BIRMINGHAM CITY COMMISSION MINUTES
NOVEMBER 24, 2014
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Stuart Lee Sherman, Mayor, called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL: Present, Mayor Sherman
Commissioner Dilgard
Mayor Pro Tem Hoff
Commissioner McDaniel
Commissioner Moore
Commissioner Nickita
Commissioner Rinschler
Absent, None

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, PSD Director Heiney, Finance Director Ostin, Assistant Finance Director Gerber, Billing Manager Laing, Police Chief Studt, Building Official Johnson, City Planner Ecker

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

11-268-14 PROCLAMATIONS

Mayor Sherman presented a proclamation to Richard "Cousin Don" Hobson in recognition of his retirement as Market Master for the Birmingham Farmers Market.

11-269-14 APPOINTMENT TO THE PRINCIPAL SHOPPING DISTRICT BOARD

MOTION: Motion by Hoff, seconded by Rinschler:
To concur in the city manager's appointment of Geoffrey Hockman, P.O. Box 936, Cheryl Daskas, Tender, 271 W. Maple, Steven Syzdek, BoConcept, 670 S. Old Woodward, to the Principal Shopping District Board, as the business operator or property owner members, to serve four-year terms to expire November 16, 2018.

VOTE: Yeas, 7
Absent, None

11-270-14 APPOINTMENT TO THE BOARD OF ZONING APPEALS

The Commission interviewed Peter Lyon, 1498 Yosemite, and Vionna Adams, 2109 Dorchester, for appointment to the Board of Zoning Appeals. Applicants Rachel Loughrin, 1604 Mansfield, and Michael Minna, 857 Redding, were previously interviewed.

MOTION: Motion by Dilgard:

To appoint Peter Lyon, 1498 Yosemite, as a regular member to the Board of Zoning Appeals to complete a three-year term to expire October 10, 2017.

MOTION: Motion by McDaniel:
To appoint Rachel Loughrin, 1604 Mansfield, as a regular member to the Board of Zoning Appeals to complete a three-year term to expire October 10, 2017.

MOTION: Motion by Rinschler:
To appoint Vionna Adams, 2109 Dorchester, as a regular member to the Board of Zoning Appeals to complete a three-year term to expire October 10, 2017.

VOTE ON NOMINATION OF LYON:
Yeas, 5 (Hoff, Sherman, Dilgard, Moore, Nickita)
Absent, None

Peter Lyon was appointed as the regular member.

MOTION: Motion by Hoff:
To appoint Vionna Adams, 2109 Dorchester, as an alternate member to the Board of Zoning Appeals to complete a three-year term to expire February 17, 2017.

MOTION: Motion by Nickita:
To appoint Rachel Loughrin, 1604 Mansfield, as an alternate member to the Board of Zoning Appeals to complete a three-year term to expire February 17, 2017.

VOTE ON NOMINATION OF ADAMS:
Yeas, 3 (Hoff, Moore, Rinschler)
Absent, None

VOTE ON NOMINATION OF LOUGHRIN:
Yeas, 4 (McDaniel, Sherman, Dilgard, Nickita)
Absent, None

Rachel Loughrin was appointed as the alternate member.

11-271-14 APPOINTMENT TO THE PLANNING BOARD

Commissioner Nickita disclosed that he has done business with J.C. Cataldo and noted that the business activities were not in Birmingham. The Commission had no concerns with Commissioner Nickita participating in the appointments.

MOTION: Motion by Hoff:
To appoint Daniel Share, 1040 Gordon Lane, as alternate member to serve a three-year term on the Planning Board to expire November 2, 2017.

MOTION: Motion by Moore:
To appoint Stuart Jeffares, 1381 Birmingham Blvd, as alternate member to serve a three-year term on the Planning Board to expire November 2, 2017.

MOTION: Motion by Rinschler:
To appoint Sam Haberman, 700 Lakeside, as alternate member to serve a three-year term on the Planning Board to expire November 2, 2017.

MOTION: Motion by Nickita:
To appoint J.C. Cataldo, 271 Chesterfield, as alternate member to serve a three-year term on the Planning Board to expire November 2, 2017.

