BIRMINGHAM CITY COMMISSION MINUTES
APRIL 13, 2015
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 7:31 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, DPS Director Wood, City Planner Ecker, City Engineer O'Meara

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

03-67-15 APPOINTMENT TO THE ARCHITECTURAL REVIEW COMMITEE

MOTION: Motion by McDaniel:
To appoint Larry Bertollini, 1275 Webster, to the Architectural Review Committee to serve a three-year term to expire April 11, 2018.

VOTE: Yeas, 7
Absent, None

03-68-15 APPOINTMENT TO THE MULTI-MODAL TRANSPORTATION BOARD

MOTION: Motion by Moore:
To appoint Michael Surnow, 320 Martin, #100, to the Multi-Modal Transportation Board, as the bicycle advocate member to serve the remainder of a three-year term to expire March 24, 2016.

VOTE: 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.

03-69-15 APPROVAL OF CONSENT AGENDA

The following items were removed from the consent agenda:

- Item F (Security Cameras for Ice Arena and Skate Park) by Commissioner Rinschler
- Item H (Letter to AT&T regarding 155 Martin Street) Mayor Sherman noted this item will be considered at a later meeting.

MOTION: Motion by Rinschler, seconded by Hoff:

To approve the consent agenda as follows:

A. Approval of City Commission minutes of March 30, 2015.

B. Approval of warrant list, including Automated Clearing House payments, of April 1, 2015 in the amount of $1,231,933.40.

C. Approval of warrant list, including Automated Clearing House payments, of April 8, 2015 in the amount of $410,506.61.

D. Resolution approving the purchase and planting of 162 trees from Franks Landscaping and Supplies, LLC for the 2015 spring tree purchase and planting project for a total project cost not to exceed $48,262.00. 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 and the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 for these services. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

E. Resolution approving the purchase of twenty-two (22) City benches for a total purchase price of $29,665.00 from the sole source vendor, Superior Play, LLC. Further, waiving the normal bidding requirement as Superior Play, LLC is the sole source vendor for Dumor site furnishings. Funds for this acquisition will come from the Capital Projects Fund- Site Furnishings for Parks Account #401-901.009-981.0100.

G. Resolution awarding Contract #3-15(P), Chester St. Structure Street Improvements to FDM Contracting, Inc., in the amount of $410,955.50, to be charged as follows:

Major Street Fund	202-449.001-981.0100	$ 92,444.75
Auto Parking Fund	585-536.008-981.0100	$306,686.75
Sewer Fund	590-536.001-981.0100	$ 11,824.00
TOTAL		$410,955.50

Further, approving the appropriation and budget amendment as follows:

Major Street Fund

Revenues:		
Draw from Fund Balance	#202-000.000-400.0000	$47,450.00
Total Revenue Adjustments		$47,450.00
Expenditures:		
Major Street Public Improvements	#202-449.001-981.0100	$47,450.00
Total Expenditure Adjustments		$47,450.00

I. Resolution setting a public hearing date for May 18, 2015 to consider the Final Site Plan and Special Land Use Permit Amendment at 250 N. Old Woodward, to consider approval of the Final Site Plan and Special Land Use Permit to allow the operation of the Emagine Palladium Theatre and Ironwood Grill restaurant, operating under one Class C Liquor License to be held by CH Birmingham, LLC.

J. Resolution setting a Public Hearing for May 11, 2015 to consider the proposed Lot Rearrangement of 640 Baldwin Ct. and Parcel #1925304029.

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, Moore (from Warrant #233894 - reimbursement)

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

03-70-15 PUBLIC HEARING OF NECESSITY
OAK STREET PAVING PROJECT

Mayor Sherman opened the Public Hearing of Necessity for the Oak St. Paving Project Sewer Lateral Replacement Special Assessment District at 7:41 PM.

City Engineer O'Meara explained that there are five houses in the district and one will be removed as the owner is confident that they are not connected to Oak Street. He confirmed for Commissioner Dilgard that the beginning of construction is based on the frost laws which require restricted loading on the roads.

The Mayor closed the Public Hearing at 7:43 PM.

MOTION: Motion by Hoff, seconded by Nickita:
To declaring necessity for the Oak Street Paving Project. The Public Hearing of confirmation will be held on April 27, 2015:

WHEREAS, The City Commission has passed Ordinance No. 1906, to establish and adopt requirements and procedures for the replacement of sewer lateral lines when the City street is open for repairs or reconstruction; and

WHEREAS, The City Commission is of the opinion that replacement of sewer laterals not meeting current criteria as a part of the planned road paving project is declared a necessity; and

WHEREAS, formal bids have been received and the actual cost per foot for replacement of the sewer laterals has been determined,

RESOLVED, that all sewer laterals not meeting current criteria located within the limits of the following streets shall be replaced as a part of the paving project on Oak St. between Chesterfield Ave. and Lakepark Dr.

