

BIRMINGHAM CITY COMMISSION MINUTES
MARCH 9, 2020
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor, called the meeting to order at 7:30p.m.

II. ROLL CALL

ROLL CALL: Present: Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman

Absent: None

ADMINISTRATION: City Manager Valentine, City Attorney Currier, City Attorney Kucharek, Human Resource Manager Myers, Finance Director Gerber, Planning Director Ecker, City Planners Fletcher, Dupuis, and Cowan, DPS Director Wood, Parks & Recreation Manager Laird, Police Chief Clemence, Commander Busen, and Cheryl Arft, Acting City Clerk

III. PUBLIC COMMENT

The City of Birmingham welcomes public comment limited at the Mayor's discretion on items that do not appear in the printed agenda in order to allow for an efficient meeting. The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda. The public can also speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, please step to the microphone, state your name for the record, and direct all comments or questions to the presiding officer.

None

IIII. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

03-042-20 ANNOUNCEMENTS

Mayor Boutros announced the following:

- The Presidential Primary is tomorrow, March 10th. The polls will be open from 7 AM to 8 PM. Voters are reminded to bring photo ID with them. If you are not registered to vote in Birmingham and wish to vote in this election, you may register tomorrow at the Clerk's Office between 7 AM and 8 PM, with acceptable residency verification. If you have questions, call the Clerk's Office at 248-530-1880.

- Residents who vote in Precinct 2 and 3 located at Derby Middle School are being relocated to classrooms 100 and 101, which are located inside the west entrance of the school. Parking is available on Adams and Derby. Signs redirecting voters will be placed in the area of the gymnasium where the precincts were previously located within the school.
- The Birmingham Museum and Baldwin Public Library will present “Wonder Women of Birmingham”, an adult lecture series in honor of the centennial of the 19th Amendment giving women the right to vote. On March 12th, “Early Aviation and the Ferguson Women” will be presented, and on April 9th, the presentation will be “The Three Prindle Sisters who tamed the Wilderness”. Both lectures begin at 7:00 PM at the Baldwin Library.
- On Sunday, March 22, 2020, from 1:00 – 3:00 PM at the Baldwin Public Library, you can shop for gently used purses, handbags, totes, wallets, and briefcases priced at \$1 and up. Enjoy bagels and coffee as you browse through a selection of high-quality used books. The Friends are now accepting donations for the sale. Please bring your gently used items to the Circulation desk in the lobby. All proceeds benefit the Friends of the Baldwin Public Library.
- The 2020 Citizens Academy is now taking applications. This free, interactive 8-week program is open to all Birmingham residents 18 years or older. The intent of the program is to provide a fun and informative learning experience for citizens who want to know more about how the City of Birmingham operates. Participants will have an opportunity to learn more about various departments such as: police, fire, engineering, building, planning, finance, DPS, and more.
Classes are offered on Tuesday and Thursday evenings from 6pm – 8:30pm, with the first session beginning on April 21st. Spots are limited and applications are accepted on a first-come basis. The application form is available for download on the front page of the City’s website at www.bhamgov.org
- The City Commission would like to thank Daniel Rontal and Amy Folberg, Multi-Modal Transportation Board members, for their years of dedicated service and commitment to the Board.

03-043-20 CITY CLERK DESIGNEE APPOINTMENT

Ben Myers, introduced Ms. Alexandria Bingham on behalf of City Manager Valentine and himself for appointment to the position of City Clerk Designee.

Ms. Bingham addressed the commission with enthusiasm and gratitude for the opportunity to be considered for this appointment.

Commissioner Hoff, as a member of the City Clerk selection subcommittee, expressed enthusiasm about this appointment and made a motion to go forward with the suggested resolution.

MOTION: Motion by Commissioner Hoff, and seconded by Commissioner Baller:
To accept the recommendation of the City Clerk Selection Sub-Committee to appoint Alexandria D. Bingham as the Birmingham City Clerk (Designee) effective March 16, 2020, and as City Clerk upon the retirement of Acting City Clerk Cheryl Arft.

VOTE: Ayes, 7
 Nays, 0

03-044-20 ADMINISTRATION OF OATH

Acting City Clerk Arft administered the oath of office.

Mayor Boutros congratulated Ms. Bingham and extended an invitation for the family to take photographs in celebration.

City Manager Valentine excused Ms. Bingham from the remainder of the meeting so that she could prepare for the election in Rose Township, Oakland County.

03-045-20 APPOINTMENT TO THE PARKS & RECREATION BOARD

The City Commission interviewed the following persons for appointments to the Parks & Recreation Board:

- 1. Jeffrey LaBelle
- 2. James P. Cleary
- 3. Martha Moyer (withdrawn)
- 4. Ross Kaplan – Current Board Member
- 5. Susan Collins
- 6. Eleanor Noble – Current Alternate

Commissioner Baller asked Mr. LaBelle if he specialized in his line of work at Deloitte. Mr. Labelle responded that he specializes in large insurance clients that are trying to engage their customers and agents effectively using technology.

Mayor Pro Tem Longe asked Mr. LaBelle which City parks he frequents. He answered Booth and Quarton Lake.

Commissioner Hoff asked Mr. Kaplan if there was anything in his personal or professional life that would keep him from attending meetings. Mr. Kaplan noted that he travels every January for work and it conflicts with the meeting schedule; but there are no other conflicts.

Commissioner Hoff commented on the loss of two long time members of this very important board. She noted that there are some projects coming up and expressed how important it is to have people on the board that have a perspective on the City’s parks and recreation. She would like to see current members stay on the board and also recruit from other areas of Birmingham.

MOTION: Motion by Commissioner Hoff:

To appoint Ross Kaplan to the Parks and Recreation Board as a regular member to serve a three-year term to expire March 13, 2023.

