

AMERICAN FORK CITY COUNCIL
MARCH 2, 2021
SPECIAL WORK SESSION AGENDA

Members Present:

Bradley J. Frost	Mayor
Kevin Barnes	Council Member
Barbara Christiansen	Council Member
Staci Carroll	Council Member
Rob Shelton	Council Member
Clark Taylor	Council Member

Staff Present:

David Bunker	City Administrator
Camden Bird	Community Services Director
Wendelin Knobloch	Associate Planner
Stephanie Finau	Deputy Recorder
Anna Montoya	Finance Officer
Melissa Mellor	Legal Counsel
Adam Olsen	Senior Planner
Darren Falslev	Police Chief
Josh Christensen	Police Lt.
Derric Rykert	Parks and Recreation Director
Scott Sensanbaugher	Public Works Director
Aaron Brems	Fire Chief

Also Present: Summerisa Stevens, Spencer Stevens, Curtis Miner, John Woffinden, Alma Faerber and Nathan Maughan

1. Discussion on crime prevention through environmental design.

Mayor Frost welcomed everyone and read the COVID-19 guidelines.

Darren Falslev, Police Chief, said that Crime Prevention Through Environmental Design had been around for quite a while. The premise behind it was properly design buildings and their surrounding area to have a significant impact on crime. Tools to impact crime ranged from fencing, to lighting, to windows, or designing a building so that there are walkways near it. People don't want to be seen committing a crime, so having pedestrians walk by a building can serve as natural surveillance. Chief Falslev turned the presentation over to Josh Christensen from Crime Prevention Through Environmental Design.

Josh Christensen said that Crime Prevention Through Environmental Design was more commonly known as CPTED. He said that he was going to breeze through some of CPTED's basic principles to provide an understanding of what it was. He said that he had some photo examples both in and outside of American Fork.

Crime Prevention Through Environmental Design was a proper design and effective use of the environment around a building or park that can lead to the reduction of the fear and incidence of crime. He said that the fear and perception of crime is what improves residents' quality of life by helping them to feel safe. There were four main elements to CPTED that were each addressed: natural surveillance, territorial reinforcement, access control and maintenance. Some of the concepts or principals worked hand in hand with other elements. Lieutenant Christensen said that some of the elements were already in practice in community policing and nuisance management. Overall, the goal of CPTED was to reduce opportunities for crime that may be inherent in the design of the structures. A crime consists of three legs: (1) there must be a desire of the suspect or the person committing the crime, (2) that person must have the ability to do so, and (3) the opportunity for the crime to be committed. Of these three legs of crime, only one can be controlled: the opportunity for the crime be committed. By focusing on eliminating the opportunity, that is a way to stop crime.

1. **Surveillance:**

- a. **Natural Surveillance** occurs naturally. As people move around the City and attend events, go into businesses, visit parks, or just drive down American Fork's roads, they are naturally surveilling the surrounding area. People in an area might be observe something that is going on and report it to law enforcement. This is the value of the community policing model. A relationship has been built with community members that makes them comfortable enough to report crimes.
 - b. **Mechanical Surveillance** involves technology such as video surveillance. Lieutenant Christensen that although it was important, in was sometimes limited in that it was reactive. Video surveillance is usually reviewed after a crime has been committed to be able to capture the suspect. In natural surveillance, however, someone is seeing the crime and stopping it immediately.
 - c. **Organized Surveillance** includes when patrols are put together. This goes along with the COMSTAT program in trying to identify trends and areas that need focus. He said that everyone in their neighborhood probably had someone who is a nosy neighbor. Although one might often say that they don't want a nosy neighbor, Lieutenant Christensen said that the nosy neighbor is really useful. It is the nosy neighbor who reports situations that are not right. They recognize if a car belongs or not. He said that he was fortunate enough to live in a cul-de-sac. Everyone in his neighborhood knows if a car doesn't belong. Even a neighbor's child or grandchild are visiting, neighbors recognize the cars that belong. When the cars don't belong, neighbors do something about it. The other night Lieutenant Christensen's wife arrived home late and she notice a car pulled up to the house being built next to them. They immediately recognized that car didn't belong. A quick phone call to the police department had officers on the scene in minutes. The guy in the car was doing drugs and the officers took him to jail. That is the whole purpose of this surveillance is to be those eyes for us.
2. **Access control** is the second element of CPTED. Criminals are looking for that easy in easy out. That want to get in quickly to the location, commit the crime and get out

undetected. There are different measures that can be put in place to help restrict that ease of access.

- a. **Natural Access Control:** Lieutenant Christensen said that one of his favorites was certain types of plants such as thorny bushes. Even though most people hate thorny bushes they have a place in preventing crime. If a resident planted a big thorny bush underneath each window, there is a lot less of a chance of having someone standing under that window and trying to break in. Another place where thorny bushes can be used are little alcoves around a business or home where one's AC unit is. Other features such as fences, walls and barriers also fall under the access control category.
 - b. **Mechanical Access Control** is not as common in American Fork, but is typically used in bigger areas.
 - c. **Organized Access Control** looks like when a construction company hires a security company to oversee and restrict people from coming into a construction site. Lieutenant Christensen said that there were businesses on the south end of town that pay companies to monitor their surveillance cameras. If someone is walking through the business parking lot at three o'clock in the morning the company gets an alert so that they can go deal with it.
3. **Territorial Reinforcement** is the third element of CPTED. This is a psychological impression people get when they look at a property.
- a. **Natural Territorial Reinforcement:** If someone pulls up in front of a house, what does it tell them. Someone might see a sidewalk that immediately leads up to the front door. That naturally tells a person that is where they are supposed to be. I'm not supposed to be up in the driveway or going to the back door. It is natural to go up to that sidewalk to the front door. Another question someone might ask is if the property is well maintained? Does the person care about the property? Are they going to care what is going on or pay attention to if someone is in an area they are not supposed to be? There are two principles that come with territorial reinforcement: defensible space and maintenance.
 - b. **Defensible Space** is divided into two categories: public and private. A public access might be a road. A semi-public access area might be a cul-de-sac. A semi-private area would be a sidewalk or driveway. Private areas are spaces behind or the home. It is the public areas that are least defensible. People are not fully comfortable in calling the police when incidents are happening in public areas compared to when they occur in private ones. Lieutenant Christensen said that there were a lot of ways to define defensible spaces through low growing hedges, the proper pathway to the front door of a business, signs that clearly state the direction someone should go delineating private areas versus those with public access.
4. **Maintenance** is the last element of CPTED that falls into a lot of American Fork's nuisance code. He said that many of the council members had heard of the broken window theory. If a building or vehicle sits abandoned and has broken windows that makes it clear that no

