

Birmingham City Commission Minutes

July 11, 2022

Municipal Building, 151 Martin

7:30 p.m.

Vimeo Link: <https://vimeo.com/724724030>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Therese Longe, Mayor, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

Alexandria Bingham, City Clerk, called the roll.

Present: Mayor Longe
Mayor Pro Tem Boutros
Commissioner Baller
Commissioner Haig
Commissioner Host
Commissioner McLain
Commissioner Schafer

Absent: None

Administration: City Manager Markus, City Clerk Bingham, Police Chief Clemence, Senior Planner Cowan, Planning Director Dupuis, Assistant City Manager Ecker, Building Official Johnson, City Attorney Kucharek

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

Announcements

- COVID-19 Update: Per the CDC, Oakland County has a COVID-19 transmission level of HIGH. The City continues to recommend the public wear masks while attending City meetings per CDC guidelines. All City employees, commissioners, and board members must wear a mask while indoors when 6-feet of social distancing cannot be maintained. This is to ensure the continuity of government is not affected by an exposure to COVID-19 that can be prevented by wearing a mask. The City continues to provide KN-95 respirators and triple-layered masks for all in-person meeting attendees.
- The Clerk's office would like to remind voters to turn in an absentee ballot application if they wish to vote by mail for the August 2, 2022 State Primary Election. Return your absentee ballot to the clerk's office as soon as possible via drop box or mail. To review your specific voting information and preview your ballot visit mi.gov/vote. The online and mail voter registration deadline is July 18th. After July 18th new voters must register in person at the clerk's office.
- Join us in Shain Park for our In The Park Summer Concert Series up next on July 13th is Shout Tribute Band (Beatles) at 7 pm and July 20th at 12 pm SURF ZUP (Beach Boys) and 7 pm Mainstream Drive (Classic Rock)
- The City Commission wishes Mayor Longe a happy birthday!

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

V. 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.

07-183-22 Consent Agenda

The following items were pulled from the Consent Agenda:

- Mayor Longe: Item A – Joint City Commission and Planning Board Minutes - June 20, 2022
- Commissioner Haig: Item H – Set a Public Hearing for a Lot Combination of 770 S. Adams and 1000 Haynes Ave, Parcel ID # 19-36-283-016, Lot T2N, R10E, SEC 36 O E SHATTUCK SUB LOTS 15, 16 & 17 & Parcel ID # 19-36-283-024, Lot T2N, R10E, SEC 36 RURAL SUB LOTS 5 TO 11 INCL, ALSO LOTS 11 & 14 OF 'O E SHATTUCK SUB'

The Mayor noted that she would be recused from voting on Item H due to a conflict-of-interest stemming from a business relationship between her spouse and the owner of the property.

MOTION: Motion by MPT Boutros, Commissioner Schafer:
To approve the Consent Agenda excluding Items A and H.

ROLL CALL VOTE: Ayes, MPT Boutros
Commissioner Baller
Commissioner McLain
Commissioner Schafer
Commissioner Host
Mayor Longe
Commissioner Haig

Nays, None

- B. Resolution to approve the City Commission meeting minutes of June 27, 2022.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 29, 2022, in the amount of \$991,516.35.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated July 6, in the amount of \$1,071,614.27.
- E. Resolution to approve a special event permit as requested by Piety Hill DAR to hold the Veterans Day Wreath Laying on November 11, 2022, 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, or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event.
- F. Resolution to set the Public Hearing of Necessity for the road surface cape-seal treatment for all properties within project area on Westwood, between Raynale & Oak, Raynale, between N.

Glenhurst and the west City limits, and Oak, between N. Glenhurst & the west City Limits, on Monday, August 15, 2022 at 7:30 P.M.; and

If necessity is determined on August 15, 2022, to meet on Monday, August 29, 2022 at 7:30 P.M., for the purpose of conducting the Public Hearing to Confirm the Assessment Roll for the for the road surface cape-seal treatment for all properties within project area on Westwood, between Raynale & Oak, Raynale, between N. Glenhurst and the west City limits, and Oak, between N. Glenhurst & the west City Limits.

