BIRMINGHAM CITY COMMISSION MINUTES
AUGUST 24, 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 7:30 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, City Engineer O'Meara, City Planner Ecker, Planner Baka, Police Chief Studt, Deputy Police Chief Clemence

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

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.

08-181-15 APPROVAL OF CONSENT AGENDA

The following item was removed from the consent agenda:

- Item J (traffic signal upgrade) by Mayor Pro Tem Hoff

MOTION: Motion by Rinschler, seconded by McDaniel:

To approve the consent agenda as follows:

A. Approval of City Commission minutes of August 10, 2015.

B. Approval of warrant list, including Automated Clearing House payments, of August 12, 2015 in the amount of $2,826,648.94.

C. Approval of warrant list, including Automated Clearing House payments, of August 19, 2015 in the amount of $5,278,289.65.

D. Resolution setting a public hearing date of September 21, 2015 to consider approval of the Final Site Plan and Special Land Use Permit for Cameron's Steakhouse at 115 Willits to approve the transfer in ownership of the existing liquor license from the current

owners, Palladium Restaurant III, LLC and RHG Fish Market Inc. to Willits Co-License LLC and Mitchell's Entertainment, Inc.

E. Resolution setting a public hearing date of September 21, 2015 to consider approval of the Final Site Plan and Special Land Use Permit for Mitchell's Fish Market at 115 Willits to approve the transfer in ownership of the existing liquor license from the current owners, Palladium Restaurant III, LLC and RHG Fish Market Inc. to Willits Co-License LLC and Mitchell's Entertainment, Inc.

F. Resolution setting a public hearing date for September 21, 2015 to consider the Final Site Plan and Special Land Use Permit for 243 E. Merrill – La Strada Caffe, to allow the operation of a new bistro.

G. Resolution setting a Public Hearing of Necessity for the Birmingham Principal Shopping District on September 21, 2015. If necessity is declared, setting a Public Hearing of Confirmation of Assessment Rolls on October 12, 2015.

H. Resolution approving the purchase of one model #D6626-1 bus shelter to be located in the area of N. Old Woodward and Oakland, in the amount of $19,780 from Enseicom, charging it to account #401-901.020-971.0100. Further, waiving the normal bidding requirements as Enseicom is a sole source vendor for this product, and further, approving the appropriation and amendment to the 2015-2016 Capital Projects Fund Budget as follows:

<u>Capital Projects Fund</u>	
Revenues:	
Bus Shelter/SMART-Community Credits (401-901.020-587.0001)	$16,760
Transfer In – General Fund (401-901.020-699.0101)	$ 3,020
Total Revenues	$19,780
Expenditures:	
Bus Shelter/Machinery and Equipment (Account # 401-901.020–971.0100)	$19,780
Total Expenditures	$19,780
<u>General Fund</u>	
Revenues:	
Draw from Fund Balance (Account #101-000.000-400.0000)	$ 3,020
Total Revenues	$ 3,020
Expenditures:	
Transfer to Capital Projects (Account # 101-999.000-999.4010)	$ 3,020
Total Expenditures	$ 3,020

I. Resolution approving the purchase of one model #D6626-1 bus shelter to be located on the southwest corner of S. Old Woodward and Merrill, in the amount of $19,780 from Enseicom, charging it to account #401-901.020-971.0100, and further, waiving the normal bidding requirements as Enseicom is a sole source vendor for this product.

K. Resolution accepting the resignation of Shawn O'Rourke from the Museum Board, thanking Mr. O'Rourke for his service, and directing the Clerk to begin the process to fill the vacancy.

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, None

08-182-15 TRAFFIC SIGNAL UPGRADE ON WEST MAPLE BETWEEN SOUTHFIELD AND CRANBROOK

In response to a question by Mayor Pro Tem Hoff, Deputy Police Chief Clemence explained that West Maple is scheduled to be repaved in 2016. The Multi-Modal Board looked to improve the timing between the traffic signals on West Maple. He explained the new technology that would synchronize the traffic signals to allow more traffic to get through in a shorter amount of time. The traffic signals also need a new controller that will embrace the technology of the signals. The improved signals will remain regardless of what happens with the width of the road.