one lives there, it invites more crime. If the property is clean, well maintained, and attractive, it shows that there is pride in the community or the property. That care tells the public (good guys or bad guys) that these people are going to notice if I am doing something that I shouldn't.

Lieutenant Christensen then jumped into some photos. He said that a couple of them were not American Fork businesses. One rule that CPTED lives by when it comes to greenery, shrubs, trees, etc., is the 2' to 6' rule. No shrub should be taller than two feet and the canopy of the tress should be no less than six feet. This allows for natural surveillance. He asked those in attendance to imagine that they were driving by a park. If the canopy was up and the shrubbery was low, visibility would extend all the way across the park. If something was going on in the back of the park that shouldn't be, it would be seen. If placed in the shoes of the bad guy, where would one hide with this type of landscaping?

In addressing another shrubbery rule, Lieutenant Christensen displayed an image of a business that had bushes completely covering the business' windows. This caused an inability to see if someone was trying to break or if an event was occurring outside of the business such as on the sidewalk. He then showed slides of examples of how to keep a business and property safe. He said that there could be a debate about which option was more aesthetically pleasing, but in terms of crime prevention visibility takes priority. He showed an example of Rotary Park that demonstrated landscaping best principles.

Proper lighting was another big strategy to help reduce crime. Lieutenant Christensen said that it took him quite a while to convince all his neighbors that leaving their porch light on would significantly reduce the chances of crime. He asked if you were a bad guy, would you be more likely to go up to a residence or business if it was completely black or dark where you can hide under the darkness, or if something was lit up? He said that to him, the common answer was that he would rather hide in the dark. A lot of American Fork's businesses had recognized that value of this. Lieutenant Christensen showed a picture of Truck Ranch at Auto Mall. At one o'clock in the morning it was all lit up. This makes it much easier to tell if someone was walking through the vehicles to try and steel wheels or tires. At Ken Garth Chevrolet, they left on the center lights in the parking lot. However, all of the perimeter lights were shut off for the evening. This was also a business that had a company monitor their surveillance cameras. He said that the department will sometimes get calls of people walking through the lot. Often times when officers go out to check it is just someone who doesn't sleep at night that likes to look at new cars.

Another example of how crime can be prevented is to be able to see in and out of windows at night. As a police officer on patrol, if someone was inside trying to burglarize a business, if he can see in through the glass, he would be a lot more likely to detect what was going on to be able to intervene. Being able to see in through windows also served as a deterrent. As a bad guy would you want to go in and start rifling through everyone's desk and trying to burglarize a well-lit business, or one where it is completely dark outside, with no windows and no light inside?

Lieutenant Christensen said that he had no intention to call out certain business and displayed a picture of Doug Smith who shuts down their lighting at night. He said that his camera did capture quite a bit of light, but that it would be a lot harder to detect if anything was going on. He said

that without pulling numbers, off the cuff, the Police Department takes more reports of vehicle burglaries, damage, or stolen property from Dough Smith than Ken Garth. He said that he attributed that in part to the difference in lighting.

Harts was another good example of a business that was lit up and easily noticed by people driving by. Lieutenant Christensen referenced back to a point he made earlier about the difference between the actual crime and the fear of the crime. As a community member would you be more likely to stop and get gas at one o'clock in the morning at a business that this completely lit up, or something that is pretty dark and gloomy. Even when not talking about actual crimes, the environment does impact community members perceptions, sense of safety and desire to be out late. As a result, having businesses adopt these principles would increase the quality of life.

Lieutenant Christensen said that when it comes to CPTED there were small changes that could be made to American Fork's code to ensure best practices. He said that some cities that have adopted the CPTED principles have also made changes to their code like adding the 10% rule that only allows businesses to cover 10% of their windows on both the interior and exterior of the window. This ensures that if a patron pulls up to a business they can see inside if a robbery is going on. This allows the first to report the incident to the police and to keep themselves from becoming involved in the situation. Likewise, if there is an incident going on outside, the clerk inside can see out to report the incident or be a good witness after the fact.

Lieutenant Christensen then displayed an image of Art Dye Park. He said that for years the park had been known by officers as one of their favorite fishing holes. Officers knew that every time they went there they could catch a fish. This meant that they knew that there would always be someone there causing trouble either by breaking the law or doing something they should not be doing for their ecclesiastic leaders. The previous night, however, when Lieutenant Christensen was at the park at one o'clock in the morning, the lights were on in the parking lot. They were of course not the full ballfield lights, but it was enough that it discouraged criminal activity. The lighting allowed him as an officer to look across the park to tell if there was someone out there causing problems. He did note that even last night at one in the morning he did still find a vehicle in the far corner of the parking lot in the one area of darkness right at the edge of the lot. When Lieutenant Christensen asked his night patrol colleagues about the activity that they've observed since the completion of the Art Dye Park, they said that they'd seen a huge difference since the lights were added.

