

BIRMINGHAM CITY COMMISSION MINUTES
APRIL 24, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL: Present,	Mayor Nickita Mayor Pro Tem Harris Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff (arrived at 8:13 PM) Commissioner Sherman
Absent,	None

Administration: City Manager Valentine, City Attorney Currier, City Clerk Brown, Police Chief Clemence, City Planner Ecker, Building Official Johnson, City Engineer O'Meara, DPS Director Wood, DPS Manager Aaron Filipski, Senior Planner Matthew Baka

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

Mayor Nickita announced

- The next session of the Citizens Academy program begins April 25th. There are a few spots still available for interested residents. For more information on the program and how to register, contact Joellen Haines in the City Manager's Office at 248-530-1807.
- The spring Used Book Sale, sponsored by the Friends of Baldwin Public Library, will be held Friday, May 5th through Monday May 8th at the Library. For more information, contact Baldwin Library at 248-647-1700 or visit www.baldwinlib.org.
- The Farmer's Market begins Sunday, May 7th from 9:00 AM to 2 PM, in Municipal Parking Lot #6 on N. Old Woodward. For more information, visit www.enjoybirmingham.com.

04-104-17 APPOINTMENTS TO STORM WATER UTILITY APPEALS BOARD

Robert Lavoie and Laura Keener were present and were interviewed by the Commission.

Mr. Lavoie stated he is a resident, a licensed engineer with 40 years of experience in civil engineering, and is recently retired.

Ms. Keener explained she is a resident, a licensed engineer, and recently retired after working for more than 30 years as a civil engineer.

MOTION: Motion by Commissioner Bordman:

To appoint Laura Keener to the Storm Water Utility Appeals Board as Regular Licensed Engineer to serve a three-year term to expire January 31, 2020.

MOTION: Motion by Commissioner Boutros:
To appoint Robert Lavoie to the Storm Water Utility Appeals Board to serve a three-year term to expire January 31, 2020.

Vote on Laura Keener
VOTE: Yeas, 6
Nays, None
Absent, 1 (Hoff)

Vote on Robert Lavoie
VOTE: Yeas, 6
Nays, None
Absent, 1 (Hoff)

The City 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.

04-105-17 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Bordman – Item A (Approval of Commission Minutes)

MOTION: Motion by Mayor Pro Tem Harris, seconded by Commissioner DeWeese:
To approve the Consent Agenda, with item A removed.

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

- B. Approval of warrant list, including Automated Clearing House payments of April 12, 2017, in the amount of \$520,628.04.
- C. Approval of warrant list, including Automated Clearing House payments, of April 19, 2017, in the amount of \$557,248.92.
- D. Resolution directing the Treasurer to transfer unpaid and delinquent special assessment and invoices, including interest and penalty, to the 2017 City tax roll and authorizing removal from the list any bills paid after City Commission approval.
- E. Resolution directing the Treasurer to transfer unpaid and delinquent water/sewage bills of subject properties to the 2017 city tax roll and authorizing removal from the list any bills paid or a payment plan agreement signed after City Commission approval.
- F. Resolution approving the service agreement with Hubbell, Roth & Clark, Inc. for electrical engineering consultation services related to a generator replacement project at

the Department of Public Services facility in the amount not to exceed \$9,977 from the Auto Equipment Fund, Equipment Maintenance account #641-441.006-933.0200. Further, authorizing the Mayor and City Clerk to sign the agreement upon receipt of all required insurances.

G. Resolution approving the purchase of one (1) new Tomcat-series refuse compactor body, and one (1) 2017 Isuzu NRR chassis from Bell Equipment Company through the H-GAC extendable purchasing contract #RH08-17, not to exceed \$124,406.00 from account #641- 441.006.971.0100.

H. Resolution authorizing the IT department to purchase the Nutanix server environment from CDWG using National IPA Contract #130733, for a purchase price not to exceed \$100,989.00 from the Network Upgrade account number 636-228.000-973.0400, and further; approving the appropriation and amendment to the 2016-2017 Computer Equipment Fund and General Fund budgets as follows:

General Fund

Revenues:

Draw from Fund Balance	101-000.000-400.0000	\$35,000
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Expenditures:

Computer Equipment Rental	101-371.000-922.0000	\$35,000
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Computer Equipment Fund

Revenues:

Draw from Net Position	636-000.000-400.0000	\$54,500
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Lease Payments	636-000.000-667.0000	\$35,000
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Total Revenues

\$89,500

Expenses:

Network Upgrade	636-228.000-973.0400	\$89,500
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I. Resolution accepting Mr. James Partridge's resignation from the Building Board of Trades Appeals, thanking him for his service, and directing the Clerk to begin the process to fill the vacancy.

