

**REPORT OF SUB-COMMITTEE ON MINUTES**


**TO THE COMMON COUNCIL OF THE CITY OF SOUTH BEND:**

**THE SUB-COMMITTEE HAS INSPECTED THE MINUTES OF THE**

**December 12th, 2016 and January 2<sup>nd</sup> 2017**

**MEETINGS OF THE COUNCIL AND FOUND THEM TO BE CORRECT.**

**THEREFORE, WE RECOMMEND THE SAME BE APPROVED:**



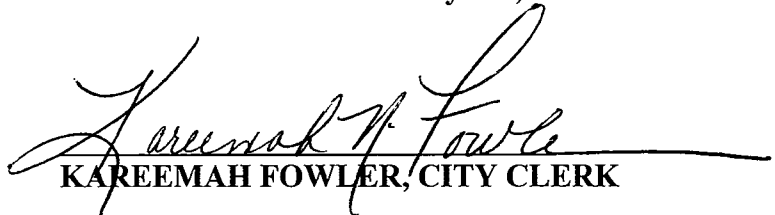
**TIM SCOTT**



**DAVID VARNER**

**APPROVED BY THE COMMON COUNCIL ON:      January 9th, 2016**

**ATTEST:**



**KAREEMAH FOWLER, CITY CLERK**



Be it remembered that the Common Council of the City of South Bend, Indiana met in the Council Chambers of the County-City Building on Monday, December 12, 2016 at 7:00 p.m. The meeting was called to order by Council President Tim Scott and the Invocation by Reverend Rick Jackson of the Olivet African Methodist Episcopal Church and Pledge to the Flag was given.

ROLL CALL

COUNCIL MEMBERS:

Tim Scott	1 <sup>st</sup> District, President
Regina Williams-Preston	2 <sup>nd</sup> District
Randy Kelly	3 <sup>rd</sup> District
Josephine Broden	4 <sup>th</sup> District
Dr. David Varner	5 <sup>th</sup> District
Oliver J. Davis	6 <sup>th</sup> District, Vice President
John Voorde	At-Large
Gavin Ferlic	At-Large, Chairperson Committee of the Whole
Karen L. White	At-Large

OTHERS PRESENT:

Kareemah Fowler	City Clerk
Jennifer Coffman	Chief Deputy Clerk
Alkeyna Aldridge	Deputy Clerk
Michael Passavoir	Executive Assistant Clerk
Aladean De Rose	Interim Council Attorney
Adriana Rodriguez	Legal Research Assistant

REPORT FROM THE SUB-COMMITTEE ON MINUTES

Councilmember Gavin Ferlic made a motion that the minutes of the November 28<sup>th</sup>, 2016 meeting of the Council be accepted and placed on file. Councilmember Oliver Davis seconded the motion which carried by a voice vote of nine (9) ayes.

SPECIAL BUSINESS

Councilmember Tim Scott announced that the Historic Preservation Commission’s appeal process would be continued until January 23, 2017; *Bill No. 66-16* on water rates is continued to January 9<sup>th</sup>, 2017; *Bill No. 16-85* Portage Prairie, *Bill No. 16-89* Coveleski project, and *Bill No. 16-90* Councilmember Oliver Davis’ resolution on neighborhood plans are all set for January 9<sup>th</sup>, 2017 as well.

Councilmember Scott announced that members of Boy Scout Troop 111 were present, asking them to please stand.

BILL NO.

16-92

A RESOLUTION OF THE COMMON COUNCIL  
OF THE CITY OF SOUTH BEND, INDIANA,  
PUBLICLY CONGRATULATING AND  
APPLAUDING ACTOR AND PERFORMER RJ

WALKER FOR HIS ACCOMPLISHMENTS IN  
THE ACTING INDUSTRY

Councilmember Regina Williams-Preston, 838 North Elmer Street, South Bend, IN, served as presenter of this bill. She invited RJ Walker and his family to the podium. Councilmember Williams-Preston stated that there had been a multimedia presentation prepared for the evening, but that it could not be shown due to technical difficulty. A still shot of a commercial Mr. Walker acted in was presented to the Council and public. Councilmember Williams-Preston encouraged those present to watch the commercial at their leisure.

Councilmember Williams-Preston then began to read the resolution before the Council and the public until she realized that she had in her hand the wrong version of the resolution. She asked to read the proper version of the resolution.

Councilmember Tim Scott made a motion to accept *Substitute Bill No. 16-92*. Councilmember Dr. David Varner seconded the motion, which carried by a voice vote of nine (9) ayes.

Councilmember Williams-Preston subsequently read the correct version of the resolution.

At this time, Mr. Walker and his family were given an opportunity to speak to the Council and public.

RJ Walker greeted everyone, stating, First off: what's up? Honestly, I'm going to be real right now, real transparent. Everything I'm saying is real, so it's not a façade or anything. Ten (10) minutes ago, I was getting cold feet, and I didn't even know if I was the right guy for this. For the past few months, I doubted myself constantly, and I consistently told myself that I don't know if I'm the right guy. But after hearing Regina restate what I told her that I went through, and seeing my family here, and I look at the news, and I come home once every year and I still see shootings often—it's kind of humbling to see that I can stand as a beacon of light. It's not a "me" thing. I feel like I'm just a vessel for it all. It's not an "RJ Walker" thing. That's just a name. But I just feel honored. I'm blessed to see that people like Tim Scott, or any of you people, would even look at me in this light. I'm a mess, I am. I am! And I admit it. But I'm just really happy to be here. It's unreal. Everything that's happened is unreal, and I thank everyone. I'm sorry I'm tearing up, it's just the emotions got the best of me. Thank you, guys. Just thank you so much.

Joanne Walker, mother of RJ Walker, residing in South Bend, IN, came up to the podium to speak, expressing gratitude for the honor her son was receiving.

Serena Walker, sister of RJ Walker, residing in South Bend, IN, came up to the podium to speak, recounting memories of her brother that illustrated clearly that Mr. Walker was the right man chosen for this resolution.

Randall Walker Sr., father of RJ Walker, residing in South Bend, IN, came up to the podium to speak, expressing great pride in his son's development and achievements, as well as explaining that Mr. Walker was a young man who was always striving to reach his goals.

Those from the public wishing to speak in favor of the bill:

Samuel Brown, 222 Navarre Street, South Bend, IN, stated that he did not know Mr. Walker but that he was touched by his words. He encouraged Mr. Walker to put his faith in God and to keep the work up.

Jonathan Jones, residing in South Bend, IN, stated that he has known Mr. Walker for some time, having previously worked at both Bethel College and IUSB. He stated that he always felt that Mr. Walker had a great light, that he was a great person. He hired him into a mentoring program, where he always brought a lot of excitement. He expressed pride in Mr. Walker and was glad to see him be acknowledged.

The Councilmembers were given the floor to comment on the bill. Each one offered a brief word of congratulations and encouragement to Mr. Walker, as well as thanks for the honor he has brought to the City with his growing body of work.

Mr. Walker presented a framed certificate in honor of the Boys & Girls Club, paying homage to them.

Councilmember Gavin Ferlic made a motion to adopt *Bill No. 16-92* and Councilmember Dr. David Varner seconded the motion, which carried by a voice vote of nine (9) ayes.

REPORTS OF CITY OFFICES

Representing the City Administration:        James Mueller, Chief of Staff  
   Suzanna Fritzberg, Deputy Chief of Staff

RESOLVE INTO THE COMMITTEE OF THE WHOLE

At 7:28 p.m. Councilmember Tim Scott made a motion to resolve into the Committee of the Whole. Councilmember Dr. David Varner seconded the motion which carried by a voice vote of nine (9) ayes. Councilmember Gavin Ferlic, Chairperson, presiding.

Councilmember Gavin Ferlic explained the procedures to be followed for tonight's meeting in accordance with Article 1, Section 2-11 of the South Bend Municipal Code.

PUBLIC HEARINGS

73-16

PUBLIC HEARING ON AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, AMENDING CHAPTER 2, ARTICLE 14 OF THE SOUTH BEND MUNICIPAL CODE TO ESTABLISH VARIOUS NEW FUNDS: LOCAL ROAD AND BRIDGE MATCHING GRANT FUND (265), EQUIPMENT/VEHICLE LEASING FUND (750), PARKS BOND CAPITAL FUND (751), SOUTH BEND REDEVELOPMENT AUTHORITY FUND (752), SMART STREETS BOND CAPITAL FUND (753), INDUSTRIAL REVOLVING FUND (754), SOUTH BEND BUILDING CORPORATION FUND (755), SMART STREETS DEBT SERVICE FUND (756), PARKS BOND DEBT SERVICE FUND (757), THE ERSKINE VILLAGE DEBT SERVICE FUND (758), AND CHANGING THE NAME OF FUND 279 TO THE IT/INNOVATION/311 CALL CENTER FUND.

Councilmember Karen White, Chair of the Personnel and Finance Committee, reported that they met and send this bill forward with a favorable recommendation.

John Murphy, City Controller with offices on the 12<sup>th</sup> Floor of the County-City Building, stated that this ordinance establishes eleven (11) new funds for the City. Mr. Murphy stated, During the budget process, we talked about nine (9) new funds regarding trustee accounts that we have always included in our audit report, and it has always been audited and counted for properly. They never were fully integrated into our accounting system or our budgeting. As a result, we are dealing with those nine (9) funds. In addition, the State of Indiana requires a new fund for any government applying for the Indiana Crossings Grant program. That's Fund 265. So if we receive that grant, we will deposit it in that fund and that's when we will spend it. We will have an appropriation in the first quarter, likely, to clean up that fund. The 311 Call Center fund, which we had in place for 2016, has been revised in its name to fully recognize the new

integrated IT Innovations 311 Call Center activities. So, all of those activities are in one fund. As discussed in Committee, there are separate divisions in each fund, so you kind of keep track of the cost of each division of the fund.

No one from the public wished to speak in favor of or opposition to the bill.

Councilmember Dr. David Varner made a motion that *Bill No. 73-16* be sent to the full Council with a favorable recommendation. Councilmember John Voorde seconded the motion which carried by a voice vote of nine (9) ayes.

74-16

PUBLIC HEARING ON AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, APPROPRIATING ADDITIONAL FUNDS FOR CERTAIN DEPARTMENTAL AND ENTERPRISE OPERATIONS IN 2016 OF \$220,000 FROM CONSOLIDATED BUILDING FUND (#600), \$120,000 FROM SOLID WASTE FUND (#610), \$5,000 FROM WATER WORKS CUSTOMER DEPOSIT FUND (#624), \$4,000 FROM WATER WORKS SINKING FUND (#625), \$5,000 FROM WATER WORKS BOND RESERVE FUND (#626), \$11,000 FROM WATER WORKS DEBT RESERVE O&M FUND (#629), \$45,000 FROM SEWER INSURANCE FUND (#640), \$22,000 FROM SEWAGE WORKS O&M RESERVE FUND (#643), \$5 FROM 2015 SEWER BOND ISSUANCE FUND (#666), AND \$346,506 FROM CENTURY CENTER FUND (#670).

Councilmember Karen White, Chair of the Personnel and Finance Committee, reported that they met and send this bill forward with a favorable recommendation.

John Murphy, City Controller with offices on the 12<sup>th</sup> Floor of the County-City Building, stated that it has been the practice of the City to amend the budget quarterly, so this amendment proposed was the final one for the year. Mr. Murphy stated, We went through the list of enterprise government amendments earlier at Committee, so I will not repeat everything here. Several of these are small—those relating to the earning interest in the fund, which has been a little higher than in the prior year in the transferring of additional funds. The Century Center appropriation is for more activity. Both expenditures and revenue are higher this year than originally budgeted, so we are pleased with that.

Councilmember Oliver Davis asked if this ordinance was concerned with the South Bend Police Department at all. It was clarified for him that that issue would be brought up in a later bill.