Another value of CPTED is its ability to recognize small design features during the building process that might be inviting to a criminal. One of Lieutenant Christensen's favorite examples of this was backside (southside) of the Ross building. He showed an image of a triangular alcove or alley between the lights. He said that he didn't know why it was part of the plan, but that the dark alley that served no purpose was one of the primary places he'd found people over his career causing trouble. Through the CPTED program, a different set of eyes, say of an officer, could look at development plans and identify potential problems before they are built.

To conclude, Lieutenant Christensen said that one of the ways the Police Department envisions the program working is for the department to be able to be more proactively involved in the planning process. He said that the Fire Department had already done a good job over the years of

proactively addressing potential fire hazards through legislation and national fire code. He said that the law enforcement world had not done as good of a job at taking proactive measures. CPTED was a program that would fill that need. He said that there were cities who had full time officers dedicated to reviewing plans of non-residential or high-density residential builds.

Council Member Carroll said that CPTED was brought up during the budget retreat when the Meadows was discussed. One of the principles of CPTED was that having people walk past an area was wanted because it helped with the natural surveillance. With the Meadows, however, the parking lot was so large and combine with other large parking lots, that there were lots of spaces where people do not drive or walk past. She said that she was not suggesting changes in this moment. However, she would like for the Council to keep in mind that there were things that could be done when building to prevent situations like at the Meadows. She said that right now the Meadows was a problem that the Police Department had to report to quite frequently for calls. Another thing that Council Member Carroll noted was that when there is a long fence along a sidewalk that is supposed to be a pedestrian area there was a greater distance between the house and the street. A resident could not look out across their backyard and see the street, thus taking away from the natural surveillance of the area. She appreciated what Lieutenant Christensen said about businesses because she felt that businesses would be really happy to prevent incidents from happening if they just understood what they could do when working on the plans.

Mayor Frost said that through his landscaping business he often works with specific shrubs and trees when helping with a commercial development. However, he didn't typically look at landscaping through the lens of CPTED. This discussion, however, made him feel that these principles should be at the forefront of architects' mind to address challenges. He said that CPTED's implementation required a multiple prong approach: the practical knowledge of the builder and informing existing businesses of what they can.

Council Member Shelton said that he loved the idea of CPTED and that in the long term he felt that it would be a lot less expensive to install lighting than to add additional police officers or to trim bushes. From an economic standpoint he thought it made a lot of sense. One thing he felt would be helpful would be for Lieutenant Christensen to give the presentation to the Planning Commission because that was where most of the review happened.

John Woffinden said that he agreed with Council Member Shelton. He hoped that Lieutenant Christensen would give the presentation to the Planning Commission as part of their training. Council Member Taylor agreed that having this sort of review as part of the Planning Commission would be really helpful. He asked what kind of outreach was applicable and tasteful to bring to businesses like Doug Smith that were not currently employing CPTED best practices.

Lieutenant Christensen said that he had gone out to some businesses already to do some inspections and give recommendations. He said that he had also already done some trainings through the Chamber of Commerce. The Police Department had been looking into and planned to get a couple more officers through the training such as Austin Lund, the community policing officer.

Council Member Shelton offered another idea related to discussions on how to reformulate the Chamber of Commerce. It had been suggested to highlight leaders through awards like business

of the month. He suggested that there might be a way to have an award through the Chamber for a CPTED award. Those businesses could be highlighted on social media to increase awareness.

Mayor Frost told Lieutenant Christensen that his presentation was very helpful and might help him personally in his industry. He said that he might have been guilty in planting a big old boxwood in an island. Now, however, he could go back to the client and suggest some grass or daylight in the area.

Council Member Christiansen asked if they could get some printed material to give to people so they have something to refer back to.

Lieutenant Christensen said that was something he had done with other businesses: provided them with a checklist of items to work on.

2. Discussion on a lease agreement for property located at approximately 90 North Church Street.

Mayor Frost said that he knew that the area had been talked about for a long time. Discussion regarding it went back several administrations and Councils. He said that he appreciated the Harrington's participation in American Fork through Chalk It Up, concerts in the park, and participating in the PARC Tax funds. He said that Harrington was a blessing, one of the spokes in the wheel of the City that have provided great services. He estimated that they had contributed millions of dollars to the arts for the City.

He said that the Council had actively sought help for Harrington by working with their representative, Senator Stevenson. He said that they were very hopeful. He did not know if Harrington had received the allocation from the legislature yet, but American Fork was watching the funding along with Harrington and their lobbyist. He continued to thank for their participation in the downtown study with the consultants and the input they provided.

Mayor Frost said that he spent more than three hours last week with Patrick Mullen, the director of the Opportunity Zone (OZ). He said that American Fork had rivaled any other City that has an OZ zone with what they had taken advantage of. He said that the City looks forward to Harrington continuing to support this by taking advantage of the available funding. He wanted to make sure that the Council had the opportunity to read the lease agreement.

Council Member Shelton wanted to thank staff. He said that there was a very quick turnaround that demonstrated a great commitment to the Harrington. He initially remembered the building as a district elementary school before it was purchased for the Harrington Center. He said that during the nine years that he was on the Council there had been so many discussions about the property. He said that he thought that it was awesome that there were investors who were taking advantage of the opportunity. As he looked at the lease, he said that there were a few things he had some questions about.

Mayor Frost said they should talk about the agreement. He noted that Cherylyn Egner was not present at the meeting, but that Melissa Mellor, Legal Counsel, was standing in for her and would be able to guide the Council through anything they needed to better understand.

Council Member Shelton said that the second WHEREAS may need to be reworded a little bit. It currently reads, “WHEREAS the tenant is preparing to redevelop its property adjacent to the property...” Because this was a lease for the Harrington Center for the Arts, a for profit entity, that the clause either needed to be rewarded or removed all together.

