

BIRMINGHAM CITY COMMISSION MINUTES
JULY 23, 2018
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Andrew M. Harris, Mayor

II. ROLL CALL

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

Administration: City Manager Valentine, City Attorney Currier, IT Manager Brunk, Chief of Police Clemence, Planning Director Ecker, Deputy Treasurer Klobucar, City Engineer O'Meara, Executive BSD Director Tighe

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

07-204-18 ANNOUNCEMENTS

- The In The Park Concerts series continues on Wednesday, July 25th at 7:00 p.m. with The Invasion, playing Beatles hits.
- The Baldwin Public Library welcomes Brian Peterson of "Bees in the D" to discuss the practice and benefits of honey beekeeping. The event is on Tuesday, July 24 at 7:00 p.m.

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.

07-205-18 APPROVAL OF CONSENT AGENDA

No items were removed from the Consent Agenda.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Boutros:
To approve the Consent Agenda as submitted.

ROLL CALL VOTE: Yeas, Mayor Pro Tem Bordman

Commissioner Boutros
Commissioner DeWeese
Mayor Harris
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman

Nays, None
Absent, None

- A. Resolution approving the City Commission meeting minutes of July 9, 2018.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated July 11, 2018 in the amount of \$235,324.60.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated July 18, 2018 in the amount of \$3,365,412.05.
- D. Resolution authorizing the City Manager to cast a vote, on the City's behalf, for the three incumbent members of the Michigan Municipal League Workers' Compensation Fund Board of Trustees for four year terms, beginning October 1, 2018.
- E. Resolution approving a request from the Piety Hill Chapter, National Society Daughters of the American Revolution to hold the Veteran's Day Wreath Laying Ceremony on November 11, 2018 at 11:00 a.m. pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- F. Resolution approving a request from the Birmingham Shopping District to revise the Day on the Town event in downtown Birmingham, to be held August 11, 2018, and to expand the footprint of the event to the total area depicted on Revised Diagram A. Approval is 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 awarding the Warwick Rd. Storm Sewer Tap, Contract #10-18(S) to Main Street Construction, Inc., in the amount of \$26,250.00, to be charged to the Sewer Fund, account number 591-536.001-981.0100, contingent upon execution of the agreement and meeting all insurance requirements. Further, approving an amendment to the 2018-19 fiscal year budget.
- H. Resolution authorizing the IT department to purchase the G-Suite licenses from Newmind Group Inc. the cost not to exceed \$11,500.00 using available funds from the Computer Maintenance fund 636-228.000-993.0600.

V. UNFINISHED BUSINESS

None.

VI. NEW BUSINESS

07-206-18 PUBLIC HEARING TO CONSIDER THE SPECIAL LAND USE PERMIT AMENDMENT AND FINAL SITE PLAN REVIEW – 260 N. OLD WOODWARD – THE MORRIE

Mayor Harris opened the public hearing at 7:33 p.m.

Planning Director Ecker presented her memo written to City Manager Valentine dated July 11, 2018 regarding The Morrie.

Planning Director Ecker confirmed:

- The Morrie reduced the size of their sign to adhere to the sign ordinance.
- Any residence within 300 feet of The Morrie was noticed as to this public hearing, as required by State Law.

Keith Scofield, representative for The Morrie, stated the music and dancing would end at 1:30 a.m. on Friday and Saturday.

Mayor Harris closed the public hearing at 7:38 p.m.

MOTION: Motion by Commissioner Boutros, seconded by Mayor Pro Tem Bordman:
To approve the Special Land Use Permit Amendment & Final Site Plan Review for 260 N. Old Woodward – The Morrie, to allow the operation of a restaurant, serving alcoholic liquors, and providing live entertainment with a dancing area. *(Formal resolution appended to these minutes as Attachment A)*

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

07-207-18 PUBLIC HEARING TO CONSIDER THE SPECIAL LAND USE PERMIT AMENDMENT AND FINAL SITE PLAN REVIEW – 33588 WOODWARD – SHELL

Mayor Harris reported the applicant wished to withdraw from consideration. No further action was taken.

07-208-18 PUBLIC HEARING TO CONSIDER THE 2018 LOCAL STREETS PAVING SPECIAL ASSESSMENT DISTRICT CONFIRMATION

Mayor Harris opened the public hearing at 7:39 p.m.