VOTE:	Ayes,	7
	Nays,	0

MOTION: Motion by Mayor Pro Tem Longe:

To appoint Eleanor Noble to the Parks and Recreation Board as a regular member to serve a three-year term to expire March 13, 2023.

VOTE:	Ayes,	7
	Nays,	0

MOTION: Motion by Commissioner Nickita:
To appoint Susan Collins to the Parks and Recreation Board as an alternate member to serve a three-year term to expire March 13, 2023.

VOTE: Ayes, 7
Nays, 0

MOTION: Motion by Commissioner Sherman:
To appoint James P. Cleary to the Parks and Recreation Board as an alternate member to serve a three-year term to expire March 13, 2023.

VOTE: Ayes, 3
Nays, 4

MOTION: Motion by Commissioner Baller:
To appoint Jeffery LaBelle to the Parks and Recreation Board as an alternate member to serve the remainder of a three-year term to expire March 13, 2022.

VOTE: Ayes, 4
Nays, 0

Commissioner Hoff thanked Mr. Cleary for applying for consideration to the board and encouraged him to stay engaged and apply for other positions as they become available. She also acknowledged with gratitude his completion of the Citizen's Academy.

Commissioner Baller noted that it is very hard to choose from a pool of qualified applicants and hopes those that were not appointed stay engaged.

03-046-20 APPOINTMENT TO THE MULTI-MODAL TRANSPORTATION BOARD

The City Commission interviewed Andrew Haig, who has traffic focused education, for appointment to the Multi-Modal Transportation Board.

Commissioner Hoff noted that the board already has someone with traffic focused experience and felt it may be redundant to have two people in that spot with the same experience. She also felt that Mr. Haig could fall into other categories, such as member at large from different parts of the city. She also noted that another long-standing member has not reapplied.

City Manager Valentine affirmed that two long-standing members are not reapplying to serve on the board. The notices of intent not to reapply were just received by the Clerk's office. The positions will be noticed at a later meeting and seeking applicants to fill the vacant positions.

MOTION: Motion by Commissioner Baller:
To appoint Andrew Haig, as an alternate member who has traffic-focused education and/or experience to the Multi Modal Transportation Board to serve a three-year term to expire March 24, 2022.

VOTE: Ayes, 7

Nays, 0

03-047-20 APPOINTMENT TO THE PLANNING BOARD

The City Commission interviewed current members, Bert Koseck and Janelle Boyce, for reappointment to the Planning Board.

MOTION: Motion by Mayor Pro Tem Longe:
To appoint Bert Koseck to the Planning Board as a regular member to serve a three-year term to expire March 28, 2023.

VOTE: Ayes, 7
Nays, 0

MOTION: Motion by Commissioner Sherman:
To appoint Janelle Boyce to the Planning Board as a regular member to serve a three-year term to expire March 28, 2023.

VOTE: Ayes, 7
Nays, 0

03-048-20 APPOINTMENT TO THE CABLE CASTING BOARD

Current member Michael Fenberg was unable to attend the meeting.

MOTION: Motion by Commissioner Sherman:
To appoint Michael Fenberg, to the Cablecasting Board as a regular member to serve a three-year term to expire March 2023.

Commissioner Hoff inquired about two other members that were up for renewal.

Acting City Clerk Aft expressed that the applications were just received and would be brought back to a subsequent meeting.

Mayor Boutros pointed out that there are three additional vacancies on that board and urged staff to keep soliciting to fill the openings.

Commissioner Nickita stressed the importance of taking advantage of the Citizens Academy, which happens a few times a year. He specifically pointed out Mr. Cleary as an example, and encouraged him to come back for consideration to other boards, such as the Multi Modal Board.

VOTE: Ayes, 7
Nays, 0

03-049-20 ADMINISTRATION OF OATH

Acting City Clerk, Cheryl Arft, administered the Oath of Office to the newly appointed board members.

V. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

03-050-20 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- | | | |
|----------------------|---------|--|
| Commissioner Baller | Item H, | Approval of the Woodward Ave Landscape Contract. |
| Resident David Bloom | Item A, | Approval of the amended City Commission Long Range Planning meeting minutes of January 25, 2020. |
| | Item J, | Approval of SLUP Amendment – Dick O’Dows |

Commissioner Hoff noted that she would abstain from voting on Item C, resolution approving the City Commission regular meeting minutes of February 24, 2020 due to absence.

Commissioner Sherman noted that he would abstain from voting on Item C, resolution approving the City Commission regular meeting minutes of February 24, 2020 due to absence.

Commissioner Host recused himself from the vote on Item E, resolution approving the warrant list dated March 4, 2020, because check #272141 on the list was made out to his wife; possibly a rebate for a building permit.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita: To approve the Consent Agenda, with the exception of Items A, H, and J, and noting the abstentions of Commissioners Hoff and Sherman from Item C, and the recusal of Commissioner Host from Item E.

ROLL CALL VOTE: Ayes: Mayor Boutros
 Mayor Pro Tem Longe
 Commissioner Baller
 Commissioner Hoff
 Commissioner Host
 Commissioner Nickita
 Commissioner Sherman
 Nays: None

- B. Resolution approving the Ad Hoc Clerk’s Selection Committee meeting minutes of February 12, 2020.
- C. Resolution approving the City Commission regular meeting minutes of February 24, 2020.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated February 26, 2020 in the amount of \$4,738,814.61.
- E. Resolution approving the warrant list, including Automated Clearing House payments, dated March 4, 2020 in the amount of \$442,429.14.
- F. Resolution approving a request from the City of Birmingham Department of Public Services for a special event permit to hold the 2020 In the Park Concert series in Shain Park on the dates as presented, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

- G. Resolution approving the State Trunkline Maintenance Contract for Woodward Avenue between Michigan Department of Transportation (MDOT) and the City of Birmingham for ground maintenance only for a term of October 1, 2019 through September 30, 2024. Further, authorizing the Mayor and City Clerk to sign the Contract.