MOTION: Motion by Hoff, seconded by Rinschler:
To approve the purchase of traffic signal upgrades for five intersections on West Maple Road: Cranbrook, Chesterfield, Lakepark, Southfield, and Chester from the Road Commission for Oakland County (a sole source vendor) in the amount of $24,855.61; further waiving normal bidding requirements and authorizing this expenditure to Traffic Control Machinery and Equipment account #202-303.001 971.0100; and further approving the appropriations and budget amendment as follows:

Major Street Fund

Revenues:		
Draw from fund balance	#202-000.000-400.0000	$24,860
Expenditures:		
Traffic Control Machinery and Equipment	#202-303.001-971.0100	$24,860

VOTE: Yeas, 7
Nays, None
Absent, None

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

08-183-15 PUBLIC HEARING TO CONSIDER ORDINANCE AMENDMENTS TRANSITIONAL ZONING

Mayor Sherman opened the Public Hearing to consider amendments to Chapter 126, Zoning, of the Code of the City of Birmingham at 7:36 PM.

City Planner Ecker explained that the Planning Board did a comprehensive review of the transitional type. The Planning Board found that there were some common characteristics between the properties including that the properties were already used or zoned commercial

uses, abutting a single family residential property or neighborhood, located on major streets or a combination of those. She noted that all are commercial in their use or zoning with the exception of one property on Purdy which is zoned and used for single family.

She noted that the proposed zones would still allow for residential uses. Transitional Zone 1 (TZ1) is proposed to be residential uses only. Transitional Zone 2 (TZ2) and Transitional Zone 3 (TZ3) would allow for residential uses and some commercial uses. She noted that the Planning Board reviewed these use by use in each category and determined that each is a neighborhood compatible use and added controls to ensure it was neighborhood compatible. Anything related to food would require a special land use permit (SLUP). Some of the other standards include design standards, materials, and streetscape to further control the use and how the building would sit on a site.

Ms. Ecker explained that TZ1 is the most restrictive type of zoning proposed with regards to use. TZ1 is residential use only – only single family or attached single family or multi-family would be allowed on these properties. No commercial uses. She explained that the intent is come up with a comprehensive approach to providing for the orderly transition from commercial to residential areas which include a fully integrated mixed use pedestrian oriented environment, to protect the existing residential neighborhoods, to regulate the building height and mass to make sure the scale is appropriate, to review the uses to make sure the uses are appropriate, to make sure that the site design and building design are compatible with adjacent neighborhoods, and to encourage right-of-way design to calm traffic and create a distinction between the less intense residential areas and the more intense commercial areas.

Ms. Ecker explained that the uses requiring a SLUP include assisted living, churches, government use and office, independent hospice and senior living, schools, and skilled nursing facility. She noted that all of the current uses and buildings on the sites today would be allowed to remain as legal non-conforming. She noted that two to three stories are allowed with a maximum height of 35 feet, which is consistent with the permitted height in single family neighborhoods.

Ms. Ecker explained that the TZ2 are already used or zoned for commercial uses, with the exception of the property on Purdy. She noted that this allows for the same residential use and noted the list of uses proposed for that area was thoroughly vetted by the Planning Board and determined that the uses are neighborhood compatible commercial uses. She explained the uses allowed with a SLUP include anything with food. She further explained the development standards and noted the permitted height is 30 feet and two stories maximum.

Ms. Ecker noted that in TZ3 is only in two locations – at Quarton and Woodward Ave and Chesterfield and Maple. She noted that there is no single family actual use or home directly abutting the property. She noted that the height would require two-stories minimum and three-stories maximum. She explained that all residential uses are permitted. The commercial uses are listed as well as those allowed with a SLUP.

She explained the design standards, buffer standards, and streetscape standards required for all transition zones. In response to a question from Commissioner Rinschler regarding uses, Ms. Ecker confirmed that if a use is not listed, it is not allowed.

Commissioner McDaniel suggested that under the SLUP category there be an “other” category with standards delineated such as low vehicle traffic, limited hours of operation, etc. He suggested eliminating the list of permitted uses and make everything subject to review against some predetermined standards. Ms. Ecker noted that the catch all category was debated by the Planning Board and determined that it was not how the rest of the ordinance was written and it was not something they wanted to add. Commissioner McDaniel stated it is worthy of reconsideration.

In response to a question from Commissioner Nickita, Ms. Ecker explained that the Planning Board wanted to make sure that everyone was clear that if they moved into a neighborhood around these parcels that all the uses were specifically listed and the resident would know what could be built next to them.