No one from the public wished to speak in favor of or opposition to the bill.

Councilmember Oliver Davis made a motion that *Bill No. 74-16* be sent to the full Council with a favorable recommendation. Councilmember John Voorde seconded the motion which carried by a voice vote of nine (9) ayes.

75-16

PUBLIC HEARING ON AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, FOR BUDGET TRANSFERS FOR VARIOUS DEPARTMENTS WITHIN THE CITY OF SOUTH BEND, INDIANA FOR THE YEAR 2016

Councilmember Gavin Ferlic made a motion to accept *Substitute Bill No. 75-16*. Councilmember Tim Scott seconded the motion which carried by a voice vote of nine (9) ayes.

Councilmember Karen White, Chair of the Personnel and Finance Committee, reported that they met and send this bill forward with a favorable recommendation.

John Murphy, City Controller with offices on the 12<sup>th</sup> Floor of the County-City Building, stated that the City also does budget transfers on a quarterly basis, so these were the final set of transfers for the year. Mr. Murphy stated, Transfers don't represent the appropriations, rather they represent reclassifications of a budget from an '81 department in the same fund to another department in the same fund, or from an account category like supplies to services within the same fund. There are four (4) pages of those. We are trying to take a lot of pride in making sure all of our accounts are balanced at the end of the year.

No one from the public wished to speak in favor of or opposition to the bill.

Councilmember Oliver Davis made a motion that *Bill No. 75-16* be sent to the full Council with a favorable recommendation. Councilmember Karen White seconded the motion which carried by a voice vote of nine (9) ayes.

### 76-16

PUBLIC HEARING ON AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, APPROPRIATING ADDITIONAL FUNDS FOR CERTAIN DEPARTMENTAL AND CITY SERVICES OPERATIONS IN 2016 OF \$364,100 FROM GENERAL FUND (#101), \$25,000 FROM UNSAFE BUILDING FUND (#219), \$25,000 FROM LOCAL ROADS & STREETS FUND (#251), \$150,000 FROM LOIT 2016 SPECIAL DISTRIBUTION FUND (#257), \$10,000 FROM INDIANA RIVER RESCUE FUND (#291), \$212,542 FROM COPS MORE GRANT FUND (#295), \$150,000 FROM COUNTY OPTION INCOME TAX FUND (#404) AND \$100,000 FROM PARKS NONREVERTING CAPITAL FUND (#405).

Councilmember Karen White, Chair of the Personnel and Finance Committee, reported that they met and send this bill forward with a favorable recommendation.

John Murphy, City Controller with offices on the 12<sup>th</sup> Floor of the County-City Building, stated that these are the additional appropriations for the Civil City funds, which are all of the funds other than TIF or enterprise funds. Mr. Murphy stated, We went through the list at Committee, this afternoon. Addressing Councilmember Davis, he stated, The camera appropriation that is included—that's under the Cops More Grant. Ken Glowacki from the Police Department is here to answer any questions that you may have. Continuing on with his presentation, Mr. Murphy stated, So, going to the list—one is related to the COIT for additional funds for flood repairs which will be reimbursed through the insurance. We are in the process of filing a claim for that.

Councilmember Davis asked, When will all the South Bend Police cars have the new cameras put inside of them, based on the finances that are here?

Ken Glowacki, Director of Finance, South Bend Police Department, stated that he did not know the final date. Mr. Glowacki stated, It is going to be a lengthy process, but as the equipment comes in, and we can rotate cars off the street and get them replaced—again, I'm not sure exactly, because it will be throughout most of next year that this process will be taking place.

Councilmember Davis asked, You said that there are some new ones coming in?

Mr. Glowacki responded, The \$212,000—\$172,000 of that deals with buying cameras for new cars just received. The difference is going to be used as part of the money with the General Fund to replace cameras in the older cars.

No one from the public wished to speak in favor of or opposition to the bill.

Councilmember Oliver Davis made a motion that *Bill No. 76-16* be sent to the full Council with a favorable recommendation. Councilmember Karen White seconded the motion which carried by a voice vote of nine (9) ayes.

***CONTINUED IN COUNCIL PORTION ONLY.***

**41-16**

AN ORDINANCE AMENDING THE ZONING  
ORDINANCE FOR PROPERTY LOCATED AT  
401 EAST COLFAX AVENUE, 228 & 230  
SYCAMORE STREET, & 312 LASALLE  
AVENUE, COUNCILMANIC DISTRICT NO. 4  
IN THE CITY OF SOUTH BEND, INDIANA

Councilmember Oliver Davis, Chair of the Zoning and Annexation Committee, reported that they met and send this bill forward with no recommendation.

Councilmembers Dr. Varner, White, and Davis discussed the fact that Council had received a letter from the Mayor addressing this bill and agreed that it should be part of the record and read to the public.

Chairperson Gavin Ferlic explained the format of the proceedings, stating that each Councilmember would be granted two (2) questions to be asked of subject matter experts. After each Councilmember, starting with Councilmember Regina Williams-Preston, finished their line of questioning, the floor would be opened up for Councilmembers to ask an unlimited number of further questions.

Councilmember Williams-Preston opted to defer questioning to the following round.

Councilmember Randy Kelly opted to defer questioning to the following round.

Councilmember Jo Broden asked Rob Bartels, What is your commitment with regard to this project, in terms of your lease agreement and understanding of the market feasibility and readiness for you to enter the market in downtown South Bend?

Rob Bartels, Martin's Supermarket, 760 West Cotter St., South Bend, IN, explained that he did not have a signed lease due to the fact that fundamentals that would require Council approval were not yet in place. Addressing the question of market feasibility, Mr. Bartels explained that Martin's Supermarket has been around for seventy (70) years and therefore knows the City well. They have looked at big data to determine market demographics for South Bend. He stated, The tricky part about a downtown location for us is that it requires a greater population density than we currently have. The confluence of this project answers parking, it answers density, and it answers momentum in terms of market trends over time.

Councilmember Broden asked, With regard to an urban market footprint versus either of the other projects that you are involved in with Regional Cities, or existing markets—how will this market differ in terms of square footage required and layout?

Mr. Bartels responded, This is a pretty radical departure for us. He explained that Martin's is involved in projects in downtown Elkhart and the south side of Goshen that are similar to this one. The Goshen project has a 25,000 square foot footprint, which is similar in size to the current project, though in a much different configuration. He stated, We as an organization are learning how to be small again. There is a great deal of learning that's going on right now. We just opened a convenience store on the west side of town, and we're working with a couple of other



projects that will get us into a more niche kind of environment. It's pretty simple: when you shrink a business model like this down to this degree, you have to be very careful with resources. Our industry is something less than two percent (2%) net profit before taxes since the Recession. That has not changed. That means that we have to be careful stewards of what we're doing, but we also understand how to adapt, and we are learning a great deal from the things that we are doing.

Councilmember Dr. Varner asked Interim Council Attorney Aladean De Rose if, in the case of this bill passing and Council modifying the proposal, this process would be the equivalent of an offer-counteroffer whereby, as modified, it would then return for negotiations.

Interim Council Attorney De Rose responded, If it's modified and the modification is accepted, it is in writing. It becomes a part of it.

Councilmember Dr. Varner responded, But it can also lead to an offer-counteroffer circumstance—or not.

Interim Council Attorney De Rose responded, Or not.

Councilmember Dr. Varner asked, Depending on how it's written?

Interim Council Attorney De Rose responded, Depends on how it's written. If it's written as a commitment, then the commitment is saved, and that commitment is adopted as a substitute with an amendment motion.

Councilmember Dr. Varner stated, What I would like to find is a resolution this evening, if we can, on a continuation of a continuation of a continuation. So, would you help us if we need specific language to accomplish that?

Interim Council Attorney De Rose confirmed that she could.

Councilmember Ferlic, addressing Marcellus Lebbin, stated, Some on the Council and other individuals have argued that the ABZA is the appropriate body to hear a request like this. Why, in your opinion, is the Council the appropriate body to hear a consideration like this?

Marcellus Lebbin, 4100 Edison Lakes Parkway, Mishawaka, IN, responded, Under Indiana law, you are the zoning authority for the City of South Bend. The ABZA is a board with appointees from the City of Mishawaka, the County, and the City of South Bend. If all of your zoning requests like this were to run through the ABZA, you would essentially be giving veto power to the County and City of Mishawaka, which is obviously not something you want. The way the system is currently set up, if something runs through the ABZA and gets denied, it comes to you and you can overrule the denial. You are the ultimate zoning authority. You have the ability to go forth and approve PUDs. Projects of this magnitude, of this scale are what the PUD statute was intended for when it was written by the State. That is why we are here today.

Councilmember Ferlic, addressing Dave Matthews, requested that Mr. Matthews talk about his process moving forward, if this successfully passes. He also asked him if there was a commitment to attempting to acquire other portions of the parcel, to work with the neighbors to potentially reduce the overall height.

Dave Matthews, 215 E. Colfax Ave., South Bend, IN, stated that Matthews LLC does the development that they do because they love South Bend. Mr. Matthews stated, We are trying to make the City better. We are trying to do what's right for the neighborhood. This is our home—this is the place we care about. I think if you look at our past buildings, they show that we care about the neighbors. There are requests from some of the neighbors to make the building shorter. We have worked with experts hired by the City from Washington D.C., we have in-house designers, we have consultants that we use outside of our company to try and figure out the best way to move forward. But we have to design within the land we own. Now, there are discussions about me buying more property on the block—it hasn't happened yet. If it does happen, then yeah, I'm definitely willing to talk and say that we come back and revisit the design and say that we don't have to build it so tall, we can build next door. And if I do buy that land, I'm happy to work with the City and say, "Hey, this additional parcel is in play. Here's what we are thinking, instead. What do you guys think? How do we move forward?" But, there's a lot of uncertainty

there, as well. We want to do what's right for the neighborhood and we are going to do what's best. If they came back and said that they were ready to go, and if some of the other parcel owners on the block said that they were happy to sell it at a reasonable price, then I could definitely understand making the building shorter. Because it's a PUD, it would probably have to come back through this process for a significant change. We would work with planners, we would work with Community Investment, and tell them what we need and ask what they want to see. We want to do what's right for the neighborhood, what's right for the City. I live a few blocks away. I walked here tonight. This is our neighborhood. We care.

Councilmember Davis requested that James Mueller read Mayor Pete Buttigieg's letter regarding compromises on the Commerce Center PUD.

James Mueller, Mayor's Office Chief of Staff, with offices on the 14<sup>th</sup> Floor of the County-City Building, read the Mayor's letter which is on file with the Office of the City Clerk, accessible in the flat file of *Bill No. 41-16* as "Mayor Buttigieg Letter to Council."

Councilmember Davis asked Mr. Mueller if he would share the name of the D.C. consultant and what their recommendation for this project was.

Mr. Mueller stated, The consultant Mr. Matthews referenced earlier from D.C. is Torti Gallas. Torti Gallas looked at the existing land that Mr. Matthews owned and basically said—well, there weren't a lot of options, but I will bring Jitin to speak further to the conclusions.

