



**CITY COMMISSION MEETING AGENDA
JULY 24, 2017
7:30 PM**



Municipal Building, 151 Martin, Birmingham, MI 48009

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BIRMINGHAM CITY COMMISSION AGENDA
JULY 24, 2017
NORTH END OF BROOKSIDE AVE.
6:00 P.M.
RECONVENING AT
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CONVENE AT 6:00 P.M. AT THE NORTH END OF BROOKSIDE AVE., BIRMINGHAM MI

- A. Physical inspection of proposed DTE Electric Company Overhead Easement for 856 N. Old Woodward.

Members of the public wishing to attend this part of the meeting should utilize Old Woodward on-street parking or Parking Lot #6.

II. RECESS

- A. Resolution to recess the meeting and reconvene at the Birmingham Municipal Building, 151 Martin, Birmingham MI at 7:30 p.m.

III. RECONVENE AT 7:30 P.M. AT MUNICIPAL BUILDING, 151 MARTIN, BIRMINGHAM MI

IV. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mark Nickita, Mayor

V. ROLL CALL

J. Cherilynn Brown, City Clerk

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

Announcements:

- The Farmer's Market continues on Sundays from 9 AM to 2 PM in Municipal Parking Lot #6 on N. Old Woodward.
- Upcoming Summer Concerts in Shain Park will feature the Toppermost Beatle Tribute at 7:00 PM, and on August 2nd at 12:00 Noon, The AnTekes, with classic rock & roll, will perform, followed at 7:00 PM that evening with The Sax Maniacs from Detroit, playing soul music.

VII. 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.

- A. Approval of Joint City Commission/Planning Board meeting minutes of June 19, 2017.

- B. Approval of City Commission minutes of July 10, 2017.
- C. Approval of warrant list, including Automated Clearing House payments, of July 12, 2017 in the amount of \$398,676.48.
- D. Approval of warrant list, including Automated Clearing House payments, of July 19, 2017 in the amount of \$2,833,311.83.
- E. Resolution approving the service agreement renewal with Logicalis, Inc. effective August 1, 2017 through June 30, 2018 for City Information Technology services. Further, directing the City Manager to sign the renewal agreement on behalf of the City.
- F. Resolution authorizing the issuance of a purchase order in the amount of \$306,195.46 to DTE Energy, for the removal of existing lights, and the manufacture and installation of 50 new street lights within the Old Woodward Ave. Reconstruction Project area. The work will be charged to account number 401- 901-010-981.0100.
- G. Resolution approving chemical/fertilizer purchases for Lincoln Hills and Springdale golf courses from Harrell's for \$22,000, Residex Turfgrass for \$22,000 and Great Lakes Turf for \$8,000. The total purchase from all vendors will not exceed a total of \$52,000. Funds will be charged to Springdale Golf Course and Lincoln Hills Golf Course - Operating Supplies, account #s 584/597-753.001-729.0000.
- H. Resolution setting Monday, August 14, 2017 at 7:30 PM for a public hearing to consider the Final Site Plan and Special Land Use Permit for 211 S. Old Woodward to allow for the addition of a theater liquor license for the Birmingham Theater.
- I. Resolution setting Monday, August 14, 2017 at 7:30 PM for a public hearing to consider the approval of the Brownfield Plan and Reimbursement Agreement for 35975 Woodward.
- J. Resolution awarding the 2017 Asphalt Resurfacing Program, Contract #5-17(P), to Florence Cement Co., of Shelby Twp., MI in the amount of \$410,369.70, to be charged to the following accounts:
- | | | |
|-------------------|----------------------|--------------|
| Local Street Fund | 203-449.001-981.0100 | \$399,469.70 |
| Sewer Fund | 590-536.001-811.0100 | \$ 6,000.00 |
| Water Fund | 591-537.004-811.0100 | \$ 4,900.00 |
| TOTAL | | \$410,369.70 |
- And further; approving the appropriation and amendment to the 2017-2018 Local Street Fund budgets as follows:
- Local Streets Fund
- Revenues:
- | | | |
|------------------------|----------------------|------------|
| Draw from Fund Balance | 203-000.000-400.0000 | \$ 119,470 |
| Total Revenue | | \$ 119,470 |
- Expenditures:
- | | | |
|--|----------------------|------------|
| EPS-Construction/
Public Improvements | 203-449.001-981.0100 | \$ 119,470 |
| Total Expenditures | | \$ 119,470 |
- K. Resolution approving the contract extension with Fleis & Vandenbrink consulting engineers through January 31, 2018 for traffic engineering services. Further, directing the Mayor and the City Clerk to sign the agreement on behalf of the City.

VIII. UNFINISHED BUSINESS

- A. Resolution authorizing the Mayor to sign DTE Electric Company Overhead Easement No. 47698093- 47698095, located on Lot 91 of Assessor's Plat #29, located in the northwest ¼ corner of Section 25, City of Birmingham.

OR

Resolution denying the request to authorize the DTE Electric Company Overhead Easement No. 47698093- 47698095, located on Lot 91 of Assessor's Plat #29, located in the northwest ¼ corner of Section 25, City of Birmingham.

IX. NEW BUSINESS

- A. Public Hearing to consider confirming Special Assessment Roll No. 879 to defray costs for public street maintenance within the 2017-2018 Capeseal project area.
 - 1. Resolution ratifying and confirming Special Assessment Roll No. 879, and instructing the City Clerk 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. Further, that special assessments shall be payable in one (1) payment as provided in Section 94-10 of the Code of the City of Birmingham at five and a quarter percent (5.25%) annual interest. (complete resolution in agenda packet)
- B. Public Hearing to consider Zoning Ordinance amendments for Glazing Standards.
 - 1. Resolution approving the following Zoning Ordinance amendments:
 - a. Article 03 Downtown Overlay District, Section 3.04(e) Architectural Standards to require clear glazing at the first floor façade;
 - b. Article 03 Triangle Overlay District, Section 3.09, commercial/mixed use architectural requirements to require clear glazing at the first floor façade;
 - c. Article 04 Development Standards, Section 4.90, WN-01 (Window Standards) to alter the required glazing on commercial buildings;
 - d. Article 07 Architectural Design Requirements, Section 7.05, Requirements, to remove inconsistent provisions; and
 - e. Article 9, Section 9.02, Definitions, to add definitions for clear glazing and lightly tinted glazing.
- C. Resolution approving Logo # 1 as the preferred logo by the Ad Hoc BBDC as the new Birmingham city logo,

OR

- Resolution approving Logo ____ as the new Birmingham city logo.
- D. SUGGESTED RESOLUTION A:
Resolution endorsing the Multi-Modal Transportation Board recommendations for S. Eton Rd. from Maple Rd. to Lincoln Ave., as described below:
 - 1. Maple Rd. to Yosemite Blvd.
 - a. Relocation of the west side curb of S. Eton Rd. from Maple Rd. to Yosemite Blvd. three feet closer to the center, allowing the installation of an 8 ft. wide sidewalk behind the relocated curb.
 - b. Installation of a pedestrian island at the Maple Rd. & S. Eton Rd. intersection to improve safety for pedestrians crossing on the south side of Maple Rd.
 - c. Installation of a wider sidewalk adjacent to the handicap ramp at the southeast corner of Maple Rd. & S. Eton Rd.
 - d. Installation of sharrows on green painted squares for both directions.
 - 2. Yosemite Blvd. to Villa Ave.
 - a. Removal of the existing parking on the west side of the street.
 - b. Relocation of the curb and gutter on both sides of the street to accommodate 5 to 6.5 ft. wide sidewalks and 4 ft. wide green spaces with new City trees.
 - c. Installation of sharrows on green painted squares for both directions.

3. Villa Ave. to Lincoln Ave.
 - a. Removal of the existing parking on the west side of the street, replaced with an 8.5 ft. wide bi-directional bike lane and a 1.5 ft. buffer with raised markers.
 - b. Sidewalk improvements as needed at Villa Ave. and Lincoln Ave. to facilitate the bi-directional bike lane.
 - c. Installation of a 3 ft. wide buffer between the northbound travel lane and 7 ft. parking lane.
 - d. Curbed bumpouts at marked pedestrian crosswalks on the west side of the street, at the intersections of Villa Ave., Hazel Ave., Bowers Ave., Cole Ave., and Lincoln Ave.

Further, confirming that the work on the block south of Maple Rd. shall be included as a part of the 2017 Concrete Sidewalk Program, Contract #3-17(SW), at an estimated total cost of \$68,000, to be charged to account number 202-449.001-981.0100. In addition, for the remaining sections, to direct staff to prepare cost estimates and budget recommendations for further consideration by the Commission.

SUGGESTED RESOLUTION B:

Resolution endorsing the Multi-Modal Transportation Board recommendations for S. Eton Rd. from Maple Rd. to Yosemite Blvd., as described below:

1. Relocation of the west side curb of S. Eton Rd. from Maple Rd. to Yosemite Blvd. three feet closer to the center, allowing the installation of an 8 ft. wide sidewalk behind the relocated curb.
2. Installation of a pedestrian island at the Maple Rd. & S. Eton Rd. intersection to improve safety for pedestrians crossing on the south side of Maple Rd.
3. Installation of a wider sidewalk adjacent to the handicap ramp at the southeast corner of Maple Rd. & S. Eton Rd.
4. Installation of sharrows on green painted squares for both directions.

Further, directing the Multi-Modal Transportation Board to study and provide recommendations for bike route improvements for the area of S. Eton Rd. from Lincoln Ave. to 14 Mile Rd.

- E. Resolution directing the Historic District Study Committee to prepare a study committee report for 361 E. Maple as outlined in section 127-4 of the City Code.
- F. Resolution to meet in closed session for consideration of the City Manager's performance evaluation as requested by the City Manager according to section 8(a) of the Open Meetings Act.

(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)

X. REMOVED FROM CONSENT AGENDA

XI. COMMUNICATIONS

XII. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA
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XIII. REPORTS

- A. Commissioner Reports

1. Notice of Intent to Appoint members to the Advisory Parking Committee, Design Review Board, and Historic District Commission on August 14, 2017.
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
 1. Board of Ethics Advisory Opinion 2016-03, submitted by the Ethics Board.
- D. Legislation
- E. City Staff

XIV. ADJOURN

INFORMATION ONLY

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:(248)530-1880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).



MEMORANDUM

City Clerk's Office

DATE: July 18, 2017

TO: Joseph A. Valentine, City Manager

FROM: J. Cherilynn Brown, City Clerk

SUBJECT: Review of June 19, 2017 Joint City Commission/Planning Board Meeting Minutes

At the July 10, 2017 City Commission meeting, Commissioner Hoff noted that her statement in the fifth full paragraph on Page 10 did not make sense and asked that the minutes be amended to clarify she was referring specifically to the following resolution adopted by the City Commission on May 8, 2017:

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Bordman:
To direct the Planning Board to review and present the recommendation to amend Article 3, section 3.04(C)(6), Specific Standards, to amend the Downtown Birmingham Overlay Standards to exclude community and personal service uses as permitted in the Redline Retail District, and to forward a recommendation to the City Commission on or before July 24, 2017, with the caveat that the Planning Board provide definitions of "community" and "personal service".

VOTE: Yeas, 4
Nays, 2 (DeWeese, Hoff)
Absent, 1 (Nickita)

I have amended the subject paragraph to read (added language is underlined):

Commissioner Hoff clarified the May 8, 2017 resolution adopted by the City Commission specifically stated* to exclude community and personal service uses. ~~It is very specific to exclude them.*~~ Commissioner Sherman clarified that the Board has to define it. We need a definition to know what those are.

SUGGESTED RESOLUTION:

To approve the Joint City Commission/Planning Board meeting minutes of June 19, 2017, as amended.

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES
JUNE 19, 2017
DPS FACILITY, 851 SOUTH ETON
8:00 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 8:00 PM.

II. ROLL CALL

PRESENT: Mayor Nickita
Mayor Pro Tem Harris
Commissioner Bordman
Commissioner Boutros
Commissioner DeWeese
Commissioner Hoff
Commissioner Sherman

Scott Klein, Planning Board Chairman
Stuart Jeffares, Member
Bert Koseck, Member
Janelle Whipple-Boyce, Member
J. Bryan Williams, Member

ABSENT: Robin Boyle, Member
Gillian Lazar, Member
Lisa Prasad, Member
Daniel Share, Member

ADMINISTRATION: City Manager Valentine, City Attorney Studt, Deputy Clerk Arft, Building
Planning Director, Ecker, Director Johnson

III. ITEMS FOR DISCUSSION

Mayor Nickita explained that this is a workshop session to discuss and evaluate various planning issues, with the intent to create an Action List for the Planning Board. City Manager Valentine added that more discussion will be needed on each item by the City Commission. The priorities will be determined by the Commission at a future meeting.

A. RENOVATION OF COMMERCIAL PROPERTIES

Planning Director Ecker explained that there are three boards that review building improvements consisting of the Planning Board, the Design Review Board and the Historic District Commission. The Zoning Ordinance establishes the review process for new construction and renovation of existing buildings. However, the Zoning Ordinance is not clear as to the extent an existing building can be renovated before it is deemed new construction, and the ordinance is not clear as to what specific changes trigger site plan review. Site plan reviews go to the Planning Board. If the building is in the historic district, it will also go to the Historic District Commission. If it is a design change only to an existing building, it would go to the Design Review Board. This issue came up particularly with the Audi building because they had not changed the footprint, it went to the Design Review Board. The question is should there be

a clarification made to some of the ordinance language to determine how much of a renovation to an existing building is a renovation, or when it becomes new construction or a new building. She noted that this is not the first time for this issue.

She also suggested clarifying what exactly is a design change vs. a site plan change. In the past, a site plan change has been interpreted as a change in the footprint in the building or square footage, but it is unclear in the ordinance. Would the City like to see the review procedures amended for new construction and/or the renovation of existing buildings, both in terms of which boards review those actions and also whether there needs to be clarification on what constitutes renovation of an existing building, and where the line is drawn between that and new construction. Also, does the Commission wish to see a distinction or clear definition as to what constitutes a site plan change and what constitutes a design change.

Commissioner Sherman suggested it would be wise to have more of a review than what we have now.

Mr. Jeffares asked about dramatic changes in use. Ms. Ecker responded that would require an application for an occupancy permit and any building permits needed. The Building Department would route the plans to the other departments. The Planning Department would look at the use to confirm it is an approved use, and at parking to confirm it met the parking requirements. If there are no exterior changes to the building, it does not need to go to a board for planning review, according to the current ordinances.

Mr. Koseck asked if the Design Review Board look at things such as site issues, pedestrian flow, trash, pickup, access, etc. Ms. Ecker said the DRB focuses more heavily on the design and the signage than the site issues. They do discuss the site issues, but not as much detail as the Planning Board and have input.

Mayor Pro Tem Harris asked for specific examples when the ordinance did not require a site plan review and the project later was thought to have needed to have site plan review. Ms. Ecker said the Audi building was an example of one that had concern expressed as to whether it needed a site plan review as well, but no changes were made to the layout of the site, access, etc. The Wachler building and the McCann building were other examples. A site on Cole Street was required to also go for site plan review, because changes were proposed to the parking lot and dumpster.

Commissioner DeWeese said the difference between design review and site plan review is not understood, and thinks it would be useful to have those defined and explained. He said that is also true of renovation and new construction. He added that site plan review considers internals, layout of other buildings around to see the interconnections between them, while Design Review does not look at as much, and so at a certain scale, it becomes important for site plan review.

Mayor Nickita said this is most evident in downtown overlay where we have specific requirements. The Surnow building is an example where we need the expertise of the Planning Board and the review that deals with specifics for a project of that sort. Maybe during the process, a recognition of the extent is clear, and if it is very minor and not much change, then it can be overlooked because we do not want to create difficulties when they are not there. We do not always know in the beginning of a project how big it might become. He thinks the

Planning Board should have some type of review to be certain the project adheres to the City's guidelines.

Commissioner Bordman expressed concern about what happens when a project turns out to be more involved than originally thought. She is unsure that our ordinance could even address a situation like that without causing problems for the builder.

Ms. Boyce said it becomes more of a planning issue when an extensive renovation matched with a change in use occurs. She would like the Planning Board to have the opportunity to review it to make sure all of the issues are addressed.

Mayor Nickita said there seems to be solid support for reviewing this further and identifying a plan of action to address having a further review than we have done in the past. The intention is not to create another level of regulation, but we have to make sure we have the proper checks and balances.

Mr. Valentine said this issue will be added and brought back to the Commission.

B. COMMERCIAL PROJECTIONS ONTO PUBLIC PROPERTY/ ARCHITECTURAL ALLOWANCES

Ms. Ecker explained that Chapter 98 implies that awnings, balconies, marquees, and canopies are permitted to project over the public right-of-way, but does not clearly state that they are permitted. They are to comply with Chapter 22, which are the Building Code regulations. The question has that arisen is should it be clarified in the Zoning Ordinance which, if any projections are permitted, and to address the height, projection or permitted materials for architectural features projecting into the public right of way.

Mayor Nickita added that the property line is the building face, so anything that projects beyond the building face is technically over City property. When the projections are a bit atypical or if they take on other forms, it becomes more difficult. Ms. Ecker said while we have a review process, we do not have a hard and fast regulation as to how far it can project.

In response to Commissioner Hoff, Ms. Ecker said we could potentially determine a size of how many inches a projection could protrude into the right of way, and if the location on the building would impact how far it could protrude.

Commissioner DeWeese said some of these projections are pleasing to the eye and are pedestrian-friendly, so the key may not be to define exactly how much, but maybe a minimum which would trigger a review standard.

Mr. Koseck said it is worth more study and investigation and development of some criteria or measurement.

Mayor Nickita said this issue is worthy of another layer of review to incorporate clear guidelines.

C. RAIL DISTRICT BOUNDARY REVIEW

Ms. Ecker explained that recently the Rail District boundaries were created and defined by the City Commission. The question has come up whether some other properties on the west side of S. Eton and/or the North Eton Plaza on N. Eton should be added to the district. The district

allows Bistro establishments to be operated on any of the properties with a Special Land Use Permit.

Commissioner Hoff noted that both of the properties mentioned are transitional zones, and are close to residential. She suggested that they could be classified in a transitional zone.

Mr. Koseck noted that the Rail District is not a zoning district, and a transitional zone is a zoning classification. Ms. Ecker agreed, and compared it to an overlay district. The Rail District is a map that is incorporated into the Zoning Ordinance that delineates where the Rail District is. She added that all of the properties in the district do not share the same zoning.

Ms. Boyce commented that this issue does not seem to be a priority.

In response to Mayor Nickita's question, Ms. Ecker said she has not seen any requests or interest from the areas for inclusion in the district. Mayor Nickita added that all commercial or non-residential in the area is in the rail district, except for the two areas.

Mayor Pro Tem Harris asked if there have been any inquiries from the properties to apply for a Bistro license. Ms. Ecker said there have been none.

Commissioner Bordman suggested that the properties could be zoned transitional within the Rail District since there are various zoning classifications within the district. The parcel north of Maple is on Eton, and is in the same position relative to residential that the rest of the Rail District as outlined is in relation to residential. She does not like to see the parcels in question have no identity.

Mr. Williams noted that the Whole Foods area was made part of the Rail District at a later time, which enabled Whole Foods to apply for a Bistro license.

Commissioner Sherman suggested this is a low priority to move forward. It is something that could move forward at a later date if we see there is going to be some type of marketing program or a possibility of developing the properties to conform with the properties in the area.

Mayor Nickita said it is unusual that the two properties are not included, but the consensus is that it can be considered at a lower level. It is something to consider in the future.

D. ECONOMIC DEVELOPMENT LICENSE BOUNDARY REVIEW

Ms. Ecker explained that this issue came up over the past year. The Economic Development License boundary includes mostly properties along the Woodward corridor that the Commission at the time felt were the properties that needed a push forward in order to see some redevelopment occur. The area also now includes Maple Road just to the east of Woodward. The Stand and Triple Nickel have been developed as a result of the district. We have had interest from others who do not fall in the district at this point. She asked if there is interest in changing the boundaries for this district or not. Ms. Ecker added the benefit of being included in the district is the ability to transfer a liquor license from another municipality.

Mr. Jeffares is in favor of looking at this.

Commissioner Hoff said the Economic Development license does not have as many restrictions as the Bistro license, and because of that, she is not in favor of expanding the Economic

Development license boundary. By expanding the area, it would bring it closer to residential, areas she feels would be better suited for a Bistro license.

Commissioner DeWeese feels we need more control of it. Currently, we are seeing Bistros getting out of hand. He agrees with Commissioner Hoff, and suggested there maybe is an intermediate step.

Commissioner Sherman said the City does have control, as a Special Land Use Permit is required. This may be another tool to encourage something that would not otherwise be done.

Commissioner DeWeese clarified that his concern is about size, scale, and appropriateness.

Mayor Pro Tem Harris asked how challenging is it for a business to obtain a liquor license if it is not in an area for a Bistro license or economic development license. Ms. Ecker does not have the specifics on that, but the owner would have to obtain an existing quota license, which are rarely for sale, and are expensive.

City Manager Valentine clarified that the investment triggers the ability to obtain the license, then the applicant must purchase the license.

Commissioner Boutros said he thinks it is worth consideration.

Mayor Nickita suggested that a revision is in need of further review to see if it has merit. There are areas in the Triangle District that could use some incentive for development.

E. BISTRO ALLOWANCES AND RESTRICTIONS

Ms. Ecker said there has been concern expressed over the size of Bistros recently. She explained that a Bistro is defined as a restaurant with 65 seats or less, with no more than 10 of them at a bar, with a full service kitchen, low key entertainment, tables that must line the storefront, and outdoor dining. The biggest issue has been how much is too much outdoor dining. The intent when Bistros was started was to encourage outdoor dining, but it was not apparent at the time how far owners would look for creative opportunities to expand the outdoor dining. She suggested clarifications as to maximums, location, enclosures and the building code issues such as energy code, fire suppression might be needed. Parking needs are also a big concern.

Mayor Nickita added that the original concept for Bistros was just in the downtown area and that has changed. Once the area expanded to the Triangle area and Rail District, it changed the circumstance because of parking and available outdoor space.

Commissioner Bordman suggested considering different rules for different areas. The needs are different. Perhaps part of the study should be whether to have the exact same requirements in each of our districts.

Commissioner DeWeese suggested we need an intermediate level that applies in different situations. He considers this a high priority issue.

Mr. Koseck suggested that we should study the materials used and also the intent.

Commissioner Hoff agreed it is time to review the Bistro ordinance. It has developed differently than what was planned.

Mayor Nickita commented that it is time to review the ordinance.

F. RENTAL PROPERTY CONSIDERATIONS

Building Official Bruce Johnson explained short-term basis rentals. The City does have a rental ordinance for dwellings. The ordinance does not differentiate as to length of rental period. The department has become aware of a handful of homes that are being offered on the internet as vacation homes. There could be a potential issue such as number of different people coming and going in the neighborhood. There are a couple of homes that have not registered as rentals, and his department has communicated the City's requirement. There is a proposed Senate bill that would prohibit local government from regulating these homes. The City could not place any further restrictions on a short-term rental as it would on any other single family home in the district. The City could not prohibit short-term rentals of homes. The ordinance works well for typical rented dwelling units, but the short-term rentals may create unique complaints or concerns from either noise, people coming and going, and we may want to review the City Code to consider any legal restrictions needed.

Mr. Jeffares confirmed with Mr. Johnson that room rentals fall under our current ordinance.

In response to Commissioner Boutros' question, Mr. Johnson said he does not believe a homeowner knowingly tries to skirt the ordinance, and that it is a question of being unaware of the existence of our ordinance.

Mayor Pro Tem Harris commented that this seems to be a new trend, and thinks it would be worthy of some study to get ahead of some issues that might surface.

Commissioner Hoff asked if we would have any control over these type of rentals in light of the proposed Senate bill if passed. Mr. Johnson responded that if it passes, the City would have no control over those rentals.

Commissioner DeWeese is in favor of looking at this when Mr. Johnson has the time to devote to investigation and research.

Mayor Nickita agreed.

G. RETAIL DEFINITION REVISION

Ms. Ecker explained that the issue is the type of uses permitted on the first floor of the Redline Retail District. These are the streets designated on the zoning map with red lines. Primarily the streets are Old Woodward, Maple, Hamilton, sections of Pierce, Willits. In that area, the current ordinance calls for a retail use in the first 20 feet of depth, which comes from the 2016 plan. The plan recommended that retail be in the first floor for the first 20 feet of depth, and it had a definition for retail. The exact language was taken from the 2016 plan and adopted into our ordinance.

What we have to look at now is, was there enough clarity in the type of definition for retail and the associated definitions. Currently, retail is defined in the ordinance but it includes commercial. Commercial is then defined in the ordinance, and it includes personal services. Personal services is not defined. We did not vary from the 2016 plan because the author of the

plan did not recommend we define it so we did not, but things change and over time, we have different uses that have come up that have tried to get into the downtown. They want to be in the downtown and they fall under this definition of personal services because we have not defined it, and they have been able to get in on the first floor spaces. The Commission has directed the Planning Board to come up with the temporary relief mechanism to change the wording of the overlay district, and to add a definition for personal services and to look at specifically taking the quasi-office type use out of being a permitted use in the Redline Retail District downtown. The Board set a public hearing for July 12th to consider the temporary relief measures that the Commission sent to them. The Board has been studying the issue of retail and the use downtown that the Commission sent to them last year; specifically, how do we define it and how has it changed. That was the bigger picture, comprehensive issue. Specifically with regards to the Redline Retail and having a temporary relief valve, that is what they set the public hearing for on July 12th.

In this case, is there interest by the Commission to direct the Board to conduct a study session to review the intent of the Redline Retail District as proposed in the 2016 Plan and evaluate whether the current application of personal services is consistent with what the intent was in the 2016 plan.

The interpretation has been that a personal service is any type of service that a person can walk in and ask and pay for that service and get that service. The business has to be open to the public so a person off the street has to be able to walk in. It is that gray. A firm selling a marketing service or website designs is a quasi-office use. Maybe these types of uses were not envisioned at the time the 2016 plan was written. We are not sure what the intent of the 2016 plan was with regards to those. Businesses have been able to get in under the definition of personal services because they are open to the public and people walk in and buy their services. The argument is that they are offering personal services. Without a definition, it is difficult to clarify and draw the line as to what constitutes personal services and what doesn't.

So the definition of personal services that is up for consideration right now was arrived at by looking at other jurisdictions and what they defined as personal services. The most common use was that personal services dealt with the care of a person or their clothing, such as tailors, salons, facials, tanning places, shoe repair, anything dealing with the person or their clothing. If that definition was adopted that would very clearly specify that only those types of personal services would fall under commercial and therefore, the quasi-office type uses that we are seeing that are almost more business-related services would not fall under permitted uses in the Redline Retail district. So it is clarifying what would be permitted, and do we want to look at the intent of the 2016 plan and some of these uses that may or may not have even been conceived of at that time.

Mayor Nickita said there are two questions. The bigger question is concerning the state of potential uses that may be available now that were not available years ago. The other question is a question that came from the Building Official which is a matter of logistics on how Mr. Johnson does his job. When he gets a set of plans, he has to determine if it is allowed under our ordinance or not allowed under our ordinance. Ordinances become gray sometimes and projects look for clear identification. We had this issue with the dormer issue being unclear. There were a number of questions whether or not they fit within our ordinance. Mr. Johnson asked for clarity in the ordinance because it was unclear for him to do his work. The Board and Commission quickly took a look at it, and we found a solution to clear up a gray area that was there. The garage house issue was the same. They were done because there was a loophole

in the ordinance that created difficulty for the building staff to clarify. Over time, people interpret the ordinances differently or the interpretation gets grayer. The personal use term is too gray to identify for clarity from a legal perspective for approval. It seems like there is a misunderstanding as to what is being asked of the Planning Board. This is a clarification; we are not changing the ordinance.

The larger question brought up is the Redline Retail area accommodating uses of the day, or should it be reviewed. That is a separate issue and can be done at a different time. The issue at hand is can we help the Building Department do its job.

Commissioner Bordman understands that the problem is that we do not have a definition for an essential aspect of the Zoning Ordinance. As to the effect it might have on the Redline district or the other aspects of the Redline district, we should study it, but it can be done over time. Perhaps we make it a top priority over time. But we have an immediate issue that must be examined. Birmingham is a dynamic City and we get proposals all the time, and if our Building Official cannot address those issues right now while they are coming in, that is a problem. This creates a situation for the employees to be put in an awkward position to make a decision. She agreed that both issues should be addressed quickly. They are connected issues, but they are separate.

Mr. Williams said the distinction was not made at the time this came to the Board. One of the issues the Board is grappling with is adopting a proposed solution without a permanent or expiration date. Temporary measures tend to be permanent if they are not replaced. If we are going to have a solution here that is appropriate, we have to put a time frame on it, which would force us to prioritize it. He is quite confident that the landlords are furious because they do not understand the distinction being made tonight, nor did he.

Commissioner Sherman said it is clear that the Board received direction that was unclear, and that is what we are trying to do now. He said the idea of having a study session of what the intention was of the personal service uses under the 2016 plan is a very good next step, even before the Public Hearing. He suggested moving the July 12th Public Hearing to a date certain, have a study session to narrow the definition down a little bit, and then have the Public Hearing. When the Commission prioritizes these items, it is the Commission's job to give the Board priorities with expectations and timelines. He agreed that something should not be temporary and then allowed to become permanent.

Commissioner Hoff favors creating a personal service definition. She agrees we need a definition of personal service and then we will decide what to do with it, but we are not at the point of asking the Board to amend anything.

Commissioner DeWeese was concerned about community service also. In terms of community service, there are certain governmental units that are independent of the City that can come in regardless of our ordinances, and he didn't want it exclusionary. We need clear definition and clear intent of what our Master Plan has been trying to achieve and what works for walkable communities.

Mr. Clein said he has just heard two opinions that we kind of slow the bus, and do not have any real conversation on actual changes to the ordinance, but simply provide definitions. What he heard originally was that the Commission wanted the Board to make changes to the ordinance. He thinks that is where the confusion came, because the Board was in the middle of its study of

retail. He thought he was all clear. He would like clarity on what the Commission's goal is here.

Mayor Nickita said the idea was to make sure the Board has the ability to study this personal service determination and be able to clarify that and put off the Public Hearing until the Board is able to do that.

Commissioner Sherman said the motion was passed 4-2 to have the Public Hearing and make changes, and to define the term. There was some discussion as to what the term actually meant. The comments heard from Commissioners Hoff and DeWeese were minority opinion. The majority opinion was what you understood and articulated.

Commissioner Boutros said the message sent to the Board was different from what the intention was.

Commissioner Bordman expressed concern about the postponement in that it will be mistaken to mean take all the time needed, rather than getting this done as quickly as possible. There needs to be some direction on this idea of postpone and study.

Mayor Nickita thinks the intention driving this to begin with was Building Department staff needing help and that it is needed it sooner than later.

Commissioner Hoff commented that we should move forward on definition before July 24th. She thinks that it is still reasonable.

Mayor Pro Tem Harris said the majority position was for definition of personal use only and not a definition of community use.

Commissioner Sherman said his original comment was to postpone the Board's July 12th Public Hearing to shortly thereafter to give time for a study session.

Mr. Williams clarified that it has been suggested that Board open the July 12th Public Hearing, postpone it to a date certain, then begin study session of the personal service definition.

Mayor Nickita said this is not to be a broad review of the downtown, but recognize that ordinances become unclear and situations change. The idea is to take the Redline Retail district as a next step with current day market conditions and identifying where it could be strengthened with the intention of making it a pedestrian, walkable place is a valid thing to do, but it is not to be done when we look at personal service.

Ms. Ecker said she understands that they are to postpone the Public Hearing, focus on the personal services definition only. She asked to confirm the Commission does not wish the amendment to Article 3, Section 3.04(C)(6) right now.

Commissioner Sherman said that the ordinance amendment is still going to be the discussion at the Public Hearing, but in order to get to that point, the Board has to first study the personal services definition to incorporate it into the amended ordinance. That is what the Public Hearing is about. Ms. Ecker noted the Public Hearing was noticed for the amendment of Article 3, Section 3.04 and the personal services definition. She asked if the Commission wants the Planning Board to come up with a personal services definition and send that to the Commission

first. She noted that the motion as passed directs the Board to consider the definition of personal services and Article 3.04 to exclude personal services from the Redline Retail District. She asked if the Commission still wants both of those together. Commissioner Sherman confirmed, and believes that is what was discussed. Then it will come to the Commission for a Public Hearing.

City Manager Valentine said if the Board provides the definition, the ordinance has to be amended. It has already been noticed that way. The process is being separated somewhat to add the additional review of the 2016 plan on what the intent is, and then discuss the definition.

Ms. Ecker clarified that the Commission wants the Board to postpone the Public Hearing to a later date, and focus on the definition of personal services only. Then hold the Public Hearing for the ordinance amendments and the definition. Commissioner Sherman explained that it is one ordinance. Mr. Valentine said the resolution that was passed included the definition, so it is all one action by resolution of the Commission.

Commissioner Hoff stated she did not think the Board was going to amend the Downtown Birmingham Overlay standards to exclude community and personal services when we do not know what the personal service definition is. Mr. Valentine clarified that the resolution that passed had a subsequent amendment added which stipulated that the definition of personal services be included when it comes back the Commission.

Commissioner Sherman said the Commission recognized that it made no sense to amend it without a definition of personal service. The Commission is asking the Board to come back with a definition of personal services and the change incorporated into the ordinance as a recommendation.

Commissioner Hoff clarified the May 8, 2017 resolution adopted by the City Commission specifically stated* to exclude community and personal service uses. ~~It is very specific to exclude them.*~~ Commissioner Sherman clarified that the Board has to define it. We need a definition to know what those are.

Commissioner Boutros asked what would happen if the Board does not have a definition in time for the July 24th Public Hearing. Commissioner Sherman noted the Commission does not have a hearing on July 24th, and that the Commission asked that the Board report back to the Commission that date.

Mr. Valentine said he will follow up with the Board with written communication outlining what was discussed tonight, so there are no questions going forward.

Mr. Williams requested that Mr. Valentine address if the Board is to include or exclude personal services.

H. SHARED PARKING CONSIDERATION;

Ms. Ecker explained that the discussion tonight will center on shared parking and parking standards for private developments. Both were previous directions from the Commission last June and also when the Ad Hoc Rail District Committee recommendations were reported. It included a recommendation to encourage shared parking.

The Planning Board conducted a study of shared parking. The ordinance currently includes a provision for shared parking. The Planning Board has encouraged applicants to consider shared parking over the years, and it has not been something that most have been willing to do.

The recommendations from the Planning Board are:

- Parking calculations that would not require an applicant to hire a parking consultant. A standardized table has been included which takes into consideration all of the variables of the use, and provides a chart with parking requirements.
- Not include a requirement to record on title. When changes occur in use of a property, the Building Department forwards the plans to the Planning Department which will look at the use and the parking requirement.
- Offer zoning incentives, such as extra square footage, reduced landscape requirements, etc., in exchange for recording on title.

The Board discovered that no community mandates shared parking, but many were examples where incentives were offered and the process was streamlined.

The Board has refined the draft ordinance language and instead of setting a Public Hearing, it was decided to add it to the discussion tonight to get the Commission's input.

Commissioner Bordman would like to know how successful the communities have been with the parking calculations, and what kind of problems they encountered.

Commissioner DeWeese said it is useful for future consideration, but not a priority at this time. To the extent possible, he suggested we should make it easier for applicants to develop the properties.

Commissioner Hoff asked if shared parking agreements would be required for approval. Ms. Ecker said the proposed amendments would not require that. The property owner would have an obligation to the City to notify of a change in use and the parking reduction would be null and void if the notification was not made. In the case of a sale of a property, Ms. Ecker said if the use did not change, it would not be an issue. If the use did change, a notification would be required. Commissioner Hoff expressed concern when both parties no longer agree to the shared parking agreement. Ms. Ecker noted her concern.

Ms. Boyce noted she was on the Ad Hoc committee and recalls that the committee talked through some of these concerns. Her impression is that this could be accomplished fairly easily, and would like to be able to do it.

Mayor Nickita agreed and said it is quite important where we want to encourage development more. Parking is a concern, so as much as we can use shared parking, the better.

Ms. Ecker explained that the issue has been raised to alleviate parking concerns. The Board has been studying this issue over the last several months, and the question is now, does the Commission wish to see an expedited review by the Board of the parking requirements for private developments.

Commissioner Bordman said it sounds like the Planning Board has a heavy schedule now. While it is a worthwhile area of study, but she does not know about expediting it. She feels the Board has more urgent needs at this time.

Mr. Clein agreed with Commissioner Bordman and said that a review of parking is a large endeavor.

The consensus agreed that this is too large a topic to undertake at this time. It also is part of the upcoming Master Plan.

I. PLANNING BOARD ACTION LIST REVIEW

Ms. Ecker discussed the Action List and the items completed and still in progress.

Commissioner Hoff would like to see the Bistro ordinance review included.

Mr. Valentine said the Action List will be brought back as an action item so the Commissioners can determine the priorities and adopt it.

IV. PUBLIC COMMENT

Mr. Paul Ceckorian, Fairfax resident commented on the definition of personal use.

Mr. Richard Share, building owner on W. Maple, commented on restrictions.

Mr. Bedros Avedian, building owner on W. Maple, commented on retail changes.

Mr. Brian Najor, commented on personal use definition.

Mr. Matt Furlow, commented on retail challenges.

Mr. James Eshaki, commented on personal services and the ordinance process.

Mayor Nickita explained the process.

V. ADJOURN

The meeting was adjourned at 10:30 PM.

Cheryl Arft
Deputy Clerk

*As amended on July 24, 2017.

BIRMINGHAM CITY COMMISSION MINUTES
JULY 10, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 7:30 p.m.

II. ROLL CALL

ROLL CALL: Present,	Mayor Nickita Mayor Pro Tem Harris Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Sherman
Absent,	None

Administration: City Manager Valentine, Assistant City Planner Baka, City Clerk Brown, Fire Chief Connaughton, City Attorney Currier, City Planner Ecker, DPS Manager Filipski, City Engineer O'Meara, Human Resource Manager Taylor, DPS Director Wood

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

Mayor Nickita announced:

- *Finding Dory* is the featured movie at Booth Park on Friday, July 14th at 7:30 PM. For more information about upcoming Movie Nights in Booth Park, visit www.enjoybirmingham.com.
- Summer Concerts in Shain Park continue on Wednesday, July 12th at 12 PM featuring Rock/Classical music performed by Gia Warner & Bobby Lewis, and at 7 PM featuring the Psychedelic Music of the 60's and 70's with the Magic Bus. For upcoming performers and the schedule, visit www.bhamgov.org/summerconcerts.
- The immensely popular Farmers Market continues on Sundays from 9 AM to 2 PM in Municipal Parking Lot #6 on N. Old Woodward.
- Day on the Town is Saturday, July 22nd from 9 AM to 7 PM. There will be great shopping and sales, as well as activities for the entire family in downtown Birmingham. For more information on this event and others coming up, visit www.enjoybirmingham.com.
- Birmingham is competing for a Community Excellence Award from the Michigan Municipal League. The Birmingham Multi-Modal Transportation Board is the City's entry. Public voting determines the winner, so please log on to <http://cea.mml.org/vote/> to vote for Birmingham's Multi-Modal Transportation Board. You can vote once a day.

07-187-17

**APPOINTMENTS TO THE GREENWOOD CEMETERY
ADVISORY BOARD**

Neither Ms. Gehringer nor Mr. Desmond was available to attend the meeting. It was noted both are inaugural members of the Board.

MOTION: Motion by Commissioner Hoff:

To appoint Darlene Gehringer to the Greenwood Cemetery Advisory Board, to serve a three-year term to expire July 6, 2020.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

MOTION: Motion by Commissioner Boutros:

To appoint Kevin Desmond to the Greenwood Cemetery Advisory Board, to serve a three-year term to expire July 6, 2020.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

07-188-17

APPOINTMENTS OF ALTERNATES TO THE PARKS AND RECREATION BOARD

Eleanor Noble, John Rusche, Heather Carmona, Wendy DeWindt, and Amara Manoogian were present and were interviewed by the Commission.

MOTION: Motion by Commissioner Bordman:

To appoint Ellie Noble to the Parks and Recreation Board as an Alternate to serve a three-year term to expire March 13, 2020.

MOTION: Motion by Commissioner DeWeese:

To appoint John Rusche to the Parks and Recreation Board as an Alternate to serve a three-year term to expire March 13, 2020.

MOTION: Motion by Mayor Pro Tem Harris:

To appoint Heather Carmona to the Parks and Recreation Board as an Alternate to serve a three-year term to expire March 13, 2020.

VOTE for Ellie Noble:

Yeas, 4 (Bordman, Boutros, DeWeese, Sherman)
Nays, 0
Absent, 0

VOTE for John Rusche:

Yeas, 6 (Bordman, DeWeese, Harris, Hoff, Nickita, Sherman)
Nays, 0
Absent, 0

VOTE for Heather Carmona:

Yeas, 4 (Boutros, Harris, Hoff, Nickita)
Nays, 0
Absent, 0

John Rusche, having received a majority of votes, was declared appointed to the first of the two Parks and Recreation Board Alternate positions.

Because of the tied vote between Ellie Noble and Heather Carmona, Mayor Nickita called for a second round of voting.

VOTE for Ellie Noble:

Yeas,	5 (Bordman, Boutros, DeWeese, Hoff, Sherman)
Nays,	0
Absent,	0

Ellie Noble, having received a majority of votes, was declared appointed to the second of the two Parks and Recreation Board Alternate positions.

City Clerk Brown administered the oath of office to John Rusche and Ellie Noble.

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.

07-189-17 APPROVAL OF CONSENT AGENDA

The following item was removed from the Consent Agenda:

- Commissioner Hoff: Item A, Approval of Joint City Commission/Planning Board meeting minutes of June 19, 2017

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Boutros:
To approve the Consent Agenda, with item A removed.

ROLL CALL VOTE:	Yeas,	Commissioner Bordman Commissioner Boutros Commissioner DeWeese Mayor Pro Tem Harris Commissioner Hoff Mayor Nickita Commissioner Sherman
	Nays,	None
	Absent,	None

- B. Approval of City Commission meeting minutes of June 26, 2017.
- C. Approval of warrant list, including Automated Clearing House payments of June 28, 2017 in the amount of \$617,375.12.
- D. Approval of warrant list, including Automated Clearing House payments of July 5, 2017 in the amount of \$994,286.29.
- E. Resolution approving a request from the Piety Hill Chapter, National Society Daughters of the American Revolution to hold the Veteran's Day Wreath Laying Ceremony on November 11, 2017 at 11:00AM, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

- F. Resolution authorizing the City Manager to cast a vote, on the City's behalf, for the five incumbent members of the Michigan Municipal League Workers' Compensation Fund Board of Trustees for four-year terms, beginning October 1, 2017.
- G. Resolution approving the street light agreement between the City of Birmingham and DTE Energy regarding the installation of street lights at 750 Forest Ave. Further, directing the Mayor to sign the agreement on behalf of the City. All costs relative to this agreement will be charged to the adjacent owner.
- H. Resolution approving the Contract for Skating Director with Jill Kolaitis effective July 11, 2017 up to and including May 11, 2018. Further, authorizing the Mayor and City Clerk to sign the Contract on behalf of the City of Birmingham upon receipt of all required insurances.

V. UNFINISHED BUSINESS

07-190-17	OAKLAND AVE. – WOODWARD AVE. TO LAWNDALE AVE. MULTI-MODAL IMPROVEMENTS
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City Engineer O'Meara reported:

- The City Commission on May 22, 2017 discussed proposed plans for the reconstruction of Lawndale Ave., from Oakland Ave. to Woodward Ave. The discussion expanded to include potential sidewalk improvements on the above segment of Oakland Ave.
- The Multi-Modal Transportation Board (MMTB) at their meeting of June 1, 2017 reviewed and approved the following recommendations:
 - If endorsed by the MI Dept. of Transportation (MDOT), the Woodward Ave. crosswalk for Oakland Ave. would be relocated to the south side of the intersection for northbound traffic only. The relocation would reduce potential traffic conflicts for pedestrians and bicyclists using this intersection.
 - A sidewalk would be added to the south side of Oakland Ave. for this short block, providing additional more direct paths for pedestrians. The improvement will also encourage pedestrians crossing Oakland Ave. in this area to cross at the signalized intersection, improving safety.
 - The existing ramp at the southeast corner of Lawndale Ave. would be relocated about 25 feet east, in order to line up with a new ramp at the northeast corner of Lawndale Ave., encouraging pedestrians to cross at a STOP bar, rather than in the middle of the intersection.
- MDOT staff also endorses the idea of relocating the northbound Woodward Ave. crosswalk at Oakland Ave. and has offered to include this work in their 2018 resurfacing project at their cost, provided that the City agrees to install the rest of the sidewalk on the south side of the road at City cost.
- If the Commission approves the plan as presented, the Engineering Dept. will include the Lawndale Ave. ramp improvements with the work planned later this summer, and will work with MDOT to ensure the remaining improvements involving Woodward Ave. are completed no later than the end of the 2018 construction season.

Commissioners Bordman and Hoff expressed concern that sightlines on the southeast corner of Lawndale and Oakland reduce the visibility of pedestrians. Suggestions were made for a stop sign or a caution sign letting drivers know they are approaching a pedestrian crossing.

Commissioner DeWeese noted the road will be narrower which will slow cars. He and Mayor Nickita suggested hatching the crosswalk.

City Engineer O'Meara noted:

- There is no change planned in the location of traffic signals.
- The Lawndale portion of the project is slated to be completed August 2017.
- Installation of stop signs requires a traffic engineer to determine if the intersection meets applicable standards.
- The subject section of Oakland Ave. is a proposed bike route, and signs will be added to designate it as such.
- The Multi Modal Transportation Board (MMTB) has not explored a stop sign.

The Commission was generally in favor of Commissioner Sherman's suggestion to move forward with City Engineer O'Meara's recommendation as submitted and have the MMTB consider how to draw attention to the crossing of pedestrians, such as with a stop or caution sign and/or hatching the crosswalk.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Hoff:

To approve the sidewalk improvement plans recommended by the Multi-Modal Transportation Board for Oakland Ave. from Woodward Ave. to Lawndale Ave., to be implemented as a part of upcoming City of Birmingham and MI Dept. of Transportation projects planned in 2017 and 2018.

John Rusche felt the current pedestrian crosswalk across Woodward Ave. keeps pedestrians further away from traffic than the new recommendation

Benjamin Gill was opposed to a change from the current design of the crosswalks.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

VI. NEW BUSINESS

07-191-17 2017 CAPE SEAL – BID AWARD

DPS Manager Filipski reported:

- The City solicited sealed proposals from qualified parties to perform cape seal treatment on approximately 31,000 square yards of roadway as part of its cape seal maintenance program.
- The solicitation sought per-unit prices for single- and double-chip treatment, slurry seal, surface pulverization, street preparation, and manhole adjustments.
- The Department of Public Services recommends awarding the cape seal contract to Highway Maintenance and Construction, Inc. of Romulus, MI, the lowest qualified bidder for each solicited bid item, with the understanding the recommendation is contingent upon the results of the public hearing of necessity and confirmation of the related special assessment roll.
- Highway Maintenance and Construction has been performing the City cape seal work for over twelve years. The last award was for the 2014 Cape Seal Program and pricing was seven (7%) percent lower than the combined bid pricing for 2017.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Harris:

To approve the award with Highway Maintenance and Construction, Inc. for services related to the 2017 Cape Seal Program, contingent upon the results of the related public hearing of necessity and confirmation of the special assessment roll, in amounts no to exceed the per unit

pricing as submitted; Double chip seal \$3.13/sq. yd., Single chip seal \$1.70/sq. yd., Slurry seal \$2.61/sq. yd., Pulverizing \$1.90/sq. yd., Street preparation \$395.00/ton and Manhole adjustment \$550.00 each. Further, to authorize the Mayor and Clerk to sign the agreement on behalf of the City upon receipt of proper insurances.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

07-192-17 CAPE SEAL – PUBLIC HEARING OF NECESSITY

DPS Manager Filipski reported:

- The Department of Public Services maintains nearly 26 miles of unimproved roadways through periodic cape seal treatment – a process that involves the application of a stone chip seal followed by a slurry microsurface.
- The result is a smoother, dust-free driving surface that resists damaging moisture intrusion into the gravel road base.
- Cape seal is an inexpensive maintenance option relative to the cost of installing a fully-engineered road, but because it is only a surface treatment, it is limited in its ability to remedy road drainage and profile issues.
- Each year, DPS staff reviews unimproved streets and recommends streets for maintenance, taking into consideration treatment age and existing conditions.
- The most common failure conditions include surface wear and loss, road center crowning, and alligator cracking.
- The following streets have been identified for the 2017 Cape Seal Program:

		Pulverize	Prep
Larchlea	Lincoln to Maple	x	
Westchester	Lincoln to Maple	x	
Berwyn	Midvale to Avon	x	
Radnor	Maple to Berwyn		x
Avon	Radnor to S. Glenhurst		
Bryn Mawr	Cranbrook to Radnor		x
Puritan	Maple to Pine		x
Willow Lane	Midland to Raynale		x
Fairfax	Raynale to Suffield	x	

- Since 1948, the City policy for assessing street maintenance work on unimproved streets has been:
 - 85% of the front-foot costs for improvement are assessed on all property fronting the improvement;
 - 25% of the side-foot costs for improvement are assessed on all residential property siding the improvement;
 - 85% of the side-foot costs for improvement are assessed on improved business property siding the improvement and;
 - 25% of side-foot costs for improvement are assessed on vacant business property siding on the improvement.
- The balance of the cost, 15% and 75%, front- and side-footage respectively, is paid by the City.

