BIRMINGHAM CITY COMMISSION MINUTES
FEBRUARY 9, 2015
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Rackeline Hoff, Mayor Pro Tem, called the meeting to order at 7:30 PM

II. ROLL CALL

ROLL CALL: Present, Mayor Pro Tem Hoff
Commissioner Dilgard
Commissioner McDaniel
Commissioner Moore
Commissioner Nickita
Commissioner Rinschler
Absent, Mayor Sherman

Administration: City Manager Valentine, City Attorney Currier, Deputy Clerk Arft, DPS Director Wood, Senior Planner Baka

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

02-20-15 RECOGNITION OF THE 2014 STUDENT BOARD REPRESENTATIVES

Mayor Pro Tem Hoff recognized the 2014 student board members.

02-21-15 APPOINTMENT OF THE 2015 STUDENT BOARD REPRESENTATIVES

MOTION: Motion by Moore, seconded by McDaniel:
To appoint the following students as non-voting members to the following City boards for calendar year 2015:

Scott Casperson Andrea Laverty	Planning Board
Zoe Bowers Patrick Rogers	Historic District Commission/Design Review Board
Ellery Benson	Historic District Study Committee
Shahanna Sarkisian Paige White	Parks and Recreation Board
Sydney Rosen Maya Salinas	Public Arts Board
Daniel Evans Rebecca Mendel	Multi-Modal Transportation Board
Maria Graham	Museum Board

VOTE: Yeas, 6
Nays, None
Absent, 1, (Sherman)

The Deputy Clerk administered the oath to the appointed student board members.

Cheryl Shettel, of Birmingham Seaholm High School, thanked the City Commission for the opportunity to serve on the boards given to the students each year.

02-20-15 APPOINTMENT TO THE BOARD OF REVIEW

MOTION: Motion by Moore:
To appoint Lester Richey, 1690 Stanley to the Board of Review to serve the remainder of a three-year term to expire December 31, 2017.

VOTE: Yeas, 6
Absent, 1 (Sherman)

The Deputy Clerk administered the oath to the appointed board member.

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.

02-22-15 APPROVAL OF CONSENT AGENDA

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

A. Approval of City Commission minutes of January 26, 2015.
B. Approval of City Commission Long Range Planning minutes of January 31, 2015.
C. Approval of warrant list, including Automated Clearing House payments, of January 28, 2015 in the amount of $1,451,178.40.
D. Approval of warrant list, including Automated Clearing House payments, of February 4, 2015 in the amount of $1,230,800.33.
E. Resolution setting a public hearing on the Development Plan and Tax Increment Financing Plan for the Birmingham Triangle District on March 16, 2015.
F. Resolution setting a Public Hearing for March 16, 2015 to consider the proposed Lot Rearrangement of 640 Baldwin Ct. and Parcel #1925304029.
G. Resolution approving the purchase of one (1) new John Deere XUV Utility Vehicle from D & G Equipment, through State of Michigan extendable purchasing contract #071B0200317 for a total expenditure of $17,495.81. Funds for this purchase are available in the Auto Equipment Fund, account #641.441.006-971.0100.
H. Resolution approving the purchase of one (1) new Toro Workman MDX Utility Vehicle from Spartan Distributors, through State of Michigan extendable purchasing contract #071B0200329 for a total expenditure of $10,930.93. Funds for this purchase are available in the Auto Equipment Fund, account #641.441.006-971.0100.
I. Resolution approving the purchase of one (1) new 2015 GMC Sierra 3500HD 4X4 medium duty dump truck from Red Holman Pontiac GMC, using Oakland County

Cooperative bid pricing for a total expenditure of $45,251.00. Funds for this purchase are available in the Auto Equipment Fund, account #641.441.006-971.0100.

J. Resolution authorizing the City Manager to sign the DIA Inside|Out Installation Agreements on behalf of the City for the installations on public property.

ROLL CALL VOTE:	Yeas,	Commissioner Dilgard
		Mayor Pro Tem Hoff
		Commissioner McDaniel
		Commissioner Moore
		Commissioner Nickita
		Commissioner Rinschler
	Nays,	None
	Absent,	1 (Sherman)

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

02-23-15 PUBLIC HEARING – SPECIAL LAND USE PERMIT (SLUP) AND FINAL SITE PLAN – 820 E. MAPLE AVENUE

The Mayor Pro Tem opened the Public Hearing at 7:45 PM.

Mr. Baka explained that the applicant is requesting an Economic Development license. He stated that All Seasons is in the Triangle District and these types of liquor licenses are permitted in this district. Mr. Baka noted that a condition attached to the Planning Board's recommendation for a variance has since been declared unnecessary by the City Attorney due to the SLUP approval on the site. Mr. Baka noted that the applicant has met the criteria as required by the Planning Board.

Mark Sturing and Bob Goyette were present on behalf of All Seasons.

Commissioner Dilgard asked why the applicant did not apply previously for this license. Mr. Sturing said the residents at the Bloomfield facility expressed a desire for liquor to be available within the facility and they decided to request the license for the Birmingham facility at this time.