Jitin Kain, Director of Department of Public Works, with offices on the 13<sup>th</sup> Floor of the County-City Building, stated that he was tasked with trying to find a reasonable compromise to the proposal offered by the developer. He stated, We consulted with Torti Gallas and Partners' urban design firm that has done work in South Bend in the past. The West Side Main Streets plan was developed by Torti Gallas. They're known not only for doing design planning work but also for building projects. They are actively involved in a lot of residential Mixed-Use projects. We worked with them over the last few days. They understood the program. They had conversations with the developer. Their key suggestion was to balance the program onto the entire site. Given the constraints of the project, they felt the best approach would be to try and look a little more horizontally as opposed to vertically. They suggested breaking the project into three (3) different buildings, with the project being phased-in. The first couple of buildings could be on LaSalle and the second phase would be on Colfax. The proposal they offered also reduced the height to about one-hundred and thirty (130) feet, or one-hundred and twenty-seven (127) feet. They offered options for certain buildings being taller than others, so that there was variation in height. Much of the proposal seemed to be heading in the direction of the compromise that we were seeking, except the challenge was site control. The proposal was contingent on having site control of the Fire Arts building and the AEP substation to make that entire program happen. We engaged with AEP in conversation. They have a mandate by their governing body to overhaul that substation, but that deadline is the middle of the year in 2019. The developer was seeking site control, earliest, by next year. AEP was willing to offer a letter of intent, saying, "We intend to work with the developer on this, however we could not come to a decision on having site control by next year." I think that seemed to be the sticking issue. We tried to work on a compromise. The proposal offered seemed unfeasible, in the end.

Councilmember John Voorde opted to defer questioning to the following round.

Councilmember Tim Scott, addressing Mr. Matthews and Mr. Mueller, stated, If I'm looking at the options that were presented to us by Mr. Matthews, there's an Option B that is eleven (11) stories, where zero (0) money is put in by the City versus, according to the letter, nine (9) stories with a minimum of \$4,100,000 from the City. If I'm looking at this correctly, according to the letter, it's an option that the Mayor has put on the table. Does this work for both the City and the developer? I'll start with the developer.

Mr. Matthews asked, For which option?

Councilmember Scott responded, Option B. Looks like eleven (11) stories, zero (0) money in from the City.

Mr. Matthews responded, That option still works for us, yes.

Councilmember Scott called Mr. Mueller up to the podium.

Mr. Mueller stated, It is not our first preference, but it does work for the City, and there is no other option on Mr. Matthews' sheet that works for the City, financially.

Councilmember Scott responded, Because of the upfront money from the City?

Mr. Mueller responded, Because of the upfront money from the City, correct.

A brief discussion between Councilmembers Davis and Scott, Mr. Matthews, and Clerk Fowler ensued over whether the public had access to a letter that Mr. Matthews had submitted listing four options for the PUD project. Clerk Fowler and Mr. Matthews confirmed for the Council and public that the letter was accessible through the City Dropbox on the City website.

Councilmember Scott, addressing Mr. Bartels and Mr. Matthews, asked, How many jobs will this building bring to the City?

Mr. Bartels responded, Our part of it is something in the neighborhood of forty (40) plus or minus ten (10). So, thirty (30) to fifty (50), but it depends on full-time/part-time. It depends on how robustly things go.

Mr. Matthews responded, We will probably have somewhere around three (3) to seven (7) full-time equivalents added for this building for both leasing management and property management.

Councilmember White, addressing Mr. Matthews, stated, I want to make sure, in terms of the December 12, 2016 letter that we received from the Mayor—the Administration had developed or offered two (2) options: A and B. Of these options, none of them will work for you, is that what you're saying? What we have before us, that James just read.

Mr. Matthews responded, You're talking about two (2) different options.

Councilmember White responded, Two (2) different options.

Mr. Matthews explained, One (1) was option D, as in David—

Councilmember White interjected, Well, I'm looking at the letter that we have.

Mr. Matthews responded, Right. The first option of their preference was my Option D, from the five (5) different proposals which was a one-hundred and twenty-seven (127) foot tall building at the curb, but we can't pay for the garage with only a hundred and forty-seven (147) units. So, the City offered \$1,500,000 to that to buy some land and help pay for the garage, but our deficit was \$4,700,000, so the \$1,500,000 didn't get us there. So that option would not work, but then their second one was my Option B, which was to reduce the height to eleven (11) stories instead of twelve (12), and that would still give us enough money with the tax abatement to pay for the garage.

Councilmember White asked, In light of what you have heard, and the height being one of the major concerns—by reducing by one (1) story, what impact would that have on you financially?

Mr. Matthews responded, It saves us \$5,000,000. We spend \$5,000,000 less. It costs us twenty-four (24) apartments, so it's probably costing us \$500,000 to \$600,000 dollars a year in revenue, and then it probably saves us \$80,000 a year in property taxes that we would not have to pay because our building would be cheaper.

Councilmember Broden asked if the format of questioning could be modified, as she felt that two (2) questions per Councilmember did not allow the Council to appropriately question a given subject matter expert.

Chairperson Gavin Ferlic proposed that if one Councilmember asks a question to a particular subject matter expert, they can ask an unlimited number of questions to them, and should any other Councilmember want to ask questions of that same subject matter expert, any number of Councilmembers may ask questions to them until said Councilmembers are satisfied. Once a subject matter expert has been totally questioned, the Council can the move on to questioning the next expert.

Councilmember Williams-Preston, addressing Mr. Matthews, stated, You had mentioned that you would be willing to work with neighbors and have already been working with neighbors, and one of the big issues that neighbors were concerned about was the height. It is my understanding that several months ago, there was a recommendation by the Area Plan Commission, I think, that you look at possibly going back to that East Bank Plan. You and I have had this conversation, too. I have concerns about making a decision that goes so far outside a plan that was created by people in the community. The issue is that business plans, in my mind, should not trump or supersede neighborhood plans. Can you clarify for me, maybe again, what was your reasoning behind not pursuing that line per the recommendation? That line of—let's go back, let's talk to neighbors, let's get some other consensus at that time.

Mr. Matthews responded, So, as a private developer, we met with the neighborhood organization for this area, the Howard Park Neighborhood Organization. We presented. We had dialogue. They gave a letter of support. We met with neighbors from the townhomes and row houses that have gone up. So, we worked with the homeowners associations of the new development, we worked the neighborhood organization for the entire neighborhood, and had a lot of conversation and dialogue as we were presenting and brought them through the design process. To update the East Bank Plan, I don't think as a private developer I can do that. I think that has to come from the City, probably via the Area Plan Commission or the Department of Community Investment. So, they have to do a new study. I'll be there, and I'm sure a lot of neighbors will be there, too. But, from a private developer standpoint, I think we went above and beyond and met with as many neighbors in the eight (8) or nine (9) blocks of the East Bank that we could.

Councilmember Broden stated, So, Mr. Matthews, at the very start of this process, pursuant through the Planned Unit Development district ordinance that was passed by this Council in 2015—there are two criteria that get to whether or not this is the type of petition that we should be seeing as a Council. One (1) is Section A3, and it says, "The PUD District is not intended for developments seeking release from development standards within a district in which the use is permitted. The height that you're requesting, is that not a development standard for this district that you're trying to build in?"

Mr. Matthews responded, The intent of the PUD is that they don't want somebody using the PUD to, let's say, get to do a variance process instead of going through the ABZA. If we were just talking about height and nothing else, then yes, that would be wrong. But we're not talking about just height. We have a site plan, we have a Mixed-Use building, we have group residencies—that's an additional use. There's now a path that somebody could use to go through the ABZA to get a group residency, but when we did the original planning for this site, you could not have three (3) people living together in a three (3) bedroom apartment. There was no way to make it happen in the Central Business District. We knew that, down the road, the City Council might make a path for people to have two (2) or three (3) roommates in the downtown. But when we were doing our planning, when we submitted the application, that was talk—and there was dialogue going on—but no one had talked to me about it. I know that was a piece of legislation you actually worked on. But again, nobody talked to me. We just heard rumors that this was going to happen eventually. So, when we did the application, the only option we had was to do a Planned Unit Development and keep a lot of the stuff intact in the Central Business District, or do a Mixed-Use Development, which has more restrictive heights and—it's not really designed with part of the Central Business District. So, it made more sense for us to do the PUD. Honestly, Eddy Street Commons is a PUD. PUD's give the Council a lot more information and a lot more control about what's going to happen. So, for a \$50,000,000 development, it seemed like the right path was to come to City Council and say, "Here's our cards, here's what we're thinking of doing, here's what it's going to look like, here's the site layout. What do you think?" Because that was a portion that was changing, that gets thrown into whether or not you guys approve the PUD.

Councilmember Broden responded, So if I could follow up on that. At the time that you presented this petition in the initial planning meeting with the Area Plan Commission staff, all of the uses that you sought then or that you are seeking now did exist by rezoning this to a Mixed-Use district. Is that true?

Mr. Matthews responded, They existed in Mixed-Use, they existed in Sing-Fro. The group residency existed in Mixed-Use.

Councilmember Broden asked, Then why did you not pursue that route, please?

Mr. Matthews responded, It also existed in Single-Family, it also existed in Multi-Family. There's other districts that would have allowed group residency. We had our choice to pick what makes the most sense for what we're applying for. And for us doing the PUD that's very similar to the Central Business District made more sense than getting a Mixed-Use zoning and then saying here's all the variances from Mixed-Use to make it more like the Central Business District. Either route would have been okay, but it seemed like the PUD was the right way to go, and it gives the City Council more discretion and more influence on the rezoning process. This is a big project. I think you guys deserve to have more influence and more say, if this goes forward. Especially, in hindsight, because the height issue became such a topic of conversation. I'm glad we went this route.

Councilmember Broden responded, But, isn't that exactly the loophole that when Council had passed your previous project at Jefferson and Niles—that went through the ABZA, and of course that was denied. Then, you brought it forth to the Council to make that decision. You brought it by way of a PUD request. And then after that process—and it was approved by Council—there was an intentional move by the Council to make this Planned Unit Development the exception rather than the rule, going forward. And it specifically listed two (2) criteria, with the help of Area Plan Staff: "The PUD District is not intended for developments seeking relief from development standards within a district in which the use is permitted," and then, "The PUD District is not intended for the development of residential subdivisions, Permitted Uses, or Special Exception Uses which are provided for within any district of this Ordinance." So, it seems to me that you are back again—are you not back again asking for a similar approval from us as a Council, having already closed this as an option for you? In other words, I'm trying to get at the validity of this as a PUD request.

Mr. Matthews responded, I just want to make sure I understand. Is the question, "Is this a valid PUD request?"

Councilmember Broden responded, Yes.

Mr. Matthews responded, Great. Yes, it is. Maybe I can bring in the attorney who is a State rep who helped draft legislation. Bryan, can you help answer this question for me? If you're asking if it is legally a request, I think it is. It made it through the process thus far, but Bryan can probably—

Bryan Dvorak, 215 West North Shore Drive, South Bend, IN, stated that he has represented Mr. Matthews on various matters. Mr. Dvorak stated, We've worked on all sorts of building projects around town. We've had discussion with some of the planning people about when a PUD application is appropriate. Last year, I think it was August of 2015, the ordinance was updated, and it included the intents section that Councilmember Broden read. I think, as Mr. Matthews mentioned, his intent was not to circumvent one of the requirements in the zoning law. His intent was to present a Planned Unit Development. As a larger project, I think as Councilmember Broden mentioned, we talked about an exceptional type of project. This is a \$50,000,000, Mixed-Use, two-hundred and forty (240) residential units on top of a grocery, pharmacy, along the East Race in the Central Business District. And with a parking garage. It is not a normal project. It's going to take a long time to construct. It's going to take a lot of money to pull together, and it will have a major impact on the town. That is the reason the State adopted the Planned Unit Development statute to begin with, to try to find an easier way to do planning for these types of major projects. We have general funds in place for the Renaissance District over in the Studebaker building. AmeriPlex was a PUD. Eddy Street Commons is a PUD. They could have been zoned in other ways as well. The PUD statute and the ordinance that the City adopted as well makes it an easier process, both for the developer—so they can make sure they have all their components in a line when they are going to get their financing done and when we're lining up contractors—but really also for the City. A major complex project like this, I think it's in the City's interest to basically have all these details spelled out ahead of time. The PUD gives you, as the Council, the ability to say that you want to know how every single component of this

project is going to work, and that's how the PUD statute and the ordinance actually is created. I don't think it at all violates the intent clause of the PUD ordinance because I don't think the intent behind applying for it as a PUD was to circumvent any of their zoning regulations. Does that answer the question?

