

BIRMINGHAM CITY COMMISSION MINUTES
OCTOBER 27, 2016
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Rackeline J. Hoff, Mayor, called the meeting to order at 7:32 PM.

II. ROLL CALL

ROLL CALL: Present, Mayor Hoff
Commissioner Bordman
Commissioner Boutros
Commissioner Harris
Mayor Pro Tem Nickita
Commissioner Sherman
Absent, Commissioner DeWeese

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, DPS Director Wood, City Engineer O'Meara, Police Chief Clemence, Finance Director Gerber, Building Official Johnson, City Planner Ecker

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

10-317-16 APPOINTMENT TO THE MULTI-MODAL TRANSPORTATION BOARD

The following individuals submitted applications for appointment to the Multi-Modal Transportation Board:

1. Daniel Rontal, 926 Bird (interviewed on 10/10/16)
2. A. Harvey Bell IV, 848 Pleasant (interviewed on 10/10/16)
3. Paddy Mullin, 1794 Bradford (not in attendance)
4. Johanna Slanga, 4410 Charing Way, Bloomfield Hills (interviewed 10/27/16)

MOTION: Motion by Sherman:

To appoint Johanna Slanga, 4410 Charing Way, as the traffic focused member, to the Multi-Modal Transportation Board to serve a three-year term to expire March 24, 2019.

MOTION: Motion by Harris:

To appoint Daniel Rontal, 926 Bird, as the urban planning member, to the Multi-Modal Transportation Board to serve a three-year term to expire March 24, 2017.

VOTE ON NOMINATION OF SLANGA:

Yeas, 6
Absent, 1 (DeWeese)

VOTE ON NOMINATION OF RONTAL:

Yeas, 3 (Harris, Boutros, Hoff)

Absent, 1 (DeWeese)

Ms. Slanga was appointed. Mr. Rontal was not appointed.

The Commission discussed the board positions. It was noted that one of the criteria is a member with experience or expertise in visual or hearing impairment.

MOTION: Motion by Sherman:

To appoint Daniel Rontal, 926 Bird, as the mobility expertise member, to the Multi-Modal Transportation Board to serve a three-year term to expire March 24, 2017.

VOTE: Yeas, 6
Absent, 1 (DeWeese)

Mr. Rontal was appointed.

**10-318-16 APPOINTMENT TO THE
DESIGN REVIEW BOARD & HISTORIC DISTRICT COMMISSION**

MOTION: Motion by Boutros:

To appoint Dulce Fuller, 255 Pierce, as an alternate member, to serve a three-year term on the Design Review Board & Historic District Commission - to expire September 25, 2019.

VOTE: Yeas, 6
Absent, 1 (DeWeese)

The Clerk administered the oath to the appointed board members.

**10-319-16 REQUEST FOR ADVISORY OPINION FROM THE
BOARD OF ETHICS**

Mayor Hoff explained that the Commission has the option of appointing a member to the Birmingham Youth Assistance General Citizens Committee as a voting or non-voting member or to refer the following question to the Board of Ethics: "Is there a conflict of interest with City Commissioners serving as board members for community-based organizations that rely on the City for funding, and what actions should be followed if they wish to serve on boards that make requests to the City Commission?" The Commission agreed that this item should be considered by the Board of Ethics.

MOTION: Motion by Sherman, seconded by Nickita:

To refer this to the Board of Ethics and to ask staff look at the alternate language and the language in the agenda to try to craft exactly what we are looking for as the alternate language may be too specific and miss the generalities that may apply to other boards that Commissioners are appointed to. The language in the agenda may be a little too broad. In addition, to include a copy of the correspondence from the Birmingham Youth Assistance and the City Commission minutes which include previous discussions on this item.

Commissioner Harris noted that, in his experience, the issue posed to the Board of Ethics was verbatim the issue that the Board addressed in response to an Advisory Opinion request. He questioned if the Board of Ethics has the flexibility to investigate the issue and frame it as there could be circumstances not covered by this language.

