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CALL TO ORDER

[Time: 00:00:04]

Mayor Lane: It's nice to see an audience here for our Work Study Session. I would like to call to order the May 30th Work Study session, please.

ROLL CALL

[Time: 00:00:12]

Mayor Lane: Roll call, please.

City Clerk Carolyn Jagger: Mayor Jim Lane.

Mayor Lane: Present.

Carolyn Jagger: Vice Mayor Suzanne Klapp.

Vice Mayor Klapp: Here.

Carolyn Jagger: Councilmembers Virginia Korte.

Carolyn Jagger: Virginia Korte.

Councilmember Korte: Here.

Carolyn Jagger: Kathy Littlefield.

Councilwoman Littlefield: Here.

Carolyn Jagger: Linda Milhaven.

Councilwoman Milhaven: Here.

Carolyn Jagger: Guy Phillips.

Councilman Phillips: Here.

Carolyn Jagger: David Smith.

Councilman Smith: Present.

Carolyn Jagger: City Manager Jim Thompson.

Jim Thompson: Here.

Carolyn Jagger: City Attorney Bruce Washburn.

Bruce Washburn: Here.

Carolyn Jagger: City Treasurer Jeff Nichols.

Jeff Nichols: Here.

Carolyn Jagger: City Auditor Sharron Walker.

Sharron Walker: Here.

Carolyn Jagger: And the Clerk is present.

[Time: 00:00:36]

Mayor Lane: Thank you. A couple of items of business. The Work Study is a less formal setting to discuss specific topics at length but with each other and with the city staff. Work Study sessions provide an opportunity for staff to receive direction from the Council and for public to observe these discussions.

We do allow some Public Comment on it, at the outset of the meeting. The Public Comment is a total of 15 minutes that's set aside at the beginning of each Work Study session for Public Comment and comments are limited to the two items on the agenda. Please see the City Clerk if you have thoughts or suggestions on the Work Study session item that you would like the Council to consider. We do have two such requests. We do only have two items on this Work Study session and there's no specificity as to what they may be requesting on. Two items are the Amending Local Transaction Privilege Tax Except Sales of Work of Fine Art and the second is the Zoning Ordinance Bonus Provisions and Cultural Improvements Projects.

PUBLIC COMMENT

Mayor Lane: We'll start with Sandra Schenkat.

[Time: 00:02:14]

Sandra Schenkat: I'm reading this letter for Brad and Jinger Richardson. They sent it to Bob Pejman and he asked me to read it. Dated May 30th. Hello, City Councilmembers. Please let me start with thanking you all for your time, service, and consideration. I'm a third generation Arizonan. My wife Jinger and I opened Legacy Gallery 29 years ago in Scottsdale and Scottsdale Art Auction 13 years ago. We are asking you to support the transaction privilege tax-exempt sales of works of fine art to comply with House Bill 2536.

Scottsdale Art Auction has done over \$100 million in sales and brought in thousands of art collectors to view, bid and purchase art. We average each year between 200 and 300 bed nights which means tax revenue to the city of Scottsdale. We are simply asking for the same exemption that the state has granted. Due to the 1.65% tax, our customers have told us they will not attend the auction for this reason. We would much rather have them in the room and getting caught up in the excitement. Being in Scottsdale means they are paying bed tax, rental car tax, and frequenting all the restaurants. One was from our auction in April of 2011. We had a customer attend the auction and purchase \$1.5 million worth of art which he then had shipped to his home in Texas. We charged him 1.65% tax and he was in his room bidding which totaled \$25,006.16. He was so upset, he would never attend our auction again and unfortunately has kept his word. He has still purchased art in excess of \$1 million since, but by the phone only.

This couple was accompanied by another couple that spent \$412,000. \$6,689.51 in city tax. And they promised the same. These are the type of people we'd want visiting our city. We absolutely do not want to deter them from coming in any way. In addition to the auction, Legacy Gallery spends hundreds of thousands of dollars on advertising to encourage buyers to visit our city and our gallery. We hold special shows and spend tens of thousands of dollars on refreshment and entertainment to create an atmosphere with attending. The city tax has been a huge hurdle for us since the beginning.

Thank you again for all you do. Please accept this as our formal plea to support the amendment to the local privilege tax exemption for fine art sales to conform to the Arizona house bill, 2536, Brad and

Jinger, with Legacy Art Gallery.

Mayor Lane: Thank you, Sandra. Next is Bob Pejman.

[Time: 00:05:20]

Bob Pejman: Thank you, Mayor and Councilmembers. I fully agree with all the statements that Brad and Jinger have made in that letter. And to put it in perspective, this is not something unique that we are asking the city to do or we had asked the state to do. If you go to other states? If I go to Carmel, if I go to Santa Fe and I buy a piece of art and have it shipped to Arizona, there's no sales tax. That's traditionally the way it works because intrastate of commerce laws. You are supposed to pay use tax in the place that you are a residence of.

That's how this works. Now, I have two additional comments here because when Brad and Jinger wrote that, they are assuming that what you are doing here today is to conform the city tax exemption to the state. But then we found out that that's not really the case, that you are proposing different languages it's exemption code, I think 737. So the problem is that if your objective is for the city to conform to the state tax exemption for the sale of fine art shipped out of the state, then the state language has to be really used. So you have to use identical language. On the other hand, if you want to pass an exemption, based on a restrictive language, then not only are you not helping the galleries, you are putting them at a disadvantage because you are saying the artist who sells it directly, they get an advantage over the gallery. My plea to you is, I ask you to pass it with uniform language or don't pass it. Thank you.

Mayor Lane: Thank you, Mr. Pejman. That completes the Public Comment on our items in this Work Study session.

ITEM 1 - AMENDING LOCAL TRANSACTION PRIVILEGE TAX – EXEMPT SALES OF WORKS OF FINE ART

Mayor Lane: We will go ahead and start with the first item, amending the local transaction privilege tax-exempt sales of works of fine art and we have before us Teresa Hogle, Business Services Manager. Welcome.

[Time: 00:07:35]

Business Services Manager Teresa Hogle: Thank you. Mayor, Councilmembers, I'm here to provide an overview of the process for amending the Model City Tax Code. So we can start with a brief history of the Model City Tax Code. Prior to 1984, each of the cities in Arizona maintained their own tax code. In 1984, the state legislature created the Municipal Sales Tax Study Commission. And that commission looked at issues such as joint auditing, joint licensing, and creating uniformity across the different jurisdictions in the state. They created various drafts of a tax code, and finally in 1987, the Model City Tax Code was adopted by the Arizona cities and Scottsdale adopted the Model City Tax Code in April of 1987. The Arizona State legislature adopted the Model City Tax Code the following year.

So since that time, there have been some changes and updates made to the code based on the business community's input, the League of Cities and other groups, the legislature themselves. The structure of the Model City Tax Code is that it's set into Sections. The first section gives definitions of the different taxable activities. The next section tells how to determine gross income. The next section deals with licensing and who needs to be licensed. There are, there's a list of all the taxes by the business types. There's an administration section for dealing with the tax code and there's a section on use tax. There's a regulations area that supplements and clarifies the language of the code. Another part of the code is some option charts that are out there. There's two option charts.

Model options allow the cities and towns to eliminate language from the Model City Tax Code, and local options allow cities and towns to add or substitute language in the Model City Tax Code. These are all pre-scripted options. So you, the cities and towns can pick which ones they want to include in their tax code, and which ones they don't want to include in the tax code. The process for making changes to the Model City Tax Code is outlined in the revised statutes, the Arizona revised statutes. First of all, modification or change that anyone is proposing has to be presented to the Arizona Department of Revenue. From there, the request is reviewed by the Municipal Tax Code Commission.

Now the Municipal Tax Code Commission is made up of a representative from the Department of Revenue, usually the director and nine Mayors and Councilmembers from throughout the state. And those are five appointed by the Governor, two appointed by the Speaker of the House and two appointed by the Senate president. They meet every other month unless there are no issues to discuss. They can hold hearings.

[Time: 00:11:29]

They can make modifications to any proposal that they see, and they have the authority to accept or to reject any changes or modifications that are suggested. Once a proposal is made for a change, the proposals also must be reviewed by the Department of Revenue, all of the Arizona cities and towns, the League of Arizona Cities and Towns, State Chamber of Commerce, the Arizona Tax Research Association, and then the Municipal Tax Code Commission. The next slide, I'm sorry. I have not been advancing these slides for you. There you go.

The next slide shows you the estimated tax revenue, first of all, the total tax paid by the art galleries for these periods and these are fiscal years. And secondly, this is an estimate of how much tax is paid for out of state sales. These are estimates because we don't have specific numbers but they are based on prior audits and the percentages of the revenue that have been attributed to out-of-state sales. You see the numbers have been going down and part of that is impacted by the decrease in the number of galleries in the city, in the fiscal year '12/13, there were 298. And in '15/16, we were down to 239. So that was everybody who listed as a gallery. As I mentioned before, there are model and local options available to cities and towns that they can adopt if they like. And there's one option related to fine art and that's Local Option X. Local Option X is narrower in scope.