Councilmember Broden responded, Sure. So, let's distinguish the Eddy Street Commons, if we would. That is a mix of all kinds of different uses and a large swath of land, and it preceded the 2015 amendment, if I'm correct.

Mr. Dvorak stated, Right.

Councilmember Broden continued, stating, And then with regard to the Renaissance District—sorry, I can't remember my notes on that. So really, again, it's trying to get to whether this is appropriate post the 2015 amendments that this Council passed 9-0. Everybody is excited about the development. The big question here is the height, and it continues to be morphed in all kinds of different proposals. I guess I'm just wondering why it did not go the route of the ABZA, because to me that should have been the route for this particular project.

Mr. Dvorak responded, The question is whether or not this is prohibited under the City ordinance on Planned Unit Developments based on the intent clause of the ordinance?

Councilmember Broden responded, The criteria—yeah, yeah, the intent.

Mr. Dvorak continued, stating, This is sort of an exercise in statutory construction, I guess, so we can sort of look at this. Subsection A of Article 5 of the Planned Unit Development District—it has three (3) parts. The first one talks about what the district is intended to do. It talks about establishing compatible and efficient mix of land uses and open space; compatibility with the Comprehensive Plan; establishing a creative approach in building design through architectural compatibility; flexibility and incentives for development; and any individual land or combination of land uses otherwise not specified elsewhere in the Ordinance. So, that's the intent, and then it has two (2) conditions on that. One (1), it's not intended for residential subdivisions; and then permitted uses, special exception uses; and then the third one is, "The PUD District is not intended for developments seeking relief from development standards within a district in which the use is permitted." So, that's the intent of the statute. That describes what the intent of it is, but it actually doesn't carry any force of the law, because what the statute actually does is described in the next section, B, Permitted Uses and Development Standards. Then it talks about what the actual permitted uses are under a PUD application, none of which prohibit this application from going through. I guess my response is, number one (1), I don't think the ordinance prohibits this application in any way—before this meeting, I went through all the meeting minutes. At every step of the process, no one ever said this isn't a legal application under the PUD's ordinance. That's a new and novel argument that I don't think makes sense because, number one (1), the intent section of the ordinance doesn't apply or carry any sort of force of law, and it's not prohibited under the permitted uses. So, I guess that's my argument.

Councilmember Broden responded, Okay.

Mr. Dvorak asked, Does that make sense?

Councilmember Broden responded, Sure, thank you.

Councilmember Dr. Varner stated, Just for the sake of clarification, while it says that it may not be intended, it doesn't say it's forbidden to use this.

Mr. Dvorak responded, Right. It actually doesn't say it may not be intended, it just says, "This is the intent of the ordinance." The rest of the ordinance actually spells out how it's applied, and there's nothing in the actual meat of the ordinance that says this would be prohibited at all.

Councilmember Davis stated, You—and especially Dave Matthews, your client, has shared that he liked the PUD because of the fact that it allows the Council to have more authority. Is that not correct?

Mr. Dvorak responded, Correct.

Councilmember Davis presented to Mr. Matthews and Mr. Dvorak an analogy in which the Council and Mr. Matthews were two (2) friends deciding how to distribute mushrooms and black olives on a hypothetical pizza, and how to split the bill on the order of said pizza.

Councilmember Davis argued that if the pizza cost forty dollars (\$40) and Mr. Matthews paid for the entire pizza, he would be at Mr. Matthews' mercy—conversely, if Councilmember Davis paid for the whole pizza, Mr. Matthews would be at his mercy. He stated that he appreciated the fact that Mr. Matthews had previously stated that he wanted the Council to have more control over the fate of this project. Councilmember Davis stated that he felt that every suggestion given by Council was shut out by Mr. Matthews, though.

Mr. Matthews went on to explain, using the pizza analogy, that if—instead of paying twenty dollars (\$20), or half of the cost of the pizza right away—Councilmember Davis opted to pay fifty cents (\$.50) every week for the next five (5) years, that would be equivalent to how the tax abatement would work for the actual PUD. He further explained that if Councilmember Davis paid twenty dollars (\$20) right away, that would be equivalent to the City abiding by the East Bank Plan's call for the City to build a garage on the property within the last eight (8) years. He stated, If the garage was built by the City, as the plan called for, I can build a shorter building. So, if the City doesn't have the money to pay for the garage, we have no deal, unless we can figure something out. What I figured out is that if we do a modified tax abatement and we go taller, I can make enough money to cover the City's portion and say, "Great, I'll buy the whole pizza today. You can pay for your share over the next ten years."

Councilmember Davis responded that he felt that as the project could not proceed without taxpayer money, that Council influence should in fact be equal to Mr. Matthews's. According to the analogy, where both Councilmember Davis and Mr. Matthews have twenty dollars (\$20) apiece, Mr. Matthews could not buy the pizza without Councilmember Davis's contribution, no matter how Councilmember Davis chose to pay his share. Councilmember Davis stated that despite this, it had been portrayed to him that Mr. Matthew's influence was greater than his own. Councilmember Davis stated that he did not see the equal value of each party's influence, in practice.

Mr. Dvorak stated that Mr. Matthews has been transparent about his financial situation. He further stated that it was rare for developers to present a dozen (12) different possibilities for a project, to which Councilmember Davis responded that Council had received these different configurations in the last week or two (2). Councilmember Broden added, You had ninety (90) days. Mr. Dvorak returned to the pizza analogy, stating that people had been clamoring in the East Bank area for pizza. Mr. Matthews showed up with the intent on buying the pizza for the people. Council then showed up, stating that they would pay Mr. Matthews back for the pizza over five (5) to ten (10) years. As this arrangement does not allow for both to buy the pizza upfront, Mr. Matthews would be the only one who could buy the pizza at the table, right then and there. He stated that Council still wielded the most influence of all: should they say that they did not want to do the project, the project would not go forward.

Councilmember Davis responded that the only reason that Mr. Matthews has money upfront in this scenario is because he knows he will be paid back. Without the tax abatements subject to Council approval, the project could not happen.

Mr. Dvorak agreed with Councilmember Davis. He further stated that population density was critical to the success of the grocery store, and that aside from those residing at the Pointe and Mr. Matthews' properties in the area, there were not many people living in the East Bank. Of those people, Mr. Dvorak stated that, to the best of his knowledge, almost all have supported the project. He stated, We humbly beseech your approval.

Councilmember John Voorde deferred his question.

Councilmember Tim Scott stated that he would defer his question as well, as he felt ready to make a motion.

Councilmember Karen White asked if the only way, from Mr. Matthews' perspective as a developer, that the project could go forward was if it were eleven (11) stories tall.



Mr. Matthews responded that it could be shorter, but somebody would have to pay for it.

Councilmember White asked if Mr. Matthews could speak about how the project could possibly be in conflict with the South Bend Design Guidelines established in 2013.

Jitin Kain approached the podium and explained that this was a revision to the Central Business Development Area Plan which presented broad guidelines for policies affecting the Central Business District, looking at the East Bank, West Bank, Monroe Industrial Park, and Medical District as subsections of the Central Business District. He further explained that these guidelines would say nothing about height or appearance, but was concerned with the types of uses of properties in these subsections of the Central Business District.

Councilmember Regina Williams-Preston asked Mr. Matthews what guarantee Council had that Mr. Matthews would continue to pursue the acquisition of additional land that would allow the height of the project to be brought down, if Council approves the project.

Mr. Matthews responded that he did not know that there could be a guarantee.

Councilmember Williams-Preston, addressing Mr. Dvorak, asked what the use of a City plan was if developers could turn to PUD's to break away from plan guidelines. She also asked how vulnerable Council would be to legal action if they approved this PUD but denied another developer's PUD in the future.

Mr. Dvorak responded that planning is important but that it is also important to plan for the plan to fail. Where a PUD is appropriate, he stated, is when it is a unique type of project that benefits from its special type of planning. In his and Mr. Matthews' view, a \$50,000,000 Mixed-Use project that brings in a grocery store and pharmacy, as well as two-hundred and forty (240) market-rate apartments is a special project. A PUD allows for the project to happen more quickly and involves Council more in the smaller details of the project.

Councilmember Williams-Preston responded, So you're saying that when Joe Developer comes tomorrow—

Mr. Dvorak interjected, stating that if someone tried to file a gas station as a PUD, they would obviously not be eligible.

Councilmember Broden asked, Based on what criteria, though? She stated that the project ignored the Comprehensive Plan, to which Mr. Dvorak responded that it ignored only part of the plan. Councilmember Broden stated that it was a critical aspect of the plan, and argued that the project bucked against the scale, design, and aesthetic set for the neighborhood in 2004 and reasserted in 2008 with the East Bank Plan. She then asked how Council could turn away other petitioners going against the plan if the PUD in question, which was against the plan, was approved.

Mr. Dvorak responded that it was under the authority vested in the Council to make zoning decisions that they could decide whether to approve or disapprove of a petition. City plan calls for high density, mixed-use, walkability, the connection of public resources (such as the City's trails), as well as the bringing in of useful retail in a way that makes the City more urban. He argued that that was what the project intended to do. He stated that the project takes a vacant lot and brings in high quality urban development. He stated that, given this, he felt that it was an easy call to make.

Councilmember Gavin Ferlic, addressing Mr. Matthews, stated, Dave, in conversations with some Councilmembers, I think there's a sense that if this does not pass tonight, then we'll just keep on working on it and we'll get it figured out. Is there a legitimate chance in your mind that if we don't pass this tonight, that we are not going to see a grocery store downtown and we're not going to see a pharmacy downtown?

Mr. Matthews responded, I think you'll see one, but it might be a long time before you do.

Councilmember Ferlic asked whether or not there was a good chance that this project on this parcel would not happen in any shape or form if Council does not approve the project.



Mr. Matthews responded that he and his team care about the City, that they want to get a grocery store and pharmacy downtown, but that they had been working on the project for half a year. He asked, Do we want to do it, or not? If we don't want to do it, okay, we'll go build other stuff in the neighborhood. The building is leased up; we'll keep renting it. He stated, though, that he and Council had an opportunity, right then, to move forward with the project.

Councilmember Davis asked Mr. Matthews if the project, when first proposed, was at seven (7) stories in height, to which Mr. Matthews responded yes. Mr. Matthews explained that when South Bend was applying for the Regional Cities grant, he submitted a letter that included two (2) paragraphs explaining the general idea of the project. When the region was awarded the Regional Cities grant, he had to update the math—at which point Rob Bartels contributed a letter of support. Mr. Matthews stated that that was when the project grew much larger.

Councilmember Davis then asked Mr. Matthews why in 2013 he was opposed to a similarly against-plan development, but now had done a one-hundred and eighty degree (180°) turn.

Mr. Matthews responded, Frank Perri and Tom Panzica proposed on the old Wharf site—south of Colfax, next to the river; that triangular sandlot that's been vacant for sixteen (16) years. They went to the ABZA—not the City Council—and asked for a height variance to go taller. They increased the height limit from sixty (60) feet to almost one-hundred (100). That's not the zoning authority: the City Council is. So, we went to Mishawaka, Osceola, some South Bend reps, and some County reps and said, "Hey, in downtown South Bend, is it okay to build a suburban-like apartment building with a parking lot around it in the middle of downtown?" It was a poor urban design, and it was the wrong people to ask. The City Council should decide if it's changing.

Councilmember Davis asked if Mr. Perri and Mr. Panzica had brought the project to the City Council, would Mr. Matthews have relented his protest. Mr. Matthews responded that if the project had been brought to the Council, and had been more pedestrian friendly instead of "a couple of towers in a sea of parking," he would not have objected to it. He stated that everything about the project motivated him to speak against it.

