

BIRMINGHAM CITY COMMISSION MEETING MINUTES
APRIL 6, 2020
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor, called the virtual meeting to order at 7:30 p.m. with the reciting of the Pledge of Allegiance.

II. ROLL CALL

Alexandria Bingham, City Clerk Designee, called the roll:

PRESENT Mayor Boutros
 Mayor Pro Tem Longe
 Commissioner Baller
 Commissioner Hoff
 Commissioner Host
 Commissioner Nickita
 Commissioner Sherman

ADMINISTRATION City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, Planning Director Ecker, City Clerk Designee Bingham, and Acting City Clerk Arft.

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

04-059-20 ANNOUNCEMENTS

Mayor Boutros made the following announcements:

- All City offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.
- The City has created a hotline to provide residents with information about City and County COVID-19 resources. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential functions, and obtaining necessary supplies Call 248-530-1805, Monday through Friday from 8 a.m. – 5 p.m.
- Some of your favorite Birmingham restaurants offer take-out or delivery. Per Gov. Whitmer's most recent executive order 2020-21, restaurant carryout is still allowed. View a complete list of restaurants offering take-out at on the city's website.
- We encourage everyone to sign up for our email distribution system to receive the latest information from the City. You can do this by going to our website and clicking on the box in the lower right corner of your screen to sign up.
- Commissioner Baller's birthday.

- The spring session of Citizen's Academy Class has been postponed to an undetermined date.

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.

04-060-20 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

Mayor Pro Tem Longe Item L, Elevator repair and replacement projects at the Chester Street and Park Street garages.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:
To approve the Consent Agenda with the exception of Item L.

ROLL CALL VOTE: Ayes, Mayor Boutros
 Mayor Pro Tem Longe
 Commissioner Baller
 Commissioner Hoff
 Commissioner Host
 Commissioner Nickita
 Commissioner Sherman

 Nays, None

- A. Resolution approving the City Commission regular meeting minutes of March 9, 2020.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated March 11, 2020 in the amount of \$1,540,080.83.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated March 18, 2020 in the amount of \$1,467,933.18.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated March 25, 2020 in the amount of \$306,300.39.
- E. Resolution approving the warrant list, including Automated Clearing House payments, dated April 1, 2020 in the amount of \$174,090.61.
- F. Resolution approving the purchase of holiday lights from Sassin Management Services LLC & Xpress Holiday Lighting for a total cost not to exceed \$26,250.00. Funds are available from the General Fund-Community Activities Operating Supplies account #101-441.004-729.0000 and Property Maintenance Operating Supplies account # 101-441.003-729.000 for this purchase.
- G. Resolution approving the purchase and planting of fifty (50) trees from County Line Nurseries, Inc. for the Spring 2020 Tree Purchase and Planting Project for a total project cost not to exceed \$29,750.00. Funds are available from the Local Streets Fund-Forestry Service Contract account #203-449.005-819.0000, the Major Streets Fund-Forestry Service Contract account #202-449.005-819.0000, the Local Streets Fund-Operating Supplies account #203-449.005-729.0000, the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 and the Parks- Other Contractual Services account

#101-751.000-811.0000 for these services. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

- H. Resolution approving the contract amendment with Anderson, Eckstein & Westrick, Inc. for professional services, to be charged to the various capital improvement accounts for work being undertaken by the City, and further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- I. Resolution approving the contract amendment with Hubbell, Roth & Clark Engineers for professional services, to be charged to the various capital improvement accounts for work being undertaken by the City, and further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- J. Resolution approving the cost sharing agreement with the City of Royal Oak to proceed with resurfacing the section of 14 Mile Road between Greenfield Road and Crooks Road at the estimated amount of \$444,586.00 to be from account number 202-449.001-981.0100 (Major Street Fund) and further; approving the appropriation and amendment to the fiscal year 2019-2020 Major Street Fund budget. (Complete resolution can be found in the agenda packet).
- K. Resolution approving the Program Year 2020 High Intensity Drug Trafficking Area (HIDTA) Sub Recipient agreement between the County of Oakland and the City of Birmingham. Further, authorizing the Mayor and the City Manager to sign the agreement on behalf of the City.
- M. Resolution awarding the Closed Captioning contract to Clearview Captioning & Interpreting, LLC, in the amount of \$145.00 per hour from the account 101-215.000-811.000, and further authorizing the Mayor and Clerk to sign the agreement.