Commissioner Sherman noted that his motion was to have staff take a look at not only the alternate language that was prepared, but also the language that was in the agenda and arrive at some middle ground that does address a specific set of questions that we are asking that really apply to all the outside agencies where Commissioners are board members.

VOTE: Yeas, 6
 Nays, None
 Absent, 1 (DeWeese)

IV. 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.

10-320-16 APPROVAL OF CONSENT AGENDA

The following item was removed from the consent agenda:

- Item A (Minutes of October 10, 2016) by Commissioner Bordman

Commissioner Sherman thanked Ms. Peabody for her service on the Advisory Parking Committee.

Commissioner Bordman disclosed that she sits on the Next Board and took no part in advising Next regarding Item F.

MOTION: Motion by Nickita, seconded by Bordman:

To approve the consent agenda as follows:

- B. Approval of warrant list, including Automated Clearing House payments, of October 12, 2016 in the amount of \$820,896.63.
- C. Approval of warrant list, including Automated Clearing House payments, of October 19, 2016 in the amount of \$1,502,574.38.
- D. Resolution authorizing the purchase of one Microsoft Surface Hub and associated mounting kit from CDW-G for a total cost of \$9,368.61 from account #101-371.000-971.0100.
- E. Resolution approving the contract for the Pembroke Park Lawn Repair project to Homefield Turf and Athletic, Inc. in the amount not to exceed \$12,500.00 from the Capital Projects Fund, account #401-751.001-981.0100. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City.
- F. Resolution awarding the 2016-2017 Public Services contract totaling \$18,584 for Minor Home Repair, Yard Services and Senior Outreach Services to NEXT under the Community Development Block Grant Program; and further, authorizing the Mayor to sign the contract on behalf of the City.
- G. Resolution accepting the resignation of Susan Peabody from the Advisory Parking Committee, thanking Ms. Peabody for her service, and directing the Clerk to begin the process to fill the vacancy.
- H. Resolution confirming the City Manager's emergency expenditure to engage the services of Rid A Leak to waterproofing the outside wall at the Detective Bureau at the lower level of City Hall with the expenditure in the amount not to exceed \$7,200.00. Cost will be charged to the City Hall And Grounds other contractual services account # 101-265.001-811.0000.

- I. Resolution approving the agreement between the City of Birmingham and Walker Parking Consultants/Engineers for consulting services related to the maintenance of the City's parking structures for a three year period, with all funding being charged to the Auto Parking System Fund. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City.

ROLL CALL VOTE: Yeas, Commissioner Bordman
 Commissioner Boutros
 Commissioner Harris
 Mayor Pro Tem Nickita
 Commissioner Sherman
 Mayor Hoff
 Nays, None
 Absent, Commissioner DeWeese
 Abstention, None

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

**10-321-16 PUBLIC HEARING TO CONSIDER THE
 BROWNFIELD PLAN AND REIMBURSEMENT AGREEMENT
 856 NORTH OLD WOODWARD, THE PEARL**

Mayor Hoff opened the Public Hearing to consider the Brownfield Plan and Reimbursement Agreement – 856 N. Old Woodward, The Pearl at 8:05 PM.

City Planner Ecker explained the application for a Brownfield Reimbursement at 856 North Old Woodward. A four-story mixed use building is proposed, with one level of underground parking, one level of retail space in the front and some parking in the rear, and residential on floors two, three and four. She explained that the site is a difficult as there is a lot of contamination on site, drops off severely down toward the river and is located in the floodplain. She explained that the plan has been reviewed by the City and the environmental attorney for the City, as well as the Brownfield Redevelopment Authority.

Commissioner Harris disclosed that he and his firm have referred cases to the applicant's law firm. He noted that his firm received no compensation for the referrals.

Beth Gotthelf, chair of the Brownfield Redevelopment Authority, explained that the Authority took a lot of time deliberating on this. In response to a question from Mayor Hoff, Ms. Gotthelf explained that for Brownfield's, only the increase in the tax value can be captured and reimbursed back to the developer. She noted that this encourages the redevelopment of those properties.