- The Federal Americans with Disabilities Act requires sidewalk crossing ramps to be upgraded where applicable; in this project all streets have ramps subject to that requirement.
- Actual costs will be determined once the project is completed.

Commissioner Sherman explained cape sealing is a temporary solution to deal with unimproved roads until the roads are improved. He cautioned that the cape sealing process can move a drainage issue from one location to another.

Commissioner Hoff referred to several letters sent to the Commission from residents objecting to paying for the cape sealing. She explained that assessing the residents for unimproved road repairs is the City's policy and has been since 1948.

Commissioner DeWeese explained that an improved road, which means paved with curb and gutter, costs residents more up front, but once the road is improved the City maintains it. If enough people on the block petitioned for their road to be improved, the City could do that rather than cape seal, but he explained the road is in bad shape so something has to be done.

Mayor Nickita opened the public hearing at 8:22 p.m.

Len Billingsly asked how to find out what the assessment will be for his lot. City Manager Valentine directed him to talk to DPS Manager Filipski.

Paul Hofley, representing his parents, placed the blame for damaged roads on construction equipment and suggested the City allocate money from building permits to repair roads.

John Corey said the resurfacing is unnecessary because the road is smooth and not dusty. He commented that the last time the road was resurfaced the contractor left a deep depression in front of his property. He explained that four years ago the City did a good job filling in the area and the street itself does not need resurfacing.

Steve Taylor recommended postponing the cape seal program because of the current construction activity in the neighborhood. Concerning the policy of assessing residents for repairs, he recommended the City consider changing it to a fee-based system on builders. He asked that the 2017 program be postponed until the City Commission has time to consider a change.

Susan and Dennis Potoczak echoed what other community members said. He noted that 8 new builds have been constructed in the past 7-8 years, and 2 more homes on the road are currently being demolished and rebuilt. They said it is time to reconsider how the City repairs the roads and asked that load limits on construction vehicles be enforced.

Dennis Schreibeis indicated the residents are not going to vote to upgrade the road. He said it is time to change the City's policy because the underlying premise of the 1948 policy no longer applies. Mr. Schreibeis stated the taxes he has paid in Birmingham for the past five years are significant, and he is surprised the taxes aren't going to the roads.

Mike Brennan referenced his ongoing communications with City Manager Valentine regarding the inadvisability of putting a bike path on Larchlea when there are potholes from construction trucks all over the road. He pointed out that Larchlea becomes a single lane street with rainfall

because of the potholes caused by construction vehicles. He asked the Commission to consider delaying the cape seal program, noting ongoing construction in the neighborhood, and to make the people causing the road damage pay for the repairs. Mr. Brennan suggested the City more widely publicize the process, including the costs, of how residents can petition for improved streets.

Commissioner Sherman pointed out:

- Cape seal is a temporary band aid; it is just smoothing the underlying dirt and putting more gravel on top.
- The roads for the 2017 program have been identified based on the necessity of repairs, and residents are better off putting in an improved road and letting the City take over the maintenance.
- Residents pay the assessment for an improved road over 10 years.
- Improved roads increase property values.
- The roads have to be addressed in some fashion.

City Manager Valentine explained:

- The cape seal program is a maintenance program for gravel roads.
- A long term proposition is for an ad hoc committee to investigate alternatives.
- The City has brought on additional ordinance enforcement to deal with construction issues.

Commissioner DeWeese commented:

- He appreciates residents' comments about heavy trucks, and the City is becoming more sensitive as to how to address the issue.
- Birmingham is growing, and it is a change which allows the tax millage to be reduced.

Commissioner Hoff, referencing communication from Helen and Larry Smith, asked if cape seal will increase the crown of road and if the City could increase the width of the street with cape seal. DPS Manager Filipski explained Westchester Way will be pulverized which keeps the crown from becoming bigger, and the City cannot intentionally make the road wider.

Mayor Pro Tem Harris noted:

- The residents' comments resonate deeply.
- He believes the City is poised to investigate change.

Mayor Nickita remarked:

- The current assessment policy has been in place for decades so many residents over the years have had to pay the assessment.
- There has been a clear increase in construction activity in recent times, and valid points have been made concerning its impact on the roads which the City can consider, but those ideas are not in place now.
- City Manager Valentine is correct that the City does everything possible to address issues caused by contractors.
- Residents should report to the City observations of damage by construction vehicles.

In response to questions from Mayor Nickita, DPS Manager Filipski responded:

- Roads are identified for the cape seal maintenance program via an annual review and prioritization of conditions, such as potholes, alligator cracking and crowning, on all streets.

- Residents are informed of the options and process for requesting an improved street as part of the notification process for the cape seal program.

Mayor Nickita closed the public hearing at 9:01 p.m.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:

To declare necessity for the improvement to be known as 2017 Cape Seal Program-Public Street Improvement; further, approving the detailed cost estimates submitted by the Department of Public Services; further, creating a special assessment district and special assessments levied in accordance with benefits against the properties as described above; further that the following method of assessment be adopted: 85% of front-foot costs for improvement are assessed on all property fronting the improvement; 25% of side-foot costs for improvement are assessed on all residential property siding the improvement; 85% of side-foot costs for improvement are assessed on improved business property siding the improvement and; 25% of side-foot costs for improvement are assessed on vacant business property siding on the improvement; further, to direct the City Manager to prepare the special assessment roll and present the same to the City Commission for confirmation at the Public Hearing on Monday, July 24, 2017 at 7:30 p.m.

Commissioner Sherman encouraged residents to petition for full improved streets.

City Manager Valentine clarified that petitions for improved streets would need to be submitted in the next week and a half in order for the streets to be removed from the 2017 cape seal program.

Commissioner Boutros explained that improved streets are more expensive but can be paid for over 10 years, the cost is roughly \$10,000 - \$15,000, and are a better return on investment.

DPS Manager Filipski confirmed for Commissioner Hoff that every resident on the impacted streets were notified and given the question and answer form.

Commissioner Bordman said:

- She lives on an unimproved street and is aware of the problems and understands the concerns expressed.
- Birmingham is an old city where all the streets started as gravel roads, so the remnants have to be dealt with, and it's painful because the residents have to pay.
- To live in a wonderful city sometimes you have to go through some pain.
- The residents' comments may help the City going forward even if the process doesn't change right now.
- She thanks the residents for participating in the conversation.

Susan Potoczak asked the City to provide the potential costs of improving a street to the residents when sending out notification of the cape seal program.

Steve Taylor added that potential costs and the process for an improved street need to be given to residents on a timely basis, such as a year ahead, to give them a chance to explore options.

Commissioners discussed ways of giving affected residents a closer estimate of costs and perhaps a comparison between the costs of cape seal and full improvement, along with the information that assessments for full improvement may be paid over a 10 year period.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

07-193-17 PUBLIC HEARING FOR A LOT SPLIT OF 839 RANDALL CT.

Mayor Nickita opened the public hearing at 9:21 p.m.

Senior Planner Baka reported:

- The applicant previously combined their home on lots 10 and 11 with lot 9.
- At this time, the applicant is seeking approval to separate the existing platted lot 9 (currently vacant) from lots 10 and 11 on which their home is located.
- Although lot 9 is an existing platted lot, it cannot be separated administratively as the home located at 839 Randall Ct. was considered legal non-conforming in regards to Zoning Ordinance requirements when the combination was completed, and it has been determined by the Building Official that reverting the properties to the previous configuration would create a non-conforming condition.
- The Subdivision Regulation Ordinance (Chapter 102, Section 102-53) requires that the following standards be met for approval of a lot division:

(1) All lots formed or changed shall conform to minimum Zoning Ordinance Standards.

Both parcels that result from the lot split at 839 Randall Ct. would conform to minimum Zoning Ordinance standards as set out in Article 02, Section 2.08 of the Zoning Ordinance, for the R-2 Zoning District. However, there are several non-conforming conditions on the existing house that do not comply with the current ordinance standards. A review by the Building Department noted the following possible non-conformities:

- Lot coverage would return to 30.1% with 30% maximum required and open space would return to 36.7% with 40% required.
This non-conformity was existing previous to the lot combination and would be re-established if the requested lot split is approved.
- The front setback is off Randall Ct. and must meet the average of the homes within 200'.
This non-conformity will not be affected by the lot split.
- The rear setback is required to be a minimum of 30' (14.27' is existing).
This non-conformity will not be affected by the lot split.
- A total front and rear setback must be a total of 55' (29.26' is existing).
This non-conformity will not be affected by the lot split.
- Need to verify that a 5' minimum setback will exist if split on the west side.
This dimension has been verified by a surveyor as 5.22' which meets the requirement.
- Need front yard average of homes within 200' on Baldwin to confirm 24.06 is equal or larger than the average.
This non-conformity will not be affected by the lot split.

(2) All residential lots formed or changed by the division shall have a lot width not less than the average lot width of all lots on the same street within 300 feet of the lots formed or changed and within the same district.

The parcel at 839 Randall Ct. would revert back to 100'. The parcel identified as lot 9 would revert back to 72.83. The average lot width of lots in the area is 67.92. Accordingly, the parcels created by the lot split will meet this requirement.

(3) *The division will not adversely affect the interest of the public and of the abutting property owners. In making this determination, the City Commission shall consider, but not be limited to the following:*

- a. *The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use of appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.*
- b. *The effect of the proposed division upon any flood plain areas, wetlands or other natural features and the ability of the applicant to develop buildable sites on each resultant parcel without unreasonable disturbance of such natural features.*
- c. *The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.*

- The code requirements in Sec. 102-51 for administrative approval by the Building Official are not met in this case.
- Section 102-4, Waivers, of the code gives the City Commission the authority to make an exception in this case based on the fact that lot 9 was previously a buildable platted lot prior to 2015.

In response to questions from Commissioners, Senior Planner Baka explained:

- The lot size, 72.83' x 126', is similar to other lots on Randall.
- Lot 9 does not currently have an address because it is grouped with 839 Randall Ct.
- There is room to build a conforming house on lot 9.
- The two non-conforming features of lot 9, maximum lot coverage and open space, which were alleviated by the combining of lots 10 & 11 with lot 9, are the only nonconforming features that return if the lot split is approved.
- Despite builder fencing around the lot and builder advertising on the lot, no permits have been issued.
- Development of the lot would have to meet all city codes.

Tina Blodgett, property owner, in answer to Commissioner Hoff, explained:

- In 2015 the combination of the lots was requested to add on to the existing home.
- In 2017 the Blodgett's are moving out of state for her husband's job.
- The Blodgett's have received no offers on the house with the extra lot included, and their realtor suggested separating the lot.
- Builders have expressed interest in developing lot 9.

Mayor Nickita closed the public hearing at 9:35 p.m.

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Harris:
To grant a waiver in accordance with Sec. 102-4 Waivers and approve the proposed lot split of 839 Randall Ct.

Commissioner Sherman expressed concern with granting a waiver that will reintroduce a nonconforming situation.

Mayor Nickita, stating lot splits are notable and significant and should not be taken lightly, was troubled about the in and out nature of the situation. He noted, however, that Lot 9 is a very typical site for the neighborhood, while a gigantic house on the three combined lots would not be appropriate.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

07-194-17 856 N. OLD WOODWARD AVE. DTE ENERGY LINE RELOCATION

City Engineer O'Meara and City Planner Ecker reported:

- 856 N. Old Woodward Ave., directly south of the southeast corner of Oak St., has been vacant for nearly 30 years. The former building, destroyed by fire occupied only a portion of the site. The current owner, known as FLS Properties #5, LLC, has obtained final site plan approval from the Planning Board for the construction of a four-story mixed-use building, including two levels of underground parking. Final construction drawings are currently under review.
- Overhead electric wiring feeding many other properties to the north and south currently obstruct the full use of the property, and must be relocated if it is to be redeveloped to its full potential. The applicant has worked with DTE Energy Co., the two immediate property owners to the north, and City staff to finalize a relocation plan that accomplishes the goal of relocating the overhead wiring closer to the east property line, as well as entirely away from the north property line.
- In order to relocate the wires in such a manner that construction can proceed, DTE Energy has developed a relocation plan that moves a section of the wiring south of the subject property from its current location further east. Since the relocation involves City property, approval must be obtained from the City Commission.
- Issues relevant in this case:
 - A. The existing overhead wires obstruct both the north and east ends of the property. The wires are considered primary in the DTE Energy system, meaning that they cannot just be ended and re-routed elsewhere, rather, they need to continue north and south of this area on some path to ensure proper redundancy both to this new building and all of the other existing buildings in the immediate corridor.
 - B. The existing pole labeled A1 on the drawing, while not in direct conflict with the new building, is situated such that the entire relocation south of the property becomes warranted. Specifically, the wires south of the building cannot remain in place because if a new alignment started north of pole A1, a guy wire would have to extend further north to properly support the remaining wires and poles further south. With the building proposed immediately north of pole A1, there is no room available to create tension for the wires and poles to the south, if they were to remain.
 - C. Once the determination was made that a relocation is required, DTE Energy

identified three poles that should be relocated, given their current close proximity to the Rouge River (the bases of the poles are situated immediately adjacent to the west bank of the river). Extending the relocation south to the north edge of Parking Lot #6 (at pole #4), the remaining lines further south can then be tensioned with a guy wire without being potentially undermined from the adjacent river bank.

D. Relocating the lines further east will impact existing trees on a City owned floodplain/natural area. Given its low topography and classification as a floodplain, approving an easement in this area does not represent an impediment to future development of the property. The main focus, then, would be damage to the existing natural environment, particularly in the form of mature trees. In order to avoid such damage, DTE Energy was asked to consider all possible options that could avoid this relocation. The following was considered:

- Relocation from Parking Lot #6 property directly out to the N. Old Woodward Ave. right-of-way could be considered. Moving the wiring to an important, very visible right-of-way would require an underground installation. Further, given other existing underground utilities in the area, DTE Energy indicated that the wires would have to be moved to the west side of the right-of-way, while feeding each of the existing buildings being fed on the east side via underground connections. While such an effort would improve the overall aesthetics of the area, it would be prohibitively expensive, being roughly estimated at \$2 million (the proposal now being suggested is estimated at about \$220,000, which will be a 100% developer expense).
- Attempting to locate a source for power relocation to the west of Old Woodward Ave. through existing backyard feeds does not address the issue of feeding the existing buildings to the south.
- Likewise, attempting to locate a source for power relocation to the east of Woodward Ave. power lines (currently in backyards) again does not address the issue of feeding existing buildings to the south.
- DTE Energy mapped out the existing location and size of all trees 2" diameter and larger along the proposed route. The original route selected by DTE Energy focused on a natural linear clearing that exists in the area. DTE Energy agreed with the request of City staff to move the alignment approximately 10 feet west, allowing several larger trees to remain.
- After much analysis and discussion involving all involved parties, it appears that the only feasible solution to removing the encumbrance from 856 N. Old Woodward Ave. will involve the relocation of overhead electric utilities onto adjacent City property currently being maintained as a natural floodplain buffer between commercial and residential areas. The design moves the poles in an area of relatively low visibility, remains economically feasible, and allows redevelopment of this important property that has remained vacant for nearly thirty years.

Mayor Pro Tem Harris disclosed that he and the applicant have done cross-referral business with each other in past, but have no current business together.

After lengthy discussion of the proposed route for the line relocation, with representatives from DTE Energy explaining why several suggestions for alternate plans would not work or be cost prohibitive, the City Commission requested DTE provide a site tour for them so that an informed decision could be made.

City Manager Valentine indicated he would work out a date and time with DTE for the tour, and he thanked the DTE representatives for their time.

Mayor Nickita noted the tour would be noticed as a public meeting, and the tour will be open to members of the public.

The City Commission took no action.

07-195-17 DESIGN AND COST CONSIDERATIONS FOR 2018 OLD WOODWARD AVE. CONSTRUCTION PROJECT

City Engineer O'Meara and City Planner Ecker reported:

- Earlier this year the Engineering Department solicited bids for the proposed reconstruction of Old Woodward Ave. between Willits St. and Brown St. in Downtown Birmingham.
- The City requested bidders to provide bids for numerous material options, which resulted in a complex, detailed bidding package.
- The City Commission may wish to select preferred options in each category based on design and cost considerations to allow for a simpler bid package, which may attract a greater number of bidders and more competitive pricing.

They noted the options, specifications and costs as outlined in the June 30, 2017 memo to City Manager Valentine.

The Commissioners were in agreement that the look of Old Woodward Ave. should be consistent with the unified downtown design recommended in the Birmingham 2016 Plan. Therefore they were in favor of using standard Birmingham street lights, and standard streetscape and concrete street design. However, to allow the Birmingham Business District more options for lighting and other decorations, the Commissioners were in favor of an electrical system separate from the street light electrical system.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To direct staff to revise the bidding documents for the Old Woodward Ave.
Reconstruction Project, prepared for 2018 construction, with the following directives:

1. Installation of Hadco standard Birmingham street lights.
2. Inclusion of a separate electrical system.
3. Installation of the City's standard streetscape and concrete street design throughout the project, known as Option A1.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

07-196-17 2017 – 2018 PLANNING BOARD ACTION LIST

City Planner Ecker presented the Draft Planning Board Action List for 2017-2018 based on the June 19, 2017 Joint Planning Board/City Commission Meeting.

Each Commissioner noted their preference for priority projects, taking into account how quickly an item could be completed, which items might bog down progress because they will require more effort, input and time, and which items are issues the Commission is currently facing.

City Planner Ecker explained the Planning Board addresses 5 study items at each study session, so that 5 issues are being worked on concurrently. She estimated any zoning ordinance amendment takes a minimum of 3 - 6 months to go through the planning and public hearing process to reach the point of adoption.

A change in wording of the *Specific Direction/Problem Definition* for *Definition of Retail – Short Term Study* was requested to be consistent with City Manager Valentine's June 30, 2017 memo to the Planning Board: "review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown".

With regard to the issue of renting properties, which City Planner Ecker noted is not within the scope of the Planning Board, City Manager Valentine indicated he presented the issue at the joint meeting as something to keep an eye on. He believes it important to monitor pending legislation and plan for appropriate language in case the legislation doesn't pass.

The Commission requested that City Planner Ecker provide more clarity and detail for 2 items:
(1) "Consider looking at principal uses allowed and add flexibility ("and other similar uses")" and
(2) "Potential residential zoning changes; MF & MX garage doors".

Mayor Nickita asked for a timely update on the Planning Board's progress, and City Manager Valentine suggested a progress report be given at the next Joint Planning Board/City Commission Meeting.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To approve the Planning Board 2017 Action List as amended:

1. Definition of Retail – Short Term Study
2. Bistro Parameters
3. Economic Development License Boundary Review
4. Renovation of Commercial Properties
5. Commercial Projections onto Public Property / Architectural Allowances
6. Definition of Retail – Long Term Study
7. Shared Parking
8. Consider looking at principal uses allowed and add flexibility ("and other similar uses")
9. Potential residential zoning changes; MF & MX garage doors
10. Rail District Boundary Review
11. Sustainable Urbanism (Green building standards, pervious surfaces, geothermal, native plants, low impact development, etc.)
12. Additional Items to be Considered during Master Plan Process

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

07-197-17 RECOMMENDATION FOR EXTENSION OF MASONRY SCREEN WALL

Fire Chief Connaughton reported:

- In the construction documents for the Chesterfield Fire Station the City approved removal of the existing wooden fence separating City property from residential

property on the north side of City property and replacement with a six foot masonry screen wall with capstone.

- The existing wooden fence also extends from the fire station property heading east, 120 lineal feet into City property.
- A property owner has requested that the wooden fence separating their property from City property be removed and replaced with the approved masonry screen wall.
- Without this change, their property line would have both wooden fence and masonry screen wall.

Fire Chief Connaughton requested the City Commission consider removing the 120 feet of existing wooden fence and replacing it with the six foot high masonry screen wall with capstone to dramatically improve the aesthetic and provide a stronger partition between property lines. He noted that now, while still early in the construction phase of this project, would be the optimal time to move forward with the proposal while equipment and manpower are on site and landscaping has not begun

Fire Chief Connaughton confirmed for Commissioner Hoff that the entire current fence belongs to the City.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Sherman: To approve the quote from Axiom Construction in the amount of \$36,211.20 to remove the existing wooden fence and replace with 120 feet of six foot high masonry screen wall with capstone, to be funded from account number 401-339.001-977.0000

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

07-198-17 PROPOSED SETTLEMENT AGREEMENT AND CONTRACT RENEWAL WITH BIRMINGHAM FIREFIGHTERS ASSOCIATION

HR Manager Taylor reported:

- The Birmingham Firefighters Association (BFFA), affiliated with the International Association of Firefighters, represents a total of twenty-seven (27) Firefighters, Firefighter/Paramedics, Lieutenants, and Captains.
- The current Collective Bargaining Agreement expires on June 30, 2017.
- The City and Union reached a settlement agreement on Monday, June 19, 2017, and union membership ratified the agreements on June 26, 2017.
- The primary economic provisions are consistent with the City's overall bargaining strategy of balancing wages with health care and other benefits costs, and continue the trend on increased employee cost sharing for health care-related coverages.
- The settlement is consistent with existing contracts with the Birmingham Police Officers and Command Officers agreements.
- The primary features of the settlement agreement are:
 - Three-year contract through 6/30/2020.
 - 2% wage adjustment in each year of the contract.
 - Increased prescription drug co-pays.
 - Increases in City contributions to retirement benefits.
 - Modest improvements in other minor economic provisions.

HR Manager Taylor, in response to a question from Commissioner Sherman, confirmed the contract is consistent with contracts negotiated with other unions. She explained there is a long term disability provision that was not in the police contract, but overall strategy is the same.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Bordman:
To approve the tentative agreements of June 12, 2017 and settlement agreement of June 19, 2017 between the City and BFFA for a renewal of the collective bargaining agreement through June 30, 2020. Further, to authorize the transfer of the appropriate funds by the Finance Department for the contract effective July 1, 2017.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

**07-199-17 CERTIFICATION OF COMPLIANCE WITH STATE OF MICHIGAN
PUBLIC ACT 152 OF 2011**

Human Resource Manager Taylor reported:

Background

Since 2012, Michigan public employers have annually certified compliance with Public Act 152— Publicly-funded Health Insurance Contribution Act—in order to maintain eligibility for state funding. Previously, this was a requirement for statutory revenue sharing disbursements tied to the Economic Vitality Incentive Program (EVIP) which has been discontinued. Now, MDOT uses PA 152 compliance for distribution of federal funds. Certification of compliance is required by September 30th of each year to guarantee eligibility for road funding in the current fiscal year.

Alternatives for Compliance

A local unit of government may comply with the Act by adopting any one of the following:

1. Adopt a limitation on flat dollar amounts of employee medical costs by establishing the hard dollar caps set forth by the Michigan Department of Treasury for single coverage, 2-person coverage, and family coverage.
2. Adopt a limitation on a percentage of the total annual medical costs by establishing a maximum employer contribution of 80%.
3. Opt-out by exempting itself from the requirements of the Act by 2/3 vote of the governing body.

Considerations

Since 2012, the City has elected to exempt itself from the requirements of the Act as its compliance alternative. This has been due to employee concessions in health care, which were initiated several years ago with increased cost sharing on the part of employees through increasing deductibles, co-insurance and co-pays. This has continued, and is continuing, with the objective of managing health care costs.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To authorize the city's compliance with the provisions of State of Michigan Public Act 152 of 2011, by exercising the City's option to exempt itself from the requirements of the Act; and further, directing the Finance Director to submit the required form with the Michigan Department of Transportation.

VOTE: Yeas, 7

Nays, 0
Absent, 0

**07-200-17 2017-18 COMPENSATION RECOMMENDATIONS FOR
DEPARTMENT HEADS AND ADMINISTRATIVE / MANAGEMENT
EMPLOYEES**

Human Resource Manager Taylor reported:

- Collective bargaining negotiations in recent years (including pending settlements of BFFA) have included a 2% wage adjustment for all respective labor groups.
- For fiscal year 2017-2018, HR recommends a 2% salary table adjustment for Department Heads and Administrative/Management classifications effective July 1, 2017, along with part-time employees not covered by a labor organization.
- Individual administrative and management staff do not receive automatic adjustments in conjunction with salary table changes. Instead increases for this group are determined through annual performance evaluations.
- HR recommends in-range performance increases based upon department head recommendations, and HR and City Manager approval, for the Department Heads and Administrative/Management group (including part-time staff not covered by a labor organization). This adjustment is for one of the City's largest employee groups and provides an estimated cost of \$140,000.
- In the past, the Commission has approved a variable pay component for management staff at or near their salary range maximum (currently about 15 key staff members) which provides the ability to achieve a performance increment. This performance increment, when achieved, is not built into base salary, but is a one-time lump sum payment and is subject to City Manager and HR approval. For fiscal year 2017-18, HR recommends an increment of up to 2.00%, which is an estimated cost of \$27,500.

MOTION: Motion by Commissioner Sherman seconded by Commissioner DeWeese:

- A. To approve the recommendation by Human Resources, to implement a 2% salary table adjustment and in-range adjustments based upon performance for full-time and part-time employees in the Department Head and Administrative/Management classifications effective July 1, 2017.

AND

- B. To approve the recommendation by Human Resources, to implement the 2% performance increment through June 30, 2018 with individual eligibility to be in accordance with merit increase guidelines.

AND

- C. To authorize increased copays in the Administrative/Management and ACA-Eligible benefit plans effective January 1, 2018 as recommended.

AND

- D. To approve the transfer of the necessary funds by the Finance Department to the respective departmental personnel accounts.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

VII. REMOVED FROM CONSENT AGENDA

07-201-17 APPROVAL OF JOINT CITY COMMISSION/PLANNING BOARD MEETING MINUTES OF JUNE 19, 2017

Commissioner Hoff noted that her statement in the fifth full paragraph on Page 10 did not make sense and asked that the minutes be amended to clarify she was referring specifically to the resolution adopted by the City Commission on May 8, 2017 which specifically excluded community and personal services.

City Clerk Brown was requested to review the minutes and bring them back at the July 24, 2017 Commission meeting for consideration of approval.

VIII. COMMUNICATIONS

None.

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

None.

X. REPORTS

07-202-17 COMMISSIONER REPORTS

The Commission will appoint members to the Advisory Parking Committee on August 14, 2017.

07-203-17 CITY STAFF REPORTS

The Commission received the Parking Utilization Report, submitted by City Engineer O'Meara.

The Commission received the Museum Strategic Plan Update, submitted by Museum Director Pielack.

XII. ADJOURN

Mayor Nickita adjourned the meeting at 11:54 p.m.

J. Cherilynn Brown, City Clerk

City of Birmingham
Warrant List Dated 07/12/2017

Meeting of 07/24/2017

Check Number	Early Release	Vendor #	Vendor	Amount
251375		MISC	4-EVER-WATER-TITE LLC	200.00
251376	*	000855	48TH DISTRICT COURT	100.00
251377	*	000855	48TH DISTRICT COURT	100.00
251378	*	000855	48TH DISTRICT COURT	250.00
251379	*	000855	48TH DISTRICT COURT	100.00
251380	*	000855	48TH DISTRICT COURT	100.00
251381		007266	AETNA BEHAVIORAL HEALTH LLC	379.73
251382		007071	AIRE SERV	233.21
251383		007696	AMERICAN CLEANING COMPANY LLC	1,350.00
251384	*	000881	APWA	740.00
251385		003946	ARAMARK	15.99
251388		007479	ASB DISTRIBUTORS	45.15
251389		004027	AUTOMATED BENEFIT SVCS INC	8,210.50
251390		MISC	BABS SALON & SPA	500.00
251391		006316	BAHL & GAYNOR, INC	4,687.96
251392		001122	BOB BARKER CO INC	1,762.20
251393	*	000517	BEIER HOWLETT P.C.	34,239.75
251395		000518	BELL EQUIPMENT COMPANY	5,174.16
251396		002231	BILLINGS LAWN EQUIPMENT INC.	2,195.86
251397	*	008095	BIRMINGHAM BLOOMFIELD ART CENTER	116.73
251399	*	001086	CITY OF BIRMINGHAM	1,018.67
251401		003907	CADILLAC ASPHALT, LLC	5,646.36
251402		008082	CAMFIL USA INC	336.36
251403		008082	CAMFIL USA INC	25.16
251404		008082	CAMFIL USA INC	310.38
251405		008082	CAMFIL USA INC	488.45
251408		007875	CANFIELD EQUIPMENT SERVICE INC.	1,735.00
251409		000571	CAR TRUCKING INC	1,650.00
251410	*	003947	TIMOTHY CARPENTER	212.90
251411		000444	CDW GOVERNMENT INC	45,599.00
251412		MISC	CENTRO CONSTRUCTION INC	85.00
251414	*	007744	MOHAMED F. CHAMMAA	149.80
251415		000603	CHEMCO PRODUCTS INC	232.00
251416	*	MISC	CHRISTIAN THIELE	193.50
251417		000605	CINTAS CORPORATION	122.66
251418	*	000912	MARK CLEMENCE	90.59
251419	*	008044	CLUB PROPHET	590.00
251420		004026	COFINITY	1,350.00
251421	*	007625	COMCAST	199.28
251423	*	002668	CONTRACTORS CLOTHING CO	590.17
251424		001367	CONTRACTORS CONNECTION INC	197.40
251425		MISC	COOK, DANIEL	850.00
251427		003802	CROSWELL GREENHOUSE	17,149.45

City of Birmingham
Warrant List Dated 07/12/2017

Meeting of 07/24/2017

Check Number	Early Release	Vendor #	Vendor	Amount
251428		006907	DENTEMAX, LLC	139.50
251430		005115	DETROIT NEWSPAPER PARTNERSHIP	1,137.80
251431		000565	DORNBOS SIGN & SAFETY INC	517.59
251432	*	000190	DOWNRIVER REFRIGERATION	92.14
251435		MISC	DRY BASEMENTS LLC	100.00
251436	*	000179	DTE ENERGY	4,801.36
251437	*	000180	DTE ENERGY	45,654.71
251438		001077	DUNCAN PARKING TECH INC	2,878.43
251439		000493	ED RINKE CHEVROLET BUICK GMC	302.99
251440		000995	EQUATURE	3,500.00
251441		001495	ETNA SUPPLY	2,000.00
251444		006181	FIRST CHOICE COFFEE SERV	130.45
251445		MISC	FOUNDATION SYSTEMS OF MICHIGAN INC.	200.00
251446		007172	GARY KNUREK INC	101.00
251447		000592	GAYLORD BROS., INC	1,010.37
251448		MISC	GIANFRANCO PALAZZOLO	700.00
251449	*	000234	GLENN WING POWER TOOLS	2,469.00
251450		004604	GORDON FOOD	391.73
251451		000243	GRAINGER	106.03
251452		006696	GRAPHIC TICKETS & SYSTEMS	1,857.03
251453		MISC	GREAT LAKES ROOFING, INC	2,000.00
251457	*	007473	DONALD GRIER	301.21
251458		007342	H2A ARCHITECTS, INC.	475.50
251459		000331	HUBBELL ROTH & CLARK INC	8,364.30
251460	*	MISC	HUNTINGTON DISEASE SOCIETY OF AMERI	222.00
251463	*	007035	INNOVATIVE OFFICE TECHNOLOGY GROUP	652.33
251464		000261	J.H. HART URBAN FORESTRY	1,824.00
251465		000186	JACK DOHENY COMPANIES INC	626.41
251466	*	007423	K/E ELECTRIC SUPPLY	388.50
251467		004088	KGM DISTRIBUTORS INC	152.00
251468		008147	KIMBALL MIDWEST	135.24
251469		004085	KONE INC	1,710.25
251470	*	005876	KROPF MECHANICAL SERVICE COMPANY	790.00
251472		MISC	LEVINE & SONS INC	294.34
251474		MISC	MAC CONSTRUCTION, INC.	500.00
251475		001564	MAGLOCLIN	400.00
251477		000369	MCFI	3,647.00
251481		000230	MIKE SAVOIE CHEVROLET INC	1,112.55
251482		008509	MOBILE DUELING PIANOS	1,750.00
251483	*	001452	MONTGOMERY & SONS INC	4,485.37
251485		006371	MPELRA	230.00
251487	*	000668	NATIONAL TIME & SIGNAL CORP	514.80
251488		001194	NELSON BROTHERS SEWER	164.00

City of Birmingham
Warrant List Dated 07/12/2017

Meeting of 07/24/2017

Check Number	Early Release	Vendor #	Vendor	Amount
251489	*	007856	NEXT	24,952.50
251490		006359	NYE UNIFORM COMPANY	160.50
251491		003461	OBSERVER & ECCENTRIC	1,031.70
251492	*	000481	OFFICE DEPOT INC	2,446.95
251508		003881	ORKIN PEST CONTROL	555.00
251510	*	006697	PROGRESSIVE IRRIGATION, INC	2,206.50
251511		001062	QUALITY COACH COLLISION LLC	4,313.48
251512		006729	QUENCH USA INC	240.00
251513		008508	RECORD AUTOMATIC DOORS, INC	345.00
251515		008510	RENTAL WORLD	607.00
251516	*	MISC	ROBYNN ERICSSON	432.00
251517		000495	ROCHESTER LAWN EQUIPMENT CENTER INC	73.86
251518		001181	ROSE PEST SOLUTIONS	300.00
251519	*	005759	SCHEMA ROOFING & SHEET METAL	430.00
251521	*	MISC	SIGNATURE SERVICES	100.00
251524		000260	SPARTAN DISTRIBUTORS INC	148.30
251526	*	007583	YVONNE TAYLOR	75.00
251527		MISC	THERMAL SHIELD WINDOW & CONSTRUCTIO	200.00
251529		008346	THYSSENKRUPP ELEVATOR CORP	55,594.93
251530		MISC	TRADEMARK BUILDING COMPANY INC	1,100.00
251531		004379	TURNER SANITATION, INC	95.00
251532		MISC	UNITED HOME SERVICES	500.00
251534		007226	VALLEY CITY LINEN	47.10
251535		008411	VARIPRO	704.75
251537	*	000158	VERIZON WIRELESS	856.19
251538	*	000158	VERIZON WIRELESS	857.27
251539	*	000158	VERIZON WIRELESS	70.62
251540		000298	VESCO OIL CORPORATION	83.25
251541	*	000299	WEINGARTZ SUPPLY	27.98
251542		MISC	WHITTIER BUILDING COMPANY LLC	500.00
251546		004512	WOLVERINE POWER SYSTEMS	5,891.46
251547		007083	XEROX CORPORATION	551.63

City of Birmingham
Warrant List Dated 07/12/2017

Meeting of 07/24/2017

Check Number	Early Release	Vendor #	Vendor	Amount
Sub Total Checks:				\$343,651.27
Sub Total ACH:				\$55,025.21
Grand Total:				\$398,676.48

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber
Finance Director/ Treasurer

*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.

7/24/2017

City of Birmingham
7/12/2017

Vendor Name	Transfer Date	Transfer Amount
Automated Benefit Services, Inc.	7/10/2017	55,025.21
TOTAL		55,025.21

City of Birmingham
Warrant List Dated 07/19/2017

Meeting of 07/24/2017

Check Number	Early Release	Vendor #	Vendor	Amount
251548		003390	11 MILE TRUCK	5,287.66
251549	*	000855	48TH DISTRICT COURT	100.00
251550	*	000855	48TH DISTRICT COURT	100.00
251551	*	000855	48TH DISTRICT COURT	100.00
251552	*	000855	48TH DISTRICT COURT	100.00
251553	*	000855	48TH DISTRICT COURT	100.00
251554	*	000855	48TH DISTRICT COURT	100.00
251555	*	000855	48TH DISTRICT COURT	100.00
251556	*	000855	48TH DISTRICT COURT	100.00
251557	*	000855	48TH DISTRICT COURT	200.00
251558	*	000855	48TH DISTRICT COURT	10.00
251559	*	006965	7UP DETROIT	238.50
251560		002284	ABEL ELECTRONICS INC	2,585.00
251562	*	008106	ACUSHNET COMPANY	868.82
251563		003708	AIRGAS USA, LLC	172.62
251565		007233	ALL STAR PRO GOLF	336.21
251566		000282	APOLLO FIRE EQUIPMENT	185.87
251567		008269	ARGUS-HAZCO	120.00
251568		007479	ASB DISTRIBUTORS	52.40
251569	*	006759	AT&T	113.35
251570	*	006759	AT&T	1,010.84
251571	*	006759	AT&T	90.53
251572	*	006759	AT&T	35.49
251573	*	006759	AT&T	41.47
251574	*	006759	AT&T	71.40
251575	*	006759	AT&T	188.03
251576	*	006759	AT&T	134.96
251577	*	006759	AT&T	203.10
251581		003012	BATTERIES PLUS	855.78
251582		007345	BEVERLY HILLS ACE	82.64
251583		000525	BIRMINGHAM PUBLIC SCHOOLS	20.25
251584	*	001086	CITY OF BIRMINGHAM	989.47
251586		000542	BLUE WATER INDUSTRIAL	21.00
251587		000157	BOB ADAMS TOWING INC.	530.00
251589	*	008463	J. CHERILYNN BROWN	12.30
251590	*	005289	BUSINESS CARD	52.37
251592		000571	CAR TRUCKING INC	931.50
251593	*	000444	CDW GOVERNMENT INC	6,916.68
251596		002067	CENTRAL PARKING SYSTEM	90.00
251597		002067	CENTRAL PARKING SYSTEM	56.00
251598		000605	CINTAS CORPORATION	87.66
251600	*	007625	COMCAST	374.15
251601		002668	CONTRACTORS CLOTHING CO	656.45

City of Birmingham
Warrant List Dated 07/19/2017

Meeting of 07/24/2017

Check Number	Early Release	Vendor #	Vendor	Amount
251602		001367	CONTRACTORS CONNECTION INC	15.25
251603		003923	CUMMINS BRIDGEWAY LLC	1,215.93
251604		004386	CYNERGY PRODUCTS	255.00
251606		008005	DE LAGE LANDEN FINANCIAL SVCS INC	173.75
251607		004232	DEARBORN LITHOGRAPH INC	5,183.00
251608		000177	DELWOOD SUPPLY	10.84
251610		001077	DUNCAN PARKING TECH INC	6,378.75
251612	*	007538	EGANIX, INC.	720.00
251613		004671	ELDER FORD	176.00
251614		000207	EZELL SUPPLY CORPORATION	282.10
251616		007613	FIRESERVICE MANAGEMENT	235.50
251619		004604	GORDON FOOD	1,328.16
251621		000249	GUARDIAN ALARM	224.03
251622	*	008513	DARRIN HAGEL	700.00
251623		001447	HALT FIRE INC	589.36
251624		003701	HD SUPPLY WATERWORKS, LTD	991.91
251625	*	007458	HERITAGE - CRYSTAL CLEAN, LLC	1,653.68
251628		000331	HUBBELL ROTH & CLARK INC	371.59
251629	*	001307	JOSHUA HUSTED	78.97
251630		007794	IMPRESSIVE PRINTING & PROMOTIONS	190.00
251631		000340	INDUSTRIAL BROOM SERVICE, LLC	975.90
251632		002407	J & B MEDICAL SUPPLY	493.84
251633		000344	J.T. EXPRESS, LTD.	3,701.16
251634		003823	JAY'S SEPTIC TANK SERVICE	1,315.00
251635		003458	JOE'S AUTO PARTS, INC.	186.96
251636		007423	K/E ELECTRIC SUPPLY	310.50
251637		008515	KATANA FORENSICS LLC	500.00
251638		000891	KELLER THOMA	1,490.60
251639		004088	KGM DISTRIBUTORS INC	84.00
251640	*	008147	KIMBALL MIDWEST	98.97
251641		005452	KNOX COMPANY	1,842.00
251642		005876	KROPF MECHANICAL SERVICE COMPANY	1,086.26
251643		005550	LEE & ASSOCIATES CO., INC.	405.50
251645		007471	LOCKSMITH, INC.	1,747.50
251646		008158	LOGICALIS INC	10,000.00
251648		007910	MACALLISTER RENTALS	301.66
251649		007797	MAILFINANCE INC.	422.13
251650		001417	MAJIK GRAPHICS INC	175.00
251651		002648	MARC DUTTON IRRIGATION INC	652.00
251652	*	008392	MICHIGAN FIRE TRAINING CONSULTANTS	800.00
251655		007659	MICHIGAN.COM #1008	32.50
251659		007163	MOBILE HEALTH RESOURCES	2,852.81
251660	*	006371	MPELRA	150.00

City of Birmingham
Warrant List Dated 07/19/2017

Meeting of 07/24/2017

Check Number	Early Release	Vendor #	Vendor	Amount
251662		006289	NATIONAL ELEVATOR CONSULTANTS, INC.	3,200.00
251663	*	000477	OAKLAND COUNTY	381,492.12
251664	*	008214	OAKLAND COUNTY WATER DEPARTMENT	8,611.63
251665		004370	OCCUPATIONAL HEALTH CENTERS	184.00
251669		006625	PACIFIC TELEMAGEMENT SERVICES	78.00
251670		008197	PARKMOBILE LLC	2,090.59
251672	*	001753	PEPSI COLA	431.04
251673		005501	POISON IVY CONTROL OF MI	5,900.00
251675		006697	PROGRESSIVE IRRIGATION, INC	25,808.00
251676		001062	QUALITY COACH COLLISION LLC	6,468.35
251677		002393	R & R PRODUCTS INC	329.43
251680		000495	ROCHESTER LAWN EQUIPMENT CENTER INC	345.23
251682	*	002806	SAM'S CLUB/SYNCHRONY BANK	471.07
251683		MISC	SARA AHMED	215.00
251685		003785	SIGNS-N-DESIGNS INC	295.00
251686	*	008073	SITEONE LANDSCAPE SUPPLY, INC	270.57
251687		000254	SOCRRA	69,616.00
251688	*	001097	SOCWA	239,175.03
251691		000260	SPARTAN DISTRIBUTORS INC	967.02
251692		004355	SYMETRA LIFE INSURANCE COMPANY	26,195.00
251693		005127	SYSTEMATIC FINANCIAL MGMT. L.P.	10,730.94
251695		000275	TIRE WHOLESALERS CO INC	199.62
251697		007587	TRI-COUNTY AQUATICS, INC.	2,400.00
251700		003760	UNUM LIFE INSURANCE CO. OF AMERICA	20,773.03
251701		007226	VALLEY CITY LINEN	73.85
251702	*	000158	VERIZON WIRELESS	105.12
251703	*	000158	VERIZON WIRELESS	199.32
251704	*	000158	VERIZON WIRELESS	76.02
251705		008516	MICHAEL WALLNER	126.00
251706		004497	WATERFORD REGIONAL FIRE DEPT.	101.07
251707		007278	WHITLOCK BUSINESS SYSTEMS, INC.	1,680.68
251708	*	008462	WILSON MARINE	2,200.00
251709	*	005794	WINDSTREAM	714.72
251710		000306	WOLVERINE CONTRACTORS INC	797.30
251711	*	003890	LAUREN WOOD	525.00
251712		007083	XEROX CORPORATION	644.23
251717	*	000912	MARK CLEMENCE	900.00

City of Birmingham
Warrant List Dated 07/19/2017

Meeting of 07/24/2017

Check Number	Early Release	Vendor #	Vendor	Amount
Sub Total Checks:				\$889,210.59
Sub Total ACH:				\$1,944,101.24
Grand Total:				\$2,833,311.83

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber
Finance Director/ Treasurer

*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.

7/24/2017

City of Birmingham
ACH Warrant List Dated 7/19/2017

Vendor Name	Transfer Date	Transfer Amount
Birmingham Schools	7/17/2017	699,779.79
Oakland County Treasurer	7/17/2017	1,221,353.33
Automated Benefit Services, Inc.	7/17/2017	22,968.12
TOTAL		1,944,101.24

DATE: July 12, 2017

TO: Joseph A. Valentine, City Manager

FROM: Yvonne Taylor, HR Manager

SUBJECT: Professional Services Agreement Renewal – Logicalis, Inc.

Background

Following the retirement of Information Technology (IT) Manager, Gary Gemmell, the City received authorization from the City Commission to enter into a 12-month service agreement with Logicalis, Inc. – an IT Integration Solution Provider – beginning on July 5, 2016. Since that time Logicalis has provided IT services to the City such as infrastructure management and upgrading, network and server administration, cybersecurity, and user support and training. The service agreement expired on June 30, 2017. A one-month interim agreement has been reached to transition to the new term. The new agreement is effective 8/1/17.

Renewal Recommendation

During the course of this service agreement, ongoing feedback and information has been collected related to on-site Logicalis staff and quality of services provided. Overall, the City continues to benefit from the placement of one (1) on-site dedicated Network Administrator with access to other Logicalis staff with specialized skills for City projects. Additionally, City staff has provided positive feedback on quality of services rendered including system updates/upgrades, IT equipment procurement, and Help Desk response and resolution.

Given the overall satisfaction of Logicalis' services rendered, it is recommended to renew the agreement for the remainder of the fiscal year from August 1, 2017 through June 30, 2018, which will provide stability and continuation of major IT projects currently pending and scheduled in the upcoming fiscal year. Funds are available in the existing budget, and the renewed agreement offers a 3% decrease in costs from the previous year. The renewal agreement is attached.

SUGGESTED RESOLUTION:

To approve the service agreement renewal with Logicalis, Inc. effective August 1, 2017 through June 30, 2018 for City Information Technology services. Further, to direct the City Manager to sign the renewal agreement on behalf of the City.

PROJECT CHANGE REQUEST

Date:	7/13/2017
Customer Name:	City of Birmingham
Customer Contact Person:	Yvonne Taylor
Engagement Name and Number:	City of Birmingham - On Site Person - Eric Brunk - SOW - 0198212
PCR Iteration:	PCR 02 - Extend to June 30, 2018
Account Executive:	Patrick Rotary
Project Number:	
This Project Change Request (PCR) amends the Statement of Work, dated 7/13/2016, between Logicalis, Inc. and City of Birmingham. A Project Change Request is solely for the purpose of revisions to the Scope of Work and/or Pricing Information section(s) of the Statement of Work. Project Change Requests shall not be utilized for any revisions to the legal terms or conditions of any agreement. All other terms of the Statement of Work and/or agreement remain in effect and are incorporated herein by reference.	

Description of Project Change Request

The purpose of this Project Change Request is to extend contract to June 30, 2018

Anticipated Personnel Role	Monthly Rate	Contract Hours	Estimated Duration
Eric Brunk	\$9,700.00 per month	40/week	8/01/2017 through 6/30/2018
The following Skills will be provided: Server Administration and Support			

Acceptance Process**Acceptance:**

To authorize the change(s) detailed in this Project Change Request document, please return two (2) signed copies of this document along with a copy of the Purchase Order, if required.

Alternatively, you may FAX a copy to (248) 232-5412. Upon acceptance by Logicalis, a counter-signed copy will be returned to your attention.

Accepted By:

City of Birmingham

Accepted By:

Logicalis, Inc.

Signature_____
Signature_____
Printed Name_____
Printed Name_____
Title_____
Title_____
Date_____
Date_____
City of Birmingham
P.O. Number (if provided)_____
Logicalis Engagement Number
(when available)

Billing Contact:

Billing Contact Correction:

Yvonne Taylor
City of Birmingham
151 Martin Street
Birmingham, Michigan 48009
248.530.1811_____

Cc: Patrick Rotary, Sanjay Shah, Deb Bandico



MEMORANDUM

Engineering Dept.

DATE: July 17, 2017

TO: Joseph Valentine, City Manager

FROM: Paul T. O'Meara, City Engineer

SUBJECT: Old Woodward Ave. Reconstruction Project
Willits St. to Brown St.
DTE Energy Street Light Agreement

At the July 10, 2017 City Commission meeting, direction was given to staff relative to the type of street lights that will be installed on the Old Woodward Ave. project, planned for construction in 2018. Accordingly, DTE Energy has now prepared a standard agreement for the installation of Hadco street lights.

The project area includes all of Old Woodward Ave. between Willits St. and Brown St., as well as a short segment of Maple Rd. east and west of Old Woodward Ave. A total of 65 old street lights will be removed within the project area. In their place, a total of 50 new lights will be installed, including 11 on Maple Rd. The Maple Rd. lights will have electrical outlets installed, while the ones on Old Woodward Ave. will not. As discussed, the Old Woodward Ave. corridor will be supplemented with a separate underground electric system that will provide power at each tree well. The reduced number of lights is a function of the new sidewalk design as proposed by planning consultant MKSK, wherein the tree wells are elongated. The different design reduces the number of tree wells, and the number of street lights accordingly.

It is recommended that the City authorize DTE Energy to install a total of 50 new street lights on Old Woodward Ave. and Maple Rd. in conjunction with the Old Woodward Ave. Reconstruction Project at a total cost of \$306,195.46, or \$6,123.91 each. Based on previous estimates for work of this nature, this cost is reasonable. All costs are budgeted and will be charged to the Capital Improvements fund.

SUGGESTED RESOLUTION:

To authorize the issuance of a purchase order in the amount of \$306,195.46 to DTE Energy, for the removal of existing lights, and the manufacture and installation of 50 new street lights within the Old Woodward Ave. Reconstruction Project area. The work will be charged to account number 401-901-010-981.0100.

Exhibit A to Master Agreement

Purchase Agreement

This Purchase Agreement (this "Agreement") is dated as of July 17, 2017 between The Detroit Edison Company ("Company") and City of Birmingham ("Customer").

This Agreement is a "Purchase Agreement" as referenced in the Master Agreement for Municipal Street Lighting dated April 11, 2013 (the "Master Agreement") between Company and Customer. All of the terms of the Master Agreement are incorporated herein by reference. In the event of an inconsistency between this Agreement and the Master Agreement, the terms of this Agreement shall control.