- G. Resolution to set the Public Hearing of Necessity for the replacement and improvement of Water and Sewer Laterals meeting the requirements for assessment, for all properties within project area on Westwood, between Raynale & Oak, Raynale, between N. Glenhurst and the west City limits, and Oak, between N. Glenhurst & the west City Limits, on Monday, August 15, 2022 at 7:30 P.M.; and

If necessity is determined on August 15, 2022, to meet on Monday, August 29, 2022 at 7:30 P.M., for the purpose of conducting the Public Hearing to Confirm the Assessment Roll for the replacement and improvement of Water and Sewer Laterals meeting the requirements for assessment, for all properties within project area on Westwood, between Raynale & Oak, Raynale, between N. Glenhurst and the west City limits, and Oak, between N. Glenhurst & the west City Limits.

- I. Resolution to approve the City of Birmingham Hardship Application and Policy.
- J. Resolution to authorize the City Manager to cast a vote, on the City's behalf, for the one (1) candidate seeking re-election to the Michigan Municipal League Workers' Compensation Fund for a four-year term, beginning October 1, 2022.
- K. Resolution to approve the award of the 2022-2023 Sidewalk Trip Elimination Services Contract #10-22 (SW) for the 2022-2023 sidewalk program repair area and emergency services, with the option for the City to extend the contract for up to two additional years for additional areas within the City at the proposed contract rates, with an initial budget of \$195,000.00 for proposed service work. In addition, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City. Funding for this project has been budgeted in account #101-444.001-981.0100.
- L. Resolution to approve an Addendum to the Coordination Agreement with RH and Sachse Construction to alter Recital D, and Sections 2, 7, and 11 of the original agreement approved on April 25, 2022.

07-184-22 (Item A) Joint City Commission and Planning Board Minutes - June 20, 2022

The Mayor asked that 'said she was glad to see that' on page four be amended to 'noted'.

MOTION: Motion by Mayor Longe, MPT Boutros:
To approve the Joint City Commission and Planning Board meeting minutes of June 20, 2022.

VOICE VOTE: Ayes, MPT Boutros
Commissioner Baller
Commissioner McLain
Commissioner Schafer
Commissioner Host
Mayor Longe

Commissioner Haig

Nays, None

07-185-22 (Item H) Set a Public Hearing for a Lot Combination of 770 S. Adams and 1000 Haynes Ave, Parcel ID # 19-36-283-016, Lot T2N, R10E, SEC 36 O E SHATTUCK SUB LOTS 15, 16 & 17 & Parcel ID # 19-36-283-024, Lot T2N, R10E, SEC 36 RURAL SUB LOTS 5 TO 11 INCL, ALSO LOTS 11 & 14 OF 'O E SHATTUCK SUB'

Due to her recusal, the Mayor stepped out of the room at 7:35 p.m.

The Mayor Pro Tem assumed facilitation of the meeting at 7:35 p.m.

In reply to Commissioner Haig, ACM Ecker explained this would be considered a commercial lot combination since that is a category in the ordinance comprising anything except a single family residential lot combination.

Commissioner Haig requested that the applicant be more clear in their documentation in the future.

MOTION: Motion by Commissioner Haig, Commissioner Baller:
To set a public hearing date of August 15, 2022 to consider the proposed lot combination of 770 S. Adams and 1000 Haynes Ave, Parcel ID # 19-36-283-016 & Parcel ID # 19-36-283-024.

VOICE VOTE: Ayes, MPT Boutros
Commissioner Baller
Commissioner McLain
Commissioner Schafer
Commissioner Host
Commissioner Haig

Nays, None

VI. UNFINISHED BUSINESS

None.

VII. NEW BUSINESS

The Mayor rejoined the meeting and resumed facilitation at 7:38 p.m.

07-186-22 Next Long-Term Written Agreement with BPS and Need to have City Pursue Other Alternative Sites for Next Operations

CM Markus presented the item.

Cris Braun, Executive Director of NEXT, spoke on behalf of the request.

MOTION: Motion by MPT Boutros, Commissioner McLain:

To direct the City Manager to meet with the NEXT Executive Director and Board and to assist with the study of alternative facilities and/or sites for construction of NEXT facilities that could be considered for the long term needs of the NEXT operations and services.

VOICE VOTE: Ayes, MPT Boutros
 Commissioner Baller
 Mayor Longe
 Commissioner McLain
 Commissioner Schafer
 Commissioner Host
 Commissioner Haig

Nays, None

Code of Conduct

CA Kucharek introduced the item.

Commissioner Haig said Sec 1.1 - The Do's and Don'ts - City Commission - 'Consider & Approve' should be changed to 'Consider for Approval', because otherwise it is an imperative that the Commission approve the listed items.

