

City Of Birmingham

AD HOC UNIMPROVED STREET STUDY COMMITTEE

Held Remotely Via Zoom And Telephone Access
Friday, June 19, 2020

Minutes of the Ad Hoc Unimproved Street Study Committee meeting held Friday, June 19, 2020. Chairman Scott Moore called the meeting to order at 8:02 a.m.

1) ROLLCALL

Present: Chairman Scott Moore
Pierre Boutros
Michael Fenberg
Katie Schafer (left at 9:47 a.m.)
Stuart Sherman
Janelle Whipple-Boyce

Absent: Jason Emerine

Administration: Joe Valentine, City Manager
Tiffany Gunter, Assistant City Manager
Mark Gerber, Finance Director
Laura Eichenhorn, Transcriptionist

2) APPROVAL OF JANUARY 31, 2020 MEETING MINUTES

Ms. Whipple-Boyce noted that the fourth line of the second paragraph on page three had a typographical error and recommended that 'references' in that line be changed to 'residents'.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boutros to approve the Minutes of the Ad Hoc Unimproved Streets Committee of January 31, 2020 as amended.

Motion carried, 6-0.

VOICE VOTE

Yeas: Whipple-Boyce, Boutros, Fenberg, Moore, Schafer, Sherman

Nays: None

3) Overview Of Unimproved Streets / Committee Activity

ACM Gunter and Chairman Moore introduced the item.

City Manager Valentine advised the Committee that Governor Whitmer extended the option to hold public meetings virtually through July 31, 2020. He noted the Committee

should take the extension into consideration when scheduling future dates for public engagement.

4) Draft Policy Document Discussion - Finalize

Ms. Whipple-Boyce stated that the draft policy document needed to integrate the option for residents to use the petition process as a means to request the City to move their road up on the schedule for improving streets.

Both Ms. Whipple-Boyce and Mr. Sherman cited the eighth paragraph on page two of the January 31, 2020 minutes as being an accurate summary of the will of the Committee. They both reiterated their statements from that meeting that the cape seal nomination list should not be the only factor in determining the order of street improvements in the City.

Mr. Sherman said that the ranking report should be the primary source of data for determining the order of street improvements. He said the cape seal nomination process should be part of the determination for street improvements, but that it should be treated as a secondary source relative to the ranking report.

Mr. Fenberg concurred with Ms. Whipple-Boyce and Mr. Sherman. Mr. Fenberg recalled that at an earlier AHUSSC meeting former City Engineer O'Meara had laid out a possible list of criteria that could be used to determine the appropriate order for improving City streets. Mr. Fenberg stated that the Committee is seeking a more finalized version of that criteria which could be used moving forward.

Chairman Moore stated he was in agreement with his fellow Committee members.

In reply to ACM Gunter, Mr. Fenberg said the City could incorporate former City Engineer O'Meara's criteria into the draft policy document if the City clarified that those criteria might be subject to changes made by the City administration on occasion.

Ms. Whipple-Boyce agreed with Mr. Fenberg.

Mr. Sherman said that former City Engineer O'Meara had proposed ranking streets for improvement according to the condition of their pavement, sewer, and water infrastructure. Mr. Sherman said he would add sidewalks as another dimension for consideration, specifying that the sidewalk's condition and potential drainage issues on the sidewalk would be the subcategories.

Mr. Fenberg recommended that the ranking system be included as an appendix of the draft document for the benefit of the community.

In reply to Dr. Schafer, ACM Gunter said the intent would be to use the score resulting from the ranking system as the primary way of determining the order of street improvements. She noted that there may be cases in which residents' opinions could be considered as a factor as well. One example she provided was in a situation where two

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streets have close scores and one street has residents with stronger preferences. She said in that case, for instance, that it might be appropriate to have some flexibility. She said that it may also be appropriate to leave some room in the ranking system for other possible factors that have not yet been considered.

Chairman Moore said that since the City Commission would ultimately be making the decisions regarding street improvements, it would be best for the Commission to factor in residents' opinions as appropriate when they finalize and approve the street improvement order.

City Manager Valentine agreed with Mr. Fenberg's statement that the ranking list should be used with an understanding that it may be subject to modifications by the City administration on occasion. Providing an example, City Manager Valentine noted that if the top ranking street would cost \$500,000 to improve, but the second ranked street would cost \$100,000 to improve, that would need to be taken into account in terms of the City's budgetary priorities and constraints. He said the draft document must incorporate language that would allow for that and other alterations of the ranking order to occur on occasion subject to other relevant considerations.

