

BIRMINGHAM CITY COMMISSION MINUTES
MARCH 10, 2014
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Stuart Lee Sherman, Mayor Pro Tem, called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL:	Present,	Mayor Pro Tem Sherman Commissioner Dilgard Commissioner Hoff Commissioner McDaniel Commissioner Nickita Commissioner Rinschler
	Absent,	Mayor Moore

Administration: Interim City Manager Valentine, City Attorney Currier, City Clerk Pierce, DPS Director Wood, Fire Chief Metz, Police Chief Studt, Golf Manager Brito, City Planners Ecker & Baka, City Engineer O'Meara

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

**03-50-14 APPOINTMENT TO THE
PARKS AND RECREATION BOARD**

MOTION: Motion by McDaniel:
To appoint John Meehan, 656 Chester, to the Parks & Recreation Board to serve a three-year term to expire March 13, 2017.

MOTION: Motion by Rinschler:
To appoint Ross Kaplan, 635 Oak, to the Parks & Recreation Board to serve a three-year term to expire March 13, 2017.

VOTE ON NOMINATION OF MEEHAN:
Yeas, 6
Absent, 1 (Moore)

VOTE ON NOMINATION OF KAPLAN:
Yeas, 6
Absent, 1 (Moore)

The Commission encouraged applicant Patricia Bordman, 1091 Lake Park, to continue to apply for other boards.

**03-51-14 APPOINTMENT TO THE
PLANNING BOARD**

MOTION: Motion by Rinschler:

To appoint Bert Koseck, 2441 Dorchester, as the architect member, to serve a three-year term on the Planning Board to expire March 28, 2017.

MOTION: Motion by Hoff:

To appoint Janelle Boyce, 179 Catalpa, serve a three-year term on the Planning Board to expire March 28, 2017.

VOTE ON NOMINATION OF KOSECK:

Yeas, 6

Absent, 1 (Moore)

VOTE ON NOMINATION OF BOYCE:

Yeas, 6

Absent, 1 (Moore)

**03-52-14 APPOINTMENT TO THE
CABLECASTING BOARD**

MOTION: Motion by Nickita:

To appoint Elaine McLain, 528 Pilgrim, to serve a three-year term on the Cablecasting Board to expire March 30, 2017.

MOTION: Motion by Hoff:

To appoint David Lurie, 755 Lakeview, to serve a three-year term on the Cablecasting Board to expire March 30, 2017.

MOTION: Motion by McDaniel:

To appoint Colin Linsenman, 1196 Holland, to serve a three-year term on the Cablecasting Board to expire March 30, 2017.

VOTE ON NOMINATION OF MCLAIN:

Yeas, 6

Absent, 1 (Moore)

VOTE ON NOMINATION OF MEEHAN:

Yeas, 6

Absent, 1 (Moore)

VOTE ON NOMINATION OF MEEHAN:

Yeas, 6

Absent, 1 (Moore)

The Clerk administered the oath to the appointed board members.

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.

03-53-14 APPROVAL OF CONSENT AGENDA

The following items were removed from the consent agenda:

Item D (Mohegan & Kennesaw Paving Project Contract Award) by Commissioner Dilgard

Item F (Birmingham Villas Water Main Project Contract Award) by Commissioner Hoff

Item H (Peabody Street Parking Structure Monthly Permits) by Commissioner Hoff

Item E (Set Public Hearings for Mohegan & Kennesaw Paving Project) by Mayor Pro Tem Sherman as it is related to Item D

MOTION: Motion by Rinschler, seconded by Nickita:

To approve the consent agenda as follows:

- A. Approval of City Commission minutes of February 24, 2014.
- B. Approval of warrant list, including Automated Clearing House payments, of February 26, 2014 in the amount of \$461,993.57.
- C. Approval of warrant list, including Automated Clearing House payments, of March 5, 2014 in the amount of \$4,000,327.76.
- G. Resolution approving the proposal and agreement with DTE Energy Co. for the removal and replacement of two street lights in front of 2000-2070 Villa Ave., in the amount of \$17,432.17, to be charged to account #401-901.006-981.0100. Further, directing the Mayor to sign the agreement on behalf of the City.
- I. Resolution accepting the resignation of Alexander Chapman from the Housing Board of Appeals, thanking Mr. Chapman for his service, and directing the Clerk to begin the process to fill the vacancy.
- J. Resolution approving the agreement between Oakland County and the City of Birmingham for Ballot Layout and Programming Services for a five-year period in the amount of \$300.00 per election and to charge account #101-262.000-729.0000 for this service. Further, authorizing the mayor to sign the agreement on behalf of the City.
- K. Resolution authorizing the City to enter into a contract with Colonial Fireworks for providing a fireworks display on July 3, 2014 (July 5 rain date) at Lincoln Hills for the sum of \$15,000.00 and further authorizing the administration to secure the necessary insurance. This would be contingent upon the vendor meeting all state and local laws, City requirements, and insurance requirements.
- L. Resolution approving a three (3) year Golf Cart Lease between the City of Birmingham and Pifer, Inc. in the annual amount of \$26,250 (\$78,750 for total leasing period) and authorizing the Mayor and City Clerk to sign the lease documents on behalf of the City upon receipt of proper insurances. Funds for this lease are contained with the Equipment Rental line items, accounts #584-753.002-941.0000 and #597-753.002-941.0000.
- M. Resolution approving the Master Membership Agreement with MISS DIG. Further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.

ROLL CALL VOTE: Yeas, Commissioner Dilgard
 Commissioner Hoff
 Commissioner McDaniel
 Commissioner Nickita
 Commissioner Rinschler
 Mayor Pro Tem Sherman

 Nays, None
 Absent, 1 (Moore)
 Abstentions, None

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

**03-54-14 PUBLIC HEARING TO CONSIDER A LOT SPLIT
572 WATKINS AND 559 SOUTHFIELD**

Mayor Pro Tem Sherman opened the Public Hearing to consider a Lot Split, 572 Watkins and 559 Southfield at 7:45 PM.

Planner Baka explained the applicant's request to rearrange the lots back as originally plotted because the intended garage was not able to be built due to restrictions in the zoning ordinance. He noted that this would re-establish a previously existing non-conformance lot size, however the City Code allows the City Commission to waive that requirement.

Bob Vanhellemont, applicant, explained his concern that the interpretation of the language in the code is prohibiting him from building a usable garage on the space.

The Mayor Pro Tem closed the Public Hearing at 7:50 PM.

MOTION: Motion by McDaniel, seconded by Nickita:
To waive the minimum lot size standard for 572 Watkins and approve the proposed rearrangement of 572 Watkins and 559 Southfield as proposed.

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

Commissioner McDaniel questioned the interpretation of footprint versus square foot in the City Code. Mr. Valentine confirmed that staff will return to the Commission with the explanation.

**03-55-14 PUBLIC HEARING TO CONSIDER A LOT SPLIT
607 BATES**

Mayor Pro Tem Sherman opened the Public Hearing to consider a Lot Split 607 Bates at 7:52 PM.

Planner Baka explained the request to split the lot into two parcels. He stated that the applicant intends to move the existing house five feet and build a house on the second parcel. He noted that a waiver from the City Commission is necessary due to the proposed width of the lots.

Jeff Dawkins, architect for the project, explained that the owner plans to renovate and restore the existing historic home. He explained that the neighborhood has lots of varying size and noted that the owner is willing to agree to a limit on the size of the new house.

The Mayor Pro Tem closed the Public Hearing at 8:19 PM.

The Commission received the following communications opposed to the proposed lot split:
Bill Taubman, 651 S. Bates
Richard Burstein, representing Mr. Taubman

MOTION: Motion by McDaniel, seconded by Rinschler:
To waive the minimum lot width standard for 607 Bates and approving the proposed lot split as proposed.

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

**03-56-14 PUBLIC HEARING TO CONSIDER A SPECIAL LAND USE PERMIT
220 EAST MERRILL**

Mayor Pro Tem Sherman opened the Public Hearing to consider a Special Land Use Permit (SLUP) and Final Site Plan for 220 E. Merrill at 8:22 PM.

Ms. Ecker explained that all existing restaurants serving liquor must obtain a SLUP upon change in ownership, name of establishment, or upon application for site plan review. She explained that the new owner plans to keep the name of the restaurant and extensively renovate. She noted that the changes to the exterior include the addition of a door to the center window and expansion of the outdoor dining area with a pergola. She reviewed the conditions placed by the Planning Board.