Mayor Sherman commented on the uses which are heavier than what is currently allowed such as food and drink establishments. Ms. Ecker explained that the public stated that they wanted a small scale neighborhood use such as a specialty food shop. She noted that they also heard from the public who did not want a food shop which is why it is in the SLUP category.

Commissioner Moore expressed his understanding of the tension the Board went through in terms of uses and predictability. At the same time, the City wants to encourage entrepreneurship. He suggested this is a discussion to have down the line in terms of how we go about ensuring that the City remains relevant in terms of uses.

Enid Livingston stated that she would like the see the height in TZ1 restricted to the average of the adjacent heights rather than 35 feet.

Dorothy Conrad expressed concern with the number of units permitted under the development standards.

David Conlin suggested a different definition of transition as it can have a disruptive connotation.

David Bloom stated that the City has gotten away from the term buffer zone and started calling it transition which is a vague word. He suggested more time be spent trying to find a way to get more neighborhood buy-in for this.

Jim Partridge stated that the discussion is out of sync with the existing building code. He commented on the amount of glazing required. He expressed concern that this will become a City of awnings and transitional zoning should not be discussed until the windows are resolved, otherwise nothing will be built.

Patti Shayne expressed concern with density for such a small area, in particular on Purdy, as it is congested near the park. She stated that she is not clear how some of these zoning categories have emerged and is nervous about what could be built in such a small area.

Irving Tobocman expressed concern with the situation of the townhouses on Brown Street. He stated that the setbacks for residential should be left to the designer and architect so there is a

closer relationship between the walkable pedestrian situation and the people on the front porch like it is in most of the residential areas of the City.

Michael Murphy expressed concern with allowing the use of on-street parking as part of the parking requirement. He stated that blanketing the TZ2 with on-street parking across the board is not right.

Bill Finnicum expressed concern with the TZ1 zoning allowing front garages as they disrupt the rhythm of the street and the front porches are lost. He also expressed concern that there is no requirement for outside living space and allowing a building to be built up to the street as it will result in massive cumbersome structures.

David Kolar agreed with the suggested to incorporate a catch-all phrase for SLUP's. He expressed concern that with the new ordinance buildings would be built to an unusual shape and not leasable.

Larry Bertollini expressed concern with parking and increased traffic with the proposed uses. He noted that there is not a parking requirement with outdoor dining, which is allowed in TZ1 and TZ2. He noted that neighborhoods suffer with the parking issue.

Paul Reagan commented that there is a difference between the structural or dimensional provisions and the usages. He expressed concern that these buffers will be sieves, with the introduction of SLUPs.

Jim Mirro commented that he does not trust the process. He stated that spot zoning is bad and agreed with Mr. Reagan.

Bill Dow stated that he is unhappy with the ever increasing density and over-building of the City which is creating a lot of problems such as lack of parking, congested traffic, and encroachment in the neighborhoods.

Benjamin Gill agreed with Mr. Dow. He stated that when a particular problem comes up, a gigantic overview plan is not needed to take care of a few minor issues. He stated suggested using the rules already in place.

Commissioner Rinschler suggested eliminating all uses in TZ1 except for those that are specifically residential. Commissioner Nickita noted that it is a matter of interpretation as to whether the City wants the flexibility. He stated that for the most part it is residential unless there is a special condition in which case it is a SLUP. Commissioner McDaniel suggested having no defined uses, instead define the standards against which that proposal would be evaluated.

Commissioner McDaniel expressed concern with the design standards as expressed by architects tonight. He suggested a resolution is needed. In response to a question from Commissioner Nickita, Ms. Ecker explained that a building could be built, but it may not be in the same configuration. She confirmed that the glazing standards have been studied by the building department who found that buildings could be built to comply with the energy code standards.

Commissioner Moore questioned 404 Park. Ms. Ecker stated that it is currently zoned R2. There are no commercial uses proposed on that site. Churches, schools and government offices would be allowed with a SLUP. She noted that those uses are currently allowed in R1, R2, and R3. It is consistent with what is allowed in the single family districts already in the City.