Councilmember Davis stated that in reading Mr. Matthews' testimonial from that time, he did not see any mention of protest against those particular details of the project. Councilmember Davis noted an emphasis on ideas of density and other factors similar to those present in Mr. Matthews' own project. Mr. Matthews stated that he could not recall what precisely he had said on record, but that after Mr. Perri had gotten his project approved by the ABZA, Mr. Matthews brought two (2) projects to the ABZA that were subsequently denied by the ABZA.

Councilmember Voorde stated that though he appreciated the alternatives presented by Mr. Matthews, he did not think that it was productive to negotiate those alternatives at a Council meeting. He stated, I want to focus on the garage and to make sure that I understand the alternatives. The number of living units in each one of these proposals varies. Obviously, if you're talking about one-hundred and twenty-seven (127) feet, you're talking about one-hundred and forty-four (144) or one-hundred and sixty-eight (168) units, right? The cost to the City to help you make this financially feasible is either a \$4,700,000 or \$4,100,000 contribution to help you build the garage?

Mr. Matthews responded that a better way of looking at it is that the City approved the East Bank Plan and said that they would pay for the garage. He stated, It's been eight (8) years. A recession hit, the hospital left town, a high school moved in—the neighborhood's changed. He stated that the City never built that garage and did not intend to build it; that it knows that a garage is necessary in order to do any development on the block. The City could then chip in \$4,700,000 toward the \$12,600,000 they should have spent to build the garage.

Councilmember Voorde responded, In your alternatives—your options—is the garage size static?

Mr. Matthews responded that if they were building on grass, this would be much easier. The current parking spaces are booked with the Commerce Center. He stated, If we build a garage, it's not just building a garage to satisfy the demand of the apartments or the grocery store—it's building a garage to satisfy the demand of the office workers that are getting displaced when the grocery store goes in and their ground-floor hundred (100) spots of customer parking comes in.

He stated that the proposed garage was sized for the daily traffic needed for the grocery store, pharmacy, office workers, and a small amount for daytime apartment parkers. At night, though, he stated that the garage was probably going to be half-empty because the grocery store, pharmacy, and office would be closed. This abundance of volume could accommodate increased density in the area, such as if the Pointe wanted to expand.

Councilmember Voorde asked, If Fire Arts became available—

Mr. Matthews interjected, I'm on the board, I talk to them.

Councilmember Voorde continued, asking if that development became available if they would be strictly apartment units, like what is to be built on Sycamore, or if they would be a commercial-residential mix.

Mr. Matthews responded, The ground floor, if they go commercial, they are going to put a demand on the parking of the grocery store and on the streets. If it's low-impact commercial during the day, then we can have commercial on the ground floor. There is not going to be enough capacity in that garage, though, to do an office building or commercial uses on multiple floors. It's going to have to be residential—unless we build another garage, but I don't think it's necessary.

Councilmember Voorde asked if the garage, in all the alternative configurations of the project, would be sized to accommodate more than a downsized building, to which Mr. Matthews responded that as long as the building is mostly residential, the garage would be accommodating.

Councilmember Scott, addressing Community Investment, stated that in 2008 there was an expected real estate tax increase of \$2,700,000. He asked how much of this plan has been realized, in terms of tax generation.

Brian Pawlowski, Interim Executive Director, Community Investment, with offices on the 14<sup>th</sup> Floor of the County-City Building, stated that the short version of the answer was that the City was not there yet.

Councilmember Broden, addressing Mr. Pawlowski and Mr. Mueller, asked why, after a four (4) month-long process, Council received four (4) additional project options—as well as the Mayor's letter listing his preferred compromise—only in the last twenty-four (24) hours.

Mr. Mueller responded that negotiations had been going on for several months, and that the issues presented that night were not altogether new. He stated, I credit a lot of the Councilmembers for their efforts to get these kinds of options there. We've been trying to push some sort of compromise for many weeks. Quite frankly, I think there was a perception that you could peel off a fifth vote and not necessarily follow what the Administration was negotiating. I think when there became a clear message from the Council that you wanted to see a compromise and we were trying to negotiate that compromise, this is when you saw a movement of—

Councilmember Broden interjected, stating, So really, your focus started two (2) weeks ago when we got that pressure. She pointed out that none of the options conform to the East Bank Plan. She asked, as a result, where the compromise was.

Mr. Mueller responded that he felt that it was a compromise between business development and planning. He stated that, regarding Councilmember Scott's question about the amount of development seen since the 2008 plan, there had not been as much development as projected at all. He stated that developers present would probably agree with the notion that height makes these sorts of projects viable. He stated, So, we have to develop what's possible with what we would like to see.

Mr. Pawlowski added that the exercise with the consultant was productive. He further stated that Community Investment started to consider different options for the project after the Area Plan Commission, when issues started to come in to the Council, the Mayor's office, and Community Investment's office—which occurred more than two (2) weeks prior to this meeting. He explained that TIF resources are finite. He stated, When we're looking at what we're able to get out the door toward projects—be it in the East Bank or different portions of the City—we do have competing needs for those things. So, to the extent that the East Bank is alive and vibrant,

because of the fact that we're not hitting those investment goals that have been outlined in the 2008 plan, it's not a very hefty TIF in terms of the overall funding that it has. So, we have to be conscious of the resources that exist there and when and how to expend those, in terms of the different projects that come in. It's not just laser-focus on one (1) project.

Councilmember Broden, addressing also Angela Smith, asked what the process was for moving forward with possibly revising the Comprehensive Plan.

Mr. Mueller responded, I'd be remiss if we didn't put in a plug for the Red Tape Commission, where we go over the Code and existing plans, and take a look at what makes sense today and what doesn't.

Mr. Pawlowski stated that Councilmember Davis's recommendation of reviewing plans for a given year is a natural place to start with the Comprehensive Plan revision process. He explained that any ordinance discussion of this type would always come back to the Council.

Councilmember Broden asked what effect approving the PUD would have on other neighborhood plans.

Mr. Pawlowski responded that the project in question would not strictly make sense in the East Bank Village, but it might make sense in the wider context of the Central Business District. He stated that he did not think it would have an adverse effect on other neighborhoods.

Councilmember Broden asked the question again, this time specifically to Angela Smith and Larry Magliozzi.

Angela Smith, Area Plan Commission, with offices on the 11<sup>th</sup> Floor of the County-City Building, stated that there was a concern that if a decision was made that night that goes against the Comprehensive Plan or encourages a PUD in violation of the intent of the PUD district, then other developers may be able to follow the same path, and it would make it more difficult for the City Council to address those items in a way that was consistent with plan and Council precedent.

Councilmember Broden asked if there was some concern or if this was a case of direct liability in a Court of Law.

Ms. Smith responded that she was not an attorney. She stated that even if the intent criteria of the PUD were not met, Council would still have to look at whether or not the PUD is consistent with the Comprehensive Plan.

Councilmember Davis asked if things like less-than-expected tax generation in the East Bank Village factors into the Area Plan Commission's decision to recommend or not recommend a project.

Ms. Smith responded, When we're looking at whether or not a proposal is consistent with the Comprehensive Plan, we're not looking at whether or not the financial goals for a project have been met to that plan. The overall goals of the plan stay in effect up until another plan replaces it with an amendment.

Councilmember Davis asked, If a plan is only meeting one twenty-fifth (1/25) of its goals and another plan is meeting ninety-six percent (96%) of its goals, wouldn't it be wise for Councilmembers whose plan is hitting ninety-six percent (96%) of its goals to make sure that they are more aggressive with that plan, and the one that is hitting one twenty-fifth (1/25) of its goals you don't really have to aggressively push for?

Ms. Smith responded, It's hard, in this instance, when you're talking about the financial aspect of it, because there are a lot of goals other than the financial and investment ones. The Comprehensive Plan was decided to come up with policies that are consistent with the neighborhood. The financial aspects often come into projects that would enforce those policies. Those projects are often laid out and may or may not ever come to fruition. The planning aspect is looking at the land-use matters, not the financial stuff behind the land-use matters. If it was up to the Council to evaluate these plans, looking at those might be indicators that maybe a plan is out of date, or it was not a good policy to start with. Those would be indicators to maybe go back

and revisit that plan through the process, but until that plan is actually replaced, these are still those policy and guideline and land-use policies and zoning issues that we have to look at when we have to evaluate them for that area plan. The underlying Comprehensive Plan itself, without going back through the process, is still the underlying plan until it's replaced.

Councilmember Davis asked, No matter how much it has met financial obligations or not?

Ms. Smith reiterated that the plan is what APC considers, not financial goals.

Councilmember Davis asked what APC's initial counsel to Mr. Matthews was, and what the rationale for that counsel was.

Ms. Smith responded that APC, in May or June, did not believe that the PUD was the appropriate avenue for this project. They also felt that the project was very complex and so they recommended that Mr. Matthews go to the Project Advisory team, which allows the project to be reviewed by several departments, including Engineering, or the Department of Community Investment. APC recommended to Mr. Matthews to remain zoned in Central Business District and to seek a variance. Another recommendation was to rezone to Mixed-Use and seek variances. Once the PUD had been reviewed, APC's recommendation came out. She stated, We gave him those options, and he chose to follow the PUD option. She also stated that APC recommended that Mr. Matthews have a discussion with the Department of Community Investment to look at reevaluating the East Bank Plan if he thought it was out-of-date.

Councilmember Davis asked why that last bit of counsel was given to Mr. Matthews.

Ms. Smith responded that Mr. Matthews had expressed that enough had changed in the neighborhood that the plan had become out-of-date. She stated that if anyone thinks the plan is so out-of-line, the best way to determine if it is or not is to revisit the plan.

Councilmember Davis asked how long the plan amendment process would take.

Ms. Smith explained that though the actual process itself is a forty-five (45) day process, the development of the plan by the Department of Community Investment is very lengthy.

Councilmember Davis asked Mark Robinson to share with the Council updates on where AEP Indiana Michigan Power was regarding a promissory letter on the subject of Mr. Matthews potentially acquiring the property.

Mark Robinson, Indiana Michigan Power, 2929 Lathrop Street, South Bend, IN 46628 stated that two substations were being mandated: the old Drewry Station and the Colfax Station. He stated that the stations are old, and that they were going to rebuild the stations as they connected them. He explained that the Colfax station was not a great place for a substation. He and Mr. Matthews had had conversations about moving that station to another property that Mr. Matthews owns. He stated, That is still very much a line of conversation. The mandate would be put in place in mid-to-late 2019. Mr. Robinson stated that the promissory letter referenced by Councilmember Davis was a letter of intent from AEP and it stated that they were still very much interested in moving the substation. He stated, We are very much interested in having the conversation about the land-swap, because although it doesn't really impose a lot of potential benefit to us as a company, if we are going to do it, we might as well do it in the best interest of the community at large. We have been speaking with the City quite a bit. Mr. Robinson stated that his team had been in contact with Jitin Kain, the Department of Community Investment, as well as their Organization, Transmission, and Planning group. He stated, The timing is the key, and unfortunately we're not a year earlier on the timing. He explained that they would have to put everything in place in 2019—and 2019 is the latest they could get the work done—but that it may be possible to piecemeal the project and move certain pieces ahead of others.

Councilmember Davis asked, So that's what's going to be in your letter of intent?

Mr. Robinson responded that they had not even had a feasibility study done on the land. He stated, There are several different options for the transmission line, including working with Notre Dame. There are a lot of moving parts to that project. It is not a simple project. The letter would be an intent letter—it would not be any type of a guarantee that could be put on the project.

Councilmember Davis asked, When you do intent letters, what has been your success rate?