VOTE ON NOMINATION OF SHARE:
Yeas, 3 (Hoff, McDaniel, Sherman)
Absent, None

VOTE ON NOMINATION OF JEFFARES:
Yeas, 7
Absent, None

VOTE ON NOMINATION OF HABERMAN:
Yeas, 1 (Rinschler)
Absent, None

VOTE ON NOMINATION OF CATALDO:
Yeas, 3 (Nickita, Dilgard, Moore)
Absent, None

Stuart Jeffares was appointed as an alternate member. No other applicants received sufficient number of votes to be appointed to the second alternate position. The Mayor called for a second vote.

VOTE ON NOMINATION OF SHARE:
Yeas, 3 (Hoff, McDaniel, Sherman)
Absent, None

VOTE ON NOMINATION OF HABERMAN:
Yeas, 1 (Rinschler)
Absent, None

VOTE ON NOMINATION OF CATALDO:
Yeas, 3 (Nickita, Dilgard, Moore)
Absent, None

No applicants received sufficient number of votes to be appointed to the second alternate position. The Mayor called for another vote.

VOTE ON NOMINATION OF SHARE:
Yeas, 4 (Hoff, McDaniel, Sherman, Rinschler)
Absent, None

Daniel Share was appointed as an alternate member.

11-272-14 APPOINTMENT TO THE GREENWOOD CEMETERY ADVISORY BOARD

The Commission interviewed applicants for appointment to the Greenwood Cemetery Advisory Board. Applicants George Stern, 1090 Westwood, Pamela DeWeese, 932 Purdy, and Linda Peterson, 1532 Melton, were unable to attend to be interviewed.

MOTION: Motion by Nickita:
To appoint Darlene Gehringer, 1108 W. Maple, to the Greenwood Cemetery Advisory Board to serve a three-year term to expire July 6, 2017.

MOTION: Motion by Hoff:
To appoint Kevin Desmond, 962 Humphrey, to the Greenwood Cemetery Advisory Board to serve a three-year term to expire July 6, 2017.

MOTION: Motion by Rinschler:
To appoint Pamela DeWeese, 932 Purdy, to the Greenwood Cemetery Advisory Board to serve a two-year term to expire July 6, 2016.

MOTION: Motion by Dilgard:
To appoint Barbara Thurber, 463 Vinewood, to the Greenwood Cemetery Advisory Board to serve a two-year term to expire July 6, 2016.

MOTION: Motion by Moore:
To appoint Laura Schreiner, 591 Bird, to the Greenwood Cemetery Advisory Board to serve a one-year term to expire July 6, 2015.

MOTION: Motion by Hoff:
To appoint George Stern, 1090 Westwood, to the Greenwood Cemetery Advisory Board to serve a one-year term to expire July 6, 2015.

MOTION: Motion by Nickita:
To appoint Linda Peterson, 1532 Melton, to the Greenwood Cemetery Advisory Board to serve a one-year term to expire July 6, 2015.

VOTE ON NOMINATION OF GEHRINGER:
Yeas, 7
Absent, None

VOTE ON NOMINATION OF DESMOND:
Yeas, 7
Absent, None

VOTE ON NOMINATION OF DEWEESE:
Yeas, 7
Absent, None

VOTE ON NOMINATION OF THURBER:
Yeas, 7
Absent, None

VOTE ON NOMINATION OF SCHREINER:
Yeas, 7
Absent, None

VOTE ON NOMINATION OF STERN:
Yeas, 7
Absent, None

VOTE ON NOMINATION OF PETERSON:
Yeas, 7
Absent, None

The Clerk administered the oath to the appointed board members.

IV. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

11-273-14 APPROVAL OF CONSENT AGENDA

The following item was removed from the consent agenda:

- Item F (Village Fair Special Event Request) by Mayor Pro Tem Hoff

MOTION: Motion by McDaniel, seconded by Rinschler:
To approve the consent agenda as follows:

A. Approval of City Commission/Planning Board workshop minutes of October 20, 2014.
B. Approval of City Commission minutes of November 10, 2014.
C. Approval of warrant list, including Automated Clearing House payments, of November 12, 2014 in the amount of $1,658,079.30.
D. Approval of warrant list, including Automated Clearing House payments, of November 19, 2014 in the amount of $1,022,136.94.
E. Resolution approving a request from the Birmingham Bloomfield Art Center to hold Art Birmingham in Shain Park and on the surrounding streets on May 9–10, 2015 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.