- I. Resolution approving the contract amendment with Nowak & Fraus Engineers for professional services, to be charged to the various capital improvement accounts for work being undertaken by the City, and further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.

- K. Resolution approving the contract amendment with G2 Consulting Group, L.L.C. for professional services, to be charged to the various capital improvement accounts for work being undertaken by the City, and further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.

- L. Resolution accepting the resignation of Doug Burley, member of the Historic District Commission, thanking him for his service, and directing the Acting Clerk to begin the process to fill the vacancy.

03-051-20 THE WOODWARD AVENUE LANDSCAPE CONTRACT (ITEM H)

Commissioner Baller pulled this item from consent to ask if there was a warranty on the plant material.

Parks & Recreation Manager Laird affirmed that there is a 2-year warranty on the plant material.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Sherman: To award the Woodward Avenue Landscape Enhancements and Maintenance contract to Superior Scape, Inc. in an amount not to exceed \$127,714.00. Funds are available from the Capital Projects fund account #401-441.003-981.0100 in the amount of \$85,000.00 and from the Property Maintenance; Other Contractual Services acct #101-441.003-811.0000 in the amount of \$22,377.00 for a total project cost of \$107,377 for fiscal year 2019-2020. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

VOTE: Ayes, 7
 Nays, 0

03-052-20 AMENDED CITY COMMISSION LONG RANGE PLANNING MEETING MINUTES OF JANUARY 25, 2020 (ITEM A)

Resident David Bloom pulled this item from consent because another resident, Paul Reagan, who was present at the Long Range Planning Meeting asked him to make sure that his comments were included in the minutes.

Mayor Boutros suggested that Mr. Reagan email his comments to him.

Commissioner Nickita asked City Manager Valentine would pinpointing individual comments be consistent with existing practices.

City Manager Valentine expressed that it would be unusual to tailor comments. The meeting minutes are not intended to interject comment outside of the discussion surrounding a motion and an actual vote.

City Attorney Currier concurred and expressed that the minutes are generally a synopsis of what transpires at a meeting, motion and the vote.

Commissioner Hoff commented that in viewing the minutes, particularly under Paul Reagan's comments, there are four bullet points. She felt his comments were spelled out, and on another page, his reiteration was included.

Mayor Boutros suggested that the commission not set a precedent of recording word for word in the minutes and closed the discussion.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Sherman:
To approve the amended City Commission Long Range Planning meeting minutes of January 25, 2020.

VOTE: Ayes, 7
 Nays, 0

03-053-20 PUBLIC HEARING - DICK O'DOWS SLUP AMENDMENT (ITEM J)

David Bloom, resident, pulled this item from the consent agenda because he thinks that Dick O'Dows solution is brilliant. He went on to say that there are other retailers concerned about the construction on Maple Road and should be heard by the commission.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To set Monday, April 6, 2020 at 7:30 PM for a public hearing to consider approval of a Special Land Use Permit Amendment and Final Site Plan and Design Review for Dick O'Dows at 160 W. Maple to allow outdoor dining at the rear of the building from April 1 through November 15, 2020 during construction on E. and W. Maple.

VOTE: Ayes, 7
 Nays, 0

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

03-054-20 PUBLIC HEARING TO CONSIDER THE PROPOSED LOT COMBINATION OF 1680 S. BATES AND 1684 S. BATES

Mayor Boutros opened the public hearing at 8:25 P.M.

Mr. Brooks Cowan, Planning Department, presented this item.

Chapter 102-83 of the Combination Land Parcel Ordinance requires that the following six standards be met for approval:

1. The combination will result in lots or parcels of land consistent with the character of the area where the property is located, chapter 126 of this Code for the zone district in which the property is located, and all applicable master land use plans.
2. All residential lots formed as a result of a combination shall be a maximum width of no more than twice the average lot width of all lots in the same zone district within 300 feet on the same street.
3. All residential lots formed as a result of a combination shall be a maximum area of no more than twice the average lot area of all lots in the same zone district within 300 feet on the same street.
4. The combination will result in building envelopes on the combined parcels that will allow for the placement of buildings and structures in a manner consistent with the existing rhythm and pattern of development within 500 feet in all directions in the same zone district.
5. Any due or unpaid taxes or special assessments upon the property have been paid in full.
6. The combination will not adversely affect the interest of the public or the abutting property owners. In making this determination, the city commission shall consider, but not be limited to the following:
 - a. The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use or appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.
 - b. The effect of the proposed combination upon any floodplain areas, wetlands, other natural features, and the ability of the applicant to develop a buildable site on the resulting parcel without unreasonable disturbance of such natural features.
 - c. The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.

The proposed combination does not meet requirement #3. The average lot area is 6,257 sq. ft.; the applicant is proposing 13,750 sq. ft., which is over the max of 12,515 sq. ft. by 1,230 sq. ft.

The requirement outlined in #4 - rhythm and pattern of the neighborhood is uncharted territory. The zoning ordinance does not address or regulate rhythm and pattern. However, it is addressed in the master plan. Based on the master plan recommendations, this proposal will meet standard #4.

Harry and Katie Pearce, 1680 and 1698 S. Bates, expressed that they understand that this is a new process for lot combinations. The plan is to take down 1680 S. Bates for the purpose of expanding the yard. It would be a safer place for sons to play; it would also allow for the expansion of the patio, relocation of the hot tub for more privacy, and relocation of the basketball hoop in the back yard. Ms. Pearce receives compliments on current landscaping from the pedestrian traffic on Bates Street and it is the couple's plan to expand and improve on the current landscape. She also noted that the sports area would be shielded. The proposal would also improve drainage on the block and reduce flooding.