It's only relates to works of fine art sold by the artist and you have the actual language of the code that tells you it is only restricted to that population of sales that happen for fine art. Scottsdale has not currently adopted Option X, and adopting this option would require putting it on the Council agenda, putting out an intent to modify the code statement 15 days prior to that and having the Council vote on it. The next slide is a definition fine art that's within.... oops, went too far. We added two slides to the presentation, and I'm sorry, they are not here on the screen but first one, you have a copy of that, and that's the revised statutes that give definition of what fine art is within the state statute.

There is a state statute 42-5661 which was put into the code in 2016 as HB-2536 and I will read you the text of that. So it says the retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from sales, this is one of the exemptions, sales of works of fine art as defined in section 441771, at an art auction or gallery in this state, to nonresidents of this state, for use outside the state if the vendor ships or delivers the work of fine art to a destination outside the state.

So in terms of actions, the Council could choose to continue with the current taxing authority. That's within the Model City Tax Code so effectively no change. We could propose a new option to the Model City Tax Code that allows exemptions for out-of-state sales of fine art this would apply to fine art where the out-of-state person is actually standing in the gallery or the store and/or we could propose an amendment. We could adopt Model Option X as well. So that is basically the process.

[Time: 00:17:09]

Mayor Lane: Thank you very much, Teresa, for the presentation, and for some of the additional clarifying points to be made on the definition of the state's version. But to our members here, Councilman Smith.

[Time: 00:17:28]

Councilman Smith: Thank you, Mayor and thank you, Teresa. You don't have a copy that the public can see. Is there something we can put on the Elmo of what the state law is on this or do we have anything that can be put up?

Teresa Hoglund: That one.

City Treasurer Jeff Nichols: Yes, we do.

Councilman Smith: While you are doing that, the only reason for putting that up is the, indeed the only reason we are having this discussion. It was to discuss whether we could conform, I guess that's not readable was whether we could comply House Bill 2536. It's a little bit awkward not being able to read it, to see what we're trying to conform to.

Mayor Lane: It's over here.

Councilman Smith: You can't read it.

Mayor Lane: Over here.

Councilman Smith: Ah! I think the history is interesting, but I think what we want to do is have you discuss, suppose we tell you we want to conform with the state law. Then what do we do. I don't need a lot of history for that. What do we do? How do we get it done? What's the procedure? I mean, I know all of these people have to sign off. What do we do?

Teresa Hoglund: You have to give us direction that that is what you want to move forward and then we have to take it to the Department of Revenue, write it up and take it to the Department of Revenue and it then it will start the process.

Councilman Smith: Okay. On the slide that has set forth the dollar amounts of tax, the estimates, each of these, what is shown here is just 39% of the total, is that because you said some audit in the past that is 39% of.....

Teresa Hoglund: They have averaged 39% when we have done audits of art galleries. It's definitely an estimate.

Councilman Smith: Is that the same kind of thing that we are talking about here, in other words, the person, he's from out ever state. He comes to the gallery or the auction, he bids, he buys it and then he says as he's leaving ship it to me?

Teresa Hoglund: Yes, it is.

Councilman Smith: Okay. So it is not, it does not include any out-of-state buyers who stand there, buy the merchandise and then say put it in a sack for me, I will take it with me?

Teresa Hoglund: It will include those.

[Time: 00:20:18]

Councilman Smith: Okay. Then I think we are looking at perhaps the wrong number because if we are really trying to conform to the state, I think the state only exempts those people who stand there and buy it and have it shipped to them. If they stand there and buy it and take it with them, there's no state exemptions. Am I correct?

Teresa Hoglund: Right. If they ship or deliver. I'm sorry. I misspoke. It is that. It's for people who ship and deliver them. They come into the store, I'm sorry. I misunderstood the question.

Councilman Smith: All right. Is the, you have here the estimated revenue from out-of-state sales of

fine art and I guess you are confirming for me also that our definition of fine art, it's the same as the definition of fine art in the state law, wherever that went, Arizona statute 44-1771.

Teresa Hoglund: Yes.

Councilman Smith: Okay. Well, I don't know that I have any other questions. My comment, the reason we are talking about this is to see if we can conform our procedures to those of the state. I think it is, it is something we should try to do and that would certainly be my direction to you. The reason I think we should try to do it is because we are sending a very awkward message to customers now who come to the city, to this call it arts Mecca in the state of Arizona and they find the peculiar dynamic that the state doesn't charge them a tax but we, the affluent city of Scottsdale and the art Mecca of the state charge them tax on their purchase. Not only is it an awkward message to be sending in my judgment, but it's also as Brad and Jinger Richardson have pointed out, it is contrary to the message we are trying to send from a visitation and tourism point of view. We try to encourage people to come to the city to enjoy the arts and buy the arts but if you have it shipped home, we will charge you tax. And it has very real and tangible effects that they pointed out and I'm sure it has effects that have not been identified. So if we are trying to promote something that is a tourism dynamic of our city, whether it's car auctions or the sale of art to out-of-towners, I think in every case we should try to live up to our reputation. So my recommendation would be that we do whatever we have to do to pursue through the Model City Tax Code the alignment of our taxation with that of the state.

Mayor Lane: Thank you, Councilman. Councilwoman Korte.

[Time: 00:23:24]

Councilmember Korte: Thank you. What other municipalities either conform to this Arizona revised statute or are in the process of conforming?

Teresa Hoglund: Right now the Model City Tax Code is what rules the city's taxing authority. So there aren't any other cities in the state that conform. In order to conform, the Model City Tax Code would have to be changed. So there are some cities who have adopted model Option X where they don't tax the sale of fine art by the artists themselves. But the rest of the cities are on the same basis that we are.

Councilmember Korte: Thank you.

Mayor Lane: Thank you, Councilwoman. Councilman Phillips.

[Time: 00:24:34]

Councilmember Phillips: Well, that makes it a little more confusing. I tend to agree with Councilman Smith, when the state passed this law, I thought it was a great idea and I assumed it would come to the Council through a consent agenda item and we would automatically conform. I guess

it's not that way, we have choices, thereby the Work Study. So I'll agree with Councilman Smith that I think we need to find a way to conform with the state.

Mayor Lane: Thank you, Councilman. Councilwoman Klapp?

[Time: 00:25:07]

Vice Mayor Klapp: I agree. I think we should conform with the state rule on exempting fine art sales. The problem I have with the Option X language, I guess many problems but one in particular, it just doesn't recognize that there's a distribution system of art. It wants to bypass the entire system and only exempt artists that sell their art directly to the public and that's not typically the way the art is sold in the city of Scottsdale. It might be in some other city in the surrounding area but we are known as the art city in this region and so it would seem to me that we should be doing all we can to encourage sales of art as was mentioned by Councilman Smith to encourage tourism and tourists do come to the city to buy art as the Richardsons have testified. They have a problem where if someone comes to the city and wants to buy art, they can take a look at the art. I've had this conversation with the Richardsons several years ago. People can come to their gallery and look at the art and then they leave and they go home and during the auction, they bid at home for the art so they can buy it without having to pay sales tax. That does not nothing for the city of Scottsdale.

So we are certainly not encouraging sales of a lot of art to out-of-state tourists that come to the state just to buy art. So it doesn't seem logical in my estimation at all to use Option X. It seems totally illogical. It would be like if you want to buy a car, you have to go directly to the manufacturer, and bypass the whole distribution system. We are thinking of having that option for art sales. I don't think it's the way to do it. I think, as was mentioned by Councilman about the state tax exemption, I also was supportive of that and advocated for exempting art sales from the state sales tax. So it would be hypocritical for me to now say that well, now we have exempted the state sales tax, we should continue to collect the city sales tax. I've not agreed with that. Now that it's come before it, I can tell you I don't like it and I think we should go to conforming with the state law.

Mayor Lane: Councilwoman Milhaven.

[Time: 00:27:49]

Councilmember Milhaven: I'm supporting moving forward with an exemption. Thank you.

Mayor Lane: Councilwoman Littlefield.

[Time: 00:27:59]

Councilwoman Littlefield: I agree with Councilman Smith, Phillips and Klapp, and Milhaven. I would like to see a conformation of the state law. I find that making an incentive to keep people out of Scottsdale who want to come here and buy high-end, expensive art go to our hotels and eat at our restaurants and take in our shows is a little counterintuitive of what we are trying to do here in

Scottsdale. So I would not be supportive of the Option X. I would like to see us do the confirmation. Thank you.

Mayor Lane: Thank you, Councilwoman Littlefield.

Councilwoman Littlefield: I'm supportive of Councilman Smith, Phillips and Klapp, and Milhaven, Councilpersons of all, I would like to see us do a conformation of the state law. I find that making an incentive to keep people out of Scottsdale who want to come here and buy high-end, expensive art, go to our hotels, eat at our restaurants, take in our shows, is a little counter-intuitive of what we're trying to do here in Scottsdale. I would not be supportive of the Option X. I would like to see us do the conformation. Thank you.