ROLL CALL VOTE:	Yeas,	Commissioner Dilgard
		Mayor Pro Tem Hoff
		Commissioner McDaniel
		Commissioner Moore
		Commissioner Nickita
		Commissioner Rinschler
		Mayor Sherman
	Nays,	None
	Absent,	None
	Abstentions,	1, Hoff from Warrant 230973 (payment as election inspector)

The Commission agreed to consider Consent Item F at this time.

11-274-14 SPECIAL EVENT REQUEST
VILLAGE FAIR

In response to a question from Mayor Pro Tem Hoff, Joe Bauman, president of the Birmingham Bloomfield Chamber, explained that the sponsor of the private party pays a sponsor fee to the Chamber in order to host the private party on Wednesday, which helps the Chamber fund the grants given to the local charities. He explained that the Chamber does not pay a fee to the operators of the fair. The agreement with the operators of the fair is revenue-share based on the overall attendance at the fair.

MOTION: Motion by Hoff, seconded by McDaniel:
To approve a request submitted by the Birmingham Bloomfield Chamber to hold the Village Fair in the Shain Park area, May 27-31, 2015, including the private party, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

VOTE: Yeas, 7
Nays, None
Absent, None

V. UNFINISHED BUSINESS

11-275-14 PUBLIC HEARING TO CONSIDER A SPECIAL LAND USE PERMIT
SHELL GAS STATION, 33588 WOODWARD AVE

Mayor Sherman opened the Public Hearing to consider a Final Site Plan and Special Land Use Permit for Shell Gas Station (formerly Citgo), 33588 Woodward Ave at 8:17 PM.

Ms. Ecker explained that the Public Hearing was re-noticed as a new Special Land Use Permit (SLUP) with 24-hour operation. She explained the revisions to the previous resolution include language that the previous SLUP would be terminated and this would be considered a new SLUP. She noted that the photometric issue has been corrected and is now in compliance.

Ms. Ecker confirmed for Commissioner Nickita that there have been no design changes from the previous submission.

Scott Barbat, owner, confirmed for Mayor Pro Tem Hoff that no baking will occur on site. He explained that there will be four pumps which will allow for eight cars.

Commissioner Nickita suggested Mr. Barbat look at the property as immediate clean up is necessary.

The Mayor closed the Public Hearing at 8:30 PM.

MOTION: Motion by Rinschler, seconded by Nickita:
To approve the Final Site Plan & Design and a Special Land Use Permit at 33588 Woodward to allow the 24 hour operation of a Shell gasoline station with a convenience store and a Dunkin Donuts store on site:

WHEREAS, a Citgo gasoline station with a convenience store was previously in operation on the site until January 2014, operated under a valid Special Land Use Permit,

WHEREAS, B5 Investment LLC has now applied for a Special Land Use Permit, to operate a gasoline service station with 24 hour operation, along with a convenience store and a Dunkin Donuts store on site at 33588 Woodward,

WHEREAS, The land for which the Special Land Use Permit is sought is located at the southeast corner of Woodward Ave. and Chapin Ave.,

WHEREAS, The land is zoned B-2B General Business, which permits a gasoline service station with a convenience store 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 now requests a Special Land Use Permit to allow for the redevelopment of the site, including the construction of a new gas pump canopy with LED lighting, expansion and repair of the existing building, signage changes, as well as pedestrian improvements on the site, such application having been filed pursuant to Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

WHEREAS, The Planning Board reviewed the proposed Special Land Use Permit on August 27, 2014 at which time the Planning Board voted to recommend approval of the Final Site Plan and SLUP to the City Commission with the following conditions:

1. The applicant must reduce the max/min foot candle levels in the parking/drive area to 20/1 or obtain a variance from the BZA;
2. The applicant addresses all department concerns as outlined in the report subject to administrative approval;
3. All mechanical equipment must be fully screened;
4. The Planning Board approves the use of non-cutoff fixtures to up light the facade as proposed tonight;
5. Full brick is allowed and permitted as indicated tonight.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on August 27, 2014,

WHEREAS, The Birmingham City Commission has reviewed the B5 Investments LLC Special Land Use Permit application as well as the standards for such review as set forth in Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

NOW, THEREFORE, BE IT RESOLVED, That the previous Special Land Use Permit in effect for the operation of the former Citgo gasoline station at 33588 Woodward is hereby terminated.

