

BIRMINGHAM CITY COMMISSION MINUTES
APRIL 27, 2015
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Stuart Lee Sherman, Mayor, called the meeting to order at 7:31 PM.

II. ROLL CALL

ROLL CALL:	Present,	Mayor Sherman Commissioner Dilgard Mayor Pro Tem Hoff Commissioner McDaniel Commissioner Moore Commissioner Nickita Commissioner Rinschler
	Absent,	None

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, DPS Director Wood, City Engineer O'Meara, Assistant Engineer Fletcher, City Planner Ecker, Billing Manager Laing, Building Official Johnson, Finance Director Gerber

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

04-81-15 APPOINT TO THE DESIGN REVIEW BOARD AND HISTORIC DISTRICT COMMISSION

MOTION: Motion by Hoff:

To appoint Thomas Trapnell, 660 Smith, to the Design Review Board and Historic District Commission, as a regular member, to serve the remainder of a three-year term to expire September 25, 2015.

VOTE: Yeas, 7
Absent, None

The Clerk administered the oath to the appointed board member.

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.

04-82-15 APPROVAL OF CONSENT AGENDA

MOTION: Motion by Rinschler, seconded by Nickita
To approve the consent agenda as follows:

- A. Approval of City Commission minutes of April 13, 2015.
- B. Approval of warrant list, including Automated Clearing House payments, of April 15, 2015 in the amount of \$351,790.27.
- C. Approval of warrant list, including Automated Clearing House payments, of April 22, 2015 in the amount of \$439,209.63.
- D. Resolution confirming the City Manager's authorization for the emergency expenditure to thaw frozen water service lines by Rhodes Welding Co., Inc. in the amount of \$19,912.50 to be paid from the Water Supply Fund account #591-537.005-811.0000, pursuant to Sec. 2-286 of the City Code.
- E. Resolution requesting reimbursement for the maximum allotment of \$2,648.39 for eligible mosquito control activity under the Oakland County's West Nile Virus Fund Program:
 - WHEREAS, upon recommendation of the Oakland County Executive, the Oakland County Board of Commissioners has established a West Nile Virus Fund Program to assist Oakland County cities, villages and townships in addressing mosquito control activities; and
 - WHEREAS, Oakland County's West Nile Virus Fund Program authorizes Oakland County cities, villages and townships to apply for reimbursement of eligible expenses incurred in connection with personal mosquito protection measures/activity, mosquito habitat eradication, mosquito larviciding or focused adult mosquito insecticide spraying in designated community green areas; and
 - WHEREAS, the City of Birmingham, Oakland County, Michigan has incurred expenses in connection with mosquito control activities believed to be eligible for reimbursement under Oakland County's West Nile Virus Fund Program.
 - NOW THEREFORE BE IT RESOLVED that the Birmingham City Commission authorizes and directs its Director of Public Services, as agent for the City of Birmingham, in the manner and to the extent provided under Oakland County Board of Commissioners, to request reimbursement of eligible mosquito control activity under Oakland County's West Nile Virus Fund Program.
- F. Resolution directing the Treasurer to transfer the unpaid and delinquent water/sewage bills of the properties listed in the April 15, 2015 report to the 2015 city tax roll and authorizing the removal from the list any bills paid or a payment plan agreement signed after City Commission approval:
 - WHEREAS, The City Treasurer, in accordance with Chapter 114, Section 114-303, of the city code has reported certain water/sewage accounts, including interest and penalty, unpaid and delinquent on May 1, 2015, and
 - WHEREAS, Chapter 114, Section 114-303, of the city code provides that these payments shall be carried to the next annual city tax roll,
 - NOW, THEREFORE, BE IT RESOLVED, that the properties with unpaid and delinquent water/sewage accounts listed in the report dated April 15, 2015, including interest and penalty, be transferred and reassessed to the 2015 city tax roll and authorization be given to remove from the list any bills paid or a payment plan agreement signed after commission approval.
- G. Resolution directing the Treasurer to transfer the unpaid and delinquent special assessment and invoices, including interest and penalty, to the 2015 City tax roll and authorizing removal from the list any bills paid after City Commission approval:
 - WHEREAS, the City Treasurer, in accordance with the provisions in the City Code has reported certain special assessments and invoices, including interest and penalty, unpaid and delinquent on May 1, 2015, and
 - WHEREAS, the City Code provides that these delinquent special assessments and invoices shall be carried to the next annual City tax roll,

NOW THEREFORE BE IT RESOLVED, that the listing of unpaid and delinquent special assessments and invoices, including interest and penalty, dated April 15, 2015, be transferred and reassessed to the 2015 City tax roll with an additional 15% penalty and authorization be given to remove from the list any bills paid after commission approval.