Mike Kulka, PM Environmental, explained that the concentrations present are not concentrations that would require to be removed if it was filled in. In order to facilitate construction, the main issue is that contaminated unsuitable fill must be removed. For geotechnical purposes, the site has to be excavated beyond what we ever would to facilitate structural stability of the parking area.

The Commission discussed other brownfield projects and the amount of taxes collected. Ms. Gotthelf commented that if the site is not developed, they cannot submit it for reimbursement.

The Mayor closed the Public Hearing at 8:56 PM.

MOTION: Motion by Boutros, seconded by Harris:

To approve the Brownfield Plan and Reimbursement Agreement for 856 N. Old Woodward, The Pearl, amending paragraph 5 of the agreement not to exceed the amount of \$1.4 million of City tax dollar money.

Whereas, the City of Birmingham has created a Brownfield Redevelopment Authority and appointed members to serve on the Authority, pursuant to 1996 PA 381, and

Whereas, the Brownfield Redevelopment Authority is charged with the review of Brownfield Plans for Brownfield projects in the City of Birmingham, and

Whereas, FLS Properties #5 LLC, the owner and developer of 856 N. Old Woodward Avenue, Birmingham, Michigan, intends to develop a mixed-use residential/retail building with underground parking at 856 N. Old Woodward Avenue, and

Whereas, PM Environmental has prepared a Brownfield Plan for the site, dated July 26, 2016, as revised September 16, 2016, that estimates that eligible activities on this property will cost approximately \$2,981,610, and

Whereas, the Brownfield Redevelopment Authority has reviewed the Brownfield Plan. NOW THEREFORE BE IT RESOLVED THAT:

The Brownfield Redevelopment Authority approves the Brownfield Plan for 856 N. Old Woodward Avenue, subject to the following:

1. If relevant State of Michigan agencies do not approve the school tax component of the Brownfield Plan, estimated to be \$1,500,000 plus simple interest at 3%, the Brownfield Authority will not reimburse the developer for such amounts.
2. The Brownfield Authority will not reimburse amounts attributable to contamination caused by liable parties estimated to be \$325,000.
3. The maximum reimbursement will be \$2,656,610.
4. Reimbursement will occur for a maximum of 10 years.
5. The maximum amount of City tax money shall be capped at \$1.4 million.

The Brownfield Authority requests the City Clerk to forward the Brownfield Plan and associated Reimbursement Agreement to the Birmingham City Commission for its review and approval pursuant to Act 381.

Commissioner Sherman commented that he is troubled by the amount the applicant is requesting for reimbursement. He pointed out that this is double the largest plan previously approved and noted the City portion is capped at \$1.4 million. He suggested the City require some type of pro forma be coming back to determine the value increase.

VOTE: Yeas, 5
 Nays, 1 (Sherman)
 Absent, 1 (DeWeese)

10-322-16 ADAMS PARK CONCEPT SITE PLAN

DPS Director Wood explained that there has been a collaborative effort over several years with the residents, Roeper school and staff with regards to the development of Adams Park.

Michael Dul, landscape architect, presented the Adams Park Concept Plan. He explained that the plan will provide social and recreational amenities to the neighborhood and address the drainage problem. In response to a question from Mayor Hoff, Ms. Wood explained that Roeper has access to the park during the school year and they have offered to pay for costs attributed to them. She confirmed for Commissioner Harris that it is shared access to the park.

MOTION: Motion by Bordman, seconded by Boutros:
To accept the Adams Park concept site plan dated October 27, 2016, as submitted.

Mr. Valentine confirmed for Commissioner Harris that part of the arrangement includes shared parking.

Gordon Rinschler, representing South Poppleton Homeowners Association expressed support of the motion and the plan. He confirmed that there are no restrictions to the residents in using the park.