Mr. Robinson responded, So, the project will happen. It's a mandate by PJ, which is a regional transmission organization and manages the transmission grid and the wholesale market of electricity. It is their mandate, for reliability purposes, that we do this project. When you look at the commitment that we made to this City, via Smart Streets—of course, in conjunction with Smart Streets, but with the network upgrades that we had to do, because of the incidents that we had. We are completing that this weekend. When we say we are going to do something, we are going to do it.

Councilmember Williams-Preston asked whether 2018 or 2019 was the soonest the project could be completed, and afterward asked if there was anything the City of South Bend could do to help that process along.

Mr. Robinson responded, A lot of that discussion is based on the funding, because that is the capital expenditure for our company, and those projects—we vibe with ten (10) other states for the funding of these projects. He explained that there are so many variables involved in these projects. If it went really well, he determined that it would be completed before 2019.

Councilmember Williams-Preston asked, Is there anything that a municipality could do to help grease the wheels?

Mr. Robinson responded, Just knowing where existing utilities are—that type of thing. We are supposed to get plans. He stated that it is helpful to not have setbacks that could have been avoided through discussion ahead of time. The Department of Public Works offered to do everything it could to make sure the process goes forward smoothly.

Councilmember Williams-Preston asked if Mr. Robinson had ever come in before his deadline on these projects, to which he responded that he had.

Mr. Robinson stated, They have given us plenty of time. I would say that you'll be hearing more and more about our transmission projects. He stated that if they reroute the underground portion of the Colfax Station line and they can reconnect that, as the other station is being built, the Colfax Station might be able to be abandoned early, though he admitted to not being sure, as he was not an engineer. He stated, But if we could, and it makes sense, we will.

Councilmember Broden asked how much time Mr. Robinson had spent with staff regarding the project's feasibility.

Mr. Robinson responded, We have had two (2) meetings lately. One (1), I believe, was a year and a half, maybe two (2) years ago. So this has been a project that we've seen coming for a while. It is probably going to move a whole lot faster now. I'd say, all man hours on our side in conversation with the City—probably about forty (40) hours, fifty (50) hours.

Councilmember Broden stated that one of the recommendations from the Torti Gallas group was to spread out the development and phase it in over time. She stated, To me, it looks like maybe there's a one (1) year difference there between your deadline and Mr. Matthews'. She asked Mr. Matthews if his project's deadline was the year 2020. Mr. Matthews confirmed that 2020 was indeed the deadline year.

Mr. Matthews, in reference to Mr. Robinson, added, Another question to ask would be what's the likelihood that this site we're looking at is not feasible, and you just stay at Colfax? That's a possibility.

Mr. Robinson stated, I will tell you all the plans that I've seen involve just your location, as a swap. I have not seen any for the existing space.

Councilmember Davis asked Mr. Mueller to clarify a section of Mayor Buttigieg's letter that states, "Given to the tight timeline associated with the \$4.9 million Regional Cities grant from the state, I respectfully request that the council support the administration's negotiating team and our effort to arrive at a compromise." He stated, When I hear "our effort to arrive at a compromise," that means that you haven't gotten there. It seems to me, from this paragraph, that this is even looking beyond tonight. Where are you on that?

Mr. Mueller explained that the target date for Regional Cities financing is in June 2017. When the project does not progress, the risk of money going anywhere else increases as time goes on. That is one time constraint. The Council still needs to approve the tax abatement necessary for the project's funding. The Administration wants to keep making progress and wants to keep trying to work with the developer to get to a good solution for the neighborhood.

Councilmember Davis stated, Your thoughts of the tax abatement process is where your negotiation team is prepared to focus on any sound resolution, tonight.

Mr. Mueller responded, I think getting clarity from Council on this matter would be helpful. If we don't have a solution tonight, the risks do go up over time.

Councilmember Davis stated that the central idea of that paragraph in the Mayor's letter was that Council would need to compromise. He stated that the compromise would need to happen for not only the two (2) issues shared upfront, but also the tax abatement.

Brian Pawlowski stated, In terms of the tax abatement, if you look at that paper of options and you look at, say, Option D, you can see the different assumptions that are built in there on the tax abatements. For example, if you look at Option D, it says 100% x 10—that would be one-hundred percent (100%) abated over a decade. I think, as the letter lays out, we have pushed our compromise which is a ten (10) year abatement at ninety-five percent (95%) per year for the entirety of that ten (10) years, and then an addition for increased public and green space along the Race waterway. We would be prepared to contribute an additional \$1,500,000. We have been driving it after time—the numbers just simply don't end up working out. The garage obviously plays a huge role in that discussion. As the letter also makes clear, if you look at the assumptions of the other option, B—of 100% x 5 and 95% x 5—that's the assumption that we're banking in to meet financial obligations, both for Regional Cities and the overall project.

Councilmember Broden asked if these options would be going through as a PUD or if the aim was to change, as soon as possible, the Comprehensive Plan, therefore having these options go through as a rezoning for the Central Business District with variances. She asked, What do you recommend with regard to the tool that we use, going forward with this?

Mr. Mueller responded that, in terms of timing, the best option would be the PUD. He stated, We would prefer to get some clarity from Council on their height limit. The sooner the better. So, tonight, we have a PUD before us. We could start a process next year, should you guys prefer that process. But, as time goes on, we risk missing the deadline.

Councilmember Broden asked, So, you're asking—for reasons of simplicity and timing—that it go through a PUD and that we stipulate the height based on one (1) of these options that you've provided us?

Mr. Mueller responded that the Mayor had recommended in his letter his preferred option, as well as the eleven (11) story option.

Councilmember Broden stated that there are district standards entailed in the PUD that the petitioner has agreed to, in the past, or has represented in his public statements. She asked, Are we prepared to go over that, tonight, and to address those and incorporate that into this PUD? Second, is the petitioner willing to abide by the design standards of the Central Business District, as outlined by the Redevelopment Commission?

Mr. Pawlowski stated, Councilmember Davis, in your letter that you'd asked for, outlining some of the changes that had been made as a result of the developer's conversations with DCI as well as the APC. We had sent that outline. Some of those changes into some of the categories that you're discussing. I think the short version is yes.

Councilmember Broden responded, Yeah, because I think they're about district standards and then it seems as if there was some tradeoff for height standards, or public spaces, public amenities, those types of things.

Mr. Pawlowski asked, Are you referring to DCI's past decisions? The ninety-six (96) foot height limit on a previous project—I would tell you that that was an isolated project that was looked at in that circumstance. Public space, green space, and some other tradeoffs design-wise were

considered in relationship to the height, and that's why I made the decision. I think, otherwise though, the rest of those different development standards that exist within the CBD per our plans, as Jitin outlined, deal more with the use aspects rather than some of the design aspects. Some of the design aspects that were concerning, the developer worked with them on that. That was outlined in the letter that we had sent a while back.

Councilmember Broden stated, So that's updated and that would be incorporated in—

Mr. Pawlowski interjected, stating, Yeah, I think anything that we submitted, automatically being part of the record, actually is part of the overall public file on it, at this point. All that is public record.

Chairperson Ferlic attempted to close the portion of the discussion of *Bill No. 41-16* devoted to questions, but Councilmember Broden protested, stating that to approve these PUD's, Council needed to go through all the relevant different uses and development standards.

Mr. Matthews responded, The design standards we went through with staff, and we went through before the City Council Meeting and the Informal Meeting. I'm under the impression that there weren't any objections to the staff's recommendations, which we then modified our PUD application to meet, but if you have objections to any of those, I'm happy to talk about them, I guess. I felt like we've moved beyond all those questions, and the only thing outstanding was height and who is paying for the garage.

Ms. Smith stated, I believe you're talking about the Downtown Design Review Area? Ms. Smith then explained what that entailed to Mr. Matthews. She stated, I think she is asking you if you would be okay with following the downtown design guidelines in this project. Mr. Matthew expressed that his internal design standards were way above the downtown design standards.

Ms. Smith stated, Just to clarify, as part of the Downtown Design Review Area, if he were to do anything outside of that, he would go in front of the Design Review Committee who would grant any waivers to that. One of the things with the PUD is that our department is tasked with keeping track of any commitments or anything made as part of this. We have a chart where we have been trying to follow any development standards and anything that the Council would recommend, which we would incorporate also. For instance, we have incorporated in here that so far as what he's represented, it says the parapet height will be one-sixty-two (162) feet, the overall height would be one-seventy-five (175). I would actually encourage the Council, if they pursue the PUD, to not hold him to the square-footages outlined in the presentations that he's made. In past projects, we probably would have had to hold him to that, but because this is a Central Business District kind of project, and there could be some flexibility as the project develops, we don't want to get into a position where we would have to say, "You only represented that there would be two-hundred (200) square feet of residential—you can't do two-ten (210)." Any references to square-footages of the per-use, we would recommend that you would not incorporate those items from the record. Some of the larger issues were: the main floor of the building shall contain at least three (3) entry points, one of which would be a residential entry; the area east of the existing Commerce Center would be reserved as open space accessible to the general public; the ground floor shall be a nonresidential use. I don't know that there's any of those in there that Mr. Matthews should have any objection to.

Mr. Matthews asked Ms. Smith if she had the parapet height in her record as one-hundred and sixty-three (163) feet or one-hundred and sixty-two (162) feet. Ms. Smith responded that she had one-hundred and sixty-two (162) in her record and corrected it to state that the parapet height was set at one-hundred and sixty-three (163) feet.

Councilmember Davis asked Ms. Smith if she had seen the proposals sent to Council over the weekend by Mr. Matthews, to which she responded that she had. Councilmember Davis asked what Ms. Smith's thoughts on Mr. Matthews' proposals and the Mayor's letter were.

Ms. Smith responded, Our recommendation, as the Area Plan Commission staff to the Area Plan Commission when we're looking at land-use issues—we still look at whether or not it's consistent with the Comprehensive Plan. The only option that gets close to the Comprehensive Plan would be Option E.



Councilmember Davis asked Ms. Smith to clarify Option E for the public.

Ms. Smith responded, Option E is the one that shows the maximum height at sixty-seven (67) feet at the parapet. The ordinance actually calls for sixty (60). The Comprehensive Plan talks about a low-to-mid rise—for which the general height variance is seventy-five (75). So, Option E would be consistent with the low-to-mid rise criteria. It would still exceed what is allowed per the ordinance, but it would be consistent with the Comprehensive Plan. All the other options would not be consistent with the Comprehensive Plan.

Councilmember Broden, referring to Option E, asked, And that would require \$12,600,000 upfront to actually abide by the East Bank Village Plan and the Comprehensive Plan?

Mr. Matthews responded, The City would just have to build the garage on the plan that the plan calls for the City to build.

Councilmember Davis asked if there was any way that the City could pay for the garage, given that the plan calls for the City to build one there.

Mr. Mueller responded, You raise a great point, and this is an issue with plans across the board. We come with a great plan, but we don't always figure out the funding sources behind the plan. There's a Southeast Plan that has a lot of great stuff in it—we can't identify all the funding for that. There's other plans that we can't identify the funds for. If you're saying would we want to put \$12,600,000 when we know that we have a fiscal curve coming up in 2020. We may have a [unintelligible] in our Motor Vehicle Highway Fund. I would not say this would be among the highest priorities, if we found somewhere, magically, \$12,600,000.

Councilmember Davis asked if the City had made any considerations whatsoever regarding the funding of construction of the promised garage.

Mr. Pawlowski responded, This is kind of what I was inartfully trying to get at earlier, which is: as the '08 plan set out the investment targets, if you assume those investment targets are hidden away—not general or civil city funding, but TIF funding is absorbed into that district and then can be theoretically put back into a garage or other business ventures, or any other thing that you might want. We have not seen that. So, the TIF is not as robust as I think we would have hoped that it would have been, because those are really your funding sources. The fiscal cliff that many of us are anticipating in 2020, or shortly thereafter, is going to make things like this really cost-prohibitive in any other way than bonding. I think John Murphy would smack me in the back of the head if I said we had any type of funding in the General Fund to do that. In the future, TIF is really the mechanism to do it. Projects like this will enable the TIF over time and the General Fund after that to be a little more well-funded, in terms of tax dollars, whether they be TIF or General Fund. As that '08 was done, let's not forget that that was right at the time of a pretty rough patch, nationally as well as locally.