Customer requests the Company to furnish, install, operate and maintain street lighting equipment as set forth below:

1. DTE Work Order Number:	47335204 If this is a conversion or replacement, indicate the Work Order Number for current installed equipment: N/A	
2. Location where Equipment will be installed:	Along S Old Woodward Ave between Willits St & Brown St and along Maple Rd at S Old Woodward Ave, as more fully described on the map attached hereto as <u>Attachment 1</u> .	
3. Total number of lights to be installed:	50	
4. Description of Equipment to be installed (the " <u>Equipment</u> "):	Install (50) – Green Philips Hadco Birmingham style 86 watt LED fixtures mounted on (50) Green Philips Hadco Birmingham style posts on a concrete foundation. The (11) new street lights along Maple Rd plus (1) spare assembly to include 2 – GFI outlets per post. The (39) new street lights along S Old Woodward Ave plus (1) spare assembly will not have GFI outlets installed. Remove (66) – Existing decorative ornamental posts & fixtures and remove (7) – Existing street lights on ATS posts.	
5. Estimated Total Annual Lamp Charges	\$15,384.00	
6. Computation of Contribution in aid of Construction (" <u>CIAC Amount</u> ")	Total estimated construction cost, including labor, materials, and overhead:	\$352,347.46
	Credit for 3 years of lamp charges:	\$46,152.00
	CIAC Amount (cost minus revenue)	\$306,195.46
7. Payment of CIAC Amount:	Due promptly upon execution of this Agreement – PO Term 270 days.	
8. Term of Agreement	5 years. Upon expiration of the initial term, this Agreement shall continue on a month-to-month basis until terminated by mutual written consent of the parties or by either party with thirty (30) days prior written notice to the other party.	
9. Does the requested Customer lighting design meet IESNA recommended practices?	(Check One) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If "No", Customer must sign below and acknowledge that the lighting design does not meet IESNA recommended practices Signature: _____	
10. Customer Address for Notices:	City of Birmingham 151 Martin St, PO Box 3001 Birmingham, MI 48012 Attn: Paul O'Meara	

11. Special Order Material Terms:

All or a portion of the Equipment consists of special order material: (check one) ☒ YES ☐ NO

If "Yes" is checked, Customer and Company agree to the following additional terms.

A. Customer acknowledges that all or a portion of the Equipment is special order materials ("SOM") and not Company's standard stock. Customer will purchase and stock replacement SOM and spare parts. When replacement equipment or spare parts are installed from Customer's inventory, the Company will credit Customer in the amount of the then current material cost of Company standard street lighting equipment.

B. Customer will maintain an initial inventory of at least **2 posts (1-spare post to include 2 GFI's and 1-spare post with no GFI's)** and **2 luminaires** and any other materials agreed to by Company and Customer, and will replenish the stock as the same are drawn from inventory. Costs of initial inventory are included in this Agreement. The Customer agrees to work with the Company to adjust inventory levels from time to time to correspond to actual replacement material needs. If Customer fails to maintain the required inventory, Company, after 30 days' notice to Customer, may (but is not required to) order replacement SOM and Customer will reimburse Company for such costs. Customer acknowledges that failure to maintain required inventory could result in extended outages due to SOM lead times.

C. The inventory will be stored at **City of Birmingham DPW Yard**. Access to the Customers inventory site must be provided between the hours of 9:00 am to 4:00 pm, Monday through Friday with the exceptions of federal Holidays. Customer shall name an authorized representative to contact regarding inventory: levels, access, usage, transactions, and provide the following contact information to the Company:

Name: Paul O'Meara

Title: City Engineer

Phone Number: 248-530-1840

Email: pomeara@bhamgov.org

The Customer will notify the Company of any changes in the Authorized Customer Representative. The Customer must comply with SOM manufacturer's recommended inventory storage guidelines and practices. Damaged SOM will not be installed by the Company.

D. In the event that SOM is damaged by a third party, the Company may (but is not required to) pursue a damage claim against such third party for collection of all labor and stock replacement value associated with the damage claim. Company will promptly notify Customer as to whether Company will pursue such claim.

E. In the event that SOM becomes obsolete or no longer manufactured, the Customer will be allowed to select new alternate SOM that is compatible with the Company's existing infrastructure.

F. Should the Customer experience excessive LED equipment failures, not supported by LED manufacturer warranties, the Company will replace the LED equipment with other Company supported Solid State or High Intensity Discharge luminaires at the Company's discretion. The full cost to complete these replacements to standard street lighting equipment will be the responsibility of the Customer.

12. Experimental Emerging Lighting Technology ("EELT") Terms:

All or a portion of the Equipment consists of EELT: (check one) ☒ YES ☐ NO

If "Yes" is checked, Customer and Company agree to the following additional terms.

A. The annual billing lamp charges for the EELT equipment has been calculated by the Company are based upon the estimated energy and maintenance cost expected with the Customer's specific pilot project EELT equipment.

B. Upon the approval of any future MPSC Option I tariff for EELT street lighting equipment, the approved rate schedules will automatically apply for service continuation to the Customer under Option 1 Municipal Street Lighting Rate, as approved by the MPSC. The terms of this paragraph B replace in its entirety Section 7 of the Master Agreement with respect to any EELT equipment purchased under this Agreement.

Company and Customer have executed this Purchase Agreement as of the date first written above.

Company:

Customer:

The Detroit Edison Company

City of Birmingham

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Attachment 1 to Purchase Agreement

Map of Location

[To be attached]

[illegible]

CITY OF BIRMINGHAM

STREET LIGHT REMOVAL PROJECT

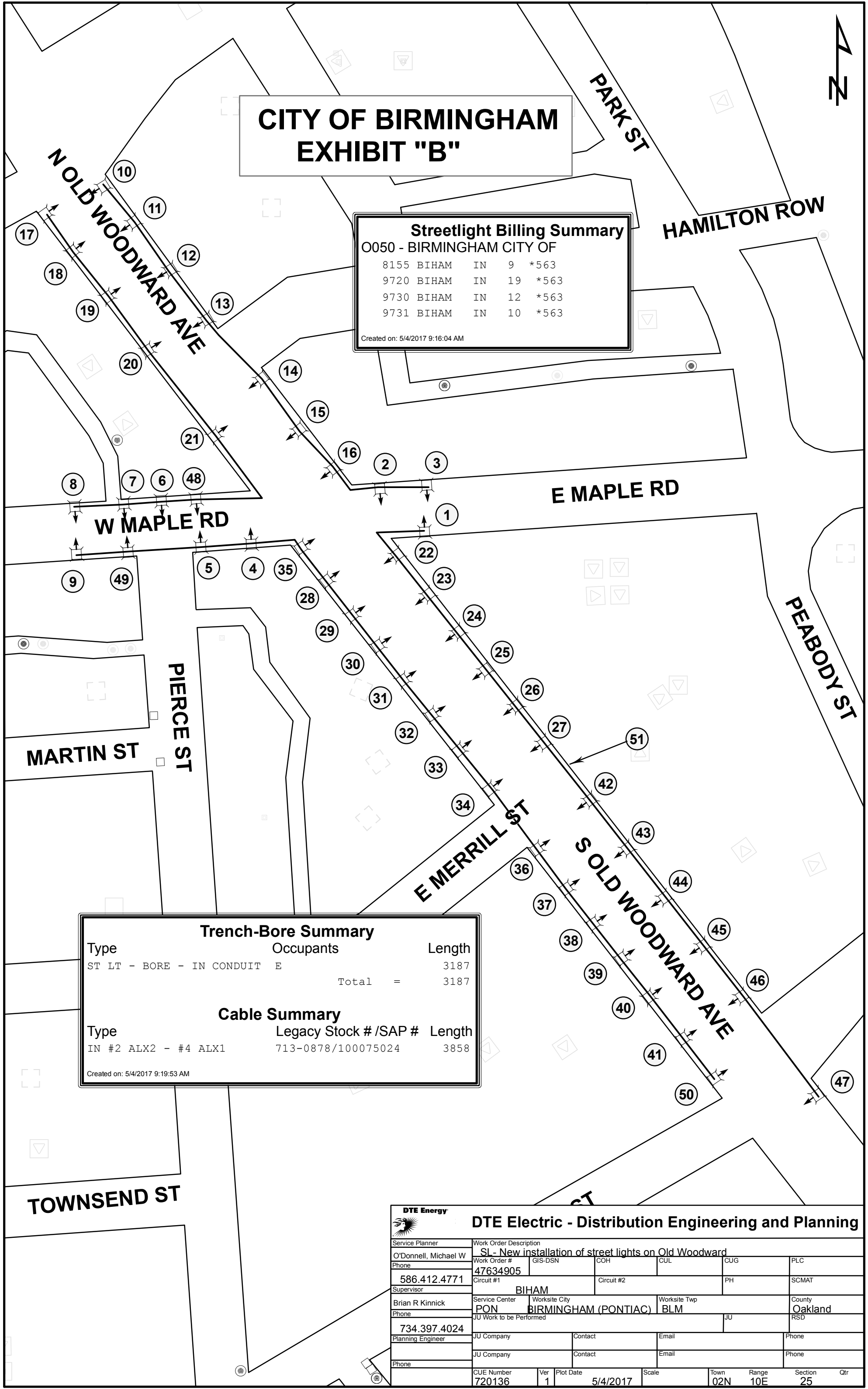
EXHIBIT "B"

This map displays the locations of street lights to be removed as part of the City of Birmingham Street Light Removal Project, Exhibit "B". The project area covers a section of the city bounded by Willits St to the north, W Brown St to the south, and various east-west streets including E Maple Rd, E Merrill St, E Brown St, Daines St, Ann St, E Frank St, Purdy St, Elm St, S Hunter Blvd, Peabody St, and Park St.

The map shows numerous numbered locations (e.g., 1 through 80) where street light removal is planned. Each location is associated with specific details regarding the existing lighting fixture and its replacement or disposal status.

Legend:

- WL 1: RM: SERIES TO MULTIPLE MV 400 CM COBRA
RM: UG SHORTNG CAP
M 400 OB150 -- 8155 BIHAM -- O050 -- 203 -- B
RM: POST CODE 072
RM: FOUNDATION FOUNDATION DISPOSED/RELOCATED
- WL 2: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB151 -- 8155 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 3: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB152 -- 8155 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 4: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB153 -- 8155 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 5: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB154 -- 8155 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 6: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB155 -- 8155 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 7: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB156 -- 8155 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 8: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB157 -- 8155 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
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- WL 9: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB158 -- 8155 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 10: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB159 -- 8155 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
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- WL 11: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OA340 -- 8155 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 12: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OA341 -- 8155 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 13: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OA342 -- 8155 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 14: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OA343 -- 8155 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
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- WL 15: RM: UG MULTIPLE LED 85 LU RICHLAND
RM: UG SHORTNG CAP
L 85 AAK950 -- 8055 BIHAM -- O050 -- 563 -- B
RM: POST CODE 51A
RM: FOUNDATION BROKEN UP
- WL 16: RM: UG MULTIPLE LED 85 LU RICHLAND
RM: UG SHORTNG CAP
L 85 AFU739 -- 9720 BIHAM -- O050 -- 563 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 17: RM: UG MULTIPLE LED 85 LU RICHLAND
RM: UG SHORTNG CAP
L 85 AFU740 -- 9720 BIHAM -- O050 -- 563 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 18: RM: UG MULTIPLE LED 85 LU RICHLAND
RM: UG SHORTNG CAP
L 85 AFU738 -- 9720 BIHAM -- O050 -- 563 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 19: RM: SERIES TO MULTIPLE MV 400 CM COBRA
RM: UG SHORTNG CAP
M 400 OB178 -- 9720 BIHAM -- O050 -- 203 -- B
RM: POST CODE 072
RM: FOUNDATION FOUNDATION DISPOSED/RELOCATED
- WL 20: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB180 -- 9720 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
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- WL 21: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB181 -- 9720 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 22: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB182 -- 9720 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 23: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB183 -- 9720 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 24: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB184 -- 9720 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 25: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB185 -- 9720 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 26: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB186 -- 9720 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 27: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB187 -- 9720 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 28: RM: UG MULTIPLE LED 85 LU RICHLAND
RM: UG SHORTNG CAP
L 85 AAL101 -- 9720 BIHAM -- O050 -- 563 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 29: RM: UG MULTIPLE LED 85 LU RICHLAND
RM: UG SHORTNG CAP
L 85 AAL102 -- 9720 BIHAM -- O050 -- 563 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 30: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB188 -- 9720 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 31: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB189 -- 9720 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 32: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB190 -- 9720 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 33: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB191 -- 9720 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 34: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB192 -- 9720 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 35: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB193 -- 9720 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 36: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB194 -- 9720 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 37: RM: UG MULTIPLE HPS 250 CC COBRA
RM: UG SHORTNG CAP
S 250 OF662 -- 7557 BIHAM -- O050 -- 233 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 38: RM: SERIES TO MULTIPLE MV 250 CM COBRA
RM: UG SHORTNG CAP
M 250 Z8431 -- 7553 BIHAM -- O050 -- 113 -- R
RM: POST CODE 096
RM: FOUNDATION BROKEN UP
- WL 39: RM: SERIES TO MULTIPLE MV 400 CM COBRA
RM: UG SHORTNG CAP
M 400 OB210 -- 9730 BIHAM -- O050 -- 203 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 40: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB209 -- 9730 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 41: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB208 -- 9730 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 42: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB207 -- 9730 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 43: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB206 -- 9730 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 44: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB205 -- 9730 BIHAM -- O050 -- 073 -- R
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 45: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB204 -- 9730 BIHAM -- O050 -- 073 -- B
RM: POST CODE 017
RM: FOUNDATION BROKEN UP
- WL 46: RM: UG MULTIPLE MV 175 44 OPTION2
RM: UG SHORTNG CAP
M 175 OB203 -- 9730 BIHAM -- O050 --



CITY OF BIRMINGHAM
EXHIBIT "B"

Streetlight Billing Summary					
O050 - BIRMINGHAM CITY OF					
8155 BIHAM	IN	9	*563		
9720 BIHAM	IN	19	*563		
9730 BIHAM	IN	12	*563		
9731 BIHAM	IN	10	*563		
Created on: 5/4/2017 9:16:04 AM					

Trench-Bore Summary		
Type	Occupants	Length
ST LT - BORE - IN CONDUIT	E	3187
Total		= 3187
Cable Summary		
Type	Legacy Stock # /SAP #	Length
IN #2 ALX2 - #4 ALX1	713-0878/100075024	3858
Created on: 5/4/2017 9:19:53 AM		

DTE Energy									
DTE Electric - Distribution Engineering and Planning									
Service Planner		Work Order Description							
O'Donnell, Michael W		SL - New installation of street lights on Old Woodward							
Phone		Work Order #		GIS-DSN		COH		CUL	
586.412.4771		47634905						CUG	
Supervisor		Circuit #1		Circuit #2		PH		SCMAT	
Brian R Kinnick		BIHAM							
Phone		Service Center		Worksite City		Worksite Twp		County	
734.397.4024		PON		BIRMINGHAM (PONTIAC)		BLM		Oakland	
Planning Engineer		JU Work to be Performed				JU		RSD	
		JU Company		Contact		Email		Phone	
		JU Company		Contact		Email		Phone	
Phone									
		CUE Number		Ver		Plot Date		Scale	
		720136		1		5/4/2017		Town	
								Range	
								10E	
								Section	
								25	
								Qtr	



MEMORANDUM

Department of Public Services

DATE: July 17, 2017

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Golf Course Fertilizer/Turf Chemicals Purchase

On Thursday, July 13, 2017 the Department of Public Services publicly opened bids entitled "Turf Chemicals". This bid includes fertilizers and turf chemicals used at the municipal golf courses to maintain and beautify the turf. The Request for Proposals (RFP) was entered into the Michigan Inter-governmental Trade Network (MITN) purchasing system. Four companies submitted bid prices per the specifications. After review of the tabulations from the companies that have submitted competitive prices per the bid specifications, the Department of Public Services recommends purchases from these three companies.

<u>Company</u>	<u>City</u>	<u>7/1/17-6/30/18</u>	<u>Bid Amount</u>
Harrell's	New Hudson MI	\$22,000	\$22,000
Residex Turfgrass	South Lyon, MI	\$22,000	\$22,000
Great Lakes Turf	Grand Rapids, MI	\$ 8,000	\$ 8,000
TOTAL			\$52,000

The pricing for these products are the same from the various vendors. This is based on agency pricing which is determined by the product manufacturer. Therefore, the price is identical from the bidders. Some of the bidders did not make all of the products available to the City as part of their bid. The City selects the vendors for which to purchase its products based on experience with the vendor, customer service, availability of the product, timely product delivery, including the quality of the performance of the vendor. What products are needed for what treatments and the quantities of product are determined by the Grounds Superintendent during the golf season. Last year these same three companies were used for the product purchases for a total amount not to exceed of \$52,000.

You will notice on the attached list of Golf Course Chemicals and Fertilizers that Roundup Pro or Glyphosate has been removed from the bid list and usage list by Bryan Grill our Golf Course Superintendent. The Chemical/Fertilizers listing are for the 2017 season and funds are available in the operating supplies account for each course, #s 584/597-753.001-729.0000. Based on the actual need and requested orders for the golf courses during the season, the total purchases may fluctuate but will not exceed a total of \$52,000.

SUGGESTED RESOLUTION:

To approve chemical/fertilizer purchases for Lincoln Hills and Springdale golf courses from Harrell's for \$22,000, Residex Turfgrass for \$22,000 and Great lakes Turf for \$8,000. The total purchase from all vendors will not exceed a total of \$52,000. Funds will be charged to Springdale Golf Course and Lincoln Hills Golf Course - Operating Supplies, account #s 584/597-753.001-729.0000.



MEMORANDUM

Department of Public Services

DATE: July, 18 2017

TO: Lauren Wood

FROM: Bryan Grill

SUBJECT: Chemicals

This serves to provide more detail with regard to the Bid Tab for chemical purchases for the golf courses for the 2017/2018 season. The list of chemicals and fertilizer to be purchased is more a prediction than a "set in stone" list. We may not need some of them; we may need something that is not on the list. Environmental situations and new chemicals introduced to the market may dictate what we purchase. The golf courses adhere to Integrated Pest Management (IPM) practices. IPM is the use of all appropriate and economical strategies to manage pests and their damage to acceptable levels with the least disruption to the environment. Using many different tactics to manage a pest problem tends to cause the least disruption to non-target organisms and the surroundings at the application site. We don't apply chemicals based on the calendar; we scout the property and determine acceptable threshold levels. In other words, we generally won't spray for a pest if we don't see it. This limits the number of applications we make throughout the year, saving money and limiting the inputs to the environment. For example, we will often pull weeds instead of applying herbicide to kill them. We use organic fertilizers whenever possible. We place signs in visible locations stating what was applied, where it was applied and my contact information if anyone has a question about what was applied.

Golf Course Chemicals and Fertilizers

Product (Common)	Chem. Name	Signal Word	Classification	Use (Area)	Frequency	Target Pest	Comments
Merit	Imidacloprid	Warning	Insecticide	All turf	As needed	Grubs, Insects	
Acelepryn	Chlorantraniliprole	Warning	Insecticide	All turf	As needed	Grubs, Insects	
Dylox	Trichlorfon	Warning	Insecticide	Tees, Rough	As needed	Grubs, Insects	
Briskway	Azoxystrobin	Warning	Fungicide	Greens	2-3X/year	Various Fungi	
Headway	Propiconazole	Warning	Fungicide	Greens	2-3X/year	Various Fungi	
Affirm	PolyoxinD zinc salt	Caution	Fungicide	Greens	1X/year	Patch Diseases	
Emerald	Boscalid	Warning	Fungicide	Tees, Fairways	1X/year	Dollar Spot	
Concert	Propiconazole+ Chlorothalonil	Danger	Fungicide	Tees, Fairways, Greens	3-4X/year	Various Fungi	
Clearys 26/36	Thiophanate Methyl	Warning	Fungicide	All turf	2-3X/year	Various Fungi	
Secure	Fluazinam	Warning	Fungicide	Greens	1-2X/year	Various Fungi	
Instrata	Fludioxonil, Propiconazole, Chlorothalonil	Warning	Fungicide	Greens, Tees, Fairways	1X/year	Various Fungi	
Daconil Action	Chlorothalonil	Warning	Fungicide	ays	4-5X/year	Various Fungi	
Xzemplar	Fluxapyroxad	Caution	Fungicide	Greens	2-3X/year	Various Fungi	
Velista	Penthiopyrad	Caution	Fungicide	Greens	2-3X/year	Various Fungi	
Tank Defoamer		Caution	Tank Additive				
Sync	Methylacetic acid	Danger	Tank Additive				
25-0-10	Urea Nitrogen, K2O	Warning	Fertilizer	Rough	1-2X/year		
33-0-12	Urea Nitrogen, K2O	Warning	Fertilizer	Tees, Fairways	1X/year		
22-0-11	Urea Nitrogen, K2O		Fertilizer	Rough, Fairways	1X/year		
40-0-0	Urea Nitrogen		Fertilizer	Rough			
14-7-14			Fertilizer	Greens			
Millennium Ultra	2,4D, Dicamba, Monoethanoleamine	Danger	Herbicide	Rough	2-3X/year	Broadleaf weeds	
Confront	Triclopyr, Clopyralid	Danger	Herbicide	Rough	As needed	Broadleaf weeds	
Primo Maxx	Trinexapac	Warning	Growth Regulator	Greens	As needed		
Proxy	Ethephon	Danger	Growth Regulator	Greens	As needed		
TriCure	Surfactant	Warning	Wetting Agent	All turf	As needed		
PK Fight	Potash (K2O)	Warning	Fertilizer	Greens	Every 2 weeks		
Astron	Ca, Mg, B, Cu, Fe, Zn	Danger	Fertilizer	Greens	Every 2 weeks		
Knife Plus	N, S, Cu, Fe, Mn, Mo, Zn	Danger	Fertilizer	Greens	Every 2 weeks		
Power 23-0-0	N	Warning	Fertilizer	Greens	Every 2 weeks		
Power 0-22-28	P2O5, K2O	Warning	Fertilizer	Greens	Every 2 weeks		
Bentgrass seed							
Annual Ryegrass seed							
Aquasphere							

Agency pricing



MEMORANDUM

Planning Division

DATE: July 17, 2017

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Set Public Hearing for 211 S. Old Woodward – Birmingham Theater Special Land Use Permit and Final Site Plan

The subject site, Birmingham Theater, is located at 211 S. Old Woodward, on the east side of S. Old Woodward at Merrill. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District. The applicant, Birmingham Teatro, LLC, is applying for a Special Land Use Permit (SLUP) to operate with a Class C liquor license under the new ordinance allowing a movie theater to operate with a liquor license. Birmingham Teatro is owned equally by Daniel Shaw and Nicholas Lekas, who in addition to operating the theater, are also part owners of Birmingham Theater, LLC, which is the sub-landlord for 211 S. Old Woodward.

Article 2, section 2.37, B4 (Business-Residential) District requires that any establishment with alcoholic beverage sales (on-premise consumption) shall obtain a Special Land Use Permit. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit.

On July 12, 2017, the Planning Board conducted a public hearing to discuss a request by the applicant to permit the service of alcoholic liquors at the Birmingham Theater. The Planning Board voted unanimously to recommend approval to the City Commission of the Special Land Use Permit ("SLUP") and Final Site Plan for 211 S. Old Woodward, Birmingham Theater, with no conditions.

As there are no proposed exterior changes to the Birmingham Theater building, the applicant is not required to appear before the before the Historic District Commission (HDC), even though the property is located within the Central Business District Historic District.

Thus, the Planning Division requests that the City Commission set a public hearing date for **August 14, 2017** to consider approval of the Final Site Plan and Special Land Use Permit to allow the addition of a theater liquor license at 211 S. Old Woodward. Please find attached the staff report presented to the Planning Board, along with the relevant meeting minutes for your review.

SUGGESTED ACTION:

To set a public hearing date of August 14, 2017 to consider the Final Site Plan and Special Land Use Permit for 211 S. Old Woodward to allow for the addition of a theater liquor license for the Birmingham Theater.



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

PHILLIP G. ADKISON
KELLY A. ALLEN
SALAM F. ELIA
GREGORY K. NEED
G. HANS RENTROP

39572 Woodward, Suite 222
Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:

KEVIN M. CHUDLER
SARAH J. GABIS
LINDA S. MAYER

April 17, 2017

VIA HAND DELIVERY

Unit 1 – Licensing Division
Michigan Liquor Control Commission
525 W. Allegan Street
P.O. Box 30005
Lansing, Michigan 48909

Re: Request to Transfer Ownership and Location of the Class C Liquor License with Sunday Sales (AM and PM) Permit and Entertainment Permit from Thumper's Splatter, LLC, Business ID No. 235577 (In Escrow at 230 E Auburn Rd., Rochester Hills, Oakland County, Michigan) to Birmingham Teatro, LLC, to be Located at 211 S. Old Woodward, Birmingham, Oakland County, Michigan; Request for a New Additional Bar Permit; and Request to Cancel the Existing Sunday Sales (AM) Permit.

To Whom It May Concern:

This is Birmingham Teatro, LLC's application to transfer ownership and location of the Class C Liquor License with Sunday Sales (AM and PM) Permit and Entertainment Permit from Thumper's Splatter, LLC, Business Id. No. 235577 (currently in escrow at 230 E Auburn, Rochester Hills, Oakland County, Michigan), to be located at 211 S Old Woodward, Birmingham, Oakland County, Michigan; request for a new Additional Bar Permit; and request to cancel the existing Sunday Sales (AM) Permit.

Enclosed, to begin the investigation, are the following:

1. LCC-100 for Birmingham Teatro, LLC (including Page 3 for members: Daniel Shaw and Nicholas Lekas);
2. LCC-301 for Birmingham Teatro, LLC;
3. Proposed Articles of Organization and Operating Agreement for Birmingham Teatro, LLC;


4. Liquor License Purchase Agreement with deposit check; and
5. Sublease Agreement and Lease Agreement.

Additionally, enclosed is a credit card authorization form for payment of fees totaling \$1,162.50 (\$70.00 for the inspection fees, \$600.00 for the Class C License, \$350.00 for the Additional Bar Permit, and \$142.50 for the Sunday Sales PM Permit).

If you have any questions or need any further information, please do not hesitate to contact my office.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



Kelly A. Allen

/lbp
Enclosures

cc: Nicholas Lekas (*with enclosures, via electronic mail*)



Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll-Free: 866-813-0011 - www.michigan.gov/lcc

Business ID: _____
Request ID: _____
(For MLCC Use Only)

Retail License & Permit Application

For information on retail licenses and permits, including a checklist of required documents for a completed application, please visit the Liquor Control Commission's frequently asked questions website [by clicking this link](#).

Part 1 - Applicant Information

Individuals, please state your legal name. Corporations or Limited Liability Companies, please state your name as it is filed with the State of Michigan Corporation Division.

Applicant name(s): Birmingham Teatro, LLC		
Address to be licensed: 211 S Old Woodward Ave		
City: Birmingham	Zip Code: 48009	
City/township/village where license will be issued: City of Birmingham		County: Oakland
Federal Employer Identification Number (FEIN):		

1. Are you requesting a new license? ☐ Yes ☒ No
2. Are you applying ONLY for a new permit or permission? ☐ Yes ☒ No
3. Are you buying an existing license? ☒ Yes ☐ No
4. Are you modifying the size of the licensed premises?
If Yes, specify: ☐ Adding Space ☐ Dropping Space ☐ Redefining Licensed Premises ☐ Yes ☒ No
5. Are you transferring the location of an existing license? ☒ Yes ☐ No
6. Is this license being transferred as the result of a default or court action? ☐ Yes ☒ No
7. Do you intend to use this license actively? ☒ Yes ☐ No

Leave Blank - MLCC Use Only

Part 2 - License Transfer Information (If Applicable)

If transferring ownership of a license ONLY and not transferring the location of a license, fill out only the name of the current licensee(s)

Current licensee(s): Thumper's Splatter, LLC		
Current licensed address: 230 E Auburn		
City: Rochester Hills	Zip Code: 48307	
City/township/village where license is issued: City of Rochester Hills		County: Oakland

Part 3 - Licenses, Permits, and Permissions

Off Premises Licenses - Applicants for off premises licenses, permits, and permissions (e.g. convenience, grocery, specialty food stores, etc.) must complete the attached Schedule A and return it with this application. Transfer the fee calculations from the Schedule A to Part 4 below.

On Premises Licenses - Applicants for on premises licenses, permits, and permissions (e.g. restaurants, hotels, bars, etc.) must complete the attached Schedule A and return it with this application. Transfer the fee calculations from the Schedule A to Part 4 below.

Part 4 - Inspection, License, and Permit Fees - Make checks payable to State of Michigan

Inspection Fees - Pursuant to MCL 436.1529(4) a nonrefundable inspection fee of \$70.00 shall be paid to the Commission by an applicant or licensee at the time of filing of a request for a new license or permit, a request to transfer ownership or location of a license, a request to increase or decrease the size of the licensed premises, or a request to add a bar. Requests for a new permit in conjunction with a request for a new license or transfer of an existing license do not require an additional inspection fee.

License and Permit Fees - Pursuant to MCL 436.1525(1), license and permit fees shall be paid to the Commission for a request for a new license or permit or to transfer ownership or location of an existing license.

Inspection Fees:	\$70.00	License & Permit Fees:	\$1,092.50	TOTAL FEES:	\$1,162.50
------------------	---------	------------------------	------------	--------------------	-------------------

Schedule A - Licenses, Permits, & Permissions

Applicant name: Birmingham *Teatro, LLC*

Off Premises License Type:	Base Fee:	Fee Code MLCC Use Only
New Transfer		
<input type="checkbox"/> <input type="checkbox"/> SDM License	\$100.00	
<input type="checkbox"/> <input type="checkbox"/> SDD License	\$150.00	
<input type="checkbox"/> <input type="checkbox"/> Resort SDD License	Upon Licensure/\$150.00	

Off Premises Permits:	Base Fee:
<input type="checkbox"/> Sunday Sales Permit (AM)*	\$160.00
<input type="checkbox"/> Sunday Sales Permit (PM)** (Held with SDD License)	\$22.50
<input type="checkbox"/> Catering Permit	\$100.00
<input type="checkbox"/> Secondary Location Permit - Complete Form LCC-201	
<input type="checkbox"/> Beer and Wine Tasting Permit	No charge
<input type="checkbox"/> Living Quarters Permit	No charge

On/Off Premises Permission Type:	Base Fee:
<input type="checkbox"/> Off-Premises Storage	No charge
<input type="checkbox"/> Direct Connection(s)	No charge
<input type="checkbox"/> Motor Vehicle Fuel Pumps	No charge

*Sunday Sales Permit (AM) allows the sale of liquor, beer, and wine on Sunday mornings between 7:00am and 12:00 noon, if allowed by the local unit of government.

**Sunday Sales Permit (PM) allows the sale of liquor on Sunday afternoons and evenings between 12:00 noon and 2:00am (Monday morning), if allowed by the local unit of government. No Sunday Sales Permit (PM) is required for the sale of beer and wine on Sunday after 12:00 noon. The Sunday Sales Permit (PM) fee is 15% of the fee for the license that allows the sale of liquor. Additional bar fees and B-Hotel room fees are also calculated as part of the permit fee.

Licenses, permits, and permissions selected on this form will be investigated as part of your request. Please verify your information prior to submitting your application, as some licenses, permits, or permissions cannot be added to your request once the application has been sent out for investigation by the Enforcement Division.

Inspection, License, Permit, & Permission Fee Calculation

Number of Licenses: 1 x \$70.00 Inspection Fee

Total Inspection Fee(s): Fee Code: 4036 \$70.00

Total License Fee(s): \$600.00

Total Permit Fee(s): \$492.50

TOTAL FEES DUE: \$1,162.50

Please note that requests to transfer SDD licenses will require the payment of additional fees based on the seller's previous calendar year's sales. These fees will be determined prior to issuance of the license to the applicant.

Make checks payable to **State of Michigan**

On Premises License Type:	Base Fee:	Fee Code MLCC Use Only
New Transfer		
<input type="checkbox"/> <input type="checkbox"/> B-Hotel License	\$600.00	
Number of guest rooms: _____		
<input type="checkbox"/> <input type="checkbox"/> A-Hotel License	\$250.00	
Number of guest rooms: _____		
<input type="checkbox"/> <input checked="" type="checkbox"/> Class C License	\$600.00	4034
<input type="checkbox"/> <input type="checkbox"/> Tavern License	\$250.00	
<input type="checkbox"/> <input type="checkbox"/> Resort License	Upon Licensure	
<input type="checkbox"/> <input type="checkbox"/> Redevelopment License	Upon Licensure	
<input type="checkbox"/> <input type="checkbox"/> Brewpub License	\$100.00	
<input type="checkbox"/> <input type="checkbox"/> G-1 License	\$1,000.00	
<input type="checkbox"/> <input type="checkbox"/> G-2 License	\$500.00	
<input type="checkbox"/> <input type="checkbox"/> Aircraft License	\$600.00	
<input type="checkbox"/> <input type="checkbox"/> Watercraft License	\$100.00	
<input type="checkbox"/> <input type="checkbox"/> Train License	\$100.00	
<input type="checkbox"/> <input type="checkbox"/> Continuing Care Retirement Center License	\$600.00	
<input type="checkbox"/> MCL 436.1545(1)(b)(i) <input type="checkbox"/> MCL 436.1545(1)(b)(ii)		

B-Hotel or Class C Licenses Only:

<input checked="" type="checkbox"/> <input type="checkbox"/> Additional Bar(s)	\$350.00	4012
Number of Additional Bars: <u>1</u>		

B-Hotel or Class C licenses allow licensees to have one (1) bar within the licensed premises. A \$350.00 licensing fee is required for each additional bar over the one (1) bar initially issued with the license.

On Premises Permits:	Base Fee:	
<input type="checkbox"/> Sunday Sales Permit (AM)*	\$160.00	
<input checked="" type="checkbox"/> Sunday Sales Permit (PM)**	\$142.50	4032
<input type="checkbox"/> Catering Permit	\$100.00	
<input type="checkbox"/> Banquet Facility Permit - Complete Form LCC-200		

A Banquet Facility Permit is an extension of the license at a different location. It may have its own permits and permissions. It is not a banquet room on the licensed premises.

<input type="checkbox"/> Outdoor Service	No charge
<input type="checkbox"/> Dance Permit	No charge
<input checked="" type="checkbox"/> Entertainment Permit	No charge
<input type="checkbox"/> Extended Hours Permit:	No charge

☐ Dance ☐ Entertainment Days/Hours: _____

<input type="checkbox"/> Specific Purpose Permit:	No charge
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Activity requested: _____

Days/Hours requested: _____

<input type="checkbox"/> Living Quarters Permit	No charge
<input type="checkbox"/> Topless Activity Permit	No charge

Schedule B - New Specially Designated Merchant License Supplemental Application - New SDM License Applications ONLY

Applicant name: Birmingham Teatro, LLC

Effective January 4, 2017 pursuant to MCL 436.1533(5), Specially Designated Merchant (SDM) licenses are quota licenses based on one (1) SDM license for every 1,000 of population in a local governmental unit. MCL 436.1533 provides for several exemptions from the quota for qualified applicants. Please carefully read the requirements in the boxes below, selecting the applicable approved type of business option(s) from Section 1 and an applicable new SDM license quota option from Section 2.

Section 1 - Requirements to Qualify as Approved Type of Business for New SDM License Applicants

Applicant must meet one (1) or more of the following conditions (check those that apply to your business):

- ☐ a. Applicant holds and maintains retail food establishment license or extended retail food establishment license under the Food Law of 2000, MCL 289.1101 to MCL 289.8111.
- ☐ b. Applicant holds or has been approved for Specially Designated Distributor license (Applicant must also hold and maintain food establishment license as described above).
- ☐ c. Applicant holds or has been approved for an on-premises license, such as a Class C, A-Hotel, B-Hotel, Tavern, Club, G-1, or G-2 license.

Section 2 - Quota Requirements for New SDM License Applicants

Applicant must qualify under one of the following sections of the Liquor Control Code regarding the SDM quota:

- ☐ a. Applicant is an applicant for or holds a Class C, A-Hotel, B-Hotel, Tavern, Club, G-1, or G-2 license.
MCL 436.1533(5)(a) - SDM license is exempt from SDM quota and license cannot be transferred to another location.
- ☐ b. Applicant's establishment is at least 20,000 square feet and at least 20% of gross receipts are derived from the sale of food.
MCL 436.1533(5)(b)(i) - SDM license is exempt from SDM quota and license cannot be transferred to another location.
- ☐ c. Applicant's establishment is a pharmacy as defined in the Public Health Code, MCL 333.17707.
MCL 436.1533(5)(b)(ii) - SDM license is exempt from SDM quota and license cannot be transferred to another location.
- ☐ d. Applicant's establishment qualifies as a marina under MCL 436.1539.
MCL 436.1533(5)(e) - SDM license is exempt from SDM quota and license may be transferred to another location if the applicant complies with MCL 436.1539 at the new location.
- ☐ e. Applicant does not qualify under any of the quota exemptions or waiver listed above.
MCL 436.1533(5) - Commission shall issue one (1) SDM for every 1,000 population in a local governmental unit and an unissued SDM must be available in the local governmental unit for the applicant to qualify. SDM license may be transferred to another location.

Documents Required To Be Submitted with New SDM License Application

In addition to the documents listed on the application checklist, the new SDM license applicant must submit the documents listed below, as applicable, with its application to comply with the requirements described above. Select one or more of the following:

- ☐ Copy of retail food establishment license or extended retail food establishment license for a SDM license or a SDM license to be issued in conjunction with a Specially Designated Distributor license. The name on the food establishment license must match the applicant name in Part 1 of this application form. *A food establishment license is not required for a SDM license to be issued in conjunction with an on-premises license.*
- ☐ If applying under Section 2b above, documentary proof that applicant's establishment is at least 20,000 square feet and at least 20% of gross receipts are derived from the sale of food.
- ☐ If applying under Section 2c above, a copy of the pharmacy license issued under the Public Health Code.

**REMOVED
DUE TO CLIENT
CONFIDENTIALITY**

**REMOVED
DUE TO CLIENT
CONFIDENTIALITY**

Part 6 - Contact Information

Provide information on the contact person for this application. Please note that corporations and limited liability companies must provide documentation (e.g. meeting minutes, corporate resolution) authorizing anyone other than the applicant or an attorney of record to be the contact person. If an authorization is not provided, your contact person will not be acknowledged if they are anyone other than the applicant or attorney.

What is your preferred method of contact?		<input type="radio"/> Phone	<input type="radio"/> Mail	<input checked="" type="radio"/> Email	<input type="radio"/> Fax
What is your preferred method for receiving a Commission Order?		<input type="radio"/> Mail	<input checked="" type="radio"/> Email	<input type="radio"/> Fax	
Contact name: Laura Peters	Relationship: legal assistant				
Mailing address: 39572 Woodward Ave Ste 222, Bloomfield Hills, MI 48304					
Phone: 248-540-7400	Fax number:	Email: lpeters@anafirm.com			

Part 7 - Attorney Information (If You Have An Attorney Representing You For This Application)

Attorney name: Kelly Allen		Member Number: P-
Attorney address: 39572 Woodward Ave Ste 222, Bloomfield Hills, MI 48304		
Phone: 248-540-7400	Fax number:	Email: kallen@anafirm.com
Would you prefer that we contact your attorney for all licensing matters related to this application?		<input checked="" type="radio"/> Yes <input type="radio"/> No
Would you prefer any notices or closing packages be sent directly to your attorney?		<input checked="" type="radio"/> Yes <input type="radio"/> No

Part 8 - Signature of Applicant


Be advised that the information contained in this application will only be used for this request. This section will need to be completed for each subsequent request you make with this office.

Notice: When purchasing a license, a buyer can be held liable for tax debts incurred by the previous owner. Prior to committing to the purchase of any license or establishment, the buyer should request a tax clearance certificate from the seller that indicates that all taxes have been paid up to the date of issuance. Obtaining sound professional assistance from an attorney or accountant can be helpful to identify and avoid any pitfalls and hidden liabilities when buying even a portion of a business. Sellers can make a request for the tax clearance certificate through the Michigan Department of Treasury.

Under administrative rule R 436.1003, the licensee shall comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules, and ordinances as determined by the state and local law enforcements officials who have jurisdiction over the licensee. Approval of this application by the Michigan Liquor Control Commission does not waive any of these requirements. The licensee must obtain all other required state and local licenses, permits, and approvals for this business before using this license for the sale of alcoholic liquor on the licensed premises.

I certify that the information contained in this form is true and accurate to the best of my knowledge and belief. I agree to comply with all requirements of the Michigan Liquor Control Code and Administrative Rules. I also understand that providing **false** or **fraudulent** information is a violation of the Liquor Control Code pursuant to MCL 436.2003.

The person signing this form has demonstrated that they have authorization to do so and have attached appropriate documentation as proof.

<u>Nicholas Lekas</u>	<u></u>	<u>4/4/17</u>
Print Name of Applicant & Title	Signature of Applicant	Date
<u>Managing Member</u>		

Please return this completed form along with corresponding documents and fees to:

Michigan Liquor Control Commission

Mailing address: P.O. Box 30005, Lansing, MI 48909

Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933

Fax to: 517-373-4202



Report of Stockholders, Members, or Partners

(Authorized by MCL 436.1529(1), R 436.1051, and R 436.1110)

Part 1 - Licensee Information

Please state your name as it is filed with the State of Michigan Corporation Division.

Licensee name(s): Birmingham Teatro, LLC		
Address: 211 S Old Woodward Ave		
City: Rochester Hills		Zip Code: 48009
Contact name: Janet Lekas	Phone:	Email: janet@oakmanagement.com

Part 2a - Corporations - Please complete this section and attach more copies of this page if more room is needed.

Name and address of all stockholders:	No. of Shares Issued:	Date Issued/Acquired:

Name and address of Corporate Officers and Directors, pursuant to administrative rule R 436.1109:

Part 2b - Limited Liability Companies - Please complete this section and attach more copies of this page if more room is needed.

Name and address of all members:	Percent % Issued:	Date Issued/Acquired:
Daniel Shaw 4880 Lakeview Blvd Clarkston MI 48348	50%	4-17-2017
Nicholas Lekas, 4553 Racewood Commerce MI 48382	50%	4-17-2017

Name and address of Managers and Assignees, pursuant to administrative rule R 436.1110:

Nicholas Lekas, 4553 Racewood Commerce MI 48382-manager



Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll-Free: 1-866-813-0011 - www.michigan.gov/lcc

Business ID: _____
Request ID: _____
(For MLCC Use Only)

Report of Stockholders, Members, or Partners

(Authorized by MCL 436.1529(1), R 436.1051, and R 436.1110)

Part 2c - Limited Partnerships - Please complete this section and attach more copies of this page if more room is needed.

Name and address of all partners:	Percent % Issued:	Date Issued/Acquired:
Name and address of Managers, pursuant to administrative rule R 436.1111:		

Part 3 - Authorized Signers (Authorized in compliance with R 436.1109(1)(c) for a corporation or R 436.1110(1)(g) for a limited liability company)

Name & Title:	Daniel Shaw, Nicholas Lekas,	-members
Name & Title:	Kelly Allen-attorney	
Name & Title:	Laura Peters-legal assistant	
Name & Title:		
Name & Title:		

Part 4 - Signature of Applicant or Licensee

I certify that the authorized signers under Part 3 of this form have been authorized in compliance with R 436.1109(1)(c) for a corporation or R 436.1110(1)(g) for a limited liability company.

I certify that the information contained in this form is true and accurate to the best of my knowledge and belief. I agree to comply with all requirements of the Michigan Liquor Control Code and Administrative Rules. I also understand that providing false or fraudulent information is a violation of the Liquor Control Code pursuant to MCL 436.2003.

The person signing this form has demonstrated that they have authorization to do so and have attached appropriate documentation as proof.

<u>Nicholas Lekas</u>	<u>Kelly Allen</u>	<u>4/4/17</u>
Print Name of Applicant or Licensee & Title	Signature of Applicant or Licensee	Date
<u>Managing Member</u>		

Please return this completed form to:
Michigan Liquor Control Commission
Mailing address: P.O. Box 30005, Lansing, MI 48909
Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933
Fax to: 517-763-0059

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

Date Received

(FOR BUREAU USE ONLY)

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

Name

Anthony G. Mammina

Address

370 E. Maple Road, Suite 230

City

Birmingham

State

MI

ZIP Code

48009

EFFECTIVE DATE:

Document will be returned to the name and address you enter above.
If left blank, document will be returned to the registered office.

ARTICLES OF ORGANIZATION

For use by Domestic Limited Liability Companies

(Please read information and instructions on reverse side)

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned executes the following Articles:

ARTICLE I

The name of the limited liability company is: Birmingham Teatro, L.L.C.

ARTICLE II

The purpose or purposes for which the limited liability company is formed is to engage in any activity within the purposes for which a limited liability company may be formed under the Limited Liability Company Act of Michigan.

ARTICLE III

The duration of the limited liability company if other than perpetual is: _____

ARTICLE IV

1. The name of the resident agent at the registered office is: Nicholas Lekas

2. The street address of the location of the registered office is:

211 South Old Woodward

(Street Address)

Birmingham

(City)

, Michigan 48009

(Zip Code)

3. The mailing address of the registered office if different than above:

(P.O. Box or Street Address)(City), Michigan(Zip Code)

ARTICLE V (Insert any desired additional provision authorized by the Act; attach additional pages if needed.)

Signed this 17th day of April, 2017

By Nicholas Lekas

(Signature(s) of Organizer(s))

Nicholas Lekas

(Type or Print Name(s) of Organizer(s))

Preparer's Name Anthony G. MamminaMammina & Ajlouny, P.C.Business telephone number (248) 642-1330**INFORMATION AND INSTRUCTIONS**

1. This form may be used to draft your Articles of Organization. A document required or permitted to be filed under the act cannot be filed unless it contains the minimum information required by the Act. The format provided contains only the minimal information required to make the document fileable and may not meet your needs. This is a legal document and agency staff cannot provide legal advice.
2. Submit one original of this document. Upon filing, the document will be added to the records of the Corporations, Securities & Commercial Licensing Bureau. The original will be returned to your registered office address unless you enter a different address in the box on the front of this document.

Since this document will be maintained on electronic format, it is important that the filing be legible. Documents with poor black and white contrast, or otherwise illegible, will be rejected.
3. This document is to be used pursuant to the provisions of Act 23, P.A. of 1993, by one or more persons for the purpose of forming a domestic limited liability company. **Use form BCS/CD 701 if the limited liability company will be providing services rendered by a dentist, an osteopathic physician, a physician, a surgeon, a doctor of divinity or other clergy, or an attorney-at-law.**
4. Article I - The name of a domestic limited liability company is required to contain the words Limited Liability Company or the abbreviation L.L.C. or L.C., with or without periods.
5. Article II- Under section 203(b) of the Act, it is sufficient to state substantially, alone or with specifically enumerated purposes, that the limited liability company is formed to engage in any activity within the purposes for which a limited liability company may be formed under the Act.
6. Article V - Section 401 of the Act specifically states the business shall be managed by members unless the Articles of Organization state the business will be managed by managers. If the limited liability company is to be managed by managers instead of by members, insert a statement to that effect in Article V.
7. This document is effective on the date endorsed "Filed" by the Bureau. A later effective date, no more than 90 days after the date of delivery, may be stated as an additional article.
8. The Articles must be signed by one or more persons organizing the Limited Liability Company. Type or print the name of the organizers signing beneath their signature.
9. If more space is needed, attach additional pages. All pages should be numbered.
10. **NONREFUNDABLE FEE:** Make remittance payable to the State of Michigan. Include limited liability company name on check or money order.....\$50.00

Submit with check or money order by mail:

Michigan Department of Licensing and Regulatory Affairs
Corporations, Securities & Commercial Licensing Bureau
Corporations Division
P.O. Box 30054
Lansing, MI 48909

To submit in person:

2501 Woodlake Circle
Okemos, MI
Telephone: (517) 241-6470

Fees may be paid by check, money order, VISA or Mastercard when delivered in person to our office.

MICH-ELF (Michigan Electronic Filing System):

First Time Users: Call (517) 241-6470, or visit our website at <http://www.michigan.gov/corporations>
Customer with MICH-ELF Filer Account: Send document to (517) 636-6437

LARA is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

OPERATING AGREEMENT FOR
Birmingham Teatro, L.L.C.
A Michigan Limited Liability Company

THIS OPERATING AGREEMENT ("Agreement"), is made and entered into as of this 17th day of April 2017, with respect to Birmingham Teatro, L.L.C., a Michigan limited liability company ("Company"), by and among Nicholas Lekas and Daniel Shaw and all of those persons who shall hereafter be admitted as members (individually, a "Member" and collectively, the "Members") who agree as follows:

ARTICLE I

ORGANIZATION

1.1 **Formation.** The parties have formed the Company pursuant to the Michigan Limited Liability Company Act, being Act No.23, Public Acts of 1993, ("Act") by the filing of Articles of Organization ("Articles") with the Michigan Department of Commerce.

1.2 **Name.** The name of the Company is Birmingham Teatro, L.L.C. The Company may also conduct its business under one or more assumed names.

1.3 **Purposes.** The purposes of the Company are to engage in any activity within the purposes for which a limited liability company may be formed under the Act and any and all activities and transactions as may be necessary or desirable in connection with the achievement of any or all of the foregoing purposes.

1.4 **Duration.** The Company's existence shall be perpetual and shall continue unless and until the Company shall be sooner dissolved and its affairs wound up in accordance with the Act or this Operating Agreement.

1.5 **Registered Office and Resident Agent.** The Registered Office and Resident Agent of the Company shall be as designated in the initial Articles or any amendment thereof. The Registered Office and/or Resident Agent may be changed from time to time, in accordance with the Act. If the Resident Agent shall resign, the Company shall promptly appoint a successor.