BE IT FURTHER RESOLVED, The Birmingham City Commission finds the standards imposed on B5 Investments LLC under the City Code have been met, subject to the conditions below and B5 Investments LLC's application for a Special Land Use Permit to operate a gasoline service station with 24 hour operation, along with a convenience store and a Dunkin Donuts store on site at 33588 Woodward, is hereby approved, subject to the attached site plan, and subject to the following conditions:

1. The applicant must reduce the max/min foot candle levels in the parking/drive area to

20/1 or obtain a variance from the BZA;

2. The applicant addresses all department concerns as outlined in the report subject to administrative approval;
3. All mechanical equipment must be fully screened;
4. The Planning Board approves the use of non-cutoff fixtures to up light the facade as proposed tonight;
5. Full brick is allowed and permitted as indicated tonight.

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 B5 Investments LLC Company 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 B5 Investments LLC to comply with all the ordinances of the City, may result in the Commission revoking this Special Land Use Permit.

Commissioner Dilgard commented on the improvements to the lighting, landscaping and facade.

VOTE: Yeas, 7
Nays, None
Absent, None

VI. NEW BUSINESS

11-276-14 PUBLIC HEARING OF CONFIRMATION CUMMINGS STREET PAVING

Mayor Sherman opened the Public Hearing of Confirmation for the Cummings Street Paving at 8:32 PM.

Seeing no public comment, the Mayor closed the Public Hearing at 8:32 PM.

MOTION: Motion by Hoff, seconded by Dilgard:
To confirm Special Assessment Roll No. 863, to defray the cost of construction of new concrete pavement on Cummings Street-Chapin Avenue to East Fourteen Mile Road:

WHEREAS, Special Assessment Roll, designated Roll No. 863, has been heretofore prepared by the Billing Manager 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 11-262-14 provided it would meet this 24th day of November, 2014 for the sole purpose of reviewing the assessment roll, and

WHEREAS, at said hearing held this November 24th, 2014, 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. 863 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 four and a quarter percent (4.25%) on all unpaid installments.

VOTE: Yeas, 7
Nays, None
Absent, None

11-277-14 2014 AUDIT PRESENTATION

Joe Heffernan, Plante Moran, presented the 2014 Audit. He discussed the positive financial outlook and budget variances. He commented that by using the five-year financial forecasting, the City has kept the fund balance at a very healthy level.

Mr. Heffernan explained that the major and local street fund revenue has dropped to a point where, under the accounting rules, it does not deserve to be its own fund. Therefore the reporting on the financial statement has changed where the general fund is consolidated with the major and local street activity.

Commissioner Rinschler noted that the City has been focused on retirement, not health care. If contributions continue to be made in the health care fund, it is expected to be diminished by at least one third by the time the new rules comes into effect. Mr. Heffernan confirmed and noted that three years ago the unfunded pension, was significantly larger. The City has done a lot to reduce it and is now ninety percent funded. Mr. Valentine stated that closing the system has made an impact on this as well.

11-278-14 ORDINANCE TO REPEAL SECTION 74-310 REGARDING THE TRANSPORTATION OF MEDICAL MARIJANA

Police Chief Studt explained that the medical marijuana statute is undergoing changes through court decisions on a regular basis. As a result, the ordinance regarding the transportation of medical marijuana was found to be unconstitutional.

MOTION: Motion by Dilgard, seconded by Rinschler:
To repeal an ordinance - Section 74-310 – Possession, transport of usable marihuana in or upon a motor vehicle or self-propelled vehicle.

VOTE: Yeas, 7
Nays, None
Absent, None

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

11-279-14 COMMUNICATIONS

The Commission received the following communications:

- Ann Doman, 600 Arlington, regarding West Maple
- J. Claibourne & Elaine Kelly, 390 Hawthorne, regarding West Maple
- Mary & Fremont Scott, 776 Arlington, regarding West Maple

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

X. REPORTS

11-280-14 CITY STAFF REPORTS

The Commission received the Zoning Map updates and corrections submitted by Senior Planner Baka.

The Commission received the Holiday Tree Status update submitted by DPS Director Wood.

XI. ADJOURN

The Mayor adjourned the meeting at 8:53 PM.

Laura M. Pierce
City Clerk