Deputy Treasurer Klobucar presented the memo dated July 13, 2018 addressed to City Manager Valentine regarding special assessment district (S.A.D.) # 883.

Deputy Treasurer Klobucar noted that the first line of the suggested resolution should be updated to read “To confirm Special Assessment Roll # 883 to defray the cost of installing of sewer and water laterals within the 2018 Local Streets Paving Project.”

There being no further comments, Mayor Harris closed the public hearing at 7:40 p.m.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To confirm Special Assessment Roll # 883 to defray the cost of installing of sewer and water laterals within the 2018 Local Streets Paving Project. *(Formal resolution appended to these minutes as Attachment B)*

VOTE: Yeas, 7

Nays, 0
Absent, 0

07-209-18 AUTHORIZING THE CONTINUATION OF THE ROOF-TOP VALET ASSIST AND RETAIN THE 3-HOUR MAXIMUM PARKING SIGNAGE

City Manager Valentine reviewed the reasons for recommending a six-month continuation of the roof-top valet assist and the 3-hour maximum parking signage.

City Manager Valentine confirmed that:

- The reallocation of monies to this project will not impede the maintenance schedule for the parking structure.
- The amount of money needed in the enterprise fund is determined by the plans for the parking system. If Birmingham builds another parking structure, the fund would be short, requiring a special assessment and potentially a bond. If Birmingham were not to build another parking structure, then the fund would have more money than necessary to operate the current system. Birmingham has been operating with an eye towards establishing additional reserves in order to expand the capacity of the parking system.
- Monthly parking permit holders are usually parked by the time the roof-top valet assist begins, since that runs from 10 a.m. to 2 p.m.

Commissioner Hoff:

- Expressed approval of the program;
- Recommended that the program be observed carefully as more drivers return to Birmingham once the construction is concluded because the results may change; and,
- Requested that attention be paid as to whether monthly parking permit holders are using the roof-top valet assist.

Commissioner DeWeese noted that once S. Old Woodward re-opens, there will also be more street parking available which is why this six-month evaluation period will be useful.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese: To authorize the continuation of the program requiring that monthly permit holders utilize the roof-top valet assist option and retain the 3 Hour Maximum parking signage in all garages as an on-going program at a cost of \$3,112 per month.

VOTE: Yeas, 7
Nays, 0
Absent, 0

07-210-18 AUTHORIZING THE CONTINUATION OF THE ON-STREET VALET PROGRAM FOR A TRIAL PERIOD

City Manager Valentine:

- Reviewed the proposed changes to the on-street valet program, which would continue for a six-month period in order to allow for further evaluation.
- Stated that, to his knowledge, there have been no damage claims, theft reports or other complaints regarding the valet program.
- Confirmed that the valet company receives the payment from the individuals using the system, and Birmingham subsidizes the rest of the cost as set forth in the agreement.

- Confirmed that two on-street parking spaces are used for the valet service on Hamilton, and two or three on-street parking spaces are used south of Merrill. The program focuses on the downtown areas in Birmingham with the highest projected utilization of valet services.

Commissioner DeWeese suggested that one of the benefits may be decongestion of the streets since fewer cars will be looking for parking. He continued that this is an experiment, that the valet service is taking a financial risk, and with these considerations, the program can always be revised in the future.

Assistant City Manager Gunter noted that post-construction the valet service will be better able to utilize the other garages.

City Manager Valentine reiterated that the proposed on-street valet stand locations were recommended by the valet service, which is very familiar with the utilization and traffic patterns in Birmingham. Since this is a trial, the locations can be shifted if necessary at a later date, but these are projected to be the most viable options at this time.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese:
To approve the recommendation of the Advisory Parking Committee to accept the service proposal received from In-House Valet to continue the on-street valet program for a six month trial period post construction for a total cost of \$36,000 with a \$10,000 contribution from the Birmingham Shopping District and the remaining \$26,000 to be drawn from the Parking Fund 585-538.001-811.0000 to support two (2) valet stands in downtown Birmingham and evaluate the success of the program at the end of the six month period to consider establishing on street valet as a permanent program.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

07-211-18 APPROVING THE RESIDENTIAL STREET WIDTH STANDARDS AS RECOMMENDED BY MULTI-MODAL TRANSPORTATION BOARD

Planning Director Ecker reviewed the July 13, 2018 memo outlining the topic.