J. Resolution approving the Software License Agreement with Hart InterCivic, Inc. which sets forth the terms and conditions pursuant to which City of Birmingham may procure or license from Hart software for use in connection with the Verity voting system, and further authorizing the City Clerk to execute the Agreement on behalf of the City.

K. Resolution awarding the "Water Utility Customer Portal" project to AmCoBi, of Colorado Springs, CO for a total expenditure of \$53,200.00 over three (3) years, and authorizing the Mayor and City Clerk to sign the contract on behalf of the City upon receipt of all required insurances. Funds for this project are available from the Water Supply Fund, account #591-537.001-811.0000.

L. Resolution awarding the 2017 Concrete Sidewalk Repair Program, Contract #3-17(SW) to Italia Construction, Inc., in the amount of \$812,656.00, to be charged to the various accounts as detailed in the report; and further to approve the appropriations and budget amendments to the 2016-2017 budget as follows:

Local Street Fund

Revenues:

Draw from Fund Balance	203-000.000-400.0000	\$57,542
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Total Revenue Adjustments

\$57,542

Expenditures:

Contract Maintenance	203-449.003-937.0400	\$43,130
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Webster/Worth Grant	203-449.001-985.7500	\$14,412
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Total Expenditure Adjustments

\$57,542

Water Fund

Revenues:		
Draw from net position	591-000.000-400.0000	\$35,000
Total Revenue Adjustments		\$35,000
Expenditures:		
Other Contractual Services	591-537.005-811.0000	\$35,000
Total Expenditure Adjustments		\$35,000

- M. Resolution setting Monday, May 22, 2017 at 7:30 PM for a Public Hearing to consider approval of the Final Site Plan and Special Land Use Permit Amendment for The Townsend Hotel at 100 Townsend Street to allow the addition of a new limited partner to THC Investors Limited Partnership, DBA The Townsend Hotel.

The Commission agreed to discuss the removed items at this time.

04-106-17 APPROVAL OF CITY COMMISSION MINUTES OF APRIL 13, 2017

Commissioner Bordman asked that her comments on Page 4 regarding the purchase of larvacide include, "to eliminate the ability of mosquitos to lay eggs or for the eggs to hatch", corrected the spelling of Temple Beth El on Page 8, and corrected the spelling of her name on Page 13.

Commissioner DeWeese explained he would abstain from the vote because he was absent from the meeting of April 13, 2017.

MOTION: Motion by Commissioner Bordman, second by Commissioner Boutros:
To approve the City Commission minutes of April 13, 2017 as corrected.

VOTE: Yeas, 5
 Nays, None
 Absent, 1 (Hoff)
 Abstain, 1 (DeWeese)

V. UNFINISHED BUSINESS

None

VI. NEW BUSINESS

04-107-17 SPECIAL EVENT – YOGA IN THE PARK

Don Peasley, member of the Board of Directors of the Michigan Chapter of the Huntington's Disease Society of America summarized the organization's application for the event. Mr. Peasley noted the addition of Henry Ford Health as a partner, and explained Henry Ford will be supplying a van or table for medical equipment in order provide medical assistance if needed.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To approve a request submitted by the Michigan Chapter of the Huntington's Disease Society of America requesting permission to hold Yoga in the Park, on Saturday, June 17, 2017, 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.

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

04-108-17 SLUP AMENDMENT AND FINAL SITE PLAN REVIEW AT 280 E. LINCOLN – GRACE BAPTIST CHURCH

Mayor Nickita opened the public hearing at 7:45 PM.

Senior Planner Matt Baka presented the request from Grace Baptist Church for a Special Land Use Permit amendment and Final Site Plan to allow installation of an illuminated ground sign, noting:

- On March 8, 2017, the Planning Board conducted a public hearing to discuss a request by the applicant to amend their existing Special Land Use Permit to install a new illuminated ground sign in the front open space of the Church.
- Grace Baptist Church was granted a Special Land Use Permit on June 15, 1987, which was amended in 2009 to include a surface parking lot.
- The Planning Board reviewed the proposed sign and voted to recommend approval with the following conditions:
 1. The overall size of the sign is 4 ft. x 5 ft., creating 20 sq. ft.;
 2. The faux brick base of the sign at 1 ft. 6 in. above grade will be changed to true brick with the material to be administratively approved.

Commissioner DeWeese commented the requirement for real brick is consistent with decisions on similar projects.

Mayor Nickita closed the public hearing at 7:47 PM.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Boutros: To approve a Special Land Use Permit Amendment and Final Site Plan Review for 280 E. Lincoln, Grace Baptist Church to allow for the installation of an illuminated ground sign.