VOTE: Yeas, 6
Nays, None
Absent, 1 (DeWeese)

**10-323-16 PARKING STRUCTURE TRAFFIC CONTROL EQUIPMENT
CHESTER STREET STRUCTURE**

City Engineer O'Meara explained that the City bid out new parking control equipment in 2015. He noted that it was a two phase project using Chester as a pilot. It eliminated the use of tickets to save money and handling of the ticket and it eliminated the payment with cash. He stated that there was a fair amount of negative input from the change. The recommendation is to move forward with the other four structures with hybrid equipment.

Jay O'Dell, SP+, explained that when the equipment was changed at Chester, there was between 5-10% of the people upset that they could not pay with cash. With six months in the system, the complaints have drastically reduced. He explained the unintended consequences of removing tickets from the system include people who are upset that they have to use their card if they are parking for less than two hours and the validation system for businesses that pay for the parking for their customer or employee. He explained the process used to collect the money from the businesses for validated tickets.

Mayor Hoff asked about the benefits and drawbacks of the three systems that were evaluated. Mr. O'Dell responded that the Amano/McGann system has flaws and ongoing issues and therefore was not recommended. The Tiba equipment installed by Signature Control systems is not in the Michigan market yet, and was not recommended due to the delay in obtaining repairs.

Commissioner Bordman asked about the Skidata system, which is the system recommended. Mr. O'Dell said it is the most widely used equipment outside of the U.S. It has been vetted for a long time in Europe which is far ahead of the U.S. in terms of parking technology. They are in the Michigan market.

Commissioner Bordman noted the difference in cost: a no cash or ticket system option is \$501,000 for the four remaining structures, and if we instead move to a no cash only system

which is being recommended, that is \$683,370 plus we would have to convert the Chester St. structure at a cost of \$69,900. The difference is \$252,270, and we would have to invest in tickets to supply the machines and potentially there could be more maintenance because of the ticket spitter. Commissioner Bordman noted the number of complaints have been reduced to practically nothing and the validation system works in other places without tickets, so she does not think it is worth spending more for a system that provides the tickets and prefers that Birmingham go with the no cash/no ticket system.

Commissioner Harris confirmed that the Chester St. equipment was installed in April of this year, and that it took about three to four months before the complaints subsided to the current level. He confirmed that the installation of the new equipment would be staggered. He noted his support of Commissioner Bordman's opinion.

Commissioner Boutros confirmed that we prefer to not accept cash. Customers without a credit card would have to call the help button when their information would be taken and inform them of the policies. Mr. O'Dell noted that a cash value card which would be similar to a monthly card could be sold for customers without credit cards to purchase a card using a check or money order to allow them fast and easy exit in and out of any of the structures.

Mayor Hoff noted that a lot of people are having problems with all the changes. Confusion is the biggest complaint at this time.

Mayor Pro Tem Nickita said it seems we are changing the system every 2-5 years with the upgrades in technology. He noted that this kind of approach is commonplace in other parts of the world and his experience is that is becoming the norm here as well.

Mr. O'Dell commented that the two hour free parking window and the validation problem complicates the situation.

Commissioner Bordman added that this is something that has been building for a long time. She believes it is a matter of becoming accustomed to something different. She said she is not in favor of buying equipment that costs much more and is prone to maintenance issues. She is in favor of a cashless and ticketless system.

Mr. O'Dell noted that maintenance costs would be slightly increased with addition of the ticket spitter but it will not be an extreme increase. The ticket spitter is the most reliable moving part of all of the systems currently. It is the acceptance of cash that causes the greatest maintenance issues ongoing.

Commissioner Harris confirmed that the Chester structure is the only one using the QR codes, and that the people who park there are less likely to use QR codes than at the other structures. He confirmed that from the beginning there was signage on the street informing drivers of the new system, and more was added to the face of the machine later.

It was noted by the local Skidata distributor that with the tickets, the QR code will be read inside the ticket track, so it will be in the same spot each time. Currently, the code is placed in front of the bar code reader so it can be difficult to read if the driver is not holding the ticket steady. He said with the tickets, a 100% read rate can be attained, where now it is closer to a 85% read rate.