Commissioner Nickita noted that the Board has looked at the adjacent residential and commercial condition and extended the residential condition into this area to make it adhere more to what was there. He noted that the heights are an extension of the current heights in the neighborhoods. He pointed out that the City has added a series of requirements in the 2016, Triangle District, Rail District Plans that give direction on development to make sure that the sidewalks, streets, and buildings address their particular block so they are in context in the most appropriate way. The Plans give guidance to make sure that we maintain the street activity that we have throughout these districts. These edge conditions have lacked the additional controls and guidelines. This is a very controlled zoning that adheres to what we have in these other districts.

Commissioner Moore stated that this ordinance would provide for controls over these buffer/transition zones.

Mayor Sherman commented that the concerns are about the uses. He noted that there were no garage door standards on the front in TZ1. It should be consistent in all three zones as the City does not want the garage door in the front.

Commissioner Nickita stated that in the conditions identified in TZ3, it will lessen the impact of the conditions that are there.

The Commission agreed that the ordinance needs revisions.

City Attorney Currier explained the transitional zoning amendments do not legally constitute spot zoning. Taking a look at what has been considered with the transition zoning, there has been an attempt to bring before the Commission a comprehensive plan for transitional zoning to make a gradual transition that is not abrupt nor cause harm to either district. The plan is to make an appropriate transition from one zoning classification to another where the two different districts are next to each other. The Planning Board has considered this matter for several years and has taken into account the health, safety, and welfare of the entire community and the adjacent owners and occupants of nearby properties.

Commissioner Nickita disclosed that his architectural firm has previously consulted with one of the developers interested in one particular site that will be reviewed regarding rezoning. Therefore, he will recuse himself from consideration of 404 Park.

Planner Baka presented the proposed revisions to each property in TZ2 and TZ3 comparing the current uses and the proposed uses.

The following individual spoke regarding 564, 588, Purdy, 115, 123, 195 W. Brown, 122, 178 E. Brown:

- Paul Pereira, 543 Henrietta, commented that if it is rezoned, it should be TZ1 for attached residential units. He stated that the residents should be protected.

The following individuals spoke regarding 1111 & 1137 Holland; 801, 877, 999, 1035 & 1105 S. Adams Rd.; 1108, 1132 & 1140 Webster; 1137 & 1143 Cole St.; 1101 & 1120 E. Lincoln:

- Dave Kolar, 1105 S. Adams, commented on the setbacks for TZ2 and noted that the building façade shall be built within five feet of the front lot line for a minimum of 75% of the street frontage. He stated that he would have to have a 75 foot wall façade of a building, forcing the parking to behind the building and would give an unusual "L" shaped building to be buildable to meet this requirement. He stated that he would like a relief of zoning so he can duplicate exactly what is there if it is taken by casualty.
- Larry Bongiovanni agreed. He noted that this has been brought up at the Planning Board review. He suggested that parking be considered if there will be a three story building overcapacity and the impact on the area. Mr. Baka confirmed that the same setbacks would apply for residential and commercial.

The following individuals spoke regarding 1775, 1803, 1915, 1971, 1999, 2055, 2075 & 2151 Fourteen Mile Rd:

- Michael Murphy, 1950 Bradford, questioned the benefit of changing the zoning and expanding what is there. He suggested fixing what is on Woodward now.
- Dorothy Conrad stated that there are all medical buildings along 14 Mile now with no commercial use. She questioned what is the benefit to the community to put a commercial strip along 14 Mile when there is already viable development along there.

The following individuals spoke regarding 412 & 420 E. Frank:

- Irving Tobocman stated that the ordinance takes away the lawn area that is expected in a walkable community by making the developer build five feet from the sidewalk. He noted that there are no buildings with porches or greenery. He stated that the creative process that the architects bring is being taken away.
- Mr. Baka confirmed for a resident that all the parcels could be developed as residential. The resident suggested that it be broadcasted that residential opportunity would not be eliminated.
- Salvatore Bitonti, owner of a bakery, commented that he has someone who wants to build on the property. Mr. Baka clarified that this parcel was originally intended to be TZ1. Mr. Bitonti had a concern that if he did not build his residential properties that his current tenants would be phased out eventually. Based on those comments, the Planning Board switched it to TZ2.
- Paul Reagan stated that it could have continued to operate under the existing zoning.

MOTION: Motion by Rinschler, seconded by Nickita:
To continue the Public Hearing to September 21, 2015.