Chairman Moore reminded those present that part of the goal of the AHUSSC is to minimize the likelihood of resident conflict stemming from road improvements. He stated that for this reason the street improvement order should really be determined by the ranking system, the City Commission, and the City administration.

Chairman Moore also noted that the issue of curb design had arisen in the past, and is another issue the Committee should be aware can cause controversy. He said it would be worth the Committee and City staff considering how they would address the issue should it arise during the public engagement process scheduled for later in the year. Citing one example, he explained that the residents of a street near Holy Name Church had lobbied not to have a curb installed at the time of the street's improvement due to the residents' preferences.

City Manager Valentine cautioned against allowing aesthetics to determine curb design and installation since curbs primarily exist in order to facilitate drainage from the road.

Mr. Sherman referenced the street that had lobbied against curb installation near Holy Name. He stated that the City permitted them to have their street improved without a curb, but that in exchange the residents of the street had to agree to take all financial responsibility for future repairs and improvements to the road. He explained that the City only agrees to take financial responsibility for future repairs and improvements if curbs and gutters are installed.

Dr. Schafer cautioned that she did not want to create a set of guidelines that the City would ultimately not have the ability to adhere to. She said she saw such a situation arise during her work with the MMTB regarding street widths. Dr. Schafer stated that given the amount of effort, research, and expertise that has gone into the street improvement

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process the City should be prepared to follow its own guidance, once it is finalized, as often is as practically possible.

In reply to Ms. Whipple-Boyce, ACM Gunter confirmed that the Engineering Department would update the ranking list with a consideration of appropriate sidewalk criteria and would more generally amend the ranking list as necessary. She said the document would then return to the Committee for review.

Chairman Moore and Mr. Boutros agreed that would be appropriate.

In reply to Chairman Moore, ACM Gunter confirmed that the last meeting's minutes contained sufficient information regarding asphalt and concrete to update the draft document with the Committee's recommendations.

The Committee proceeded to discuss funding options.

Mr. Fenberg said the policy document needed to make it clear that it is City policy to assess updates to the water and sewer system to the City as a whole. Residents on a street that is to be improved are only assessed for the cost of improving the street.

In reply to Chairman Moore, Finance Director Gerber confirmed that the City will be replacing the pay-as-you-go option for water and sewer improvements with a hybrid between pay-as-you-go options and bonding options.

In reply to Mr. Sherman and Mr. Fenberg, City Manager Valentine confirmed that the appropriate bonding options for future projects can be planned as part of the City's process of providing five year financial forecasts.

In reply to ACM Gunter, City Manager Valentine confirmed that the City would use a pay-as-you-go program based on the availability of funding for roads, and that the bonding component would be used for the infrastructure work underneath. He explained that completing projects would be done based on the availability of monies from the general fund for the road updates and the pursuit of water and sewer bonds to supplement the below-ground infrastructure work.

Finance Director Gerber stated that special assessments have to be calculated based on the value of what a property is receiving. He said that to recalculate special assessments for road improvements based on home values or other metrics would not result in a proportional distribution of the costs.

In reply to Chairman Moore, City Manager Valentine said the draft document would have to be careful not to set the expectation that the proposed schedule for improving the roads would be a hard-and-fast one. He noted that there are so many variables outside of the City's control that the Committee should state in the draft document that it is endeavoring to complete the road improvements as quickly as possible, while acknowledging that the process will have to be responsive to external factors.

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Chairman Moore strongly agreed with City Manager Valentine's statement. Mr. Boutros agreed with City Manager Valentine as well.

Mr. Fenberg asked if there had been any consideration of extending the time for a resident to pay back their special assessment costs to beyond the current ten year term limit. He asked if terms of 12 or 15 years had been considered.

Chairman Moore explained that City documentation shows that 50% of households repay their special assessment financial obligations within the first year, and that almost all households repay their obligations within ten years. He explained that extending the payback term limits had been considered in the '90s, but it was determined that would create issues with inadequate cash flow for future City projects.

City Manager Valentine confirmed Chairman Moore's statement.