Council Member Taylor asked how the clause hurt the agreement. He said it was not saying it was incumbent upon that. It just says the tenant is preparing. He agreed with Council Member Shelton that there shouldn’t be questions in the lease, but that he didn’t see what harm the clause caused. Council Member Shelton did think that it hurt the agreement, but that he didn’t see why it needed to be in there. He said that he thought that it would be helpful to clarify which entity was doing what so that there wasn’t confusion down the road.

Mayor Frost asked if it was the one word, “its” or if the clause should say property. Council Member Shelton said that he believed it was the investors that would be redeveloping the property not the Harrington Center of the Arts. They were two completely separate entities. He thought it would be good to clarify that.

Melissa Mellor, Legal Counsel, asked for clarification. Was it not the investors through the tenant that was doing the redevelopment? Council Member Clark Taylor said that was what he thought. How could you come in and redevelop without the tenant? Council Member Shelton said that he agreed with that.

Summeria Stevens, Harrington Center President, said that she thought that Harrington did not own the adjacent property that we be redeveloped by the investor group. Because of this, she felt that a small clarification was needed that the tenant, Harrington Center for the Arts, was preparing to redevelop, but that it wasn’t their property.

Staci Carroll clarified that the property that the Harrington Center sits on was not Harrington Center’s property. Ms. Stevens said no. The property was going to be purchased by the investor as part of the opportunity zone. Mayor Frost deferred to Ms. Mellor. Ms. Mellor asked if they could go to the exhibits. She asked if it could be clarified what Harrington owned.

Council Member Shelton said that there were three entities involved: the Harrington Center for the Arts, Orchards Securities for a lack of a better term, and the Carol Belle Family Trust. What was known as the Harrington building, the two building south of the white box, was owned by the Carol Belle Family Trust. Those buildings were anticipated to be purchased by the investors for the opportunity zone. That would be the for-profit side of the agreement. The white shaded box would be purchased by the Harrington Center for the Arts. He felt that it was important to have these actions clarified. This tied into item 1b, what we intended by that. He wanted it to be clear that this agreement affected the Harrington Center for the arts, not the opportunity zone or the Carol Belle Family Trust.

Mayor Frost asked that the Stevens. He asked if Council Member Shelton's statement was accurate. Spencer Stevens, Harrington Center vice president, said that there were multiple entities involved in the development. He said that the property was held in an LLC through the trust. Mayor Frost asked Ms. Moller her thoughts about the wording.

Ms. Moller said that she felt that it would better to clarify the particulars in the agreement. She was not aware of the multiple entities involved. Ms. Stevens said it was complex.

David Bunker, City Manager, said that there might be an issue here because we have prior agreements with the purchase of that land. If the City is circumventing that group, which may not be the same group that will develop the addition, he was trying to figure out how to pull all the entities together. He said that there was an existing agreement that the joint use of the parking area is granted in perpetuity. If it was suggested that the new development group was not agreeing to the question of joint parking, the City might have a problem with the original agreement. He said that he thought that was the intent that Ms. Egner was trying to address in the section; there are previous agreements that must be maintained along with this new agreement.

Ms. Mellor said that if there were different entities, they were going to need to be a part of this agreement or signed off on it. Even if they're not specifically a party of the current agreement, it was important that they were fully aware of how it may affect their interest. Council Member Carroll said usually we have them sign on it to as part of the contract. Council Member Shelton asked if Mr. Bunker was refereeing to the parking agreement. Mr. Bunker said yes.

Council Member Shelton said that was his main concern with how the section was written. He said that Harrington Center of the Arts, a non-profit entity, was not privy to the back history or agreements. He wanted to make sure that it was clarified exactly who the entities were that were subject to the contract.

Council Member Carroll said that she felt like that was something that the Stevens would know the answer to. Ms. Stevens said that she liked Council Member Carroll's recommendation to look at the prior agreements made on the property in the past. She said that they wanted to develop new contracts as a partnership with the City moving forward including a shared parking agreement.

Ms. Mellor said that she was at a disadvantage when we are talking about a separate agreement and separate entities. Because she didn't have past knowledge to know what was being talked about, it was difficult for her to advise regarding past agreements. Ms. Stevens said absolutely.

Council Member Shelton said that he felt that the purpose of the agreement under discussion was to allow the Harrington Center to move forward with investors in a joint relationship. He felt like it would be the job of the City to work out a direct contract with whoever was on the agreement. He asked if that contract would not be a separate agreement. He said that he felt like they would muddy the waters if they included the back history of an old agreement. Ms. Mellor said she agreed with Council Member Shelton, unless the new agreement impacted the old agreement.

Council Member Shelton suggest that they could perhaps put a contingent on the agreement being drafted based on the resolution of a parking agreement with entities from the previous contract.

Mayor Frost told Council Member Shelton that his audio was cutting out and that folks were only catching about every third word he said.

Council Member Carroll said that she was going to request if there was anything they could do to help with Council Member Shelton's audio. Council Member Shelton repeated what he said and suggested to add a contingency clause to the contract that the ability to move forward was contingent upon the other agreement being worked out with the City. This would signal to the investor the intent to go forward. He assumed that the other party would want to get the agreement in place first. The contingency clause would allow the City and the other entity to work through those agreements, while still signaling to the investor to move forward.

Council Member Carroll asked why they would incorporate that into the current contract. The old entity would be brought in as a party and the previous contract would be dissolved. Council Member Shelton said that he didn't know what that looked like. He said that he felt that they still wanted some kind of a shared parking agreement. He said that would be beneficial. He said that he was worried that by putting that into this agreement, it would slow the process down. He said that the purpose of getting the contract done was to signal to the investors the timeline for moving forward and that they had the opportunity to acquire the land having met certain conditions.

