

BIRMINGHAM CITY COMMISSION MINUTES
APRIL 15, 2019
WORKSHOP
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, Assistant City Manager Gunter, Police Chief Clemence,
City Clerk Mynsberge

Also Present: Joe Fazio, Attorney with Miller Canfield

III. DISCUSSION

04-096-19

**N. OLD WOODWARD PARKING STRUCTURE AND BATES STREET
EXTENSION PROJECT**

1. Proposed Development Agreement Review

Mayor Bordman announced the purpose of tonight's meeting is for the Commission to review the provisions of the proposed development agreement. She stated the Commission will not be making any decisions at this meeting.

City's counsel, Mr. Fazio of Miller Canfield introduced the components. He explained:

- Within the contingency agreement each party has the right to have a condition that must be satisfied before it elects to proceed. Alternatively, either party has the right to decide that a condition need not be satisfied. The City's conditions within the contingency agreement would be required or waived by Commission decision.
- In response to Mayor Bordman's request, he would add the definition of City indemnified parties to the Definitions section of the agreement.
- The cost reimbursement agreement was approved and signed by the City in February 2019. It has not been amended, and any proposed amendment would be voted on by the Commission. The current draft of the cost reimbursement agreement limits the City to pay for costs up to \$500,000. The completion of the design development drawings will require the Commission's approval, and would be part of the cost reimbursement agreement.

Commissioner DeWeese said:

- The parameters of Sites Four and Five should be set, after appropriate public discussion, before the ground leases are issued. Without this process the City could technically sign the ground leases, have the vote for the bond denied, and end up with Sites Four and Five built without the parking structure.
- Scheduling the vote on the bond for August 6, 2019, when the date for the public component of the predevelopment period is August 2, 2019 gives City stakeholders very little time to review the information. It would be best if the predevelopment information could be provided earlier if the election must be held in August 2019 in order to give all concerned parties time to review the information. Without adequate time for everyone to review the information, the likelihood of the vote's failure is increased.

Mr. Fazio continued:

- The ground leases will not be signed until approved by the City Commission. The terms of the ground leases will provide the developer with clarity in terms of its costs. The City and the developer will reach a point where they have template documents generally acceptable to both sides. If the developer does not satisfy the articulated conditions of the ground leases, the ground leases will terminate.
- While the development team is sensitive to the scheduling of this process, the notices that are required for the election and the notices that are required for the adoption of the bonds influenced the dates tentatively chosen. Mr. Fazio told Commissioner DeWeese that his point was well taken, however, and that the Commissioner's feedback about timing would be integrated.

City Manager Valentine reported:

- Since March 26, 2019, the City and the development team have had a series of meetings with stakeholders adjacent to the site to gather comments on the proposed development.
- The properties concerned include Brookside Terrace, 114 Willits Street and its residents, First Baptist Church and the school located within the Church, and residential properties on Warren Court and Bonnie Briar.
- From these meetings requests to revisit the size and scale of the development emerged. Sites Four and Five tended to be of particular concern. In response, the City and the development team are working to reduce the scale and density of both sites. As a result there may be a delay in presenting the City with the ground leases while the City and the development team work to accommodate representatives of adjacent properties.
- Commercial properties in the Parking Assessment District will be assessed only for the net gain in parking spaces being created by this project.

Mayor Bordman said that to obtain a public benefit, the developer should be contributing substantially to the public plaza and bridge to Booth Park.

Mr. Fazio told Mayor Bordman that the preliminary negotiations have made that point clear. Those terms will not be fully articulated until there is a budget for the design.

Commissioner DeWeese said he would like 'waiver date' included in the Definition section.

Mr. Fazio continued:

- 'Waiver date' is defined within the document and will also be moved to the Definition section.
- A ground lease should be seen as a sale contract, granting possession and control to the developer to construct improvements on the relevant property. The ground lease forms have contingencies in them that accommodate both the developer and the City.
- In order to move forward with implementing the design and scope of the project, the developer will need site plan approval.
- The ground leases for Sites Four and Five could be negotiated but not signed until the developer is ready to start construction on those sites. The contingency agreement would address the economic terms that will be part of the ground lease consideration as well.
- Changing the site plan review process will require significant changes to the development agreement document because the assumption was that the site plan approval would occur for all aspects of the project at once.
- If the bond vote fails, or the City cannot sell the bonds on satisfactory terms, the City has the right to cancel the project.
- The property will be divided in compliance with the City's existing lot split ordinance. The Oakland County Assessor will aid the City in that process. The finalized site plan will also contribute to the legal definition of those parcels.
- If the vote for the bond fails, the contract will be terminated.
- The bond resolution gives the City the option to issue bonds up to a certain maximum amount. It does not obligate the City to issue bonds. As of now, if the predevelopment contingency agreement is not satisfied the bond vote will still occur. In that circumstance the City could proceed with the bond vote to build the public components of the project.
- If the private components of the project do not move forward for some reason, the furnished plans can still be utilized for the building of the public components.
- Before construction is complete, ownership of Site Four and Five must be restricted to the Woodward/Bates team once the ground leases are signed. Subsequent to completed construction, the City cannot restrain the possibility of ownership transfers of said sites. At that point the developer will have satisfied its economic obligations to the City. Provisions in the ground lease will require notice to the City in the event of potential transfers of ownership interests. It is standard in the market for ground leases that once the critical improvements have been provided the developer owns the building.
- Per Commissioner Harris' suggestion, the City will discuss including "any and all other remedies available under the law" to Section 7.2 so it cannot be construed that the listed remedies are the City's only remedies.
- The City owns all plans and drawings for the public aspects of the project.