Commissioner Rinschler asked if there is any concern about parking in adjacent neighborhoods. Mr. Baka said the applicant has been very conscious about parking during construction and that they are fully compliant with the parking requirements.

Mr. Goyette confirmed for Commissioner McDaniel that this license is for the use of the residents and their guests only, not for the public.

Mayor Pro Tem Hoff asked how many seats will be available for alcoholic beverage service. Mr. Goyette responded approximately 281 seats on the first floor. Mr. Sturing added that the facility has 131 units with 67 parking spaces on site. They will have a full service valet, and they are leasing 40 parking spaces nearby. For major events at the facility, they will expand the valet service.

Mr. Goyette said residents are able to have alcohol in their rooms, but will not be permitted to

bring them to the common dining facilities.

Mayor Pro Tem Hoff expressed her concern with location, parking and traffic. She would like to postpone the decision until after All Seasons opens and then assess the impact of the parking and traffic conditions at that time.

Mr. Sturing said they believe that having a liquor license will not have an impact on parking.

Commissioner McDaniel asked how many staff will be at All Seasons at its peak times. Mr. Sturing said about 20 staff members and their vehicles have been allocated on the satellite site.

Mayor Pro Tem Hoff stated that offering liquor will make a difference to parking. Families and friends will want to stay at the facility to share a meal, rather than go elsewhere.

Mayor Pro Tem Hoff expressed concern with the number of people, such as nurses, physical therapists and others, who will provide services to the residents and generate traffic on a daily basis.

Cheryl Dillingham, representing Stahelin Street, 772 E. Maple Road commented that their office and clients have experienced problems during the construction, and would like the city to postpone action tonight in order to assess the traffic impact first.

Mayor Pro Tem Hoff closed the Public Hearing at 8:13 PM.

Commissioner Rinschler stated that although he is concerned about the parking in general, he does not want to postpone the decision on the license because of a parking concern. He feels that people would not be coming to the facility because of the liquor license. Commissioner McDaniel agreed.

Commissioner Nickita stated that the basic question seems to be how the liquor license would affect parking. He stated that the license will not drive any increase in traffic and parking. His personal experience with this type of facility is that the number of visitors are limited.

MOTION: Motion by Rinschler, seconded by McDaniel:
To approve the application for a Special Land Use Permit and Final Site Plan for All Seasons Senior Living to permit the use of an Economic Development License for All Seasons at 820 E. Maple Avenue:

> **WHEREAS**, Hospitality of Birmingham LLC filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a food and drink establishment in the O-2 zone district in accordance Article 2, Section 2.37 of Chapter 126, Zoning, of the City Code;
> **WHEREAS**, The land for which the Special Land Use Permit is sought is located on the south side of E. Maple;
> **WHEREAS**, The land is zoned O-2, and is located within the Triangle Overlay District, which permits the operation of food and drink establishments serving alcoholic beverages with a Special Land Use Permit;
> **WHEREAS**, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The applicant submitted an application for a Special Land Use Permit and Final Site Plan for 820 E. Maple;

WHEREAS, The Planning Board on December 10, 2014 reviewed the application for a Special Land Use Permit and Final Site Plan and then recommended approval of the application with the condition that the applicant obtain a variance from the Board of Zoning Appeals to operate with a liquor license on the south portion of the property;

WHEREAS, The City Attorney has since ruled that no variance is necessary as the operation of an Economic Development liquor license is permitted anywhere on the parcel upon approval of a SLUP;

WHEREAS, The Birmingham City Commission has reviewed Hospitality of Birmingham LLC's Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that Hospitality of Birmingham LLC's application for a Special Land Use Permit and Final Site Plan at 820 E. Maple is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. Hospitality of Birmingham LLC shall abide by all provisions of the Birmingham City Code; and
2. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest.

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

MAY IT BE FURTHER RESOLVED that Hospitality of Birmingham LLC is recommended for the operation of a food and drink establishment serving alcoholic beverages on premises, subject to final inspection.

Mayor Pro Tem Hoff stated that this is a unique situation and she does not believe the applicant meets the criteria for this type of liquor license. The cuisine criteria doesn't apply because they are not in competition with others and All Seasons has no track record with the city. She said she will not support the motion tonight due to her concerns.

Commissioner Dilgard expressed support of granting the license tonight and stated the management will do what it takes to make the facility successful.

Commissioner Moore stated that the previous history criteria does not always apply and other applicants have been approved for this type of liquor license without a track record. This will be All Seasons third facility and he believes it is a well-run and efficient business.

VOTE:	Yeas,	5
	Nays,	1 (Hoff)
	Absent,	1 (Sherman)

02-24-15 RESOLUTION REGARDING TREE TRIMMING PLAN

City Manager Valentine provided information regarding DTE and its Ground to Sky program, which was developed at the direction of the Michigan Public Service Commission. He indicated that DTE has now taken a step back from that program and has engaged in recent conversations with the neighboring communities. In advance of DTE beginning work in the city, he hoped to set some parameters and conditions in order to achieve the best possible result.