1.6 **Intention for Company.** The Members have formed Birmingham Teatro, L.L.C. as a limited liability company under and pursuant to the Act. The Members specifically intend and agree that the Company not be a partnership and the Company shall elect, and shall be treated for tax and accounting purposes as an s-corporation pursuant to the Act and other applicable law. No Member shall be construed to be a partner in the Company or a partner of any other Member or person.

ARTICLE II

DEFINITIONS

2.1 **"Capital Contribution"** shall mean the initial amount of cash contributed to the capital of the Company by a Member, increased by any additional cash contributions made to the capital of the Company by such Member and decreased by the amount of any cash distributions made by the Company to such Member which constitutes a return of capital in

accordance with the terms of this Agreement. Any reference to the Capital Contribution of a Member shall include the Capital Contribution made by a predecessor in interest of such Member.

2.2 "Consent of the Members" shall mean the consent of the Members holding a majority in interest of the Membership Interests of all Members, unless specifically provided otherwise in this Agreement.

2.3 "Member" shall mean those persons and/or entities who execute this Agreement as Members and who are admitted to the Company as Members pursuant to the terms of this Agreement.

2.4 "Manager" shall mean any Manager hereinafter appointed by a unanimous consent of the Members, or his or her successors or assigns, in accordance with the terms of this Agreement.

2.5 "Membership Interest" as to each Member shall mean such Member's percentage share in the Company, and such Member's share of profits, losses and distributions of the Company.

2.6 "Net Cash Flow" shall mean all cash receipts from whatever source, less cash expenditures by the Company to persons other than Members in their capacity as Members, and less cash reserves established by the Manager.

ARTICLE III

CAPITAL, PARTICIPATION IN PROPERTY AND LIABILITY

3.1 Members' Initial Capital Contributions and Loans. Each Member agrees to contribute to the capital of the Company the amount identified in Exhibit A, which is attached hereto and made a part hereof, in exchange for that Member's Membership Interest in the Company.

3.2 Company Capital. The capital of the Company shall be the aggregate amount of the Capital Contributions made by the Members and the capital accounts as stated on the Company books and records. A separate capital account shall be determined and maintained for each Member in accordance with applicable law.

3.3 Percentage Interest In Company. The Members shall have and own the Membership Interests which are identified on Exhibit A, which is attached hereto and made a part hereof.

3.4 Additional Capital Contributions. The Members shall not be required under this Agreement to make any additional Capital Contributions to the Company.

3.5 Voluntary Member Loans. If any Member agrees, with the consent of the Manager, to loan funds to the Company, such loans, together with interest thereon at the rate established by mutual agreement of the Member making the loan to the Company and the Manager, shall be repaid prior to any distributions of Net Cash Flow or other distributions of Company proceeds to the Members.

3.6 Third Party Loans to the Company. If the Company obtains a commitment

for financing which requires the personal guaranties of the Members, such financing shall require the unanimous consent of the Members. If the Members unanimously approve such financing, each individual Member shall furnish the required guaranty. If the lender requires such guaranties to be on a joint and several basis for each of the Members, and if any one or more of the Members shall become liable and in fact pay any obligation under such guaranties, each of the Members shall, upon demand, be liable for their share of the total obligations incurred by any one or more of the Members, on a pro rata basis, in accordance with their respective Membership Interests. The foregoing obligations shall survive the dissolution of the Company or the termination of this Agreement.

3.7 Restrictions Relating to Capital. Except as otherwise specifically provided in this Agreement, no Member shall have the right to withdraw or reduce his or her Capital Contribution and no Member shall have the right to receive property other than cash, if any, in return for his or her Capital Contribution.

3.8 No Third Party Rights. Nothing contained in this Article III is intended for the benefit of any creditor or other person (other than a Member in his or her capacity as such) to whom the Company owes any debts, liabilities or obligations or who otherwise has any claim against the Company, and no third party shall have any rights by virtue of the provisions of this Article III.

ARTICLE IV

DISTRIBUTION OF CASH AND ALLOCATIONS OF PROFIT AND LOSS

4.1 Tax Liability, Profits and Losses. For accounting and federal, state and local income tax purposes, the net profits and losses, and other items of income, gain, loss, deduction and credit of the Company shall be allocated and treated as an s-corporation.

4.2 Distributions of Net Cash Flow. In the event that a majority of the Members determine that all or part of the Company's Net Cash Flow should be distributed to the Members, such distribution shall be made to the Members, on a pro rata basis, in accordance with their respective Membership Interests.

4.3 Tax Provision. Notwithstanding the discretionary nature of cash distributions set forth in Section 4.2 above, to the extent the Company has available Net Cash Flow (computed for this purpose without any reserve for replacements or contingent liabilities), the Company shall distribute sufficient cash to its Members to enable the Members to pay any additional state and/or federal income tax which they incur as a direct result of any income to the Members.

4.4 Sale of Assets. The proceeds resulting from any sale of all or substantially all of the Company's assets, whether as a result of dissolution or otherwise, shall be distributed and applied in the following priority:

- (a) To the payment of any debts and liabilities of the Company;
- (b) To the establishment of any reserves which the Manager deems necessary to provide for the payment of any debts or liabilities of the Company. At the expiration of a reasonable period of time as the Manager deems advisable, the balance of such

reserve funds remaining after payment of any such debts, liabilities or contingencies, shall be distributed in the manner provided in subparagraph (c) below;

- (c) To the Members, on a pro rata basis, in accordance with their respective Membership Interests.

ARTICLE V

MANAGEMENT

5.1 **Management of Business.** The Company shall be managed by one or more persons ("Manager"). The Manager shall be Nicholas Lekas. The Manager shall serve in his capacity as Manager for the term and subject to removal as specified in Section 5.4 below.

5.2 **General Powers of Manager.** The Manager shall have the exclusive right to manage the business of the Company, except as expressly limited in Section 5.3. No Member other than a Manager, shall have any control over Company business, or shall have the power to bind the Company. The Manager is authorized and empowered to carry out and implement any and all of the purposes of the Company and to manage, control and make all decisions affecting the business and assets of the Company in the Manager's full and exclusive discretion, and the foregoing decisions and actions by the Manager shall not require the consent of the Members, except as limited by Section 5.3 below. The Manager is authorized to execute and deliver, for and on behalf of the Company, all agreements, documents and instruments to take any actions on behalf of the Company, except as limited by Section 5.3 below. Without limiting the generality of the foregoing, the Manager has the power to:

- (a) purchase, lease or otherwise acquire real or personal property;
- (b) sell, convey, mortgage, grant a security interest in, pledge, lease, exchange or otherwise dispose or encumber any real or personal property;
- (c) open one or more depository accounts and make withdrawals against and/or from such accounts which shall exceed \$25,000.00;
- (d) borrow money and incur liabilities or other obligations;
- (e) engage employees and agents, define their respective duties, and establish their compensation or remuneration;
- (f) establish pension plans, trusts, profit sharing plans and other benefit and incentive plans for Members, employees and agents of the Company;
- (g) obtain insurance covering the business of the Company, its property and the lives and well-being of its Member employees and agents;
- (h) commence prosecution or defend any proceeding in the Company's name; and
- (i) participate with others in enterprises, joint ventures and other associations and strategic alliances.

5.3 **Limitation on Powers.** Notwithstanding anything to the contrary contained

in this Article V, the Members shall have the right to vote on the following matters:

- (a) the dissolution of the Company pursuant to Section 8.1(d) of this Agreement;
- (b) the merger of the Company with one or more other limited liability companies or other entities;
- (c) a transaction involving an actual or potential conflict of interest between a Manager and the Company; and
- (d) an amendment to this Agreement altering, amending and/or limiting Manager's power.

5.4 Term; Removal of Manager

(a) A Manager shall serve in his or her capacity as Manager until his or her resignation, death, disability, bankruptcy or legal incapacity to serve as a Manager or until such Manager is removed for cause in accordance with the provisions of Section 5.4(b) below. In the event of the resignation, death, disability, legal incapacity or removal of a Manager, the Members holding a majority interest of the total Membership Interests of all Members shall select a successor Manager, who agrees to serve in such capacity.

(b) A Manager may be removed for cause by the Members holding a majority interest of the total Membership Interests of all Members. In the event any Member requests that the Manager be removed for cause, such Member shall request a meeting for such purpose and the Manager who is subject to being removed for cause shall have reasonable advance notice of the allegations against him or her and an opportunity to be heard at the meeting. The Manager who is subject to being removed for cause shall also have the right to vote his or her Membership Interest with respect to such issue. Members shall not have the right to remove a Manager without cause.

5.5 Standard of Care: Liability. The Manager shall discharge his or her duties as a Manager in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the Company. The Manager shall not be liable for any monetary damages to the Company for any breach of such duties which arise out of any act or omission performed or omitted by the Manager in good faith on behalf of the Company except for:

- (a) receipt of a financial benefit to which the Manager is not entitled; or
- (b) a knowing violation of the law.

5.6 Indemnification of Manager. The Company shall, to the fullest extent permitted by law, indemnify and hold harmless the Manager, his or her successors, heirs and assigns, from and against any and all losses, liabilities, obligations, claims, causes of action, demands, costs, and expenses (including reasonable attorney fees) incurred by the Manager with respect to any act or omission performed by such Manager within the scope of the authority conferred upon him by this Agreement, provided that the Manager acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Company and the Members; provided, however, the Manager shall not be indemnified for any acts described in Section 5.5(a) or (b).

5.7 Compensation of Manager. The Members and the Manager shall not receive any compensation for rendering services to the Company in their capacity as a Member or Manager. Manager and/or the Members may, however, be employed in other capacities within the Company. All reasonable expenses incurred by a Member or Manager in connection with the operation of the Company's business shall be reimbursed in full by the Company upon presentation of evidence of the payment of such expense.

5.8 Nature of Member's Interest. Membership Interests in the Company shall be personal property for all purposes. All property owned by the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company as an entity. No Member, individually, shall have ownership of such property. The Members hereby agree that no Member, nor any successor in interest to any Member, shall have the right while this Agreement remains in effect, to have any Company assets partitioned, or to file a complaint or institute any proceedings at law or in equity to have such asset partitioned. Each Member, on behalf of himself or herself, his or her successors, successors-in-title, and assigns, hereby waives any such right.

5.9 Bank Accounts. The bank account or accounts of the Company shall be maintained in the banking institution or institutions selected by the Manager. All funds of the Company shall be deposited into account(s) of the Company and any and all checks or other instruments used to draw funds of the Company in excess of \$25,000.00 shall require the signature of the Manager or an authorized representative of the Manager.

5.10 Activity of the Manager and Members. The Manager shall devote such time and effort as may be reasonably required to conduct the Company's business and perform his or her responsibilities under Section 5.2 above. The Members and the Manager shall not in any way be prohibited from or restricted in engaging or owning an interest in any other business venture of any kind, nature, character or description whatsoever, whether independently or with others, directly or indirectly, excepting only those businesses which may be directly competitive with the primary line of business of the Company within a two (2) mile radius of the current or future location of the Company.

ARTICLE VI

DISPOSITION OF MEMBERSHIP INTERESTS; WITHDRAWAL

6.1 Restrictions on Transfer and Assignment.

- (a) Except as expressly provided in Section 6.1(b) and (c) and Section 8.3 of this Agreement, no Member shall sell, assign, transfer, convey, pledge or otherwise encumber all or any portion of his or her Membership Interest, without obtaining the unanimous consent of the other Members. Any attempted disposition of a Membership Interest in violation of this Section 6.1(a) shall be void and of no effect.
- (b) A Member may, without obtaining the consent of the other Members, assign his or her Membership Interest to any of the following assignees: (i) to another Member; (ii) to an inter vivos or testamentary trust primarily for the benefit of that Member's immediate family so long as that Member is the sole trustee of such trust.
- (c) Other than an assignment based upon 6.1(b)(i) and (ii) above, the permitted assignment of a Membership Interest does not entitle the assignee to participate in the management and affairs of the Company or to become or exercise any rights of a

Member, including the right to vote on any matter requiring a vote of the Members, unless and until such assignee is admitted as a substitute Member in accordance with Section 6.2 below. Unless a permitted assignee is admitted as a substitute Member in accordance with the provisions of Section 6.2 below, such assignee shall only be entitled to receive, to the extent assigned, the distributions to which the assignor would be entitled.

- (d) In the event of a permitted assignment that does not result in the admission of the assignee as a substitute Member, the assignor/Member shall not be entitled to continue to exercise the rights of a Member under this Agreement, however, such assignor Member and his or her assignee shall continue to be jointly and severally liable to the Company for such Member's obligations to the Company under Article III or under the Act, and in the event of default, such Membership Interest shall be subject to all of the remedies and options otherwise available to the Company.

6.2 Admission of Substitute Members. An assignee of a Membership Interest shall not be admitted as a substitute Member, unless all of the following conditions are satisfied:

- (a) a majority of the other Members unanimously consent to the admission of such assignee as a substitute Member;
- (b) the assignor and assignee execute and deliver to the Members a copy of the written assignment which gives the assignee the right to become a substitute Member;
- (c) if requested by the other Members, the assignor provides to the Company an opinion of counsel, in form and substance satisfactory to the Members, that neither the offering nor assignment of the Membership Interest violates any provisions of federal or state securities laws; and
- (d) the assignee executes and delivers to the Company a written agreement to be bound by all of the terms and provisions of this Agreement and to assume all of the obligations of the assignor Member.

An assignee who is admitted as a substitute Member in accordance with the foregoing provisions shall have all of the rights and powers, and shall be subject to all of the restrictions, obligations and liabilities of a Member under this Agreement and the Act.

6.3 Sale / Transfer of Membership Interest. If any Member: (a) desires to voluntarily transfer and/or sell all or part of his or her Membership Interest, or (b) is required by law for any reason to involuntarily transfer and/or sell all or part of his or her Membership Interest (collectively, an "Offer"), that Member (the "Selling Member") must immediately provide the Company and each of the other Members with a written notice detailing the specific terms and conditions of the Offer, the basis upon which the Offer is being proposed and provide each with a copy of all agreements and documents relating to the Offer (collectively, the "Notice"). For thirty (30) days following the receipt of the Notice of the Offer, the Company shall have the exclusive right and option to elect to purchase and liquidate the Membership Interest subject to the Offer (the "First Option"), for the same price and terms as the Offer or for the "book value" of the Membership Interest as of the last day of the month preceding the Offer as calculated by the Company's primary accountancy firm (the "Book Value"), whichever the Company shall choose in its sole discretion.

If the Company fails to exercise the First Option, then, for an additional thirty (30) days, the remaining Members of the Company shall have the exclusive right and option to elect to purchase the Membership Interest subject to the Offer (the "Second Option"), for the same price and terms as the Offer or for the Book Value, whichever the remaining Members shall choose in their sole discretion. The Members shall purchase the Membership Interest on a pro rata basis. "Pro rata basis" with reference to the transfer and/or purchase of any Membership Interest by the Members (the "Purchasing Members"), shall mean in proportion to the percentage of Membership Interest owned by each Purchasing Members as compared to the total percentage of Membership Interest owned by all the Purchasing Members (the "Purchasing Percentage"), provided, however, that if one or more of the Purchasing Members decline to purchase the maximum percentage of Membership Interest available for purchase by that Member (the "Declining Member"), then such remaining Membership Interest shall again be offered to those Purchasing Members who are not Declining Members, in accordance with each of their respective Purchasing Percentages (as revised to exclude the Membership Interest of the Declining Members), and this process shall be repeated until there is no remaining Membership Interest or none of the Purchasing Members wish to purchase any of the remaining Membership Interest.

If the remaining Members fail to exercise the Second Option, for an additional thirty (30) days, the remaining Members shall have the exclusive right and option to secure a third-party purchaser of their choosing to purchase the Membership Interest subject to the Offer (the "Third Option"), for the same price and terms as the Offer.

If the remaining Members fail to exercise the Third Option, then the Selling Member may sell the Membership Interest subject to the Offer to the purchaser named therein. If the sale pursuant to the Offer is not consummated within sixty (60) days following the expiration of the Third Offer, the offer process set forth in this Section 6.3 shall reset and the Selling Member must again comply will all the terms and conditions of this Section 6.3, including the First Option, Second Option and Third Option.

The purchaser of a Selling Member's Membership Interest pursuant to this Section, that is not an existing Member, shall not be admitted as a substitute Member unless and until all requirements contained in Section 6.2 above have been satisfied.

6.4 Mandatory Offer on Death or Disability. On the death or disability of any Member, such Member shall be deemed to have made an Offer to sell all of his or her Membership Interest pursuant to Section 6.3, with the purchase price being the fair market value of the Membership Interest as of the last day of the month proceeding the date of the deemed offer to sell (the "Fair Market Value"), and the Company and the remaining Members shall have the options as set forth in Section 6.3. If the Membership Interest of a deceased or disabled Member are not purchased by exercise of the options described in Section 6.3, such Membership Interest shall be transferred, without payment, to the deceased or disabled Member's heirs and remain subject to the terms and conditions of this Agreement. However, the successor or assignee shall not have the rights of a Member unless the successor or assignee is admitted as a Substitute Member in accordance with Section 6.2 above. For purposes of this Agreement, "disabled" or "disability" shall mean a Member who has a physical or mental impairment that substantially limits one or more life activities that exists for sixty (60) consecutive days and the impairment is reasonably expected to continue for more than an additional six month period.

6.5 Withdrawal. Unless a Member has assigned and transferred his or her entire Membership Interest to another Member or other assignee who has been admitted as a substitute Member, a Member may not withdraw from the Company except with the unanimous

written consent of the other Members. Any Member who withdraws in violation of the provisions of this Section 6.5 shall not be entitled to any distributions under this Agreement and shall be liable to the Company and the remaining Members for any damages incurred by the Company or such remaining Members as a result of the withdrawing Member's breach of the provisions of this Section 6.5.

6.6 Amount and Payment of Purchase Price. The purchase price to be paid upon any transfer or sale of any Membership Interest shall be that as set forth in Section 6.3 and Section 6.4 above. Unless the terms of a Bona Fide Offer are accepted by the purchaser under Section 6.3, the purchase price shall be paid, within sixty (60) days of the determination of the purchase price as follows: (i) in full by a certified or bank cashier's check; or (ii) at the sole election of the purchaser, by the delivery of a certified or bank cashier's check in an amount equal to 20 percent of the purchase price, the balance to be paid pursuant to a nonnegotiable promissory note of each purchaser providing for equal annual payments of principal, together with accrued interest at the prime rate, over the following five years.

ARTICLE VII

MEETINGS OF MEMBERS

7.1 Voting. All Members shall be entitled to vote on any matter submitted to a vote of the Members.

7.2 Required Vote. Unless a greater vote is required by the Act, the Articles or this Agreement, any action requiring the vote, determination or consent of the Members shall require the affirmative vote or consent of the Members holding a majority in interest of the Membership Interests of all the Members entitled to vote.

7.3 Meetings. Meetings of Members for any proper purpose or purposes may be called at any time by any Member upon reasonable advance notice to the Members. Members may attend meetings in person, by proxy given to another Member or via telephonic communication device. The Company shall deliver or mail written notice stating the date, time, place and purposes of any meeting to each Member entitled to vote at the meeting. Such notice shall be given not less than ten (10), and no more than sixty (60) days, before the date of the meeting. The Manager shall preside at all meetings of Members.

7.4 Consent. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote, if consents in writing, setting forth the action so taken, are signed by the Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Membership Interests entitled to vote on the action were present and voted. Every written consent shall bear the date and signature of each Member who signs the consent. Prompt notice of the taking of action without a meeting by less than unanimous written consent shall be given to all Members who have not consented in writing to such action.

ARTICLE VIII

DISSOLUTION AND WINDING UP

8.1 Dissolution. The Company shall dissolve and its affairs shall be wound up on the first to occur of the following events:

- (a) at any time specified in the Articles or this Agreement;
- (b) upon any Member voting deadlock in a matter wherein a majority vote of membership interest is required, and such deadlock is not resolved between the Members within 60 days of any Member's written notice to the other Member(s) that dissolution will occur under Section VIII unless the deadlock is resolved within that 60 day period.
- (c) the sale or other disposition by the Company of all or substantially all of its property and assets not in the ordinary course of business, unless all of the Members agree to continue the Company;
- (d) by the unanimous consent of all of the Members;
- (e) upon the death, dissolution, bankruptcy or legal incapacity of any of the Members or the trustee of any Member that is a trust, or the occurrence of any other event that terminates the continued membership of a Member in the Company (the "Retiring Member"), unless within ninety (90) days from the occurrence of one of the foregoing events, the remaining Members holding a majority in interest of the aggregate Membership Interests of all remaining Members consent to continue the business of the Company and the Membership Interest of the Retiring Member is transferred in accordance with Article VI of this Agreement;
- (f) upon the entry of a final judgment, order or decree of judicial dissolution, and the expiration of any applicable appeal period in which to appeal therefrom.

8.2 Distribution on Liquidation. Upon the dissolution of the Company, the Manager shall proceed to liquidate the assets of the Company and wind up its affairs. A reasonable time shall be allowed for the orderly liquidation of the Company's assets and the payment of its liabilities so as to enable the Manager to minimize the normal losses attendant upon liquidation. The provisions of Article IV relating to the allocation of profits and losses of the Company shall be applicable during the period of liquidation. Proceeds of liquidation shall be applied and distributed in the following order of priority:

- (a) To the payment of any debts and liabilities of the Company;
- (b) To the establishment of any reserves which the Manager deems necessary to provide for the payment of any debts or liabilities of the Company. At the expiration of a reasonable period of time as the Manager deems advisable, the balance of such reserve funds remaining after payment of any such debts, liabilities or contingencies, shall be distributed in accordance with subparagraph (c) below;
- (c) To the Members, on a pro rata basis, in accordance with their respective Membership Interests.

ARTICLE IX

BOOKS, RECORDS AND ACCOUNTING

9.1 Books and Records. The Company shall maintain complete and accurate books and records of the Company's business and affairs as required by the Act and such books

and records shall be kept at the Company's Registered Office.

9.2 Accounting. The Company shall maintain proper books and records in accordance with generally accepted accounting principles. The fiscal and taxable year of the Company shall be the calendar year. All Members and their representatives shall have the right to inspect the Company's books and records at any time upon reasonable notice.

9.3 Member's Accounts. Separate capital accounts shall be maintained by the Company for each Member. Each Member's capital account shall reflect the Member's Capital Contributions and increases for the Member's share of any net income or gain of the Company. Each Member's capital account shall also reflect decreases for distributions made to the Member and the Member's share of any losses and deductions of the Company.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Binding Effect. Subject to the provisions of this Agreement relating to assignment and transferability, this Agreement will be binding upon and shall inure to the benefit of the parties, and their respective distributees, heirs, successors and assigns.

10.2 Certificates. The Members shall promptly execute and file Articles of Organization and all other legally required fictitious names or other applications, registrations, publications, certificates and affidavits required to be filed with governmental authorities.

10.3 Amendment. This Agreement may be amended or revoked at any time by a written agreement executed by all of the Members. No change or modification to this Agreement shall be valid unless in writing and signed by all of the Members.

10.4 Notices. Any notice permitted or required under this Agreement shall be conveyed to the party at the address reflected in this Agreement and will be deemed to have been given, when deposited in the United States mail, postage paid, or when delivered in person, or by courier or by facsimile transmission.

10.5 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

10.6 Choice of Law and Forum Selection. This Agreement shall be interpreted and construed in accordance with the laws of the State of Michigan. All actions arising directly or indirectly out of this Agreement shall be litigated only in the United States District Court for the Eastern District of Michigan, Southern Division, or in the Oakland County, Sixth Judicial Circuit Court, and the parties hereby irrevocably consent to the personal jurisdiction and venue of those courts over the parties to this Agreement.

10.7 Terms. Nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require.

10.8 Headings. The titles of the sections have been inserted as a matter of convenience for reference only and shall not control or affect the meaning or construction of any

of the terms or provisions of this Agreement.

10.9 Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same.

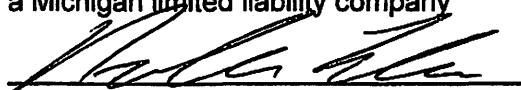
10.10 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto and contains all of the agreements among said parties with respect to the subject matter hereof.

The Members have executed this Agreement on the date set forth above.

"COMPANY"

BIRMINGHAM TEATRO, L.L.C.,
a Michigan limited liability company

By:



Nicholas Lekas, Manager
Address: 211 South Old Woodward
Birmingham, MI 48009

"MEMBERS"



Nicholas Lekas
Address: 1480 W. Romeo Rd.
Leonard, MI 48367

Daniel Shaw
Address: 4980 Lakeview Blvd.
Clarkston, MI 48348

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EXHIBIT A

BIRMINGHAM TEATRO, L.L.C.

<u>Member</u>	<u>Initial Capital Contribution</u>	<u>Membership Interest In Company</u>
Nicholas Lekas	\$50,000.00	50%
Daniel Shaw	\$50,000.00	50%
TOTAL	\$100,000.00	100%

"COMPANY"

BIRMINGHAM TEATRO, L.L.C.,
a Michigan limited liability company

By:



Nicholas Lekas, Manager

"MEMBERS"



Nicholas Lekas

Daniel Shaw

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"COMPANY"

**BIRMINGHAM TEATRO, L.L.C.,
a Michigan limited liability company**

By:

Nicholas Lekas, Manager

"MEMBERS"

Nicholas Lekas

Daniel Shaw

LIQUOR LICENSE PURCHASE AGREEMENT

THIS LIQUOR LICENSE PURCHASE AGREEMENT is entered into on this ____ day of April, 2017 ("Effective Date") by and between Thumper's Splatter, LLC, a Michigan Limited Liability Company whose address is 230 E. Auburn Road, Rochester Hills MI 48307 ("Seller") and Birmingham Teatro, LLC, a Michigan Limited Liability Company whose address is 211 S. Old Woodward Avenue, Birmingham, MI 48009 ("Buyer") (collectively, the "Parties").

WHEREAS, the Seller owns certain Class C liquor licenses issued by the Michigan Liquor Control Commission ("MLCC") (License No. 238118, Business Id. No. 235577), which licenses and attendant permits, if any (collectively, the "Liquor License"), are currently in escrow in Seller's name, at 230 E. Auburn Road, Rochester Hills MI 48307, Oakland County, Michigan; and

WHEREAS, the Seller desires to sell said Liquor License and Buyer desires to purchase same;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the Parties agree as follows:

1. **Sale of Liquor License.** Seller agrees to sell to Buyer and Buyer agrees to purchase the Liquor License, free and clear of any liens, encumbrances, restrictions, obligations, and claims of any nature whatsoever, subject only to the conditions and contingencies set forth herein. The Parties shall execute and deliver, each to the other, any legal instrument, application or document of whatsoever nature or kind may be necessary to effect and consummate this transaction, including the right to an MLCC appeal.
2. **Payment of Purchase Price.** It is agreed that Buyer shall pay to Seller, in consideration hereof, the sum of Sixty Five Thousand and No/100ths Dollars (\$65,000.00) (the "Purchase Price"), as follows:
 - A. **Deposit.** At the time of the execution of this Agreement, Buyer shall deposit the sum of Five Thousand and No/100ths Dollars (\$5,000.00) ("Deposit") with Adkison, Need, Allen, & Rentrop, PLLC ("Escrow Agent") The same is to be kept and held in the trust account by the Escrow Agent, who is specifically authorized by both Seller and Buyer to act as their Escrow Agent, until such time as the MLCC authorizes the transfer of the Liquor License from the Seller to Buyer or the Deposit is otherwise returned or distributed pursuant to the terms of this Agreement. Upon approval by the MLCC, and execution of a Bill of Sale and Assignment and any other instruments necessary to consummate this transaction, in form and content reasonably satisfactory to Buyer, said Deposit is to be paid by Escrow Agent to the Seller.
 - B. **Balance.** At the time of the closing of this transaction, an additional Sixty Thousand and No/100ths Dollars (\$60,000.00) shall be paid to the Seller by cashier's check, wire transfer or other immediately available funds.
3. **Inventory.** There is no inventory included in this Agreement.

4. **Closing Contingency.** The Parties' performance on this Agreement is contingent upon the occurrence of each of the following conditions precedent. Should any one of the following fail to occur, then the same shall constitute an automatic termination of this Agreement, Buyer shall be entitled to an immediate refund, in full, of the Deposit made hereunder, and neither party shall have any further obligation hereunder:
 - A. Buyer's receipt of written approval from the City of Birmingham and the MLCC for transfer of ownership of the Liquor License to the Buyer for use at 211 S. Old Woodward Avenue, Birmingham, MI 48009 (the "Premises"), after appeal of any denial, at Buyer's sole and absolute discretion (the "Governmental Approvals"). The Buyer shall apply to the MLCC and the City of Birmingham, if required, for the transfer of Seller's interest in the Liquor License to Buyer within twenty (20) days after full execution of this Agreement, and both parties shall diligently and expeditiously proceed with whatever steps shall be necessary to obtain the approval for the transfer. Both Seller and Buyer agree to immediately fulfill any directives or requirements from the MLCC and the City of Birmingham to expedite the transfer. Buyer shall pay all fees required in connection with the transfer of the Liquor License, including but not limited to inspection fees, fees for other permits (such as, by way of example and not by way of limitation, outdoor service permits) any other fees for any permits included in the Liquor License. Seller shall pay all fees that may have accrued prior to the date of closing, including without limitation, all renewal and/or escrow fees and any licensing fees not associated with the transfer that accrued prior to the date of closing. However, the renewal fee for 2017-2018 shall be prorated, on a per diem basis, to the date of Closing. The Buyer shall reimburse the Seller for its portion of the renewal fee at Closing.
5. **Closing.** The sale and transfer shall be consummated within twenty (20) days after the satisfaction or waiver of the contingency set forth in paragraph 4 hereof, at a time and place determined by the Parties ("Closing Date"). The Parties agree that, except as specifically set forth herein, the consummation of the transfer shall take place no later than one hundred eighty (180) days after the date of this Agreement ("Outside Closing Date"). If, through no fault of the Buyer, the Governmental Approvals have not been obtained because of delays by the MLCC processing normal paperwork, and not because of Buyer's non-performance or failure to timely respond to requests from the MLCC, the local police or the local unit of government, then the Parties hereby agree that the Outside Closing Date shall be extended an additional thirty (30) days to facilitate completion of the application processing and consideration of the transfer by the MLCC ("Extended Closing Date").

If the application is approved for transfer by the MLCC, but subject to a final inspection or other conditions outside the control of the Seller, then the closing shall be consummated as set forth above, and the Liquor License shall remain in escrow until such time as the conditions may be satisfied ("Escrowed Closing"). In the event of an

Escrowed Closing, and in the event that the Liquor License has not finally transferred prior to the next succeeding MLCC renewal deadline, the Seller shall cooperate with Buyer to facilitate renewal of the Liquor License by timely forwarding the executed MLCC renewal form to Buyer's counsel for processing before the April 30 renewal deadline.

If, through no fault of either party, the contingencies have not been satisfied or waived by the Buyer, or the sale is not consummated on or before the Outside Closing Date or Extended Closing Date, either party may terminate this Agreement by written notice delivered to the other party on or before the Outside Closing Date or Extended Closing Date, as applicable, in which event the Buyer shall receive a refund of the Deposit in full termination of this Agreement, and neither party shall have any further obligation hereunder.

In the event that the contingencies contained herein have not been satisfied by the Outside Closing Date, and the delay or failure is a result of misrepresentation, concealment, fraud, non-performance or untrue/unstated representations made by either party or its agents, the party committing such misrepresentation, concealment, fraud or non-performance shall be deemed to be in default and the non-defaulting party shall have the remedies set forth in paragraph 11, below.

6. **Termination Upon Failure of Contingencies.** In the event that the Closing Contingency set forth in paragraph 4, above, is not satisfied, for any reason other than the breach by Buyer or Seller of the express terms of this Agreement, after the Parties have complied with all of the terms and provisions provided herein, then this Agreement shall become null and void and the Escrow Agent shall immediately return to the Buyer the entire Deposit and Buyer shall have no further liability or obligation to Seller. The Escrow Agent is specifically required to make such return.
7. **Conveyance of Clear Title.** All taxes and assessments of every nature and kind, and all obligations, debts or claims which have been or may become a lien upon the Liquor License or which arise during or by virtue of Seller's ownership thereof, shall be paid by Seller prior to the Closing Date. Any liens or assessments not paid by the Seller on or before the Closing Date may be paid by the Buyer and credited against the Purchase Price due to the Seller at closing.
8. **Representations, Warranties, and Covenants of Seller.** Seller represents and warrants to and covenants with Buyer as follows:
 - A. **Marketable Title.** That Seller is the sole owner of, and has good and marketable title to, and authority to sell and transfer the Liquor License, which Liquor License shall be free and clear of all liens and encumbrances as of the Closing Date, and that there are no transfer applications or other transactions pending with anyone concerning the transfer of, or ownership of, the Liquor License; and

- B. **Liens.** That no judgments, liens, or security interests will be outstanding at the time of the closing against Seller which would affect Seller's title to, or Seller's ability to transfer, such Liquor License to Buyer.
- C. **Taxes.** All taxes and assessments of every nature and kind, which have been or may become a lien upon the Liquor License or which arise during, or by virtue of, Seller's ownership thereof, shall be paid by Seller prior to the Closing Date. There shall be no outstanding taxes due at the Closing Date that could result in successor liability under MCL 205.27a.
- i. Immediately after execution of this Agreement, Seller shall complete and file Michigan Department of Treasury form 5156, Request for Tax Clearance Application (Parts 1 and 4) which shall include authorization of Purchaser's Counsel to receive information relative to Seller's tax status. Immediately after Closing, Seller shall make application for issuance of a conditional tax clearance to the Michigan Department of Treasury, and shall prepare and file all necessary and appropriate returns and reports for issuance of conditional tax clearance.
 - ii. As security for the payment of the tax liabilities and issuance of the tax clearance, Seller agrees to deposit with Adkison, Need, Allen, & Rentrop, PLLC ("Tax Escrow Agent") an amount equal to 1 ½ times the total outstanding tax obligation as reported by Treasury in response to Seller's initial Request for Tax Clearance Application, to be held and distributed pursuant to the terms of an escrow agreement executed by the parties at the Closing. Escrow Agent shall hold the fund until the Certificate of Conditional Tax Clearance has been received from the state of Michigan showing that Seller has filed all tax returns and reports required to be filed before closing and that Seller has paid all taxes due pursuant to Section 27a of the Michigan Revenue Act, MCL 205.27a, and until evidence of any other information is furnished to assure transfer of unencumbered title to the Assets, subject to the provisions of this Agreement.
 - iii. In the event that the parties establish the Escrow Fund and it is not sufficient to pay the taxes, Seller and Seller's Member, individually, jointly and severally, shall hold, defend, and indemnify Buyer harmless for any and all liability for taxes in excess of the amount of the Escrow Fund created above.
- D. **No Violations.** There are no violations of the Michigan Liquor Control Code, or the rules promulgated thereunder, currently pending regarding the Liquor License. In the event that such a violation does exist, and Seller fails to remedy such violation, the Buyer shall have the right, but not the obligation, to itself remedy the violation in order to facilitate the transfer of the Liquor License to Buyer, in which event Seller shall indemnify and hold Buyer harmless from any and all

liability, including without limitation, fines, penalties and actual attorney fees associated with Buyer remedying Seller's or Seller's predecessor's outstanding violations of the Michigan Liquor Control Code or Rules. In the alternative, Buyer may deduct the amount Buyer pays in fines, penalties, and actual attorneys' fees associated with Buyer remedying Seller's or Seller's predecessor's outstanding violations of the Michigan Liquor Control Code or Rules from the Purchase Price paid at closing.

- E. **Authorization.** This Agreement has been duly and validly authorized by any and all necessary corporate action of Seller and, upon due execution and delivery, will constitute a valid and binding agreement of Seller.

9. **Representations, Warranties, and Covenants of Buyer.** Buyer represents and warrants with Seller as follows:

- A. **Qualification.** Buyer acknowledges that there are requirements of the City of Birmingham and the MLCC associated with the transfer of the Liquor License from Seller to Buyer. With respect to this transfer, Buyer knows of no reason why Buyer, or any of Buyer's members or shareholders, would not be approved by the City of Birmingham or the MLCC for the transfer of the Liquor License.
- B. **Authorization.** This Agreement has been duly and validly authorized by any and all necessary action of Buyer and, upon due execution and delivery, will constitute a valid and binding agreement of Buyer.

10. **Brokerage Commission.** There is no broker involved in this transaction.

11. **Default and Remedy.**

- A. **Seller Default.** In the event that Seller defaults on any of its obligations under this Agreement, and Seller fails to cure such default within ten (10) days of written notice thereof, Buyer shall have the option to either (1) waive such default and proceed to closing, (2) terminate this Agreement, in which event the Deposit shall be returned to Buyer, or (3) seek the remedy of specific performance.
- B. **Buyer Default.** In the event that Buyer defaults on any of its obligations under this Agreement, and Buyer fails to cure such default within ten (10) days of written notice thereof, Seller shall have the option to either (1) waive such default, or (2) terminate this Agreement, in which event the Deposit shall be released to Seller as liquidated damages, and neither party shall have any further obligation to the other.

12. **Miscellaneous.**

A. **Notice.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to be duly given if delivered or mailed first class, postage prepaid to the following addresses, or to the e-mail addresses below, until notification of a different address:

(1) To the Seller:
Lisa A. Ebert
2850 Riverside Dr.
Waterford, MI 48329
e-mail: Lebert248@comcast.net

(2) To the Buyer:
Nicholas Lekas
Birmingham Teatro, LLC
211 S. Old Woodward Avenue
Birmingham, MI 48009
e-mail: _____

(3) With a copy to (which shall not constitute notice):
Kelly A. Allen, Esq.
Adkison, Need, Allen, & Rentrop, PLLC
39572 Woodward Ave., Suite 222
Bloomfield Hills, Michigan 48304

B. **Applicable Law.** This Agreement shall be governed by Michigan law.

C. **Assignment.** This Agreement shall not be Assigned without the prior written consent of both Parties.

D. **Survival.** The covenants, representations and warranties of all Parties set forth herein will be effective on the date hereof, on the Closing Date, and shall survive closing.

E. **Pronouns.** The pronouns and relative words herein used are written in the singular only. If more than one Buyer and/or Seller join in the execution hereof, such pronouns and words shall be read as if written in plural.

F. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Michigan.

G. **Merger and Amendment.** This Agreement is and shall be deemed the complete and final expression of the agreement between the Parties as to matters herein contained and relative thereto, and supersedes all previous agreements between

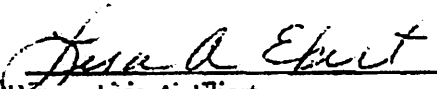
the Parties pertaining to such matters. It is clearly understood that no promise or representation not contained herein was an inducement to either party or was relied on by either party in entering into this Agreement. This Agreement cannot be amended, altered or any of the provisions waived on behalf of either party, except in writing by a duly authorized agent of either party.

- H. **Waiver of Performance.** Any failure of either party to insist upon strict compliance with any provisions of this Agreement shall not constitute a waiver thereof and all provisions herein shall remain in full force and effect.
- I. **Headings.** The paragraph headings used in this Agreement are included solely for convenience and shall not affect or be used in connection with the interpretation of this Agreement.
- J. **Severability.** If any part of this Agreement is held to be invalid or unenforceable under Michigan law, the remaining provisions shall be enforceable to the maximum extent permitted by law; provided that the remaining provisions effectuate fully the intent of the Parties as manifested herein.
- K. **Waiver of Conflict.** The Buyer and Seller acknowledge that the Firm of Adkison, Need, Allen, & Rentrop, PLLC represents both Parties with regard to this Agreement for purposes of handling the procedures required by the MLCC. However, the Seller has been advised to seek separate counsel to review the terms of this Agreement.
- L. **Counterparts and Electronically Transmitted Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. For purposes of this Agreement, an electronically transmitted signature shall be deemed the same as an original.

IN WITNESS WHEREOF, the Parties have entered into this Agreement to be effective as of the date first set forth above.

SELLER:
Thumper's Splatter, LLC,
a Michigan Limited Liability Company

BUYER:
Birmingham Teatro, LLC,
a Michigan Limited Liability Company


By: Lisa A. Ebert
Its: Member

By: Nicholas Lekas
Its: Member

Dated: 4-17-17

Dated: _____

the Parties pertaining to such matters. It is clearly understood that no promise or representation not contained herein was an inducement to either party or was relied on by either party in entering into this Agreement. This Agreement cannot be amended, altered or any of the provisions waived on behalf of either party, except in writing by a duly authorized agent of either party.

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Thumper's Splatter, LLC,
a Michigan Limited Liability Company

BUYER:
Birmingham Teatro, LLC,
a Michigan Limited Liability Company

By: Lisa A. Ebert
Its: Member

Dated: _____

By: Nicholas Lekas
Its: Member

Dated: 4-17-17

ACKNOWLEDGEMENT OF ESCROW

Adkison, Need, Allen, & Rentrop, PLLC, the Escrow Agent named, does hereby consent to act as Escrow Agent under the terms of this Agreement, and does hereby acknowledge receipt of the sum of Five Thousand and No/100ths Dollars (\$5,000.00) from Buyer, and agrees to hold same in escrow as provided in this Agreement and to deliver same to the persons entitled thereto upon the performance or nonperformance of the terms and conditions of this Agreement.



Kelly A. Allen

VENDOR ID	NAME	PAYMENT NUMBER	CHECK DATE				
ADKISON, NEED	Adkison, Need, Allen, \$ Rentrop,	00000000000038182	3/31/2017	2883			
OUR VOUCHER NUMBER	YOUR VOUCHER NUMBER	DATE	AMOUNT	AMOUNT PAID	DISCOUNT	WRITE-OFF	NET
DEP LIQUOR LIC	3/31/2017		\$5,000.00				
			\$5,000.00	\$5,000.00	\$0.00		\$5,000.00

COMMENT

2883

BIRMINGHAM THEATRE, LLC211 SOUTH OLD WOODWARD
BIRMINGHAM, MICHIGAN 48009
(248) 723-6230JPMORGAN CHASE BANK, N.A.
9-32/720

DATE

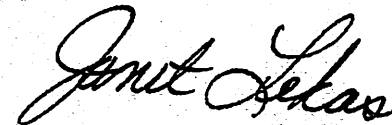
AMOUNT

3/31/2017

\$5,000.00

PAY

Five Thousand Dollars and 00 Cents

TO THE
ORDER
OFAdkison, Need, Allen, \$ Rentrop, PLLC
39572 Woodward, Suite 222
Bloomfield Hills MI 48304

AUTHORIZED SIGNATURE

Security features. Details on back.



⑈002883⑈ ⑆072000326⑆

727267192⑈

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the "**Sublease**") is dated as of the 17th day of April 2017, by and between **Birmingham Theatre, L.L.C.**, a Michigan limited liability company, located at 211 South Old Woodward, Birmingham, MI 48009 ("**Sublandlord**"), and **Birmingham Teatro, L.L.C.**, a Michigan limited liability company ("**Subtenant**") located at 211 South Old Woodward, Birmingham, MI 48009. Sublandlord and Subtenant are each sometimes referred to herein as a "**Party**" and collectively as the "**Parties**".

R E C I T A L S:

The following is a recital of the facts underlying this Sublease:

A. Sublandlord is a tenant pursuant to a written Lease dated January 3, 2017 with Fuller Central Park Properties, L.L.C., a Michigan limited liability company (the "**Primary Landlord**"), located at 112 Peabody St., Birmingham, MI 48009 (the "**Primary Lease**").

B. The Primary Lease relates to a lease of the building commonly known as 211 S. Old Woodward, Birmingham, Michigan (the "**Building**"). The Primary Lease runs through December 31, 2024 (the "**Term**").

C. This Sublease is subject to the Primary Lease at all times.

IN CONSIDERATION of the mutual covenants contained herein, the parties agree as follows:

1. **Sublease.** Sublandlord hereby leases to Subtenant, and Subtenant hereby leases from Sublandlord, the Subleased Premises on the terms and conditions set forth herein and subject to the terms of the Primary Lease.

2. **Modified Provisions.** Notwithstanding the provisions of the terms of the Primary Lease, this Sublease is on the following terms:

A. **Rent.** Subtenant shall pay to Sublandlord all Rent as is set forth in the Lease. Monthly rental payments shall be paid to Sublandlord in advance on the first (1st) day of each calendar month during the Term without setoff, deduction or counterclaim. Any period which is less than a full calendar month shall be prorated accordingly.

B. **Occupancy.** Subtenant shall be given occupancy/access of the Subleased Premises on April 17, 2017 (the "**Commencement Date**").

C. **Condition of Subleased Premises.** Subtenant agrees that it will take possession of the Subleased Premises in their "As-Is, Where-Is" condition.

D. **Payment of Rent.** All rent shall be paid by Subtenant to Sublandlord at the following address:

112 Peabody St.
Birmingham, Michigan 48009

E. No Right To Assign Or Sublease. Subtenant acknowledges and agrees that it has no right to sublease the Subleased Premises or to assign its rights under this Sublease in whole or in part, without the prior written consent of Sublandlord and Landlord.

F. Insurance. Subtenant shall procure and maintain at its sole cost and expense policies of insurance of the types required to cover its contents and business interruption. Sub-landlord shall continue its general commercial liability insurance coverage of the entire building (including the Subleased Premises) as required under the Primary Lease. Such policies shall name Landlord and Sublandlord and Subtenant as additional insureds.

G. Subtenant's Improvements. Subtenant shall not have the right to make any structural improvements to the Subleased Premises. Any non-structural improvements, to the Subleased Premises shall be subject to the Sublandlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, as well as the Landlord's prior approval.

H. Counterparts/Electronic Delivery. This Sublease may be signed in two or more counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. A photocopy, electronic image file or facsimile of this Sublease shall have the same force and effect as an original.

IN WITNESS WHEREOF the Parties have executed this Sublease the day and year above written:

SUBLANDLORD

Birmingham Theatre, L.L.C.,
a Michigan limited liability company

By: Janet Lexas

Its: Member

Additional signatures appear on the following page

SUBTENANT

Birmingham Teatro, L.L.C.,
a Michigan limited liability company

By: 

Its: member

LANDLORD'S CONSENT

By signing below, Landlord consents to Sublandlord's entering into the Sublease with Subtenant. Landlord and Subtenant acknowledge and agree that this instrument constitutes a sublease only, and not an assignment of the Primary Lease, whether in whole or in part.

LANDLORD

Fuller Central Park Properties, L.L.C.,
a Michigan limited liability company

By: 

Its: MANGR

LEASE AGREEMENT
RETAIL

FULLER CENTRAL PARK PROPERTIES, L.L.C.
112 Peabody Street
Birmingham, MI 48009-6329
(248) 642-0024

This Lease made this 31st day of January, 2017 ("Effective Date"), by and between, FULLER CENTRAL PARK PROPERTIES, L.L.C., a Michigan limited liability company, of 112 Peabody Street, Birmingham, Michigan 48009-6329, the Lessor, hereinafter designated as the Landlord, and BIRMINGHAM THEATRE, L.L.C., a Michigan limited liability company, 211 S. Old Woodward Avenue, Birmingham, Michigan 48009, the Lessee, hereinafter designated as the Tenant.

WITNESSETH:

For and in consideration of the Leased Premises, the covenants herein, and other valuable consideration, the receipt and adequacy of which are hereby mutually acknowledged, the parties hereto agree:

1. Leased Premises. Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed by the Tenant, does hereby lease unto the Tenant and Tenant hereby hires and leases from Landlord the following-described Leased Premises ("Leased Premises") situated in Landlord's building (the "Building") located in the City of Birmingham, County of Oakland, State of Michigan, to-wit:

Approximately 32,500 square feet more commonly known as
211 S. Old Woodward Avenue, Birmingham, Michigan.

2. Term. The term of this Lease is eight (8) years from and after the first day of January, 2017, unless terminated earlier by Landlord or Tenant as provided herein.

3. Rent. Tenant shall pay during the continuance of this Lease unto the Landlord for rent of the Leased Premises for said term the sum of Two Million Nine Hundred Four Thousand Six Hundred Forty-six and (\$2,904,646.08) 08/100ths Dollars in lawful money of the United States payable in ninety-six (96) consecutive monthly installments in advance upon the first day of each and every month as follows:

\$30,256.73 per month	01/01/17 – 12/31/24	\$2,904,646.08
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Tenant shall pay as Additional Rent any money and charges required to be paid by Tenant pursuant to the terms of this Lease, whether or not same may be designated "Additional Rent."

All payments of Base Rent shall be made without demand; and all payments of Additional Rent and all other payments to Landlord required hereunder shall be made as and when called for herein and if not herein specified then upon demand by Landlord; all payments

hereunder including Base Rent and Additional Rent shall be made without deduction or off-set, in cash or by check drawn upon a U.S. banking institution payable to Landlord, with collected funds on deposit when such check is written and presented, and shall be delivered to Landlord at its address set forth in this Lease, or to such other party and place as may be designated by notice in writing from Landlord to Tenant from time to time.

No payment by Tenant or receipt and acceptance by Landlord of a lesser amount than the Base Rent, Additional Rent, or other payments to Landlord required hereunder shall be deemed to be other than part payment of the full amount then due and payable, nor shall any endorsement or statement on any check or any document accompanying any check, payment of rent or other payment, be deemed an accord and satisfaction or modification of Tenant's liabilities; and Landlord may accept such part payment without prejudice to Landlord's right to recover the balance due and payable or pursue any other remedy in this Lease provided and without regard to any such endorsement or document, which, between the parties, shall be ineffective as a diminishment of Tenant's obligations.