RESOLVED, that at such time as the Assessor is directed to prepare the assessment roll, of which 100% of the contractor's charge to replace sewer lateral (calculated at the rate of $54 per linear foot) shall be charged to the adjoining property owners benefiting from the sewer lateral,

RESOLVED, that there be a special assessment district created and special assessments levied in accordance with benefits against the properties within such assessment district, said special assessment district shall be all properties, within the following district:

"Caspar J. Lingeman's Quarton Road Unit of Quarton Lake Estates" Subdivision
Lots 24 and the southerly 35 ft. of lot 25, lot 72.

"The Heights" Subdivision
Lots 29, the westerly 127.5 ft. of lots 72 & 73 except for the northerly 8.0 ft. of lot 73.

"Subdivision of Lots 1 to 184 of Quarton Lake Estates Subdivision"
Lot 32.

RESOLVED, that the Commission shall meet on Monday, April 27, 2015, at 7:30 P.M., for the purpose of conducting a public hearing to confirm the roll for the replacement of sewer laterals within the Oak St. Paving Project.

VOTE: Yeas, 7
Nays, None
Absent, None

03-71-15 PUBLIC HEARING TO CONSIDER A SPECIAL LAND USE PERMIT AMENDMENT TOAST BIRMINGHAM, 203 PIERCE

Mayor Sherman opened the Public Hearing to consider a Special Land Use Permit and Final Site Plan amendment at Toast Birmingham, 203 Pierce at 7:44 PM.

City Planner Ecker explained the request to add an outdoor dining platform using two on-street parking spaces. She explained that the tree will be incorporated into the layout of the deck and the applicant is required to add an ADA compliant tree grade in the tree well in order to maintain the five foot walkway. She noted that there is existing outdoor dining on the sidewalk.

Ms. Ecker explained that at the time the original request came forward, the Commission felt it would be prudent to wait until the Ad Hoc Parking Study Committee had finished its parking report. The report is complete and shows an existing surplus system wide, however the long term forecast shows an increased demand for parking.

Richard Astrein, Astrein Jewelers, expressed opposition to the use of the two parking spaces as the loss of the spaces will have a definite impact on the stores. He questioned whether there was a limit to having outdoor dining on both the sidewalk and a platform.

Ms. Ecker confirmed that the ordinance does not limit establishments to outdoor dining to only the sidewalk or a platform. She pointed out that there are establishments which have both.

Commissioner Nickita pointed out that the 2016 plan suggests the downtown street parking be reviewed as there may be opportunity to gain a number of spaces within the yellow curb areas and a number of places where the parking striping could be altered.

Commissioner Moore questioned why the original request in 2008 was for less seats and questioned how this evolved to the current request.

Commissioner Rinschler pointed out that the approval of a platform is not guaranteed.

Mayor Pro Tem Hoff noted that with the current number of seats on the sidewalk, the applicant has almost exactly the number originally requested. She questioned the reason for adding the additional seats. Mayor Pro Tem Hoff expressed concern with the parking situation and stated that she cannot support taking out the two spaces.

Stuart Jeffares, 1381 Birmingham Blvd, expressed support of the platform.

Thomas Bloom, proprietor of Toast, commented that the original plan was almost the same as currently submitted. In response to a question from Commissioner Moore, Mr. Bloom explained the request is to use two full spaces.

In response to a question from Mayor Pro Tem Hoff, Julie Fielder, Retail Leasing Consultant for the PSD, confirmed that parking is very important to the potential retailers. Ms. Fielder pointed out that the parking decks are well located and service the four quadrants of the City.

Sara Dodge, resident, expressed support of the proposal to use the two parking spaces and frustration with the valets using the parking decks.

The Mayor closed the Public Hearing at 8:19 PM.

MOTION: Motion by Rinschler, seconded by McDaniel:
To approve the Final Site Plan & Special Land Use Permit Amendment for 203 Pierce – Toast Birmingham, to allow the addition of an outdoor dining platform.

Commissioner McDaniel pointed out that if all the platforms were removed, the parking problem would not be solved. He noted that valets and handicap parkers need to follow the state law.

Commissioner Dilgard explained his position is to allow a platform in limited situations only if there is not enough room for outdoor seating on the sidewalk.

Mayor Sherman noted that the platform does not extend to the bump out and questioned the reasoning as it could add additional seats. He expressed support of the platform, but suggested the applicant be allowed to extend the platform in order to utilize the existing space.

The Commission agreed to amend the motion to allow for administrative change in the platform.