Council Member Carroll said that she must be missing something. She said that she thought that was what they were doing: making those determinations and flushing out all of the entities so that they could be included in a single agreement. Council Member Shelton said yes, but that right now they were missing the other party.

Mr. Bunker said that the other party was critical in this agreement because they were talking about a parcel of property that the other party is partial to. He said that he didn't feel like they could make the agreement today without coming up with an agreement with the previous party that could be included in the new agreement.

Ms. Mellor said that they would even just need an acknowledgement that states that they fully understand and sign off on how things will be moving forward. She agreed that if there was another entity involved, she would caution moving forward without them.

Mayor Frost asked who the other parties were so that they could move in that direction. Ms. Stevens said that there were three parties involved. The first was Orchard Securities who was putting together the investment group that would have a different name. The second party was 4750 LLC and the third party was Harrington Center for the Arts.

Mr. Bunker asked if Orchard investments had a different interest in the 4750 LLC. Ms. Stevens said no. Mr. Bunker clarified that the agreement should just bring in the 4750 LLC which was on the title right now of the original Harrington building. Ms. Stevens said yes.

Council Member Taylor said that he was no legal guru on this. His understanding was that the agreement that they were creating was between the City and Harrington Center for the Arts. He didn't think that the agreement had anything to do with the potential investor at this point. He

didn't understand why they were sweating including all the parties because the goal today was to allow the Harrington Center to move forward.

Council Member Carroll said that was what she understood. She said that even if the agreement was built as a contract, it would of course have to be approved by the other party. If they had to make a modification because the other party didn't approve it, so be it. At that point there was at least a concrete proposal for the other party.

Ms. Mellor asked who the member of the 4750 LLC was. Council Member Carroll said it was Carol Belle.

Council Member Shelton answered Council Member Taylor's question. They did need to clarify that there were other entities involved.

Council Member Taylor asked his question again. They were not creating an agreement with the investors. They were creating an agreement with the Harrington Center. He said that it was his understanding that they were drafting an agreement that would allow the Bell family in all of its capacities in this to be able to proceed and be able to sell to the appropriate party.

Council Member Shelton said that he thought that were the confusion rests is that Mr. and Ms. Stevens do a great job representing two different entities, the Belle Family, and the other Harrington Center for the Arts. Based on how the contract was written now it would not legally bind the LLC that we are talking about. He just wanted to make sure that was clear that the LLC, the Harrington Center for the Arts, and the City were the different parties involved.

Ms. Mellor said that if there was an agreement with the sharing of the parking lot so that there is some interest in that parking lot by 4750 LLC, there should be an acknowledgement of acceptance of this that shows the understanding that they had some interest in that parking lot. Council Member Shelton asked if that that language was something that could easily be added to the contract. Ms. Mellor said yes.

Mayor Frost asked if needing to have that acknowledgement would be a deterrent to getting the contract approved. He said that it was his preference to have all of the components in one contract but that he didn't want it to get in the way of moving forward. Ms. Mellor said that getting an acknowledgement and acceptance of the agreement depended on who was the managing member of the 4750 LLC. If Carol Belle was the managing member, as stated, they would have the ability to act and acknowledge and accept the new agreement.

Ms. Stevens said that Carol Belle has active authority of the LLC. Council Member Shelton said that he just wanted to make sure that they had all of the parties straight in the agreement. He said that he felt the discussion helped clarify item 1b for him in regard to the City's intent to resend previous agreements.

Mayor Frost wanted to make sure that the Council felt that item 1b had been appropriately addressed. He asked if everyone was comfortable with the proposed changes in language for that item. Council Member Shelton that asked about item 2b that talked about the equipment. He said that

it looked like general language from a lease contract. However, later in the agreement it states that they can't do anything to the property vertically. He wondered if it should be clarified that they really can't do anything as a renting parking lot.

Council Member Carroll said she had a similar question with 4b and 4d. She thought that 4b was where the contract outlined that no vertical development could be added. She said that she felt that 4b was a little contradictory with 4d and speaks to the same point made by Council Member Shelton about 2b.

Mr. Bunker asked for Ms. Moller to chime in because she was the legal expert. He said that in conversation with Ms. Egner in drafting the agreement, the intent was to communicate that there could be improvements that are not a structure. In regard to the question of vertical development, it was his understanding that the only way for this to happen was to surplus or sell the property and have a title change. The lease does not contemplate going vertical or building a structure on it, without going through the public disposal process. This is addressed in item five that talks about the surplus or property. Basically, the lease intends that for a three-year period, there will be a right to start working on plans and to go through the approval process. Once that has been done and there is an assurance that there would be construction of phase one as outlined in item 5, at that point, the City would surplus the property. This was a requirement in order for the City to divest of the property and allow the vertical construction of a building to go on it.

Council Member Shelton asked it was better to just state that no vertical improvements can go on the property and to just strike 2b until it was owned. He asked why it would not be stated that the area stay as a parking lot. Mr. Bunker said that he thought that starting with the sentence, "any and all utility, fixtures..."

Ms. Mellor asked where the sentence Mr. Bunker was talking about so that she could follow. Mr. Bunker said 2b, under the lease term. He said that he thought that Council Member Shelton was right that it could be added that a building could not be installed on the property or constructed during the lease term. The lease term was to prepare and getting everything ready to go for development. One the development plans were approved and the project was ready to go vertical, the land would need to be sold as surplus.

Ms. Mellor clarified that there was not any anticipated improvement to the property: no additional lighting, no bumper curbing thing, for parking stalls or anything like that, none anticipated? Council Member Carroll said that she thought what they were trying to get across in the agreement is that the tenant cannot do any of those improvements until they purchase the property. Ms. Mellor said that she thought that that there should be no other elements unless the owner (the City) agrees to it. She felt that the addition would be fine. If anything not contemplated right now came up, then it would still need to be approved by the City. She felt that would be more appropriate language. Mayor Frost said that it might be a duplicate in the contract. He didn't think that language changed the contract.