04-061-20 ELEVATOR REPAIR AND REPLACEMENT PROJECTS AT THE CHESTER STREET AND PARK STREET GARAGES (ITEM L).

Mayor Pro Tem Longe commented that the work proposed for the parking decks is important and much needed. She noted that a three-year warranty was listed for the parts being used for the repairs at the Chester Street parking deck and no warranties were mentioned for the Park Street elevator repairs.

Assistant City Manager Gunter replied that the parts needed for the Chester Street garage would automatically come with warranties. Conversely, the parts being used (sensors) on the Park Street elevator does not automatically come with a warranty.

Commissioner Hoff noted that many of the residents of the Balwin House use the Chester Street parking deck and notice should be given to make them aware of the duration that the elevators will be out of service.

MOTION: Motion by Mayor Pro Tem Longe, seconded by Commissioner Nickita: Authorizing the elevator repair and replacement projects to be performed at the Chester and Park Street garages by Kone, Inc. for an amount not to exceed \$40,363.00 to be paid from accounts 585-538.003-930.0200 (Park Street) and 585-538.008-930.0200 (Chester).

ROLL CALL VOTE: Ayes, Mayor Boutros
 Mayor Pro Tem Longe

Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
None

Nays,

V. UNFINISHED BUSINESS

04-062-20 PUBLIC HEARING TO CONSIDER THE CONTINUATION OF THE PUBLIC HEARING TO APRIL 20, 2020 FOR LOT COMBINATION OF 1680 S. BATES STREET & 1698 S. BATES STREET

Planning Director Ecker presented this item.

Section 84, Chapter 102 Subdivisions, of the City Code allows for approval with conditions for the commission to designate:

- Front and rear property line for the development.
- Location, placement, and size of the building envelope.
- Restricting the lot coverage size.

If the concerns from the last meeting have been addressed by the above conditions, the City Attorney would draft an agreement between the City and Mr. and Mrs. Pearce.

Commissioner Host commented that Mr. and Mrs. Pearce made a very good presentation. He went on to say that because there could be limits set after the lot combination, shows that this commission could be amenable in working with them to achieve their goals knowing that the City does not want a giant structure built on the two lots.

Mayor Boutros agreed.

Commissioner Hoff asked if this would be an amendment to the City Code or Zoning Ordinance. She also asked if it would be a permanent lot combination or specific to the current owner; and would the proposed agreement allow Mr. and Mrs. Pearce to build a structure that would occupy both lots.

Director Ecker confirmed that it would not be an amendment at all. There is an existing section in the Subdivision Ordinance of the City code that would govern. A lot combination would be required and recorded on the title based on conditions imposed by this body. The City code also allows for application to return back to separate lots at any time in accordance with any conditions that might be imposed.

Commissioner Baller expressed concern about moving forward with an agreement for the proposed lot combination. He went on to say that the characteristics of a private recreational area and the unforeseen consequences should be the issue as opposed to the size of the home that may be built in the future. Commissioner Baller asked if City Attorney Currier knew of a precedent set in any other community similar to this situation; and asked for clarity with respect to his process. Commissioner Baller felt that any agreement drafted should be acceptable to the community as well as Mr. and Mrs. Pearce.

City Attorney Currier responded that once a listing of the types of uses are received for the property, an agreement would be drafted to share with Mr. & Mrs. Pearce and the City

Commission for review. He expressed that the key would be to tailor it to the neighborhood, the people involved, and the limits to the size of the proposed structure.