4. Late Payments. Tenant shall pay to Landlord a late charge equal to five (5%) percent of the amount of each installment of Base Rent or any other sum owing from Tenant to Landlord under the terms hereof which is not received by Landlord within seven (7) days after its due date, in order to defray the legal, management, bookkeeping and other administrative costs resulting from Tenant's failure to timely make such payments, and an additional late charge of two (2%) percent per month on any installment of Base Rent or other payment owing from Tenant to Landlord under the terms hereof which is overdue thirty (30) days or longer. Tenant shall pay to Landlord interest at the rate of twelve (12%) percent per annum on any sums advanced until payment thereof is received by Landlord. To the extent any sums collected above are in excess of the amounts which Landlord may lawfully collect, the excess shall instead be applied to the immediately succeeding installment(s) of Base Rent due hereunder or shall be returned to Tenant, at Landlord's option.

5. Assignment. Tenant shall not, in whole or in part, assign or transfer this Lease or any rights hereunder or hypothecate or mortgage same or sublet or grant a license within the Leased Premises, or any part thereof, without the prior written consent of Landlord in each instance, such consent not to be unreasonably withheld. Any such assignment, transfer, hypothecation, mortgage, license or subletting shall not release Tenant hereunder, and any assignee or subtenant shall expressly assume all of the Tenant's covenants, warranties and obligations hereunder. In the event the rent or any other charge to be paid by a subtenant, licensee or assignee of Tenant exceeds the sum of the rent due under this Lease from Tenant to Landlord (as a whole or on a square foot basis for the space involved), Tenant shall pay to Landlord, as Additional Rent, an amount equal to such excess at the time or times the same is paid by such subtenant, licensee or assignee to Tenant. Any attempted assignment, transfer, hypothecation, mortgage, license or subletting without Landlord's prior written consent shall give Landlord the right to terminate this Lease and re-enter and repossess the Leased Premises and Tenant shall be liable to Landlord for all damages in connection therewith, in addition to and cumulative of any other remedies of Landlord provided herein and by law. The transfer(s), attempt(s) to transfer, grant of an option or encumbrance of or for more than twenty-five (25%) percent of the stock or membership interest of Tenant or a change in the management or control of Tenant shall, for the purposes of this paragraph, be an assignment of this Lease.

6. Bankruptcy and Insolvency. If the estate created hereby shall be taken in execution, or by other process of law, or if the Tenant shall be declared bankrupt or insolvent, according to law, or any receiver be appointed for the business and property of the Tenant, or if any assignment shall be made of the Tenant's property for the benefit of creditors, then and in such event this lease may be canceled at the option of the Landlord.

7. Right to Mortgage. The Landlord reserves the right to subject and subordinate this lease at all times to the lien of any mortgage or mortgages now or hereafter placed upon the Landlord's interest in the Leased Premises and/or on the land and buildings of which the Leased Premises are a part or upon any buildings hereafter placed upon the land of which the Leased Premises form a part. Tenant shall execute and deliver upon demand such further instrument or instruments subordinating this lease to the lien of any such mortgage or mortgages as shall be desired by the Landlord and any mortgagees or proposed mortgagees and hereby irrevocably appoints the Landlord the attorney-in-fact of the Tenant to execute and deliver any such instrument or instruments for and in the name of the Tenant. Any such mortgage and Tenant's subordination thereto shall provide that Landlord's default and/or any foreclosure or other enforcement of any such mortgage shall not terminate this Lease or disturb Tenant's rights, possession and/or use of the Leased Premises, unless Tenant shall be in default, or shall subsequently default.

If, as a condition of making such mortgage, Landlord's mortgagee shall request reasonable modifications of this Lease, Tenant shall not unreasonably withhold or delay its agreement to such modifications, provided that such modifications do not increase the obligations or materially and adversely affect the rights of Tenant under this Lease.

8. Use and Occupancy. It is understood and agreed between the parties hereto that the Leased Premises during the continuance of this Lease shall be used and occupied for the operation of eight (8) movie theatres for the showing of movies (except adult or pornographic films) and for any lawful business appurtenant to the foregoing, including but not limited to the sale of drinks, confections, candy, and similar items; for the sale of personal property incidental or related to films; for the sale of alcoholic beverages if an appropriate license is obtained by Tenant; and for no other purpose or purposes without the written consent of the Landlord, and that the Tenant will not use the Leased Premises for any purpose in violation of any law, municipal ordinance or regulation, and that on any breach of this agreement the Landlord may at its option terminate this Lease forthwith and re-enter and repossess the Leased Premises.

9. Risk of Loss. All property in the Leased Premises, including, but not limited to, all inventory and merchandise, shall be and remain the Tenant's sole risk, and the Landlord shall not be liable for any damage to, or loss of property or other damages arising from any act or negligence of any persons or entities other than those grossly negligent or intentional acts, omissions of Landlord or its employees or agents. Landlord shall not be liable for any damage to or loss of property or other damage or injury arising from the roof leaking, or from the bursting, leaking, or overflowing of water, sewer or sprinkler system pipes, or from heating or plumbing fixtures, or from electric wires or fixtures, or from any other cause whatsoever, nor shall the Landlord be liable for any injury to the person of the Tenant, its officers, agents, employees, representatives, invitees or other persons in the Leased Premises. It is expected that all such

losses will be borne and/or covered by insurance that Tenant is to maintain pursuant to this Lease.

10. Casualty. If the Leased Premises are wholly or partially destroyed by fire or other casualty, Tenant shall give immediate notice thereof in writing to Landlord, and shall fully cooperate with Landlord in filing all necessary proofs of claim with insurance companies. The proceeds of such insurance applicable to the Leased Premises, to the extent permitted by any mortgage then encumbering the Leased Premises, and provided sufficient insurance proceeds, in Landlord's judgment, are available, shall be used by Landlord to promptly commence to rebuild, repair or restore the Leased Premises to their condition at the time immediately preceding the loss or damage. Landlord may, however, elect to retain such insurance proceeds and shall not be required to rebuild, repair or restore the Leased Premises to their condition at the time immediately preceding the loss or damage. Landlord may, however, elect to retain such insurance proceeds and shall not be required to rebuild, repair or restore the Leased Premises by notifying Tenant within fourteen (14) days of such casualty, and either Landlord or Tenant may elect to terminate the Lease if more than one-half of the Leased Premises are so damaged or destroyed. In the event of total destruction of the Leased Premises and the Lease is not terminated as provided above, the rent shall abate during the period of rebuilding, repair or restoration by Landlord or, in the event of partial destruction of the Leased Premises, the rent shall abate pro rata during the period of rebuilding, repair or restoration based upon the portion of the Leased Premises rendered unusable during the period of rebuilding, repair or restoration by Landlord. The estimated time for rebuilding, repair or restoration shall be given to Tenant within thirty (30) days of any such loss or damage and, in the event that the work of restoring the Leased Premises to pre-casualty condition, based upon such estimate cannot, or in fact, such rebuilding, repair or restoration is not substantially completed within one hundred eighty (180) days after said loss or damage, Tenant shall have the one time option to terminate this Lease by sending certified written notice to Landlord at any time prior to Landlord's tender of the substantially repaired Leased Premises to Tenant.

11. Eminent Domain. If the whole or any part of the Leased Premises shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease on the part so taken from the day the possession of that part shall be required for any public purpose and all rent and other obligations of Tenant shall be paid up to the day and from that day the Tenant shall have the right either to cancel this Lease and declare the same null and void or to continue in the possession of the remainder of the same under the terms herein provided except that rent shall be reduced in proportion to the amount of the Leased Premises taken. All damages awarded for such taking shall belong to and be the property of the Landlord whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Leased Premises; provided, however, that the Landlord shall not be entitled to any portion of the award made to the Tenant for loss of business.

12. Certain Insurance. Tenant shall procure and keep in effect fire insurance (including special covered causes of loss endorsements) for the full replacement cost of Tenant's equipment, all inventory, merchandise and all other personal property and cause Landlord to be named as an additional insured in connection therewith.

13. Insurance and Indemnification.

(a) Tenant's Insurance. Tenant agrees to and does hereby indemnify and hold Landlord harmless of, from and against all liability for damages to any person or property in, on or about the Leased Premises from any cause whatsoever, including, without limitation, as a result of Tenant's acts or omissions. During the term of this Lease, Tenant at Tenant's expense shall maintain in full force and effect general public liability and property damage insurance against claims for injury, wrongful death and property damage, including, but not limited to, coverage for damage to all plate glass, occurring upon, in or about the Leased Premises and the appurtenances thereto for the benefit of the Landlord, and which shall name Landlord as an additional insured, in the aggregate sum of not less than Three Million (\$3,000,000.00) Dollars.

(b) Waiver of Subrogation. Each casualty, fire and extended coverage or all-perils insurance policy required under this Lease shall contain a clause in which the underlying insurance carrier waives all rights of subrogation with respect to losses payable under such policies. By this Paragraph 14, Landlord and Tenant intend that the risk of loss or damage be borne by the parties' insurance carriers and Landlord and Tenant shall look solely to and seek recover from only their respective insurance carriers in the event of a loss is sustained for which insurance is required under this Lease. For this purpose, applicable deductible amounts shall be treated as though they were recoverable under such policies.

14. Policies of Insurance. All of Tenant's insurance policies shall contain an agreement by the insurers that such policies shall not be canceled or amended to materially affect the Landlord or any coverage which may affect the Landlord, without at least thirty (30) days prior written notice to Landlord. Such insurance shall be obtained and evidence thereof delivered to Landlord prior to any occupancy of the Leased Premises by Tenant or upon the commencement of the Lease Term, whichever shall first occur, and Tenant shall pay the renewal premium on such insurance and deliver evidence thereof to Landlord not less than fourteen (14) days prior to the expiration of such insurance. Upon Tenant's failure to procure or maintain said insurance, Landlord may, but shall have no obligation to, at its option, obtain such insurance and the cost thereof, with interest thereon as provided in Paragraphs 4 and 5 hereof, shall be paid in full by Tenant, as Additional Rent, due and payable on the same date as the next installment of Base Rent. The policy or policies obtained by Tenant pursuant to Tenant's obligations hereunder shall contain a clause or provision pursuant to which the insurance carrier or carriers waive all rights of subrogation against the Landlord with respect to losses payable under such policies. Tenant shall deliver to Landlord upon execution of this Lease, copies of its insurance policies maintained pursuant to this paragraph and shall notify Landlord promptly of any change of the terms of any such policies.

15. Repairs and Alterations. The Tenant will, at its own expense, during the continuance of this Lease, keep the Leased Premises and every part thereof in as good repair and at the expiration of the term yield and deliver up the Leased Premises in like condition as when Tenant first commences business, reasonable use and wear thereof excepted. The Tenant shall not make any alterations, additions or improvements to the Leased Premises without the Landlord's written consent, which shall not be unreasonably withheld, and all alterations, additions or

improvements made by either of the parties hereto upon the Leased Premises, except movable displays, furniture and movable trade fixtures put in at the expense of the Tenant, shall be the property of the Landlord, and shall remain upon and be surrendered with the Leased Premises at the termination of this Lease, without molestation or injury. This paragraph shall be construed to include and refer to anything as part of the Leased Premises that is attached to the floor, walls or ceiling of the Leased Premises by means of glue, screws, nails, tacks, bolts or otherwise.

The Tenant covenants and agrees that if the Leased Premises consists of only a part of a structure owned or controlled by the Landlord, the Landlord may, upon making a reasonable attempt to provide Tenant with advance notice thereof, enter the Leased Premises at reasonable times and install or repair pipes, wires and other appliances or make any repairs deemed by the Landlord necessary to the use and occupancy of other parts of the Landlord's property.

Additionally, it will be Tenant's obligation during any Tenant's construction, remodeling, or making of improvements to utilize Landlord's mechanical contractors and to secure from city, county, and state agencies any and all necessary permits.

16. Roof, Outer Wall, Door and Window Repairs. The Landlord shall be responsible only for the maintenance and repair of the roof, all structural portions of the Leased Premises (not including any structural portions of any improvements made by Tenant to the Leased Premises), and the four outer walls of the Leased Premises (collectively referred to hereinafter as the "Structural Repairs"). Landlord shall not be responsible for such Structural Repairs if the need for such Structural Repairs was/is caused by the acts of Tenant or Tenant's agents. The Tenant shall be solely responsible to maintain and keep in good order and repair the doors, door frames, all window and door glass and plate glass (interior and exterior), window casings, window frames, windows and any of the appliances or appurtenances of said doors or window casings, window frames and windows, any improvements made by Tenant or its agents, and any attachment or attachments to said building or Leased Premises and all systems used in connection therewith. If Tenant fails to perform any repairs that it is required to make hereunder within 15 days after its receipt of written notice from Landlord, Landlord shall have the right but not the obligation to make such repairs and, provided such repairs were made in a good and workmanlike manner, Tenant shall promptly reimburse Landlord for Landlord's reasonable expenses in making such repairs. All repairs made by either party shall comply with all legal requirements applicable to such repairs.

17. Reservation. The Landlord reserves the right of free access at all times to the roof and/or ceiling area of said Leased Premises and reserves the right to rent said roof and outer walls for advertising purposes.

18. Care of Leased Premises. The Tenant shall not perform any acts or carry on any practices which may injure the Building or be a nuisance or menace to other tenants in the Building or adjacent property and shall keep the Leased Premises under its control.

19. Comply with Laws. The Tenant shall at its own expense under penalty of forfeiture and damages promptly comply with all laws, orders, regulations or ordinances of all municipal, county, state and federal authorities affecting the Leased Premises hereby leased and the cleanliness, safety, occupation and use of same.

20. Smoking. These Leased Premises are non-smoking Leased Premises. No smoking of any substance is permitted in, on or around the Leased Premises and/or Leased Premises, including any common areas. Any violation of this clause shall constitute a breach of this Lease upon which Landlord may terminate this Lease. Landlord otherwise reserves all other rights and remedies available under this Lease and/or pursuant to the law. This provision applies to the Tenant, Tenant's invitees, and any other person on and/or in the Leased Premises.

21. Condition of Leased Premises at Time of Lease. The Tenant acknowledges that it has examined the said Leased Premises prior to the making of this Lease and knows and accepts "as is" the condition thereof.

22. Re-renting. The Tenant hereby agrees that for a period commencing one hundred twenty (120) days prior to the termination of this Lease, the Landlord may show the Leased Premises to prospective tenants, and ninety (90) days prior to the termination of this Lease may display in and about the Leased Premises and in the windows thereof signs indicating the Leased Premises are for rent.

23. Holding Over. It is hereby agreed that in the event of the Tenant holding over after the termination of this Lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary at a monthly rental rate in an amount equal to one hundred fifty (150%) percent of the rate called for during the last month of the Lease Term.

24. Utilities. Tenant shall pay all charges made against or in respect to the Leased Premises for all utilities, as the same shall become due.

25. Heating and Cooling System. Tenant agrees, at its own expense to maintain its own air conditioning system and/or any other heating or cooling system presently on or hereinafter installed on the Leased Premises in good operating condition, and at the end of the lease term to return same to Landlord in good operating condition.

26. Signage. No sign shall be displayed excepting such as shall be approved in writing by the Landlord prior to display, and no awning or other outside attachment shall be installed or used on the exterior of said Building unless approved in writing by the Landlord prior to such installation.

27. Access to Leased Premises. The Landlord shall have the right to enter upon the Leased Premises at all reasonable hours upon reasonable notice for the purpose of inspecting the same. Tenant hereby authorizes Landlord to enter into and/or to allow any public safety officials to enter into the Leased Premises at any time in the event that the Landlord has a reasonable basis to believe that an emergency situation that exists which would place people and/or property in imminent jeopardy, however, Landlord will, as soon as reasonably possible thereafter, provide Tenant with notice of such entry and the reasons therefore. If the Landlord deems any repairs necessary, it may demand that the Tenant make the same in writing; and if the Tenant refuses or neglects forthwith to commence such repairs and complete the same with reasonable dispatch, the Landlord may make or cause to be made such repairs and shall not be responsible to the Tenant for any loss or damage that may accrue to its stock or business by reason thereof. If the

Landlord makes or causes to be made such repairs, the Tenant agrees that it will forthwith on demand pay to the Landlord the cost thereof.

28. Quiet Enjoyment. The Landlord covenants that the said Tenant, on payment of all sums called for herein and performing all the covenants set forth herein, shall and may peacefully and quietly have, hold and enjoy the Leased Premises for the Lease Term. However, should Landlord enter into a construction project on any of its properties or Leased Premises, adjacent to the normal construction project or otherwise, disturbance, debris and/or inconvenience shall not be considered a violation of Tenant's quiet enjoyment.

29. Default. If Tenant should fail to pay any sum of the monthly rent or other amounts due under this Lease or shall breach any of the terms and/or conditions of this Lease and same shall not be remedied within seven (7) calendar days after written notice from the Landlord to the Tenant that such payment is past due or such breach has occurred, such non-payment and/or breach after such 7-day period shall constitute a default under this Lease by the Tenant (an "Event of Default"). If an Event of Default shall occur and be continuing for more than the 7-day period, or if Tenant can establish that it timely commenced its efforts to cure any non-monetary default upon notice of same and is diligently pursuing a reasonable cure, Tenant shall have an additional period not to exceed thirty (30) days from the original date of written notice to cure or the Landlord may terminate the Lease, demand Tenant vacate the Leased Premises and/or may demand and/or file suit seeking all of the Landlord's resulting damages.

30. Expenses and Damages - Re-entry. In the event that the Landlord shall obtain possession of the Leased Premises by re-entry, summary proceedings or otherwise, the Tenant hereby agrees to pay the Landlord all reasonable expenses incurred in obtaining possession of the Leased Premises and in pursuing its remedies for breach of the Lease, including recovery of all unamortized funds which Landlord expended and/or contributed toward tenant improvements, all expenses and commissions which may be paid in and about the re-letting of the Leased Premises or any part thereof and all other damages, including actual attorneys' fees and costs. Landlord will use commercially reasonable efforts to mitigate its damages in the event of a Tenant default.

31. Remedies not Exclusive. It is agreed that each and every of the Landlord's rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of said rights, remedies and benefits, or of any other rights, remedies, and benefits otherwise allowed by law.

32. Waiver. Landlord's failure to enforce any of its rights hereunder shall at no time be considered as a waiver of its rights to do so at any later time or times. One or more express waivers of any covenant or condition by the Landlord shall not be construed as a waiver of a further breach of the same covenant or condition.

33. Delay of Possession. It is understood that if the Tenant shall be unable to enter into and occupy the Leased Premises hereby leased at the time above provided, by reason of the Leased Premises not being ready for occupancy, or by reason of the holding over of any previous occupancy of said Leased Premises, or as a result of any cause or reason beyond the direct control of the Landlord, the Landlord shall not be liable in damages to the Tenant therefor, but during the period the Tenant shall be unable to occupy said Leased Premises as hereinbefore

provided, the rental therefor shall be abated and the Landlord is to be the sole judge as to when the Leased Premises are ready for occupancy by Tenant.

34. Non-liability of Landlord. In the event the Landlord hereunder or any successor owner of the Leased Premises shall sell or convey the Leased Premises, all liabilities and obligations on the part of the original Landlord or such successor owner under this Lease accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant shall attorn to such new owner.

If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, and, if as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only against the right, title and interest of Landlord in the Leased Premises and out of rents or other income from the Leased Premises receivable by Landlord, or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Leased Premises, and Landlord shall not be liable for any deficiency.

35. Estoppel Certificate. At any time and from time to time but not more than ten (10) days subsequent to request by Landlord, Tenant shall promptly execute, acknowledge and deliver to Landlord, a certificate indicating (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification), (b) the date, if any, to which rental and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default which has not been cured, except as to defaults specified in said certificate, and (d) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser, mortgagee or beneficiary under any deed of trust of the Leased Premises or any part thereof.

36. Taxes. Tenant will pay all its pro rata share of all real property taxes, assessments and special assessments on the Leased Premises, when billed by Landlord. Additionally, Tenant will pay its own personal property taxes.

37. Option to Renew/Right of First Offer. Provided that Tenant is not in default of this Lease at the time of the notice of exercise and at the time of the commencement of the hereinafter provided Option Terms, Landlord grants to Tenant One (1) successive Five (5)-year option to extend this Lease upon same terms and conditions, except for the annual Base Rent, which shall, at the commencement of the Option Term, be increased by three percent (3%) of the per square foot Lease rate annually. To exercise any such Option, Tenant must tender written notice to Landlord exercising such Option not less than twelve (12) months prior to the expiration date of the Lease Term or immediately preceding Option Term. Failure of Tenant to timely tender written notice of its exercise of an Option shall terminate such Option, time being of the essence.

38. Notices. Whenever under this Lease a provision is made for notice of any kind it shall be deemed sufficient notice and service thereof if such notice to the receiving party is in writing addressed to the receiving party at its last known post office address or at the Leased Premises and deposited in the mail with postage prepaid; and/or hand delivered to the receiving

party to be noticed. Notice need be sent to only one Tenant or Landlord where the Tenant or Landlord is more than one person.

39. Pronouns. It is agreed that in this Lease the word "it" shall be used as synonymous with the words "she," "he," and "they," and the word "its" synonymous with the words "her," "his," and "their."

40. Successors. The covenants, conditions, and agreements made and entered into by the parties hereto and the benefits hereunder are binding on, and the benefits hereunder shall accrue to the parties hereto and their respective heirs, successors, representatives, and assigns.

41. Severability. The unenforceability or invalidity, if any, of any provision of this Lease shall not render any other provision or provisions unenforceable or invalid and the remainder of this Lease shall not be affected thereby and the balance of the terms and provisions of this Lease shall be valid and enforceable. If any provision of this Lease is partially unenforceable or invalid, the remaining portion thereof shall be enforced to the fullest extent permitted by law.

42. Security Provision. The Landlord herewith acknowledges the receipt of no monies.

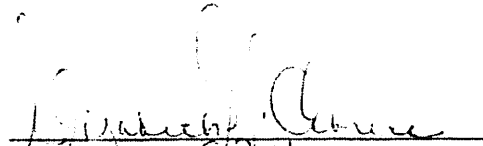
43. Recording. Tenant hereby covenants and agrees not to record this Lease or any memorandum or affidavit thereof or cause same or any memorandum or affidavit thereof to be recorded by any third persons.

44. Headings. The paragraph headings provided herein are for the convenience of the parties, but shall not be deemed to qualify, modify or amend the text of each paragraph of the Lease.

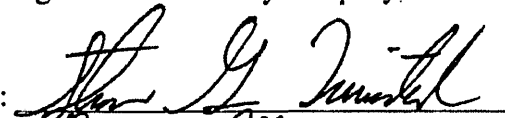
45. Entire Agreement. This Lease constitutes the entire agreement between the parties and may not be modified in any manner except by a writing signed by the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

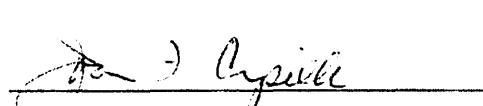
WITNESSED BY:

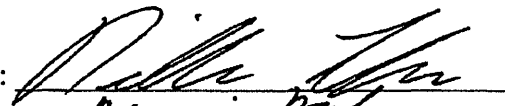

Elizabeth G. McCabe

FULLER CENTRAL PARK PROPERTIES,
a Michigan limited liability company, LANDLORD

By: 
Its: Property Manager

BIRMINGHAM THEATRE, L.L.C., a Michigan
limited liability company, TENANT


Joan F. Cipelle

By: 
Its: Managing Partner



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

PHILLIP G. ADKISON
KELLY A. ALLEN
JESSICA A. HALLMARK
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Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:

KEVIN M. CHUDLER
SARAH J. GABIS
LINDA S. MAYER

May 1, 2017

Via Hand Delivery

Commander Chris Busen
Birmingham Police Department
151 Martin
Birmingham, MI 48012

**Re: Birmingham Teatro, LLC
211 Old S. Woodward, Birmingham**

Dear Commander Busen:

We represent Birmingham Teatro, LLC ("Birmingham Teatro"), which will do business as Birmingham Theater at 211 S. Old Woodward in Birmingham. Birmingham Teatro is requesting to transfer ownership and location of the Class C license from Thumper's Splatter, LLC, formerly located in Rochester Hills. Birmingham Teatro is requesting a Sunday Sales (AM and PM) permit, an additional bar permit, and an entertainment permit. We have submitted the required requests to the City Manager and the City Planner for the SLUP application for Birmingham Teatro.

Birmingham Teatro is owned equally by Daniel Shaw and Nicholas Lekas. Birmingham Teatro has a sublease for the real estate and furniture, fixtures and equipment with landlord Fuller Central Park Properties, LLC, which is effective April 17, 2017, and expires December 31, 2024. The monthly payments are \$30,256.73. The only cost to Birmingham Teatro is for the liquor license and alcoholic beverage inventory. This amount will be financed by a loan from Birmingham Theatre, LLC, which is the sub-landlord. Mr. Lekas and Mr. Shaw are part owners of Birmingham Theatre, LLC.

The liquor license will allow customers to purchase alcohol while enjoying the movie experience. In recent years there has been a national trend with prominent movie theatres to offer this service. The service of alcohol at movie theatres is now popular in Michigan as well. The service of the alcohol will be primarily out of the concession area on the second floor, except during the slower hours; then the alcohol will be served from the first floor concession area.

Birmingham Teatro's hours of operation are 7 days a week from 11:00 am to 1:00 am. The total capacity is 597.

Enclosed for your review are the following:

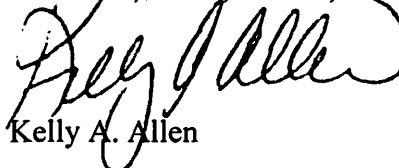
- Check payable to the City of Birmingham for \$1,500;
- City of Birmingham Application and Release, driver's license, birth certificate, and 2014, 2015, and 2016 tax returns for Daniel Shaw;
- City of Birmingham Application and Release, driver's license, passport, and 2014, 2015, and 2016 tax returns for Nicholas Lekas;
- Liquor License Purchase Agreement (contained in the binder);
- Filed Articles of Organization and Operating Agreement for Birmingham Teatro, LLC (contained in the binder);
- Sublease Agreement and Lease Agreement (contained in the binder);
- Statement of Money Lender for the loan from Birmingham Theatre, LLC to Birmingham Teatro, LLC;
- Bank letters and 2015 and 2016 tax returns for Birmingham Theatre, LLC; and
- Floor plan.

We have also enclosed the applications submitted to the MLCC requesting the transfer of ownership and location of the Class C Liquor License and permits.

If you have any questions whatsoever, please do not hesitate to call me or my legal assistant, Laura Peters. I appreciate your assistance in this matter.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



Kelly A. Allen

/lbp
Enclosures



MEMORANDUM

Planning Department

DATE: June 14th, 2017

TO: Planning Board

FROM: Nicholas Dupuis, Planning Intern

APPROVED BY: Jana Ecker, Planning Director

SUBJECT: 211 S. Old Woodward SLUP and Final Site Plan Review

Executive Summary

The subject site, Birmingham Theater, is located at 211 S. Old Woodward, on the east side of the street just south of Merrill. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District. The applicant, Birmingham Teatro, LLC, is applying for a Special Land Use Permit (SLUP) to operate with a Class C liquor license under the new ordinance allowing a movie theater to operate with a liquor license. Birmingham Teatro is owned equally by Daniel Shaw and Nicholas Lekas, who in addition to operating the theater, are also part owners of Birmingham Theater, LLC, which is the sub-landlord for 211 S. Old Woodward.

Article 2, section 2.37 (B4) of the Zoning Ordinance requires that a theater seeking to provide alcoholic beverage sales (on-premise consumption) shall obtain a Special Land Use Permit and site plan review. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit.

1.0 Land Use and Zoning

- 1.1 Existing Land Use - The existing site is used as a theater. Land uses surrounding the site are retail and commercial.
- 1.2 Existing Zoning – The property is currently zoned B-4, Business-Residential, and D-4 in the Downtown Overlay District. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.
- 1.3 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.

	North	South	East	West
Existing Land Use	Commercial / Retail	Commercial / Retail	Commercial / Retail	Commercial / Retail
Existing Zoning District	B-4, Business-Residential	B-4, Business-Residential	B-4, Business-Residential	B-4, Business-Residential
Downtown Overlay Zoning District	D-4	D-4	D-4	D-4

2.0 Screening and Landscaping

2.1 Screening – No changes are proposed.

2.2 Landscaping – No changes are proposed.

3.0 Parking, Loading, Access, and Circulation

3.1 Parking – As the subject site is located within the Parking Assessment District, the applicant is not required to provide on-site parking.

3.2 Loading – No changes are proposed.

3.3 Vehicular Access & Circulation - Vehicular access to the building will not be altered.

3.4 Pedestrian Access & Circulation – No changes are proposed.

3.5 Streetscape – The applicant is not proposing to alter the existing sidewalk, street trees, or light poles.

4.0 Lighting

No new lighting is proposed at this time.

5.0 Departmental Reports

5.1 Engineering Division – The Engineering Division has no concerns.

5.2 Department of Public Services – No concerns were reported from the DPS.

5.3 Fire Department – No comments were received from the Fire Department.

5.4 Police Department - The Police Department has no concerns.

5.5 Building Division – No comments were received from the Building Division.

6.0 Theater Liquor License Requirements

Earlier this year, the City Commission approved amendments to the Zoning Ordinance and Chapter 10, Alcoholic Liquors, to allow the service of liquor at existing theaters in the D4 zone district. The purpose of the amendments were to create a policy and conditions to allow the City Commission the ability to approve a request to transfer a liquor license into the city in excess of the city's quota licenses if the request is deemed to constitute a substantial benefit to the city for the continuation and development of theaters, to establish criteria for selecting applicants, and to evaluate the impact of increased liquor licenses on the city. Theaters are defined as a building, part of a building for housing dramatic presentations, stage entertainments or motion picture shows.

The applicant, Birmingham Teatro, LLC operates the Birmingham 8 Theater at 211 S. Old Woodward, which houses motion picture shows to the public. The trend in the nation is to provide this service at entertainment/movie venues. The applicant has advised that it is necessary to the experience and the viability of the Theater to serve alcoholic liquors in order to compete in this market. The entire Theater will be licensed by the MLCC. The applicant has advised that alcohol will be primarily served at the existing concession stand on the second floor, with the occasional sale at the first floor concession stand when business is slow.

Chapter 10, Alcoholic Liquors, section 101 outlines the following requirements when applying for a liquor license for a theater:

Persons desiring to transfer a liquor license from outside the city limits into the city limits in excess of the city's quota licenses shall make an application to the city commission and pay the applicable theater liquor license transfer review fee as set forth in appendix A of this Code. In addition to those items and conditions set forth in section 10-42, the application shall set forth in detail its proposed project, including, but not limited to:

- (1) Utilization of said liquor licenses and details on the number of quota liquor licenses in escrow at the time of application.
 - (2) Proposed and/or existing site plan of the property, building floor plan and an operations floor plan.
 - (3) An economic impact analysis.
 - (4) A copy of the special land use permit application and supporting documentation submitted by the applicant.
-

- (5) All documentation submitted to the LCC requesting the transfer.
- (6) Full identification and history of the license holder(s) as it pertains to the license proposed to be transferred, including all complaints filed with the state liquor control commission (LCC) or actions taken by any municipality or the LCC to suspend, revoke or deny the non-renewal of said license and all other documentation setting forth the detail of the existing theater or proposed theater by the applicant, including the approximate dollar amount of the investment to be made, number of jobs to be created, minimum of 150 seats and other benefits to the city.
- (7) Information detailing how the proposed operation will create or sustain the theaters in the city.
- (8) Such other items deemed necessary by city administration.

The applicant has advised that all quota liquor licenses are currently in use, with the exception of the following, which are currently in escrow:

1. BELLAR BIRMINGHAM VENTURES LLC (Attached to the building)
2. MONDIAL PROPERTIES III, L.L.C. (Transfer pending with the MLCC)
3. PEABODY'S OF BIRMINGHAM, INCORPORATED (Asking price is \$750K)

The applicant has provided a floor plan of the existing theater at 211 S. Old Woodward. No site plan has been provided, however no exterior changes are proposed.

The applicant has submitted an economic impact analysis that states that the economic impact of the Birmingham Theater having a liquor license will be positive for the City. Specifically, the full service aspect of the oldest and most iconic theater in town will allow the Birmingham Theater to thrive and to bring customers to the middle of the downtown area to enjoy other retail and dining establishments.

The applicant has submitted the required SLUP application and supporting documentation, as well as all documentation submitted to the LCC requesting the transfer of a liquor license to 211. S. Old Woodward. Please see attached.

The applicant has provided information on the proposed license holder, Birmingham Teatro, which is owned equally by Daniel Shaw and Nicholas Lekas. Identification and information has been provided on each of these co-owners. In addition, the following information regarding LCC complaints at other establishments owned or partially owned by the applicant(s) have been submitted:

1. E.A Fuller Oak Management Corporation, which does business as the Baypointe Golf Club, located at 4001 Haggerty Rd, West Bloomfield. This license does not have any violation history with the MLCC.
-

2. Fuller Oak Management, LLC and Oakland County Parks & Recreation Commission, doing business as, Glen Oaks Golf & Country Club, located at 30500 w. 13 Mile Rd, Farmington Hills. This license has a warning ticket issued by the MLCC for allowing the sale of two drinks for the price of one.

The applicant has indicating that the amount of investment proposed to be made at the existing theater is \$70,000. The applicant has stated that the Birmingham Theater provides a total of 625 seats, and there are currently 35 – 40 employees. The applicant has advised that the service of alcohol is required for the continued operation of the Birmingham 8 Theater, given market trends and the need to compete with the Emagine Palladium Theater, which also provides the service of alcohol to theater patrons. Emagine and the Birmingham Theater are the only two movie theaters in the City. Granting the SLUP to the Birmingham Theater will enable it to serve alcohol, the theaters will be similarly situated, and both should be able to sustain their businesses into the future.

Chapter 10, Alcoholic Liquors, Section 102 also establishes the following criteria for reviewing applications for theater liquor licenses:

- (a) Selection criteria. In addition to the usual factors and criteria used by the city commission for liquor license requests, including those listed in section 10-42, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the existing establishment applicants, if any, should be approved:
 - (1) The applicant's demonstrated ability to finance the proposed project.
 - (2) The applicant's track record with the city including responding to city and/or citizen concerns.
 - (3) Whether the applicant has an adequate site plan to handle the proposed liquor license activities.
 - (4) Whether the applicant has adequate health and sanitary facilities.
 - (5) The percentage of proceeds from the sale of tickets and food products as compared to the sale of alcoholic beverages.
 - (6) Whether the applicant has outstanding obligations to the city (i.e. property taxes paid, utilities paid, etc.).
- (b) Maximum number of theater licenses. The city commission may approve a maximum of two theater licenses each calendar year in addition to the existing quota licenses otherwise permitted by state law.
- (d) If any new transfers of licenses for theaters are to be considered, the city commission shall set a schedule setting forth when all applicants must submit their application and supporting documentation, when interviews may be conducted and a timeframe within which a decision will be anticipated.

The applicant has advised that the applicant and its Landlord have been operating the Birmingham Theater since 1976. The only additional financial commitment from the Theater

is the cost of the Class C liquor license and alcohol inventory in the approximate amount of \$70,000. The source of these funds is from the operating income of the Theater.

The applicant has an outstanding track record of responding to both City and citizen concerns both with regard to the Birmingham Theater and numerous other properties owned throughout the City.

The applicant has demonstrated an adequate site plan and floor plan that will accommodate the proposed service of liquor. The existing theater has adequate health and sanitary facilities for the proposed use.

The applicant has indicated that approximately 5% of total sales will be from the sale of alcoholic beverages, and approximately 95% of total sales will be from the sale of tickets and food products.

The applicant does not currently have any outstanding obligations to the City.

In accordance with Chapter 10, section 102, the City Commission may approve a maximum of two theater licenses each calendar year in addition to the existing quota licenses. The City Commission must set a schedule for the review and consideration of applications for theater licenses. The Birmingham Theater is the only existing theater in the City that is qualified to apply for a theater liquor license under Chapter 10, Alcoholic Liquors due to its location in the B4 zone district.

6.0 Design Review

The applicant is proposing no interior or exterior design changes to the building at this time.

Hours of operation for liquor sales will be seven days a week from 11:00 AM to 1:00 AM. The enforcement of liquor sales and handling will be done by all of the employees. Every employee of the Theater who deals with alcohol sales will be formally trained by "TIPS". This a program approved by the MLCC. Also, every person, regardless of their age, will be carded when purchasing alcohol. The bar will be full service with beer, wine and mixed drinks.

7.0 Downtown Birmingham 2016 Overlay District

The 2016 Birmingham Master Plan recommended a mix of retail, food services and entertainment in Downtown Birmingham. The first floor theater use is consistent with the recommendations contained in the 2016 Plan.

8.0 Approval Criteria

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property not diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

9.0 Approval Criteria for Special Land Use Permits

Article 07, section 7.34 of the Zoning Ordinance specifies the procedures and approval criteria for Special Land Use Permits. Use approval, site plan approval, and design review are the responsibilities of the City Commission. This section reads, in part:

Prior to its consideration of a special land use application (SLUP) for an initial permit or an amendment to a permit, the **City Commission shall refer the site plan and the design to the Planning Board for its review and recommendation. After receiving the recommendation, the City Commission shall review the site plan and design of the buildings and uses proposed** for the site described in the application of amendment.

The City Commission's approval of any special land use application or amendment pursuant to this section shall constitute approval of the site plan and design.

10.0 Suggested Action

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board recommend APPROVAL to the City Commission of the applicant's request for Final Site Plan and a SLUP for 211 S. Old Woodward, Birmingham Theater.

11.0 Sample Motion Language

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board recommend APPROVAL to the City Commission of the applicant's request for Final Site Plan and a SLUP for 211 S. Old Woodward, Birmingham Theater.

OR

Motion to recommend DENIAL of the Final Site Plan and SLUP to the City Commission for 211 S. Old Woodward, Birmingham Theater for the following reasons:

1. _____
2. _____

OR

Motion to POSTPONE the Final Site Plan and SLUP for 211 S. Old Woodward, Birmingham Theater, pending receipt of the following:

1. _____
2. _____



Department of Licensing and Regulatory Affairs

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Michigan Liquor Control Commission

BAYPOINTE GOLF CLUB

County Name OAKLAND
LGU Name WEST BLOOMFIELD TWP
Insurance Company ILLINOIS UNION INSURANCE COMPANY (12/31/2015-Present)
Business Id 224110
Business Tax Id 382036734
Business Address 4001 Haggerty Rd, West Bloomfield, 48323
Business Phone 248.360.0600
Number of Bars 2

*No Violation
history*

Licensees

E. A. FULLER OAK MANAGEMENT CORPORATION

Stockholders/Members

FULLER, EDWARD A

LEKAS, JANET J

LEKAS, NICHOLAS

SHAW, DANIEL J

Contacts

Name	Purpose/Function	Phone Nbr	Fax Nbr	Address
NONE				

Liquor License Specifics

License (Type-NBR-YR)	Permits	Transfer Status	MCL Act
CLASS C-204009-2017	1.CATERING 2.SS 3.DANC-ENT 4.OD-SERV 5.SPECIFIC PURPOSE(FOOD,GOLF) 6.ADDBAR	TRANSFERABLE	NONE
SPECIALLY DESIGNATED MERCHANT-204010-2017	NONE	TRANSFERABLE	NONE

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[Michigan Liquor Control Commission](#)

Lansing, MI 48909-7505

Ph: 866-813-0011

Fx: 517-763-0059

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Michigan Liquor Control Commission

GLEN OAKS GOLF & COUNTRY CLUB

County Name	OAKLAND
LGU Name	FARMINGTON HILLS CITY
Insurance Company	ILLINOIS UNION INSURANCE COMPANY (12/31/2015-Present)
Business Id	339
Business Tax Id	NONE
Business Address	30500 W 13 Mile Rd, Farmington Hills, 48334
Business Phone	248.858.4944
Number of Bars	1

Licensees

FULLER OAK MANAGEMENT, L.L.C.

OAKLAND COUNTY PARKS & RECREATION COMMISSION

Stockholders/Members

FULLER, EDWARD A

LEKAS, JANET J

LEKAS, NICHOLAS

SHAW, DANIEL J

Contacts

Name	Purpose/Function	Phone Nbr	Fax Nbr	Address
NONE				

Liquor License Specifics

License (Type-NBR-YR)	Permits	Transfer Status	MCL Act
CLASS C-523-2017	1.DANC-ENT 2.OD-SERV 3.SS 4.ADDBAR 5.SPECIFIC PURPOSE(FOOD) 6.SS(AM) 7.SPECIFIC PURPOSE(GOLF) 8.BANQUET-DANC-ENT,OD-SERV,SPECIFIC PURPOSE(FOOD),SS,SS(AM) 9.CATERING	TRANSFERABLE	NONE

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Michigan Liquor Control Commission

Violation History of Business: 339 FULLER OAK MANAGEMENT, L.L.C.

Violation Date	MLCC Complaint Number	Violation Description	Decision or Event
7/13/16	177888		7/13/2016 6/23/16 WARNING TICKET ISSUED R 436.1438(1)

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Lansing, MI 48909-7505

Ph: 866-813-0011

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LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

PHILLIP G. ADKISON
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GREGORY K. NEED
G. HANS RENTROP

39572 Woodward, Suite 222
Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:
KEVIN M. CHUDLER
SARAH J. GABIS
LINDA S. MAYER

June 22, 2017

Via Electronic Mail

Jana Ecker, Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48012

Re: SLUP Application for the Birmingham Theater

Dear Ms. Ecker:

In addition to the information we have provided to the Planning Department, we are providing responses to the relevant ordinances set forth below.

Chapter 10 Sec. 10-102. - *Application for transfer of liquor license into the city for theater purposes.*

In addition to those items and conditions set forth in section 10-42, the application shall set forth in detail its proposed project, including, but not limited to:

(1) Utilization of said liquor licenses and details on the number of quota liquor licenses in escrow at the time of application.

RESPONSE: There are currently three Class C licenses in escrow in the City. The licenses are listed below. None of these licenses are available to the Birmingham Theater.

1. BELLAR BIRMINGHAM VENTURES LLC (Attached to the building)
2. MONDIAL PROPERTIES III, L.L.C. (Transfer pending with the MLCC)
3. PEABODY'S OF BIRMINGHAM, INCORPORATED (Asking price is \$750K)

(2) Proposed and/or existing site plan of the property, building floor plan and an operations floor plan.

RESPONSE: Provided.

(3) *An economic impact analysis.*

RESPONSE: The economic impact of the Birmingham Theater having a liquor license will be positive for the City. Specifically, the full service aspect of the oldest and most iconic theater in town will allow the Birmingham Theater to thrive and to bring customers to the middle of the downtown area to enjoy other retail and dining establishments.

(4) *A copy of the special land use permit application and supporting documentation submitted by the applicant.*

RESPONSE: Provided.

(5) *All documentation submitted to the LCC requesting the transfer.*

RESPONSE: Attached.

(6) *Full identification and history of the license holder(s) as it pertains to the license proposed to be transferred, including all complaints filed with the state liquor control commission (LCC) or actions taken by any municipality or the LCC to suspend, revoke or deny the non-renewal of said license and all other documentation setting forth the detail of the existing theater or proposed theater by the applicant, including the approximate dollar amount of the investment to be made, number of jobs to be created, minimum of 150 seats and other benefits to the city.*

RESPONSE: Provided.

(7) *Information detailing how the proposed operation will create or sustain the theaters in the city.*

RESPONSE: There are only two movie theaters in the City, Emagine and the Birmingham Theater. By granting the SLUP to the Birmingham Theater, which would enable it to serve alcohol, the theaters will be similarly situated, and should both be able to sustain their businesses into the future.

(8) *Such other items deemed necessary by city administration.*

RESPONSE: No further information.

The Applicant is also providing responses to Chapter 10, Alcoholic Liquors, Section 102 which establishes the following criteria for reviewing applications for theater liquor licenses:

(a) *Selection criteria. In addition to the usual factors and criteria used by the city commission for liquor license requests, including those listed in section 10-42, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the existing establishment applicants, if any, should be approved:*

(1) The applicant's demonstrated ability to finance the proposed project.

RESPONSE: The Applicant and its Landlord have been operating the Birmingham Theater since 1976. The only additional financial commitment from the Theater is the cost of the Class C liquor license and alcohol inventory in the approximate amount of \$70,000. The source of these funds is from the operating income of the Theater.

(2) The applicant's track record with the city including responding to city and/or citizen concerns.

RESPONSE: Provided.

(3) Whether the applicant has an adequate site plan to handle the proposed liquor license activities.

RESPONSE: Provided.

(4) Whether the applicant has adequate health and sanitary facilities.

RESPONSE: Provided.

(5) The percentage of proceeds from the sale of tickets and food products as compared to the sale of alcoholic beverages.

RESPONSE: The ticket and food sales percentage vs. the alcohol sales percentage is estimated to be 95% to 5%.

(6) Whether the applicant has outstanding obligations to the city (i.e. property taxes paid, utilities paid, etc.).

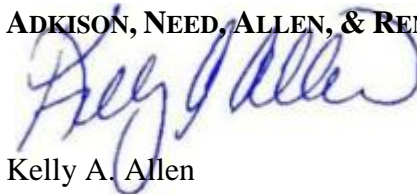
RESPONSE: The City is obtaining this information from the Treasurer.

Please let us know if you require any further information.

Thank you for your great work on this.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



Kelly A. Allen

/kjf

m:\fuller, ted\birmingham theater\corres\2017-06-22 ltr to jecker re responses to ordinance for slup application.docx

**Planning Board Minutes
June 28, 2017**

**SPECIAL LAND USE PERMIT ("SLUP") REVIEW
FINAL SITE PLAN AND DESIGN REVIEW**

1. 211 S. Old Woodward Ave.

Birmingham Theater

**Request for approval to serve alcoholic liquors in the existing theater
operating under a Class C Liquor License**

Chairman Cline **Clein** took back the gavel at this time.

Ms. Ecker advised the subject site is located on the east side of S. Old Woodward Ave. just south of Merrill. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District. The applicant, Birmingham Teatro, LLC, is applying for a SLUP to operate with a Class C Liquor License under the new ordinance allowing a movie theater to operate with a liquor license. Birmingham Teatro is owned equally by Daniel Shaw and Nicholas Lekas, who in addition to operating the theater, are also part owners of Birmingham Theater, LLC, which is the sub-landlord for 211 S. Old Woodward.

Article 2, section 2.37 (B4) of the Zoning Ordinance requires that a theater seeking to provide alcoholic beverage sales (on-premise consumption) shall obtain a SLUP and site plan review. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan and SLUP.

The applicant has advised that the service of alcohol is required for the continued operation of the Birmingham 8 Theater, given market trends and the need to compete with the Emagine Palladium Theater, which also provides the service of alcohol to theater patrons. Emagine and the Birmingham Theater are the only two movie theaters in the City. Granting the SLUP to the Birmingham Theater will enable it to serve alcohol, the theaters will be similarly situated, and both should be able to sustain their businesses into the future.

The sale of alcohol will be a relatively small amount of the Birmingham Theater's business, but they believe it will help them to provide a full service experience.

Design Review

The applicant is proposing no interior or exterior design changes to the building at this time other than the service of alcohol primarily from the second-floor concession stand.

As the applicant was not present, the following motion was made:

Motion by Mr. Williams

Seconded by Mr. Share to postpone the SLUP and Final Site Plan And Design Review for 211 S. Old Woodward Ave., Birmingham Theater, to July 12, 2017.

No one from the public wished to comment on the motion.

Motion carried, 6-1.

VOICE VOTE

Yeas: Williams, Clein, Koseck, Lazar, Share, Whipple-Boyce

Nays: Jeffares

Absent: Boyle

**DRAFT Planning Board Minutes
July 12, 2017**

OLD BUSINESS

- 1. 211 S. Old Woodward Ave.
Birmingham Theater
Request for approval of a Special Land Use Permit ("SLUP") and Final Site
Plan Review to serve alcoholic liquors in the existing theater operating
under a Class C Liquor License** (postponed from the meeting of June 28, 2017)

Ms. Ecker advised the subject site is located on the east side of S. Old Woodward Ave. just south of Merrill. The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District. The applicant, Birmingham Teatro, LLC, is applying for a SLUP to operate with a Class C Liquor License under the new ordinance allowing a movie theater to operate with a liquor license. Birmingham Teatro is owned equally by Daniel Shaw and Nicholas Lekas, who in addition to operating the theater, are also part owners of Birmingham Theater, LLC, which is the sub-landlord for 211 S. Old Woodward.

Ms. Ecker stated she had reviewed this application thoroughly at the last meeting. The board had a few questions for the applicant who was not present for the last meeting.

Ms. Kelly Allen, Adkison, Need, Allen & Rentrop, LLC, appeared on behalf of the applicant, Birmingham Teatro, LLC. She apologized for not being present at the last meeting.

She responded to questions from last time:

- Why they are requesting to serve liquor until 1 a.m.?
The answer is they will stop serving liquor an hour before the movies are over but in any event, no later than 1 a.m.
- Can anyone come in and go upstairs to the little bar area?
Customers must purchase a ticket to enter the theater. To get upstairs they must provide a ticket.
- The concession area has not changed except for new tile and paint. There will no longer be popcorn there. There are four tables with chairs for people to sit. The idea is that patrons can carry their beverage into the movie theater.

Ms. Whipple-Boyce received confirmation that liquor will only be served upstairs.

No one from the public wished to comment on this appeal at 7:38 p.m.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce that based on a review of the site plans submitted, the Planning Board recommends approval to the City Commission of the applicant's request for Final Site Plan and a SLUP for 211 S. Old Woodward Ave., Birmingham Theater.

Motion carried, 7-0.