AMENDED MOTION: Motion by Rinschler, seconded by McDaniel:
To approve the Final Site Plan & Special Land Use Permit Amendment for 203 Pierce – Toast Birmingham, to allow the addition of an outdoor dining platform to allow administrative change to increase the footprint of the deck over what is approved tonight if it is feasible and meets all the City requirements within the existing boundaries:

WHEREAS, Toast Restaurant filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a new restaurant as a bistro as defined in Article 9, section 9.02 of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the east side of Pierce Street between W. Maple and Merrill;

WHEREAS, The land is zoned B-4, Business Residential, and is located within the Downtown Birmingham Overlay District, which permits bistros 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 Planning Board on March 26, 2008 reviewed the application for Final Site Plan Review and a Special Land Use Permit and recommended approval with the following conditions:

1) The applicant maintain nighttime hours as presented this evening, Monday–Wednesday 7 a.m. – 9 p.m.; Thursday–Saturday 7 a.m. – midnight; Sunday 7 a.m. – 5 p.m.;
2) The applicant appear before the Historic District Commission for all building changes and signage;
3) The applicant execute a contract with the City of Birmingham for use of the right-of-way;
4) The applicant obtain an outdoor dining permit from the City of Birmingham for use of the right-of-way;
5) The applicant comply with all requests of City departments;
6) The applicant shall provide low-key entertainment as desired;
7) The color of the railing is black as presented;
8) The tables measure 24 in. x 28 in. as opposed to 28 in. x 28 in.;
9) The entry to the west patio access is at the north side of the enclosure, flipped from what is shown;
10) The seating be 65 seats, with no more than ten at the bar in accordance to the Ordinance.

WHEREAS, The Historic District Commission approved building changes and the proposed outdoor dining design and layout on May 7, 2008;

WHEREAS, The Advisory Parking Committee recommended on April 2, 2008, that the City Commission approve the request, contingent upon the applicant meeting all other relevant requirements;

WHEREAS, The applicant has complied with all other conditions for approval as recommended by the Planning Board on March 26, 2008;

WHEREAS, The Planning Board on May 14, 2014 reviewed the application for Revised Final Site Plan Review and a Special Land Use Permit to add an outdoor dining deck on Pierce Street and recommended approval with the following conditions:

(1) The applicant provide the required 5 ft. walk by adding an ADA compliant city standard tree grate to the tree well;

(2) The applicant add trash receptacles to both outdoor dining areas subject to administrative approval;
(3) The applicant provide appropriate details on the platform guardrail and handrails on the ramp to the platform to ensure compliance with the requirements of the Building Division;
(4) The applicant pay for the removal and re-installment of the parking meter where the outdoor dining platform is located;
(5) The applicant execute a revised contract with the City and obtain an outdoor dining permit; and
(6) The applicant is allowed to change the north table seating arrangement to a one table setup with administrative approval.

WHEREAS, The Advisory Parking Committee recommended on May 28, 2014 that the City Commission approve the request;

WHEREAS, The Birmingham City Commission has reviewed the Toast Restaurant 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 Toast Restaurant's application for a Special Land Use Permit authorizing the operation of a bistro at 310 E. Maple in accordance with Chapter 10, Alcoholic Liquors, 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) The applicant maintain nighttime hours of Monday–Wednesday 7 a.m. – 9 p.m.; Thursday–Saturday 7 a.m. – midnight; Sunday 7 a.m. – 5 p.m.;
2) The applicant appear before the Historic District Commission for all building changes and signage;
3) The applicant execute a contract with the City of Birmingham for use of the right-of-way;
4) The applicant obtain an outdoor dining permit from the City of Birmingham for use of the right-of-way;
5) The applicant comply with all requests of City departments;
6) The applicant provide the required 5 ft. walk by adding an ADA compliant city standard tree grate to the tree well;
7) The applicant add trash receptacles to both outdoor dining areas subject to administrative approval;
8) The applicant provide appropriate details on the platform guardrail and handrails on the ramp to the platform to ensure compliance with the requirements of the Building Division;
9) The applicant pay for the removal and re-installment of the parking meter where the outdoor dining platform is located;
10) The applicant execute a revised contract with the City and obtain an outdoor dining permit; and
11) The applicant is allowed to change the north table seating arrangement to a one table setup with administrative approval.

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, Toast Restaurant 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 Toast Restaurant to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 5
Nays, 2 (Dilgard, Hoff)
Absent, None

Commissioner Nickita suggested moving forward on a parking analysis to review the spaces and the current meter system or look at an alternate system. Mr. Valentine stated that in light of the current parking study, on-street parking could be included in the ongoing analysis to determine what opportunities exist and what additional spaces could be gained or utilized, then return to the Commission with recommendations.