Mayor Hoff said she is inclined to go with the system proposed by SP+, which is the tickets and credit cards but no cash. She confirmed that the reason for the replacement in the remaining four structures is that the machines have reached the end of their life and maintenance is an issue.

Commissioner Bordman asked if the problem that they are having is that they have to put their credit card in. Mayor Hoff said there are people who have no credit cards. Commissioner Bordman said that in either of the two systems we are considering, a credit card will have to be used. The solution to that problem is the purchase of the "In" card. It would be purchased at the parking office and there are also plans to sell it at city hall.

The Commission discussed the parking systems with no cash or tickets. Mayor Hoff commented that not everyone has a credit card. Mr. O'Dell noted that people could purchase a card at the Chester office.

MOTION: Motion by Sherman, seconded by Bordman:
To go with a no cash no tickets at \$501,000 for the four systems and request that SP+ or the vendor look into the validation system and find a better way to do it.

VOTE: Yeas, 5
Nays, 1 (Hoff)
Absent, 1 (DeWeese)

**10-324-16 STORM WATER UTILITY FEE APPORTIONMENT REPORT
AND SET PUBLIC HEARING TO CONSIDER ADOPTION OF A
STORM WATER ULITLITY ORDINANCE**

City Manager Valentine explained that the City was charged with changing the methodology that it uses for charging for storm water. He explained that storm water is rain water that is washed into the sanitary sewer system. How it is billed has come under dispute. He noted that it now has to be itemized separately on the bill and calculated separately.

City Attorney Currier explained the class action lawsuit regarding this issue. He explained the provisions in the settlement agreement required the City to commission a study to confirm the current and future usage of storm water disposal based on estimates of the amount of impervious surface present on the properties in the City. He noted that that City had the responsibility to come up with a new ordinance by January 1, 2017.

Finance Director Gerber explained how the current sewer rates are calculated. Jim Surhigh, Hubbell, Roth, and Clark, explained the methodology followed in how the areas were measured, how the calculation was proportioned, and items considered when making the apportionment determination. Mr. Surhigh noted the measures that residents could take to reduce the amount of storm water that enters the sewer. Mr. Gerber explained how the new rates will be calculated.

MOTION: Motion by Sherman, seconded by Bordman:
To accept the Storm Water Utility Fee Apportionment Report prepared by Hubbell, Roth & Clark, Inc. and further, setting a public hearing date of December 5, 2016 to consider adoption of a storm water utility ordinance for the City of Birmingham.

VOTE: Yeas, 6

Nays, None
Absent, 1 (DeWeese)

**10-325-16 MICHIGAN UNIFORM VIDEO SERVICE LOCAL
FRANCHISE AGREEMENT WITH AT&T**

City Attorney Currier explained that there is very little negotiation with a franchise agreement. The franchise fee is set at 5% and the Act states you cannot exceed 2% for the PEG fee. There is a proviso that if you agree otherwise, you could have more than a 2%. He noted that Comcast had agreed to a step down basis for the PEG charge. He explained that AT&T has a right to match the incumbent's agreement and will do a step down charge until 2018 which puts them in lockstep with Comcast.

MOTION: Motion by Boutros, seconded by Sherman:

To approve the formal resolution renewing the Michigan Uniform Video Service Local Franchise agreement with AT&T effective immediately. The Mayor and Clerk are hereby authorized to sign the same on behalf of the City.

WHEREAS, effective January 1, 2007, the Uniform Video Service Local Franchise Act, Act. No. 480 of the Public Acts of 2006 ("Act") went into effect; and,

WHEREAS, Section 3 of the Act requires a Video Service Provider (Provider) to submit a complete Franchise Agreement with the local unit of government, prior to offering video services within the boundaries of a local unit of government (Franchising Entity); and,

WHEREAS, Section 3(2) of the Act requires a Franchising Entity to notify the Provider as to whether the submitted Franchise Agreement is complete as required by the Act within 15 business days after the date that the Franchise Agreement was filed. If the Agreement is not complete, the Franchising Entity shall state in its notice the reasons the Franchise Agreement is incomplete; and,

WHEREAS, Section 2 of the Act sets forth all of the provisions and information that a Provider must submit to a Franchising Entity in order to deem the Provider's proposed Franchise Agreement "complete".