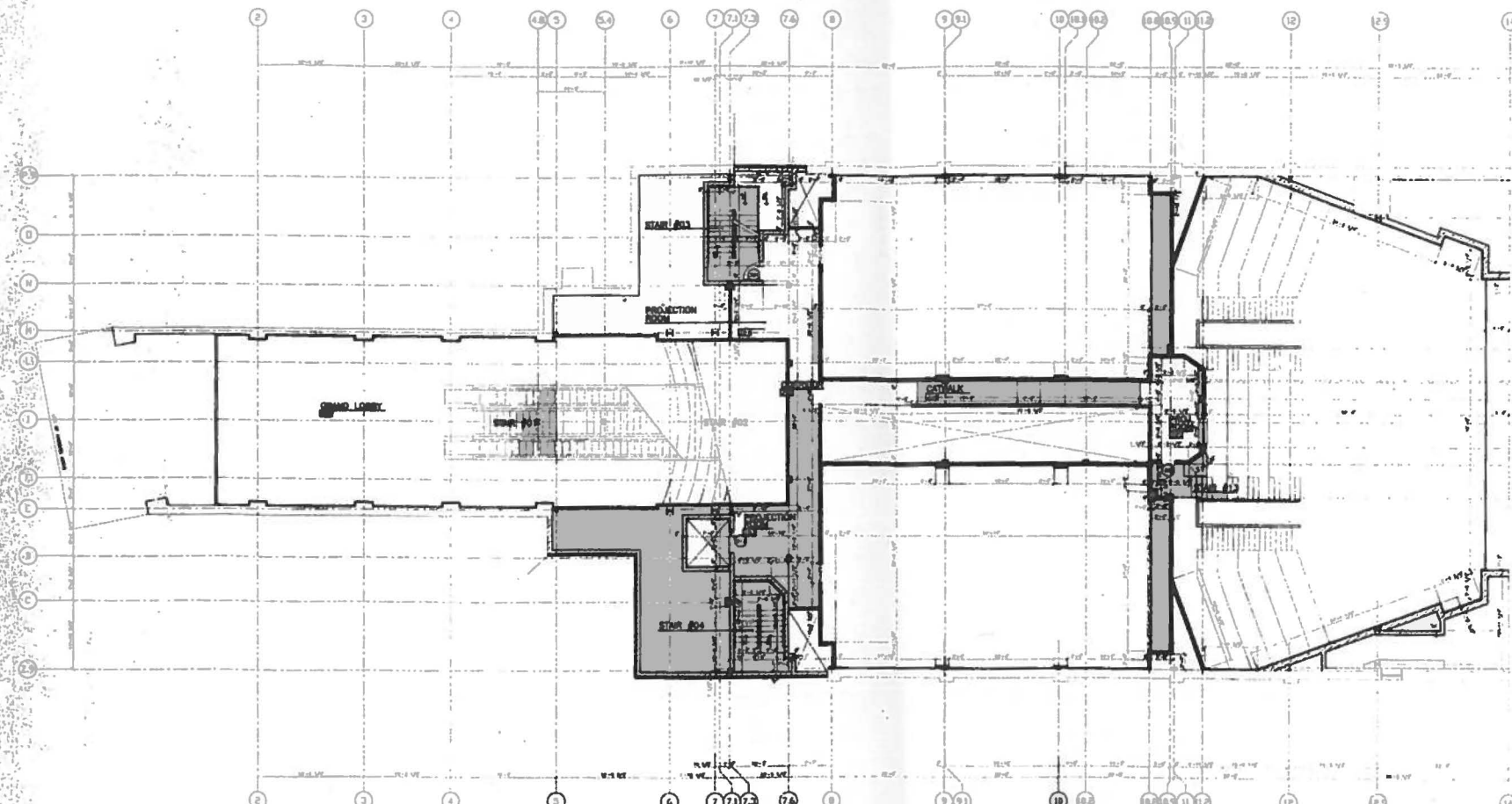
No one spoke from the public at 7:39 p.m.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Lazar, Prasad

Nays: None

Absent: Koseck



PROPOSED LOWER LEVEL PROJECTION MEZZANINE PLAN
 SCALE: 1/8"=1'-0"

- WALL LEGEND**
- STAIR 201
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 - STAIR 300

PROJECT ARCHITECT:
 VICTOR TORRES & ASSOCIATES
 ARCHITECTS, P.C.
 325 North Woodward Ave.
 Birmingham, MI 48009
 810.258.5700
 fax 810.258.5515

ASSOCIATE ARCHITECT:
 ASSOCIATION DOCUMENTS
 PRIMA DESIGN SYSTEMS, INC.
 877 South Adams Rd.
 Suite 202
 Birmingham, MI 48009
 810.540.1711
 fax 810.540.3856

STRUCTURAL ENGINEER:
 L & H, INC.
 29580 Northwestern Hwy.
 Suite 100
 Southfield, MI 48034
 810.356.7750
 fax 810.356.1210

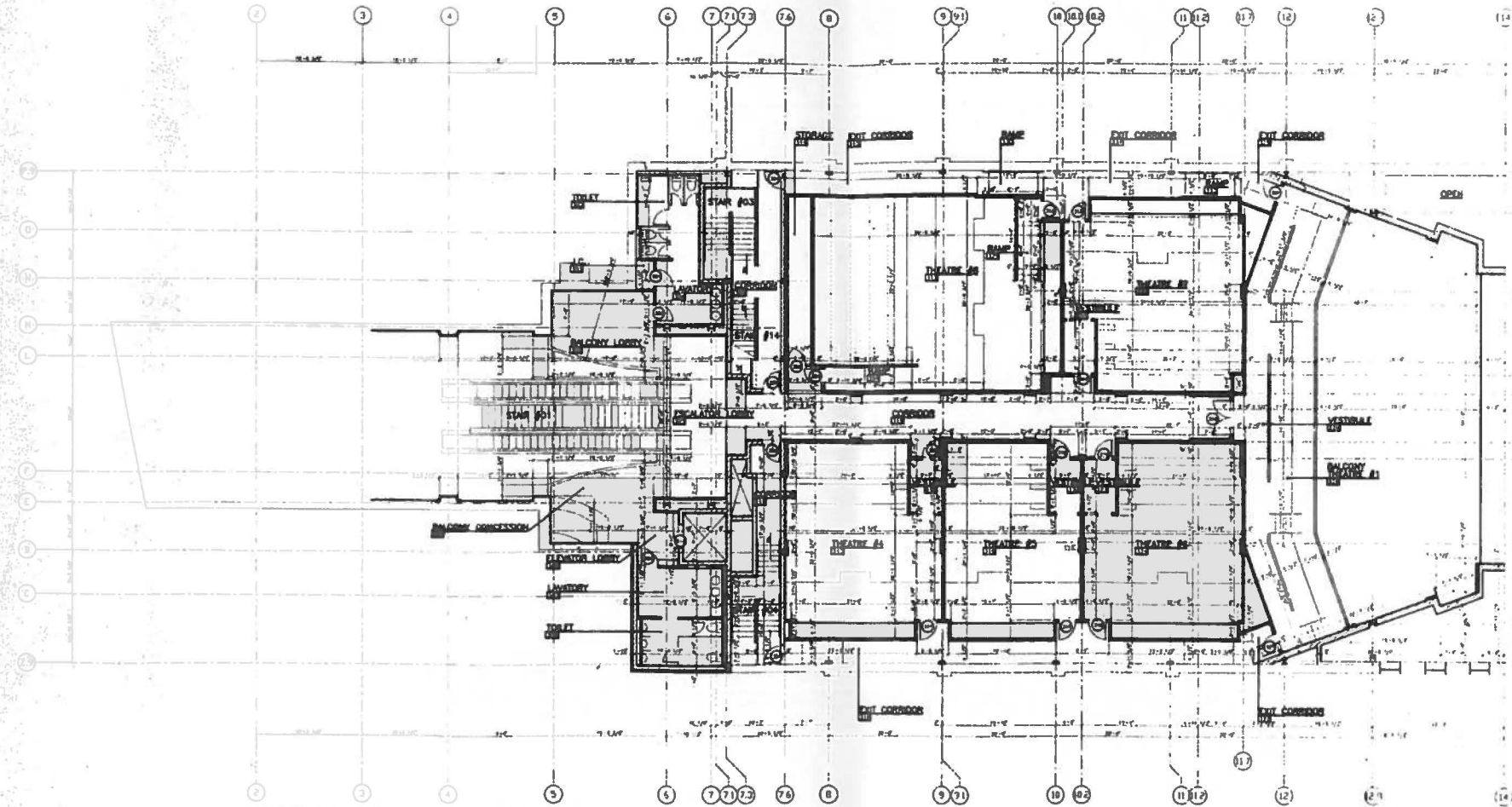
MECHANICAL/ELECTRICAL ENGINEER:
 JAMES PORTER & ASSOCIATES, INC.
 925 South Adams Rd.
 Birmingham, MI 48009
 810.645.1465
 fax 810.645.1590

CONSTRUCTION MANAGER:
 INTEGRATED CONSTRUCTION
 SERVICES, INC.
 355 South Woodward Ave.
 Suite 200
 Birmingham, MI 48009
 810.642.9800
 fax 810.642.9870

BIRMINGHAM THEATRE
 Uptown Theatres
 211 South Woodward Ave.
 Birmingham, MI 48009

Date: Issued For:
 10/19/00 PROJECT REVIEW
 10/19/00 DESIGN REVIEW
 10/19/00 PERMIT SET

Project Number:
 20-011
 Sheet Title:
 PROPOSED
 LOWER LEVEL PROJECTION
 MEZZANINE PLAN
 Sheet Number:
 A1.04



PROPOSED UPPER LEVEL FLOOR PLAN

SCALE: 1/8" = 1'-0"

WALL LEGEND

- EXISTING WALL TO REMAIN
- NEW POLYMER CONCRETE WALL - FINISH
- NEW CONCRETE BLOCK WALL
- NEW CONCRETE BLOCK - 8" CMU
- NEW BRICK, CONCRETE, STONE AND OTHER
- NEW SPECIAL PARTITION
- NEW SPECIAL PARTITION ON EXISTING CURB
- NEW SPECIAL "TYP" WALL

PROJECT ARCHITECT:
DESIGN:
VICTOR SOROKI & ASSOCIATES
ARCHITECTS, P.C.
525 North Woodward Ave.
Birmingham, MI 48009
810.258.5707
fax 810.258.5515

ASSOCIATE ARCHITECT:
CONSTRUCTION DOCUMENTS:
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877 South Adams Rd.
Suite 202
Birmingham, MI 48009
810.540.1711
fax 810.540.3856

STRUCTURAL ENGINEER:
L & B, INC.
29540 Northwestern Hwy.
Suite 100
Southfield, MI 48034
810.355.7750
fax 810.356.1210

MEDICAL/ELECTRICAL ENGINEER:
JAMES BENTON ASSOCIATES, INC.
925 South Adams Rd.
Birmingham, MI 48009
810.645.1465
fax 810.645.1590

CONSTRUCTION MANAGER:
INTEGRATED CONSTRUCTION SERVICES, INC.
355 South Woodward Ave.
Suite 200
Birmingham, MI 48009
810.642.9800
fax 810.642.9870

BIRMINGHAM THEATRES
Uptown Theatres
211 South Woodward Ave.
Birmingham, MI 48009

Date: Issued For:
11-14-95 15-14-95
10-12-95 10-12-95
11-14-95 10-12-95

Project Number:
Sheet Title:
**PROPOSED
UPPER LEVEL
FLOOR PLAN**
Sheet Number:
A1.05



MEMORANDUM

Planning Division

DATE: July 17, 2017

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Set a Public Hearing for a Brownfield Plan for 35975 Woodward
(vacant site, former gas station)

The State Brownfield Redevelopment Statute (Public Act 381 of 1996, as amended) allows the City to approve a Brownfield Plan in order to help finance the cleanup of a contaminated site through the use of Tax Increment Financing (TIF).

In March 2017, the owner of the above-captioned property submitted a draft Brownfield Plan ("the Plan") to the City in anticipation of the construction of a new two story commercial development proposed for the site. The Brownfield Plan outlines numerous environmental concerns on the site, including historical operations and contamination of the adjacent sites, and contamination on the subject site. Extensive soil and groundwater contamination was found, including the presence of various volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs), and metals at concentrations exceeding Part 201 Generic Residential Criteria. The contamination of the soil and groundwater has been demonstrated to be pervasive across the entire site, as shallow as 0.5 feet below ground surface and as deep as 13 feet below ground surface.

City staff, the City Attorney and our environmental consultants at AKT Peerless reviewed the draft Plan and requested additional information. The applicant submitted the requested details, and on May 9, 2017, AKT Peerless completed their review and recommended approval (see attached letter). The applicant is now requesting approval of the Brownfield Plan and the future reimbursement of \$826,210 in environmental costs in order to clean up the site to meet the Michigan Department of Environmental Quality standards.

On June 27, 2017, the Brownfield Redevelopment Authority ("BRA") met and reviewed the applicant's Brownfield Plan and the associated Reimbursement Agreement. After much discussion regarding the history of contamination, previous property owners, and potential liable parties, the BRA postponed the matter and requested that the applicant reach out to BP (previous owner) and determine if they are willing to assist with the vapor intrusion and soil removal costs.

On July 12, 2017, the BRA again met to discuss the proposed Brownfield Plan and associated Reimbursement Agreement for 35975 Woodward. The applicant advised that they had contacted BP, and had a letter from them indicating that they were not liable for assisting with any environmental clean up costs. The BRA questioned BP potential liability, but after much discussion voted to approve a maximum of \$826,210 in environmental clean up costs, to be reimbursed over a maximum of 10 years. Further, the agreement states that if relevant State of Michigan agencies do not approve the School Taxes component of the Brownfield Plan (estimated to be \$247,243), then the City will not reimburse the developer for such amounts from the local Taxes component. In this case, reimbursable eligible costs will not exceed \$580,570, and reimbursement from Local Taxes will not exceed \$333,327.

Both the City's legal counsel and the City's environmental consultant have reviewed the Brownfield Plan for 35975 Woodward, and all previously requested amendments have been made by the applicant. A copy of the Brownfield Plan and the proposed Reimbursement Agreement are attached for your review.

The Planning Division now requests that the City Commission set a public hearing date for **August 14, 2017** to consider approval of the revised Brownfield Plan as recommended by the Brownfield Redevelopment Authority on July 12, 2017, as well as the associated Reimbursement Agreement. Please find attached all relevant documents and the draft meeting minutes for your review.

SUGGESTED ACTION:

To set a public hearing date of August 14, 2017 to consider the approval of the Brownfield Plan and Reimbursement Agreement for 35975 Woodward.

**RESOLUTION APPROVING THE BROWNFIELD PLAN FOR
35975 WOODWARD AVENUE**

Whereas, the City of Birmingham has created a Brownfield Redevelopment Authority and appointed members to serve on the Authority, pursuant to 1996 PA 381, and

Whereas, the Brownfield Redevelopment Authority is charged with the review of Brownfield Plans for Brownfield projects in the City of Birmingham, and

Whereas, August, LLC, the owner and developer of 34977 Woodward, Suite 530, Birmingham, Michigan, intends to develop a two story commercial building at 35975 Woodward, and has determined that the subject property needs approximately \$826,210 in environmental costs in order to meet Michigan Department of Environmental Quality standards, and

Whereas, Soils and Materials Engineers, Inc. has prepared a Brownfield Plan for the site, dated June 5, 2017, and

Whereas, the Brownfield Redevelopment Authority has reviewed the Brownfield Plan.

NOW THEREFORE BE IT RESOLVED THAT:

The Brownfield Redevelopment Authority approves the Brownfield Plan for 35975 Woodward Avenue and requests the City Clerk to forward the Brownfield Plan and associated Reimbursement Agreement to the Birmingham City Commission for its review and approval pursuant to Act 381.

Ayes: _____

Nayes: _____

Abstain: _____

Brownfield Redevelopment Authority
MINUTES
City Commission Room of the Municipal Building
151 Martin Street, Birmingham, Michigan
Tuesday, June 27, 2017
8 a.m.

1. Chairperson Beth Gotthelf welcomed everyone and convened the meeting at 8 a.m.

Members Present: Chairperson Beth Gotthelf
Robert Runco
Dani Torcolacci

Member Absent: Wendy Zabriskie

Also Present: Daniel R. Cassidy, Vice President of SME
Troy Helmick, SME
Dan Wells, AKT Peerless Sr. Project Manager
Evan Yaldo, Architect with Saroki Architecture
Jamie Lee Turnbull, Owner's Representative for August LLC

Brett Stuntz, AKT Peerless Environmental Services, City Brownfield Consultant

Administration: Jana Ecker, Planning Director
Mark Gerber, Finance Director
Jeffrey Haynes, Beier Howlett, City Attorney
Carole Salutes, Recording Secretary
Joseph Valentine, City Manager

The chairperson advised that Wendy Zabriskie was not present because she has a conflict of interest with the property at 35975 Woodward Ave. Also, Paul Robertson has resigned from the authority to pursue other opportunities.

2. Approval of March 21, 2017 Minutes

Motion by Mr. Runco

Seconded by Ms. Torcolacci to approve the March 21, 2017 minutes as presented.

Voice

Vote: Yeas, 3
Nays, 0

Absent, 1

Motion carried, 3-0.

3. Brownfield Plan Application for 35975 Woodward Ave.:

Resolution approving the Brownfield Plan and associated Reimbursement Agreement pertaining to the Brownfield Plan for 35975 Woodward Ave. (currently vacant land) and requesting the City Clerk to forward the Brownfield Plan and Reimbursement Agreement to the Birmingham City Commission for their review and consideration.

Chairperson Gotthelf noted the purchase price of the property was reduced by \$302,000 because of the environmental challenges.

Ms. Ecker stated that in March 2017, the owner of the above-captioned property submitted a draft Brownfield Plan ("the Plan") to the City in anticipation of the construction of a new two-story commercial development proposed for the site. The first floor will be commercial with office above and a basement below with a reduced height for mechanical and storage. There is a two-car private garage as well as a surface parking lot. The development has received Preliminary and Final Site Plan approval from the Planning Board. Also, the Board of Zoning Appeals ("BZA") has granted a variance for the rear yard setback.

Ms. Evan Yaldo with Saroki Architecture detailed some of the challenges associated with the development which has roughly a 5,500 sq. ft. floor plate. All required parking is supported on-site. The property was formerly a gas station and it is adjacent to a dry cleaners which is currently operational. The site contains a significant amount of fill. Also there are challenges with cross easements that have to be left open to maintain access for the dry cleaners. They are using substantial quality materials along with a thoughtful design. Streetscape improvements are proposed to enhance this site that has been vacant for quite some time. She requested the authority's consideration for approval.

Mr. Dan Cassidy, SME, advised the variation in requested dollar amounts that appeared in the documents was because the numbers were revised several times. The current eligible cost is \$580,570. The payback is 11 years.

Mr. Runco noticed the amounts for excavation, transportation, and disposal are very much in line.

Chairperson Gotthelf said one thing this authority has always been cautious about is that there is no double dipping. That means the applicant both gets a discount in the purchase price

because of contamination expenses, and then gets reimbursed for those same costs through the Tax Increment Financing ("TIF").

Mr. Cassidy noted they are unable to recover the cost for non-environmental activities. The cost for constructability challenges with the site is not reflected in the Brownfield Plan. Only pure environmental costs are eligible in the City of Birmingham. So he doesn't believe there is a double dipping occurring.

Ms. Jamie Rae Turnbull, Owner's Representative, advised there were negotiations based on the complicated site and the environmental. The market price that has been paid for this site is well within what they feel is reasonable. Therefore, she thinks the construction complications and other items are not double dipping due to that.

Ms. Torcolacci asked for a summary of some of the items that were knocked off from the original reimbursement request of \$826,210. Mr. Cassidy replied the dollars/ton of soil management costs based on actual bids were extremely high. That reduced the dollar amount significantly. He believed they also reduced some of the groundwater management costs because that number is lower. One of the decisions made during the planning process was to locate the building as far away from the drycleaner and as far north as possible. They picked the cleanest and safest portion of the site to try to bring down the costs. The footprint helps as well, as it is not very large.

Ms. Torcolacci received clarification that the payback time shown on page 27 should be eleven years rather than nine.

In response to the chairperson, Mr. Cassidy advised the taxable value of the property is \$672,700. They are projecting it will be \$1.75 million at build-out. The investment dollar amount is \$5 million. Chairperson Gotthelf thought it would be interesting in some of the latest projects to see the difference of what was estimated vs. what was actually assessed. Maybe that information could be provided for the next meeting.

Another issue is to look at the prior use and the liable party. In this case, BP was the last owner and some of the cost of remediation may be incurred by them. Mr. Cassidy recalled that all Restrictive Covenants placed on the deed have been discharged with the exception of two land use items: the restriction of property use to commercial and the prohibition on installing a drinking water well.

Discussion brought out that from 1961 to 2000, BP owned the property. Chairperson Gotthelf noted her experience with BP has been when they are the liable party they have stepped in and covered the reasonable cost for remediation to the appropriate cleanup standard. Even when they are several owners behind and then there were other uses they have paid for the

increased cost of transportation and the vapor barrier. They would not pay for the Baseline Environmental Assessment ("BEA").

In response to Mr. Haynes, Mr. Cassidy stated there aren't any costs they are asking reimbursement for that would be costs of closure if the site were closed. They are just asking for recovery of the cost to excavate, transport and haul contaminated soil. The installation of the vapor barrier is necessitated by the development itself and is not going to contribute to closure. The BEA items are all related to liability management for the current owner. The Due Care Assessments only benefit the new owner. Groundwater management is only driven by the decisions during construction. None of the items will benefit the liable party.

Chairperson Gotthelf summarized they are talking about \$20,000 for the vapor intrusion, and \$151,000 for the soils. She thought it would be worth reaching out to BP this week to discuss their ability to assist with those costs. She committed to make the phone call to BP with SME in order to get started. Mr. Runco advised there may be reason for SME to investigate further whether the tonnage number might go up.

Ms. Jamie Rae Turnbull announced the timing is critical for them. It was agreed to set Wednesday, July 12 at 8 a.m. for the next meeting.

DRAFT Brownfield Minutes
July 12, 2017

Not yet available.

BROWNFIELD REIMBURSEMENT AGREEMENT

THIS AGREEMENT (the “Agreement”) dated _____, is entered into between the **CITY OF BIRMINGHAM** (“City”) and the **CITY OF BIRMINGHAM BROWNFIELD REDEVELOPMENT AUTHORITY** (the “Authority”), an authority established pursuant to Act 381 of Public Acts of 1996, as amended (“Act 381”), whose addresses are 151 Martin Street, Birmingham, Michigan 48009; and **AUGUST, LLC** (the “Developer”), a Michigan limited liability company, whose address is 34977 Woodward Ave, Ste 530, Birmingham, Michigan 48009.

Recitals

A. In accordance with Act 381, the Authority has adopted a Brownfield Plan for 35975 Woodward Avenue, Birmingham, Michigan, that the City Commission of the City has approved (the “Brownfield Plan”).

B. The Developer owns property in the City located at 35975 Woodward Avenue, Birmingham, Michigan (the “Property”), which is described on the attached Exhibit A. The Property is included in the Brownfield Plan as an eligible Property because it is a Facility due to the presence of hazardous substances on the Property as described in the Brownfield Plan.

C. The Developer plans to redevelop the Property by constructing a two-story office building, including a basement, and associated surface parking (the “Improvements”). The Improvements are intended to create temporary construction jobs and new full time jobs, increase the tax base of the City, and otherwise enhance the economic vitality and quality of life of the City.

D. Act 381, as amended, authorizes the Authority to reimburse a developer for the costs of Eligible Activities on Eligible Property using Tax Increment Revenues generated by the redevelopment of the property.

E. To make the Improvements on the Property, the Developer may incur costs to conduct Eligible Activities—including Baseline Environmental Assessment Activities, Due Care Activities, Additional Response Activities, and the reasonable costs to prepare the Brownfield Plan—each of which may require the services of contractors, engineers, environmental consultants, and other professionals (the “Eligible Costs”). The Developer estimates the Eligible Costs, including contingencies, to be approximately \$826,210.

F. The Brownfield Plan authorizes the use of Tax Increment Revenues that are generated by Local Taxes and School Taxes imposed on the Property to reimburse the Developer for Eligible Costs.

G. The parties are entering into this Agreement to establish the procedure for reimbursing the Eligible Costs and using Tax Increment Revenues in accordance with Act 381, as amended, and the Brownfield Plan.

Accordingly, the parties agree with each other as follows:

1. The Brownfield Plan. The Brownfield Plan is attached as Exhibit B and incorporated in this Agreement. To the extent provisions of the Brownfield Plan conflict with this Agreement, this Agreement controls. To the extent provisions of the Brownfield Plan or this Agreement conflict with Act 381, as amended, Act 381 controls.

2. Term of Agreement. In accordance with the Brownfield Plan, the Authority will capture the Tax Increment Revenues generated by the Improvements on the Property to reimburse the Eligible Costs until the earlier of the date that all the Eligible Costs are fully reimbursed under

this Agreement or ten years after the date the Authority begins to capture Tax Increment Revenues under the Brownfield Plan.

3. Eligible Activities. The Authority will reimburse the Developer for Eligible Costs identified in the Brownfield Plan that were incurred before the Birmingham City Commission approves the Brownfield Plan if permitted under Act 381, as amended. The Developer must diligently pursue completion of the Eligible Activities set forth in the Brownfield Plan.

4. Reimbursement Source. During the term of this Agreement, the Authority will capture the Tax Increment Revenues generated by the Improvements from Local Taxes and School Taxes imposed on the Property and any personal property located on the Property and use those Tax Increment Revenues to reimburse the Eligible Costs (including interest) in accordance with the Brownfield Plan and this Agreement.

5. Limitations on Reimbursement. The Authority will reimburse Eligible Costs up to but not exceeding the line item costs described in the Brownfield Plan, plus a maximum of 15% contingency for each line item. If relevant State of Michigan agencies do not approve the School Taxes component of the Brownfield Plan, estimated to be \$247,243, the Brownfield Authority will not reimburse the developer for such amounts from the local Taxes component. Reimbursable Eligible Costs will not exceed \$580,570. Reimbursement from Local Taxes will not exceed \$333,327.

6. Reimbursement Process. (a) On a quarterly basis, the Developer may submit to the Authority a request for cost reimbursement for the Eligible Costs the Developer incurred during the prior period. This request will be in the form attached as Exhibit C ("Petition"). The Petition will identify whether the Eligible Activities are: (1) Baseline Environmental Assessment Activities; (2) Due Care Activities; (3) Additional Response Activities; or (4) the reasonable costs

to prepare the Brownfield Plan. The Petition must describe each activity claimed as an Eligible Activity and the associated costs of that activity. Documentation of the costs incurred must be included with the Petition, including proof of payment and detailed invoices for the costs incurred sufficient to determine whether the costs incurred were for Eligible Activities. The Petition must be signed by an authorized representative of Developer.

(b) The Authority will review a Petition within 60 days after receiving the Petition. The Developer will cooperate with the Authority by providing information and documentation to supplement the Petition as requested by, and as deemed reasonable and necessary by, the Authority. Within such 60 days, the Authority will identify in writing to Developer (i) all costs approved for reimbursement, and (ii) any costs deemed ineligible for reimbursement and the basis for the determination. The Developer then has 45 days to provide supplemental information or documents to support of any costs deemed ineligible by the Authority. Within 30 days after the Developer provides the supplemental information or documents, the Authority will decide on the eligibility of the disputed cost and inform the Developer in writing of its decision. The Developer may appeal the Authority's decision pursuant to law.

(c) Twice a year, after the summer and winter taxes are collected on the Property, the Authority will capture the Tax Increment Revenues in accordance with the Brownfield Plan and will use those Tax Increment Revenues to reimburse the Developer for approved Eligible Costs (including accrued interest). The Authority is not obligated to reimburse the Developer for any approved Eligible Costs during any period of time that the Developer is delinquent in the payment of real or personal property taxes imposed on the Property or delinquent in the payment to the City for administrative, legal, or other costs invoiced to the Developer.

(d) If there are insufficient funds available from Tax Increment Revenues captured under subparagraph (c) at any time to pay all the Developer's unreimbursed Eligible Costs and accrued interest, the Authority is not required to reimburse the Developer from any other source. The Authority will, however, make additional payments toward the Developer's remaining unreimbursed Eligible Costs and accrued interest in accordance with this Agreement as Tax Increment Revenues become available under subparagraph (c).

(e) Subject to Section 5(d), payment of Eligible Costs to the Developer is not conditioned on the completion of any of the Improvements at any time or in any sequence so long as Developer is in compliance with its obligations and duties under this Agreement.

(f) The Authority will reimburse the Developer for Eligible Costs as follows:

Check shall be payable to:	August, LLC
Delivered to the following address:	34977 Woodward Ave, Ste 530 Birmingham MI 48009 Attn: Diane Wells

By certified mail.

(g) Developer may assign its payments to any person by providing 45 days' prior notice to the Authority of such assignment. Any such assignment does not discharge or release Developer from any of its obligations and duties under this Agreement.

7. Information. The Developer will provide to the Authority any information the Authority considers necessary to fulfill any reporting obligation to the State of Michigan under Act 381, as amended.

8. Legislative Authorization. This Agreement is governed by and subject to the restrictions set forth in Act 381, as amended. If legislation is enacted in the future that alters or affects the terms of this Agreement, including, but not limited to, the amount of Tax Increment Revenues subject to capture or the definition of Eligible Property or Eligible Activity, then the

Developer's rights and the Authority's obligations under this Agreement may be modified accordingly by agreement of the parties.

9. Freedom of Information Act. All Petitions and documentation submitted by Developer are open to the public under the Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 *et seq.* The Developer will not bring any claim of trade secrets or other privilege or exception to the Freedom of Information Act related to such Petitions and documentation.

10. Plan Modification. The Brownfield Plan may be modified to the extent allowed under Act 381, as amended, by mutual agreement of the parties.

11. Notices. All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown above. Either party may change the address by written notice sent by registered or certified mail to the other party.

12. Assignment. The interest of any party under this Agreement shall not be assignable without the other party's written consent, which shall not be unreasonably withheld, except that the Developer may assign this Agreement for purposes of securing financing for the Improvements without the prior consent of the Authority.

13. Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties. No other agreements, written, oral, express or implied, have been made or entered into by the parties concerning the subject matter of this Agreement. This Agreement may be modified or amended only by subsequent written agreement executed by all of the parties. This Agreement has been the subject of negotiations between the parties and may not be construed against any party as drafter.

14. Non-waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, will constitute a waiver of that or any other right, unless otherwise expressly provided in this Agreement.

15. Headings. Headings in this Agreement are for convenience only and may not be used to interpret or construe its provisions.

16. Governing Law. This Agreement is to be construed in accordance with and governed by the laws of the State of Michigan.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument.

18. Binding Effect. The provisions of this Agreement are binding upon and inure to the benefit of each of the parties and their respective heirs, legal representatives, successors, and assigns.

19. Definitions. Unless otherwise defined in this Agreement, the following terms have the definitions given to them by Act 381, as amended:

- (a) “Additional Response Activities” is defined by Section 2(a) of Act 381;
- (b) “Baseline Environmental Assessment” is defined by Section 2(c) of Act 381;
- (c) “Baseline Environmental Assessment Activities” is defined by Section 2(d) of Act 381;
- (d) “Brownfield Plan” is defined by Section 2(g) of Act 381;
- (e) “Due Care Activities” is defined by Section 2(l) of Act 381;
- (f) “Eligible Activities” is defined by Section 2(n) of Act 381;
- (g) “Eligible Property” is defined by Section 2(o) of Act 381;

- (h) “Facility” is defined by Section 2(q) of Act 381;
- (i) “Local Taxes” is defined by Section 2(y) of Act 381;
- (j) “School Taxes” means “taxes levied for school operating purposes” as defined by Section 2(kk) of Act 381;
- (k) “Tax Increment Revenues” is defined by Section 2(ii) of Act 381;

Subject to Section 1, if these definitions are amended during the term of this Agreement, the defined terms shall be construed to the fullest extent possible to conform to the provisions of this Agreement.

The parties have executed this Agreement of the dates set forth below.

CITY OF BIRMINGHAM

By: _____

Title: _____

By: _____

Title: _____

Date: _____

**CITY OF BIRMINGHAM BROWNFIELD
REDEVELOPMENT AUTHORITY**

By: _____

Title: _____

Date: _____

AUGUST, LLC

By: _____

Title: _____

Date: _____

Exhibit A

Property Description

Land situated in the City of Birmingham, County of Oakland, State of Michigan, and described as follows:

Part of the Northwest 1/4 of Section 25, Town 2 North, Range 10 East, City of Birmingham, Oakland County, Michigan, described as: Beginning at a point in the Westerly line of Hunter Boulevard (200.00 feet wide), said point located North 88 degrees 16 minutes 00 seconds West, 659.12 feet and North 49 degrees 21 minutes 00 seconds West, 120.93 feet from the Center of said Section 25; thence North 49 degrees 21 minutes 00 seconds West, along the Westerly line of said Hunter Boulevard, 200.00 feet to the Southerly line of Oak Street (60.00 feet wide); thence South 40 degrees 39 minutes 00 seconds West, along said Southerly line, 171.16 feet; thence South 22 degrees 50 minutes 00 seconds East, 49.17 feet; thence North 40 degrees 39 minutes 00 seconds East, 77.11 feet; thence North 85 degrees 39 minutes 00 seconds East, 22.63 feet; thence South 49 degrees 21 minutes 00 seconds East, 113.19 feet; thence South 88 degrees 16 minutes 00 seconds East, 34.45 feet; thence North 40 degrees 39 minutes 00 seconds East, 78.36 feet to the Point of Beginning.

Tax Parcel Number(s): 08-19-25-179-001

Exhibit B

Brownfield Plan

Exhibit C

Brownfield Request for Cost Reimbursement For Eligible Activities

Date: _____

Listed below are total costs expended for each eligible activity category for the expenses being submitted with this request. Attached is evidence of each cost item, including proof of payment and detailed invoices.

Eligible Activity Category		Total Cost
1.	Phase I/Phase II/BEA	
2.	Due Care Activities	
3.	Additional Response Activities	
4.	Brownfield Plan preparation	
	Total Cost Reimbursement Request	

I certify that the information submitted on and with this Request for Cost Reimbursement is accurate and is an eligible cost described in the Brownfield Plan for this project approved by the City Council of the City of Birmingham.

Developer: _____

Signature: _____

Title: _____

Address: _____

May 9, 2017

Jana Ecker
Planning Director
City of Birmingham
151 Martin Street
P.O. Box 3001
Birmingham, Michigan, 48012

Subject: Brownfield Plan Application for 35975 Woodward Avenue

Dear Ms. Ecker,

We have reviewed the Brownfield Plan Application for a proposed redevelopment of 35975 Woodward Avenue and the applicant has satisfactorily answered the questions presented on the application. We reviewed the environmental data collected on the site and we concur that the proposed eligible activities proposed are reasonable in cost and will sufficiently alleviate Brownfield conditions on the site to permit redevelopment.

If you have any questions please call me at (616) 608-0229.

Sincerely,



Dan Wells
Senior Project Manager
AKT Peerless



BROWNFIELD PLAN FOR:

35975 Woodward Avenue, Birmingham, Michigan

Birmingham Brownfield Redevelopment Authority
151 Martin Street, PO Box 3001
Birmingham, Michigan 48012
Contact: Ms. Jana Ecker (248) 530-1841

Prepared with the assistance of:
SME
June 5, 2017



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I. INTRODUCTION

A. PLAN PURPOSE

The purpose of this Brownfield Plan (the Plan), to be implemented by the Birmingham Brownfield Redevelopment Authority (Authority; BBRA), is to satisfy the requirements of Act 381 for including the eligible property described below, designated as 35975 Woodward Avenue, Birmingham, Michigan (the “Property”), in a Brownfield Plan. The Property consists of one parcel of land that is a “facility” as defined by Part 201 of Michigan’s Natural Resources and Environmental Protection Act (1994 P.A. 451, as amended). The Property is located within the boundaries of the City of Birmingham.

This Plan allows the BBRA to use tax increment revenue to reimburse the developer, August, LLC (August), for the costs of eligible activities required to prepare the Property for safe redevelopment and reuse (see Section III). Given the nature of the expenses proposed, the capture of tax increment generated by August’s proposed redevelopment is necessary to ensure the economic viability of the redevelopment.

B. PROPERTY DESCRIPTION

The Property consists of one parcel of land occupying 0.538 acres of land at the southwest corner of Woodward Avenue and Oak Street in the City of Birmingham. The parcel identification number is 19-25-179-001 and the property address 35975 Woodward Avenue, Birmingham, Michigan. Additional property description information is provided in Section III (G).

C. BASIS OF ELIGIBILITY

The Property is eligible for inclusion in this Brownfield Plan in accordance with MCL 125.2652(n) because the Property is a “facility” as defined by 1994 P.A. 451, as amended. The BBRA, duly established by resolution of the Birmingham City Commission, pursuant to the Brownfield Redevelopment Financing Act, Michigan Public Act 381 of 1996, MCLA 125.2651 et. seq., as amended (Act 381), is authorized to exercise its powers within the limits of the City of Birmingham.

D. PROJECT DESCRIPTION

The Property was originally developed as an automotive filling and repair service station in 1962. Gasoline sales continued until 2003 when the Property was sold, although automobile repair operations continued until at least 2007. Previous environmental reports indicate the historical installation and removal of underground storage tanks (USTs) on the Property beginning in 1962. In 2003, remaining USTs were reportedly emptied and were later removed in 2007. All structures were demolished by 2015. In its current state, the Property is developed with a paved surface parking lot. A restrictive covenant was placed on the property on February 23, 1998, Liber 18211 (1998 RC). However, the 1998 RC was addressed as satisfied and officially discharged on October 8, 2007. A Quit Claim Deed dated May 19, 2005 stipulated below grade construction should be restricted on the site. This restriction was officially discharged in a document titled, “Modification and Discharge of Certain Terms and Conditions and Ratification of Remaining Terms and Conditions” dated October 8, 2007. A copy of the documents discharging the 1998 Restrictive Covenant and the below grade construction restriction are attached. The documents rescinding the 1998 Restrictive Covenant and the restriction from below grade construction are attached in Appendix A.

Subsurface investigations on the Property have evaluated the condition of soil and groundwater on the Property. Various volatile organic compounds (VOCs), polyaromatic hydrocarbons (PAHs), and metals were measured in soil and groundwater at concentrations exceeding Part 201 Generic Residential Criteria. The contamination to soil has been demonstrated to be pervasive across the entire site, as

shallow as 0.5 feet below ground surface (bgs) and as deep as 13 feet bgs. Due to the extent and level of contamination in the soil across the site, no soil is suitable for reuse on site and must be disposed of at a Type II landfill. Contamination to groundwater was also demonstrated to be pervasive across the site in concentrations that will require on-site treatment followed by discharge to the sewer system. The presence of contaminated soil and groundwater presents costly and logistical challenges for redevelopment including the need for proper soil and groundwater management and installation of engineering control to prevent unacceptable human exposure to site contaminants.

August intends to redevelop the property with an 11,000 square-foot, two-story office building with a basement and associated surface parking. The building will be located on the northern corner of the Property, adjacent to the intersection of Oak Street and Woodward Avenue. Each floor will be approximately 5,500 square feet. The surface parking lot is designed to accommodate 30 cars including two handicapped parking spaces. Ingress and egress from the parking area will be available off Woodward Avenue and Oak Street. The office spaces will be leased to up to three tenants. Upon approval of the BBRA, August intends to begin construction in Summer of 2017. Construction is expected to be completed within 12 months. Conceptual design drawings for the project are provided in Appendix B.

Aside from the known contamination on the Property, the location is ideal for redevelopment. The Property is located at the northern gateway to downtown Birmingham and once redeveloped will provide an attractive entrance for the City. Until now, the Property has been left as a vacant and underutilized eyesore. Previous redevelopment have been planned; however, they were ultimately unsuccessful, largely due to the exorbitant upfront cost associated with the subsurface soil conditions. In addition to the aesthetic benefits, the redeveloped property will generate increased tax base. The anticipated investment for the project is approximately \$5 million. This project is expected to create 50+ temporary construction jobs, including two full time construction management personnel. This project is not expected to create any new, full-time positions directly related to day-to-day operations of the office building. However, the creation of the new office space may offer the opportunity for future tenants to expand their businesses and hire more staff. At this point in time, the future tenants are unknown and therefore we are unable to accurately quantify the number of new, full-time permanent jobs they may generate.

II. GENERAL DEFINITIONS AS USED IN THIS PLAN

All words or phrases not defined herein shall have the same meaning as such words and phrases included in Act 381.

III. BROWNFIELD PLAN

A. DESCRIPTION OF COSTS TO BE PAID WITH TAX INCREMENT REVENUES AND SUMMARY OF ELIGIBLE ACTIVITIES

August requests reimbursement for the costs of eligible department specific (MDEQ) activities necessary to prepare the Property for redevelopment. The costs of eligible activities included in, and authorized by, this Plan, will be reimbursed with incremental local and school operating tax revenues generated by the Property after redevelopment and captured by the BBRA. Tax revenues captured will be subject to any limitations and conditions described in this Plan, approvals of the Michigan Department of Environmental Quality (MDEQ) for school operating tax capture, and the terms of a Reimbursement Agreement between August and the Authority (the "Reimbursement Agreement"). Administrative expenses of the BBRA will not be reimbursed through capture of incremental taxes. No personal property taxes are projected to be captured by this Plan.

The estimated total cost of activities eligible for reimbursement from tax increment revenues is \$580,570. The eligible activities are summarized in Table 1 in Appendix C. The individual costs activities eligible for reimbursement are estimated and may increase or decrease, depending on the nature and extent of unknown conditions encountered. No costs of eligible activities will be qualified for reimbursement except to the extent permitted in accordance with the terms and conditions of the Reimbursement Agreement and Section 2 of Act 381 of 1994, as amended (MCL 125.2652). The Reimbursement Agreement and this Plan will dictate the total cost of eligible activities subject to reimbursement. As long as the total cost limit described in this Plan is not exceeded, line item categories and costs of eligible activities may be adjusted without Plan amendment after the date of this Plan, to the extent the adjustments do not violate the terms of Act 381.

B. ESTIMATE OF CAPTURED TAXABLE VALUE AND TAX INCREMENT REVENUES

The estimated 2016 taxable value of the Property is \$672,700, which is the initial taxable value for this Plan. This value was obtained from the City of Birmingham's Online Assessor's Office database. The anticipated taxable value at project completion is estimated to be \$1,750,000 based on 35% of the proposed development costs. For planning purposes, the taxable value for tax year 2018 is assumed to be 50% with the full taxable value appearing in tax year 2019. The actual taxable value will be determined by the City Assessor.

The BBRA will capture 100% of the incremental local tax revenues generated from the Property to reimburse August for the costs of eligible activities under this Plan in accordance with the Reimbursement Agreement. The BBRA will capture 100% of the incremental school operating tax revenues generated from real property to reimburse the costs of eligible department specific (MDEQ) activities pursuant to a work plan approved by the MDEQ. Estimated taxable values, tax increment revenues to be captured, impacts on taxing jurisdictions, and eligible activities reimbursement cash flows are presented in Table 2 (Appendix D). The actual annual incremental taxable value and captured tax increment revenue will be determined by the City of Birmingham. The actual increased taxable value of the land and all future taxable improvements on the Property may vary.

It is the intent of this Plan to provide for the proportional capture of all eligible tax increments in whatever amounts and in whatever years they become available until all eligible costs described in the Plan are paid or 30 years, whichever is shorter. It is estimated that all eligible costs will be reimbursed within nine (9) years. If the MDEQ elects not to participate in this Project, the portion of capture related to their proportionate share will be assumed by, made whole by, and become the responsibility of the other taxing entities to the extent allowed by Act 381.

C. METHOD OF FINANCING PLAN COSTS AND DESCRIPTION OF ADVANCES BY THE MUNICIPALITY

August is ultimately responsible for financing the costs of eligible activities included in this Plan. Neither the BBRA nor the City of Birmingham will advance any funds to finance the eligible activities. All Plan financing commitments and activities and cost reimbursements authorized under this Plan shall be governed by the Reimbursement Agreement. The inclusion of eligible activities and estimates of costs to be reimbursed in this Plan is intended to authorize the BBRA to fund such reimbursements. The amount and source of any tax increment revenues that will be used for purposes authorized by this Plan, and the terms and conditions for such use and upon any reimbursement of the expenses permitted by the Plan, will be provided solely under the Reimbursement Agreement.

Reimbursements under the Reimbursement Agreement shall not exceed the cost of eligible activities and reimbursement limits described in this Plan, unless it is further amended.

D. MAXIMUM AMOUNT OF NOTE OR BONDED INDEBTEDNESS

Not applicable.

E. DURATION OF BROWNFIELD PLAN

The duration of this Brownfield Plan for the Property shall not exceed the shorter of the following: reimbursement of all eligible costs, cumulatively not to exceed \$580,570, or 30 years tax capture after the first year of tax capture under this Plan. The date for beginning tax capture shall be 2018, unless otherwise amended by the BBRA. It is anticipated that the eligible expenses should be fully reimbursed within 11 years, at which point the full increment will be available to the municipality and the State for use.

F. ESTIMATED IMPACT OF TAX INCREMENT FINANCING ON REVENUES OF TAXING JURISDICTIONS

Incremental local and state tax revenues generated by the project will be captured by the BBRA until all incurred eligible brownfield redevelopment costs are reimbursed. The tax revenue available for capture by the BBRA will be split between local and state sources, with approximately 57% being reimbursed with local tax revenues and approximately 43% being reimbursed with state tax revenues, based on the 2016 millage rates obtained from the City of Birmingham Treasurer's Office. The impact of the BBRA incremental tax capture on local taxing authorities is presented in Table 2 (Appendix D).

G. LEGAL DESCRIPTION, PROPERTY MAP, PROPERTY CHARACTERISTICS AND PERSONAL PROPERTY

The property consists of single, approximately 0.538-acre parcel with a current address of 35975 Woodward Avenue, Birmingham, Michigan. A legal description and an ALTA survey of the Property are included in Appendix E.

H. ESTIMATES OF RESIDENTS AND DISPLACEMENT OF FAMILIES

No occupied residences are involved in the redevelopment, no persons reside at the Property, and no families or individuals will be displaced as a result of this development. Therefore, a demographic survey and information regarding housing in the community are not applicable and are not needed for this Plan.

I. PLAN FOR RELOCATION OF DISPLACED PERSONS

No persons will be displaced as a result of this development; therefore, a Plan for relocation of displaced persons is not applicable and is not needed for this Plan.

J. PROVISIONS FOR RELOCATION COSTS

No persons will be displaced as result of this development and no relocation costs will be incurred; therefore, provision for relocation costs is not applicable and is not needed for this Plan.

K. STRATEGY FOR COMPLIANCE WITH MICHIGAN'S RELOCATION ASSISTANCE LAW

No persons will be displaced as result of this development; therefore, no relocation assistance strategy is needed for this Plan.

L. DESCRIPTION OF THE PROPOSED USE OF LOCAL BROWNFIELD REVOLVING FUND (LBRF)

The BBRA has decided not to capture incremental revenues for their LBRF for this Plan.

M. OTHER MATERIAL THAT THE AUTHORITY OR GOVERNING BODY CONSIDERS PERTINENT

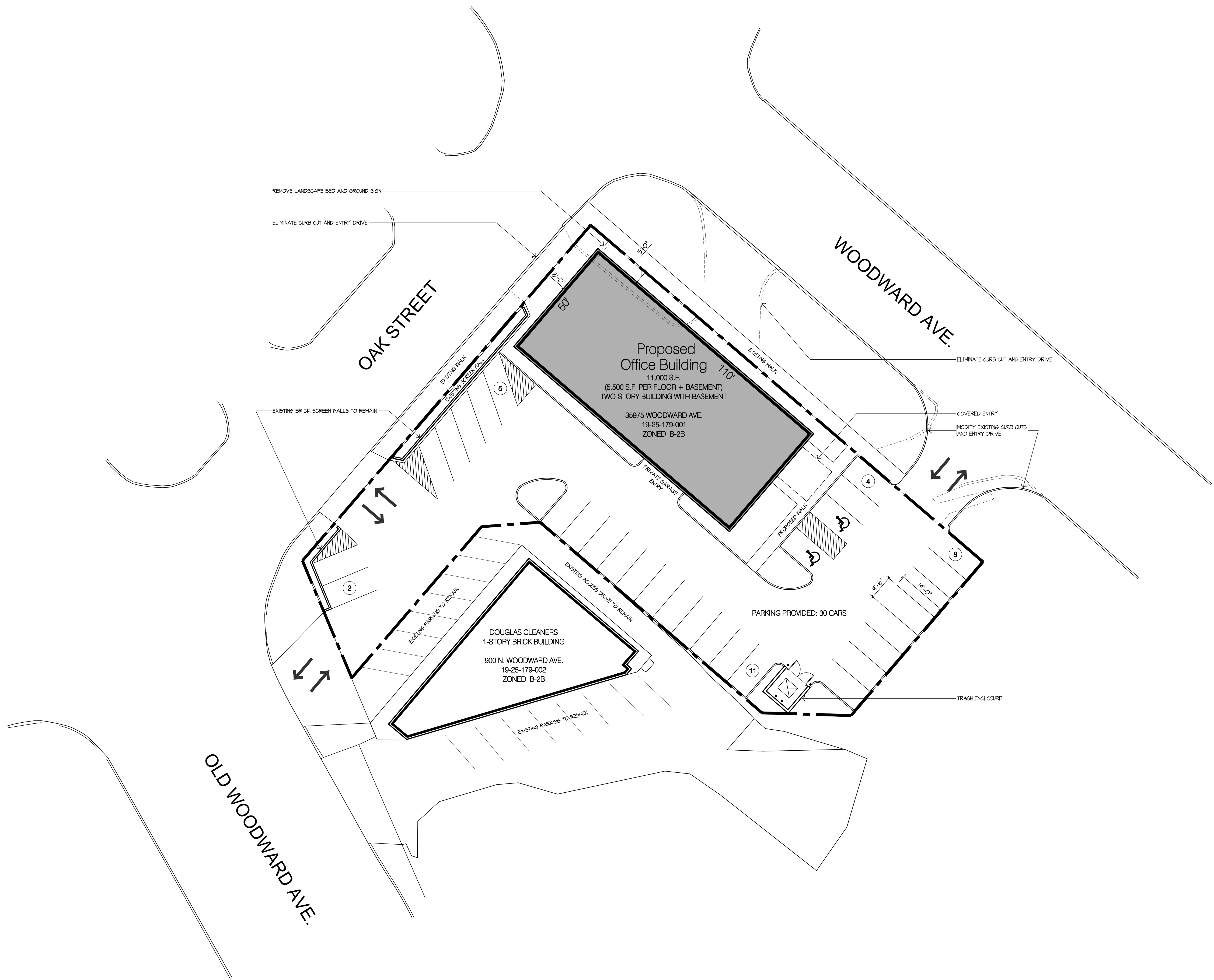
There is no other material that the BBRA or governing body considers pertinent.