Commissioner Haig also raised concerns about the fourth point under Sec. 1-2. – City Commissioner Conduct with City Staff and Boards, Committees and Commissions - City Commissioners Make the Following Commitments to Board, Committee and Commission Members. He noted that Commissioners are occasionally tasked with serving on other boards and that this language might preclude that service.

ACM Ecker noted that City ordinance tasks Commissioners with sitting on other boards and that this point refers to any attempt by a Commissioner to influence the proceedings of a board they do not sit on.

CA Kucharek said the language for the fourth point could be changed to specify the distinction described by ACM Ecker.

In reply to Commissioner McLain, CA Kucharek confirmed that the purpose of Sec. 1-3(c) is to, firstly, encourage Commissioners to avoid solicitation of opinions regarding items that is or may be before the Commission outside of Commission meetings. She said the second goal is to encourage Commissioners to report any communications with interested parties that occur outside of Commission discussions.

CM Markus added that the Commission is a joint effort, and Commissioners acting individually outside of Commission meetings should use an abundance of caution in how they communicate with the public. He cautioned Commissioners not to make promises beyond committing to relate an issue to a Staff member who may be able to address the issue.

Mayor Longe and Commissioner McLain also said the Commissioners should recommend concerned members of the public use the new GovAlert mobile application to report their concerns.

Commissioner Baller said:

- He disagreed with Sec 1.3(a)(ii) - Members Should STRIVE to - point nine. He noted that it is generally expected that legislators advocate for particular points of view, and said he was not in favor of a code of conduct that indicates such conduct is inappropriate. This also applied to Sec.

- 1-4(iii), point three;
- He would prefer a clear indication of what is considered appropriate in Sec 1.3(c)(i) instead of just directing Commissioners to 'exercise caution', which he said was too vague;
- In Sec 1.3(c)(ii), he said the expectation that a Commissioner should expose ex parte communications should be sufficient, as occurs with potential conflicts-of-interest. He said the Mayor should not be required to actively ask for disclosures;
- The language of the last sentence in Sec. 1-4(i) needed to be made grammatically correct;
- 'Dissuaded' should be replaced with an appropriate word in Sec. 1-4(ii);
- It should be clarified what kind of 'personal information' was being referred to in Sec. 1-4(iii), point two;
- Sec. 1-4(iv) - 'During a decision...' - 'Do not make...' was unlikely to be adhered to for the same reasons that Commissioners could not be expected to refrain from advocacy;
- Paragraph three of Sec. 1-5 lacked clarity about how one could make an accusation and whether the Chair of the Ethics Board would preside over and Ethics Board meeting or some other kind of meeting;
- Sec. 1-5 in general needs more clarity; and,
- Commissioners should be required by the Code of Conduct to be familiar with the Commission's Rules of Procedure, with Robert's Rules of Order, with the City Charter, and with City Ordinances. The expectation should not be expertise but familiarity and an ability to seek out some answers within the aforementioned documentation if necessary.

CM Markus commented:

- The proposed Code of Conduct focused on ex parte communications regarding quasi-judicial issues, usually pertaining to land use;
- The guidance on ex parte communications as a way to have complete transparency;
- He has seen communities use it as a technique to reduce lobbying of Commissioners outside of Commission meetings;
- Commissioners will inevitably have preconceived opinions on certain topics. Due process just means that each Commissioner will listen to all of the information provided and that each Commissioner will remain willing to change their mind on topics as appropriate; and,
- The proposed Code of Conduct came about because of some tension between certain Commissioners. While there are some refinements that could be made, he did not agree with some of Commissioner Baller's comments.

In reply to the Mayor, CA Kucharek clarified that Sec 1.3(a)(ii) - Members Should STRIVE to - point nine aims to encourage Commissioners to constrain their advocacy of topics to Commission meetings, and not to interactions with the public outside of the meetings.

The Mayor said she found the meaning of the word 'advocate' unclear.

CA Kucharek said clarifying language could be added.

Commissioner Haig said CA Kucharek's description of when advocacy is appropriate could be directly added to the Code of Conduct and used to replace some of the proposed Code's more superfluous or vague language. He said he agreed with some of Commissioner Baller's comments as well, especially regarding some of the vague language about ex parte communications.

The Mayor noted that CM Markus specified that the guidance on ex parte communication disclosures largely referred to discussions regarding land use.

Commissioner Haig explained he was concerned that narrowing it down that far would make it too specific.

Commissioner McLain said she was glad to have this conversation in public in order to continue the Commission's commitment to transparency.