Commissioner Hoff asked Mr. Cowan how an accessory structure is determined.

Mr. Cowan expressed that permanent attachment to the ground determines an accessory structure.

Commissioner Hoff went on to note that it is a busy intersection, and does not doubt that they need the space. She asked Mr. Cowan if Mr. and Mrs. Pearce wanted to keep the lot vacant, fence it in, and add a playscape; would that be allowed.

Mr. Cowan affirmed that Commissioner Hoff's scenario would be allowed, but the addition of a hot tub, pool, or barbeque would not be allowed on the vacant lot as the ordinance is currently written.

Commissioner Sherman expressed concern about lot combinations that leaves the City with houses that do not fit the neighborhood. He would like to see residents have the ability to improve an adjacent lot with common ownership without combining lots.

Mr. Cowan suggested that the path to settle concerns about lot combinations would be to consider an ordinance amendment to allow accessory use on a lot without a principal use, under certain circumstances.

Commissioner Baller asked how long it would take to amend the ordinance.

City Manager Valentine responded that it could be several months.

Commissioner Baller continued in reference to the green lots on the plats and asked if they were products of lot combinations.

Mr. Cowan affirmed that they were.

Commissioner Baller went on to suggest that this type of issue should go before the Planning board. In reviewing the proposal, he agreed with Commissioner Sherman to the extent that lot combinations create large parcels of land for all time, and the potential next structure should be considered in the decision.

Commissioner Nickita asked City Planner Cowan to speak to the intention of the master plan as it relates to this type of lot combination. He commented that it was his understanding that guidelines were in place to address the character and rhythm of streets in terms of future construction.

City Planner Cowan referred to Section B, titled Neighborhoods of the Master Plan, which addresses issues with lot combination applications. He pointed out that one of the suggestions was to look at the zoning ordinance, and another recommendation is to implement an approval process for the exterior design of single-family homes.

Commissioner Nickita asked about the direction or dialog about character of neighborhoods; he asked would the commission be embracing the idea of neighborhoods transitioning into something else long-term by way of lot combinations or lot splits.

City Planner Cowan expressed that the Master Plan has a long-term visions, and recommends ordinances and policies that are in line with the vision. Currently, the processes are in the finalization phase.

Commissioner Nickita acknowledged that the process is in transition. He continued with interest in how character of neighborhoods and streets would be defined. In the instances where lot combinations were done without review, large houses ended up next to smaller houses, and disrupted the harmony of the neighborhood. Commissioner Nickita understands while it is hard to define, and interest in lot combinations are increasing, it could be positive to the neighborhood. He feels that the issue of precedent is a major concern.

Commissioner Host thanked Mr. and Mrs. Pearce for their efforts in trying to enhance the neighborhood. He pointed out that the problem with their proposal is that it does not meet the ordinance requirements. Commissioner Host expressed fear in who might purchase the property in the future and build a very large home on the combination lot. He explained that the purpose of the ordinance is to ensure that the rhythm of the block continues with the adjacent blocks.

Mayor Boutros addressed the applicant and complimented them on their presentation. He pointed out that he believed that all of the criteria were met and the plan would leave the character and rhythm of the neighborhood intact. Mayor Boutros urged the City Commissioners to consider this application on its own merit, because Mr. and Mrs. Pearce cannot achieve what they want without the lot combination.

Mayor Pro Tem Longe expressed sympathy for the owners in this very difficult situation. She recognized the enormous effort that went into the presentation. Mayor Pro Tem Longe felt other homes skewed the calculation. She also felt that there is a benefit to combining the lots and in other instances, the combinations have only complemented blocks. In reference to the concerns about losing a structure and the ability for the next owners to build larger, she suggested allowing the lot combination but prohibiting construction of a larger structure by deed or SLUP. This would allow accessory uses without waiting many months for an ordinance amendment.

City Attorney Currier said that it is unprecedented but he would do some research.

Commissioner Nickita thought there is some merit to the idea of keeping the combination aside, but having the adjacent property allowed for by a variation in the ordinance that allows for certain types of accessory elements. He recommended review per condition and is encouraged by the direction of thinking in support of this proposal.

Commissioner Sherman agreed with Commissioner Nickita, and commented that this is the third time that he has seen or been aware of lot combinations, and they do not always end up as proposed. He felt that the zoning ordinances are the best guide for this type of issue. He also suggested postponing the public hearing and directing the Planning board to prepare appropriate zoning language changes to take into account this type of situation under the zoning ordinance.

City Manager Valentine asked for clarification as to whether Commissioner Sherman is suggesting that the zoning language change or the City Code change. Commissioner Sherman affirmed a City Code amendment.

Mr. Cowan clarified that accessory use is a zoning ordinance issue, and lot combination is a City Code issue.

Mayor Pro Tem Longe pointed out that the only reason a lot combination has been requested is that it is the only alternative.

Commissioner Host commented that Mr. and Mrs. Pearce seemed sincere in their proposal and if the City had a different mechanism to achieve their goal, they would not be seeking a lot combination.

Commissioner Baller asked if the house has been demolished. If not, is it pending for approval on this issue?

Mr. Pearce expressed that it has not been done. He also offered that it is cost prohibitive to tear down the old homes and replace with a new house in the next 20-30 years. He went on to say that, they are waiting for approval by the City Commission to seek a demolition permit. If the proposal were not approved, they would be forced to sell the house that they want to demolish.

Commissioner Baller asked if the lot combination is delayed, would he go ahead and demolish the house.

Mr. Pearce said no. He also said that if this is not approved that they would be forced to sell.