APPENDIX B

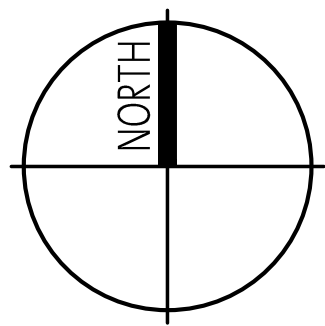
PROJECT CONCEPTUAL DRAWINGS

A
B
C
D
E
F
G
H

1 2 3 4 5 6 7 8 9 10



H6
A010
Architectural Site Plan
SCALE: 1" = 20'-0"



SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:
August, LLC
35975 Woodward Ave.
Birmingham, Michigan 48009

Date: 09-19-2016 **Issued For:** REVIEW

Sheet No.:
A010
ARCHITECTURAL SITE PLAN





APPENDIX C

ELIGIBLE ACTIVITIES COST TABLE



TABLE 1
ELIGIBLE ACTIVITIES
35975 WOODWARD AVENUE REDEVELOPMENT
BIRMINGHAM, MICHIGAN
SME Project No: 075099.01
6/5/2017

ELIGIBLE ACTIVITIES										
TASK/ACTIVITY	COST ITEM	BROWNFIELD UNIT COST	GREENFIELD UNIT COST	UNITS	QUANTITY	BROWNFIELD COST (Extra costs incurred due to presence of contamination)	GREENFIELD COST (Development costs for a non-contaminated site)	ELIGIBLE COST (Brownfield cost - Greenfield cost)	TIF SOURCES	
									Local	State
DEPARTMENT SPECIFIC (MDEQ) ACTIVITIES										
BEA Activities										
Phase I Environmental Site Assessment	Phase I ESA for All Appropriate Inquiry	\$2,800	\$0	ea.	1	\$2,800	\$0	\$2,800	\$1,608	\$1,192
Phase II Environmental Site Assessment	Phase II ESA	\$10,000	\$0	ea.	1	\$10,000	\$0	\$10,000	\$5,741	\$4,259
Baseline Environmental Assessment	BEA report	\$3,000	\$0	ea.	1	\$3,000	\$0	\$3,000	\$1,722	\$1,278
							BEA Activities Subtotal:	\$15,800	\$9,071	\$6,729
Due Care Activities										
Documentation of Due Care Compliance	Preparation of due care compliance documentation, in accordance with Part 201 (two plans: construction and post-construction)	\$3,500	\$0	ea.	2	\$7,000	\$0	\$7,000	\$4,019	\$2,981
Site Specific Health and Safety Plan	Health and Safety Plan for consultants and contractors	\$3,000	\$0	ea.	1	\$3,000	\$0	\$3,000	\$1,722	\$1,278
Due Care Response Activity Planning and Management	Evaluation of engineering controls and remediation plans for response activities. Due care consulting and management during contractor bidding and throughout construction	\$10,000	\$0	ea.	1	\$10,000	\$0	\$30,000	\$17,224	\$12,776
	Third party protection barrier from contamination during construction	\$8	\$0	lf.	1,000	\$8,000	\$0			
	On-site remediation excavation observation and equipment	\$1,200	\$0	days	10	\$12,000	\$0			
Soil Management	Disposal characterization sampling and analysis	\$3,000	\$0	ea.	1	\$3,000	\$0	\$151,000	\$86,695	\$64,305
	Excavation of contaminated soil (Basement excavation dimensions: 110' x 50' x 15', basement egress ramp and sloped earth rention along west wall and south wall for approximately 145 feet, surface cut, and utility installation trenching)	\$10	\$3	tons	7,400	\$74,000	\$22,200			
	Transport of contaminated fill/soil to a Type II landfill	\$8	\$5	tons	7,400	\$59,200	\$37,000			
	Disposal of contaminated fill/soil to a Type II landfill	\$10	\$0	tons	7,400	\$74,000	\$0			
Groundwater Management	Groundwater disposal characterization sampling	\$5,000	\$5,000	ea.	4	\$20,000	\$0	\$180,000	\$103,345	\$76,655
	Dewatering of contaminated groundwater	\$0.08	\$0.08	gal.	1,000,000	\$80,000	\$0			
	On-site treatment of waste water	\$40,000	\$0	ea.	2	\$80,000	\$0			
Prevent Exacerbation of Contaminated Soil	Excavation equipment decontamination and waste water handling	\$20,000	\$0	ea.	1	\$20,000	\$0	\$20,000	\$11,483	\$8,517
Chemical Vapor Mitigation Controls	Design and engineering costs of Vapor Intrusion Mitigation System (VI System)	\$20,000	\$0	ea.	1	\$20,000	\$0	\$70,000	\$40,190	\$29,810
	Installation of VI System	\$40,000	\$0	ea.	1	\$40,000	\$0			
	Monitoring of VI System installation and quality control testing of vapor mitigation system	\$10,000	\$0	ea.	1	\$10,000	\$0			
Brownfield Site Management	Tax Incremental Financing (TIF) cost tracking and BBRA/MDEQ consulting and coordination	\$15,000	\$0	ea.	1	\$15,000	\$0	\$15,000	\$8,612	\$6,388
Abandon Existing Monitoring Wells	Decommission any exisiting monitoring wells	\$10,000	\$10,000	ea.	1	\$10,000	\$10,000	\$0	\$0	\$0
							Due Care Activities Subtotal:	\$476,000	\$273,290	\$202,710
							Environmental Activities Subtotal:	\$491,800	\$282,361	\$209,439
	Environmental Activities Contingency ¹	\$491,800	\$0	ea.	0.15	\$73,770	\$0	\$73,770	\$42,354	\$31,416
							Environmental Activities Total:	\$565,570	\$324,715	\$240,855
Brownfield Plans										
Brownfield Plans										
Preparation and review of Brownfield Plan and Act 381 Work Plan	Brownfield Plan	\$5,000	\$0	ea.	1	\$5,000	\$0	\$5,000	\$2,871	\$2,129
	Act 381 Work Plan	\$10,000	\$0	ea.	1	\$10,000	\$0	\$10,000	\$5,741	\$4,259
							Brownfield Plans Subtotal:	\$15,000	\$8,612	\$6,388
TOTAL ELIGIBLE COSTS:								\$580,570	\$333,327	\$247,243

Notes:

1.The contingency amount is equal to 15% of the eligible costs; brownfield work plan costs are excluded.

APPENDIX D

SUMMARY OF TAX INCREMENT FINANCING AND REIMBURSEMENT OF ELIGIBLE ACTIVITIES



TABLE 2
TAX CAPTURE + REIMBURSEMENT SCHEDULE
35975 WOODWARD AVENUE REDEVELOPMENT
BIRMINGHAM, MICHIGAN
SME Project No: 075099.01
6/5/2017

		2018 (Y1)	2019 (Y2)	2020 (Y3)	2021 (Y4)	2022 (Y5)	2023 (Y6)	2024 (Y7)	2025 (Y8)	2026 (Y9)	2027 (Y10)	2028 (Y11)	TOTALS
TAX INCREMENT													
Initial Taxable Value	\$ 672,700												
Taxable Value after Improvement ⁽¹⁾		\$ 875,000	\$ 1,750,000	\$ 1,767,500	\$ 1,785,175	\$ 1,803,027	\$ 1,821,057	\$ 1,839,268	\$ 1,857,661	\$ 1,876,238	\$ 1,895,000	\$ 1,913,950	
Total Capturable Taxable Value		\$ 202,300	\$ 1,077,300	\$ 1,094,800	\$ 1,112,475	\$ 1,130,327	\$ 1,148,357	\$ 1,166,568	\$ 1,184,961	\$ 1,203,538	\$ 1,222,300	\$ 1,241,250	
YEARLY TAX CAPTURE													
State Taxes - Millages													
State Education Tax (SET)	6.0000	\$ 1,214	\$ 6,464	\$ 6,569	\$ 6,675	\$ 6,782	\$ 6,890	\$ 6,999	\$ 7,110	\$ 7,221	\$ 7,334	\$ 7,448	
School Operating	18.0000	\$ 3,641	\$ 19,391	\$ 19,706	\$ 20,025	\$ 20,346	\$ 20,670	\$ 20,998	\$ 21,329	\$ 21,664	\$ 22,001	\$ 22,343	
Total State Millages Available for Capture by BRA	24.0000	\$ 4,855	\$ 25,855	\$ 26,275	\$ 26,700	\$ 27,128	\$ 27,560	\$ 27,997	\$ 28,439	\$ 28,885	\$ 29,335	\$ 29,791	
	43%												
Local Taxes - Millages (2016)													
City Operating	11.1843	\$ 2,263	\$ 12,049	\$ 12,245	\$ 12,442	\$ 12,642	\$ 12,844	\$ 13,047	\$ 13,253	\$ 13,461	\$ 13,671	\$ 13,883	
City Refuse	0.8687	\$ 176	\$ 936	\$ 951	\$ 966	\$ 982	\$ 998	\$ 1,013	\$ 1,029	\$ 1,046	\$ 1,062	\$ 1,078	
Library	1.4100	\$ 285	\$ 1,519	\$ 1,544	\$ 1,569	\$ 1,594	\$ 1,619	\$ 1,645	\$ 1,671	\$ 1,697	\$ 1,723	\$ 1,750	
Public Schools Supplemental	8.4951	\$ 1,719	\$ 9,152	\$ 9,300	\$ 9,451	\$ 9,602	\$ 9,755	\$ 9,910	\$ 10,066	\$ 10,224	\$ 10,384	\$ 10,545	
Oakland County Operating	4.4938	\$ 909	\$ 4,841	\$ 4,920	\$ 4,999	\$ 5,079	\$ 5,160	\$ 5,242	\$ 5,325	\$ 5,408	\$ 5,493	\$ 5,578	
Oakland County Community College	1.5707	\$ 318	\$ 1,692	\$ 1,720	\$ 1,747	\$ 1,775	\$ 1,804	\$ 1,832	\$ 1,861	\$ 1,890	\$ 1,920	\$ 1,950	
Oakland County Intermediate Schools	3.3398	\$ 676	\$ 3,598	\$ 3,656	\$ 3,715	\$ 3,775	\$ 3,835	\$ 3,896	\$ 3,958	\$ 4,020	\$ 4,082	\$ 4,146	
OCPTA/SMART	0.9941	\$ 201	\$ 1,071	\$ 1,088	\$ 1,106	\$ 1,124	\$ 1,142	\$ 1,160	\$ 1,178	\$ 1,196	\$ 1,215	\$ 1,234	
Total Local Millages Available for Capture by BRA	32.3565	\$ 6,547	\$ 34,858	\$ 35,424	\$ 35,995	\$ 36,573	\$ 37,157	\$ 37,745	\$ 38,341	\$ 38,942	\$ 39,550	\$ 40,164	
	57%												
Available Tax Capture by BRA (Local + State Millages)													
Total Available Tax Capture by BRA	56.3565	\$ 11,402	\$ 60,713	\$ 61,699	\$ 62,695	\$ 63,701	\$ 64,717	\$ 65,742	\$ 66,780	\$ 67,827	\$ 68,885	\$ 69,955	
City administrative (local only) ⁽²⁾		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
State Revolving Fund (3 mills)		\$ 607	\$ 3,232	\$ 3,285	\$ 3,338	\$ 3,391	\$ 3,445	\$ 3,500	\$ 3,555	\$ 3,611	\$ 3,667	\$ 3,724	\$ 27,964
Annual State Increment Capture by BRA for Reimbursement		\$ 4,248	\$ 22,623	\$ 22,990	\$ 23,362	\$ 23,737	\$ 24,115	\$ 24,497	\$ 24,884	\$ 25,274	\$ 25,668	\$ 26,067	\$ 195,730
Annual Local Increment Capture by BRA for Reimbursement		\$ 6,547	\$ 34,858	\$ 35,424	\$ 35,995	\$ 36,573	\$ 37,157	\$ 37,745	\$ 38,341	\$ 38,942	\$ 39,550	\$ 40,164	\$ 301,582
Total Annual Increment Capture by BRA for Reimbursement ⁽³⁾		\$ 10,795	\$ 57,481	\$ 58,414	\$ 59,357	\$ 60,310	\$ 61,272	\$ 62,242	\$ 63,225	\$ 64,216	\$ 65,218	\$ 66,231	\$ 497,312
MDEQ DEPARTMENT SPECIFIC COSTS													
State Tax Reimbursement		\$ 4,248	\$ 22,623	\$ 22,990	\$ 23,362	\$ 23,737	\$ 24,115	\$ 24,497	\$ 24,884	\$ 25,274	\$ 25,668	\$ 19,457	\$ 240,855
Unreimbursed Department Specific Costs (State portion)	\$ 240,855	\$ 236,607	\$ 213,984	\$ 190,994	\$ 167,632	\$ 143,895	\$ 119,780	\$ 95,283	\$ 70,399	\$ 45,125	\$ 19,457	\$ -	
Local Tax Reimbursement		\$ 6,547	\$ 34,858	\$ 35,424	\$ 35,995	\$ 36,573	\$ 37,157	\$ 37,745	\$ 38,341	\$ 38,942	\$ 23,133	\$ -	\$ 324,715
Unreimbursed Department Specific Costs (Local portion)	\$ 324,715	\$ 318,168	\$ 283,310	\$ 247,886	\$ 211,891	\$ 175,318	\$ 138,161	\$ 100,416	\$ 62,075	\$ 23,133	\$ -	\$ -	
Brownfield Plan Costs													
State Tax Reimbursement		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,388	\$ 6,388
Unreimbursed Brownfield Plan Costs (State portion)	\$ 6,388	\$ 6,388	\$ 6,388	\$ 6,388	\$ 6,388	\$ 6,388	\$ 6,388	\$ 6,388	\$ 6,388	\$ 6,388	\$ 6,388	\$ -	
Local Tax Reimbursement		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,612	\$ -	\$ 8,612
Unreimbursed Brownfield Plan Costs (Local portion)	\$ 8,612	\$ 8,612	\$ 8,612	\$ 8,612	\$ 8,612	\$ 8,612	\$ 8,612	\$ 8,612	\$ 8,612	\$ 8,612	\$ -	\$ -	
Annual Reimbursement to Developer		\$ 10,795	\$ 57,481	\$ 58,414	\$ 59,357	\$ 60,310	\$ 61,272	\$ 62,242	\$ 63,225	\$ 64,216	\$ 57,413	\$ 25,845	\$ 580,570
Local Brownfield Revolving Fund (LBRF) ⁽⁴⁾		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

Notes:

⁽¹⁾ Taxable value after redevelopment was estimated as 35% of the total investment. Thh taxable value for 2018 assumes 50% of construction was complete with the full post redevelopment taxable value appearing in 2019. The taxable value growth was estimated at 1% per year.

⁽²⁾ City administrative funds will not be captured by this plan.

⁽³⁾ This projection does not include personal property tax due to the uncertainty of availability; however, if available, personal property tax will be captured.

⁽⁴⁾ Costs to fund the LBRF will not be captured by this plan.

APPENDIX E

LEGAL DESCRIPTION

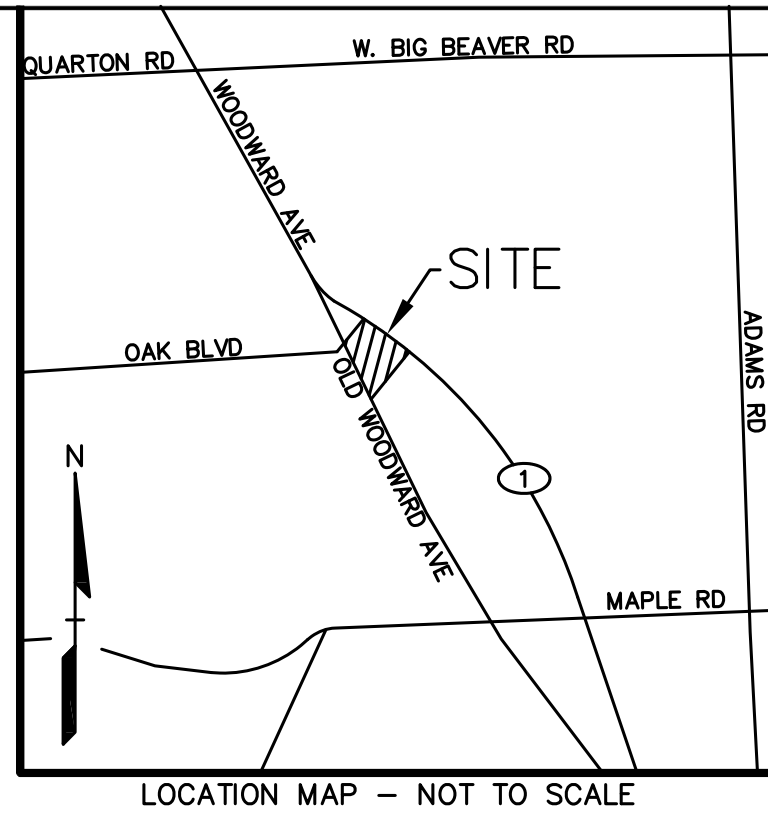
(Per First American Title Insurance Company, Commitment #751231, dated July 12, 2016)

Part of the Northwest 1/4 of Section 25, Town 2 North, Range 10 East, City of Birmingham, Oakland County, Michigan, described as: Beginning at a point in the Westerly line of Hunter Boulevard (200.00 feet wide), said point located North 88 degrees 16 minutes 00 seconds West, 659.12 feet and North 49 degrees 21 minutes 00 seconds East, 120.93 feet from the Northwest corner of the intersection of Hunter Boulevard and Oak Street, 21 minutes 00 seconds West, 171.16 feet and North 49 degrees 21 minutes 00 seconds East, 171.16 feet to the Westerly line of said Hunter Boulevard, 200.00 feet to the Southerly line of Oak Street (60.00 feet wide); thence South 40 degrees 39 minutes 00 seconds West, along said Southerly line, 171.16 feet; thence South 22 degrees 50 minutes 00 seconds East, 49.17 feet; thence North 40 degrees 39 minutes 00 seconds East, 77.11 feet; thence North 85 degrees 39 minutes 00 seconds East, 171.16 feet to the Southerly line of Oak Street, 60.00 feet; thence South 88 degrees 16 minutes 00 seconds East, 120.93 feet; thence North 40 degrees 39 minutes 00 seconds East, 77.36 feet to the Point of Beginning.

(Per letter dated August 31, 2016 from City of Birmingham, Senior Planner, Mathew Baka and per Article 02 – Sections 2.31–2.32 of Zoning Ordinance)

- FLOODPLAIN NOTE:**
BY GRAPHICAL PLOTTING, SITE IS WITHIN ZONE 'X', AREA DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN PER FLOOD INSURANCE RATE MAP NUMBERS 26125C0537F & 26125C0536F, DATED SEPTEMBER 29, 2006.

- A. The subject parcel contains 46 parking spaces, including 2 handicapped spaces.
- B. There were no buildings observed on the subject parcel.
- C. There was no evidence of recent earth moving work, building construction, or building additions observed in the process of conducting the fieldwork.
- D. There was no information concerning any proposed changes in street right of way lines nor any evidence of recent street or sidewalk construction or repair observed in the process of conducting the fieldwork.
- E. There were no wetlands delineated by a qualified specialist hired by the client to locate at the time of survey.
- F. There are four square 2'x2' hinged steel access lids to 2 foot deep vaults that contain piping that may be part of a current or formerly active monitoring/remediation system. The vaults themselves lie on Parcel 19-25-179-002 to the south, but the concrete pad they are set in crosses the subject parcel as depicted.
- G. Guy lines/anchors for pole cross parcel line as depicted.
- H. A water service line crosses parcel as depicted.
- J. Fire Hydrant lies on parcel line.

[illegible][illegible]

(Per First American Title Insurance Company, Commitment #751231, dated July 12, 2016)

- 1 Any facts, rights, interests, or claims that are not shown by the Public Records but that could be
ascertained by an inspection of the Land or by making inquiry of persons in possession of the Land.
- 2 Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- 3 Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title
including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be
disclosed by an accurate and complete land survey of the Land, and that are not shown in the Public
Records.
- 4 Any lien or right to lien for services, labor or material imposed by law and not shown by the Public
Records.
- 5 Taxes and assessments not due and payable at Commitment Date.
- 6 Terms and Conditions contained in Easement and Right of Way for ingress and egress as disclosed by
instrument recorded in 457.0, page 47 and as disclosed by Notice of Claim of Interest Under
Marketable Record Title Act (MCL 565.001) recorded in Liber 39107, page 345. [As plotted.]
- 7 Terms and Conditions contained in Restrictive Covenant as disclosed by instrument recorded in Liber
18211, page 238. [As plotted.]
- 8 Any rights, title interest or claim thereof to that portion of the land taken, used or granted for
streets, roads or highways.
- 9 Interest of others in oil, gas and mineral rights, if any, inquired in the public records or unrecorded.
- 10 Interest, if any, of the United States, State of Michigan, or any political subdivision thereof, in the oil
gas and minerals in and under and that may be produced from the captioned land.
- 11 Rights of tenants, if any, under any unrecorded leases.
- 12 Lien for outstanding water or sewer charges, if any.

CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

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 C/O BODMAN, LLC
 DETROIT, MICHIGAN 48226

ALTA/NSPS LAND TITLE SURVEY
35975 WOODWARD
 PART OF THE NORTHWEST 1/4 OF SECTION 25, T2N, R10E
 CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN

DATE	BY	CHK'D	APP'D	SCALE	DESCRIPTION
08/15/2016	236	DAK	WOODWARD	DNCE	= PRTS SURVEY= VECTORIZED= VECT= ALTA M

ORIGINAL ISSUE DATE:
SEPTEMBER 23, 2016

PEA JOB NO. 2016-226

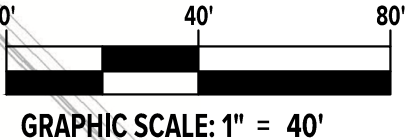
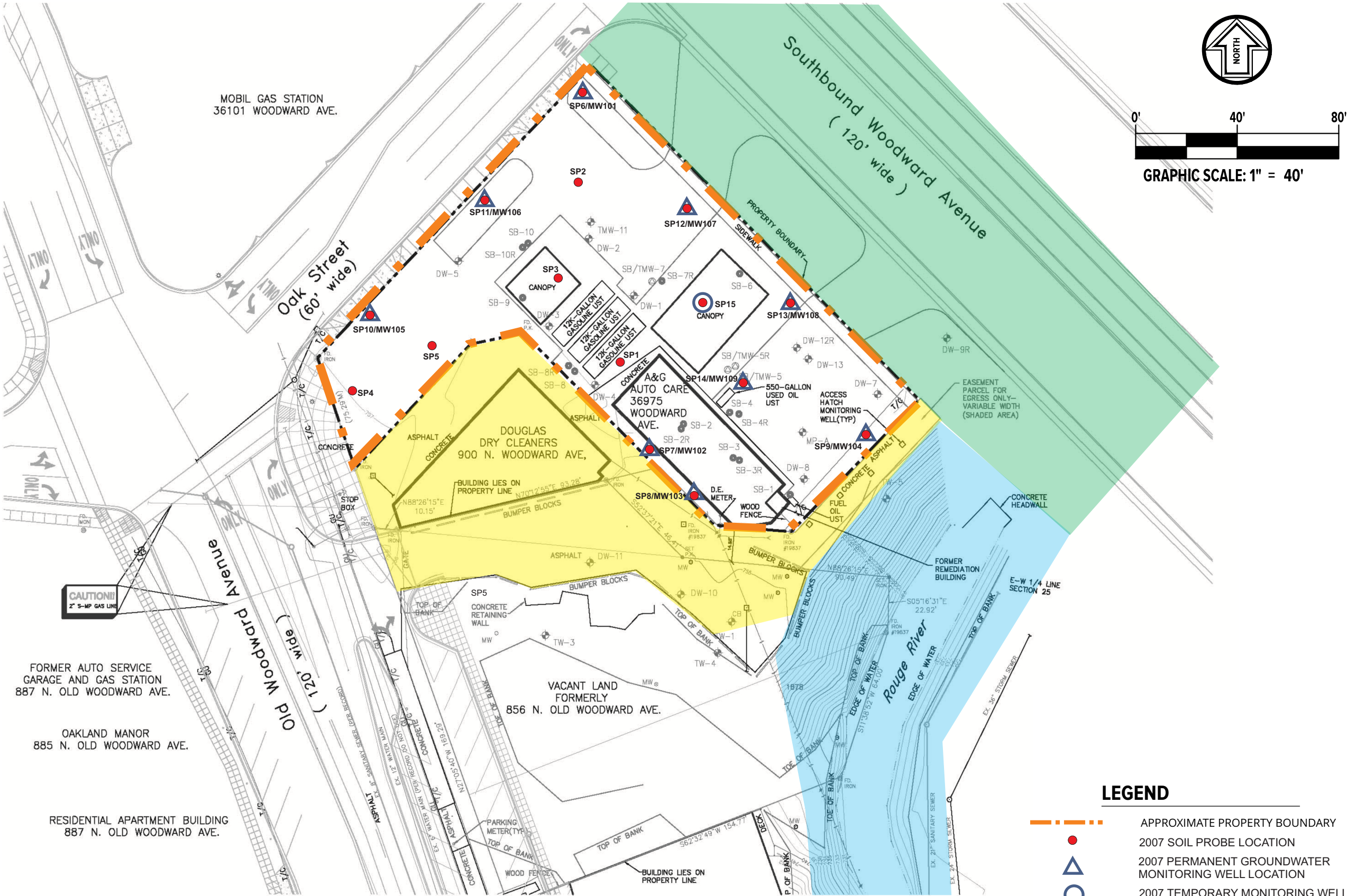
SCALE: 1" = 20'

DRAWING NUMBER:

1

STORM SEWER	BIRMINGHAM CSD/RTD DRAIN MAP, WATER RESOURCES COMMISSIONER STATE 098, DATED MARCH 31, 2014
SANITARY SEWER	BIRMINGHAM CSD/RTD DRAIN MAP, WATER RESOURCES COMMISSIONER STATE 098, DATED MARCH 31, 2014
	NOT RECEIVED AT TIME OF SURVEY
WATER MAIN	DTE ENERGY MAP #298-386 & 298-384, DATED 9/9/02
ELECTRIC	CONSUMERS ENERGY QUARTER SECTION MAP 02-06-25 DATED 7/31/16
CABLE	NOT RECEIVED AT TIME OF SURVEY
TELEPHONE	AT&T FIELD 1 & UTILITY SHEET, DATED 1/21/08
FLUOID PLAIN	FEMA F.I.R.M. NO. 261250537F & 261250536F, DATED 12/16/08
R.C.O.C.	OKA STREET BRIDGINGS, ROAD COMMISSION FOR OAKLAND COUNTY WORK ORDER #14839, LOCATION #292 & 2916 DATED 06/12/12
OTHER	BOUNDARY AND TOPOGRAPHIC SURVEY, PEA JOB NO. 2008-005, DATED MARCH 4, 2008

FILE LOCATION: \\Sme-inc\pz\WIP\075099.01\CADD\DWGS\rev0\075099.01-02.dwg



www.sme-usa.com

Project
**AUGUST LLC
REDEVELOPMENT
PROJECT**

Project Location
**35975 WOODWARD
AVENUE
BIRMINGHAM,
MICHIGAN**

Sheet Name
**PROPERTY
FEATURES
DIAGRAM**

No.	Revision Date

Date
10-10-16

CADD
GM

Designer
CEB

Scale
1" = 40'

Project
075099.01

Figure No.
1

DRAWING NOTE: SCALE DEPICTED IS MEANT FOR 11" X 17"
AND WILL SCALE INCORRECTLY IF PRINTED ON ANY
OTHER SIZE MEDIA
NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR
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LEGEND

- APPROXIMATE PROPERTY BOUNDARY
- 2007 SOIL PROBE LOCATION
- △ 2007 PERMANENT GROUNDWATER MONITORING WELL LOCATION
- 2007 TEMPORARY MONITORING WELL LOCATION

NOTE: DRAWING INFORMATION TAKEN FROM SOIL BORING AND MONITORING WELL LOCATIONS DATED 5-5-06, PREPARED BY PM ENVIRONMENTAL, INC.

NOTE:
DRAWING INFORMATION TAKEN FROM SOIL BORING AND MONITORING WELL LOCATIONS DATED 5-5-06, PREPARED BY PM ENVIRONMENTAL, INC.



MEMORANDUM

Engineering Dept.

DATE: July 20, 2017

TO: Joseph Valentine, City Manager

FROM: Paul T. O'Meara, City Engineer

SUBJECT: 2017 Asphalt Resurfacing Program
Contract #5-17(P)

Each year, the Engineering Dept. puts together a project to extend the life of its permanent asphalt pavements. This year's work focuses on asphalt resurfacing several relatively short, dead-end streets.

Below is a description of the work to be performed this year:

- 1. Ashford Lane – Quarton Rd. to East End.** The existing full depth asphalt road will have its top surface milled and removed. The underlying road will be prepared as needed, and a new 2 inch asphalt surface will be installed. One existing fire hydrant will also be removed and replaced.
- 2. Millrace Ct. – Lakeside Dr. to South End.** After preparing the existing concrete road as needed, a new 2 inch asphalt overlay will be installed.
- 3. Hidden Ravines Drive, Trail, and Court – All west of Southfield Rd.** The existing asphalt overlay will be removed, the underlying concrete pavement will be prepared as needed, and a new 2 inch asphalt overlay will be installed.

The attached map shows the streets included in this project.

As referenced in detail under separate cover, the Multi-Modal Transportation Board reviewed the above streets with respect to the Multi-Modal Master Plan. No multi-modal features were recommended for these streets at this time.

Bidding & Project Schedule

On June 29, 2017, the Engineering Dept. opened bids from contractors to perform the work on this project. A summary of the bid results is attached. Three companies submitted bids for this project. The low bidder was Florence Cement Co., of Shelby Twp., MI with their bid of \$410,369.70. During final design of the project, it was noted that the pavement condition on the Hidden Ravines section of the project has declined seriously the last few years. The asphalt overlay previously installed in 1999 is showing serious signs of distress. In fact, one section of the street was completely overlaid just last year by Dept. of Public Services staff because it could no longer support traffic. The current conditions led our office to focus on designing a more robust repair section than what was originally planned. Additional sections of the road will be completely removed and replaced, and the thickness of the asphalt overlay was

increased by 25% to help extend its life cycle. Using the quantities as bid in the project, the Engineer's estimate was \$420,000, although the total amount budgeted for this project was \$280,000. Due to the discrepancy, a budget amendment is recommended below.

The City has worked with Florence Cement both as a prime and subcontractor on other similar projects over the past eight years. Most of them were larger and more complex than this one. Given the bids received, and the overall good track record of this company, we are confident that they are qualified to perform satisfactorily on this contract. We also feel that these prices are a good reflection of the current market for this work.

It is expected that the work on this project will be completed during the coming months (sometime between August and October). The contractor is anticipating working approximately 27 days to complete the work on this project.

Funding for this project will be split into three accounts:

Local Street Fund	203-449.001-981.0100	\$399,469.70
Sewer Fund	590-536.001-811.0100	\$ 6,000.00
Water Fund	591-537.004-811.0100	<u>\$ 4,900.00</u>
TOTAL		\$410,369.70

As is required for all of the City's construction projects, Florence Cement has submitted a 5% bid security with their bid which will be forfeited if they do not provide the signed contracts and required bonds and insurance required by the contract following the award by the City Commission.

It is recommended that the 2017 Asphalt Resurfacing Project, Contract #5-17(P), be awarded to Florence Cement Co., of Shelby Twp., MI in the amount of \$410,369.70, to be charged to the accounts shown in the suggested resolution.

SUGGESTED RESOLUTION:

To award the 2017 Asphalt Resurfacing Program, Contract #5-17(P), to Florence Cement Co., of Shelby Twp., MI in the amount of \$410,369.70, to be charged to the following accounts:

Local Street Fund	203-449.001-981.0100	\$399,469.70
Sewer Fund	590-536.001-811.0100	\$ 6,000.00
Water Fund	591-537.004-811.0100	<u>\$ 4,900.00</u>
TOTAL		\$410,369.70

And further; to approve the appropriation and amendment to the 2017-2018 Local Street Fund budgets as follows:

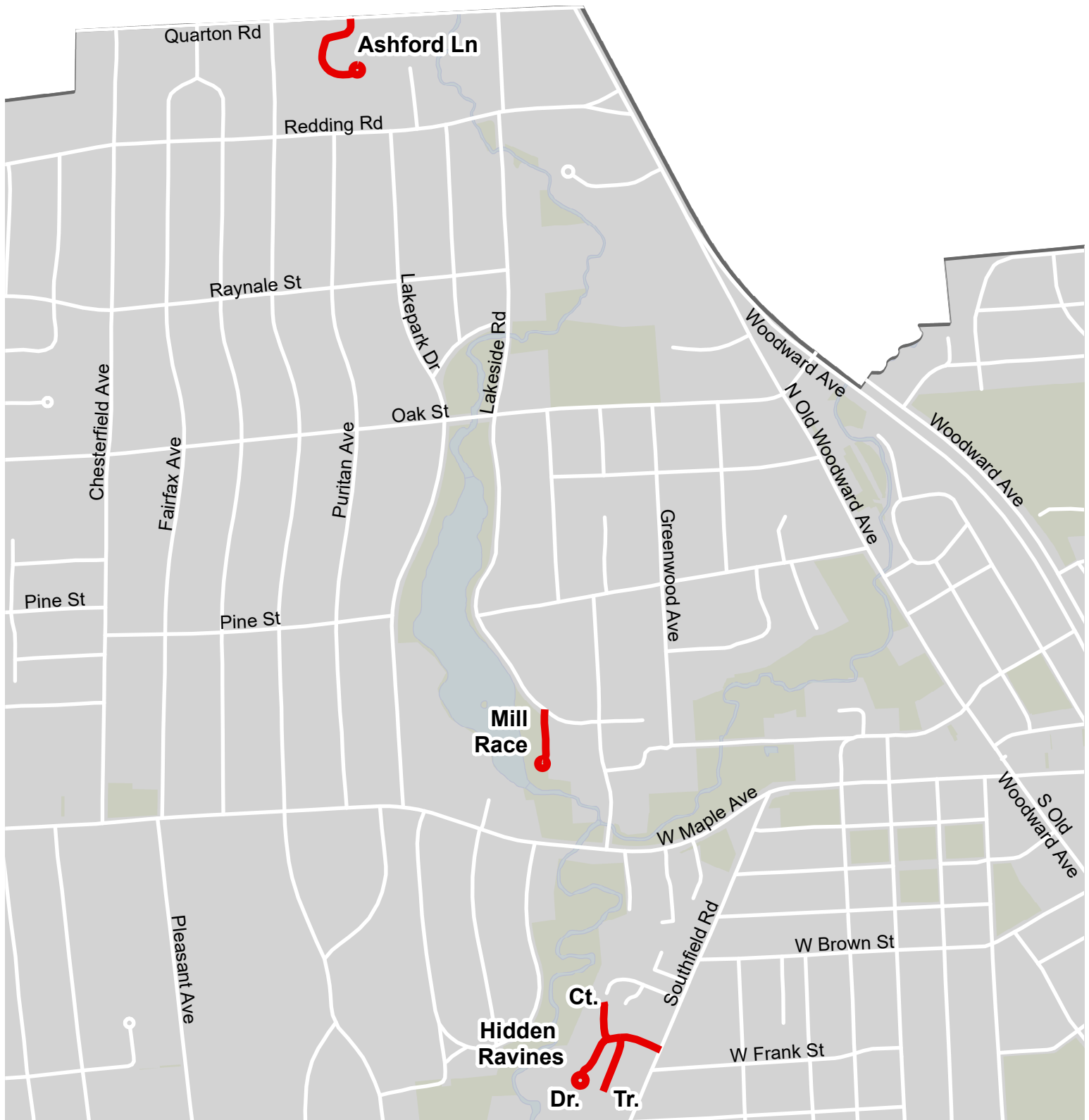
Local Streets Fund

Revenues:

Draw from Fund Balance	
203-000.000-400.0000	\$119,470
Total Revenue	<u>\$119,470</u>


Expenditures:	
EPS-Construction/Public Improvements	
203-449.001-981.0100	\$119,470
Total Expenditures	<u>\$119,470</u>

2017 Asphalt Resurfacing Program



Legend

 2017 Asphalt
Resurfacing
Program

 Miles
0 0.05 0.1 0.2 0.3 0.4



CITY OF BIRMINGHAM

2017 ASPHALT RESURFACING PROJECT

CONTRACT # 5-17 (p)

BID SUMMARY

June 29, 2017 - 2:00 PM

[illegible][illegible]



MEMORANDUM

Engineering Dept.

DATE: July 21, 2017

TO: Joseph Valentine, City Manager

FROM: Paul T. O'Meara, City Engineer

SUBJECT: Fleis & Vandenbrink Consulting Engineers
Contract Renewal

Fleis & Vandenbrink (F&V) is the consulting firm that acts as the City's traffic engineer. They work on a regular basis with the Multi-Modal Transportation Board and to a lesser extent, the Planning Board.

It has come to our attention that the operating agreement between the City and F&V has expired. A contract extension continuing the previous contract terms until January 31, 2018 is attached. F&V was selected as the traffic engineering firm in 2014 after a request for proposals was issued by City staff. It is our intention to issue a new Request for Proposals, and conduct a selection process between now and January 31. Once that process has been completed, a new contract recommendation will be forwarded to the Commission. The following resolution authorizes continuing the services agreement between the City and F&V until January 31, 2018.

SUGGESTED RESOLUTION:

To approve the contact extension with Fleis & Vandenbrink consulting engineers through January 31, 2018 for traffic engineering services. Further, to direct the Mayor and the City Clerk to sign the agreement on behalf of the City.

**AMENDMENT TO THE CONSULTING AGREEMENT BETWEEN
THE CITY OF BIRMINGHAM AND FLEIS & VANDENBRINK**

THIS AMENDMENT to the Consulting Agreement ("Agreement") made this ____ day of _____, 2017 by and between the **CITY OF BIRMINGHAM**, having its principal office at 151 Martin Street, P.O. Box 3001, Birmingham, Michigan, 48012 (hereafter "CITY"), and **FLEIS & VANDENBRINK**, having its principal office at 27725 Stansbury, Suite #150, Farmington Hills, Michigan, 48334 (hereinafter "CONTRACTOR"), provides as follows:

WITNESSETH:

WHEREAS, the CITY, desires to have the Consulting Agreement with Fleis & Vandenbrink extended from September 23, 2016 through January 31, 2018; and,

WHEREAS, the CONTRACTOR, also desires to extend the contract from September 23, 2016 through January 31, 2018.

NOW, THEREFORE, AND IN CONSIDERATION OF THE RESPECTIVE AGREEMENTS AND UNDERTAKINGS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

The Consulting Agreement between the City of Birmingham and Fleis & Vandenbrink shall be extended from September 23, 2016 through January 31, 2018 with all of the remaining terms and conditions set forth in the September 22, 2014 Agreement remaining in full force and effect.

FLEIS & VANDENBRINK

By: Michael J. Labadie

Michael J. Labadie

Its: Group Manager

CITY OF BIRMINGHAM

By: _____

Mark Nickita

Its: Mayor

By: _____

Cherilynn Brown

Its: Clerk

Approved:

Joseph A. Valentine, City Manager
As to Substance

Paul T. O'Meara, City Engineer
As to Substance

Mark Gerber, Director of Finance
As to Financial Obligation

Timothy J. Currier, City Attorney
As to Form



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/20/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Olivier-VanDyk Insurance Agency 2780 44th Street SW Wyoming MI 49519		CONTACT NAME: Jody Johnson PHONE (A/C, No., Ext): 616-454-0800 E-MAIL ADDRESS: jodym@ovdinsurance.com FAX (A/C, No): 616-454-7100	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Citizens Insurance Company	
		INSURER B: Hanover Insurance Companies	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

INSURED FLEI&VA-01Fleis & VandenBrink Engineering, Inc.
F&V Construction Management, Inc.
2960 Lucerne Dr SE
Grand Rapids MI 49546**COVERAGES****CERTIFICATE NUMBER:** 796098816**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Y		Z7I7994041	4/1/2017	4/1/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	Y		ADI-D190606	4/1/2017	4/1/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$0			U7I7994057	4/1/2017	4/1/2018	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	W7I7568068	4/1/2017	4/1/2018	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
B	Professional Liability Contractor's Pollution			LHI9501310	4/1/2017	4/1/2018	Per Claim 4,000,000 Aggregate 5,000,000 Retroactive Date 01/12/1993

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Engineering & Architectural Services

Umbrella Liability does not extend over the Professional Liability policy.

City of Birmingham including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members are included as additional insured for general liability and automobile liability on a primary and non-contributory basis if required in written contract.

30 days notice of cancellation will be given.

CERTIFICATE HOLDERCity of Birmingham
151 Martin Street
PO Box 3001
Birmingham MI 48012**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2010 ACORD CORPORATION. All rights reserved.

PROFESSIONAL FEES & CONSTRUCTION ESTIMATE



As projects are identified and selected for funding, we propose to provide appropriate project scopes and budgets using the following rates:

Classification	Rate
Sr. Project Manager, Sr. Planner, Principal-In-Charge	\$162 - \$197
Project Manager, Sr. Engineer, Sr. Architect, Sr. Geologist	\$130 - \$162
Project Engineer, Professional Surveyor, Sr. Landscape Architect, Architect	\$115 - \$141
Engineer, Engineer EIT, Geologist, Landscape Architect, Sr. Technician	\$86 - \$114
Survey Crew Chief, Sr. CAD Technician	\$86 - \$114
Technician, CAD Technician, Survey Technician	\$69 - \$100
Project Assistant, Field Assistant	\$58 - \$86

Rates are typically adjusted annually in April.

Classification	Rate
Survey & Construction Observation Equipment	
Survey Total Station	\$30 per day
Leica Global Positioning System (GPS)	\$300 per day
Robotic Survey System	\$175 per day
Troxler (Nuclear Density)	\$60 per day
Concrete Testing	\$35 per day
Vehicles	
Trucks (light duty)	\$15 per day + \$0.54 per mile
Construction Observation / Survey	\$20 per day + \$0.54 per mile
Trucks (4x4)	\$25 per day + \$0.62 per mile
Construction Observation / Survey	\$25 per day + \$0.62 per mile
Autos & Vans	\$10 per day + \$0.54 per mile

We will be happy to provide you with budgets on individual tasks as they arise to assist you with your planning processes. We will utilize a mix of younger and more experienced staff to provide you with the lowest effective billing rate to efficiently and professionally accomplish your projects.

**CONSULTING AGREEMENT BETWEEN THE CITY OF BIRMINGHAM
AND FLEIS & VANDENBRINK**

AGREEMENT made this 22 day of Sept., 2014, by and between the **CITY OF BIRMINGHAM**, whose address is 151 Martin Street, Birmingham, Michigan (hereinafter referred to as the "City") and **FLEIS & VANDENBRINK** whose address is 27725 Stansbury, Suite #150, Farmington Hills, MI 48334 (hereinafter referred to as the "Contractor"), to-wit:

1. Contractor shall provide professional consultant services under this Agreement as requested from time to time by the City of Birmingham through its Engineer or his/her designee for the Multi-Modal Transportation Board.

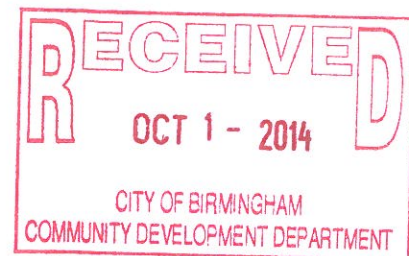
2. Professional services to be rendered under this Agreement and the fee schedule, attached hereto and incorporated by reference as Exhibit A, are mutually agreed upon pursuant to the Request for Qualifications, attached hereto and incorporated by reference as Exhibit B. The City promises and agrees to pay said Contractor for all labor supplied and work performed under this Agreement. Invoices shall be submitted to the City on a monthly basis and shall be paid upon acceptance by the City of the work produced by the Contractor.

3. Written notices regarding this Agreement shall be addressed to the following:

City: City of Birmingham
P.O. Box 3001
Birmingham, Michigan 48012
Attn: City Engineer and City Clerk (one written copy to each)

Contractor: Fleis & Vandenbrink
27725 Stansbury, Suite #150
Farmington Hills, MI 48334
Attn: Mr. Michael Labadie

4. This Agreement shall have a term of two (2) years from the date stated above. The City and the Contractor shall each have the right to unilaterally terminate this Agreement on thirty (30) days written notice. In the event of termination, the Contractor shall receive compensation for services to the date the termination takes effect and the City shall be entitled to retain and use the results to the date the termination takes effect and the City shall be entitled to retain and use the results of all information, maps, and recommendations prepared by the Contractor through such date. The parties agree that this agreement can be renewed for one (1) year upon the written agreement of the parties.



5. The Contractor and the City agree that the Contractor is acting as an independent contractor with respect to the Contractor's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms,

conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and appointed Board members against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, or appointed Board members, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the act or omission of its elected or appointed officials, employees, or appointed Board members.

12. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required by this paragraph. All certificates of insurance shall be with insurance carriers licensed and admitted to do business in the State of Michigan. All coverages shall be with insurance carriers acceptable to the City of Birmingham. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

- A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

- C. Motor Vehicle Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$ 1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- D. Additional Insured: The Commercial General Liability and Motor Vehicle Liability, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members. This coverage shall be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance required from Contractor under this Section.
- E. Professional Liability Insurance: If Professional Liability Insurance is available, Professional Liability Insurance with limits of not less than \$1,000,000 per claim if Consultant will provide service that are customarily subject to this type of coverage.
- F. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance, Professional Liability Insurance and Motor Vehicle Liability Insurance as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Director of Finance, City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012.
- G. Proof of Insurance Coverage: Contractor shall provide the City at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City, as listed below.
- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
 - 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
 - 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;

4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;

- H. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.

13. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

14. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

15. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

16. The City shall be the owner of all drawings, reports, specifications and other documents prepared by the Contractor. Any modifications made to these documents by the City shall be clearly marked as such on the modified document. Any modifications made by the City without the prior written consent of the Contractor shall be at the City's sole risk and responsibility.

FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

CITY OF BIRMINGHAM

By: _____

Scott D. Moore, Mayor

By: _____

Laura M. Pierce
Laura Pierce, City Clerk

FLEIS & VANDENBRINK

By: _____

Its: _____

Approved:

Joseph A. Valentine, City Manager
(Approved as to substance)

Paul T. O'Meara, City Engineer
(Approved as to substance)

Timothy J. Currier, City Attorney
(Approved as to form)

B. Sharon Ostin, Director of Finance
(Approved as to Financial Obligation)

EXHIBIT A
PROFESSIONAL FEES & CONSTRUCTION ESTIMATE

<u>CLASSIFICATION</u>	<u>RATE</u>
Sr. Project Manager, Sr. Planner, Principal-in-Charge	\$148 - \$183
Project Manager, Sr. Engineer, Sr. Architect, Sr. Geologist	\$104 - \$148
Project Engineer, Professional Surveyor, Sr. Landscape Architect, Architect	\$104 - \$130
Engineer, Engineer EIT, Geologist, Landscape Architect, Sr. Technician	\$77 - \$104
Survey Crew Chief, Sr. CAD Technician	\$91 - \$104
Technician, CAD Technician, Survey Technician	\$77 - \$92
Project Assistant, Field Assistant	\$51 - \$77

Survey & Construction Observation Equipment

<u>CLASSIFICATION</u>	<u>RATE</u>
Survey Total Station	\$30 per day
Leica Global Positioning System (GPS)	\$300 per day
Robotic Survey System	\$175 per day
Troxier (Nuclear Density)	\$60 per day
Concrete Testing	\$35 per day

Vehicles

<u>CLASSIFICATION</u>	<u>RATE</u>
Trucks (light duty)	\$15 per day + \$0.555 per mile
Construction Observation/Survey	\$20 per day + \$0.555 per mile
Trucks (4x4) Construction Observation/Survey	\$25 per day + \$.063 per mile
Autos & Vans	\$10 per day + \$0.555 per mile

EXHIBIT B



CERTIFICATE OF LIABILITY INSURANCE

FLEIS-1

OP ID: SS

DATE (MM/DD/YYYY)

10/13/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Olivier-VanDyk Agency, Inc 2780 44th Street SW Wyoming, MI 49519 Mike DeWindt	Phone: 616-454-0800 Fax: FAX 454-7100	CONTACT NAME: Jody Johnson	
		PHONE (A/C, No, Ext): 616-454-0800 FAX (A/C, No): 616-454-7100 E-MAIL ADDRESS: jodym@ovdinsurance.com	
INSURED Fleis &VandenBrink Engineering Inc, F&V Construction Mgmt Inc Gould Engineering Inc 2960 Lucerne Dr SE Grand Rapids, MI 49546	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Citizens Insurance Company		31534
	INSURER B : Massachusetts Bay Ins Co.		31534
	INSURER C : Hanover Insurance Company		22292
	INSURER D :		
	INSURER E :		
		INSURER F :	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X		Z7I7994041	04/01/2014	04/01/2015	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X		AD17567040	04/01/2014	04/01/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ -0-	X		U7I7994057	04/01/2014	04/01/2015	EACH OCCURRENCE \$ 10,000,000
							AGGREGATE \$ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	W7I7568068	04/01/2014	04/01/2015	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
							E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liab. Contr. Pollution			LHI-9501310 RETROACTIVE DATE 01/12/93	04/01/2014	04/01/2015	Per Claim 3,000,000
							Aggregate 4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Engineering & Architectural Services
Umbrella Liability does not extend over the Professional Liability policy
The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commission and/or authorities and board members, including employees and volunteers thereof are included as

CERTIFICATE HOLDER**CANCELLATION**

BIRM001

City of Birmingham
Attn: Ms. Nancy Weiss
151 Martin St
PO Box 3001
Birmingham, MI 48012-3001

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

NOTEPAD:

HOLDER CODE **BIRM001**
INSURED'S NAME **Fleis &VandenBrink Engineering**

FLEIS-1
OP ID: SS

PAGE **2**
DATE **10/13/14**

additional insureds if required in written contract. This coverage is
primary and non-contributory for the benefit of the additional insureds.
30 days notice of cancellation will be given.



