

**BIRMINGHAM CITY COMMISSION MINUTES**  
**FEBRUARY 11, 2019**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Patty Bordman called the meeting to order at 7:30 PM.

**II. ROLL CALL**

ROLL CALL:	Present:	Mayor Bordman Mayor Pro Tem Boutros Commissioner DeWeese Commissioner Harris Commissioner Hoff Commissioner Nickita Commissioner Sherman
	Absent:	none

Administration: City Manager Valentine, City Attorney Currier, Police Commander Albrecht, Assistant Fire Chief Bartalino, Communications Director Byrnes, Planning Director Ecker, Assistant Engineer Fletcher, Finance Director Gerber, Assistant City Manager Gunter, Building Official Johnson, City Engineer O'Meara, HR Manager Myers, City Clerk Mynsberge, Interim Fire Chief Wells

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

**02-030-19 ANNOUNCEMENTS**

Mayor Bordman recognized Assistant Fire Chief Matt Bartalino.

Mayor Bordman announced:

- Library Director Doug Koschik will be hosting a book discussion on *Narrative of the Life of Frederick Douglass*, an 1845 memoir and treatise on abolition. The discussion will take place on Thursday, February 21 at 10:00 a.m.
- The Friends of the Baldwin Public Library are now collecting gently used handbags, purses, totes, and wallets for their Books, Bags, and Bagels sale on Sunday, March 24 from 1 p.m. to 4:00 p.m.
- The celebration of Commissioner Nickita's Birthday.
- Today is the 86th anniversary of Birmingham's change from village to a city.

**02-031-19 APPOINTMENT TO THE BOARD OF ZONING APPEALS**

The Commission interviewed new applicants Ron Reddy and Adam Rubin. Jerry Attia was not in attendance but had previously been interviewed by the Commission for a regular appointment to the BZA. Mr. Attia was not appointed to the BZA at that time, and was told he could apply to be an alternate member without returning for a second interview.

**MOTION:** Motion by Commissioner Nickita:  
To appoint Jerry Attia to the Board of Zoning Appeals, as an alternate member, to serve the remainder of a three-year term to expire February 17, 2020.

VOTE:           Yeas,           3  
                  Nays,           0  
                  Absent,        0

**MOTION:** Motion by Commissioner Hoff:  
To appoint Ron Reddy to the Board of Zoning Appeals, as an alternate member, to serve the remainder of a three-year term to expire February 17, 2020.

VOTE:           Yeas,           4  
                  Nays,           0  
                  Absent,        0

City Clerk Mynsberge administered the oath of office to Mr. Reddy.

**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.

**02-032-19 APPROVAL OF CONSENT AGENDA**

The following items were removed from the Consent Agenda:

- Commissioner Nickita   Item I;   Proposed Rezoning of 469 – 479 S. Old Woodward

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Hoff:  
To approve the Consent Agenda, with Item I removed.

ROLL CALL VOTE:   Ayes:           Mayor Bordman  
  Mayor Pro Tem Boutros  
  Commissioner DeWeese  
  Commissioner Harris  
  Commissioner Hoff  
  Commissioner Nickita  
  Commissioner Sherman  
                          Nays:           None

- A. Resolution approving the City Commission Long Range Planning meeting minutes of January 26, 2019.
- B. Resolution approving the City Commission meeting minutes of January 28, 2019.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated January 30, 2019 in the amount of \$2,038,185.38.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated February 6, 2019 in the amount of \$471,673.98 .

- E. Resolution extending the term of the Ad Hoc Joint Senior Services Committee through March of 2020.
- F. Resolution approving a request from the Birmingham City Clerk's Office to hold the Celebrate Birmingham Parade on downtown streets as presented and the Party in Shain Park on May 19, 2019 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 a request from the Huntington Disease Society of America-MI Chapter to hold Yoga in the Park in Shain Park on June 22, 2019 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.
- H. Resolution setting Monday, March 11, 2019 at 7:30 P.M., for a Public Hearing to consider creation of and declare necessity for a Special Assessment District for the installation of the City's standard streetscape and new street lights on Park Street between Oakland Avenue and Hamilton Row; further, if necessity is determined on March 11, 2019, a Public Hearing to review the assessments and confirm the roll will be held on Monday, March 25, 2019, at 7:30 P.M.