- H. Resolution authorizing the Mayor and Clerk to sign the general services agreement for engineering services between Hubbell, Roth, & Clark, Inc., and the City of Birmingham.
- I. Resolution approving the street light agreement between the City of Birmingham and DTE Energy regarding the installation of street lights at 375 S. Eton Rd. Further, directing the Mayor to sign the agreement on behalf of the City. All costs relative to this agreement will be charged to the adjacent owner.
- J. Resolution authorizing the issuance of a purchase order in the amount of \$41,712.29 to DTE Energy, for the manufacture, shipment, and installation of 9 street lights with associated wiring for the Chester St. Structure Street Improvement Project. The work will be funded by the Auto Parking System, charged to account #585-538.008-981.0100.
- K. Resolution authorizing the 2015 Sidewalk Repair Program, and directing the Engineering Department to notify the owners of properties on the list of the City's intention to replace sidewalks adjacent to their properties.
- L. Resolution setting a Public Hearing for May 18, 2015 to consider the proposed Lot Split of 1530 Pilgrim, Parcel #1926226002.
- M. Resolution approving the professional service agreement with National Elevator Consultants, Inc. to perform items A through E in the their proposal of March 19, 2015 in an amount not to exceed \$10,600 to the Peabody St. Parking Structure Elevator Maintenance account #585-538.004-930.0200 and directing the Mayor and City Clerk to sign the agreement on behalf of the City.

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

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

**04-83-15 PUBLIC HEARING OF CONFIRMATION
 OAK AVENUE PAVING PROJECT**

Mayor Sherman opened the Public Hearing of confirmation for the Oak Avenue Paving Project at 7:37 PM. Hearing on public comment, the Mayor closed the Public Hearing at 7:38 PM.

MOTION: Motion by McDaniel, seconded by Rinschler:
To confirm Special Assessment Roll No. 866, to defray the cost of installing new sewer laterals within the Oak Avenue Paving Project limits:

To confirm Special Assessment Roll No. 866, to defray the cost of installing new sewer laterals within the Oak Avenue Paving Project limits:

WHEREAS, Special Assessment Roll, designated Roll No. 866, has been heretofore prepared by the Billing Manager for collection, and

WHEREAS, notice was given pursuant to Section 94-7 of the City Code, to each owner or party- in- interest of property to be assessed, and

WHEREAS, the Commission has deemed it practicable to cause payment of the cost thereof to be made at a date closer to the time of construction and

Commission Resolution 03-70-15 provided it would meet this 27th day of April, 2015 for the sole purpose of reviewing the assessment roll, and

WHEREAS, at said hearing held this April 27th, 2015, all those property owners or their representatives present have been given an opportunity to be heard specifically concerning costs appearing in said special assessment roll as determined in Section 94-9 of the Code of the City of Birmingham,

NOW, THEREFORE, BE IT RESOLVED, that Special Assessment Roll No. 866 be in all things ratified and confirmed, and that the City Clerk be and is hereby instructed to endorse said roll, showing the date of confirmation thereof, and to certify said assessment roll to the City Treasurer for collection at or near the time of construction of the improvement.

BE IT FURTHER RESOLVED, that special assessments shall be payable in ten (10) payments as provided in Section 94-10 of the Code of the City of Birmingham, with an annual interest rate of four and a quarter percent (4.25%) on all unpaid installments.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**04-84-15 PUBLIC HEARING TO CONSIDER SPECIAL LAND USE PERMIT
 AND FINAL SITE PLAN AT AU COCHON AND ARTHUR AVE
 260 NORTH OLD WOODWARD**

Mayor Sherman opened the Public Hearing to consider a Special Land Use Permit and Final Site Plan at Au Cochon and Arthur Ave., 260 N. Old Woodward at 7:38 PM.