City Manager Valentine asked if they anticipate installing a storm drain to alleviate the flooding? If not, is there another method that would be used.

Mr. Pearce affirmed that a French drain system was installed that works for their current yard. He went on to say that the yard to the North still floods heavily. Regrading would allow it to drain into the existing French drain system and help the neighbors to the West and North.

Public Comment

David Bloom commented that the homeowners did an outstanding job presenting their proposal; he lives in this neighborhood, and have attended meetings when lot combinations were discussed. He expressed that lot combinations are not good for the community moving forward because it would be hard to encourage young families seeking starter homes to move to Birmingham.

Debbie O'Hara, lives on Bates, and expressed that rhythm and character does not exist anymore. She supports the proposal.

Miles Arson fully supports the proposal. Open space would be a welcome addition to the neighborhood.

Tao Anderson, 786 Bates, expressed that part of the appeal of owning a home in Birmingham is that all of the homes are different, and that is part of the rhythm. She supports the development.

John Henke, 724 Bates, wanted to clarify what is being proposed, to Commissioners Baller and Sherman's point, that the available footprint for the lot would be approximately 11,000 sq.ft. house.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff To postpone the public hearing approving the proposed lot combination of 1680 S. Bates Street, Parcel # 19-36-331-038 and 1684 S. Bates Street, Parcel # 19-36-331-039 to April 6, 2020, direct staff to evaluate whether it would be a City Code or Zoning Ordinance amendment, with options to take into account for this situation.

Commissioner Hoff agreed that the commission is moving in the right direction, but it is not the answer for Mr. and Mrs. Pearce.

Commissioner Nickita expressed that he understands the City Attorney's comment that it is unknown whether it has to go through the zoning ordinance or City Code; and suggested that he evaluate whether this can be done.

City Manager Valentine felt that this process would take 6-7 months.

City Attorney Currier explained the process required to amend the zoning ordinance and what is required to amend the City code.

Commissioner Baller expressed that 7-8 months is reasonable for the task. He further explained that the City is trying to accommodate the proposal. He went on to ask if there were any way to expedite a demolition permit.

Commissioner Sherman commented that Mr. and Mrs. Pearce might not want to proceed with demolition.

Commissioner Hoff expressed that the commission should establish that they are not determining yes or no on the request when it comes back, the commission is simply determining the next steps needed in possibly changing the ordinance.

Mayor Boutros addressed the applicant with appreciation for the work that they have done in attempting to develop the green space. He asked for their patience while the City finds ways to help them succeed.

VOTE: Ayes, 7
 Nays, 0

Public Hearing ended at 9:40 p.m.

03-055-20 REVIEW AND RENEWAL OF ALL CLASS B, CLASS C, AND MICROBREWERY LIQUOR LICENSES

Commissioner Nickita recused himself from discussing and voting on 220 Merrill and Toast due to business relationships with the owners of both establishments.

City Manager Valentine presented an overview of this item.

Commissioner Baller suggested, procedurally, that the applications with no violations be approved first with minimal discussion. and requested a copy of the list.

Commissioner Hoff felt that many establishments had seating issues that have been corrected and are now in compliance.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the renewal for the 2020 licensing period, of all Class B, Class C, and microbrewery liquor licenses for which a current year application was received with the exception of the following establishments:

- Bistro Joe's
- Churchill's Wine and Cigar Bar and Bistro
- La Strada Caffè, LLC
- Pernoi
- Rojo Mexican Bistro and Sidecar Slider Bar
- Social Kitchen and Bar
- Tallulah Wine Bar & Bistro
- Toast Birmingham, LLC
- Townhouse Kitchen and Bar, LLC
- Vinoteca Wine Bar and Restaurant
- 220 Merrill

Commissioner Nickita commented that many of the bistros in Birmingham have been out of compliance with seating. It is important for the establishments to take the SLUP agreements seriously and not push the envelope in terms of seating.

Commissioner Hoff expressed the same sentiment about seating and want to discuss the additional bar stools set up at some of the establishments.

VOTE: Yeas, 7
 Nays, 0

Bistro Joe's

Commissioner Nickita noted that it is unclear where the 65 bistro seats are located and also unclear where the restaurant stops and other seats in the back near the wine begin.

Nick Dupuis, Planning Engineer, expressed that the approved site plans do not show the seats in the back of the restaurant, nor were they in the original proposal. A barrier and signage specify that the seating is not for Bistro Joe's.

Mayor Pro Tem Longe mentioned that she had observed the tables with place settings on occasion, suggesting restaurant seating.

Kurt Bender of Bistro Joe's, says that during the winter season people have been known to sit until asked to move.

Mayor Boutros asked if there is an overflow of people in Bistro Joe's, would they be seated in the restaurant area.

Mr. Bender responded no.

Commissioner Nickita asked if the bistro seats are clearly off limits to restaurant patrons.

Mr. Bender answered no.

Commissioner Baller asked Mr. Bender what the seats would not be used, at risk of losing his license for a SLUP violation. More than one commissioner witnessed people being seated in the area.

Mr. Bender affirmed.

Commissioner Nickita asked if Mr. Bender directs staff to seat people, or is aware of staff seating people in the restaurant area as an overflow to the bistro. Commissioner Nickita also asked if he thought it happens on occasion.

Mr. Bender's response was no.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Nickita:
To approve the renewal for the 2020 licensing period, of all Class B, Class C, and microbrewery liquor licenses for Bistro Joe's.

VOTE: Yeas, 7
 Nays, 0

Churchill's Wine and Cigar Bar and Bistro

Commissioner Hoff noted that there are signs on the building facade that are not permitted and there are additional bar height stools in the bar area.

Planning Engineer Dupuis explained that there are ledges that he does not know how to classify. The two signs are about hip high and have been around since 2012 and the owner says they were there when he took occupancy.