[Time: 00:28:45]

Mayor Lane: Thank you, Councilwoman Littlefield. I too think it, having been in support of the Arizona statute in this same regard, it seems a little foolish maybe to be trying to go down a separate and different path that may require a different definition and I'm not sure exactly how that translates, but we do have some information from some of our citizens who have addressed the issue that we want to mention as well.

Nevertheless, to have two sets of rules on it, particularly now since we are consolidating tax returns with the D.O.R. and with the state in that regard, it would seem a little bit difficult if there is some distinction between it. And, of course, there is a big distinction when you talk about artists versus art galleries. I'm supportive of the definition and the way the state or the revised statute is indicated. But my question is this, and I don't know whether it wasn't just raised by a constituent, in fact, Mr. Thompson indicated something about the conversation about utility of it.

I was looking to see whether we have that more or less exemptions. They are both aesthetics and utilitarian are not exempt. If I might ask, how was, how was this being interpreted by the state. And when I say that, let me just give an example. If I have a set of coffee mugs that are artistic in their renderings but they are used on a day-to-day basis. Do they qualify as fine art. If I have a silk screened T-shirt that has a rendering of art, does that qualify as fine art? The only reason I bring that up, is there seemed to be some concern about is the use of utilitarian versus aesthetic and so if the state definition confines it as I see it being more to fine art, in a craft sense, I think that's really the only way to go. My question is an open one, I don't know whether we have answer here. How does the state define it? I mean, how far does it go as far as fine art is concerned?

Mayor Lane: No, I'm talking about in actual fact, I've got that here in front of me, in actual application, this doesn't seem to me to imply the exclusion of utilitarian use, but I don't know.

Teresa Hoglund: I can get that answer for you but I don't have that answer right now.

[Time: 00:31:31]

Mayor Lane: Okay, well, as long as we are talking about fine art and I think the way everyone has been thinking about it and how it has been exercised, I'm completely comfortable with this. I can only imagine a choice of Option X, there are two things that other cities and maybe we were contemplating, and that's going strictly to an artist selling his goods, which we are moving away from that in Option X and the other is it seems to be very specific about making sure that things that are created in an artistic sense but are used every day don't necessarily qualify for fine art. I just, maybe it's a subtlety, but I think that's what they were trying to do here.

Teresa Hoglund: Right.

Mayor Lane: I guess with that, we are all in agreement of moving toward the adoption of the state's definition and the same language. I would appreciate if we could get an answer as far as what the actual definition is and make sure we are on solid ground as far as that is concerned. Yes, Councilwoman Korte.

Councilmember Korte: Just to confirm that I'm in agreement of this recommendation.

Mayor Lane: Thank you. Unless there's any other questions? I don't know how we all expected that to be that easy. In any case, thank you for that presentation and the information.

Teresa Hoglund: You are very welcome. We will start the process.

Mayor Lane: I'm sorry, Councilwoman Littlefield, do you have something on this?

Councilwoman Littlefield: I'm sorry, Councilwoman Korte. I didn't mention your name. I should have. I apologize.

Mayor Lane: Okay. I'm glad we got that covered. Thank you. All right.

ITEM 2 - ZONING ORDINANCE BONUS PROVISIONS AND CULTURAL IMPROVEMENTS PROJECT

Mayor Lane: The next item is a zoning ordinance bonus provision and cultural improvements project and our presenter here is Brad Carr, principle planner and we have a side kick in reverse, Randy Grant.

[Time: 00:33:35]

Principle Planner Brad Carr: I'm very happy to have Randy as my side kick. Good evening Mayor and members of Council. As you mentioned this evening, I will be giving a presentation and hopefully sparking some discussion on the zoning ordinance bonus provisions as well as the cultural improvements provisions in our zoning ordinance. Our discussion will be two parts. The first part is the special improvement bonuses available in certain zoning districts within the city of Scottsdale. The second part is the cultural improvement programs as administered by the zoning ordinance, and Current Planning.

This, just for a little bit of background. This discussion is the result some of prior discussions from Council and direction to return to the Council for additional discussion on that special improvement bonuses and Public Art component. This evening we are hoping to get some direction from the Councilmembers to staff regarding maybe some potential changes to the zoning ordinance provisions, related to the special improvement bonuses and/or the cultural improvement program requirements.

So why do we have special improvements. Special improvements are in place to allow some flexibility in our downtown area, as well as other parts of the city in achieving downtown plan and other character plans throughout the city to allow public amenities and infrastructure. Some of those programs were created recently during the downturn due to slow economic activity to encourage reinvestment in public improvements. Those special improvements allow development of public amenities that may otherwise be constructed or maybe would occur on an extended timeline. Those improvements can be outside of the normal development project, and not restricted strictly to the site that that project is on. Thereby allowing some additional benefit to the public outside of that specific project. And finally the special improvements encourage design and environmental innovation.

[Time: 00:35:38]

So what are special and public improvements? Those special and public improvements need to be a development project near a development project that provide assistance in achieving, like I mentioned the city's goals in their General Plan and the Character Area Plans. Those special improvements also need to be noteworthy investments in sustainable high-quality, urban design and enhance public benefit. And finally they need to improve the quality of life for the community as a whole. Three areas within our zoning code that currently allow special improvements are our Planned Block Development district which is properties within our downtown area of the city. Those, the Planned Block Development allows bonuses through any of five elective paths. Another one is our Planned Airpark Core Development, or our PCP district. The PCP is located primarily, exclusively within the Airpark Character Plan in our central part of the city. There's allowances for bonuses through eleven elected paths. And finally our Planned Regional Center, or PRC district, throughout the city on larger properties of 25 acres or larger. Those provisions mandate certain requirements be achieved in order to obtain a bonus.

So starting with the Plan Block Development district itself. The bonuses for that district could include floor area, height and/or density. As I mentioned that is achieved through one or more of five elective paths that a developer, property owner could choose to obtain those bonuses. The first is additional cultural improvement program contribution, otherwise known as Public Art. That would be above the base 1% requirement that is normally required in the PBD. And workforce housing is another option. Open space, another option. Again, that's an area outside of our normal setbacks and/or normal requirements. Compliance with the Scottsdale green construction code is another option. And finally special improvements outside of those aforementioned are also available. That would include improvements like wider sidewalks, additional street lighting, and other pedestrian improvements to the area in the project. All of those values for the special improvements are obtained through a formula to ensure equity amongst all the development. Special improvement

bonuses as they relate to the PCP district, these bonuses are available only for floor area and/or height, not for density. And it has a much broader range of available elective paths for a property owner to choose enable to enact those bonuses.

Some of those include right-of-way dedications, additional infrastructure improvements public parking areas, Public Art, enhanced transit, pedestrian amenities, solar collection, landscape water conservation systems, electric charging and compliance with the green construction code. And special improvements as they relate to the PRC, as I mentioned, or I should say this is only for bonuses for floor area and/or height, not with density. As I mentioned before, to achieve this bonus or bonuses, you had to comply with all of these requirements, all seven requirements. So a little bit different than the PBD or PCP where a property owner could elect to choose one of several paths. The property owner in this instance would have to demonstrate compliance with all of these paths in order to get the bonus.

So this evening again, the Council could provide some direction to us to eliminate certain elective paths for achieving bonuses, and/or increase the scrutiny for obtaining a bonus through an elective paths. Another possibility is to create specific paths for achieving bonuses similar to the PRC or they could leave the existing methodology in place. I think at this point before we head on it the cultural improvements maybe we will have some discussions on the special improvements bonus.

Mayor Lane: Okay. Very good. Provided there is some questions or comments from the Council here. At this point in time do we have some questions specifically on this or do we want to continue? Yes, go ahead Councilwoman.

[Time: 00:39:58]

Vice Mayor Klapp: Since we are not privy to all the discussions that you have with people who bring you projects, are there paths that we are providing that no one is taking and if so maybe you would eliminate those? That would be my first question. Are those that since nobody wants to do it, we should just eliminate it?

Brad Carr: Sure. Absolutely, Mayor and Councilmember Klapp. Let me go back to the PBD, the majority of people using the PBD in the downtown area would be doing one of two things. They would contribute additional monetary value to the cultural improvement funds or art ,or choose to provide special improvements in, around their site through enhanced sidewalks or other pedestrian amenities and/or infrastructure improvements. We have yet to have somebody choose the path of workforce housing or open space at this point.

Vice Mayor Klapp: Or green construction apparently.

Brad Carr: Not for downtown.

Vice Mayor Klapp: You have had green construction chosen in the past?

Brad Carr: Yes, for our Planned Airpark Core Development, the PCP area. We had somebody utilize, or both, one of the projects have utilized the green construction codes as one of the options as well as additional Public Art has been the other choice. The remainder of those on the screen have not been utilized at this point by any development. Granted we have only had two that have the elected path under the PCP at this point. But the two that have applied public art, and the green construction code.

Vice Mayor Klapp: I guess my other question could be since you have so few paths being chosen, are you wanting to recommend to us to eliminate paths or are we supposed to pick one and say we don't want this anymore. I'm trying to go figure out why exactly you need us to direct you on which paths to eliminate since we have a limited knowledge of how you work with developers on these variety of projects and paths that they take if that makes any sense.