Chairman Moore noted that Mr. Fenberg's question was related to a comment that Chris Bidlake, a member of the public, had made at the Committee's January 2020 meeting. Mr. Bidlake had explained that it is beyond the means of some Birmingham households to repay their special assessment financial obligations entirely, or in the time allotted, and that the City should have ways of working with those households. Chairman Moore stated that the City has grants and other options available for households facing difficulties in repaying their financial obligations, and that the Committee must include a section in the policy document that clearly delineates what options are available to residents in such a situation.

Dr. Schafer agreed with Chairman Moore's statement that the City must be responsive to residents facing financial hardships in terms of repaying their special assessment obligations. She also noted that the consequences of the Covid-19 pandemic are unprecedented and are affecting people in terms of their health, safety, well-being and financial security. She stated that many Birmingham residents are likely either experiencing financial hardship as a result of Covid-19 or have real concerns regarding potential future financial hardships. She agreed with the Committee's and City's perspective that this project cannot be delayed any longer, and also acknowledged that it is a difficult time for the City to be commencing this project. She cautioned that the City must be very careful to show compassion and awareness of its residents' circumstances as the project begins.

In reply to a recommendation by Ms. Whipple-Boyce, City Manager Valentine said it could be worthwhile for the Building and Engineering Departments to review streets' planned construction projects annually to determine whether some of the cost of improving the streets should be passed along to builders using those roads especially heavily. He noted that in cases where residents are remodeling or building homes the costs assigned to the builders by the City for road improvements would likely just be rolled into the costs being charged to the residents.

While agreeing with City Manager Valentine's statement, Ms. Whipple-Boyce noted that developers build a number of spec houses in the City and that in those cases the charges

for road improvements would be partially borne by the developers and builders. She said that in line with Dr. Schafer's comments she was trying to think of ways to make the costs incurred by residents for road improvements a little less onerous. She recommended that the policy document could include language that calls for the Building and Engineering Departments to meet annually to discuss how upcoming development projects relate to streets that are next in the improvement queue and how that might affect how charges are assessed.

City Manager Valentine said that staff would include clear language in the policy document for explaining exactly how that process would work so as to avoid confusing residents down the line.

Chairman Moore said that perhaps staff could return to the AHUSSC with a draft of possible language for that process. He said he was also concerned that this could lead to contentious interactions between residents of different streets if one street's residents expected their street to be improved next only to find it was bumped due to a number of construction projects coming up on another street. He said that it was an important goal of the AHUSSC to lessen the opportunities for friction between residents.

Mr. Sherman said he wanted to change the subject a bit. He stated that the Engineering Department needs to set forth very clear criteria for how asphalt or concrete will be selected for improved streets, and that those metrics need to be included in the policy document. He said that debates over road improvement materials are one of the larger sources of contention between residents, and that leaving those decisions in the future to the Engineering Department will go far to alleviate those disagreements.

Chairman Moore agreed that it would be important for those criteria to be spelled out in the policy document.

In reply to Mr. Sherman, City Manager Valentine stated that this policy would only apply to street improvements occurring after the policy's adoption. He stated that any street improvements undertaken up until that point will follow the City's current procedure for street improvements.

ACM Gunter asked the Committee if they wanted to continue their discussion from the January 2020 meeting regarding whether more heavily trafficked roads in Birmingham should have costs assessed differently, given their frequent use.

Ms. Whipple-Boyce said that it would be difficult to know if a road that is more frequently used now will continue being more frequently used years down the line. She said it might not be possible to charge different roads differently based on traffic frequency, since those counts could change given any number of variables.

5) Public Engagement Strategy - Discussion

Ms. Whipple-Boyce stated that in her experience as both a member of the Planning Board and this Committee, Zoom meetings have been significantly more conducive to public

engagement and comment than the meetings the City has held at the Municipal Building. She said she has seen many more people joining the City's Planning Board meetings via Zoom than usually join in-person.

Ms. Whipple-Boyce advocated for continuing Zoom meetings for the AHUSSC at least through the Governor's currently permitted date of July 31, 2020.

6) Public Comment

In reply to David Lurie, a Lakeview resident whose home is part of a special assessment district (S.A.D.), Finance Director Gerber explained that the interest rates for an S.A.D. are set at the time of the initial assessment and are not tied to subsequent changes in the prime rate. He did not explain why residents are charged 2% over the prime rate.