City Planner Ecker explained that the original proposal was for an outdoor dining deck that took up four parking spaces on the street. The proposal was reviewed by the Advisory Parking Committee which requested the applicant return with a plan using two spaces. The Advisory Parking Committee still took no action on that issue. The applicant has decided to come forward with a plan for using two on street parking spaces.

Ms. Ecker explained that the former Chen Chow space would be divided into two restaurants each with its own entrance, bar area, and table area. There would be a dividing wall between the spaces, however the restaurants would be connected in the back and share a common kitchen and office space. They are looking to operate under a direct connect permit under a liquor license.

Ms. Ecker explained the proposal for two outdoor dining decks, one immediately adjacent to the restaurant on the sidewalk and the other in the street. She noted that Au Cochon is proposed to be open from 7:00 AM – 2:00 AM, seven days a week and Arthur Ave is proposed to be open from 11:00 AM – 2:00 AM seven days a week. Ms. Ecker pointed out the proposed private dining space in Arthur Ave.

In response to a question from Mayor Pro Tem Hoff, City Attorney Tim Currier explained that the requirements for a direct connect include an interior connection and common ownership. Zack Sklar, owner, confirmed that the staff would be different, but management would be shared between the two restaurants.

Mr. Sklar explained the importance of outdoor dining to his establishment. He stated that each outdoor table is \$30,000 to the bottom line. He stated that people want to be outside. He confirmed for Commissioner McDaniel that no umbrellas are proposed at this time.

Commissioner Nickita stated that there is concern with the platforms on the street. He noted that the sidewalk is exceptionally wide and suggested that if the deck on the sidewalk was redesigned, it could accommodate the number of seats from the on street platform. Discussion ensued regarding the shape of the sidewalk deck to accommodate additional seating.

Mr. Sklar stated noted that they are opting to not have valet. Instead of valet, they are proposing to place an outdoor dining deck in the parking spaces because either way you are taking up spaces.

Mr. Sklar confirmed for Mayor Pro Tem Hoff that they are not requesting an entertainment permit, but will be requesting Sunday sales and catering.

Discussion ensued regarding the closing time of the restaurants. The Commission expressed concern with the proposed closing time.

In response to a question from Commissioner Nickita, Mr. Sklar stated that they may want to have valet. He pointed out that Chen Chow had outdoor dining seating against the building and valet. Mayor Pro Tem Hoff expressed concern with valet as it would take up parking spaces.

The Commission agreed to continue the Public Hearing to May 11th. The Commission requested the applicant return with a redesign of the outdoor dining area and review the closing time.

04-85-15 PUBLIC HEARING TO CONSIDER ZONING ORDINANCE AMENDMENTS REGARDING GARAGES

Mayor Sherman opened the Public Hearing to consider amendments to Article 4, Sections 4.59 and 4.70 of the Zoning Ordinance at 8:29 PM.

City Planner Ecker presented the proposed amendments to the zoning ordinance which would control the size and placement of private, attached, single-family residential garages. She explained that the existing ordinance requires no more than 50% of the total front façade can be garage. People are getting around the ordinance by adding a bonus room of habitable living space in front of the garage resulting in the garage dominating the front view of the house.

Ms. Ecker explained that the proposed ordinance language would keep the existing limitation on the width of the garage on the front elevation to 50% or less. A clarification was added to the ordinance that the requirement now applies to all linear building widths that face the street, including corner lots. Further clarification was added that requires any attached garage facing the street be set back five feet from the portion of the front façade that is furthest set back from the street. Therefore the bonus room could not be counted in this calculation. In addition the width of attached garage doors was expanded from eight feet to nine feet requiring the jam in the center between the garage doors. She noted that the ordinance applies to attached garages facing the street.

Commissioner Nickita questioned whether the bonus room in front of the garage was usable. Building Official Johnson explained that some of the rooms have stairs which attach to the living space above the garage.

Commissioner Rinschler stated that this may encourage more detached garages. He suggested reviewing the garage height too.