City Manager Valentine advised the Commission that staff has requested alternates for the guaranteed maximum price (GMP) that will provide options for different scenarios to consider with regard to pricing of the structure.

In response to Commissioner DeWeese, City Manager Valentine explained holding the vote on the bond in August 2019 will reduce costs to the City as opposed to holding the vote later.

Mayor Bordman invited the public to speak in relation to the provisions of the proposed development agreement.

Gordon Rinschler said he disagrees with public criticism of how the Commission has handled the process so far. He stated major capital decisions should start with enthusiasm for the project, continue with a determination of cost and affordability, and conclude with an analysis of whether the project is prudent and worthwhile before the actual project begins. He said such an analysis should entail whether it would be the best use of the money, what other options the decision maker would be forgoing, and the ability of the decision maker to furnish a persuasive argument in the project's favor. He said he would like the Commission to have solid reasons for why this project is necessary. He said without solid reasons, the City should not proceed with the project at this time.

Kathy Frank thanked Commissioner DeWeese and City Manager Valentine for their perspectives on the project, specifically Sites Four and Five. She said that most Birmingham residents are likely unaware that the developers will have a 100-year lease of Birmingham public property. Lastly, she asked whether the private buildings on Sites Four and Five proposed as part of the project are a done deal, or whether the City will be responsive to concerned residents.

Robin Boyle noted he is a member of the Planning Board but said he would be speaking as a resident. He said Phase One of the project would be made up of Building Program 1A, Building Program 2, and Building Program 3, and received confirmation from the Commission and staff of that framing. He received confirmation from City Manager Valentine that the Planning Board would review Phase One of the project, and that Phase One would constitute more than 20,000 square feet. As a result of these confirmations, Mr. Boyle clarified that the City would be legally obligated to make a Community Impact Statement (CIS), which must precede any discussion of a preliminary planning assessment.

Larry Bertollini asked for clarification on the waiver clause and asked if the City had been aware that underground parking would extend under Building Two.

Mr. Fazio explained that both the City and the developer have the right to waive conditions that the opposite party was originally supposed to satisfy, should either party choose to do so. Any waiver by the City would be decided by the Commission. If the developer does not get a site plan approved for one of the private sites, they may return with a different request, but cannot sue the City for non-approval. The City cannot be held liable for the exercise of its typical governmental rights relative to site plan approval. Given discussions about private buildings on Sites Four and Five this evening, those site plans may be approved after the August 6, 2019 election on the bond proposal. The vote is only to address bonding for the public aspects of the project, however, so the public will not be missing any key information at the ballot box even if the parameters of Sites Four and Five are not clear at that time.

David Bloom recommended two ways to increase perceptions of transparency among the City's residents: adding the bond vote to the November 2019 ballot in order to increase voter turnout, and adding the whole project to the November 2019 ballot, including the 100-year lease of the public property.

Douglas Etkin noted the parking structure may be getting smaller, and that an earlier document from the Ad Hoc Parking Committee indicates that Option 1A is the preferred alternative but he cannot find any record of Option 1A being approved.

City Manager Valentine explained that the design of the project would go before the Planning Board in late May 2019 or early June 2019.

Commissioner DeWeese said there was no way the City would be able to issue final site plan approval before the August 2019 election. To Mr. Etkin's point, there is currently no final approval for what will be built as part of this project, and Commissioner DeWeese asked how that would be addressed. City Manager Valentine said the design of the project will be discussed by the Planning Board at their regularly scheduled meetings.

Mr. Etkin asked if a City representative could answer how Option 1A became the preferred option.

City Manager Valentine explained that the reference to Option 1A at the March 26, 2019 Commission meeting was in error, and should actually have indicated Option 2A as the correct selection.

Mr. Etkin said Option 1A is the only option that included an additional half ramp at the top of the parking structure, which was not ultimately approved by the Committee. He asked why the additional half ramp is being included in the plan now.

Commissioner Nickita said Mr. Etkin raised an important point. He clarified that he was on the Ad Hoc Committee which voted the approved design and did so with a 7-0 vote. The design specifications have been rolled into the current design without any further use of the 2A designation. In that time, the parking structure began being labelled as Site 1A, which is likely what caused the confusion, because it seemed to indicate that Option 1A had been advanced. Commissioner Nickita clarified that the design option which was advanced was the one voted on unanimously to advance.

Mayor Bordman confirmed for Clinton Baller that the development group would be paying \$20,000 towards the expenses incurred by the bond special election.

Mr. Baller said he was disappointed that Planning Director Ecker was not present. He seconded Mr. Bloom's statements.

Mayor Bordman advised Mr. Baller that he had ten seconds to finish speaking.

Mr. Baller contested the Mayor's allocation of time. Mayor Bordman explained she had announced to the audience that each person would have one turn to speak for two minutes.

Mr. Baller continued to dispute the time he was given to speak, then challenged the City to put the issue on the ballot.

XI. ADJOURN

Mayor Bordman adjourned the meeting at 9:29 p.m.

J. Cherilynn Mynsberge, City Clerk