Commissioner Nickita asked would a lot split be required if construction were desired on the second lot in the future, and would the agreement be considered a SLUP or similar.

City Attorney Currier affirmed that a lot split would be required. This instance is a lot combination with conditions pursuant to the subdivision ordinance.

Commissioner Nickita clarified that it is different from a SLUP because it is specific to the lot and legal details of the lot. He asked how large of an extension or addition could be built, and how would the details be determined.

City Attorney Currier expressed that he and Director Ecker have been in discussions about developing a building envelope that would include all additions moving forward.

Commissioner Nickita asked for clarification on how envelope size would be determined; and the basis for the determination.

City Attorney Currier further explained that having two lots does not increase the envelope of the single lot. He went on to say there would only be one building envelope.

Commissioner Baller asked for clarification of the proposed agreement, including what could be done with the accessory structures in the future.

Director Ecker clarified that the relevant issues are lot coverage and limiting the side setback. She further suggested that the commission could increase the side setback and limit the lot coverage, which includes accessory structures.

Commissioner Hoff expressed concern about making this a permanent lot combination. She went on to ask if there were a way to give them what they are asking for without combining the lot. She suggested a SLUP agreement or simple contract.

Director Ecker spoke to an ordinance amendment and the length of time required to change it, and the far-reaching implications and unforeseen complications with other properties. She also spoke to conditional zoning which has never been done in the past due to unforeseen complications.

City Attorney Currier felt that the concept that Commissioner Hoff is suggesting would create some pre-existing uses of property that would be non-conforming.

Mrs. Pearce expressed thanks for the consideration that the commission has given this project.

Commissioner Sherman asked if Mr. & Mrs. Pearce had their own counsel; and whether or not April 20, 2020 would be a reasonable date to bring this issue back to commission.

City Attorney Currier did not know if they had representation, but felt that April 20, 2020 was reasonable under the current circumstances.

Commissioner Baller asked why Director Ecker and City Attorney Currier decided to recommend a lot combination with conditions specified in an agreement. He expressed concern that it would set a precedent for additional special agreements.

City Attorney Currier, again, explained that there is an ordinance that provides for the suggested resolution; and does not require an amendment. He agreed that it would set a precedent.

Commissioner Hoff expressed that before the commission required lot combinations to come before their body for approval, residents were combining lots and doing as they pleased with the properties. She expressed concern that the commission is going back down that path by the recommended solution.

Commissioner Nickita clarified that lot combinations were done administratively in the past, and then an ordinance was created that was not thoroughly thought through. He expressed agreement with an ordinance change for the long term. Commissioner Nickita does not agree with approvals based on criteria being met. All in all, he went on to say that the proposed resolution does address fundamental concerns, but is not a perfect solution. In terms of Commissioner Hoff's concerns, conditions would be appropriate and the best approach. He expressed support for an amendment to the ordinance as a permanent solution.

Mayor Boutros expressed, in response to Commissioner Baller wanting this decision noted as transitional, in 10 years or so the Pearce family will still occupy the home. Therefore, he would like to see this family enhance an existing property. He further believes that each lot would have to be judged on its own merit and the commission should look at these requests on a case-by-case basis.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Longe: To continue the public hearing to April 20, 2020 at 7:30 PM, and directing staff to prepare an agreement between the City and the owners of 1680 and 1698 S. Bates to establish conditions of approval for the lot combination to limit the size and placement of future buildings, to be brought back to the City Commission for approval.

Commissioner Hoff asked if accessory structures would be allowed under this agreement.

Commissioner Sherman clarified that City Attorney Currier would draft a SLUP agreement to address those concerns.

City Attorney Currier noted that each lot combination is unique and tailored to its neighborhood.