Council Member Shelton asked if it would be okay to say that the tenant cannot make any improvements unless the City approves them in 2b. Ms. Mellor said that she would eliminate the

last sentence of 2b and just add a 2c that states that “no improvements to the property by tenant without prior approval by the owner.”

Council Member Shelton then moved to item 5a that talked about the surplusing of the property. He said that in 5a it says the “tenant secures the financing for the purchase of the property at fair market value and associated development construction of phase I and as a necessary development plan prepare for approval and applicable building codes.” He wondered if they were making a condition that for purchasing the property they had to prove to the City that they had the financing viable for construction.

Mr. Bunker said that he thought that was the intention. The City would not sell the property until they knew that it was ready to be built on and that the plans were approved. This was like the normal approval process.

Ms. Stevens asked if the green “go” light that started the chain of action was contingent on site plan approval or that a certain percentage of funding was raised. Mr. Bunker said that he didn’t so much have the funding component. It was just that the development plans were approved and were ready for construction. At that point, the lease term would end and the process to surplus the property would engage. Then, the property would be turned over to the Harrington Center of the Arts would happen after the property was surplused.

Ms. Stevens said that the section under discussion was obviously really important to be clear. For 5a she said they would like a list of all of the agreements and criteria that must be met before the City is obligated to attempt to declare property surplus, that would help them to know where the goal post is.

Council Member Shelton said that his worry was that the clause reads “secures the necessary financing and associated development and construction of phase I of the project.” He said that word “and” concerned him. He said that if they had an approved site plan, the financing was theirs to put in place and figure out. He asked if the language could be changed such that only having an approved site plan would trigger the opportunity to purchase surplus property.

Mr. Bunker asked if Council Member Shelton was suggesting that “secures the necessary financing” be removed from the contract. Ms. Mellor said that she thinks that the financing is referring to the purchase of the property being leased, not the financing of its development. She thought that was a condition. The City wanted to know that the tenant could by the property before they went through the surplus process. Council Member Shelton said that he thought that if they just indicated site plan approval all of the criteria were in the development code. He didn’t think that all of the criteria needed to be included in the contract. The trigger point was that they came back with an approved site plan. At that point that can exercise their right to purchase the property. The property would not sell if they could not pay the full and fair price for it.

Council Member Carroll asked if once the City surpluses a property is, were they required to sell it to a buyer. Mr. Bunker said no, not a specific buyer. He said that was an issue. He said that when the City surpluses it, other entities could bid on it.

Council Member Carroll said that was what she was asking. If once the City makes it a surplus property and someone else bids on it, was the City required to sell it because it was surplus? Council Member Shelton said that it was his understanding that when a property became surplus the City got to decide who was the best person to purchase it. The decision did not have to be economical. They could go back and show that it was in the City's best interest to help the Harrington Center.

Mr. Bunker asked if site plan approval was all of the necessary documents required for building. He didn't know that just site plan approval granted the ability to build.

Ms. Stevens asked if Curt Miner could speak to that. Curtis Miner said that the site plan approval dealt with the technical development of the site only. It would have some information relative to the building itself. He said that it was the building permit that was based on the full set of construction documents from the architect and engineers that would be the basis of construction for the building.

Mr. Bunker asked if the clause could say site plan and building permit. Curtis Miner clarified approval of the building permit. Council Member Shelton said that sounded good and took care of the building code and parking requirement criteria. He said it was simple; if you had a site plan and building permit you could buy the property. He said that the only thing that he thought would be good to add was that usually when the City sees these fair market values, they have always found the word fair to be somewhat arbitrary depending on who is determining what is fair. Usually, they say that fair was based on an appraisal and if the two parties disagree then they take the average of the two appraisals.

Ms. Mellor asked if this was how Council Member Shelton wanted to define fair. Council Member Shelton said yes: define what fair market value is. He said that he was sure Ms. Mellor had some appropriate legal language that would work. In regard to 5b, the contract read that the term should end upon the surplus of the property. He said that he thought the lease would end upon the sale of the property. He felt it was important to note the difference between the two. He also suggested that as a Council the surplus the property now to get it through the public process, that way when Harrington is ready, the City is not tied up by procedural issues.

Ms. Mellor said that she would caution against surplus at this point since there was something that needed to happen first before the property could be declared surplus. Council Member Shelton asked if Ms. Moller was talking about the agreement with the other property. Ms. Moller said that Harrington needed to have a site plan approved and a building permit before it could be deemed surplus property.

Mr. Bunker said that the City might not want to divest in the property if the Harrington Center was not the project that goes forward. To surplus the property now might indicate to a different purchaser to approach the City to surplus the property. Council Member Shelton said that he felt like it was just semantics. If approached by someone else, the City could say no and that they wanted to keep the property. Surplus did not mean that the City had to sell the property. He said that he would just hate to hold Harrington up because the City had not surplused the property or had the needed public hearings to move forward.

Ms. Stevens asked if there was a way to add into section five—to protect both the City and Harrington Center for the Arts—the right for Harrington the Center of the Arts the first right of refusal on the property being declared surplus. Ms. Moller said that could not be done legally. There has to be a finding of the property’s fair market value. The right of first refusal would basically state that yes the City will sell to a specific party, skipping the surplus requirements.

Council Member Shelton asked if the first right of refusal could be put in the criteria. He said that was the biggest issue for the investor. From his experience the agreement was to give investors the green light and say that the property was available. He felt like they could specify that Harrington had the first right of refusal because that was what the Council had decided was best for the residents of American Fork. He said that he did not think that the City would be interested in selling the property to anyone else because no one else would be able to demonstrate the type of use that Harrington had.