Commissioner Rinschler suggested a change in the wording to direct city staff to work with DTE and Consumers.

MOTION: Motion by Rinschler, seconded by Moore:
To approve the Resolution directing city staff to work with DTE Energy and Consumers Energy on a reasonable tree trimming plan for the City of Birmingham to meet the Michigan Public Service Commission directive:

WHEREAS, the Birmingham City Commission is aware of a recent directive from the Michigan Public Service Commission (MPSC) to DTE Energy and Consumers Energy to implement a new tree trimming program in 2015 to reduce the number of power outages caused by falling trees and branches near power lines. DTE is calling their new program "Ground-to-Sky"; and

WHEREAS, electric service in Birmingham is provided by DTE; and

WHEREAS, DTE has interpreted this directive with an extreme interpretation and proceeded with such aggressive measures in other communities, resulting in drastic tree removal and a loss of numerous mature trees and other vegetation due to the clear-cutting methods; and

WHEREAS, while the Birmingham City Commission recognizes the need for the community to have reliable electric service, it also places high value on its existing tree canopy and other vegetation, which is vital in maintaining Birmingham's Tree City USA designation and adds to the character and property values of Birmingham; and

WHEREAS, Birmingham City Commission believes that while appropriate measures need to be taken by DTE to reduce possible impediments from maintaining reliable electric service by keeping the power lines running through the City clear from trees and branches, such efforts should be done in coordination with each respective community in order to prevent the unnecessary loss of existing canopy; and

WHEREAS, it is a concern that the substantial removal of trees and other vegetation results in unremoved branches, stumps and other related debris, which not only gives a blighted appearance, but exacerbates the visual impact to the area; and

WHEREAS, the Birmingham City Commission desires to communicate its concerns related to the Ground-to-Sky program and offer recommendations to DTE and request they review their Ground to Sky program and develop a program that is less drastic.

NOW THEREFORE, BE IT RESOLVED that the Birmingham City Commission urges DTE Energy to immediately end the Ground-to-Sky program and to initiate a careful review and analysis of what is reasonable and necessary to provide sustainable power and incorporate the following comments into consideration:

1. While falling trees and branches have contributed to loss of electrical services, primarily during storms, a clear-cutting approach is unreasonable and goes well beyond what is necessary to achieve the stated concerns and beyond what the MPSC has directed.
2. Any tree removal or trimming techniques should err on the side of minimizing the removal of any trees/shrubs/groundcover under lines that do not threaten power lines or have the characteristics that would allow them to grow and interfere with the overhead lines.
3. DTE shall continue to adhere to the established professional tree trimming standards.
4. DTE shall contact the City of Birmingham not less than 30 days before work is planned to begin to review the proposed trimming/removal schedules in order to determine an appropriate arrangement for each respective site.

5. DTE shall be required to make provision for the replacement of trees and other vegetation that it removes from public property.
6. DTE must secure the appropriate approvals and/or authorizations for any work to be done on private property and outside of any easements.

Commissioner Nickita asked Mr. Valentine to what degree does the city have the ability to direct the concerns of the community and adjacent neighbors. Mr. Valentine indicated that there is now a more collaborative approach. Discussion followed about the recent tree clearing in the neighboring communities.

Commissioner Rinschler stated the resolution is a political statement indicating the Commission's desire to be involved in discussions prior to any work being done, and noted DTE is not subject to city ordinances. Mr. Valentine said that by DTE indicating a willingness to discuss the work, the city can have a better outcome.

Commissioner Dilgard suggested that Mr. Valentine send the resolution to the CEO of DTE. The Commissioners agreed.

VOTE:	Yeas,	6
	Nays,	None
	Absent,	1 (Sherman)

02-25-15 TEAMSTERS LOCAL 214 GRIEVANCE

City Manager explained that this is step 5 in the grievance procedure and reviewed the options before the City Commission.

MOTION: Motion by McDaniel, seconded by Rinschler:
To waive consideration of the Teamsters Local 214 grievance of September 22, 2014.

VOTE:	Yeas,	6
	Nays,	None
	Absent,	1 (Sherman)

02-26-15 CLOSED SESSION REQUEST
ATTORNEY/CLIENT PRIVILEGE COMMUNICATION

MOTION: Motion by Nickita, seconded by McDaniel:
To meet in closed session to discuss an attorney/client privilege communication in accordance with Section 8(h) of the Open Meetings Act.

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

The Commission recessed to closed session at 8:38 PM.

The Commission reconvened in open session at 9:37 PM.

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

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

X. REPORTS

02-27-15 COMMISSIONER REPORTS

The Commission intends to appoint members to the Parks & Recreation Board, Multi-Modal Transportation Board, Planning Board, and Cablecasting Board on March 16, 2015.

XI. ADJOURN

The Mayor Pro Tem adjourned the meeting at 9:37 PM.

Cheryl Arft
Deputy City Clerk