Mayor Boutros commented about the ledge, and felt that the owners addressed the ledges and are compliant.

Planning Engineer Dupruis asked for direction as to how to classify the stool.

City Manager Valentine suggested that staff handle the issue administratively, since the issue was not a part of the motion.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Longe:
To approve the renewal for the 2020 licensing period, of all Class B, Class C, and microbrewery liquor licenses for Churchill's Wine and Cigar Bar and Bistro.

VOTE: Yeas, 7
 Nays, 0

La Strada Caffè, LLC

Commissioner Hoff asked about the advertised name change for this establishment.

John Henke, La Strada representative, affirmed that La Strada Caffè, LLC is the official name of the establishment. The addition of Italian Kitchen and Bar would only be a tag line.

Commissioner Hoff further asked about the temporary banner signs that did not have a permit.

Mr. Henke expressed that the building owner or contractor put it out as a directional sign since the building façade is under construction. It is a temporary situation and has been resolved.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To approve the renewal for the 2020 licensing period, of all Class B, Class C, and microbrewery liquor licenses for La Strada Caffè, LLC.

VOTE: Yeas, 7
 Nays, 0

Pernoj

Commissioner Hoff asked for an explanation for the isinglass enclosure being lowered surrounding the outdoor dining area.

Rick Rattner, 380 Old Woodward, expressed that the isinglass was lowered recently in the dead of winter because the vortex of wind is too cold and the isinglass needed to be used to block the air from entering the bar area. There are no table or chairs on the patio.

Mr. Luciano, owner of Pernoj, confirmed that without it, the bar and dining room would be very uncomfortable in the winter. The heaters are also in use to temper the restaurant.

Commissioner Hoff reminded everyone that Café Via was approved to use the isinglass. Since then there are no allowances provided for isinglass. While she empathized with Mr. Luciano's reasons for lowering the isinglass, she also pointed out that using isinglass is in violation of the SLUP agreement. She suggested that the issue come back to the commission for discussion and a decision.

Mayor Boutros clarified that Mr. Luciano is not present to challenge any ordinances, but to explain his unique situation in the winter during inclement weather.

Commissioner Nickita expressed that his concern is making sure the establishment is adhering to the seating arrangement in the SLUP and since they are not using the patio year round, he does not see that there is a violation.

Mayor Pro Tem Longe concurred with Commissioner Nickita, and does not have an issue with Mr. Luciano using the isinglass.

City Manager Valentine felt that maybe there is an opportunity to correct the language in the SLUP agreement, with clarity, on how the isinglass could and should be used.

Commissioner Baller asked Mr. Luciano if using isinglass is the permanent solution to the problem.

Mr. Luciano expressed that it is a good solution.

Mayor Boutros felt that Pernoi adds value to the Maple Road pass through/corridor, and supports use of the isinglass.

Commissioner Sherman suggested that Mr. Luciano bring back an amended SLUP agreement allowing use of the isinglass in the off season. At the commission's discretion, the fees can be waived for the off season.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Longe:
To approve the renewal for the 2020 licensing period, of all Class B, Class C, and microbrewery liquor licenses for Pernoi.

VOTE: Yeas, 7
 Nays, 0

Rojo Mexican Bistro and Side Car Slider Bar

Commissioner Hoff noted that Rojo is storing outdoor dining furniture on an outdoor dining platform and at Side Car, the window signage exceeds 12 feet. It should be noted that a payment plan is in place for delinquent property taxes.

City Planner Dupuis commented that he had the same problem with Rojo last year; but since they are moving he felt it was not an issue.

Mayor Boutros asked what is the time frame of the move.

City Attorney Currier and Commissioner Sherman suggested a public hearing.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To set a public hearing for 7:30 PM on Monday, March 23, 2020 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Rojo Mexican Bistro and Side Car Slider Bar** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the storage of outdoor seats number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Rojo Mexican Bistro and Side Car Slider Bar**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

Commissioner Baller expressed that he does not understand what is happening or why.

Mayor Boutros explained that because the restaurant is moving to a new location in Birmingham, the commission wants to make sure that the restaurant owner is held accountable for current licenses and agreements.

Attorney Allen, representative of Rojo, stated that the license belongs to Steve Simon's company and they are closing around April 1, 2020 and moving to a different location. She felt that the operator of the restaurant should be held accountable for the SLUP and Liquor license. The current license is going into escrow on April 1, 2020.

Attorney Currier commented that there may be an expectation that the behavior on Merrill street would be tolerated at the new location.

VOTE: Yeas, 7
 Nays, 0

Social Kitchen and Bar

Commissioner Hoff noted a window signage violation that has not been addressed.

Mayor Pro Tem Longe asked if it was a first offence. City Planner Dupuis affirmed that it was a first offence.

MOTION: Motion by Mayor Pro Tem Longe, seconded by Commissioner Host:
To approve the renewal for the 2020 licensing period, of all Class B, Class C, and microbrewery liquor licenses for Social Kitchen and Bar.

Commissioner Baller asked if there would be any follow up action on the violations. Mayor Boutros confirmed that staff would follow up with the owner operator.

VOTE: Yeas, 7
 Nays, 0

Tallulah Wine Bar & Bistro

Commissioner Nickita asked if staff could clarify the seating arrangement relative to the SLUP agreement in the space to the north of the primary restaurant.

City Planner Dupuis affirmed that Tallulah complies with the SLUP agreement, per administrative approval in 2012, even though the table and chairs were rearranged.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Sherman:
To approve the renewal for the 2020 licensing period, of all Class B, Class C, and microbrewery liquor licenses for Tallulah Wine Bar & Bistro.

VOTE: Yeas, 7
 Nays, 0

Townhouse Kitchen and Bar, LLC

Commissioner Hoff noted that Townhouse is delinquent in their financial obligations to the City.