Ms. Moller said that you can’t put that in the contract because the property has to go through the process. Council Member Shelton said that the property had to be surplus first. Ms. Mellor said yes; Harrington would have to meet the criteria assuming that the property has a fair market value and that they have the necessary approval.

Council Member Shelton said that he was just wondering what comes first. Ms. Mellor said that part of surplus a property is public noticing, having a public hearing so that residents are aware and can provide input. To state, sorry public, we’ve already determined that this party has the right of first refusal when the public hasn’t had the opportunity to be heard.

Council Member Shelton said that he agreed with that. He said that was why he was wondering why the property could not be surplus now as opposed to later so that the public hearings could happen and the City could enter into those agreements. He said that he did not think they should bypass the public. He wanted to keep it open. He said that he thought that the investors were ready to pull the trigger. To start that process now to be able to give them the property, it signals to the investors a commitment. He said that the biggest risk to investors is political risk. Why would they put \$10 million into the building adjacent to the property only to have uproar from the public? He suggested that they have the uproar now so that is on the table before the investment dollars get put in.

Ms. Mellor said that yes, the City wants to move forward with this particular proposal, but the concern is if the property is surplus now and steps don’t happen for the property to be developed by Harrington then property has become surplus that should be.

Mr. Bunker said that there would be time in between getting the site plan approved and getting the building permit. He thought that it could be another Council action item to surplus. If the agreement can be approved as is, the Council can always come back at another meeting and put the surplus on another agenda in advance of a final site plan approval if they wish. He said there would be time in-between now and the building permit that a surplus could happen.

Council Member Shelton said that he was looking for a way to try and alleviate the concern of political or legislative risk. He said that nowhere in the contract was there the right of first refusal

because nothing says that Harrington could purchase the property outright. He said that by initiating the surplus now and stating those conditions, it would give Harrington the ability to have security of the right of first refusal before they pour in millions of dollars of investment.

Mayor Frost said that he thought that it was important. He said that he felt like they had a good framework. If they needed to have a subsequent meeting with investors he thought that Council could have that if they were hung up on perceived political or legislative risk.

Ms. Stevens said that one of the investors from Orchard Securities was on the call. She said that the investors had mentioned earlier today that they would feel more comfortable and secure in the agreement if there was some language regarding first right of refusal. If that was not possible she wondered if they could explore other avenues to create security. She had two questions. Her first question was regarding the building permit. Do you have to own the property first to get a building permit?

Ms. Mellor said that building permits were usually contingent on properties being under contract. She said that a building permit would not be issued if an entity was not the property owner or the property was under contract. Ms. Stevens said earlier it was suggested in the contract that the surplus of the property be triggered by the approval of a site plan and building permit. She was curious how they could get the building permit if they were not eligible to own the property when it had not yet been surplus. Her second question pertained to the earlier conversation about parking. She said that she knew that a building permit would address parking. She wondered if the parking agreement could be tabled until the application for the building permit. At that point, all parties could decide.

Ms. Mellor asked about what parking permit Ms. Stevens referred to. Ms. Stevens apologized and said that she had gone back a little bit. She said that she knew that in typical development, parking was addressed further down the road during the site plan and building permit. She said that parking had been discussed earlier on in the discussion. She wondered if the contract could indicate that the building permit would address parking and that is the point at which the parking agreement between all the parties could be updated.

Ms. Mellor said that the parking agreement she was talking about was the shared parking that was already in existence. That needed to be recognized with an understanding that the project was moving forward, but that because the agreement was in existence there at least needed to be an acknowledge and acceptance of the agreement with the other party entitled to the parking.

Ms. Steven said that from their perspective, because it can only be a parking lot right now and hadn't been deemed surplus it would remain parking until it was purchased by their organization. She said that seemed like the appropriate time to work on a parking agreement between all parties. Mayor Frost said that he thought that would be addressed during the development process. How many spaces would be needed based on the use? It was a very prescribed process. Council Member Christiansen said planning would address that.

Ms. Stevens said they were looking for 5a for the surplus of the property which says, "and has the necessary development plans..." She thought that was what they were talking about there.

Mayor Frost said the language might extend as far as developing the property.

Mr. Bunker said that language might actually be better now that we've talked about it rather than suggesting a building permit is to be issued. If you can't get a building permit unless you're the owner of the property this language says that development plans are prepared for approval, It is not saying you have to get a building permit. The language suggests that all of those things were ready and the Council understand those. He thought that leaving the language as is might be better than adding the building permit.

Ms. Stevens said that in regard to 5a they just wanted it to be really clear about the list of agreements and criteria that the City would like them to meet and what they have to have done before the City is obligated to attempt to declare the property surplus.

Mr. Minor asked if they could set up a ladder system where the obligation of the Harrington Group initially is to prepare the site plan which resolves the parking. The parking would be built into that site plan. Once the site plan was submitted and approved that would obligate the City to begin the surplus process. The surplus process would begin the sale of that surplus property. The sale of the property would allow the Harrington Center to submit for the building permit. He said that if you thought about the total money to design the project, 10%-15% of the investment would be for the design fee that would motivate the Harrington to get the site plan approval. Then it would trigger a requirement by the City to surplus the property and execute the sale. That would be the security for the Harrington to spend the other 70-80% of the design fee to get the construction documents ready for the building permits. It became a stepped process where there was risk on one side and risk on the other side that would ultimately come to a conclusion.

Mayor Frost said that he was not a lawyer. Everything makes good practical sense. He said that he thought they were working on terms of trust. Back in the old west they would shake hands, but that was not how things worked anymore. He deferred to legal counsel and asked if the Council had any other input. He said that he was under the impression that the agreement needed to be done today. That was why they pushed it along. He said that they wanted to get it done today. He didn't want it to be slowed down. When legal language was introduced with steps he felt like it was important to retreat and regroup. He said that he knew that every word counted. He said that if they were looking to him for legal answers all he could offer was to tell them what tree to plant.