Public Comment

Paul Reagan said the focus of the proposed Code was too broad, and that he did not like the proposed disclosure requirement for ex parte communications.

The Mayor said the Commission would take no action at present and the language would be returned to the Commission at a later date.

CA Kucharek confirmed.

07-187-22 City of Birmingham Policy on Public Comments During Virtual Meetings

CA Kucharek introduced the item.

The Mayor recommended that 'and address' be added after 'your name' in '1.8 Start of Comment'.

Commissioner Haig recommended that 'Zoom' be amended to 'Virtual Meeting Technology' so as not to refer to a trademark.

CA Kucharek said those changes could be made.

In reply to Commissioner Baller, CA Kucharek confirmed that said the policy aligned with the Rules of Procedure.

MOTION: Motion by Commissioner Schafer, Commissioner Host:
To accept and adopt the Policy on Public Comments during Virtual Meetings with the amendments recommended by the Mayor and Commissioner Haig.

VOICE VOTE: Ayes, MPT Boutros
 Commissioner Baller
 Mayor Longe
 Commissioner McLain
 Commissioner Schafer
 Commissioner Host
 Commissioner Haig

Nays, None

Times of Regular Meetings of the Birmingham City Commission

CA Kucharek introduced the item.

Commissioner Baller noted that the proposed language included an end time, which would presumably require a motion to extend the meeting beyond. He proposed meeting times of 7 p.m. to 11 p.m. as a starting point for discussion.

MPT Boutros clarified that the meeting could end earlier than 11 p.m. if appropriate. He agreed that an ending time of 11 p.m. with the allowance of motions to extend would be beneficial.

The Mayor noted that the Planning Board requires motions to extend meetings in 15 minute increments past 11 p.m.

CA Kucharek said that language could be added to the proposed ordinance change if agreed upon by the Commission.

Commissioner Host said he was not in favor of adding an end time because Commission meetings are for the public's benefit.

Commissioner McLain said she was in favor of a 7 p.m. start time and open to an ending time of 11 p.m. with extensions.

Commissioner Haig said he would like to know the average end dates for the past 24 months to have a better understanding of where the 11 p.m. proposal falls in that range. He said he was amenable to a start time of 7 p.m. Regarding fiscal impact, the Commissioner floated the idea that Staff could come into work later the day after meetings as a formalized policy if Staff working late for meetings was one of the concerns.

The Mayor said Commissioner Haig's the latter comment, regarding scheduling, might be part of the City Manager's purview in terms of Staff management. She noted that an 11 p.m. end time likely was pretty close to the average end time, and said that since the Commission would be empowered to extend meetings it was likely not necessary to generate a study of the Commission end times for the past 24 months.

MPT Boutros made a motion to change the hours from 7 p.m. to 11 p.m. with the possibility of continuation in 15 minute increments as discussed. Commissioner McLain seconded. After further discussion, the motion was withdrawn by MPT Boutros and Commissioner McLain.

Commissioner Host reiterated that he was not in favor of the motion.

Commissioner Schafer said a 7:30 p.m. start time was more beneficial for her since she works full time and has young children. She said it also might be more beneficial for Commissioners in a similar position in the future.

Commissioner Baller said he was in favor of an earlier start time because his thinking was sharper before 11 p.m. He added that the Commission would likely be more efficient if they had a reason to be mindful of the time, including postponing topics when appropriate.

Commissioner Haig concurred with Commissioner Schafer. He also noted that workshops would have to be scheduled earlier if the proposed change was made.

MPT Boutros said he did not want to advance a motion on this topic that did not have unanimous support.

The Mayor thought a change to a 7:00 p.m. start time would be useful because she was often ready to begin the meeting by then, and Staff was ready to start then as well.

No action was taken on the item.

07-188-22 Police Department / City Hall Architectural Assessment and Conceptual Designs

PC Clemence and the team from Telluris presented the item.

Commissioner McLain said she was especially in favor of the confidentiality some of the updates could afford people who may be struggling. She said the more compassionate the City could be, the better it would be.

PC Clemence and the Mayor concurred.

MOTION: Motion by MPT Boutros, Commissioner Baller:
To approve an agreement with Telluris Architecture for Police Department/City Hall Assessment and Conceptual Designs for Renovations/Expansion in the amount not to exceed \$74,833.00. In addition, to approve the appropriation and amendment to the FY 2022-2023 Capital Projects Fund budget as noted below and authorize the Mayor and City Clerk to sign the agreement on behalf of the City. Funding for this project has been budgeted in account # 401.301.000.979.0000.