Councilmember Davis responded, I agree with the '08 plan being done. At the same time, those of us in this Council that were here during that plan, we raised everything in the City. We planned for that plan. Our city has gotten all the financial rewards, and we've been rolling on, and we're not like other cities in the State because we took measures and planned to deal with that storm. He stated that after having raised taxes, the City should have generated enough money that, with a bit of applied creativity, could be put toward this garage. He asked, Why can't we keep our promise to this plan so that he does not have to go and build something way to the scraper, get everybody in the community upset except those who believe in everything he does. We keep our plan and he keeps his plan. We get the store, we get everything else.

Mr. Pawlowski responded, It's unfortunate, but we just haven't seen the financial growth and the development there that we wanted to see to enable this to happen at this point.

Councilmember Broden asked, And the resources with regard to the Wharf project—what is going in there? Is that okay to ask and to actually connect those dots for that garage, please?

Mr. Pawlowski responded, I would prefer not to get too into it. We don't have any signed development agreements at this point.



Councilmember Broden asked, Is the petitioner in the room? Or would the developer in the room like to address that?

Frank Perri approached the podium to answer Councilmember Broden's question, but Councilmember Tim Scott declared a point of order. Councilmember Scott asked for someone to explain to him how this line of questioning relates to the PUD. He stated, I think we've gotten way into the woods on all types of speculation on garages. Where does this fit? Directly relate it to the PUD, 41-16, that we have before us.

Councilmember Broden stated that the developer said that assistance with the garage would help compress the height of the project. She stated that Councilmember Davis was trying to look for resources for garages in the East Bank District.

Councilmember Scott responded that the person of expertise would be someone who works in City finances.

Chairperson Ferlic agreed and stated, If the question is, "What are the funds available?" the question should be directed toward Brian Pawlowski.

Councilmember Davis agreed but felt that Frank Perri might offer insight into the matter, and that Council needed all the insight it could get. He asked Mr. Perri to come up and share his thoughts on the matter. Certain members of the Council audibly questioned the relevance of the question. Chairperson Ferlic asked Interim Council Attorney Aladean De Rose if the asking of the question was to be decided by vote or by the Chair, to which she replied that this was a decision to be made by the Chair. Councilmember Davis asked how Council could override the Chair's decision, adding that he was sure that it could be overridden. Councilmember Dr. Varner stated that a two-thirds (2/3) vote was necessary. Chairperson Ferlic stated that the question was relevant, but asked that it were directed only to Mr. Pawlowski.

Mr. Pawlowski stated, The simple version is: if you are asking if resources out the door for one project affect the other, the answer is yes. What we are prepared and willing to do on one project is completely dependent on its merits alone, and we are looking at this project in that respect. Past that, I think it would be bad precedent, potentially, to talk about other deals that are currently in active negotiation. There are finite resources in that TIF, to be sure—both now and in the foreseeable future, for the next five (5) years out. Decisions will have to be made. My personal view at this point is that we can see a lot of growth and development there without hindering any of the projects—and future ones to come, as well.

Councilmember Dr. Varner stated, There is a shortage of funds, and in fact this project won't have any money in the TIF funds for about ten (10) years because of the aggressive tax abatement. Would it be fair to say that this seems to be the only plan that gets both these projects done, rather than having to take money from one project and put it in another?

Mr. Pawlowski responded, Any scenario where we don't have to contribute cash out the door, and we can take care of a developer's needs or a regional match, in this case, with a phase-in in taxes—that's certainly a preference we would have. The option that you all have seen of 100% x 5 and 95% x 5—in that situation, you are getting tax dollars in the door, after the initial five (5) years. After the decade is up, the TIF still has life until thirty-three (33) or thirty-five (35), where the full amount could be upwards of \$800,000, a portion of which flows into the TIF a bunch.

Councilmember Davis asked, So, you're telling me that there's no other option to fund this outside of TIF in that area?

Mr. Pawlowski responded, As someone who is not the General Fund expert, I think the answer to that is no.

Councilmember Davis asked, So, therefore the City cannot keep its commitment to take care of that?

Mr. Pawlowski responded, I think the City's commitment was based on assumptions that unfortunately just did not come to pass. Had those investment targets all been met, we would not need this conversation. This is the type of development that we want to see drive things over there. This developer; other developers who are in the room. Their projects are going to be the

ones that revitalize this TIF and really put dollars in the pocket to do even more in the future that hopefully comes before you.

Councilmember Ferlic announced that the Council portion for questions was closed. At this point, each Councilmember in a line would offer one (1) final comment. No Councilmember would be revisited. Only after each Councilmember had given their comment would the Council entertain any motions.

Councilmember Scott asked everyone to respect each person who has the floor.

Councilmember Regina Williams-Preston stated that with projects brought to the Council there are so many loose ends. This begs for the due diligence of Council and the search for options that could satisfy a given project and policy. These issues of process mean that if the Council says no to a developer that they may not seem friendly to development in general. She stated that it felt like it was up to Council to make sure that things were done in line with the law. She stated that petitioners should be held accountable for making sure that they are doing what they need to do, so that these questions don't end up in Council's lap. Councilmember Williams-Preston stated that she had issues with this moving forward as a PUD and was hoping for a different way to proceed. She stated that the Council Attorney had warned that this would put Council in danger of liability; that the decision could be viewed as arbitrary and capricious. She stated that there were really great ideas brought forth at the last minute, and that that was not the way to make big decisions. She found the proposal hard to support as is.

Councilmember Randy Kelly stated that this was supposed to be in Council's lap, that it was time to make a decision. He did not feel that information was presented to the Council at the eleventh (11<sup>th</sup>) hour. He stated that consultants were brought in to present options, but none of them were viable because the City does not have \$12,600,000 in TIF to build the garage. Many have said that the project would be better on the other side of the river—Councilmember Kelly stated that that was not a good enough reason to turn down a \$50,000,000 project. He stated that Mr. Matthews did a good job of making the project feasible. He stated that the 2008 East Bank Plan opened with the recognition of the fact that there had been no development in the area up to that point, and that was the reason for the plan in the first place. He stated that that means that there have been nearly two (2) decades of little development in the East Bank. Here is a chance, he stated, to let in a \$50,000,000 development. There needs to be a first twelve (12) story building. He thought that a bridge between the east and the west of the river would be good.

Councilmember Jo Broden stated that the unique flavor of the East Bank will fall with this project because of the choice to go up rather than out; that it would negate the community-building effort of the creation of the East Bank Plan. She argued that a distinction between the east of the river and the west of the river was a good thing. She stated that the project's height was egregious and that it would be a game-changer for the rest of the district. She argued that though it provides for long-desired needs, there should not be this level of separation between the vision that has been expressed through the East Bank Plan and the proposed project's features. She felt that it was problematic that she received a message from Mr. Matthews on the evening of Sunday, December 11, 2016 and received another on the Council table, yet the public was not privy to these messages in advance. She stated that there has been no compromise on height until twelve (12) hours prior to the current Council meeting. She stated, We can hit density or tax dollar targets, but how do we get there—up or out? She argued that the nature of the neighborhood suggested that building out was the solution. If the future of the neighborhood is to be redirected, she stated, it should be in a collective way instead of by way of development plans. She stated, We can do better. The plan should still be around after this decision, she concluded.

Councilmember Dr. David Varner stated that the Council once passed on University Park Mall because it did not seem to fit the plan, and that did not work out for the City. The Hall of Fame was built, and yet did not really work out for the City, either. He stated that the City has been crying for people to bring in private money and development so that the City does not have to use TIF or raise taxes so that the City does not spend on plans. He asked, What do you do with a plan that is ten (10) years old with one (1) building to show for it in that district? He stated that a plan can be well-intentioned and unviable at the same time. He argued that some discretion should be left to the developers to determine if they can make a project profitable. He stated, I

don't know how you can fit a grocery store and pharmacy into three (3) separate buildings. He pointed out that the request for amenities dictates a fairly large footprint. He argued that large buildings are the kind of thing that put towns on the map. He contrasted reaction to the height of the proposed project to lack of reaction to the twelve (12) story tall Karl King Tower on Lincoln Way East, stating that residents drive by it every day and do not give it a second thought. He concluded that the PUD was a good opportunity for the City: little upfront cash from the City would give the City money for other development.

Councilmember Gavin Ferlic stated that PUD's must be evaluated according to rational criteria. He argued that the project fit within the character of the neighborhood, that it was a desired use, that density would increase commercial value—therefore, a grocery store and pharmacy would increase property values for residential properties. He stated that ninety-five percent (95%) of the proposed project fits the plan, and that only the height does not fit. He stated that the City has powerful momentum—that the City has found a way to say yes and that its reputation has improved as a result. He contrasted this with a failure to acquire University Park Mall, WSBT, and May Oberfell Lorber—all caused by the desire to fit the projects too perfectly to plans. He stated that there were lost opportunities and lost jobs, and that lives were negatively impacted by these failures. The majority of people, he stated, support the project. He listed among those people the Neighborhood Association, the River Race Flats Homeowners Association, and the East Bank Homeowners Association. He added that a reasonable attorney can say that this is an appropriate project, as can a reasonable layperson. He concluded that saying yes has done the City good.

Councilmember Oliver Davis began by clarifying that the May Oberfell Lorber decision did not come before Council and was, in fact, an administrative decision. He was thankful for the extension of the discussion of the PUD, stating that he felt there was an attempt to squash this discussion. Any less time, he argued, would mean that Council could not make a sound decision. He stated that this gave Council the chance to carefully review plans and examine the very need for reviewing them. He stated that there were gaps in these plans. He stated that this discussion exposed the fact that the City was unable to keep the promise it made in the East Bank Plan of 2008 to build garages by 2016. He stated that the City has a responsibility to honor promises made in plans. He further stated that the Council should know that there is not City money in-place ahead of time. He asked how the City could expect developers to honor their promises if the City could not itself do so. He argued that it was not fair to Dave Matthews, and that the City should be capable of being creative so as to fund these projects. He explained that he voted to raise taxes in 2008 to help ensure that funding would be at a level that could prevent South Bend residents from being impacted by what was going on in the State. He stated to Councilmember Ferlic that that was why Council has been able to say yes for the past eight (8) years. He stated that he was shocked that the City's financial experts did not plan such that higher taxes would lead to more robust funding. He concluded that the project's height should be set at sixty-seven (67) feet, and that the City should pay for the garage.

Councilmember John Voorde stated that this process belonged in front of the Council. He declared that he would be voting against the bill because the height of one-hundred and seventy-five (175) feet was too high for that area. He stated, though, that an argument could be made that the Island between the race and the river is considered distinct from what is east of the race to Niles Avenue. He stated that the garage was key. He explained that the PUD is a tool for expediting development and that the PUD process was a public one. He argued that plans—being good guideposts—were better when they included stakeholders in the plan-writing process than when they were paid for. He stated that economic realities must be considered: the lack of development in the East Bank was not anyone's fault, but rather the result of the Great Recession. He concluded that, with the help of experts, a better compromise could be arrived at regarding the PUD.

Councilmember Tim Scott stated that it was a travesty that the process had gone on for so long. He stated that there would be talks with DCI and the Mayor's Office. He stated that after eight (8) years, nothing has come out of the East Bank Plan. Part of the problem, he explained, was that he did not see the east and west of the river as distinct but the plan did. He stated that though there existed a general urge to change South Bend, there has often been a buck against change





when new opportunities arrive. He asked, Who is trying to be creative and match up these plans? He concluded that he was in favor of the bill, as it was a private development that required no City dollars. He added that he wanted to make a motion for an amendment to the bill when the time came.