Ms. Mellor said that she would agree with taking a step back to regroup, especially since they need an acknowledgement and acceptance by 4750 LLC. She said that sounded like it was not going to be an issue. Because she had not seen that agreement she felt like to move forward she would need to. She said that she could not legally advise the City to move forward knowing that there is another agreement that could potentially be affected. Because there was already discussion about advising the agreement and using different language that could have a significant impact for all parties involved it was better to slow down to get just the right language. She said that didn't mean that the agreement could not be put on the fast track.

Ms. Stevens said that they were so grateful for the time spent by staff putting together this legal document. They were excited for this step that we are taking with American Fork City. She said that it was obviously a long time coming with a lot of work that had been put into this moment.

She said that they received the agreement last night and talked it over with their lawyer Kirkton McConkie. She said that their legal team would have time this week to comment back and forth and could be ready by March 9th if everyone wanted to take a few days to fine tune any necessary language.

Council Member Carroll said she personally would be more comfortable with a contract where I can see the wording. Mayor Frost agreed with Council Member Carroll. Council Member Carroll said that she did have one small and one big question. First, she was worried that the language of the contract calls the property a parcel. She said that was totally normal for a contract. They did that all the time. Because the area of the parcel had not been defined, she wondered if they did want to put in some sort of description so that when it came to the sale they were deliberating over what they were actually selling.

Mr. Bunker said that if you look at Exhibit A, there was a legal description. Council Member Carroll said that worked. Mr. Bunker said to be cleared until they saw a site plan there could be some minor modifications. The description was prepared by the City's GIS group but the final sale might deviate a little. Instead of 152.83 feet it might be 164.65 feet. It could be slightly different, but that would not be known until the actual site plan was submitted.

Council Member Carroll said that when they talked about this item at their last meeting, it was discussed that in giving up the parcel, there could perhaps be some sort of parking agreement that would shift the lots that were missing to another area, how the lots might be shared, etc. She thought that those details might have been intertwined into this agreement. She had heard the discussion about how parking came later. For her, however, they were talking about selling the property with the contingency that there would be the additional parking. She wondered if others had thoughts or comments on that concept because that was what was talked about at the last meeting.

Mayor Frost attempted to answer Council Member Carroll. In exhibit A, the City currently owned the entire parcel all the way back to the sidewalk. The City would hold in reserve a portion of the parcel to take care of public safety needs.

Council Member Carroll said absolutely and that perhaps she misunderstood. She thought that something further to the south was currently the Harrington's area that they would maybe be able to use for fire.

Council Member Taylor told Council Member Carroll that he thought the same thing. When they looked at the plans there was an open parking lot all the way down Center Street and the old administration building that were the administrative offices of the Harrington Center of the Arts were there now. It was his understanding that when the parking spots were going to be gone, the City was going to strike an agreement for a certain number of additional parking spots in that area as well.

Ms. Stevens said that what Council Member Carroll and Taylor perceived was accurate. She said that Harrington's organization and plans worked really well with City functions as far as their

events happening in off-peak times. She said that they had never looked at them being two separate parking lots, but a joined parking lot that City staff could use as well.

Council Member Carroll said that she didn't know how to specify the parking agreement because she didn't know what all of the options were. She wondered if it needed to be stated in the contract that Harrington could not restrict public access. She wondered if it needed to be stated that it was a shared lot with the City or if they just waited for the development process. At that point, however, the City didn't have any leverage because the property had already been sold.

Ms. Stevens said that she thought that was what Mr. Minor was trying to address when he outlined the stepping process. She felt that as opposed to addressing parking now, but to do so when the site plan was completed and Harrington had completed all of the tasks necessary for the property to go up for surplus. At that point, all of the parties could come together and say, this site plan is approved contingent on x, y and z parking needs being met. She said that she had always looked at this as a partnership with the City. As they developed the site plan they intended to work closely and have a lot of communication about what the City's parking needs were. She worried that if they rescinded any prior agreement with the Carol Bell Family Trust now it didn't leave options or room for negotiation the site plan when Harrington actually purchased the property.

Mayor Frost said that it was going to have to come back. He asked if there was representation from the investor present. Ms. Stevens said that she thought that Nathan Maughan was still on. Mayor Frost asked as they talk about this parcel and shared parking in regard to the needs of the Carol Belle Foundation and the City, did the investor need to have a say as well.


Nathan Maughan, investor, said that he thought that could only get as far as they could get. He said that they would like to see what the City came up with in the laddering process. At that point they as investors would be able to decide. He said that they were very happy to see the level of cooperation playing out. He said that he didn't feel like he was at a point where he wanted to say that they needed x for certain or y for certain quite yet.

Mayor Frost asked that they talk about realistic dates. He asked what a realistic timeline was to see again and approve the agreement. Ms. Stevens said that their attorneys could get everything worked through by March 9th. She said that depended on the timeline of City staff. Mayor Frost asked not when Harrington's legal counsel could look at the contract, but the realistic date the City could expect a nod from the investors. Ms. Stevens asked Mr. Maughan if March 16th, two weeks from the date of the meeting, would be alright or if they needed to wait for the investor group to have some sort of finalized agreement. Mr. Maughan said that he thought they were okay with March 16th.

Mayor Frost thanked everyone for there. He said that they would have packets out shortly for the upcoming City Council Meeting.

3. Adjourn.

The work session ended at 6:15 p.m.

A handwritten signature in cursive script that reads "Stephanie Finau". The ink is dark and the handwriting is fluid.

Stephanie Finau, Deputy Recorder