In response to questions from the Commission, Zaid Elia, one of the owners, explained that Edison's will remain open. He noted that the number of outdoor seats will increase to seventy. He explained that a drainage system will be used to water the plants in the pergola.

Commissioner Nickita questioned the design of the passageway. Ms. Ecker noted that the dumpsters will be screened and landscaping will be added.

The Mayor Pro Tem closed the Public Hearing at 8:40 PM.

MOTION: Motion by Rinschler, seconded by Dilgard:
To approve a Special Land Use Permit and the Final Site Plan for 220 Restaurant at 220 E. Merrill:

- WHEREAS, 220 filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a food and drink establishment in the B4 zone district in accordance Article 2, Section 2.37 of Chapter 126, Zoning, of the City Code;
- WHEREAS, The land for which the Special Land Use Permit is sought is located on the south side of E. Merrill, west of S. Old Woodward;
- WHEREAS, The land is zoned B-4, and is located within the Downtown Birmingham Overlay District, which permits the operation of food and drink establishments serving alcoholic beverages with a Special Land Use Permit;
- WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;
- WHEREAS, The applicant submitted an application for a Special Land Use Permit and Final Site Plan for 220;
- WHEREAS, The Planning Board on February 26, 2014 reviewed the application for a Special Land Use Permit and recommended approval of the application with the following conditions:
- (1) Applicant screen the dumpster behind the building or obtain a variance from the Board of Zoning Appeals;
 - (2) Applicant provide specification sheets for the planters and the plant material

- to be used;
- (3) Applicant add small planting beds adjacent to the west side of the building to allow the planting of climbing vines on the building along the Edison Passage (west);
- (4) Applicant improve the Edison Passage (west) as previously agreed with the former owner of the property;
- (5) Applicant provide specifications on the proposed lighting fixtures in the outdoor dining area;
- (6) Applicant provide specification sheets on the proposed door system to be added to the north elevation of the building;
- (7) The applicant obtains an outdoor dining permit from the City of Birmingham; and
- (8) Applicant install a Knox Box.

WHEREAS, The applicant has agreed to comply with the conditions of approval recommended by the Planning Board;

WHEREAS, The Birmingham City Commission has reviewed 220's Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that 220's application for a Special Land Use Permit and Final Site Plan at 220 E. Merrill is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

- 1. 220 shall abide by all provisions of the Birmingham City Code; and
- 2. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest.
- 3. Applicant screen the dumpster behind the building or obtain a variance from the Board of Zoning Appeals;
- 4. Applicant provide specification sheets for the planters and the plant material to be used;
- 5. Applicant add small planting beds adjacent to the west side of the building to allow the planting of climbing vines on the building along the Edison Passage (west);
- 6. Applicant improve the Edison Passage (west) as previously agreed with the former owner of the property;
- 7. Applicant provide specifications on the proposed lighting fixtures in the outdoor dining area;
- 8. Applicant provide specification sheets on the proposed door system to be added to the north elevation of the building;
- 9. The applicant obtains an outdoor dining permit from the City of Birmingham; and
- 10. Applicant install a Knox Box.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, 220 and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of 220 to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that 220 is recommended for the operation of a food and drink

establishment serving alcoholic beverages on premises, subject to final inspection.

Commissioner McDaniel suggested staff ask the new owners to improve the passageway on the east side of the building.

Mr. Elia confirmed for Commissioner Hoff that the restaurant will be opened in mid-June.

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

**03-57-14 PARK STREET PARKING STRUCTURE
 ELEVATOR LOBBY ADDITION CONTRACT AWARD**

City Engineer O'Meara explained that the two bids received were higher than expected. He noted that it is advisable to rebid the project and separate the building portion and the concrete portion. He confirmed for Commissioner Hoff that, of the bids received, the concrete portion was around the budgeted amount; however the building portion was three times what was budgeted.

The Commission took no action.

**03-58-14 FORMATION OF AN
 AD HOC PARKING STUDY COMMITTEE**

City Engineer O'Meara explained that the proposed ad hoc committee would study the possible expansion of the Pierce Street Parking Structure and the future parking needs for the Central Business District and Triangle District. He noted that the committee would consist of five members of existing City boards.