Commissioner Nickita recommended:

- That the graphic in the Residential Street Width Standards (Standards) be updated to indicate a range of 24' - 28'.
- That the criteria considered under 'Intent' should be presented as measurable, objective directives in #4. Commissioner Nickita proposed #4 could include "consider neighborhood context and character in identifying adjacent street and infrastructure conditions as it affects the proposed dimension," or something to that effect.
- Addressing public noticing as done in #3, and eliminating the restatement in #4.

Planning Director Ecker suggested enforcement will be more challenging without explicit parameters.

Commissioner Nickita replied that the decision is one that weighs all the relevant factors, and that the other factors would help determine the correct decision.

Commissioner Sherman said that:

- While he understood Commissioner Nickita's points, this plan addresses the Commission's previous directives.
- Measurable criteria will be the best way to determine how the City should proceed when considering a street width change because 'context and character' is amorphous.

Commissioner Hoff noted that the first line of #4 is that "any modification must be consistent with the Intent of these standards", which ties the Intent into the consideration. She continued that to state it again in #4 would be redundant.

Commissioner DeWeese said:

- The lead chart font should be made at least 50% bigger.
- The document is good enough to adopt, and can be adjusted at a later time should the Commission find it necessary to do so.

Planning Director Ecker explained all the numbers in the Standards were derived through extensive discussion and research with the City's traffic consultants, MKSK and Fleis & Vandenberg (F&V), which included research on other communities' standards, consultation with the Birmingham Fire and Police Departments, and other factors.

Mayor Pro Tem Bordman said the evidentiary data used to determine the numbers in the Standards should be provided.

City Engineer O'Meara said that these recommendations are in-line with the work MKSK and F&V have done in previous communities.

Mayor Pro Tem Bordman said this policy should be acknowledged as advice and opinion, and not as based on evidence.

Planning Director Ecker said that MKSK and F&V's national research revealed no norms for residential street-width standards, meaning it is difficult to provide evidence beyond what has worked for other communities.

City Engineer O'Meara said that #4 could have an additional bullet-point noting that if a street is potentially marked for Birmingham's bike route in the Master Plan, it should be considered as a factor potentially affecting street-width.

Mayor Pro Tem Bordman suggested that heavy bike traffic should be a factor whether or not the street is marked out for Birmingham's bike route.

Planning Director Ecker said 'heavy bike traffic' may be difficult to quantify. She suggested the issue may be sufficiently addressed in the 'Intent', but could be added if desired.

Mayor Pro Tem Bordman suggested that 'heavy bike traffic' could be determined by the frequency of cyclists travelling a road over a chosen rate of time.

City Engineer O'Meara said the City could do a count on a Birmingham street with high cyclist volume to determine a standard number.

Mayor Harris concurred with Commissioner Nickita that the 'Intent' should be incorporated into #4. The Mayor continued that:

- The difference between #1B and #4G could be clarified.
- The Multi-Modal Transportation Board (MMTB) should consider whether resident preference could occasionally override other aspects of the policy, because the Mayor wants there to be the possibility to allow that in certain circumstances.

Commissioner DeWeese pointed out that cyclists can occupy the main part of the road when travelling down streets, just like a vehicle, so factoring in bike lanes would be superfluous.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese: To approve the Residential Street Width Standards as recommended by the Multi-Modal Transportation Board on May 3, 2018, and as further refined and recommended on July 12, 2018.

Commissioner Nickita said the Standards are much improved but still lack some key information, without which he will not be voting in support at this time.

Mayor Harris concurred with Commissioner Nickita, adding that he failed to see why the Standards needed to be adopted now as opposed to after a few more changes.

Commissioner Sherman stated that this is policy and not ordinance, meaning it does not have the effect of law.

VOTE: Yeas, 4
 Nays, 3 (Bordman, Harris, Nickita)
 Absent, 0

07-212-18 APPROVING THE BIRMINGHAM CITY COMMISSION 2019 MEETING SCHEDULE

City Manager Valentine presented the proposed schedule, noting that Commissioner DeWeese had a conflict with the budget meeting being on May 4, 2019. As a result, City Manager Valentine suggested shifting the budget meeting to May 11, 2019. The Commission concurred.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Bordman: To approve the Birmingham City Commission 2019 Meeting Schedule as amended to schedule the budget hearing on May 11.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

07-213-18 CLOSED SESSION

MOTION: Motion by Commissioner Nickita, seconded by Commissioner DeWeese:
To meet in closed session pursuant to Section 8(h) 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. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)

ROLL CALL: Yeas , Mayor Harris
 Mayor Pro Tem Bordman
 Commissioner Boutros
 Commissioner DeWeese
 Commissioner Hoff
 Commissioner Nickita
 Commissioner Sherman

 Nays, none
 Absent, none

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

A. Communication from Ara Darakjian – TIR Equities

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

Mr. Darakjian read a statement strongly reiterating TIR Equities’ bid to build the N. Old Woodward/Bates Street parking structure for the City.