WHEREAS, on August 31, 2016, AT&T filed its Uniform Video Service Local Franchise Agreement (Agreement) with the City of Birmingham (Franchise Entity); and,

WHEREAS, the Agreement submitted by AT&T satisfies the requirements of the Act, and the Agreement meets the technical requirements of the Act, and, therefore, the City undertakes to adopt this Resolution approving the Agreement, as required by the Act; and,

WHEREAS, Notice of Completeness of the Agreement was provided by the City of Birmingham to AT&T on September 2, 2016, the 2nd business day after receiving the above referenced Agreement and Attachment, in compliance with Section 3(2) of the Act; and,

WHEREAS, Section 6 of the Act (MCL 484.3306) requires video service providers to pay to the franchising entity a fee as support for public, education, and government access facilities an annual fee equal to the fee paid to the franchising entity by the incumbent video provider.

NOW, THEREFORE, BE IT RESOLVED, that the City finds that the Agreement meets the technical requirements of the Act, and solely for that reason, the City hereby approves the Agreement with AT&T on the 2nd day after receiving the above referenced Agreement and Attachment, in compliance with Section 3(3) of the Act.

BE IT FURTHER RESOLVED, AT&T agrees to pay PEG fees as follows:

- 2.5% from the effective date to April 30, 2017;
- 2.25% from May 1, 2017 – April 30, 2018; and,
- 2% from May 1, 2018 to the termination of the Agreement

BE IT FURTHER RESOLVED, such approval by the City is given only because it is required by the Act, and is not an indication of the City's Agreement with or assent to any provisions of the Act or Agreement.

BE IT FURTHER RESOLVED, that by approving the Agreement, the City shall not be found to have waived its rights to challenge any provisions of the Act and/or any related provisions of the Agreement on the basis that such provisions are invalid and unenforceable as violations of law, including on the grounds of unconstitutional impairment of contractual rights, and further reserves any and all rights stemming from any successful challenge to such provisions undertaken by any other local franchising entity.

VOTE: Yeas, 6
 Nays, None
 Absent, 1 (DeWeese)

VII. REMOVED FROM CONSENT AGENDA

**10-326-16 CITY COMMISSION MEETING MINUTES
 OF OCTOBER 10, 2016**

Commissioner Bordman requested the Clerk review the tape to clarify language in Resolution #10-310-16 regarding the addition of alternates on the Multi-Modal Transportation Board and to add additional information regarding the funding of the bus shelter in Resolution #10-316-16.

The Commission agreed to return this item at the next meeting.

VIII. COMMUNICATIONS

IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

10-327-16 OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

Delphine Scott, resident, expressed concern with the location of the parking space on Elm, near Maple. She suggested it be eliminated as it is difficult to navigate around with oncoming traffic.

City Manager Valentine stated that staff will review the parking space.

X. REPORTS

10-328-16 COMMISSIONER REPORTS

The Commission intends to appoint members to the Advisory Parking Committee on November 14, 2016.

10-329-16 COMMISSIONER COMMENTS

Mayor Pro Tem Nickita clarified a comment from October 10th regarding the Old Woodward Master Plan. He noted that at time of the meeting, his firm had previously entered into an RFP with MKSK, however did not receive the official notice that they did not get the project until later that week. City Attorney Currier commented that it would not have made any difference in the vote, however for purposes of transparency, Mayor Pro Tem Nickita clarified the timing.

Commissioner Harris commented on the RTA presentation at the Townsend Hotel which he attended this month.

10-330-16

CITY STAFF REPORTS

The Commission received the update on the Transit Shelter Location Options submitted by City Planner Ecker.

XI. ADJOURN

The meeting adjourned at 11:32 PM.

Cheryl Arft
Acting City Clerk