**02-033-19                      PROPOSED REZONING OF 469–479 S. OLD WOODWARD  
(ITEM I)**

Comments/Clarification

Commissioner Nickita explained the City avoids spot zoning, and asked for clarification from staff regarding how the proposed rezoning of 469-479 S. Old Woodward is not an instance of spot zoning.

City Manager Valentine clarified that D5 zoning requires a Special Land Use Permit (SLUP) in order for a building to be allowed additional height. This is the only zoning classification that has that requirement that goes with it. When D5 zoning was created, it allowed properties adjacent to D5-zoned properties the opportunity to be considered on a case-by-case basis for a SLUP that would allow for a height increase. The SLUP would originate with the Planning Board as part of this rezoning.

Planning Director Ecker stated:

- The SLUP portion of this request will not be heard by the Planning Board until a decision is made by the Commission in regards to the rezoning request.
- When D5 was created, various areas of the City were considered for the zoning classification. The City ultimately decided to rezone the three properties requesting the rezoning at the time as D5. As a result, the Planning Board has heard the request for this rezoning over the last six months and has considered it without engaging in a larger zoning study since the original study to create D5 was so comprehensive.
- The D5 zoning was developed when owners of non-conforming buildings were unable to perform necessary renovations because of the way the buildings were zoned at the time. This zoning allowed the owners to carry out those renovations. Included in D5 zoning are stipulations to make buildings legal-conforming, language regarding additions to existing non-conforming buildings, and language regarding new buildings.

- The lot between the 555 Building and Haines is zoned D5 and owned by the owner of the 555 Building.
- Had the 469-479 S. Old Woodward property been owned by the owner of the 555 Building, it would have been zoned to D5 at the same time the 555 Building's south lot was.
- The Planning Board did discuss whether this request was spot zoning and concluded it was not.

Commissioner Sherman suggested the section around the buildings currently zoned to D5 should be considered for possible rezoning.

City Attorney Currier explained the question before the Commission is whether or not to set a public hearing. The substance of the rezoning request is not the subject before the Commission at this meeting. He explained the petitioner has a right to be heard by the City via a public hearing, and the Commission could also request more information on the matter from the Planning Board.

City Attorney Currier confirmed that sending the request back to the Planning Board after a public hearing would not constitute a denial of the request.

Commissioner Sherman said he would like to see additional information regarding the issue of spot zoning at the public hearing.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Harris:  
To set Monday, March 11, 2019 at 7:30 PM for a Public Hearing to consider the proposed rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5.

VOTE:           Yeas,           7  
                  Nays,           0  
                  Absent,        0

**IV.1. CLOSED SESSION**

**02-034-19           RESOLUTION TO MEET IN CLOSED SESSION TO REVIEW PENDING LITIGATION IN THE MATTER OF DARAKJIAN V CITY OF BIRMINGHAM PURSUANT TO SECTION 8(E) OF THE OPEN MEETINGS ACT, MCL 15.261 – 15.275.  
(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission.)**

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Hoff:  
To adjourn to closed session to review pending litigation in the matter of Darakjian v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275.

ROLL CALL VOTE:   Ayes:           Mayor Bordman  
  Mayor Pro Tem Boutros  
  Commissioner DeWeese  
  Commissioner Harris  
  Commissioner Hoff

Commissioner Nickita  
Commissioner Sherman  
Nays: None

Mayor Bordman adjourned the meeting to closed session at 8:03 p.m.

Mayor Bordman reconvened the regular meeting at 8:39 p.m. and recessed the meeting for 15 minutes.

Mayor Bordman reconvened the meeting at 8:51 p.m.

**V. UNFINISHED BUSINESS**

None.

**VI. NEW BUSINESS**

**02-035-19 PUBLIC HEARING – SIGN ORDINANCE & OVERLAY SIGNAGE AMENDMENTS**

Mayor Bordman opened the public hearing at 8:51 p.m.

Planning Director Ecker presented the item as included in the agenda packet.