Ms. Ecker confirmed for the Commission that the Planning Board action list includes parking requirements.

The Commission discussed the monthly permits at the parking structures. Commissioner Rinschler suggested the Committee focus on the Central Business District.

City Engineer O'Meara confirmed for Commission Hoff that staff representatives will be attending the Ad Hoc Committee meetings.

Commissioner Nickita encouraged the members of the Ad Hoc Committee to consider "out of the box" alternatives such as enhancing street parking or a shuttle service.

MOTION: Motion by Hoff, seconded by McDaniel:

To accept the recommendation of the Advisory Parking Committee, authorizing the formation of an Ad Hoc Parking Study Committee that will be formed for a limited time to update the parking demand study done in 2000 for the Parking Assessment District, as well as the 2007 parking study completed as a part of the Triangle District Master Plan. The goal of the Committee will be to determine the long term demand levels for parking throughout the Central Business District and Triangle District, and to provide recommendations of how to best use the Auto Parking System's properties at this time, as well as to establish targeted needs for the Triangle

District. The Ad Hoc Parking Study Committee shall include the following members, with each of the suggested boards nominating their representative accordingly:

- Advisory Parking Committee
- Corridor Improvement Authority
- Multi-Modal Transportation Board
- Planning Board
- Principal Shopping District

The Ad Hoc Parking Study Committee shall be formed as soon as practical, with the goal of finalizing a report of findings and recommendations by July, 2014.

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

**03-59-14 GOLF REPORT – 2013 REVIEW
 AND 2014 PROSPECTUS**

Golf Manager Brito presented the 2013 Golf Review and noted that the revenues are up. She explained the memberships offered and upcoming events.

Commissioner Hoff noted that by lowering the cost of membership, the number of members increased. She also pointed out that the revenues were over expenditures.

MOTION: Motion by Rinschler, seconded by Nickita:
To accept the Golf Report – 2013 Review – 2014 Prospectus.

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

**03-60-14 ORDINANCE AMENDMENT
 PRECIOUS METAL DEALERS**

Police Chief Studt explained that the ordinance amendment would move the process to an electronic system and eliminate staff time associated with data entry. He explained that there is an annual fee to the City to utilize the on-line system. Chief Studt confirmed that the City has about a dozen licensees who generate many transactions.

MOTION: Motion by Rinschler, seconded by Nickita:
To adopt an ordinance amending Part II of the City Code Chapter 26 Businesses, Article V, Precious Metals Dealers, Division 2, Registration, adding Section 26-181 Permanent Record of Each Transaction and adding Section 26-182 retaining precious item for the nine calendar days; alteration and adding section 26-183 Prohibited Conduct.

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

**03-61-14 CLOSED SESSION REQUEST
 ATTORNEY/CLIENT PRIVILEGE COMMUNICATION**

MOTION: Motion by Hoff, seconded by Nickita:

To meet in closed session to discuss an attorney/client privilege communication in accordance with Section 8(h) of the Open Meetings Act.

ROLL CALL VOTE: Yeas, Commissioner Hoff
 Commissioner McDaniel
 Commissioner Nickita
 Commissioner Rinschler
 Commissioner Dilgard
 Mayor Pro Tem Sherman
 Nays, None
 Absent, 1 (Moore)
 Abstentions, None

VII. REMOVED FROM CONSENT AGENDA

**03-62-14 MOHEGAN & KENNESAW PAVING PROJECT
 CONTRACT AWARD**

In response to a question from Commissioner Dilgard regarding the durability of plastic pipes, City Engineer O'Meara explained that this is the first time the City has done any main in plastic. On the Mohegan & Kennesaw Project there will be a large 18" diameter pipe that will be much deeper than normal to avoid everything else in the way on Mohegan. He noted that it is a transmission main and is not tapped by each house. It is to help strengthen the system by bringing water from Woodward Avenue to Adams and strengthen the east side of the town. He noted that the plastic pipe works much better for that scenario than the traditional pipes.

Dorothy Conrad questioned whether the neighborhoods had been notified. Mr. O'Meara commented that the neighborhoods have not officially been notified because the City did not have all the information needed until now. Ms. Conrad commented that this project is going to be extremely disruptive and it is very important that the residents have an opportunity to speak up before it is a fact.