Planning and Development Director Randy Grant: This was brought up because of some questions that were asked about how these criteria were applied in a specific project. And in that project, the question related to the provision of art in a location that might not be considered Public Art. It was a part of the building or attached to or within the building complex. So....

[Time: 00:42:49]

Vice Mayor Klapp: So in that case, would you want more clarification as to where the Public Art might be located, is that you are saying?

Randy Grant: I think if it helps the Council to feel comfortable with, if there is a discomfort with how this is being applied, then certainly we could come you to prior to the zoning that would affect this and tell you what public improvements are proposed and you would have the opportunity to weigh in which of these is selected and how much it is worth. There's a relative value of these things. I mean the electric vehicle charging stations, for example, is something that more and more developers are choosing to go put in. And that then raises a question if they are choosing to put it in, should we be providing a bonus for it? This was the previous direction from Council at a time when development was fairly stagnant and we were looking for ways to stimulate new development and revitalization.

Vice Mayor Klapp: Thank you. That gives me better clarification of what you are looking for from us. Thank you.

Mayor Lane: Thank you, Councilwoman. Councilwoman Korte.

Councilmember Korte: So are all of these elective paths on a same level? So one is not given more importance than the other? They are not, they are not graded?

Brad Carr: Yes, Mr. Mayor and Councilmember Korte, they are given a value on a formula that bases a value on the proposed requirement of the developer to put that in as far as a cost on their end. So they were not necessarily on a level playing field to begin with. A vehicle electric charging station will

cost a lot less than a 12-inch sewer line for instance, as far as a developer's costs. And so there's a formula that would break those down to you a similar metric. You wouldn't as a developer get as much value for one electric vehicle station as you would for a 12-inch sewer line.

Councilmember Korte: So let's pick a compliance with the Scottsdale green construction code. It's a volume of criteria. I'm sure you have it somewhere. So is, is the grade given based on how many green construction codes are implemented in a project or is it all the above or none of the above or.....

Brad Carr: Councilmember Korte, the way it's written, is compliance with it's a sliding scale. So if the entire project complies with the green construction code, you can get a maximum of a certain value and bonus. Now if you provide a smaller scale percentage-wise over the entire project, then that percentage goes down.

Councilmember Korte: And you said that that particular elective path is not often taken.

Brad Carr: Well again, keep in mind there's only been two projects that have utilized the bonus provisions in the PCP, so one of those did choose to do this to gain that bonus.

Councilmember Korte: Put not in the PBD?

Brad Carr: No, not in the PBD at this point.

Councilmember Korte: Or the other one.

Brad Carr: PRC, it's actually a requirement to get the bonus. That's one possibility that Council could take this evening, is to make one of these an actual requirement instead of an elective path.

[Time: 00:46:30]

Councilmember Korte: So if there is a suggestion that I would like to see is some requirement to comply with the green construction code at some level. I'm not imposing 100% of the code but maybe there's something that as a community that values preservation, and recycling and have preserved 28% of our land mass in a McDowell Sonoran Preserve, perhaps it's time to incorporate that value in other city codes.

Randy Grant: Councilmember Korte, that's a great point. In fact, many builders are now complying with the code regardless. It's good economic sense for them. It gives them an opportunity to market the project as being green. I think making a requirement for that is not as great a step, yes.

Mayor Lane: Randy, if I might just, I think that's a good idea as well, but several years ago, the various levels of green construction code are not only our own, are going to the LEED specifications. Were are not necessarily appropriate in our environment. They weren't really, in order to obtain the various levels some of the things that were called out for really were not a positive from a green construction standpoint here in Arizona and the valley versus other parts of the country. Has there

been any modification for those kind of, I thought, it's just from the standpoint, I like the idea, but it would be sort of silly to force something on someone that, it falls, I would imagine it falls in accommodation with the LEED standards or no?

Randy Grant: Mayor Lane, it does. In fact, the International Building Codes are getting more and more close to a green building-type requirement. What we were requiring to achieve the bonus, you would have to achieve LEED certification which is not currently part of the building code.

Mayor Lane: Yes.

[Time: 00:48:57]

Randy Grant: But the building code as it's rewritten every few years, incorporates more green building modifications because there are advancement in glazing and window systems so that even in a desert environment, we can achieve many things that 10 to 15 years ago weren't available.

Mayor Lane: To that point, I do think that's a good point and maybe a point of look-to-do. One of the things I wanted to ask, when we talk about these requirements and/or suggestions of paths that they could do as a tradeoff of modification of a plan, if we are not using a provision, is it appropriate maybe that it's not a saleable item and it's not something that, you know, it's necessarily going to be picked up and I realize we have a sample of two, not necessarily in this area so maybe it's premature to think that way, but nevertheless, it may be something we want to monitor as the time goes on. The other is this, and it comes up from time to time, and that's trading off these, for offsite development, or I shouldn't say development, paths for bonus, if you will, bonus for your density or height. I don't know where that is exactly legally, but it's a troubling aspect when you start taking something off the site on that bonus deal and I know we have come across it with Public Art. We had at least a suggestion of under grounding lines in an area. Some suggestions moving it to a city venue, those kinds of things. I don't know whether that's something that comes up routinely or whether it's something that's a bit of a challenge for us.

Randy Grant: Well, that's great thought and, in fact, there has to be a Nexus between what is required in order to achieve a development approval and what can be achieved with bonuses. And so, yes, we couldn't require as a part of a rezoning dedication of right-of-way offsite or improvements offsite but when they are requesting a bonus over and above what is required as Public Art does, they can provide it on site or deposit it into cultural trust improvement fund, et cetera. I think we in the past have vetted that fairly thoroughly with legal and they have been comfortable with that.

Mayor Lane: Yeah, all right. I do know on a basic element, it's somewhat verboten to pay for a zoning change. I don't know whether that constitutes that type of thing. If we've gotten clearance from our illustrious legal staff, I guess I'm comfortable. Thank you very much, we appreciate it. Yes, Councilwoman Milhaven.

[Time: 00:51:52]

Councilmember Milhaven: Mayor, you raised some interesting points. Might there be an opportunity for us to consider other kinds of trust funds that would allow us to have money used in other off-site locations to give us greater flexibility in, and an example, we have heard the emerald necklace in creating a walkable downtown and pocket parks. If we allowed additional height in one part of downtown, could they put into a trust that would allow us to develop an open space in another part of maybe our city or something in the airpark for the downtown. Might we be able to make this more flexible in terms of payments to the city and where and how we could use that?

Randy Grant: I believe so. I guess in laying out this entire discussion, whatever we're requiring as bonuses, should reflect the Council's priorities. If there are other areas not included, some of these for example have waxed and waned in terms of their importance. Maybe parking is more important than it used to be. But infrastructure improvements always seem to be important. So I think that as you approve the zonings that take advantage of these bonuses, you can help to or, in fact, define how those are being applied. The Downtown Trust Fund is an actual trust fund and within that, they can spend money within the downtown area. As we get more and more into the bonus provisions, the sphere within which you can demonstrate that there's a connection between the bonus and the amount being paid for it, narrows. If you get more than a few blocks away, someone may challenge whether that bonus really relates to something that is happening on that property. I think there's a fairly wide net. If you want to establish other trust funds like the Downtown Cultural Trust Fund, that's certainly at your discretion.

Mayor Lane: If I might just for clarity, that establishment of a trust fund like that would eliminate or diminish that potential challenge if it was applied ultimately to a larger area?

Randy Grant: I think if there were an established trust fund, it would demonstrate that the benefits that can be achieved are within the boundaries of that trust fund and it would make it much clearer where those monies could be spent.

Mayor Lane: Okay. Thank you. Yes, Councilman Smith.

[Time: 00:54:43]

Councilman Smith: Thank you, Mayor. A couple of clarifying questions. How many times has this bonus program been used by a developer in the PBD area?

Brad Carr: Yes, Mayor Lane, Councilman Smith, at this point, only four projects have utilized that with the PBD development.

Councilman Smith: And what are those four projects?

Brad Carr: Let me scroll forward here and I can, maybe.

Councilman Smith: Are these the pictures that you included on the presentation.

Brad Carr: Actually, they are some different ones. The Shoeman office building, a recent one in 2015, that has utilized the PBD provisions with special public improvements, totalling about \$685,000. Those are mostly for offsite improvements to the curb gutter, driveways in the area, pedestrian lighting, seating, sidewalks and also a contribution to future improvements in the area of \$269,000. Also recently the Waterview development, in order to obtain additional height and density is contributing \$366,000 was the special improvements which is under grounding of large 69kv power lines and also project Scottsdale Osborn recently got a bonus for density contribution of \$388,000 to the Public Arts fund. There was one other one. Actually, I think it was just those three, really that have contributed to this point with the PBD, with the bonuses.

Councilman Smith: And if I understood you correctly, this whole bonus program was a Council action. This was not citizens getting together and saying let's make this happen in our city?