Commissioners Host and Haig expressed support for the project.

ROLL CALL VOTE: Ayes, MPT Boutros
 Commissioner Baller
 Mayor Longe
 Commissioner McLain
 Commissioner Schafer
 Commissioner Host
 Commissioner Haig

Nays, None

07-189-22 Lease of Public Property Adjacent to 35001 and 35075 Woodward

Commissioner Baller disclosed an ex parte communication between himself and Kelly Cobb. The Commissioner stated that he said he could not discuss the item with Mr. Cobb but encouraged him to attend the present meeting. He said he followed up with Mr. Cobb and said it might be helpful if Mr. Cobb added any deed restrictions to the public record. Commissioner Baller stated that he also had one conversation with Hesham Gayar early on in his tenure as a Commissioner and later made introductions between Dr. Gayar to CM Markus.

MPT Boutros stated that he had a conversation with a friend of Dr. Gayar and encouraged Dr. Gayar to meet with the City Manager.

ACM Ecker presented the item. She noted that the City has not been able to see a deed restriction on either of the referenced properties.

CA Kucharek noted that the City is not a party to any agreements between Select Commercial Assets and Hunter House Hamburgers. She concurred with ACM Ecker the appraisal did not find a covenant on the land or a deed restriction.

In reply to Commission inquiry, ACM Ecker explained:

- In her opinion there was no reason for the City or Planning Board to request the closing of Park Street when it is not in the City's master plans, and it would be very unlikely that the City could propose shutting down Park Street while providing MDOT with plans they could approve;
- Pedestrian scale details include aspects like glazing requirements and retail access on ground floors;
- Because this design brings the building street wall out to the zero lot line it is the best-case scenario for making Woodward feel smaller. She said it was also the best-case scenario for a possible road diet on Woodward for the same reason;
- The Commission could consider leasing the air rights above Park Street but that was not under discussion presently;
- The lease between the Hunter House and the City is currently on a month-to-month basis and if the City began the lease as proposed with Dr. Gayar it would terminate the lease with the Hunter House with a 30-day notice;
- The properties north of the alleyway on the other side of Park are also City property and currently not leased by any particular business; and,
- Hunter House would be able to continue operation even if the lease for their parking was terminated because they would be considered an existing non-conforming use.

In reply to Commission inquiry, CA Kucharek stated:

- The property in question is the City's land to use in the best interest of Birmingham;
- When one compares the current revenues coming in from the property and the proposed lease which would bring in over \$60,000 with a 3% annual increase for the next 100 years, the latter use is a better use of the property;
- In addition, the development would increase the City's tax base versus the present undeveloped, vacant land; and,
- The City has not discussed raising the rent on the Hunter House.

Commissioner Baller said that any party leasing the property should be paying the appraised value.

Commissioner Haig stated that charging less than the current market rate for Hunter House's use of the land for parking amounts to the City subsidizing Hunter House. He reiterated his statement from a previous meeting that he was not interested in taking action on this request until the developer and Hunter House resolves their issues. He asked if there was a way the City could help facilitate a 'win-win' scenario here.

CA Kucharek strongly advised the Commission to focus exclusively on whether they believed the ground lease being proposed should be entered into for the benefit of the City. She reiterated that the City was not a party to any agreements between Select Commercial Assets and Hunter House Hamburgers, and the City has no role in finding a 'win-win' outcome for the two private parties. She said the Commission would risk drawing the City into litigation if they attempted to be involved in the dynamic between the private parties.

In reply to Commissioner Host, ACM Ecker reiterated from her earlier presentation that there was no parking deficit for the proposed development.

Commissioner Host replied he would like the City to negotiate a better deal for the parking.

Commissioner McLain said the Commission could only advance development on this corner by making some decisions. She said doing so might force the private parties to deal with the issues between them.

MPT Boutros concurred, saying the Commission should only focus on the issue before them. He noted that the project has been reviewed by the Planning Board and Commission a number of times and undergone a number of changes to comply with City requirements. He reiterated CA Kucharek's advise and noted that Staff was advising approval of the ground lease. He said he was in favor of this development proceeding on the lot.

In reply to the Mayor, CA Kucharek said the City Clerk would make the letter from Hunter House Hamburgers' attorney, David B. Hart, part of the minutes and that no motion was necessary. CA Kucharek noted that she took exception to the fact that Mr. Hart did not supply the letter to herself, the City Manager, the Assistant City Manager, or the City Clerk.