MOTION: Motion by Dilgard, seconded by Rinschler:
To award the Mohegan & Kennesaw Paving Project, Contract #2-14(P), to DiPonio Contracting, Inc. of Shelby Township, MI, in the amount of \$2,561,141.90, to be funded from the following accounts:

Sewer Fund	#590-536.001-981.0100	\$ 438,518.95
Water Mains Fund	#591-537.004-981.0100	\$ 1,134,669.60
Local Streets Fund	#202-449.001-981.0100	\$ 987,953.35
TOTAL		\$ 2,561,141.90

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

**03-63-14 SET PUBLIC HEARING FOR SPECIAL ASSESSMENT DISTRICT
 MOHEGAN & KENNESAW PAVING PROJECT**

Mayor Pro Tem Sherman noted that the Public Hearing for the Special Assessment District for the sewer laterals could not be set unless the contract was awarded.

MOTION: Motion by Dilgard, seconded by Hoff:

To set a public hearing of necessity for the installation of lateral sewers within the Mohegan Ave. & Kennesaw Ave. Paving Project area on April 3, 2014. If necessity is declared, setting a public hearing to confirm the roll on April 28, 2014:

RESOLVED, that the City Commission shall meet on Thursday, April 3, 2014 at 7:30 P.M., for the purpose of conducting a public hearing of necessity for the installation of lateral sewers within the Mohegan Ave. & Kennesaw Ave. Paving Project area. Should the district be declared at that time, be it further

RESOLVED, that the City Commission meet on Monday, April 28, 2014 at 7:30 P.M. for the purpose of conducting a public hearing to confirm the roll for the installation of lateral sewers in the Mohegan Ave. & Kennesaw Ave. Paving Project area.

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

**03-64-14 BIRMINGHAM VILLAS WATER MAIN PROJECT
CONTRACT AWARD**

City Engineer O'Meara confirmed for Commissioner Hoff that the neighborhood has been notified of the project. He explained that the project is considered a water main project because very little money is being spent from the local street fund and the City is attempting to leave as much of the existing cape seal streets as possible.

MOTION: Motion by Hoff, seconded by Nickita:
To award the Birmingham Villas Water Main Project, Contract #3-14(W) to D & D Water & Sewer, Inc., of Canton, MI, in the amount of \$1,034,911.00, to be funded from the following accounts:

Sewer Fund	#590-536.001-981.0100	\$ 56,310.00
Water Mains Fund	#591-537.004-981.0100	\$ 889,711.00
Local Streets Fund	#202-449.001-981.0100	<u>\$ 88,890.00</u>
TOTAL		\$ 1,034,911.00

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

**03-65-14 PEABODY STREET PARKING STRUCTURE
MONTHLY PERMITS**

City Engineer O'Meara confirmed for Commissioner Hoff that the number of permits will be reduced through attrition.

MOTION: Motion by Hoff, seconded by Nickita:
To adopt the recommendation of the Advisory Parking Committee to decrease the number of monthly permits authorized for sale in the Peabody Street Parking Structure by 31 permits, for a total of 400 permits authorized beginning immediately.

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

VIII. COMMUNICATIONS

03-66-14 COMMUNICATIONS

The Commission received the following communications:

- Oakland County Homeland Security Division regarding Severe Weather Awareness Week, April 6-12, 2014.
- WOW! Business regarding increase in rates.
- Daniel Padilla regarding West Maple between Cranbrook and Southfield

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

X. REPORTS

03-67-14 COMMISSIONER REPORTS

The Commission intends to appoint members to the Architectural Review Committee and Housing Board of Appeals on April 3, 2014.

03-68-14 CITY STAFF REPORTS

The Commission received the Engineering Update submitted by City Engineer O'Meara.

The Commission recessed to closed session at 9:42 PM.

The Commission reconvened in open session at 10:08 PM.

03-69-14 PROPOSED AGREEMENT WITH FORMER CITY MANAGER

MOTION: Motion by Rinschler, seconded by Dilgard:

To approve the proposed agreement between the City of Birmingham and former City Manager Bob Bruner.

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

XI. ADJOURN

The Mayor adjourned the meeting at 10:10 PM.

Laura M. Pierce
City Clerk