Comments/Clarification

Planning Director Ecker explained:

- Perforated graphics are considered window signs, and are not permitted unless they are smaller than 12 sq. ft. There is no percentage of perforation that allows a perforated graphic larger than 12 sq. ft. to be displayed. The definition of 'sign' in the ordinance is sufficiently broad to address the issue and allow for appropriate enforcement.
- The Planning Board and Design Review Board specifically discussed the issue of allowing or disallowing tape on signs, and the consensus was that both Boards did not want to disallow the use of tape. They felt the amendment appropriately indicates that the City mandates a clean visual appearance for signage without dictating exactly what method of application is used.
- Lit "Open" signs are currently explicitly allowed in the Birmingham ordinance but will be going before the Design Review Board for review. The results of the review will likely be back before the Commission within the next three months.

Commissioner Nickita said he hopes this clarification to the ordinance will be enough, but expects the issue of tape on signs will likely be a continuing issue without further specification. Mayor Bordman shared Commissioner Nickita's concern.

Mayor Bordman closed the public hearing at 9:01 p.m.

**MOTION:** Motion by Mayor Pro Tem Boutros, seconded by Commissioner DeWeese: To approve the following ordinance amendments as recommended by the Design Review Board, Historic District Commission and Planning Board:

Chapter 86, Article 1, Section 1.05, Permanent Business Sign and Broadcast Media Device Standards, to amend Subsection M to add application and maintenance requirements to window signage.

**AND**

Chapter 86, Article 1, Section 1.10, Overlay District Sign Standards, to eliminate the Overlay District Sign Standards.

**AND**

Chapter 126, Article 03, Overlay Districts, Specific Standards, Section 3.04, Downtown Overlay District to eliminate the Overlay Signage Standards in their entirety.

*(Ordinance Numbers 2305, 2306, and 2307 are available in the City Clerk's Office.)*

VOTE:           Yeas,           7  
                  Nays,           0  
                  Absent,        0

Commissioner Nickita said a number of issues were resolved with these changes, but for other issues there may need to be further revision.

**02-036-19                   CITY COMMISSION CONSIDERATION OF BIRMINGHAM  
FIREFIGHTERS ASSOCIATION OCTOBER 8, 2018 GRIEVANCE**

HR Manager Myers presented the item as included in the agenda packet.

**MOTION:**    Motion by Commissioner Sherman , seconded by Commissioner DeWeese:  
To waive consideration of the Birmingham Firefighters Association Local 911 grievance of October 8, 2018.

VOTE:           Yeas,           7  
                  Nays,           0  
                  Absent,        0

**02-037-19                   N. OLD WOODWARD PARKING DEVELOPMENT AND BATES  
STREET EXTENSION – PRE-DEVELOPMENT AND ENGAGEMENT  
AND COST REIMBURSEMENT AGREEMENTS**

Reports by:   Assistant City Manager Gunter  
                  Joseph Fazio of Miller Canfield  
                  Zaruhi Broglin of Jones Lang Lasalle (JLL)

Assistant City Manager Gunter, Mr. Fazio, and Ms. Broglin presented the item as included in the agenda packet.

Comments/Clarification

Mr. Fazio stated:

- Every turnkey construction contract will have a change-of-order mechanism. Those provisions have not yet been negotiated, but as construction proceeds there will be a mechanism in the contract that will allow the parties to effect change-orders.
- The second-to-last line of paragraph two in the predevelopment agreement, where it makes reference to 'costs', should be replaced with "as provided in a separate written agreement."

- In addition to the development agreement there will be ground lease forms which will be applicable to the four private components, a turnkey construction contract, and other ancillary agreements which will all be referenced in the development agreement when it is brought back to the Commission for approval.
- The ground lease language will be considered as part of the development agreement by the Commission.
- The development agreement should be considered an outline of how the parties are going to move forward. It will articulate on behalf of the developer their due diligence concerns and site plan design issues, and will articulate parallel contingencies on which to reach agreement with the City. While the development agreement will contemplate a mechanism for the resolution of those issues, it will not solve the issues upon signing the development agreement. Rather it will provide for a six to seven month period during which the parties can figure out the details and bring it back to the Commission for final approval.
- The current estimated goal is that the development agreement will be brought for the Commission's consideration on March 11, 2019.
- Representatives of JLL will be monitoring every line component to determine when each can be considered complete. In addition, it is common architectural practice for an engineer to be able to say the design criteria are 50% complete. It is likely this threshold will be reached about a month after the signing of the development agreement.