Public Comment

Kelly Cobb, resident and owner of Hunter House Hamburgers, noted:

- The letter sent on his behalf by his attorney cited liber numbers;
- His apologies that the letter was not also sent to members of the City administration;
- That he was interested in paying the City the value of the land to continue leasing it;
- There is an alternative to the presently proposed development - that he has been working on - that would be beneficial to the Hunter House, to the developer, and to the City;
- He told the City administration that he would be interested in leasing the land in February 2021;
- That alternative would take less time than litigation would; and,
- The Commission does not need to approve this ground lease in order to encourage the parties to continue negotiations.

Mr. Reagan recommended the Commission consider requiring that the development have onsite, public parking in exchange for being able to lease public land.

Robert Weisberg, attorney for the developer, stated:

- This proposal will result in a Class A development that has already been recommended for approval by the Planning Board;
- A development will generate more revenue for the City than is currently being generated at the location and will also generate more tax revenue;
- The City has leased, for free, the adjacent lot on that corner from Mr. Gayar for at least the last six years. If the price per square foot of the property under discussion is used to price out the adjacent lot, then the City has realized about \$1.6 million in actual value from that arrangement. That should be considered as part of the Commission's decision; and,
- The development can go forward because there is no encumbrance on the ownership posed by Mr. Cobb, and any other claims are not matters before the Commission.

In response to Commissioner Baller, Kevin Biddison, architect for the project, stated he had not considered asking to build over Park Street because most municipalities are not amenable to buildings over their public streets. He said he could not speak to the feasibility of the idea. He did work with City Staff to ensure that City requirements for the project were being met.

Commissioner Schafer noted the present conversation had gotten beyond the scope of the matter before the Commission. She said she was torn because she would not be proud of a decision that would take parking away from Hunter House Hamburgers, but she was also not proud of the corner of Maple and Woodward as it currently exists. She said that while the private disagreement between the developer and the Hunter House is not before the Commission, she would still like to hear from the applicant what their intention is for Hunter House since it is a longstanding community business.

Commissioner Baller described an idea he had brought to previous City Manager Valentine that might be amenable to Hunter House, the developer, and the City.

ACM Ecker noted for the record that Hunter House Hamburgers was not designated 'historic' by any local, state, or federal designation.

The Mayor made another call for public comment.

Stuart Sherman noted that a previous Commission's response to this developer was that the issues should be resolved between the developer and Hunter House before the Commission weighed in on any related topic. He stated the previous Commission's aim was to avoid influencing the negotiations in any direction. He recommended the Commission continue that course maintaining the status quo and not advancing the ground lease tonight. He asserted that this is a self-created issue for this developer, and that if the City attempts to fix the issue for this developer than other developers will expect similar treatment from the Commission.

In reply to Commissioner Schafer, Mr. Weisberg stated that Hunter House has operated rent free for the last six years and will continue to do so until construction begins. He noted that the Commission has not been presented with all the facts of the issues between the developer and the Hunter House because it is not relevant to the Commission's deliberations. Finally, he noted that the contract between the two private parties provided for the end of Hunter House's current building, and that was agreed to by the owners of the Hunter House at the time of the contract's negotiation and signing.

The Mayor closed public comment and returned discussion to the Commission.

Commissioner Host said the Commission should use the potential lease of the public land to negotiate more parking.

MPT Boutros summarized his earlier comments and said the Commissioners needed to make a decision in the best interest of the City.

MOTION: Motion by MPT Boutros, Commissioner McLain:

To approve a Ground Lease between Select Commercial Assets Hospitality and the City of Birmingham with a 50-year term to allow Select Commercial Assets Hospitality to lease City property adjacent to 35001 and 35075 Woodward Avenue to develop the proposed 5 story mixed use building with underground parking. In addition, to authorize the Mayor and City Clerk to sign the Ground Lease on behalf of the City.

Commissioner Baller said he would not support a motion that precluded the Hunter House from using the parking lot prior to commencement of the construction.

Commissioner Host said he would not support the motion because he opined that the project provided insufficient parking.

In reply to CA Kucharek, MPT Boutros said he agreed with Commissioner Baller and would like 3.01 of the Ground Lease to be amended to specify that the lease only begins on the date that construction of the project commences.