Brad Carr: That is correct.

Councilman Smith: And this was done during the downturn to stimulate development?

[Time: 00:57:11]

Brad Carr: It came out of our infill incentive district initially which was utilized to spur development during the downturn. The PBD amendments to the zoning ordinance were a way to codify and equal the playing field so to speak as far as what improvements would qualify to achieve bonuses.

Councilman Smith: Equal the playing field with whom?

Brad Carr: With developers. During the utilization of the infill incentive district, most of those improvements that were proposed were done through negotiations so to speak on certain aspects in and around the site. The PBD ordinance specified certain aspects where they could apply those bonuses instead of negotiated on a case-by-case basis.

Councilman Smith: Well, I will probably tip my hand here with my comments and, you might as well know up front, I think these are an aberration that should be done away with. They were never something that the citizens bought into, the citizens whether it was the old step program or visioning or vision 2020 or whatever. Or the multiple groups that got around to talk about General Plan and take them out to the voters or whatever. At no time did the citizens ever say, you know, our standards do have a price. We will sell our soul for \$10,000 a foot. Which is what it comes to for these height things. While I might have been sympathetic to having some kind of encouragement to development during the downturn in the economy, although, factually, I guess we didn't get any stimulation to development during that period, I don't know about the other projects, but the Shoeman project came to us in 2015, roughly seven years after the downturn.

So while I might have had sympathy for them at one point in time, I don't know that they are as relevant now as they ever were. And I hate to see us just perpetuate a program because we took the time to put it in ordinance. If it's outlived its usefulness, let's consider doing away with it. I'm

concerned that these were zoning variances that did not conform to any vision that I've ever heard citizens express. You mentioned, Brad, on slide 4, why do we have special improvements and one of the things, the last bullet said to encourage design and environmental innovation. And of the three examples I have seen here, in what way does the process encourage design and environmental innovation, other than bigger and taller?

Brad Carr: I guess because of the limited sample size and the paths that those developments have chosen at this point, I think some of those paths for innovation and environmental design have kind of waned. None of the developers at this point have chosen to go down that path. I think it's important to note that that's what some of these, a lot of these paths encourage. It's unfortunate that some of the developers haven't chosen to go down that path and instead have chosen to do some more familiar paths that they are used to. The paths at this point still encourage the environmental and innovation.

[Time: 01:01:00]

Councilman Smith: I think as your cohort said, a lot of these things are becoming deja vu. They are the way to build without incentives and they work for the builder and they get the builder a greater return on his investment regardless so it's.... If I were a builder I would certainly pay you \$100,000 to go up another floor, which is roughly what they pay because given the economics of construction, it won't cost me that much to build another floor. And it's going to be a beautiful penthouse to sell for a huge premium. So, which I guess brings me to the question of how did anybody come up with this formula that round numbers comes out to \$100,000 per 10-foot floor.

Brad Carr: Councilman Smith, during the process of updating the PBD ordinance, our staff worked through not only their own research but research with the development community to identify a cost for improvements that would bear out some of those public benefits, and so that's the number that was, I guess, realized through discussion from our staff in their research with the private community, as far as a level that the development community would pay for in order to achieve bonuses.

Councilman Smith: That is an odd way to arrive at a number, asking them what they will pay.

Brad Carr: Again, there's some research from our staff, as far as understanding the economics as to where the benefit would actually be in play. Again, one of the goals of special public improvements is to encourage some of those public improvements that would not normally not been done by the city or taken a longer time period, so....

Councilman Smith: I'm talking about how you come up with the prices.

Brad Carr: There has to be some incentive worked in there a little bit to get some return on those benefits to the city.

Councilman Smith: So you did some research and you talked to the developers. Did you talk to the citizens?

Brad Carr: I'm not sure. Maybe Randy.....

Councilman Smith: You can take a guess at that.

Randy Grant: We had the outreach that we always do. I would point out the first example of using the bonuses was the Waterfront towers. And at the time, that was the infill incentive district where there were no rules on how to apply what additional height was worth. So trying to quantify that was a way to try to make it equitable and predictable, rather than going in with the negotiation and the developer wanting to pay nothing and the city wanting the other extreme. So it has, it has been an attempt. I would probably respond that any formula that we come up with is incorrect. I think there's just not a way based on difference in properties, situation and that kind of thing, where we can get exactly what that's worth.

Councilman Smith: I would agree you that it should not be formula driven. Every property is unique and the needs of the development and the needs the community are unique to the project and although it's more laborious to negotiate each one, one at a time as a one-off negotiation, I think that's better than having some mathematically formula that sets a price for how we will compromise our standards. You said one of the benefits that is sought by this is improvement to the quality of life and the community. I assume by that you mean the fact that we may get a piece of Public Art or a park or something like that, is that what is meant?

Brad Carr: Yes, correct.

[Time: 01:05:06]

Councilman Smith: Is there any negative connotation as to what we are allowing on the other hand, in terms of quality of life? Is it deemed desirable or neutral to have 150-foot building instead of 100-foot building or 90 or whatever the number might be. In other words, the quality of life affects a lot of things.

Brad Carr: Sure. And I think that the heights that were chosen were chosen as a result of our Downtown Task Force recommendations many of which, that process took several years, for recommendations to come out of, the downtown plan was updated as a result of that to reflect the community's desire for height and density in the downtown where appropriate. I think that quality of life consideration was taken in as part of the outreach and the ultimate document that resulted from that outreach, with the Downtown Task Force.

Councilman Smith: You talked about there's several elective paths that a developer may choose. And it almost sounded like if they say OK, I'm going to do path number four, or whatever, and here's my money, they will get the bonus. My understanding from reading the zoning ordinance for the PBD is that it is never an earned right. It is something that the Council may grant. Is that true?

Randy Grant: Yes, Councilman Smith.

Brad Carr: Yes, I think that's an important note to make, with any zoning action by the Council, it's all at the Council discretion. If the Council is not comfortable with the bonus being proposed by a developer, it's certainly at their discretion to modify that or reject it, based on their determination of the project.

Councilman Smith: And your reading is the same as mine, that the Council has this option. Presumably staff initially, acting on our behalf also has this option, of telling a developer we look at what you're offering, you're offering the mathematical calculated number of so many dollars per foot, but we're just not comfortable with this. How do you, how do you make this quality of life improvement decision. Share with me your thinking on this. Is it formulaic? How do you help us make that decision?

[Time: 01:07:57]

Randy Grant: I think one of the things is look at the context of the projecting proposed. An example is Industry East, where there were, there was the opportunity to get sidewalk improvements all the way around that block. It wouldn't have been required as a part of the, of the project. I guess that was Hewson, wasn't it? But we were able to say, there's something that benefits your project that can benefit the city. Also in that process was the oversizing of a sewer line that was very close to capacity. So it's, it is a give and take. The developer is looking obviously for things that they can spend their money doing that will benefit them. We are looking more broadly at what benefits the city as a whole. I think if I can identify an area where perhaps we can improve the system, it is getting it to Council more quickly so that you can make the determination of whether or not what they are proposing is sufficient to generate or warrant the bonus being requested.

Councilman Smith: An example that you gave, am I as a citizen, I'm going to be looking at a builder taller than I ever seen, I don't know how tall these buildings were, but I will be looking at a building taller than I otherwise would have to look at for the next 50 years until it falls down or whatever happens and what I got for that visual impairment, I will call, it is a sidewalk and a sewer line. Is that my quality of life determination?

Randy Grant: Well, a couple of things. First of all this process doesn't establish the height limitation. It only identifies ways that you can achieve it. So that the Downtown Task Force really generated and discussed where development might be more appropriately built higher, and this was a way to implement what that was done. I will say that we really take to heart the identification of things that we think are the most needed. We are holding their feet to the fire to identify ways that the bonuses can be earned and cannot be simply achieved. And in that process, we come to you with a rezoning request that already includes a development agreement that's been worked out that already identifies what they are proposing and puts you in the position of responding to that. I think that's unfair in the way that that is done. One of the things I will be working on is identifying a way that we can get that to you more quickly so that you are establishing the value of the bonus.

Councilman Smith: I think that's a good suggestion, as well as keeping the bonuses something other

than simply formulaic. Let me ask you a mechanical question. It's not clear to me from reading the ordinance or the presentation, if someone wants to go 150 feet high, 100 feet high, something above what is otherwise allowed and they come in and they do this calculation, is that a classification of, how does that take into consideration the mass of the building, the size or, in fact, whether there are numerous buildings. If he's got a big parcel, and he wants to do nine buildings, does he pay one fee?

[Time: 01:11:51]

Brad Carr: Councilman Smith, as that would apply, it would be based on the property that's requesting the rezoning. So the overall development site. So if they had multiple projects or multiple parcels within the project, they could apply that over multiple parcels. Keep in mind during this process, the Development Review Board is included early on to review massing, location and massing and location and buildings, scale of buildings, all of those things that help to define what Scottsdale's downtown is or any part of Scottsdale. So any time we have a request for bonuses, the Development Board is included early on to help define how that massing should be applied. Staff also has boundaries defined through the ordinance as we also apply as the application is coming forward with the proposal.