Finance Director Gerber confirmed that at the time of the meeting, the obligations had not been met.

Commissioner Baller suggested that the City use automated payments to collect fees owed the City. He went on to say that the commission should urge the administration to make establishments sign an ACH agreement to take the fees when due out of the bank.

Commissioner Sherman agreed with the idea; but said that the commission has the authority to issue a non-renewal notice for unpaid financial obligations to the City.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To set a public hearing for 7:30 PM on Monday, March 23, 2020 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Townhouse Kitchen and Bar, LLC** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the failure to timely pay taxes and other money due the City.

Further, to direct the City Manager to notify the owners/operators of **Townhouse Kitchen and Bar, LLC**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

Mayor Pro Tem Longe asked if the owners pay before the hearing, would the hearing be cancelled.

City Manager Valentine affirmed that is what typically happens.

VOTE: Yeas, 7
 Nays, 0

Vinoteca Wine Bar and Restaurant

Commissioner Hoff noted the signage on the glass railings are not permitted, but staff is being asked to follow up with Vinoteca.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the renewal for the 2020 licensing period, of all Class B, Class C, and microbrewery liquor licenses for Vinoteca Wine Bar and Restaurant.

VOTE: Yeas, 7
 Nays, 0

Mayor Boutros excused Commissioner Nickita so that discussion could continue on 220 Merrill and Toast.

220 Merrill

City Planner Dupuis presented the following violations for 220 Merrill:

- Propane heaters stored around the building, close to the alley.
- Four portable signs are being used and they were only approved for two signs.
- The dumpster has not been screened appropriately.

He also noted that the issues had been resolved.

Zaid Elia, owner of 220 Merrill, was present to answer any questions.

Commissioner Sherman pointed out that there were two instances where police asked for assistance from the owner of the restaurant and there was no response. One instance was an assault and one call was for use of an illegal substance. Commissioner Sherman found it disturbing; there is an expectation that all of the businesses in the City are good corporate citizens.

Commander Busen affirmed that on January 7, 2019, Detective Romanowski requested assistance and on October 18, 2019 repeatedly asked for video tape of the reported assault as well as the control substance use at the bar to no avail. Commander Busen spoke to Mr. Elia about it and was assured that it will be full cooperation in the future.

Mayor Boutros asked who called the police.

Commander Busen responded that in the instance of the alleged assault, the victim called; and a third party called about the controlled substance use at the bar.

Commissioner Hoff noted that there were an additional six police contacts. She requested assurances that this type of behavior would not continue.

Mr. Elia accepted accountability for curtailing the contacts. He further stated that there is a substantial security team in place on a nightly basis to de-escalate random scenarios. He noted that the police department does have his contact information and he is in the habit of responding promptly.

City Manager Valentine asked if information were requested from you or your team in the future, who would respond.

Mr. Elia affirmed that he would respond and instructed his team to contact him immediately. He stated that his goal, with his team, is to always listen, evaluate, and make changes to address the needs of the establishment.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:

To approve the renewal for the 2020 licensing period, of all Class B, Class C, and microbrewery liquor licenses for 220 Merrill.

VOTE: Yeas, 6
 Nays, 0
 Recused, 1 (Commissioner Nickita)

Toast Birmingham, LLC

City Planner Dupuis noted that the seating arrangement was plus 27 in the restaurant, and it has been resolved. The bar height stools have been removed.

Commissioner Sherman asked the owner if Toast has instituted their new business hours for dinner on Wednesday through Saturday. She affirmed that the restaurant is honoring the new dinner schedule.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the renewal for the 2020 licensing period, of all Class B, Class C, and microbrewery liquor licenses for Toast Birmingham, LLC.

VOTE: Yeas, 6
 Nays, 0
 Recused, 1 (Commissioner Nickita)

Commissioner Hoff noted that in a report from the police, she found that the MLLC reported through a notification of violation report that Griffin Claw Brewery was charged with the sale of unregistered beer products; and asked for an explanation.

Chief Clemence explained that the State must have cited them with a manufacturing issue that was in violation of their liquor license on a State level.

03-056-20 MAPLE RD. CONSTRUCTION CONTRACT AWARD WITH MDOT

City Planner Fletcher presented this item. He emphasized the agreement between the City and MDOT relative to the Maple Road construction project.

Mayor Boutros commented that the project is already over budget estimates. City Planner Fletcher affirmed.

City Manager Valentine expressed that the City knew that some of these funds were going to take a hit, specifically a more than anticipated outlay from the water fund due to how cost is allocated. He went on to say that there would be another conversation for phase III of the project, that would address funding.

Commissioner Nickita commented that he is not surprised because construction costs are exceptionally high right now. He went on to ask from a bonus and penalty standpoint, would it be the same as Old Woodward if the project has an early completion date and is within budget projections.

City Planner Fletcher affirmed that it is very similar to the Old Woodward project.

Commissioner Baller asked if there have been any change in design since project approval; and how much of the cost is covered by tax assessments. He further asked who monitors the work.

City Planner Fletcher replied that he is the project manager and assured Commissioner Baller that there have not been any design changes since approval, and warranties are in place.