03-72-15 2015 SPRING SCREENING FOR BISTRO APPLICANTS

Mayor Sherman pointed out that there are two bistro licenses still available as the two applicants from the fall did not move forward in the process.

The City Commission heard proposals from the following bistro applicants:

- Hillstone Restaurant Group, 189 West Merrill
- La Strada Dolci e Caffé, 243 East Merrill

In response to questions from the Commission, Brian Biel, with Hillstone Restaurant Group, explained that Hillstone is privately owned. The proposed bistro does not include a platform in the street. He stated that the company is working on a long term lease with Ken Kojian for the space. He confirmed that the bistro would include the Townsend bakery area as well.

In response to questions from the Commission, Zharko Palushaj, proprietor of La Strada, explained that the property will be split with between a café and a nail salon. He explained that his wife has already been approved for the nail salon. He explained the café concept includes champagne, wine, and beer as well as a small pizza oven, hot and cold paninis, coffee, desserts, gelatos, cheeses, and salads.

MOTION: Motion by McDaniel, seconded by Rinschler:
To direct the following bistro applications, in the priority order below, to the Planning Board for full site plan and design review and Special Land Use Permit review:

1. Hillstone Restaurant Group, 189 West Merrill
2. La Strada Dolci e Caffé, 243 East Merrill

VOTE: Yeas, 7
Nays, None
Absent, None

03-73-15 AUTHORIZATION OF A BOUNDARY AND TOPOGRAPHIC SURVEY OF PARKING LOT #5

City Engineer O'Meara explained that an Ad Hoc Parking Development Committee is being formed and the Committee will review parking lot #5 which is part of the North Old Woodward Parking Structure area. The surveyor will document exactly what is there to develop a working document from which a concept plan will eventually be developed.

Mayor Pro Tem Hoff questioned whether it is necessary to hire a company to do a survey because the approximate size of the space is known and conceptual plans can be submitted based on that information. Mr. O'Meara explained that there are obstacles in the way that will likely have to be relocated such as underground utilities and existing encroachments. In addition the slope issue from Willits to the north end would be surveyed.

MOTION: Motion by Rinschler, seconded by Nickita:
To authorize Nowak & Fraus to prepare a boundary and topographic survey of Parking Lot #5 (also known as 333 N. Old Woodward Ave.) as detailed in their April 3, 2015 proposal, for a cost of $12,960.00, charged to account number 585-538.005-981.0100.

VOTE: Yeas, 7
Nays, None
Absent, None

03-74-15 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
		Mayor Sherman
	Nays,	None
	Absent,	None
	Abstentions,	None

VII. REMOVED FROM CONSENT AGENDA

03-75-15 PURCHASE OF SECURITY CAMERAS FOR ICE ARENA AND SKATE PARK

In response to a question from Commissioner McDaniel, DPS Director Wood explained that the monitoring areas will be located at DPS. The cameras are not monitored 24/7, it is a retention system where the tapes are kept for several weeks in case of incident or accident that would have to be reviewed.

MOTION: Motion by McDaniel, seconded by Hoff:
To waive the competitive bidding requirement for the sole source vendor and approve the purchase of seven (7) security cameras and one (1) server from Abel Electronics, for a total

expenditure not to exceed $ 14,005.00. Funds for this purchase are available in the Parks-Public Improvements fund, account #101-751.000-981.0100.

VOTE: Yeas, 7
Nays, None
Absent, None

VIII. COMMUNICATIONS

03-76-15 COMMUNICATIONS

The Commission received a letter from the Arbor Day Foundation recognizing Birmingham as a 2014 Tree City USA.

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

03-77-15 OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

Lionel Finkelstein, 577 Arlington expressed opposition to reducing the number of lanes on West Maple.

Bill Dow, 1347 Yorkshire, expressed concern with reducing the number of lanes on West Maple.

X. REPORTS

03-78-15 COMMISSIONER REPORTS

The Commission intends to appoint members to the Housing Board of Appeals, Board of Building Trades Appeals, and Brownfield Redevelopment Authority on May 11, 2015 and the Ad Hoc Parking Development Committee on April 27, 2015.

03-79-15 COMMISSIONER COMMENTS

Commissioner Rinschler commented on the PEG fees and suggested the Commission suggest what other Committee or Board meetings should be televised.

03-80-15 CITY STAFF REPORTS

The Commission received the update on the Development Plan & Tax Increment Financing Plan for the Birmingham Triangle District submitted by Planning Director Ecker.

The Commission recessed to closed session at 9:32 PM.
The Commission reconvened in open session at 10:07 PM.

XI. ADJOURN

The Mayor adjourned the meeting at 10:07 PM.

Laura M. Pierce
City Clerk