ROLL CALL VOTE: Ayes, Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman

Nays, None

VI. NEW BUSINESS

04-063-20 PUBLIC HEARING TO CONSIDER APPROVAL OF SPECIAL LAND USE AMENDMENT AND FINAL SITE PLAN AND DESIGN REVIEW – 160 W. MAPLE – DICK O'DOW'S

Director Ecker presented this item.

Commissioner Hoff asked had the Willits residents been notified of the proposed change and, if approved what time would the rear patio close.

Director Ecker expressed that she presented a site plan to the manager of the Willits and she was happy with the plan. She went on to say the rear doors of the establishment must be closed by midnight, which is a condition of the existing SLUP agreement.

Commissioner Sherman noted that Chris Longe was the architect on this project and asked if Mayor Pro Tem Longe has a conflict that would require recusal from the discussion.

Mayor Boutros deferred to City Attorney Currier for a determination.

City Attorney Currier referred to the ethics ordinance, which states that if a marital relationship exists there is an automatic conflict of interest when there is an economic interest for either spouse.

Mayor Pro Tem Longe offered to recuse herself; although she claimed there was no economic interest, just a friendly gesture by her husband to move the item along.

Mayor Boutros, asked City Attorney Currier to weigh in again because the site plan was the result of a friendly gesture and not one of economic interest.

City Attorney Currier recommended recusal because a personal relationship with the owner of an establishment is also considered a conflict of interest in matters relative to the establishment.

Mayor Pro Tem Longe recused herself from the discussion and vote.

Commissioner Hoff asked if the rear patio closes at midnight, would patrons be able to sit outside after the rear doors are closed.

City Attorney Currier replied that under the LCC, patrons are not allowed to take drinks outside of an establishment when the doors are closed.

Commissioner Hoff asked when the construction is completed would both outdoor seating areas remain open.

Director Ecker expressed that it was her understanding that the existing platform used in the front, would not fit the new configuration of Maple Road post construction. She suggested putting conditions in the SLUP agreement that should govern this property. If there were changes after construction, there would need to be an application to planning and approval by the commission.

Commissioner Host noted that the back dining area is in lieu of the front platform during the Maple Road construction project and should not be confused with a permanent situation without additional approvals.

Commissioner Nickita expressed that approval should be based on conditions established by the commission. He went on to say the intent is to provide an alternative to what the restaurant would be losing during construction; therefore, the conditions could align with what was already in place for the outdoor dining platform in the front of Dick O'Dows.

Director Ecker affirmed that 2 A.M. was the closing time of record for Dick O'Dows' dining platform on the front of the building. She went on to say the proposed outdoor dining is in the rear of the building and due to its proximity to the Willits, it would be reasonable to add the condition of closing the rear by midnight to be in line with the live music restriction that is currently in place.

Commissioner Nickita noted that when outdoor seating is adjacent to a residential building, timelines and conditions have been determined in the past. He went on to ask if a standard had been established with respect to outdoor seating adjacent to property zoned residential; if so it should be applied to this situation.

Director Ecker expressed that the ordinance requires outdoor activity to cease by 10:00P.M. when immediately adjacent to single/multifamily zoned property. In this instance, the area is zoned for mixed-use and is not governed by the same requirement.

Mayor Boutros is in support of this resolution with a midnight closing.

Mr. Black of Dick O'Dows expressed that his intention is to keep the patio open until midnight. He also said that when the doors close in the rear, outdoor seating would also close.

Commissioner Hoff asked if the rear patio would be for this season only.

Mr. Black expressed that his intent is to keep his business viable during the outdoor dining season. He went on to say that the demand for the back is unknown and an analysis will be done this season. Management does not intend to support a front patio this season.

Commissioner Baller commented that he would support outdoor dining in both the front and rear of Dick O'Dows. He does not support staying open until midnight in the back due to the noise potential. He asked Mr. Black how he would feel about having both patios, after construction, going forward and closing the rear at 10 P.M. He further asked if the back door is currently open until midnight and if there were complaints.