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

**PUBLIC HEARINGS TO CONSIDER THE BISTRO APPLICATIONS FOR 2017:
04-109-17 PUBLIC HEARING - FINAL SITE PLAN AND SPECIAL LAND USE PERMIT FOR 2159 E. LINCOLN - LINCOLN YARD BISTRO**

Mayor Nickita opened the public hearing at 7:48 PM.

City Planner Ecker announced Lincoln Yard Bistro has withdrawn their application.

Curt Catallo, Owner/President of Union Joints, explained Union Joints has decided the scope of their vision for Lincoln Yard exceeds the parameters and specific purpose of a bistro license. The venue, based on the size of investment necessary to turn it into a viable restaurant true to the vision of the Union Joint family, is better suited for a Class C liquor license. Mr. Catallo expressed continued interest in bringing the project to Birmingham.

The owner of Emerald Spirits expressed support for a restaurant at the subject location.

Mayor Nickita closed the public hearing at 7:57 PM.

04-110-17

PUBLIC HEARING - FINAL SITE PLAN AND SPECIAL LAND USE PERMIT FOR 325 S. OLD WOODWARD - ADACHI BISTRO

Mayor Nickita opened the public hearing at 7:57 PM.

Senior Planner Baka presented the request from Adachi Restaurant Group, LLC for a Special Land Use Permit and Final Site Plan to allow the operation of a new bistro on a 0.3 acre site located at 325 S. Old Woodward, also known as the Ford-Peabody Mansion, a designated historic structure within the City of Birmingham, noting the following:

- The parcel is zoned B2;
- The applicant is seeking approval of a Bistro License under Chapter 10, Alcoholic Liquors, of the City Code which requires that the applicant obtain a Special Land Use Permit and approval from the City Commission to operate an establishment with a Bistro License within the City of Birmingham; and
- The applicant is proposing to convert the first floor of the Ford-Peabody Mansion into a bistro which will serve customers and provide indoor and outdoor seating.

Senior Planner Baka reported the applicant obtained the required recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit on February 22, 2017 by unanimous vote with the following conditions:

1. The applicant provide a trash receptacle within the outdoor dining area as required by the Zoning Ordinance;
2. The applicant must provide specifications on the materials for the new staircases and doors;
3. The applicant must provide wooden gates on the dumpster enclosure or obtain a variance from the Board of Zoning Appeals;
4. The applicant submit details of outdoor lighting for the bistro for review and approval by the Planning Staff;
5. The applicant provide sidewalk lighting (two standard lamps in accordance with the current Downtown design) plus an appropriate bike rack on the adjacent plaza, for review and approval by Planning Staff;
6. The applicant is required to obtain a variance from the BZA in lieu of providing the required 70% glazing;
7. The applicant will be required to have the final sign design administratively approved by the Planning Department; and
8. The applicant complies with the requests of all City Departments.

Senior Planner Baka stated on April 18th, 2017, the Board of Zoning Appeals granted the applicant's request for a variance in lieu of providing the required 70% glazing.

Senior Planner Baka reported the property is a designated historic structure, requiring the applicant to obtain approval from the Historic District Commission for any changes to the exterior of the building. He noted the Historic District Commission, on February 15, 2017, voted to approve the proposal with the following condition;

1. The northern metal will be powder coated zinc color and that the new doors will be zinc color as well.

Commissioner Bordman questioned the proposal to convert the front porch windows to doors. Senior Planner Baka explained pictorial evidence shows the windows were not original to the house and that the front porch was changed at an undisclosed point in time.

Senior Planner Baka, in response to a question from Commissioner Hoff, explained the second story of the structure will not be used as part of the restaurant, but will be utilized by separate tenants with separate leases. Mr. Chris Longe, the architect, explained the elevator servicing the upper floor is located in a rear office area which has no access into restaurant.

Mr. Longe spoke about plans to activate the front yard green space for outdoor bistro seating and the opportunity a bistro in the proposed location offers for attracting patronage south of the central business district. Mr. Longe noted the total restaurant will comprise 2600 square feet of space, with 1600 square feet dedicated to the seating areas for 65 people. He clarified for Commissioner Hoff that the five-top table shown on the porch in the plan drawing is included in the total of 70 outdoor seats, and confirmed the porch will not be enclosed.

Kenny Koza, owner, indicated that in the first year of operation the bistro would be open only for dinner and weekend brunch, and that in year two consideration will be given to opening for lunch. Mr. Koza stated he hopes to open by the end of year, and confirmed the chef is a partner in the venture. He verified the fire pit has been eliminated from the plans.