Councilmember Karen White stated that she was in agreement with a number of Councilmembers' comments. She stated that she had not met anyone who was against the project—that only the height was an issue. She stated that there must be some respect for the planning process, otherwise it becomes difficult to determine with consistency what projects are appropriate and worthy of approval. She stated, To me, it appears that we are planning as we go based on what we believe is important for the City. She stated that she was still hopeful that there would be a compromise. She suggested that plans should be reviewed yearly. She stated that the City pays thousands of dollars to bring in consultants to develop a plan only to have the plan sit on the shelf. She stated that while one department may treat a plan as policy, another might treat it as a practice—and this was not fair to the developer. She asked, Do we go ahead and approve it and hope that compromise occurs? Or do we work towards that so that what comes before this Council is the very best one can give to us? She stated that she was hopeful that Council and Mr. Matthews would meet the June 2017 deadline, and that a compromise would be reached.

Councilmember Tim Scott made a motion to amend *Bill No. 41-16* to change the proposed height to one-hundred and fifty-one (151) feet, as well as to not hold the PUD to any square footage requirement. Councilmember Dr. Varner seconded the motion which was defeated by a roll call vote of five (5) nays and four (4) ayes (Councilmembers Randy Kelly, Dr. David Varner, Gavin Ferlic, and Tim Scott).

Councilmember Gavin Ferlic made a motion to send *Bill No. 41-16* to the Full Council with an unfavorable recommendation and Councilmember Dr. David Varner seconded the motion, which carried by a roll call vote of six (6) ayes and three (3) nays (Councilmembers Randy Kelly, Gavin Ferlic, and Tim Scott).

#### RISE AND REPORT

Councilmember Oliver Davis made a motion to rise and report to full Council. Councilmember Dr. David Varner seconded the motion which carried by a voice vote of nine (9) ayes.

#### REGULAR MEETING RECONVENED

Be it remembered that the Common Council of the City of South Bend reconvened in the Council Chambers on the fourth floor of the County-City building at 11:14 p.m. Council President Tim Scott presided with nine (9) members present

#### BILLS – THIRD READING

##### 41-16

AN ORDINANCE AMENDING THE ZONING ORDINANCE FOR PROPERTY LOCATED AT 401 EAST COLFAX AVENUE, 228 & 230 SYCAMORE STREET, & 312 LASALLE AVENUE, COUNCILMANIC DISTRICT NO. 4 IN THE CITY OF SOUTH BEND, INDIANA

Councilmember John Voorde made a motion to defeat *Bill No. 41-16* and Councilmember Jo Broden seconded the motion, which carried by a roll call vote of five (5) ayes and four (4) nays (Councilmembers Randy Kelly, Gavin Ferlic, Dr. David Varner, and Tim Scott).

66-16

THIRD READING ON AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA AMENDING VARIOUS SECTIONS OF THE SOUTH BEND MUNICIPAL CODE AT CHAPTER 17, ARTICLES 4 AND 6 TO ADDRESS NEW WATER RATES AND CHARGES

Councilmember Tim Scott made a motion to continue *Bill No. 66-16* until January 9<sup>th</sup>, 2017 and Councilmember John Voorde seconded the motion, which carried by a voice vote of nine (9) ayes.

73-16

THIRD READING ON AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, AMENDING CHAPTER 2, ARTICLE 14 OF THE SOUTH BEND MUNICIPAL CODE TO ESTABLISH VARIOUS NEW FUNDS: LOCAL ROAD AND BRIDGE MATCHING GRANT FUND (265), EQUIPMENT/VEHICLE LEASING FUND (750), PARKS BOND CAPITAL FUND (751), SOUTH BEND REDEVELOPMENT AUTHORITY FUND (752), SMART STREETS BOND CAPITAL FUND (753), INDUSTRIAL REVOLVING FUND (754), SOUTH BEND BUILDING CORPORATION FUND (755), SMART STREETS DEBT SERVICE FUND (756), PARKS BOND DEBT SERVICE FUND (757), THE ERSKINE VILLAGE DEBT SERVICE FUND (758), AND CHANGING THE NAME OF FUND 279 TO THE IT/INNOVATION/311 CALL CENTER FUND

Councilmember John Voorde made a motion to pass *Bill No. 73-16* and Councilmember Oliver Davis seconded the motion, which carried by a roll call vote of nine (9) ayes.

74-16

THIRD READING ON AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, APPROPRIATING ADDITIONAL FUNDS FOR CERTAIN DEPARTMENTAL AND ENTERPRISE OPERATIONS IN 2016 OF \$220,000 FROM CONSOLIDATED BUILDING FUND (#600), \$120,000 FROM SOLID WASTE FUND (#610), \$5,000 FROM WATER WORKS CUSTOMER DEPOSIT FUND (#624), \$4,000 FROM WATER WORKS SINKING FUND (#625), \$5,000 FROM WATER WORKS BOND RESERVE FUND (#626), \$11,000 FROM WATER WORKS DEBT RESERVE O&M FUND (#629), \$45,000 FROM SEWER INSURANCE FUND (#640), \$22,000 FROM SEWAGE WORKS O&M RESERVE FUND (#643), \$5 FROM 2015 SEWER BOND ISSUANCE FUND (#666), AND \$346,506 FROM CENTURY CENTER FUND (#670).

Councilmember Gavin Ferlic made a motion to pass *Bill No. 74-16* and Councilmember John Voorde seconded the motion, which carried by a roll call vote of nine (9) ayes.

75-16

THIRD READING ON AN ORDINANCE OF  
THE COMMON COUNCIL OF THE CITY OF  
SOUTH BEND, INDIANA, FOR BUDGET  
TRANSFERS FOR VARIOUS DEPARTMENTS  
WITHIN THE CITY OF SOUTH BEND,  
INDIANA FOR THE YEAR 2016

Councilmember Jo Broden made a motion to accept *Substitute Bill No. 75-16* and Councilmember Oliver Davis seconded the motion, which carried by a voice vote of nine (9) ayes.

Councilmember Gavin Ferlic made a motion to pass *Substitute Bill No. 75-16* and Councilmember Jo Broden seconded the motion, which carried by a roll call vote of nine (9) ayes.

76-16

THIRD READING ON AN ORDINANCE OF  
THE COMMON COUNCIL OF THE CITY OF  
SOUTH BEND, INDIANA, APPROPRIATING  
ADDITIONAL FUNDS FOR CERTAIN  
DEPARTMENTAL AND CITY SERVICES  
OPERATIONS IN 2016 OF \$364,100 FROM  
GENERAL FUND (#101), \$25,000 FROM  
UNSAFE BUILDING FUND (#219), \$25,000  
FROM LOCAL ROADS & STREETS FUND  
(#251), \$150,000 FROM LOIT 2016 SPECIAL  
DISTRIBUTION FUND (#257), \$10,000 FROM  
INDIANA RIVER RESCUE FUND (#291),  
\$212,542 FROM COPS MORE GRANT FUND  
(#295), \$150,000 FROM COUNTY OPTION  
INCOME TAX FUND (#404) AND \$100,000  
FROM PARKS NONREVERTING CAPITAL  
FUND (#405).

Councilmember Karen White made a motion to pass *Bill No. 76-16* and Councilmember Gavin Ferlic seconded the motion, which carried by a roll call vote of nine (9) ayes.

RESOLUTIONS

16-85

A RESOLUTION OF THE COMMON COUNCIL  
OF THE CITY OF SOUTH BEND  
DESIGNATING CERTAIN AREAS WITHIN THE  
CITY OF SOUTH BEND, INDIANA,  
COMMONLY KNOWN AS 23464 ADAMS  
ROAD, SOUTH BEND, IN 46628 AN  
ECONOMIC REVITALIZATION AREA FOR  
PURPOSES OF A (9) NINE-YEAR REAL  
PROPERTY TAX ABATEMENT FOR GLC  
PORTAGE PRAIRIE, LLC



Councilmember Tim Scott made a motion to continue *Bill No. 16-85* to January 9<sup>th</sup>, 2017 and Councilmember Dr. David Varner seconded the motion, which carried by a voice vote of nine (9) ayes.

16-89

A RESOLUTION OF THE COMMON COUNCIL  
OF THE CITY OF SOUTH BEND, INDIANA,  
APPROVING A PETITION OF THE AREA  
BOARD OF ZONING APPEALS FOR THE  
PROPERTY LOCATED AT LOTS 2 AND 3  
COVELESKI PARK MINOR SUBDIVISION  
SOUTH BEND, INDIANA 46601

Councilmember Tim Scott made a motion to continue *Bill No. 16-89* to January 9<sup>th</sup>, 2017 and Councilmember Dr. David Varner seconded the motion, which carried by a voice vote of nine (9) ayes.

16-90

A RESOLUTION OF THE COMMON COUNCIL  
OF THE CITY OF SOUTH BEND, INDIANA,  
REQUESTING PROGRESS REPORTS TO BE  
GIVEN ANNUALLY TO THE ZONING AND  
ANNEXATION COMMITTEE ON EACH  
NEIGHBORHOOD AND DEVELOPMENT PLAN

Councilmember Tim Scott made a motion to continue *Bill No. 16-90* to January 9<sup>th</sup>, 2017 and Councilmember Dr. David Varner seconded the motion, which carried by a voice vote of nine (9) ayes.

BILLS FIRST READING77-16

FIRST READING ON AN ORDINANCE  
AMENDING THE ZONING ORDINANCE FOR  
PROPERTY LOCATED AT 3720 LINCOLNWAY  
WEST, COUNCILMANIC DISTRICT NO. 2 IN  
THE CITY OF SOUTH BEND, INDIANA

Councilmember John Voorde made a motion to send *Bill No. 77-16* to the Area Plan Commission and the Zoning and Annexation Committee, and to set public hearing for January 23<sup>rd</sup>, 2017. Councilmember Oliver Davis seconded the motion which carried by a voice vote of nine (9) ayes.

78-16

FIRST READING ON AN ORDINANCE  
AMENDING THE ZONING ORDINANCE FOR  
PROPERTY LOCATED AT A 119.89 ACRE  
TRACT OF LAND NEAR THE CORNER OF  
MAYFLOWER ROAD AND ADAMS ROAD  
ABUTTING THE ST. JOSEPH VALLEY  
PARKWAY, COUNCILMANIC DISTRICT NO. 1  
IN THE CITY OF SOUTH BEND, INDIANA

Councilmember Karen White made a motion to send *Bill No. 78-16* to the Area Plan Commission and the Zoning and Annexation Committee, and to set public hearing for January 23<sup>rd</sup>, 2017. Councilmember John Voorde seconded the motion which carried by a voice vote of nine (9) ayes.

UNFINISHED BUSINESS

APPEAL OF A CERTIFICATE OF APPROPRIATENESS FOR 1240 W. THOMAS STREET-BOYD VS. HISTORIC PRESERVATION COMMISSION

Councilmember Tim Scott made a motion to continue the Appeal of a Certificate of Appropriateness for 1240 W. Thomas Street-Boyd vs. Historic Preservation Commission until January 23, 2017 and Councilmember Dr. David Varner seconded the motion, which carried by a voice vote of nine (9) ayes.

NEW BUSINESS

There was no new business.

PRIVILEGE OF THE FLOOR

Samuel Brown, 222 East Navarre Street, South Bend, IN, addressed the homeless issue in the City. He stated that moving them from one place to another does not solve the problem. He stated, I just hope that somebody takes the time to find out a solution to the endgame, because these people need help.

ADJOURNMENT

There being no further business to come before the Council, President Tim Scott adjourned the meeting at 11:26 p.m.