Mark Johnson, residential architect, expressed objection to the language in the ordinance as it limits the ability to build on the lots.

JC Cataldo, 271 Chesterfield and residential builder, expressed support of the ordinance.

The Mayor closed the Public Hearing at 9:07 PM.

MOTION: Motion by Nickita, seconded by Dilgard:
To adopt ordinances amending Article 4, Sections 4.59 and 4.70 of the Zoning Ordinance to regulate the size and placement of private, attached, single-family residential garages.

The Commission expressed support of the proposed ordinances.

VOTE: Yeas, 7
 Nays, None
 Absent, None

04-86-15 MONTHLY PARKING PERMIT RATES

In response to a question from Mayor Pro Tem Hoff regarding the southside permits, City Engineer O'Meara explained that the spaces are located behind the CVS shopping center and beyond the 555 building in the grass triangle area.

MOTION: Motion by Rinschler, seconded by Dilgard:
To accept the recommendation of the Advisory Parking Committee, and authorize the following rates for monthly parking permit effective July 1, 2015:

Pierce St. Structure	\$65
Park St. Structure	\$60
Peabody St. Structure	\$65
N. Old Woodward Ave. Structure	\$55
Chester St. Structure	\$45
Lot 6 Regular Permit	\$65

Lot 6 Economy Permit	\$45
South Side Permit (Ann St.)	\$50
South Side Permit (S. Old Woodward Ave.)	\$25

VOTE: Yeas, 7
 Nays, None
 Absent, None

**04-87-15 PEABODY ST. PARKING STRUCTURE RESTORATION
 MONTHLY PERMIT TRAFFIC MANAGEMENT**

City Engineer O'Meara explained that the Peabody Street Structure is being renovated this summer where up to 125 spaces will be closed at a time. He explained that the structure does fill quite regularly and suggested the City offer up to 100 permits for free to permit holders to park at the Pierce or Park Street Structures during construction. He noted that the cap would be no more than fifty permits at each structure.

MOTION: Motion by McDaniel, seconded by Moore:
 To authorize the Auto Parking System to offer a maximum of 50 free monthly permits each at the Pierce St. and Park St. Structures to those that currently possess a monthly permit at the Peabody St. Structure for the months of June, July, and August, 2015, in an effort to open additional spaces to daily traffic during scheduled restoration of this facility, at an estimated cost of less than \$16,500.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**04-88-15 MICHIGAN UNIFORM VIDEO SERVICE
 LOCAL FRANCHISE AGREEMENT WITH COMCAST**

City Attorney Currier explained that the television franchise agreement with Comcast was set to expire in March of this year. Through a series of extensions the City has been working with Comcast to discuss other considerations for the City with respect to the Michigan Uniform Video Service Local Franchise Agreement to preserve the PEG fee as much as possible. Birmingham has been receiving a 3% PEG fee and is concerned that the reduction of 1/3 of the PEG fee could have a dramatic impact on the programming provided by the Birmingham Area Cable Board in conjunction with Bloomfield Community Television. The City and Comcast were able to reach an agreement that has a 5% franchise fee, 2% PEG fee. In addition, Comcast agreed to supplement the PEG fee through a side agreement.

MOTION: Motion by Hoff, seconded by Nickita:
 To approve the Michigan Uniform Video Service Local Franchise Agreement with Comcast effective April 27, 2015 and approving the April 22, 2015 letter agreement. The Mayor and Clerk are hereby authorized to sign the same on behalf of the City.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**04-89-15 CLOSED SESSION REQUEST
PENDING LITIGATION**

MOTION: Motion by Nickita, seconded by Hoff:

To meet in closed session to review pending litigation regarding Malota v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act.

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

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

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

04-90-15 OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA
David Bloom discussed the school bond proposal which will be considered by voters at the May 5th election.

X. REPORTS

04-91-15 CITY STAFF REPORTS
The Commission received the Quarton Lake Treatment Plan submitted by DPS Director Wood.

The Commission recessed to closed session at 9:33 PM.
The Commission reconvened in open session at 9:57 PM.

XI. ADJOURN

The Mayor adjourned the meeting at 9:57 PM.

Laura M. Pierce
City Clerk