Mayor Nickita closed the public hearing at 8:28 PM

Commissioner DeWeese received confirmation that a motion by the Commission to award a bistro license would automatically include the conditions imposed by the Planning Board and the Historic District Commission.

04-111-17 RESOLUTION AWARDING BISTRO LICENSE FOR 2017

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Harris:
To award a Bistro License to Adachi Bistro for 2017, and to approve the Special Land Use Permit and Contract, subject to any necessary contracts being executed by the Applicant and City.

Mayor Nickita clarified the SLUP limits operation of the outdoor dining areas to April 1st – November 15th.

VOTE: Yeas, 7
 Nays, None
 Absent, None

04-112-17 PUBLIC HEARING - FINAL SITE PLAN AND SPECIAL LAND USE PERMIT FOR 2100 E. MAPLE - WHOLE FOODS BISTRO

Mayor Nickita opened the public hearing at 8:33 PM.

City Planner Ecker presented the request from Whole Foods for a Special Land Use Permit and Final Site Plan to allow the operation of a new bistro on a 4.95 acre site located at 2100 E. Maple Rd, noting:

- The parcel is zoned B2;
- The applicant is seeking approval of a Bistro License under Chapter 10, Alcoholic Liquors, of the City Code, requiring the applicant to obtain a Special Land Use Permit

and approval from the City Commission to operate an establishment with a Bistro License within the City of Birmingham; and

- As part of the previously approved grocery store, the applicant is now proposing a small bistro which will serve customers and provide indoor and outdoor seating and will be located in the northeast portion of the building.

City Planner Ecker reported the applicant obtained the required recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit on February 22, 2017 by unanimous vote with the following conditions:

1. The applicant will be required to enter into a contract with the City outlining the nature of the bistro operation;
2. The applicant must comply with the requirements of City departments; and
3. The applicant must provide appropriate restroom facilities, such plan to be submitted to Planning Department staff and approved.

In the course of discussion City Planner Ecker clarified:

- The hours of operation of the bistro will be 8:00 AM-10:00 PM daily;
- Applicant proposes 237 parking spaces, which is in excess of the 162 required;
- Outdoor dining will be on a raised patio area with 33 seats at 11 tables;
- No part of the operation will be on public property; and
- Applicant is not proposing any exterior changes or additional exterior signage for the bistro.

In response to questions from Commissioner Hoff, City Planner Ecker noted there is a wall alongside the bistro at the exterior entrance into store and a partial wall along one side. The bistro includes one long table with communal seating for ten, and table service is proposed.

Commissioner Boutros received clarification that the outside seasonal tables facing Maple are enclosed by a railing, and that the landscape plan calls for 11 street trees and landscaping along the front of the building.

Mr. Scott Salsbury, Executive Director of Store Development, and Michael Bashaw, Midwest Regional President, made a PowerPoint presentation showing the evolution of the bistro plan from its inception in May, 2015 to the current plan which has been recommended for approval by the Planning Board.

Mr. Bashaw explained the bistro will have typical table service in the evenings, but during the day customers will order from the bar and food will be delivered to the tables by bar staff. Food may be purchased in other parts of the store and brought into the bistro, but signs and store security will be used to confine alcohol within the bistro. The bistro will close at the same time as the store, and there are currently no Whole Foods stores that remain open past 10:00 PM.

Mr. Bashaw stated Whole Foods doesn't own the building but has a 20-year lease with two 10-year options.

Responding to a question from Commissioner Bordman, Mr. Bashaw stated that to his knowledge the report in *Financial Times* that Albertson's is interested in purchasing Whole Foods is speculative, that he is unaware of discussions between Whole Foods and Albertson's holding company, and that there is no current interest in selling Whole Foods.

Norm LePage, Big Rock Chophouse, expressed support for the Lincoln Yard proposal and for Whole Foods Bistro. He suggested the Commission readdress the zoning requirements for bistros, noting the original template has evolved to a model that may allow for enclosed patios operating year round. Mayor Nickita indicated the situation is being reviewed.

Mayor Nickita closed the public hearing at 9:02.

04-113-17 RESOLUTION AWARDING BISTRO LICENSE FOR 2017

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To award a Bistro License to Whole Foods Bistro for 2017, and to approve the Special Land Use Permit and Contract, subject to any necessary contracts being executed by the Applicant and City.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**04-114-17 OLD WOODWARD AVE. PAVING PROJECT, CONTRACT #2- 17(P)
 – REJECT BIDS**

City Engineer O'Meara summarized the proposed paving project with a PowerPoint presentation highlighting the following points:

Phase I

- Why is project necessary?
 - To address old streetscape and bring into compliance.
 - Addressing ADA issues
 - Removing existing brick sidewalk liability issues
 - Removing the double curb condition
 - To upgrade water & sewer systems
 - To upgrade 40 year old streetlights with new LED
 - To replace 85 year old road substructure
- Plans were finalized and bid in early Spring in accordance with the project plan.
- Bids received have exceeded budgeted allocations.