The Mayor acknowledged the advice from ACM Ecker and CA Kucharek. She said she also believed that this decision had to be considered within the culture and fabric of the Birmingham community. She noted

that voting affirmatively would have the effect of allowing the developer to move forward to the possible detriment of the Hunter House. She noted that previous Commissions asked the two parties to come to the Commission having reached an agreement that preserves, in some way, the Hunter House as a cultural touchpoint of the City. She said she wanted to see an agreement that would make the residents, Hunter House, and the developer happy. She said approving the ground lease at this time was not likely to yield that outcome. She said she also agreed with Mr. Sherman that approving the ground lease would influence the negotiations between the two private parties. The Mayor concluded that she would prefer to maintain neutrality and therefore could not support the motion.

Commissioner Schafer said that the concerns about preserving Hunter House in some way were not sufficiently addressed. She said Commissioners could not be expected to look at this motion divorced from its broader implications. She said she would not be supporting the motion.

Public Comment

Dr. Gayar, owner of the property, stated that if the Commission did not advance the ground lease they were still influencing the negotiations. He said he has complied with all City requirements, and that the development would be small apartments like the City is looking for. He said his development would be of much greater benefit to the City than what is currently on the property. He noted that the plans for the development include a space, designated as 'retail' in the plans, for the Hunter House. He said he has tried to accommodate Mr. Cobb.

In reply to the Mayor, Mr. Weisberg stated that the plans contemplate an area of the first floor of the development that would be deeded to the Hunter House if everything else fell into place between the two parties.

CA Kucharek cautioned the Commission to use the analysis of: 'does this lease meet the best possible public interest?' If any Commissioner answers that question in the negative, she asked them to articulate their reasons for that finding clearly.

In reply to Commissioner Schafer, CA Kucharek confirmed that the development could proceed without the ground lease.

Mr. Weisberg said the development without the ground lease would provide less benefit to the City.

Mr. Cobb reiterated his willingness to pay more than \$12.42 per square foot to lease the property. He explained that the plans for the development do not allocate Hunter House enough square footage to operate because it would not meet all code and ordinance requirements. He wants to find a resolution with Dr. Gayar. Mr. Cobb requested that the Commission either vote no or table the item to allow the issues between the parties to be resolved. He noted that acting in the public interest is not just a financial consideration.

Mr. Weisberg said the size of the space allotted to Hunter House in the proposed plans was negotiated by the owners of Hunter House at the time. He said that the Commission had to show consideration to Dr. Gayar in addition to showing consideration for Hunter House.

Mr. Cobb contested Mr. Weisberg's statement that the size of the Hunter House in the proposed plans was agreed to. He asked to go back to the drawing board to try and find an outcome that would benefit all parties.

Mr. Sherman cited the length of this conversation as the reason that previous Commissions requested that an agreement between the two parties be reached before the Commission would hear further requests about the development.

Commissioner Schafer noted that if no lease of public property were proposed that the Commission would not have to be involved in this issue at all.

The Mayor reiterated CA Kucharek's direction that each Commissioner should consider in their vote whether this lease met the best possible public interest.

ROLL CALL VOTE: Ayes, MPT Boutros
 Commissioner Baller
 Commissioner McLain

 Nays, Commissioner Haig
 Mayor Longe
 Commissioner Schafer
 Commissioner Host

The Commission took a recess at 11:15 p.m. and returned from recess at 11:20 p.m.

07-190-22 Public Hearing to amend Article 2, Sections 2.04, 2.06, 2.08 and 2.10 of the Zoning Ordinance to modify the minimum front yard setback requirement.

The Mayor opened the public hearing at 11:20 p.m.

PD Dupuis presented the item.

Seeing no public comment, the Mayor closed the public hearing at 11:21 p.m.

MOTION: Motion by Commissioner Baller, Commissioner McLain:
To adopt an ordinance to amend Article 2, Sections 2.04, 2.06, 2.08 and 2.10 of the Zoning Ordinance to modify the minimum front yard setback requirement.

ROLL CALL VOTE: Ayes, MPT Boutros
 Commissioner Baller
 Mayor Longe
 Commissioner McLain
 Commissioner Schafer
 Commissioner Host
 Commissioner Haig

 Nays, None

07-191-22 Public Hearing to amend Article 4, Section 4.30, Open Space Standards, to add language to permit accessibility ramps in the required open space.

The Mayor opened the public hearing at 11:23 p.m.

PD Dupuis presented the item.

Seeing no public comment, the Mayor closed the public hearing at 11:24 p.m.

In reply to Commissioner Baller, PD Dupuis said there was no provision for certification of need by the City because it was Staff’s assumption that people would generally prefer not to have ramps in front of their homes.