Mr. Lurie replied that the 6% interest rate for the S.A.D. he is a part of is an exorbitant interest rate to be paying, and said the rate is so high that it is bound to be detrimental to some residents.

Chris Bidlake ventured that the best way to assess road improvement costs to builders would be to require that they pay a determined amount at the time of permitting into a road improvement fund run by the City. Then, when that road next needs to be repaired or improved, the City already has some funds on hand from the new or remodeled builds that have already occurred on that street.

Ms. Whipple-Boyce said that Mr. Bidlake's proposal was an excellent one, and that it might be a simple and clear way to handle her previous suggestion that some of the road improvement costs be assessed to the builders using the roads. She said that the Committee has an opportunity to come up with some new strategies for dealing with the issues that arise from road improvements, and that this strategy was certainly one worth giving further consideration. She said it is important that builders contribute to repairing streets beyond the cold patches they do to the portions of the street they cut to make the water connection.

In reply to Finance Director Gerber, Mr. Bidlake said he was not sure that the monies collected from the builders would have to exclusively benefit the parcel they built on once that road is being improved. Mr. Bidlake suggested that a road improvement fund could be used more generally across the City to ideally reduce the cost burden on home owners from 85% to 80%, which he said is more in-line with Birmingham's peer communities.

Mr. Boutros commended Mr. Bidlake for sharing his recommendations with the Committee. He said that City staff and the AHUSSC would have to figure out if there is a way to streamline the implementation of Mr. Bidlake's proposal in order to determine if it would ultimately be feasible.

Chairman Moore echoed City Manager Valentine's previous caution that the costs assessed to the builders under this proposal would really just be rolled into the costs paid by the

future buyers. He said the City would have to figure out a way to deal with that potentially inequitable allocation of charges to different residents as a result.

Ms. Whipple-Boyce said that maybe this proposed road improvement fund paid into by builders would not be part of the Committee's charge, but should be considered for implementation by the Building Department. She said that charging a fee when a project is permitted would likely be the best way to do it. She said that while having these funds available could be helpful for the City, she did not anticipate that these fees would raise enough money to lower the 85% assessment for the residents.

Mr. Sherman said that in theory Mr. Bidlake's proposal was a good one and has been explored by the City administration in the past. He said the process has always reached a terminal point when it becomes clear that the Building Department can only charge fees for specific costs incurred by the City for construction projects. He said that there has not been a way to calculate the costs the City will incur as a result of the damage that will be done to the roads.

City Manager Valentine said that it is difficult legally to assess these costs to builders since there is little way to prove the damage to the road stemmed from their construction trucks and not the school buses, delivery trucks, or other heavy vehicles that drive on the street. He said that he would raise the idea with the City's legal council to see if there are any different factors that could be considered in the case of unimproved streets.

Mr. Bidlake referenced the previous comment during the meeting that road improvement costs cannot be assessed to homes based on the value of the home because the City can only charge costs based on the value received for the improvements. Mr. Bidlake stated his perspective that when a lesser value home with more frontage is charged much more than a more expensive home with less frontage, there is no way to argue that the former owners is being charged based on the value received since the charges would be disproportionately more expensive relative to the latter case. He recommended that the City consider, instead of an 85-15 split, a 40-45-15 split where 40% of the cost assessed is determined by parcel value, 45% of the project cost is determined by frontage, and 15% of the cost is paid by the City. He said that there is a grey area between when the value received for a road improvement is divided amongst every parcel, or whether the value received is received collectively by all residents of a street. Mr. Bidlake stated that parcel calculations have been used in other communities for assessing road improvement costs.

Mr. Fenberg said that it might be best to include public comment at the end of the policy draft since the draft would then go to the City Commission and the public for review. He said that would introduce these ideas for further consideration.

Finance Director Gerber said he could do some research into any other communities that might use home value for their calculations. He said his concern would be that any calculations that use value could be described as a tax that was not approved by the residents of the community, which would be in violation of Headlee.

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Mr. Bidlake thanked the Committee for their consideration, and asked City staff and the Committee to research in earnest if there might be a way to implement some of the suggestions being discussed.

7) Next Meeting: TBD

8) Adjourn

No further business being evident, the Committee motioned to adjourn the meeting at 10:16 a.m.

Assistant City Manager Tiffany Gunter