Councilman Smith: I think I heard at the beginning that it's just one fee that if you got this square block or whatever you might have and you are going to be, maybe you want to build two buildings, three buildings, I don't know. You will pay the fee once?

Randy Grant: Well, the bonus is establishing a greater floor area and how that is distributed amongst the project is to be determined later.

Councilman Smith: Height.

Randy Grant: Well, there's floor area and height. So the floor area, in particular the floor area is saying you can get more floor area but you are still operating within the box that if it goes up, it goes in. And so you are not getting a blanket, you know, fill the cube and pay once. The bonus is related to a percentage of increase in the floor area.

Councilman Smith: Well, I'm going to stop and let somebody else weigh in at this point. I'm, obviously I'm concerned. I think it's outlived its usefulness. I'd love to see it just go away. I'm not sure it benefits anybody except developers and certainly it doesn't seem to provide a commensurate benefit for citizens or nearby residents, maybe it's designed to, I don't know what it's for.

Mayor Lane: Thank you Councilman. I'm glad you brought up the last point you just mentioned. It's one the noncash issues, if you will, the non-listed items is, frankly a smaller footprint in some cases, open spaces, plaza, they've been implemented before, they are not generally in exchange of something. They are part of the program, the valuation, something that this Council needs to do, whatever you present to us. Whatever form. What we are here to discuss really today in this Work Study is how do we go about that valuation or frankly, if we get rid of it all together but the bottom line is that's what you are asking of us to given some direction of how do you quantify these things.

How do we evaluate these things in more methodical way than we have in the past. When the Downtown Task Force brought the incentives district issue to us with the increased availability of height, there was a blanket item opened and that was a citizens task force that was put together to determine that. And when that was passed off to us, it was generally completely arbitrary as to what the trade-offs were. It was a case-by-case basis. We soon found out that it was not the preferred way to go, that some discipline, some kind of methodology should be employed to calculate that. Albeit, never perfect. But to give us some kind of guidance in that.

If we are going to do it at all, what was it going to be worth? And, of course, what the value of one particular thing versus in either dollars or cents or Public Art or some other application of funds. I think that's really what we are here to decide. Whether we do it at all. Or we will give you some guidance as far as the kind of things that we may look at as an improvement, notwithstanding some aversion to any kind of change in the zoning, nonetheless a height or density, what we would look for in exchange to make sure that the overall impact is a better situation than if it was just left to happen on its own. So that's what we are looking to try to do and I appreciate all the comments no this point in time. With, that I do know we have some additional comments and questions from Councilwoman Korte.

[Time: 01:16:33]

Councilmember Korte: Thank you, Mayor. I'm certainly here to support this program and tweak it to make it better and make it better for our community. You know, to say that this program hasn't been vetted by our citizens is not true. It was brought forward by the Downtown Task Force back in the early 2000s, I believe. The ANR General Plan Task Force has considered this and included this in, in their deliberations. And we can say that these bonus plans have been effective and they have been successful. You know, we have created a very vibrant downtown, that is a 24/7, livable, safe city. And it is a great place to be. Let's not forget some thought where maybe this was needed back in the great recession, you know, going in the 2006, 2007, and today we don't need it. Well, I think we do. You know, our landscape is changing. It has changed. There is competition in our neighboring communities. We have, you know, just to mention Salt River Pima Maricopa Indian community, how many businesses we have seen, shall we say moved from Scottsdale to the Salt River Pima Indian community because they provided the office space the density and the height that they were looking for. Tempe and Chandler and Gilbert. Yes, we still do need these incentive programs.

With that, I would like to offer just a couple ideas on paths, elective paths. You know, so back east, you know, they built buildings to last a lifetime. Well, no more than a lifetime. Generations, right? And they are still there. And we don't build buildings here to last a generation, maybe a generation. And, you know somehow we have lost or I believe we have lost that innovative design and that requirement for innovative architectural design and quality building materials and I don't know how you work that in, but I'm making the statement. And it comes down to the integrity of the building materials and what do we want our city to look like in the future. Is it, is it two by fours and plaster? Or is it building materials of integrity? And then also, I would like to, you know, we have open space in here. And somehow I would like to increase the importance of that, as an elective, that public,

public open space is critical to particularly our PBD area. Thank you.

Mayor Lane: Thank you, Councilwoman. Councilwoman Milhaven.

[Time: 01:19:56]

Councilmember Milhaven: I think my colleagues have made a lot of comments that I wanted to.... It seems that this conversation and some of Councilman Smith's comments have coupled heightened density with bonuses, and in my mind those two things can be uncoupled, and if we repeal the bonus program or eliminate the bonus program, this Council can still approve additional height and density.

Randy Grant: Yes.

Councilwoman Milhaven: So if we are going to allow additional height and density, we might as well get additional benefit, because otherwise the argument that says that we are profiting developers at the cost of the citizens' quality of life, is absolutely true if we don't get the benefit, the bonuses. I cannot imagine that eliminating the bonus program would in any way, shape or form enhance the quality of life in Scottsdale and so I would like to see it continue. I'm glad my colleagues pointed out that there was a sense of citizen subcommittee, public comment around the downtown incentive district and the Downtown Plan and I think it's important for the folks to know that the Council didn't just make it up, it really did include a lot of citizen input. I'm glad my colleagues brought that up and that it is at Council discretion.

I chaired a Development Review Board meeting. Somebody came forward with they called it Stadium Lofts, and wanted to build 90 feet at the corner of Osborn and Miller. And they talked about downtown incentive. I said there's no amount of incentive that will justify 90 feet at Miller and Osborn, in my mind, so even though we have the bonus, doesn't mean we have to approve the zoning or we have to approve the bonuses. Some of the things that are now being worked on and coming through the system, I have been talking with the developers to direct and get more benefit and better benefit out of them and more specific commitments.

I would like to see the bonus program continue. To some of the comments, we could always make it better, I would love to get staff's thoughts on are we getting enough value for what we're giving? Should we be asking for more? And are there additional uses? We talk about a cultural trust fund, revisiting, are the uses of the cultural trust fund too narrow. Could they be broadened. Do we need another trust fund. Folks talked about parking. You know, so maybe thoughts to staff about could we get greater monetary value, are there additional uses in terms of what it gets spent on or where it gets spent so that we can get some additional flexibility? Thank you.

Mayor Lane: Thank you, Councilwoman. Councilwoman Klapp.

[Time: 01:22:41]

Vice Mayor Klapp: I also would like to see us continue with this program. I wouldn't want to

discontinue it, but I think when it comes to the downtown district, in particular, when I look at the elective paths, and apparently only two things are being chosen, I go back to what are some objectives we have for downtown and perhaps those should be added to our paths. Instead of the ones that are being ignored, I would add, because if you don't have one here, but we have it in the other districts, some sort of parking improvements in the downtown, because that is an important project for us in this city, as well as within the City Council is to improve parking downtown.

So greater emphasis on parking in my estimation should be in the elective path and the other is transit amenities. That is in the next one, which I don't remember what the designation is, and the PCP area, you have public parking areas and enhancing transit amenities and pedestrian amenities, all three of which are important in the downtown but none of which are the elective paths for the developers to choose. So they are picking cultural improvements. I don't mean to say anything against Public Art, but it's not the most important thing to be done in the city of Scottsdale. It's one important thing, but right now, we have great need for parking for transit, for pedestrian improvements, and we want the downtown to be walkable. Well, if we want it to be walkable, we have to find a way to pay for that.

[Time: 01:24:23]

That would mean that we emphasize with the development community if they are going to be building in areas of downtown that they add some pedestrian amenities as well in that district. Those would be the areas that would be of primary concern to me in the transit area, maybe they contribute to the cost of trolleys or some other transit amenity we have down there. One of my special desires and maybe it's only me, is we add shade to our bus stops. We shouldn't require people to stand and wait for a bus for any length of time in this weather without having some sort of shade over the bus stops.

So if there will be a bus stop near this particular development, that particular item could be discussed with the developer about adding some sort of shade whether this is permanent or whether it's trees or something to improve the bus stops as well as the, provide better bus pull out areas or other things that could work better for the downtown. I think we are disregarding some of the important things downtown and listing things like, not that workforce housing is not important, but nobody is electing it. So if we could provide something that they could see as not only a benefit to the community but even for if it's a multifamily development, it could be a benefit to the tenants. If it's an office development, it could be a benefit to the people that work in that office, and that's why improving parking or pedestrian amenities or transit amenities. So those are three key areas to be added to the downtown area.

On this particular district, I suppose one of the things that you just mentioned electric, vehicle charging station, sounds like something that the developer would want on their own. So you ought to look seriously about whether it should be a bonus and probably consider eliminating it as a bonus and, because they are probably going to put them in anyway, because they are becoming more and more required by people who are driving electric vehicles. On the third district, if you can put it up. I don't know if there were some changes there. Those are all required, correct?

Brad Carr: That's correct.