Mr. Black noted that it is an option that would be considered, but he would like to stay open in the back until midnight. While there is currently no seating in the rear, the door is open until midnight without complaints from the Willits. He went on to say that his intent is to continue to be a good neighbor and remain in business in Birmingham for many years to come.

Kim Beydoun, Manager of the Willits, is in favor of the proposed plan for Dick O'Dows by written memo.

Mayor Boutros closed the public hearing.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Baller: Approving a Special Land Use Permit Amendment and Final Site Plan and Design Review for Dick O'Dows at 160 W. Maple to allow outdoor dining at the rear of the building from April 1 through November 15, 2020 during construction on E. and W. Maple.

ROLL CALL VOTE: Ayes, Mayor Boutros
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Nays, None
Recused, Mayor Pro Tem Longe

04-064-20 PUBLIC HEARING TO CONSIDER FILING OBJECTION WITH MLCC – TOWNHOUSE & ROJO

Mayor Boutros opened the public hearing.

City Manager Valentine presented this item, noting that all of the issues with respect to the two properties have been abated.

Mayor Boutros closed the public hearing.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita; Renewing for the 2020 licensing period, the liquor license held by Townhouse Kitchen & Bar.

AND

Resolution renewing for the 2020 licensing period, the liquor license held by RoJo Mexican Bistro/Sidecar Slider Bar.

ROLL CALL VOTE: Ayes, Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Nays, None

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

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

X. REPORTS

A. Commissioner Reports

1. Notices of intent to appoint to Board of Building Trades Appeals, and Multi-Modal Transportation Board
- B. Commissioner Comments
1. Commissioner Sherman expressed his appreciation for City staff who are working above and beyond to keep the City's essential services running.
 2. Mayor Pro Tem Longe expressed appreciation for the support of the Birmingham business' who have been supporting the front line workers and the community through this COVID19 crisis.
 3. Mayor Boutros wished safety and good health for staff and the entire community during these unprecedented times. He urged everyone to take the Governor's order seriously and follow the guidelines set forth to help mitigate this disease. He went on to express that the commissioner workshops are on pause until they could be implemented in an effective way, while keeping in line with social distancing practices.
 4. City Manager Valentine expressed that in February, serious considerations and discussions with staff were held in trying to prepare the community for what was to come. Not knowing how bad it would be, there were several initiatives to use resources to help the community.
 - a) Revamp the City website to provide a single source of resources for the public to access information.
 - b) Created COVID19 hotline (248)530-1805 avail M-F 8:00 a.m. – 5:00 p.m.
 - c) Created a citywide email distribution system. Sign up on the City's website homepage to receive information as it is released.
 - d) Reassigned staff to align to meet resources, changed work schedules to stagger employees (DPS), and cross training to back up firefighters.
 - e) Hired temporary employees to assist firefighters and backfill paramedic resources.
 - f) Executed a temporary mutual aid agreement with the Village of Beverly Hills to share public safety officers w/EMT qualifications. Putting a third ambulance in service. In early May, there will be four ambulances in service.
 - g) Created COVID care packages (masks, etc.) to leave with people whose symptoms are not severe enough for transport to the hospitals.
 - i) Established a quarantine area at the ice arena in the event that public safety personnel contract the virus; there is a place to go to avoid infecting their families.
 - j) Reassign several staff to a call center to assist the public during normal business hours.
 - k) Began the practice of video meetings hosted by Zoom which are listed on the website.
 5. Mayor Boutros commended City Manager Valentine on his commitment, and dedication to the Birmingham community of businesses, residents, boards, and staff. He does it unselfishly and with genuine concern.
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
1. Annual Golf Report, submitted by Golf Manager Brito

2. Community Development Department/Planning Division Annual Report & Planning Board, Historic District Commission, and Design Review Board Action Lists for 2020-2021, submitted by Planning Director Ecker

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 9:45 p.m.

Alexandria Bingham, City Clerk Designee
/vc