Project Estimates

- FY 2013-14 - Initial budget created at \$1,580,000 for streets, sewer & water (traffic signal not included)
- FY 2014-15 - Budget adjusted to \$1,980,000 for market trends.
- FY 2016-17 - Budget adjusted to \$3,282,000 for market trends and inclusion of sidewalks.
- January 2017- Engineer's estimate at \$4.5 million - \$5.4 million based on options.

Bid Responses

Company Name	Option A1	Option A2	Option B
Pamar Enterprises	\$6,874,163.80	\$7,223,926.30	\$8,996,933.80
FDM Construction	\$7,984,376.00	\$8,101,676.00	\$9,536,611.00

Staff Recommendations:

- To reject bids and postpone the project until Spring, 2018.

- To refine project alternates prior to rebidding for a less complicated package and direct staff to rebid the project in late 2017.

Project Postponement

- Existing infrastructure can accommodate the postponement.
- Allows merchants more time to plan.
- May have better participation from construction companies.

Commissioner Hoff encouraged Mr. O'Meara to seek state and/or Federal funding for the project. City Engineer O'Meara reported he has applied each year and, based on criteria and competition, Birmingham is less likely to be awarded a grant now than ten years ago.

Commissioner Bordman asked how urgent it is to address the aging piping under the Old Woodward road bed, some of which is more than 85 years old. City Engineer O'Meara explained the pipes are working, are not breaking, and are, therefore, not an imminent concern.

City Engineer O'Meara explained the project would be rebid in October or November. City Manager Valentine indicated discussions would be initiated with the Commission to create a more specific scope of work for the bid. Staff and Commissioners were optimistic that conditions in Fall 2017 would result in more bids being submitted and better economic options for the City.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Hoff:
To reject all bids for the Old Woodward Ave. Paving Project, Contract #2- 17(P) and direct staff to rebid the project in the Fall of 2017.

VOTE: Yeas, 7
 Nays, None
 Absent, None

City Manager Valentine stated he will be holding a meeting with affected merchants on Thursday morning to discuss the postponement of the project.

Commissioner DeWeese asked that the Celebrate Birmingham Hometown Parade route and any other events that were restricted due to possible construction be brought back to the Commission for revision.

04-115-17 CLOSED SESSION – ATTORNEY/CLIENT PRIVILEGE

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To meet in closed session to discuss an attorney/client privileged communication in accordance with Section 8(h) of the Open Meetings Act.

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

Mayor Nickita announced no action would be taken following the closed session.

VII. REMOVED FROM CONSENT AGENDA

The items removed were discussed earlier in the meeting.

VIII. COMMUNICATIONS

None.

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

None.

X. REPORTS

04-116-17 COMMISSIONER COMMENTS

Commissioner Bordman, referencing a recent dog mauling incident on the trail at Linden Park, requested additional enforcement of the City's leash law, specifically officers patrolling the trail once a day by foot and ticketing owners of unleashed dogs. City Manager Valentine outlined measures being taken, including additional community wide education on the leash ordinance and additional signage on the trails. He reported prosecution is pending in the recent incident. Commissioner Hoff commended City Manager Valentine for addressing the situation immediately, stated the need to get information in the newspapers, and supported Commissioner Bordman's position on enforcement. Mayor Nickita agreed unleashed dogs are a problem and encouraged the public to contact the police about unleashed dogs.

Mayor Pro Tem Harris, noting uncomfortable situations when walking past a residence and encountering a dog charging across the lawn without being sure the residence has an electric fence, asked if there is consideration for an ordinance requiring signage to alert pedestrians to the presence of an electric fence.

Commissioner Sherman commented that owners who let a dog off leash risk having their pet put down if there is an incident.

04-117-17 CITY STAFF REPORTS - GREAT LAKES WATER AUTHORITY SEWER RATES UPDATE

City Manager Valentine explained the report was submitted to the Commission as part of the City's monitoring of ongoing discussions with regard to significant changes being proposed, especially for the Evergreen/Farmington system. He reported the GLWA has not yet adopted changes.

The City Commission adjourned to closed session at 9:30 PM.

XI. ADJOURN

The regular meeting was adjourned at 9:48 PM.

J. Cherilynn Brown
City Clerk