Vice Mayor Klapp: Everything is required there. So you have touched on some of the elements with parking and additional compliance with green code. Maybe there could be some addition there, or I'm not sure that it relates to either parking, because usually these PRC developments provide most of their own parking, don't they?

Brad Carr: That is correct.

Vice Mayor Klapp: So it may not be necessary in that case. So anything that we can do to achieve some of the objectives that we have today, within the community that maybe we didn't have when the program was first put together, would be what I would be looking at. Thank you.

Mayor Lane: Thank you, Councilwoman. Councilman Phillips.

[Time: 01:27:26]

Councilmember Phillips: Thank you, Mayor. I think Councilwoman Milhaven summed it up pretty well. When a project comes to the Council, we can vote whether or not we give them any bonuses. There's no guarantee and I think that's where this whole thing came about was this if you are going to get nine stories let's not just give it to them, let's get something back. I guess it did go through the task force and supposedly the task force with the public outreach as it were, but, and when was that, by the way? Do you remember the year?

Brad Carr: I believe that was around 2007, 2008, the original task force as the downtown?

Mayor Lane: It was late 2009. 2010. Well, maybe when the final results came in.

Councilmember Phillips: Okay. So it came midway through the recession. It wasn't before it or something.

Mayor Lane: We hadn't recovered yet.

Councilmember Phillips: Even 2011, that was six years ago. And Councilman Smith's comments and I believe Councilwoman Korte's, is that I think our climate has changed. And it sounds like what I'm hearing from everybody is maybe these are not the right bonuses anymore or maybe we can think of better ones or different things that our city needs now that maybe we didn't need then. So it seems to me what everybody is saying, maybe we should just give direction to staff to either come back with us with new ones but then we are just deciding it. Maybe we should just go back through that process that we did six years ago, and come back with new ones, with the Task Force and the public and say what are you looking for now? And these are the new things that we'll be offering to the developers. That would be my direction.

Mayor Lane: All right, thank you, Councilman. Councilwoman Littlefield.

[Time: 01:29:32]

Councilwoman Littlefield: Thank you, Mayor. Yes, a lot of what I thought has already been said by a number of different people. I understand how the project started in the downturn, trying to generate development, construction in Scottsdale, but I don't like the way the program is run now and the primary reason for that is it's not been kept up to date. The whole idea that you get, extra density, extra height, it's now, I see it, from what I have seen while on the Council, it's used as a legal way or a justification to say, yeah, more height for you. It's great. More density. That's fine because you are going to put in a little park here or you are going to do this or you are going to do that.

A lot of these things that are listed here as items that can be used for that, there's no value to them, as far as what is the value that the city is getting back for this permanent forever height that's going on on these building or whatever it is that they are asking for. I think the items we have listed and I'm looking at the airpark core but it could be any of them, that they are saying, okay, these are the things that can be used. Some of them, we don't need. Or not as much as other things and we need to look at how society is changing, how the needs of the people are going to be changing. You know, yes.

[Time: 01:31:06]

Technology is changing. Are we using any of those kinds of things to move Scottsdale forward as opposed to moving the developers forward. And I think that's really what we need to look at. We need to know how to balance the downside of changing our character, our height and our density, to the quality of life that's being improved. What is the improvement? Sometimes it's really hard to see any improvement in the quality of life of our residents in exchange for this. Heights and density change. And I would like to say, okay. You have come to us, and I'm talking Mr. Developer. You are coming to us with a program that you want to put in place and these are the wonderful things that you are going to give to us.

How is that going to affect our citizens and how will it make their lives better? I don't really like the program as it is now. If it stays as it is, it's outdated and should go away. How do we make it more meaningful, I guess is what I'm getting to. How do we balance the downsides to the upsides, to the positives? There needs to be some sort of way to do that. And I don't see it here. When you are saying the purpose of this is to improve the quality of life of the residents of the citizens. But I have never, since I have been up here, heard exactly how that's going to occur. Never. Sustainable, high quality, urban design and enhanced public benefit.

I agree with Councilwoman Korte in that what are we doing to enhance the designs? What are we doing to improve the quality of the construction, the quality of materials that are going, in the design of the interior, the materials. I go through and I look at some of the things that have been built here in Scottsdale over the past five years. Some of them are just downright ugly. And we need to do better than that. We should have a standard that isn't decayed by this policy, but that is enhanced

by this policy. And how you go around doing that, I'm not sure. That's something that I would like to see you come back and say, okay, these are the things, the citizens have said, would enhance their quality of life in Scottsdale. And these are the things that we'll put into some of these programs, or some of these things that the developers should be looking at.

Take out the things that aren't being used. There's no point in just writing down workforce housing when nobody is going to build workforce housing. If they are going to have to do that, then keep it in. But where, when, how, how much, those are questions that are never answered and so I think we need to have some of that. \$100,000, this is the first time I heard that that's how much it costs to increase the height of one floor in Scottsdale. That's kind of a silly number for permanent, constant decay of our requirements in construction. So those are all things I think everybody is touched on similar things. And those are the things I would like to see come back with some quality improvement stuff. What are people going to need ten years from now? Electric cars? Maybe. You know? There's a lot of things coming down the pike that may change our way of life a great deal. And we need to be looking forward, not backward. Thank you.

Mayor Lane: Thank you, Councilwoman. Councilwoman Milhaven.

[Time: 01:35:06]

Councilwoman Milhaven: I wanted to reflect on some of the comments from my colleagues who are not happy with the bonus system. We don't need to wait for these guys to come back with a new bonus program. If you are not satisfied with the bonuses that developers are offering up today, I encourage you to reach out and talk to the developers and say I don't like that bonus. I want something different because you do have influence over the developer and have a voice to share what you would like to see. I hear you are saying you are not satisfied with the bonuses that we are getting today, but I encourage you to talk to the developers and ask them for the bonuses that are adequate. The conversation has been coupled with height and density and for some, there's no bonus that will justify the height and density. And for others we will approve the height and density anyway and we'd like to get as much bonus as we can. I think there's a bigger issue here than just whether or not the bonuses are adequate or whether or not we accept bonuses for additional height and density. I would just like to add one thing and say we have given you a bunch of ideas about how to move toward. I might suggest that staff work with the City Manager and make a recommendation on the process we might use to reconsider bonuses. Thank you.

Mayor Lane: And I would certainly chime in on the same side with that suggestion. I'm for continuing the program but I think we need to make some refinements. It's not a matter of changing the list. I think it's a matter of suggested items that we would consider in any case. There's something that was said earlier that's really important. Given the changes in circumstances here in Scottsdale. We don't know what a builder or developer of a project is willing to do in any case and if somehow or another, we have to get ahold of, if it's a quality of life issue, we have got to be the master of the destiny as far as it's concerned. Not what are they going to do, but what are we going to be looking for to offset any kind of request for a bonus situation.

And I think the list of items that we have in just about every category can serve to be just simply a list of prospective items we are thinking about. The one thing I would hate to lose is that opportunity where somebody is willing to do more than we're even calculating. And for their own economic reasons. And this keeps us up with the times as well.

That doesn't mean that there isn't some measure that we want to make sure that we have a stopgap or some range of things that we would be looking for in exchange for a different project and different bonus situation. So a unique builder or project is probably is probably going to be the one that you will have to be working harder on to determine where it might be. Ours is to decide whether or not those bonuses qualify for what's being asked for. I mean, that's ultimately what it gets down to, but with some guidance, I think with formula may be too strong a word but some guidance in that area, I think is going to be important.

[Time: 01:38:14]

There's another one that I think is a little bit of a fallback, and it's something else that was mentioned, and that is a trust fund. When the immediate items are not necessarily on the line, that may be something that, okay, well, listen, in addition to all of these other things that we have talked about, this is a contribution that would be necessary to that trust fund for the city to decide. But when it comes to the property, if they can open up, if they can open up open space, if they can reduce the footprint, if they can have vistas retained. If there are things that they can do in the construction of the project, the quality of the project itself, all of those things, there may be a credit system. We might want to be looking at how do we value those things in exchange for some of that bonus issue as well?

So it's going to be a bit more of an art form than it is going to be just a calculation. That would be my suggestion. I think getting together with the City Manager and formulating an approach on this basis, I think would be a good way to go. And as one of my colleagues said a little earlier irrespective of whether this program exists or not, conditions are going to come to us. We will have to be thinking about that, if, in fact, the majority is willing to accept something in exchange. Councilman Phillips.

[Time: 01:39:35]

Councilmember Phillips: I'm in favor of doing that trust fund too. I think it's a good idea. It seems like right now the developers, you just write a check to Public Art, and that's the end of it. I would like to see maybe that check go to transit like you said, or a parking garage or something like that, especially for our downtown. So if that's a feasible thing we can do, I think we should look into it.

Mayor Lane: Thank you, Councilman. Councilman Smith.