City Manager Valentine explained that the \$201,600 figure reflects the shared costs of the civil engineering, environmental engineering, landscape design, legal, public education and some of the miscellaneous costs reached through negotiation with Woodward Bates Partners.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Harris:  
To approve the non-binding Pre-Development Agreement between the City and the Walbridge Woodward Bates Partners and to authorize the City Manager to sign the agreement on behalf of the City,

**AND**

To approve the Engagement and Cost Reimbursement Agreement to support professional services, provided by the Walbridge / Woodward Bates Partners for the design and construction drawings for the public elements of the North Old Woodward / Bates Street extension project for a cost not to exceed \$575,000 from fund account #585-538.005-811.0000.

VOTE:	Yeas,	7
	Nays,	0
	Absent,	0

Commissioner Hoff stated she has a number of concerns but will support the predevelopment agreement tonight.

**VII. REMOVED FROM CONSENT AGENDA**

Items removed from the Consent Agenda were addressed earlier in the meeting.

**VIII. COMMUNICATIONS**

None

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

None

**X. REPORTS**

**02-038-19 COMMISSIONER REPORTS**

1. The City Commission will appoint two regular members to the Parks and Recreation Board on March 11, 2019.
2. The City Commission will appoint two regular members to the Planning Board on March 11, 2019.
3. The City Commission will appoint two regular members to the Multi-Modal Transportation Board on March 11, 2019.
4. The City Commission will appoint two regular members and one alternate member to the Cablecasting Board on March 11, 2019.

**02-039-19 COMMISSIONER COMMENTS**

Commissioner Harris requested the agenda packet for the March 11, 2019 Commission meeting be provided to the Commissioners earlier than the Friday before the meeting.

Commissioner Nickita reported that the February 8, 2019 issue of the Detroit Free Press honored Birmingham restaurants Hazel, Ravines and Downtown and Adachi as two of the best restaurants in Metro Detroit. He noted that almost all of the restaurants mentioned in the article are located in urban, walkable environments, which demonstrates how pedestrian-oriented development attracts high-quality businesses and benefits cities.

Agenda Packets

Commissioner Sherman said he would prefer to go back to receiving a complete agenda packet instead of maintaining certain parts of past packets for future meetings.

Commissioner Harris said he was fine either way.

Commissioner DeWeese agreed with Commissioner Sherman.

Commissioner Hoff said she was fine either way, and noted the purpose was to reduce the time and resources spent copying the agenda packet. She suggested Commissioners could receive packets according to their personal preferences.

Commissioner Sherman and City Manager Valentine advocated a uniform system.

Mayor Bordman said she had no problem saving documents from meeting to meeting. She said the Commission should not only save trees, but save the City money by not copying things over and over.

Mayor Pro Tem Boutros said the digital version should be given consideration.

Mayor Bordman said she prefers paper copies of the agenda packet. She suggested that perhaps the summary reports be submitted in paper form, with items like background studies being provided in a digitized form.



Commissioner DeWeese said he would be concerned with only receiving summary reports in paper form, since essential information could be overlooked without paper copies of the background materials.

The Commission reached consensus that agenda packets should include every item on the agenda.

Board/Committee Duty Descriptions

Mayor Bordman noted that the description of duties for the City's various advisory boards does not always indicate these boards are advisory, and their authority is only to make recommendations to the Commission to assist in its decision making responsibilities. She said this information should be added to the description of duties for the appropriate boards.

City Manager Valentine confirmed this could be done, and Commissioner DeWeese said he thought this would be a useful change.

**02-040-19 CITY STAFF**

Board of Ethics Advisory Opinion 2019-003, submitted by Clerk Mynsberge, was received.

Parking Utilization Report, submitted by Assistant City Manager Gunter, was received.

The 2<sup>nd</sup> Quarter Investment Report, submitted by Finance Director Gerber, was received.

The 2<sup>nd</sup> Quarter Budget Report, submitted by Finance Director Gerber, was received.

<b>XI. ADJOURN</b>
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The meeting was adjourned at 10:02 p.m.

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J. Cherilynn Mynsberge, City Clerk