CA Kucharek added that the City was not permitted to set any criteria for need. She said in her research she was confident that this ordinance is the best for the City. She said that this ordinance was necessary for the City to be in compliance with accessibility requirements.

In reply to the Mayor, CA Kucharek said she believed the need would run with the person in need and not with the home in the case of a sale.

Commissioners Baller and Schafer asked if there was a way of preventing superfluous ramps from being constructed.

CA Kucharek noted that ‘accessible’ clarifies what types of ramps could be constructed.

In reply to Commissioner Baller, CA Kucharek confirmed that a ‘no’ vote would contribute to a possible violation of the law.

In reply to Commissioner Haig, BO Johnson said the proposed language did not propose an annual renewal.

Commissioner McLain noted that these ramps are essential for some people to enter and exit their homes. She said she would be supportive of an annual renewal.

CA Kucharek asked to be allowed to take this item back, conduct a bit more research, and return with answers to the Commission’s questions at the next meeting.

MOTION: Motion by MPT Boutros, Commissioner McLain:
To postpone action on this item to the next regular Commission meeting of July 25, 2022.

CA Kucharek noted that if the proposed language changes the Commission would have to notice and hold another public hearing.

VOICE VOTE: Ayes, MPT Boutros
Commissioner Baller
Mayor Longe
Commissioner McLain
Commissioner Schafer
Commissioner Host
Commissioner Haig

Nays, None

07-192-22 Public Hearing for 185 N. Old Woodward – Bell Bistro (formerly Mad Hatter) – Special Land Use Permit Amendment, Final Site Plan & Design Review

The Mayor opened the public hearing at 11:35 p.m.

PD Dupuis presented the item.

Kelly Allen, attorney for the applicant, spoke on behalf of the applicant.

Seeing no public comment, the Mayor closed the public hearing at 11:37 p.m.

In reply to Commissioner Baller, ACM Ecker noted that the ordinance currently allows a restaurant outdoor dining within the width of its storefront. She explained that if the City wanted to allow establishments to share outdoor dining the City would have to amend the ordinance.

MOTION: Motion by MPT Boutros, Commissioner Host:
To approve the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 185 N. Old Woodward – Bell Bistro – and enter into a Special Land Use Permit Contract with RAM Restaurant Group, Inc. to allow for interior and exterior renovations at an existing bistro and the addition of a new outdoor dining area on public/private property on N. Old Woodward.

ROLL CALL VOTE: Ayes, MPT Boutros
Commissioner Baller
Mayor Longe
Commissioner McLain
Commissioner Schafer
Commissioner Host
Commissioner Haig

Nays, None

07-193-22 Public Hearing for 310 E Maple – Casa Pernoï – Special Land Use Permit Amendment, Final Site Plan & Design Review

The Mayor opened the public hearing at 11:42 p.m.

SP Cowan presented the item.

Seeing no public comment, the Mayor closed the public hearing at 11:44 p.m.

In reply to Commissioner Baller, SP Cowan summarized the Board of Zoning Appeal’s rationale for granting the applicant a variance.

MOTION: Motion by MPT Boutros, Commissioner Haig:
To approve the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 310 E. Maple – Casa Pernoï – and enter into a Special Land Use Permit Contract with Nuovo Holdings, LLC to allow for an isinglass enclosure and the expansion of the outdoor dining facility.

ROLL CALL VOTE: Ayes, MPT Boutros
Commissioner Baller
Mayor Longe
Commissioner McLain
Commissioner Schafer
Commissioner Host
Commissioner Haig

Nays, None

Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

Commission Discussion On Items From Previous Meetings

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

X. REPORTS

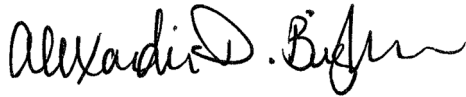
- A. Commissioner Reports
 - 1. Notice of intention to appoint Advisory Parking Committee
 - 2. Notice of intention to appoint Board of Review
- B. Commissioner Comments

In agreement with previous comments from Commissioner Baller, Commissioner McLain said it would be beneficial for all Commissioners to visit the Michigan Municipal League's website and to review their publications on the Open Meetings Act and Robert's Rules of Order.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
 - D. Legislation
 - E. City Staff
- INFORMATION ONLY

XI. ADJOURN

Mayor Longe adjourned the meeting at 11:47 p.m.



Alexandria Bingham
City Clerk



Laura Eichenhorn
City Transcriptionist