Councilman Smith: I want to echo what many people are saying and I think we are urging you to move away from the formulaic approach and it's going to be tougher. It's less tangible, less precise. More negotiation, but I think it's the only way to go with individual projects if we are going to keep this program. I'm still not keen on keeping it. If you add other things that the developer may do. I

might take exception to some of the suggestions that were made if it's providing parking for the tenant or the workers, that's not our objective. If a project is going to pay a bonus and achieve some increased height or density or whatever, the benefit is not to the occupants of that building, the benefit is to the citizens of Scottsdale because they are the ones who are giving up the standards. Every case, in my point of view, the comparison will be what is this going to do for the neighbors and greater area, or, in fact the entire city of Scottsdale. So, by the way I don't reach out to developers, I don't work for the developers. I reach out to citizens. I think that's what you as the staff do as well. You're the intermediary, but don't ever forget who is paying your salary.

Mayor Lane: Thank you, Councilman. I don't think we have any further comments. I hope we gave you some guidance and direction for you.

[Time: 01:41:29]

Brad Carr: That was part one.

Mayor Lane: Did you see me wrapping up?

Brad Carr: Part two is related to Public Art. It's a much smaller presentation here, really quick. We want to give a broad overview of what that program is and how it's administered. Public Art, which we call Cultural Improvements Program, is required of all development, utilizing the Planned Block Development in their downtown area. 1% of building valuation for, is contributing to the downtown cultural trust fund or it's actually utilized as actually building something on the site. And art work is reviewed and approved by Scottsdale Public Art and the art work locations and settings are reviewed and approved by the Development Review Board. The artwork installations and in lieu payments are at this point managed by Scottsdale Public Art but will be transferring to the Current Planning department the beginning of the year, I believe.

So we are just real quickly seeking if there's possible direction if Council, if Council has been thinking about this program, any modifications necessary for this program, on the screen here I listed some possible directions including increasing the contribution requirement, decreasing that contribution requirement or modifying some of the elements of placement or requirements for the use of the in lieu funds. And with that, that concludes the presentation on that.

Mayor Lane: All right. Thank you. Yes, Councilwoman Korte.

Councilmember Korte: Financially, how healthy is the cultural arts trust fund?

Brad Carr: I think I believe at this point, it's financially stable. As you can see, the most recent public improvements that have been utilized in the downtown have contributed some significant funds to that program so at this point it's stable. We don't have someone from art to speak directly on that. We can get you a follow-up on that.

Councilmember Korte: From my understanding historically, the last, I don't know 10, 12 years that

the cultural trust fund has, shall we say been a little thin and they haven't been able to accomplish everything they wanted. And I'm just wondering if this, if we really don't want to just dig a little deeper on this program and this process, and see, number one, if it's being administered appropriately and most efficiently and also is Public Art important to this community and should this 1% be more than just downtown 1%? You know, should we expand this? I think the conversation is worthy.

Mayor Lane: Thank you, Councilwoman. Yes, Councilman Phillips.

[Time: 01:44:54]

Councilmember Phillips: I would agree, number one that it should be expanded and I don't know what's in the wording itself, but I think that any Public Art that was money that was given for Public Art should be visible and accessible to the public. You know, sometimes you get Public Art that's in the middle of the building that somebody sees but the tenants. I would want to make sure that that's what happens. I think if we increased it to, you know, maybe citywide, that would increase the amount. You wouldn't have to increase the amount that they have to contribute but it would increase the overall because you're getting more people contributing.

Mayor Lane: Thank you, Councilman. You are saying on the placement side, you want to have some assurance that it's publicly accessible, wherever it is? That's one item of change. On the other side, you are saying increase the percentage to every builder across the city or just every....

Councilmember Phillips: Well, you know, the thing is we can't say every builder because maybe one guy is building a restaurant that will wipe him out. If it's the downtown overlay, you might want to look at other overlays too. This is our downtown, but just like Phoenix, We are building a north downtown now and it's all around the 101 and it's the same thing. So whether you pick out other overlays or something to expand it to I think is a good thing. It expands the art a further direction too.

Mayor Lane: I would just say that our arts program, or Public Arts program has been funded by this mechanism through the years. Of course the administration of it is funded by our General Fund every year to the tune of \$600,000 or \$700,000, but I may not have that number up to date. One of the things obviously that created some real trauma to its financing is the downturn of the economy, when 1% of nothing being built was nothing. It was a particular strain to maintain some of the staffing that they did. The efficiency of use is an important one but if we were to consider something here, I wonder whether or not, again not to be, I'm a little leery about this I want to make sure that we have a legal standing on something like this but a trust fund would be an interesting thing to be able to consider.

And now when we talk about whether it's on somebody's property or whether or not there's an allocation, yes, the property, but it may be the balance or there's some, if there's a change in the amount that goes into a special fund and I'm more focused on downtown because that's where we have sort of designated the place we would want people to come to see. Maybe not exclusively to every building because there's buildings that don't have any requirements that put Public Art on their

property anyway. Though may be in the perimeter center or the airpark or otherwise. I think some combination of that might even it out, potentially, in the downturn, if, in fact, there was a trust fund could be reckoned with a downturn. That would be my suggestion. Councilwoman Korte.

Councilmember Korte: Correct me, the money accumulated, the 1% money goes to Public Art throughout the city?

Brad Carr: Mayor Lane, Councilwoman Korte. The 1% as it applied in the PBD district, is just utilized downtown. There is a separate fund for those projects that utilize the bonus provision in our PCP district in the airpark, but for instance, the 1% itself is only utilized in downtown.

Councilmember Korte: So that's how we have gotten that great sculpture in the roundabout at Hayden and Northsight. No, I like it. Is the.....

Mayor Lane: Okay, I'm sorry.

Councilmember Korte: Is the PCP.....it's not PCP.

Brad Carr: It is PCP.

Mayor Lane: Now we are on drugs.

Brad Carr: I'm not 100% sure but I believe that particular art installation was not funded by that fund because at this point, we have only, we only have one project that's utilized and contributed to that fund in the airpark area.

Councilmember Korte: Okay.

Brad Carr: I may be mistaken, there could have been a small amount of that went toward that, but I don't think the entire amount was contributed to that.

Mayor Lane: Oh, I'm sorry. Brent, did you have something?

[Time: 01:49:53]

Assistant City Manager Brent Stockwell: Mayor, members of the Council, if we can clarify. My recollection on the Downtown Cultural Trust Fund, it's about \$700,000. I confirmed that with Dan. Our understanding is the portion that's related to the airpark is about \$100,000. So you look at those two pieces. You are starting to ask questions about other funding in Public Art and I wanted to clarify those as well. In the CIP, the Capital Improvement Plan for next year, we are pooling 1% of eligible projects and those can be used anywhere citywide. So the City Engineer and the Public Art director are going to consult together and figure out where there is the best need for Public Art and then have it done there. The project that was mentioned, about the Public Art in the roundabout was related to a Capital Improvement Plan project. So when you are thinking about Public Art, you have to think

about a couple of things. The art, the cultural improvement programs which a lot of people call it the art in private development program, it's actually included in that way in your agreement with the Scottsdale Cultural Council, that's one program. The other program is for the Capital Improvement Plan and that's a different set of money.

Councilmember Korte: Thank you. I just had one other question. So currently, Scottsdale Public Art manages this program for the city?

Brad Carr: By manages, you mean, what exactly? As far as administering how the funds are used?

Councilmember Korte: Art work installation and in lieu contributions?

Brad Carr: Correct, yes.

Councilmember Korte: So they review the installations? They inventory the installation. Do they maintain the installation?

Brad Carr: Correct, yes.

Councilmember Korte: And you said that was changing?

[Time: 01:51:30]

Brad Carr: Well, as far as how that money that's contributed to the downtown cultural fund is distributed, will be administered by the Current Planning department at a future date here, currently administered by our tourism folks.

Councilmember Korte: Thank you.

Mayor Lane: Thank you, Councilwoman. Councilwoman Littlefield.

Councilmember Littlefield: Thank you. Well, I think from the emails that I get from the citizens who don't like the Public Art when a new piece goes in, they care a great deal about Public Art. I think most of the citizens like having it. I think it adds to the cache here in Scottsdale. I would hesitate to increase of 1%. I would leave the improvement bonus as it is. I wouldn't want to decrease it or do away with it because I believe that the people of Scottsdale like having the Public Art as a part of our city and as a part of our right-of-way and parks and places. I do believe, however, Public Art belongs to the public in the public areas. It should not be considered Public Art when it's enclosed or part of a development for the use of the development residence, or business area. It needs to be open for the public and that's something that I agree with Councilman Phillips on, that we need to be very careful that those funds are not spent for the enhancement of a private business or a private building. Thank you.

Mayor Lane: Thank you, Councilwoman. Well, I think maybe you have got some direction on that

and so.....

Brad Carr: Yes, thank you.

Mayor Lane: I want to thank you for your presentation and thank all the Councilmembers for their input on this. And with that, unless there's any item other Councilmembers would like to discuss. Of course it has to be on agenda so that's a tough one.

ADJOURNMENT

[Time: 01:53:29]

Mayor Lane: I'll take a motion to adjourn.

Councilmember Korte. I make a motion to adjourn.

Mayor Lane: Motion to adjourn. We are adjourned. Thank you.