X. REPORTS

07-214-18 COMMISSIONER COMMENTS

Commissioner Hoff reported a glowing citizen commendation of the Fire Department.

Commissioner Nickita brought up a concern previously shared by Mayor Pro Tem Bordman regarding a garage-fronted house being built on Vinewood. Garage-fronted houses are against City ordinance, but this one had been grandfathered in as a garage-fronted house predating the passing of the ordinance. Commissioner Nickita reported that upon walking by the house, it became clear that almost all of the construction was brand-new. He suggested the City consider requiring a portion of grandfathered buildings be maintained in order to prevent largely new buildings, which would otherwise violate ordinances, from being built in Birmingham via a technicality.

City Manager Valentine replied that, while Commissioner Nickita’s proposal is possible, this particular construction project appeared before the Board of Zoning Appeals and was granted a variance for the construction.

Commissioner Nickita suggested the Planning Board or city staff could look further into the issue.

Mayor Harris said he would like to see the City look at residential non-conforming uses.

The Commission concurred, and City Manager Valentine said he would return to the Commission with recommendations.

Mayor Harris adjourned the meeting to closed session at 8:54 p.m., noting that no action would be taken at the conclusion of the closed session.

XI. ADJOURN

Mayor Harris reconvened the regular meeting at 9:30 p.m.

The regular meeting was adjourned at 9:38 p.m.

J. Cherilynn Mynsberge, City Clerk

RESOLUTION 07-206-18

**THE MORRIE
260 N. OLD WOODWARD
SPECIAL LAND USE PERMIT AMMENDMENT 2018**

WHEREAS, The Morrie was approved by the City Commission on May 14, 2018 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 Amendment is sought is located on the east side of N. Old Woodward, north of Hamilton Row;

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 Amendment and Final Site Plan to add a dancing area to the previously approved new restaurant, The Morrie;

WHEREAS, The Planning Board on June 27, 2018 reviewed the application for a Special Land Use Permit Amendment and Final Site Plan Review and recommended approval of The Morrie with a dancing area with the condition that the applicant comply with Chapter 50, Noise, Division 4;

WHEREAS, The Birmingham City Commission has reviewed The Morrie's Special Land Use Permit Amendment 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 The Morrie's application for a Special Land Use Permit Amendment and Final Site Plan at 260 N. Old Woodward 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 Amendment is granted subject to the following conditions:

1. The Morrie shall comply with Chapter 50, Noise, Division 4;
2. The Morrie shall be permitted to provide entertainment in accordance with their entertainment permit issued by the MLCC;
2. The Morrie shall abide by all provisions of the Birmingham City Code; and
3. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest including, but not limited to, violations of the state law or Birmingham City Code.

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, The Morrie 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 The Morrie 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 The Morrie is recommended for the operation of a food and drink establishment serving alcoholic beverages on premises with a Class C Liquor License, at 260 N. Old Woodward, Birmingham, Michigan, 48009, above all others, pursuant to Chapter 10, Alcoholic Liquors, of the Birmingham City Code, subject to final inspection.

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on July 23, 2018.

J. Cherilynn Mynsberge, City Clerk

RESOLUTION 07-208-18

**SPECIAL ASSESSMENT ROLL NO. 883
2018 WATER AND SEWER LATERALS**

To confirm Special Assessment Roll # 883 to defray the cost of installing of sewer and water laterals within the 2018 Local Streets Paving Project;

WHEREAS, Special Assessment Roll, designated Roll No. 883, has been heretofore prepared 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 07-196-18 provided it would meet this 23rd day of July 2018 for the sole purpose of reviewing the assessment roll, and

WHEREAS, at said hearing held this July 23, 2018, 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. 883 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 six percent (6.00%) on all unpaid installments.

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on July 23, 2018.

J. Cherilynn Mynsberge, City Clerk