VOTE: Yeas, 7
Nays, None
Absent, None

Commissioner Moore left at 10:41 PM

08-184-15 ORDINANCE AMENDMENT – CHAPTER 74 OFFENSES AGAINST PUBLIC SAFETY

Police Chief Studt explained that the proposed ordinance amendment is to be consistent with state law.

MOTION: Motion by McDaniel, seconded by Rinschler:
To adopt an ordinance amending Chapter 74, Offenses, Article VI, Offenses Against Public Safety, Division 2- Weapons.

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

Commissioner Moore returned at 10:43 PM.

08-185-15 MULTI-MODAL TRANSPORTATION BOARD RECOMMENDATIONS 2016 PAVING PROJECTS

City Engineer O'Meara presented the recommendations from the Multi-Modal Transportation Board. He explained that the recommendations include bump-outs on Brown at Bates, Henrietta, Pierce and South Old Woodward and would be included in the future as projects develop in those areas. The Board also recommended sharrows as part of the project next year.

He stated that the Board looked at the Hamilton and Park Street project and recommended that this improvement be postponed because the intersection of North Old Woodward would be reconstructed in 2018. He explained that Ferndale is narrow and difficult for the truck turning radius. He noted that the Board recommended rebuilding it as it is today as there is a bump out on the southside. The Board is also recommending bump outs at Park Street and Hamilton and Woodward and Hamilton. He noted that there would be three new parking places on the northside. At Torry Street, there is currently a side yard easement that extends the sidewalk north to Bowers Street and recommending that it be shortened with a new crosswalk to reduce the amount of time pedestrians are in the road.

Commissioner Nickita commented that the connection between the passageway to passageway should be direct. He suggested that other options be considered such as a wider crosswalk. Commissioner Nickita expressed concern with the size of the bump outs.

MOTION: Motion by Rinschler, seconded by McDaniel:
To accept the recommendations of the Multi-Modal Transportation Board with respect to 2016 paving projects planned by the City of Birmingham, in accordance with the Master Plan, as follows:

1. Brown St. – Sharrows shall be painted on all segments of Brown St. from Southfield Rd. to Woodward Ave. Crosswalk bumpouts shall be installed as a part of future projects at the intersections of Brown St., Henrietta St., Pierce St., and S. Old Woodward Ave.
2. Hamilton Ave./Park St. – Crosswalk bumpouts shall be installed at the intersections of N. Old Woodward Ave., Ferndale St., Park St., and Woodward Ave. Three additional metered parking spaces shall be installed on the north side

of Hamilton Ave., between Park St. and Woodward Ave. The south side sidewalk shall be widened on the block between Park St. and Woodward Ave. to enhance the streetscape.

3. Haynes St. & Torry St. intersection – A new handicap ramp shall be installed in the northeast section of the intersection (in front of 1601 Haynes St.), and the pavement markings for the crosswalk shall be removed and relocated to match the new and existing ramps at the east leg of the intersection.

VOTE: Yeas, 7
Nays, None
Absent, None

08-186-15 CLOSED SESSION REQUEST
LAND ACQUISITION

MOTION: Motion by Nick, seconded by McDaniel:
To meet in closed session to discuss land acquisition pursuant to Section 8(d) 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

VIII. COMMUNICATIONS

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

X. REPORTS

08-187-15 COMMISSIONER REPORTS

The Commission intends to appoint a member to the Museum Board on September 21, 2015.

08-188-15 COMMISSIONER COMMENTS

Commissioner McDaniel expressed concern with the tree trimming done by DTE on Greenwood and suggested another letter is in order. City Manager Valentine stated that the issue on Greenwood was more of a trimming, than a clear cutting issue. The challenge being that the Michigan Public Service Commission (MPSC) which oversees DTE is the one who directed them to enhance their reliability and service provided in the neighborhoods which is what they are

doing. To challenge that issue would put the City at odds with the directive put forward by the MPSC. This was not part of the ground to sky program.

Commissioner McDaniel stated that they are still cutting trees and should be notifying the residents and working with the communities. City Manager Valentine stated that the response he received was that DTE has now instituted a process by which they will be conferring amongst the different divisions that handle tree trimming and that we will be notified by all divisions in the future.

The Commission recessed to closed session at 11:00 PM.
The Commission reconvened in open session at 11:18 PM.

XI. ADJOURN

The Mayor adjourned the meeting at 11:18 PM.

Laura M. Pierce
City Clerk