MOTION: Motion by Commissioner Sherman and seconded by Commissioner Hoff: To authorize the Mayor to sign Contract No. 19-5643 between the City of Birmingham and the Michigan Department of Transportation to authorize the City's participation in a Federal Surface Transportation and Federal Highway Safety Improvement Program to fund a portion of the planned improvements at the Southfield and Maple intersection as well as Maple Road between Chester Road and Woodward Avenue. The estimated cost to the City in the fiscal year 2019-2020 is \$7,181,732.82, charged to the following account numbers:

<u>Fund</u>	<u>Account Number</u>	<u>Cost</u>
Sewer Fund	590-536.001-981.0100	\$ 707,406.40
Water Fund	591-537.004-981.0100	\$ 1,321,282.40
Major Streets	202-449.001-981.0100	\$ 2,369,166.10
Major Streets (Traffic Control)	202-303.001-981.0100	\$ 355,306.00
Sidewalk SAD	101-444.001-985.7900	\$ 2,282,918.67
General Fund	101-444.003-981.0100	\$ 135,653.25
APS Fund (Parking Meters)	585-305.000-811.0000	\$ 10,000.00
TOTAL		\$ 7,181,732.82

And further; approving the appropriation and amendment to the fiscal year 2019-2020 General Fund, Major Street Fund, and Water Fund budgets. (See Attachment A for complete resolution.)

VOTE: Ayes, 7
Nays, 0

03-057-20 CLOSED SESSION

MOTION: Motion by Commissioner Sherman, Seconded by Commissioner Host: To meet in closed session to discuss labor negotiations in accordance with Section 8(c) of the Open Meetings Act.

ROLL CALL VOTE: Ayes, Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Nays, None

The meeting recessed for closed session at 11:23 P.M.

The meeting reconvened for open session at 11:39 P.M.

03-058-20 SETTLEMENT AGREEMENT WITH BCOA/COAM

Human Resource Manager Ben Myers presented the Settlement Agreement.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita: To approve the Settlement Agreement of February 14, 2020 between the City and BCOA/COAM for a renewal of the collective bargaining agreement through June 30, 2022. Further, authorizing the transfer of the appropriate funds by the Finance Department for the contract effective July 1, 2019.

VOTE: Ayes, 7
 Nays, 0

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
The City Commission intends to appoint members to the Architectural Review Committee, Housing Board of Appeals, and Brownfield Redevelopment Authority on April 6, 2020.
- B. Commissioner Comments
Mayor Pro Tem Longe referred to the Meeting Minutes of 2/10/2020 inclusive of Mr. Bender’s comments. She noted that the next step was for the team to experiment with two work sessions and review the output. She supports the suggestion and asked Mayor Boutros and City Manager Valentine how the commission could move toward the recommendation.
Mayor Boutros expressed that he and City Manager Valentine had a follow up conversation with Mr. Bender, and he recommended workshops. Mayor Boutros went on to say that he is in the process of talking with remaining commissioners individually to implement the recommendation.
- C. Advisory Boards, Committees, Commissions’ Reports and Agendas
- D. Legislation
- E. City Staff

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 11:43 p.m.

ATTACHMENT A

**03-056-20 MAPLE RD CONSTRUCTION CONTRACT AWARD WITH MDOT
SUGGESTED RESOLUTION**

To authorize the Mayor to sign Contract No. 19-5643 between the City of Birmingham and the Michigan Department of Transportation to authorize the City's participation in a Federal Surface Transportation and Federal Highway Safety Improvement Program to fund a portion of the planned improvements at the Southfield and Maple intersection as well as Maple Road between Chester Road and Woodward Avenue. The estimated cost to the City in the fiscal year 2019-2020 is \$7,181,732.82, charged to the following account numbers:

<u>Fund</u>	<u>Account Number</u>	<u>Cost</u>
Sewer Fund	590-536.001-981.0100	\$ 707,406.40
Water Fund	591-537.004-981.0100	\$ 1,321,282.40
Major Streets	202-449.001-981.0100	\$ 2,369,166.10
Major Streets (Traffic Control)	202-303.001-981.0100	\$ 355,306.00
Sidewalk SAD	101-444.001-985.7900	\$ 2,282,918.67
General Fund	101-444.003-981.0100	\$ 135,653.25
APS Fund (Parking Meters)	585-305.000-811.0000	\$ <u>10,000.00</u>
	<u>TOTAL</u>	<u>\$ 7,181,732.82</u>

And further; to approve the appropriation and amendment to the fiscal year 2019-2020 General Fund, Major Street Fund, and Water Fund budgets as follows:

General Fund

Revenues:

101-000.000-400.0000	Draw from Fund Balance	<u>\$1,023,572</u>
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	Total Revenue	<u>\$1,023,572</u>
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Expenditures:

101-444.001-981.0100	Public Improvements – Sidewalks	\$1,387,919
101-444.003-981.0100	Public Improvements – Fiber Optic	135,653
101-999.000-999.0202	Transfers Out – Major Street Fund	(500,000)
101-999.000-999.2030	Transfers Out – Local Street Fund	(500,000)
101-999.000-999.0591	Transfers Out – Water Fund	<u>500,000</u>

	Total Expenditures	<u>\$1,023,572</u>
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Major Street Fund

Revenues:

202-000.000-699.0101	Transfer In – General Fund	\$(500,000)
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	Total Revenue	<u>\$(500,000)</u>
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Expenditures:

202-303.001-971.0100	Machinery & Equip. – Traffic Control	\$(100,000)
202-449.001-981.0100	Public Improvements – Construction	<u>(400,000)</u>

	Total Expenditures	<u>\$(500,000)</u>
<u>Local Street Fund</u>		
Revenues:		
203-000.000-400.0000	Draw from Fund Balance	\$500,000
203-000.000-699.0101	Transfer In – General Fund	<u>(500,000)</u>
	Total Revenue	<u>\$ -0-</u>
<u>Water Fund</u>		
Revenues:		
591-000.000-400.0000	Draw from Net Position	\$161,282
591-000.000-699.0101	Transfer In – General Fund	<u>500,000</u>
	Total Revenue	<u>\$661,282</u>
Expenses:		
591-537.004-981.0100	Public Improvements – Water Mains	<u>\$661,282</u>
	Total Expenses	<u>\$661,282</u>