MEMORANDUM

Engineering Dept.
Planning Dept.

DATE: July 19, 2017

TO: Joseph Valentine, City Manager

FROM: Paul O'Meara, City Engineer
Jana Ecker, Planning Director

SUBJECT: 856 N. Old Woodward Ave.
DTE Energy Line Relocation
Update

The above referenced vacant property, directly south of the southeast corner of Oak St., has been vacant for nearly 30 years. The former building, destroyed by fire occupied only a portion of the site. The current owner, known as FLS Properties #5, LLC, has obtained final site plan approval from the Planning Board for the construction of four-story mixed-use building, including two levels of underground parking. Final construction drawings are currently under review.

OVERHEAD ELECTRIC WIRING CONFLICT

Overhead electric wiring feeding many other properties to the north and south currently obstruct the full use of the property, and must be relocated if it is to be redeveloped to its full potential. The applicant has worked with DTE Energy Co., the two immediate property owners to the north, and City staff to finalize a relocation plan that accomplishes the goal of relocating the overhead wiring closer to the east property line, as well as entirely away from the north property line. In order to relocate the wires in such a manner that construction can proceed, DTE Energy has developed a relocation plan that moves a section of the wiring south of the subject property from its current location further east. Since the relocation involves City property, approval must be obtained from the City Commission. Attached for your reference are the following:

1. Color enhanced route relocation plan prepared by DTE Energy Co.
2. Simplified version of relocation route, imposed on aerial photography.
3. Suggested easement and legal description of route as proposed by DTE Energy Co.
4. Original legal description and ownership records for subject City property.
5. Tree survey of suggested relocation route.
6. Grant of easement to DTE Energy for relocation of overhead wiring on adjacent property known as 35975 Woodward Ave.
7. Written approval for relocation route of overhead wiring from owner of adjacent property known as 900 N. Old Woodward Ave.
8. Most recent site plan for proposed building at street level.
9. Current aerial photography of subject area.

Referring to attachment #1, the following describes the issues relevant in this case.

- A. The existing overhead wires obstruct both the north and east ends of the property. The wires are considered primary in the DTE Energy system, meaning that they cannot just be ended and re-routed elsewhere, rather, they need to continue north and south of this area on some path to ensure proper redundancy both to this new building, and all of the other existing buildings in the immediate corridor.
- B. The existing pole labeled A1 on the drawing, while not in direct conflict with the new building, is situated such that the entire relocation south of the property becomes warranted. Specifically, the wires south of the building cannot remain in place because if a new alignment started north of pole A1, a guy wire would have to extend further north to properly support the remaining wires and poles further south. With the building proposed immediately north of pole A1, there is no room available to create tension for the wires and poles to the south, if they were to remain.
- C. Once the determination was made that a relocation is required, DTE Energy identified three poles that should be relocated, given their current close proximity to the Rouge River (the bases of the poles are situated immediately adjacent to the west bank of the river). Extending the relocation south to the north edge of Parking Lot #6 (at pole #4), the remaining lines further south can then be tensioned with a guy wire without being potentially undermined from the adjacent river bank.
- D. Relocating the lines further east will impact existing trees on a City owned floodplain/natural area. Given its low topography and classification as a floodplain, approving an easement in this area does not represent an impediment to future development of the property. The main focus, then, would be damage to the existing natural environment, particularly in the form of mature trees. In order to avoid such damage, DTE Energy was asked to consider all possible options that could avoid this relocation. The following was considered:
 - Relocation from Parking Lot #6 property directly out to the N. Old Woodward Ave. right-of-way could be considered. Moving the wiring to an important, very visible right-of-way would require an underground installation. Further, given other existing underground utilities in the area, DTE Energy indicated that the wires would have to be moved to the west side of the right-of-way, while feeding each of the existing buildings being fed on the east side via underground connections. While such an effort would improve the overall aesthetics of the area, it would be prohibitively expensive, being roughly estimated at \$2 million (the proposal now being suggested is estimated at about \$220,000, which will be a 100% developer expense).
 - Attempting to locate a source for power relocation to the west of Old Woodward Ave. through existing backyard feeds does not address the issue of feeding the existing buildings to the south.
 - Likewise, attempting to locate a source for power relocation to the east of Woodward Ave. power lines (currently in backyards) again does not address the issue of feeding existing buildings to the south.

Referring to Attachment #3, the proposed easement language has been reviewed and approved both by this office and the City Attorney's office. Of note is that the grant of easement is about

116 ft. long. The remaining relocation would fall within existing Brookside Ave. right-of-way, or river right-of-way, as originally platted (Brookside Ave., while platted, was never built in this area given its floodplain status).

Referring to attachment #4, a record of how these properties were acquired by the City, they can generally be classified into two groups. The northerly floodplain properties were quit claim deeded by their former owners. It is not known what the purpose of the transfers were, but they likely represented a gift to the City due to their status as an undevelopable floodplain. The southerly property acquisitions were generally bought and paid for by the City. While these properties are also prone to flooding, and are encumbered by large sewers, the City's likely interest in ownership was related to providing municipal parking.

Referring to attachment #5, DTE Energy has mapped out the existing location and size of all trees 2" diameter and larger along the proposed route. The original route selected by DTE Energy focused on a natural linear clearing that exists in the area. However, selecting this path resulted in removal of several substantial trees. City staff asked that DTE Energy consider moving the alignment approximately 10 feet west to the alignment now shown, which allowed several larger trees to remain. DTE Energy agreed with this change, and have modified the easement form accordingly.

Attachment #6 is an easement that was provided by the owner of 35975 Woodward Ave. (southwest corner of Oak St.). The relocation will involve relocating overhead wires along the rear property line of this property, should the City Commission approve the alignment further south. The owner of this property (known as August, LLC), had decided to cooperate with the 856 N. Old Woodward Ave. developer to allow their development to move forward.

Attachment #7 is an email from the owner of 900 N. Old Woodward Ave. (Douglas Cleaners). As owner of Douglas Cleaners, David Underdown's property owns the narrow 10 foot strip that extends out to Woodward Ave. (it is currently undeveloped). Overhead wires currently extend over this narrow strip in a similar location, therefore, DTE Energy believes they have the right to slightly modify the location of the wiring without a new written easement from Mr. Underdown. The relocation represents an improvement for the Douglas Cleaners property, as the current wiring extending over the existing building will be removed.

ANALYSIS OF VISUAL IMPACT

Referring again to Attachment #1, the proposed electrical work involves a relocation of overhead wiring from pole 9 (located on the northeast corner of Old Woodward Ave. & Oak St., adjacent to Mobil/Tim Horton's), to pole 4, located on City property directly behind 720 N. Old Woodward Ave. The following considers the impacts south and north of pole A1, at the south property line of the subject property.

1. South of Pole A1

While considering this proposal, City staff and DTE Energy staff have met on the subject City property. The proposed alignment is currently staked as well. The owner of 740 Brookside Dr., the single family home closest to this area, has asked questions about what is proposed. He

has raised questions relative to the visual impact of this proposal. Detailed responses from the City and DTE Energy are attached to this memo.

2. North of Pole A1

Through the Central Business District, electric services to the buildings are generally underground, or located at the rear of buildings in alleys and backyards. The current wiring supported by poles A5, A6, and 9 represent a departure from that norm, with overhead wiring still present at the north end of the Old Woodward Ave. corridor. The proposed relocation would move the overhead wiring between Douglas Cleaners and the new building at 856 N. Old Woodward Ave. on the west side, and the new proposed two-story building planned at 35975 Woodward Ave. on the east side. While overhead wiring would still extend across Oak St. as it currently does, it would be in a less prominent location, and represents an improvement from the current condition. Once electric service is removed from Pole A6, the City will work with telecommunication utilities also located on this pole, with the goal being that Pole A6 can be removed as well.

SUMMARY

After much analysis and discussion involving all involved parties, it appears that the only feasible solution to removing the encumbrance from 856 N. Old Woodward Ave. will involve the relocation of overhead electric utilities on to adjacent City property currently being maintained as a natural floodplain buffer between commercial and residential areas. The proposed design moves the poles in an area of relatively low visibility, remains economically feasible, and allows redevelopment of this property that has remained vacant for nearly thirty years. A suggested resolution follows.

On July 10, 2017, the City Commission reviewed the proposed relocation plan for the overhead power lines, along with the survey of trees that would be removed if the relocation was approved. DTE representatives were present to answer questions regarding the service requirements. After much discussion, the City Commission postponed the matter to July 24, 2017 to allow for a site visit by the City Commission. Specifically, the City Commission requested that DTE update the tree survey by adding the river and the adjacent home, and to go out and mark the trees in the field that were proposed for removal should the relocation be approved. DTE representatives also agreed to attend the on site meeting of the City Commission on July 24, 2017 to respond to questions. Please find attached the revised tree survey updated as requested by the City Commission.

SUGGESTED RESOLUTION:

To authorize the Mayor to sign DTE Electric Company Overhead Easement No. 47698093-47698095, located on Lot 91 of Assessor's Plat #29, located in the northwest ¼ corner of Section 25, City of Birmingham.

OR

To deny the request to authorize the DTE Electric Company Overhead Easement No. 47698093-47698095, located on Lot 91 of Assessor's Plat #29, located in the northwest ¼ corner of Section 25, City of Birmingham.

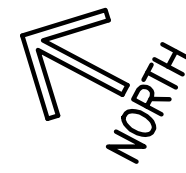
NOTES:

DRAWING IS SET UP IN THE MICHIGAN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, INTERNATIONAL FOOT.

THE HORIZONTAL DATUM IS NAD 83 (2011).

THE PROPERTY LINES INDICATED HEREON ARE FOR REFERENCE ONLY. NO BOUNDARY SURVEY WORK HAS BEEN PERFORMED AT THIS DATE.

REFERENCE DRAWINGS:
5SE BIR-001; REV. B: MAP OF OVERHEAD ELECTRIC LINE RELOCATION



WOODWARD AVENUE (M-1) 200 FT WIDE

TAX PARCEL
19-25-179-001

OAK STREET 60 FT WIDE

EXISTING BUILDING
900 N. OLD WOODWARD

TAX PARCEL
19-25-179-002

OLD WOODWARD VARIABLE WIDTH

TAX PARCEL
19-25-179-003

TAX PARCEL
19-25-328-005

ASSESSOR'S PLAT NO. 29
LIBER 6, PAGE 45

ASSESSOR'S PLAT NO. 29
LIBER 6, PAGE 45

CITY OF BIRMINGHAM PROPERTY
TAX PARCEL
19-25-328-037

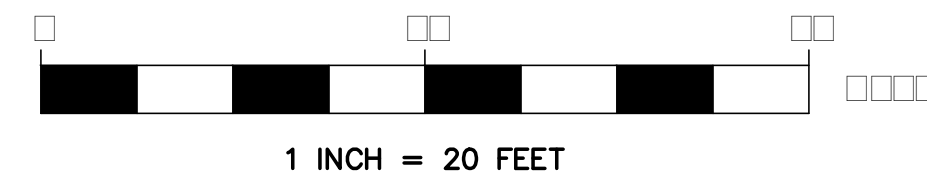
CENTERLINE OF PROPOSED
POLE LINE

BUILDING(S)

BUILDING(S)

ISLAND VIEW DRIVE

BROOKSIDE AVENUE



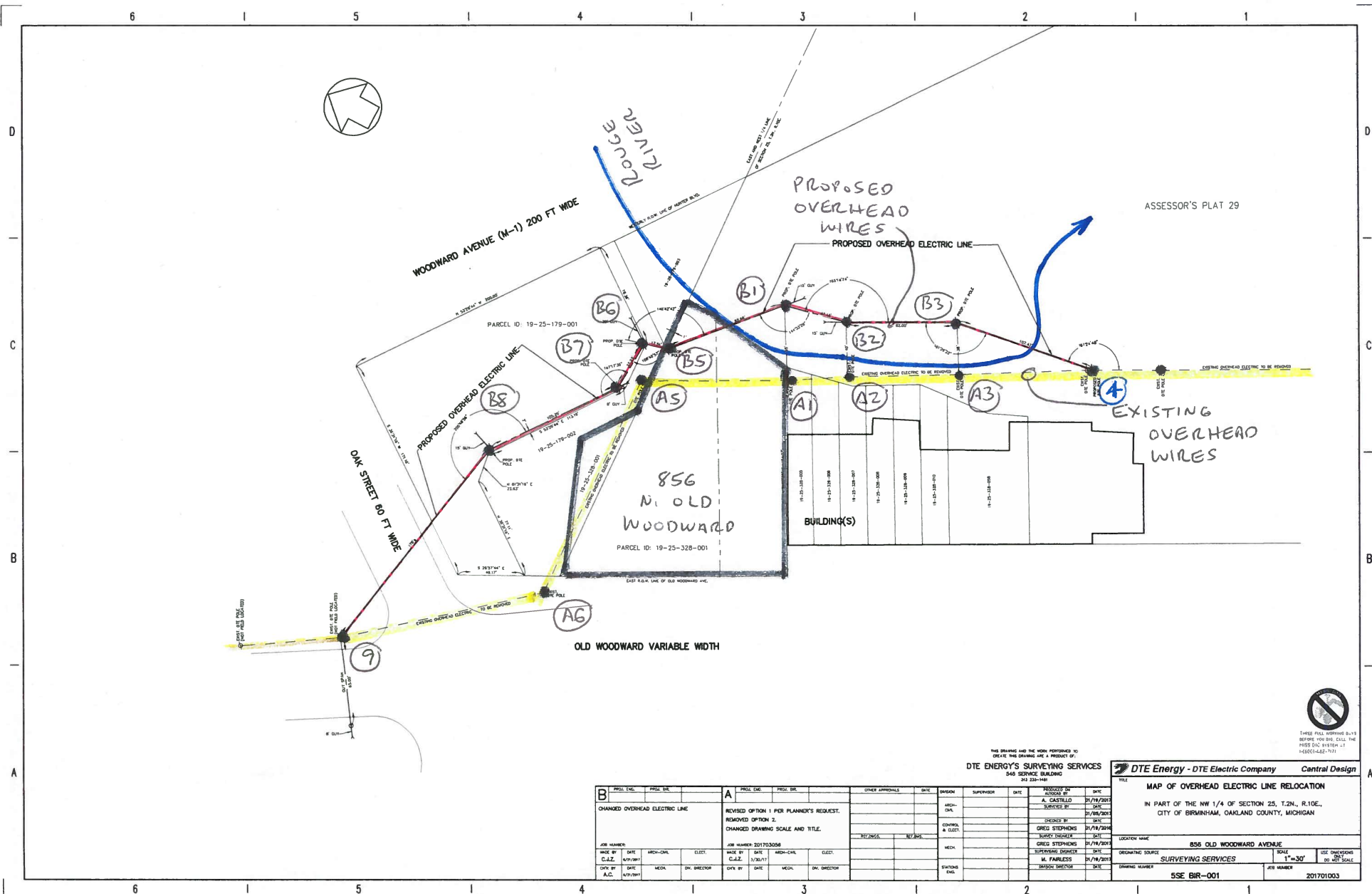
DTE ENERGY'S SURVEYING SERVICES
545 SERVICE BUILDING
(313) 235-1461

DTE Energy - DTE Electric Company Central Design

C PROJ. ENG. PROJ. DIR. REVISED THE TREES TO BE REMOVED JOB NUMBER: 201707138 MADE BY: C.J.Z. DATE: 7/20/2017 ARCH-CIVIL ELECT. CHK BY: DATE MECH. DIV. DIRECTOR				B PROJ. ENG. PROJ. DIR. ADDED BUILDING (900 N. OLD WOODWARD) AND HOUSE, END OF BROOKSIDE AVENUE PAVEMENT, ADDED BAR SCALE JOB NUMBER: 201707138 MADE BY: C.J.Z. DATE: 7/17/2017 ARCH-CIVIL ELECT. CHK BY: G.D.S. DATE: 7/17/2017 MECH. DIV. DIRECTOR				A PROJ. ENG. PROJ. DIR. CHANGED OVERHEAD ELECTRIC LINE JOB NUMBER: MADE BY: C.J.Z. DATE: 6/21/2017 ARCH-CIVIL ELECT. CHK BY: A.C. DATE: 6/21/2017 MECH. DIV. DIRECTOR				OTHER APPROVALS DATE ARCH-CIVIL CONTROL & ELECT. MECH. STATIONS ENG.		DIVISION SUPERVISOR DATE ARCH-CIVIL CONTROL & ELECT. MECH. STATIONS ENG.		PRODUCED ON AUTOCAD BY: C. ZBOCH DATE: 5/24/2017 SURVEYED BY: S. WLAZLIK, K. BALL DATE: 5/15/2017 CHECKED BY: S. WLAZLIK, K. BALL DATE: 5/24/2017 SURVEY ENGINEER: A. CASTILLO DATE: 5/24/2017 SUPERVISING ENGINEER: M. FAIRLESS DIVISION DIRECTOR DATE:		TITLE TREE SURVEY IN PART OF THE WEST 1/2 OF SECTION 25 T. 2 N., R. 10 E., CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN SHEET 1 OF 1 LOCATION NAME: CITY OF BIRMINGHAM ORIGINATING SOURCE: SURVEYING SERVICES SCALE: 1" = 20' USE DIMENSIONS ONLY DO NOT SCALE DRAWING NUMBER: 5SE BIR-002 JOB NUMBER: 201705086			
---	--	--	--	---	--	--	--	--	--	--	--	--	--	--	--	---	--	---	--	--	--



THREE FULL WORKING DAYS
BEFORE YOU DIG, CALL THE
MISS DIG SYSTEM AT
1-(800)-482-7171



LEGEND

○

EXISTING DECO POLE

●

PROPOSED POLE

○

FOREIGN POLE

⌵

EXISTING ANCHOR

⌵

PROPOSED ANCHOR

☁

TREE

—

120/240 V LINE

—

4.8 KV LINE

—

13.2 KV LINE

—

40 KV LINE



811

Know what's below.
Call before you dig

DTE Energy

DTE Electric - Distribution Engineering and Planning

Service Planner	Work Order Description					
Dababneh, Nurah I	OVERHEAD CONSTRUCTION					
Phone	Work Order #	GIS-DSN	COH	CUL	CUG	PLC
248.427.2946	45709883					
Supervisor	Circuit #1	Circuit #2		PH	SCMAT	
Carl L Ford	BIHAM2719					
Service Center	Worksite City	Worksite Twp		County		
PON		BLOOMFIELD		Oakland		
Phone	JU Work to be Performed				JU	RSD
248.427.2937	JU Company		Contact	Email	Phone	
Planning Engineer	JU Company		Contact	Email	Phone	
Phone						
CUE Number	Ver	Plot Date	Scale	Town	Range	Section Qtr
697974	1	3/29/2017		02N	10E	25

DTE Electric Company Overhead Easement (Right of Way) No. 47698093-47698095

On _____, 2017, for the consideration of system betterment, Grantor grants to Grantee a permanent, non-exclusive overhead easement ("Right of Way") in, on, and across that part of Grantor's Land to be referred to herein as the "Right of Way Area".

"Grantor" is: CITY OF BIRMINGHAM, A MICHIGAN MUNICIPAL CORPORATION, WHOSE ADDRESS IS PO BOX 3001, BIRMINGHAM, MI 48012

"Grantee" is: DTE Electric Company, a Michigan corporation, One Energy Plaza Drive, Detroit, Michigan 48226

"Grantor's Land" is in SW 1/4, SEC 25, T2N, R10E, CITY OF BIRMINGHAM, County of OAKLAND, and State of Michigan, and is described as follows:

T2N, R10E, SEC 25 ASSESSOR'S PLAT NO 29 LOTS 89 TO 92 INCL, ALSO ALL THAT PART OF VAC DRIVEWAY ADJ TO SAME 2-4-03 CORR

Tax Identification Number(s): 19-25-328-037

The "Right of Way Area" is a ten foot (10') wide easement on part of Grantor's Land. The centerline of the Right of Way Area shall be established in the as-built location of the centerline of Grantee's facilities, and shall be installed on Grantor's Land in the approximate location described as follows:

THE LEGAL DESCRIPTION OR EASEMENT DRAWING IS MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Tax Identification Number(s): 19-25-328-037

1. **Purpose:** The purpose of this Right of Way is to construct, reconstruct, modify, add to, repair, replace, inspect, operate and maintain overhead utility facilities which may consist of poles, guys, anchors, wires, transformers and accessories.
2. **Access:** Grantee has the right of pedestrian and vehicular ingress and egress to and from the Right of Way Area over and across Grantor's Land.
3. **Buildings or other Permanent Structures:** No buildings or other permanent structures or improvements may be constructed or placed in the Right of Way Area without Grantee's prior, written consent. Grantor agrees, at its own expense, to remove any improvement that interferes with the safe and reliable operation, maintenance and repair of Grantee's facilities upon the written demand of Grantee. If Grantor fails to comply with such demand, Grantor agrees that Grantee may remove any such improvement and bill Grantor for the cost thereof, which cost Grantor shall pay within thirty (30) days after demand therefor.
4. **Excavation:** Pursuant to 2013 Public Act 174, MISS DIG (1-800-482-7171 or 811 in some areas) must be called before any excavation in the Right of Way Area may proceed.
5. **Trees, Bushes, Branches, Roots, Structures and Fences:** Grantee may trim, cut down, remove or otherwise control any trees, bushes, branches and roots growing or that could grow or fall in the Right of Way Area and remove any structures, improvements, fences, buildings or landscaping in the Right of Way Area that Grantee believes could interfere with the safe and reliable construction, operation, maintenance and repair of Grantee's facilities. Grantee shall not be responsible for any damage to, or removal of, landscaping, trees, plant life, structures, improvements and/or fences located in the Right of Way Area.

6. **Restoration:** If Grantee's agents, employees, contractors, subcontractors, vehicles or equipment damage Grantor's Land while entering Grantor's Land for the purposes stated in this Right of Way, then Grantee will restore Grantor's Land as nearly as is reasonably practicable to the condition in which it existed prior to such damage. Restoration with respect to paved surfaces shall consist of asphalt cold patching of the damaged portion of any asphalted surfaces when the weather conditions suggest such use and the cement patching of the damaged portion of any cemented surfaces. Grantee shall have no liability, however, for the restoration or cost of any improvements located within the Right of Way Area, including, but not limited to, parking islands, gutters, fences or landscaping such as trees, bushes, or flowers (but not a simple lawn which, if damaged, will be patched and re-seeded by Grantee) that are damaged by Grantee in the course of constructing, reconstructing, modifying, adding to, repairing, replacing, operating or maintaining its facilities as described in paragraph 1 above.

7. **Successors:** This Right of Way runs with the land and binds and benefits Grantor's and Grantee's successors and assigns.

8. **Exemptions:** This Right of Way is exempt from transfer tax pursuant to MCL 207.505(a) and MCL 207.526(a).

9. **Governing Law:** This Right of Way shall be governed by the laws of the State of Michigan.

Grantor(s): City of Birmingham

By: _____

Name: _____

Title _____

Acknowledged before me in _____ County, Michigan, on _____, 2017,
by _____, Its: _____ for City of Birmingham, a Michigan municipal
corporation.

Notary's

Stamp _____

Acting in _____ County, Michigan

Notary's

Signature _____

Drafted by and when recorded, return to: Cassandra Dansby, DTE Electric Company, NW Planning & Design, 37849 Interchange Dr.,
Farmington Hills, MI 48335

Exhibit A

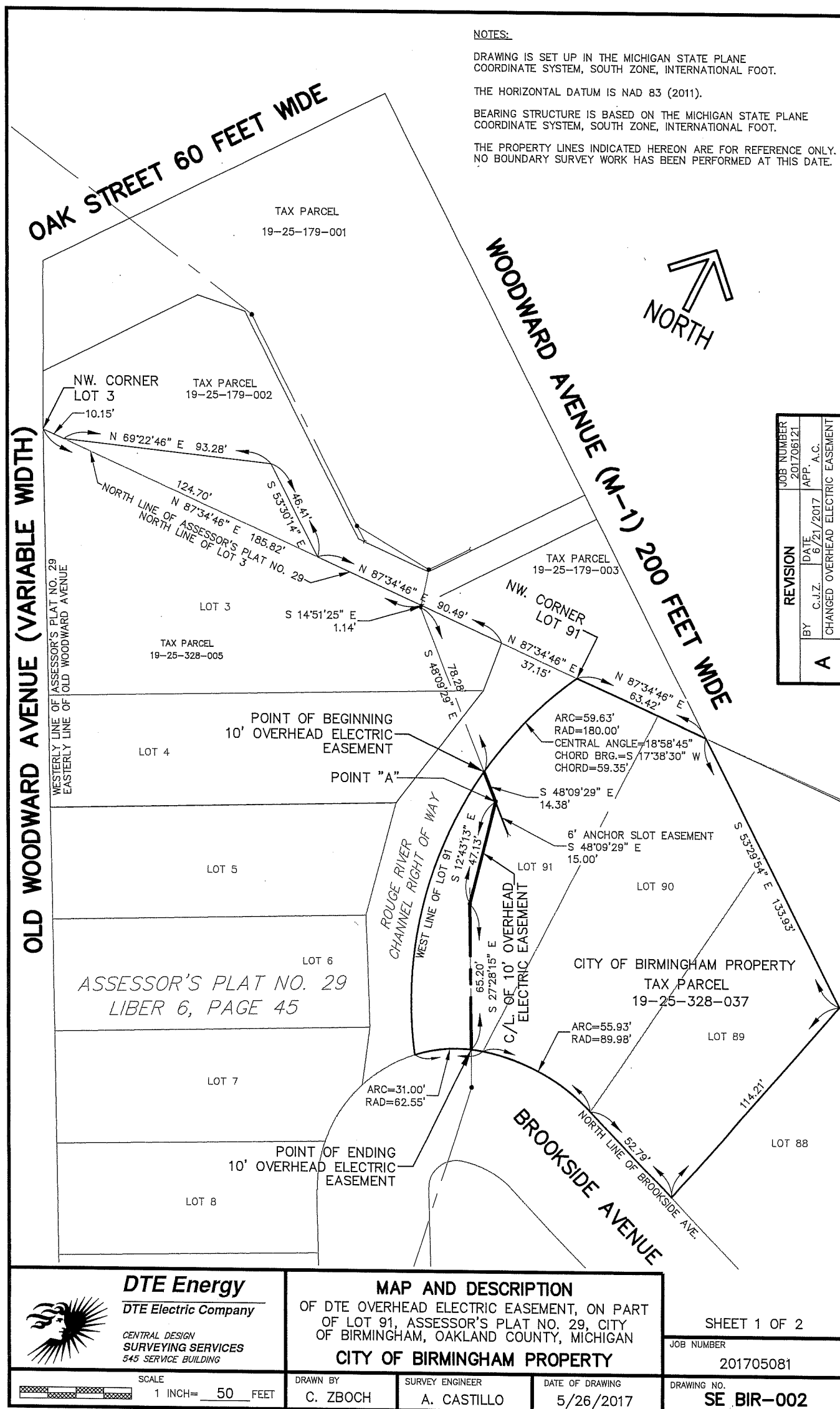


Exhibit A

10' OVERHEAD ELECTRIC EASEMENT

A 10 foot wide Overhead Electric Easement in part of the Southwest 1/4 of Section 25, Town 2 North, Range 10 East, City of Birmingham, Oakland County, Michigan, and being part of Lot 91, ASSESSOR'S PLAT NO. 29, as recorded in Liber 6 of Plats, Page 45, Oakland County Records, described by its centerline as: Commencing at the Northwest corner of Lot 3 of said Assessor's Plat No. 29, thence North 87°34'46" East, 185.82 feet along the North Line of said Lot 3 also being the North line of said Assessor's Plat No. 29; thence South 14°51'25" East, 1.14 feet; thence South 48°09'29" East, 78.28 feet to a point on the West line of said Lot 91 and the **POINT OF BEGINNING**; said point being distant along the Arc of a curve to the left 59.63 feet, having a Radius of 180.00 feet, a Central Angle of 18°58'45", and a Chord Bearing and Distance of South 17°38'30" West, 59.35 feet from the Northwest corner of said Lot 91; thence from said Point of Beginning, South 48°09'29" East, 14.38 feet to a point hereafter known as Point "A"; thence South 12°43'13" East, 47.13 feet; thence South 27°28'15" East, 65.20 feet to a Point on the North line of Brookside Avenue and the **POINT OF ENDING**.

Together with a 6 foot Anchor Slot Easement described by its centerline as: Beginning at said Point "A"; thence South 48°09'29" East, 15.00 feet to the Point of Ending.

REVISION			JOB NUMBER
A	BY	DATE	201706121
	C.J.Z.	6/21/2017	APP. A.C.
	CHANGED OVERHEAD ELECTRIC EASEMENT		



DTE Energy
DTE Electric Company
CENTRAL DESIGN
SURVEYING SERVICES
545 SERVICE BUILDING

MAP AND DESCRIPTION
OF DTE OVERHEAD ELECTRIC EASEMENT, ON PART
OF LOT 91, ASSESSOR'S PLAT NO. 29, CITY
OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN
CITY OF BIRMINGHAM PROPERTY

SHEET 2 OF 2

JOB NUMBER
201705081

SCALE
1 INCH= N.A. FEET

DRAWN BY
C. ZBOCH

SURVEY ENGINEER
A. CASTILLO

DATE OF DRAWING
5/26/2017

DRAWING NO.
SE BIR-002

CITY PROPERTY INVENTORY

Quarter Section SW 25 Assessor's No. 196-2 Site No. 51
106-20
106-18A

Name Parking Lot #6 Date of Name _____

Street Location E. Woodward- N. of Harmon

Legal Description:

City of Birmingham
106-2
SD-BTS-1

"Assessor's Plat No. 29"

Lots 2, 20, 21, 92 and driveway

Lot 2

Island View Drive, Channel R.O.W. of line 20 ft. N of S line
Lot #9

E 6 ft. of S 20 ft. Lot 9, E 6 ft. of N 20 ft. Lot 10,
E 27 ft. of S 30 ft. Lot 10, Lots 11-17, and N 69.42 ft.
of Lot 19, Lots 18 and 19 S of line 69.42 ft. S of S line
Lot 17, E 38 ft. of Lot 22

Vacated Park Street between above limits

Area 1.8 A

Area 0.10 A (p1)

Purpose for Acquisition parking lot

Reversion Public Purposes - 10 yr. from 3-10-42

Deed Restrictions _____

Dedication _____

Present Use Buffer Parking Lot #6

Proposed Development _____

Source of Funds for Acquisition General

Miscellaneous Information:

Rev. 2-8-73

OWNERSHIP DATA SUMMARY

Site No. 51

Parcel	Legal File	Lot	Conveyance	Date	Recorded		Consideration	Authority	Remarks
					Liber	Page			
112	4199	2 & 92	Q-C	3-10-42	1397	578		R94-1942	
	A-324	#9 ROW	(slo) Q-C	10-21-60	6	45			Parcel A
	A-324	#11 ROW	Q-C	1-3-61	6	45	2,800		Parcel C
	A-324	Park ROW	Q-C	1-3-61	6	45			
	A-324	Part of 11-17 18 & 19	W-D	1-3-61	6	45	44,500		F, G, H
	A-324	Part of 9 & 10	W-D	10-21-60	6	45	1,700		D
	A-324	Part of 22	W-D	10-19-60	6	45			K
	A-324	Channel ROW Part of 10	Condemn. Verdict	10-5-60	6	45	5,445		E
	A-324	Channel ROW 20 & 21	Condemn. Verdict	10-5-60	6	45	33,000		B & J

CITY PROPERTY INVENTORY

Quarter Section SW 25 Assessor's No. 106-89 Site No. 52

Name _____ Date of Name _____

Street Location Brookside & Island View

Legal Description:

CITY OF BIRMINGHAM

106-89

SD-BTS-1

"ASSESSOR'S PLAT NO 29"

LOTS 89 TO ⁹¹~~92~~ INCLUSIVE

Area 89-91 0.59 (pl)

Purpose for Acquisition Park

Reversion Public Purposes - 10 yrs. from 3-10-42

Deed Restrictions _____

Dedication _____

Present Use Buffer

Proposed Development _____

Source of Funds for Acquisition General

Miscellaneous Information:

OWNERSHIP DATA SUMMARY

Site No. 52

Parcel	Legal File	Lot	Conveyance	Date	Recorded		Consideration	Authority	Remarks
					Liber	Page			
112	4199	89-92	Q-C (slo)	3-10-42	1397	578		R94-1942	

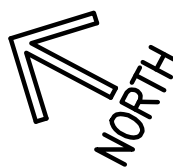
NOTES:

DRAWING IS SET UP IN THE MICHIGAN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, INTERNATIONAL FOOT.

THE HORIZONTAL DATUM IS NAD 83 (2011).

THE PROPERTY LINES INDICATED HEREON ARE FOR REFERENCE ONLY. NO BOUNDARY SURVEY WORK HAS BEEN PERFORMED AT THIS DATE.

REFERENCE DRAWINGS:
5SE BIR-001; REV. B: MAP OF OVERHEAD ELECTRIC LINE RELOCATION



Additional removal
Deleted removal



THIS DRAWING AND THE WORK PERFORMED TO
CREATE THIS DRAWING ARE A PRODUCT OF:

DTE ENERGY'S SURVEYING SERVICES
545 SERVICE BUILDING
(313) 235-1461

DTE Energy - DTE Electric Company Central Design

PROJ. ENG.		PROJ. DIR.		OTHER APPROVALS		DATE	DIVISION	SUPERVISOR	DATE	PRODUCED ON AUTOCAD BY	DATE
A							ARCH-CIVIL			C. ZBOCH	5/24/2017
							CONTROL & ELECT.			S. WLAZLIK, K. BALL	5/15/2017
							MECH.			S. WLAZLIK, K. BALL	5/24/2017
							STATIONS ENG.			A. CASTILLO	5/24/2017
										M. FAIRLESS	
JOB NUMBER:		MADE BY		DATE		ARCH-CIVIL		ELECT.		SUPERVISING ENGINEER	
		C.J.Z.		6/21/2017						DATE	
CHK BY		DATE		MECH.		DIV. DIRECTOR				DIVISION DIRECTOR	
A.C.		6/21/2017								DATE	

TITLE			
TREE SURVEY			
IN PART OF THE WEST 1/2 OF SECTION 25			
T. 2 N., R. 10 E., CITY OF BIRMINGHAM,			
OAKLAND COUNTY, MICHIGAN			
SHEET 1 OF 1			
LOCATION NAME			
CITY OF BIRMINGHAM			
ORIGINATING SOURCE		SCALE	USE DIMENSIONS
SURVEYING SERVICES		1" = 20'	ONLY DO NOT SCALE
DRAWING NUMBER		JOB NUMBER	
5SE BIR-002		201705086	

DTE Electric Company Overhead Easement (Right of Way) No. 45709883-45709888

On April 11, 2017 ("Effective Date"), for the consideration of system betterment, Grantor grants to Grantee a permanent, non-exclusive overhead easement ("Right of Way") in, on, and across that part of Grantor's Land to be referred to herein as the "Right of Way Area".

"Grantor" is: AUGUST, LLC, a Michigan limited liability company, whose address is c/o Bodman, PLC, 1901 St. Antoine Street, 6th floor, Detroit, MI 48223

"Grantee" is: DTE Electric Company, a Michigan corporation, One Energy Plaza Drive, Detroit, Michigan 48226

"Grantor's Land" is in NW 1/4, SEC 25, T2N, R10E, BLOOMFIELD TOWNSHIP, County of OAKLAND, and State of Michigan, and is described as follows:

T2N, R10E, SEC 25 PART OF NW 1/4 BEG AT PT DIST N 88-16-00 W 659.12 FT & N 49-21-00 W 120.93 FT FROM CEN OF SEC, TH N 49-21-00 W 200 FT, TH S 40-39-00 W 171.16 FT, TH S 22-50-00 E 49.17 FT, TH N 40-39-00 E 77.11 FT, TH N 85-39-00 E 22.63 FT, TH S 49-21-00 E 113.19 FT, TH S 88-16-00 E 34.45 FT, TH N 40-39-00 E 78.36 FT TO BEG 0.54 A

Tax Identification Number(s): 19-25-179-001

More commonly known as: 35975 Woodward Ave, Birmingham, MI 48009

The "Right of Way Area" is a ten foot (10') wide easement on part of Grantor's Land. The centerline of the Right of Way Area shall be established in the as-built location of the centerline of Grantee's facilities, and shall be installed on Grantor's Land in the approximate location described as follows:

THE LEGAL DESCRIPTION OR EASEMENT DRAWING IS MORE PARTICULARLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Tax Identification Number(s): 19-25-179-001

More commonly known as: 35975 Woodward Ave, Birmingham, MI 48009

1. **Purpose:** The purpose of this Right of Way is to construct, reconstruct, modify, add to, repair, replace, inspect, operate and maintain overhead utility facilities which may consist of poles, guys, anchors, wires, transformers and accessories.
2. **Access:** Grantee has the right of pedestrian and vehicular ingress and egress to and from the Right of Way Area over and across Grantor's Land.
3. **Buildings or other Permanent Structures:** No buildings or other permanent structures or improvements may be constructed or placed in the Right of Way Area without Grantee's prior, written consent. Grantor agrees, at its own expense, to remove any improvement that interferes with the safe and reliable operation, maintenance and repair of Grantee's facilities upon the written demand of Grantee. If Grantor fails to comply with such demand, Grantor agrees that Grantee may remove any such improvement and bill Grantor for the cost thereof, which cost Grantor shall pay within thirty (30) days after demand therefor.
4. **Excavation:** Pursuant to 2013 Public Act 174, MISS DIG (1-800-482-7171 or 811 in some areas) must be called before any excavation in the Right of Way Area may proceed.

5. **Trees, Bushes, Branches, Roots, Structures and Fences:** Grantee may trim, cut down, remove or otherwise control any trees, bushes, branches and roots growing or that could grow or fall in the Right of Way Area and remove any structures, improvements, fences, buildings or landscaping in the Right of Way Area that Grantee believes could interfere with the safe and reliable construction, operation, maintenance and repair of Grantee's facilities. Grantee shall not be responsible for any damage to, or removal of, landscaping, trees, plant life, structures, improvements and/or fences located in the Right of Way Area.

6. **Restoration:** If Grantee's agents, employees, contractors, subcontractors, vehicles or equipment damage Grantor's Land while entering Grantor's Land for the purposes stated in this Right of Way, then Grantee will restore Grantor's Land as nearly as is reasonably practicable to the condition in which it existed prior to such damage. Restoration with respect to paved surfaces shall consist of asphalt cold patching of the damaged portion of any asphalted surfaces when the weather conditions suggest such use and the cement patching of the damaged portion of any cemented surfaces. Grantee shall have no liability, however, for the restoration or cost of any improvements located within the Right of Way Area, including, but not limited to, parking islands, gutters, fences or landscaping such as trees, bushes, or flowers (but not a simple lawn which, if damaged, will be patched and re-seeded by Grantee) that are damaged by Grantee in the course of constructing, reconstructing, modifying, adding to, repairing, replacing, operating or maintaining its facilities as described in paragraph 1 above.

7. **Successors:** This Right of Way runs with the land and binds and benefits Grantor's and Grantee's successors and assigns.

8. **Exemptions:** This Right of Way is exempt from transfer tax pursuant to MCL 207.505(a) and MCL 207.526(a).

9. **Governing Law:** This Right of Way shall be governed by the laws of the State of Michigan.

10. **Maintenance:** Grantee agrees to maintain, repair and replace (when necessary) all installations, structures and improvements made by Grantee pursuant to this Right of Way, at Grantee's sole cost and expense; provided, however, Grantor will reimburse Grantee for any such costs for repairs and or maintenance caused by the negligence of Grantor.

11. **Improvement Costs:** Grantee acknowledges and agrees that Grantor shall have no obligation to pay or reimburse Grantee for any costs Grantee may incur in connection with any of its installations, structures or improvements within the Right of Way Area unless Grantor requests any additional service from Grantee after the Effective Date.

Grantor(s): August, LLC

By: [Signature]

Name: DIANE WELLS

Title: MANAGER

Acknowledged before me in Macomb County, Michigan, on April 11, 2017,
by Diane Wells, Its: Manager for August, LLC, a Michigan limited liability company.

Cynthia DelaVega
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF MACOMB
My Commission Expires Feb. 26, 2024
Acting in the County of Macomb

Notary's
Stamp

Acting in Macomb County, Michigan

Notary's
Signature

[Signature]

Drafted by and when recorded, return to: Cassandra Dansby, DTE Electric Company, NW Planning & Design, 37849 Interchange Dr., Farmington Hills, MI 48335





Paul O'Meara <pomeara@bhamgov.org>

DTE easement meeting re: 856.

1 message

Frank R. Simon <FSimon@simonattys.com>

Mon, Apr 10, 2017 at 2:06 PM

To: "pomeara@bhamgov.org" <pomeara@bhamgov.org>

Cc: Jana Ecker <jecker@bhamgov.org>, "jvalentine@bhamgov.org" <jvalentine@bhamgov.org>, Nurah I Dababneh <nurah.dababneh@dteenergy.com>

Paul,**See email response from David Underdown supporting Option #2 and further info below. We have adopted Option #2.****Frank****From:** David Underdown [<mailto:dcunderdown@icloud.com>]**Sent:** Wednesday, March 15, 2017 4:18 PM**To:** Eavan Yaldo <eyaldo@sarokiarchitecture.com>**Subject:** Re: DTE easement meeting

Eavan,

We support option #2. I am happy to repave our customer parking area to match the style of the new surfaces. Aesthetically the additional poles and overhead wires do not bother me nor do I foresee them impeding our ability to operate the dry cleaning business with their presence. I personally feel that the poles and wires blend into the landscape once they are up. Additionally, I think there is great value in each group having complete independence and control of their own project without including Douglas Cleaners in the decision making/planning process. My goal is to run our family business in the same way that it has been operated in this location since 1961. We are supportive and respectful of the large investments and efforts that both groups are undertaking to our neighboring properties. It is disappointing that I will be viewed as a poor and uncooperative neighbor for not surrendering our property use rights in exchange for substantial improvements made to neighboring sites, but hopefully over time we will be viewed as a good neighbor. If there are issues that I need to be made aware in the future, I will always listen and consider them. From a planning standpoint I think it will be most efficient, clear and predictable for you and your teams to operate under the assumption that we will want to use our site in the exact same way it has always been used without changes and we will respect your right to improvement and develop your new sites in the way that you choose. Best wishes for success!

Sincerely,

David C. Underdown

On Mar 14, 2017, at 04:52 PM, Eavan Yaldo <eyaldo@sarokiarchitecture.com> wrote:

Thank you for meeting with us this morning. To recap, we have two (2) different options for the new overhead lines, neither of which will add poles to the Douglas Cleaners property. In both schemes, there will be new overhead lines in a 10' easement along the south property line of the August, LLC parcel. (Both options are attached for your reference.)

Option #1 provides the best appearance for all properties, as it results in one less pole required, with overhead wires that would run parallel to the Douglas Cleaners storefront and attach to the existing pole in front of the building, just south of the N. Old Woodward access drive. It requires a 10' easement from Douglas Cleaners for overhead wires along the NW property line.

Option #2 would not require an easement from Douglas Cleaners, but would result in overhead wires running diagonally across the August, LLC property to a new 45' high pole at the corner of North Old Woodward and Oak. This would be highly visible from the Douglas Cleaners storefront, as the wires would run diagonally across the access drive.

In the spirit of cooperation and being a good neighbor, August, LLC is making substantial improvements to the property and all approaches to both properties. The majority of new poles being added will be on the August, LLC parcel. No new poles are proposed for the Douglas Cleaners property. If you select Option #1 and grant the easement, August, LLC is willing to repave your parking area in front of the store when they pave their property.

Unfortunately, we do not have your father's email address to include him on the email. Can you please provide his email?

Thank you,

Eavan



EAVAN YALDO | ASSOCIATE | LEED AP

P 248 258 5707 | EYaldo@SarokiArchitecture.com

430 N. OLD WOODWARD, BIRMINGHAM, MI 48009

SarokiArchitecture.com



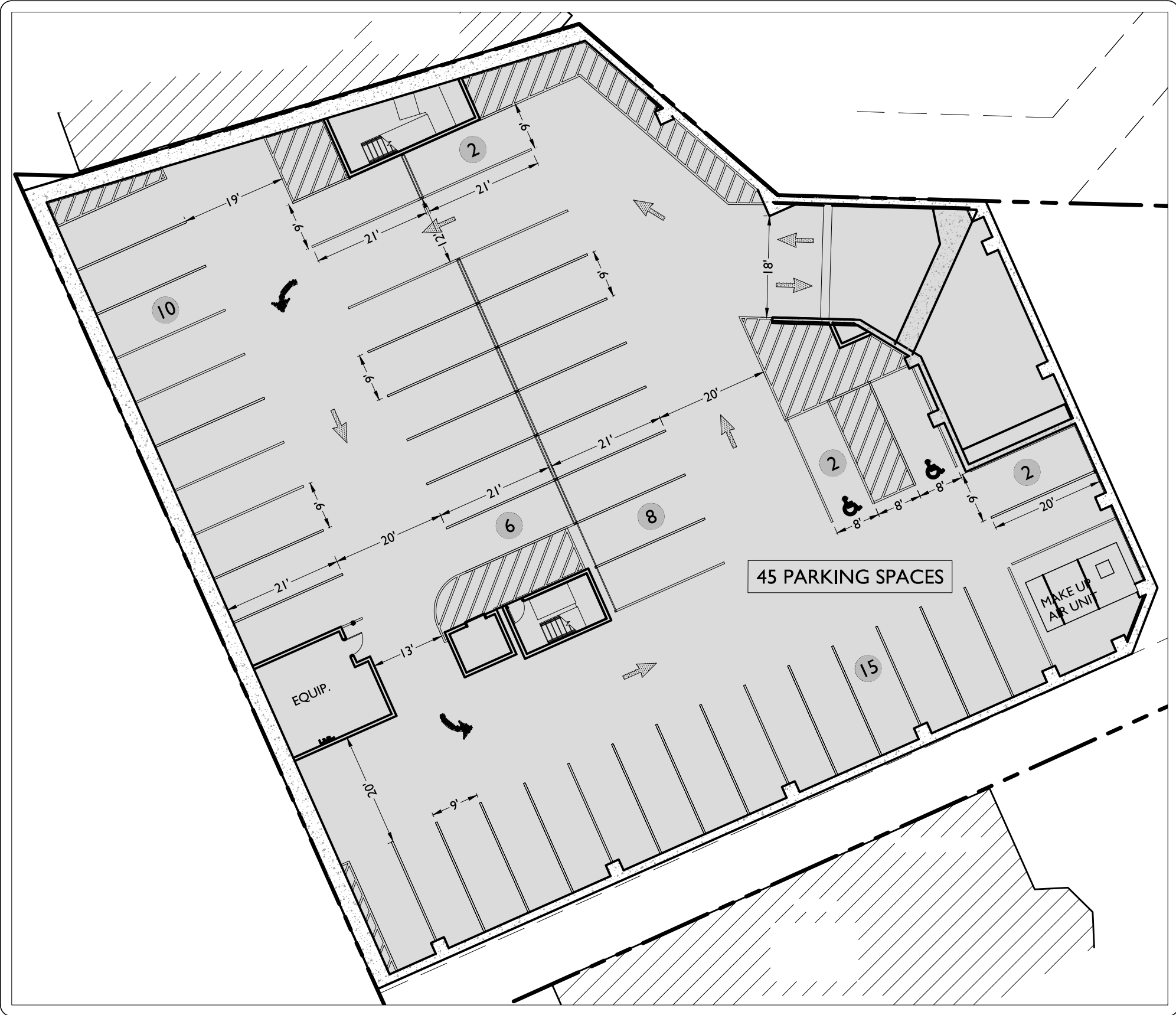
2 attachments



900 N Old Woodward (Option #1).pdf
900K



35980 Woodward (Option #2).pdf
926K



BASEMENT FLOOR LAYOUT

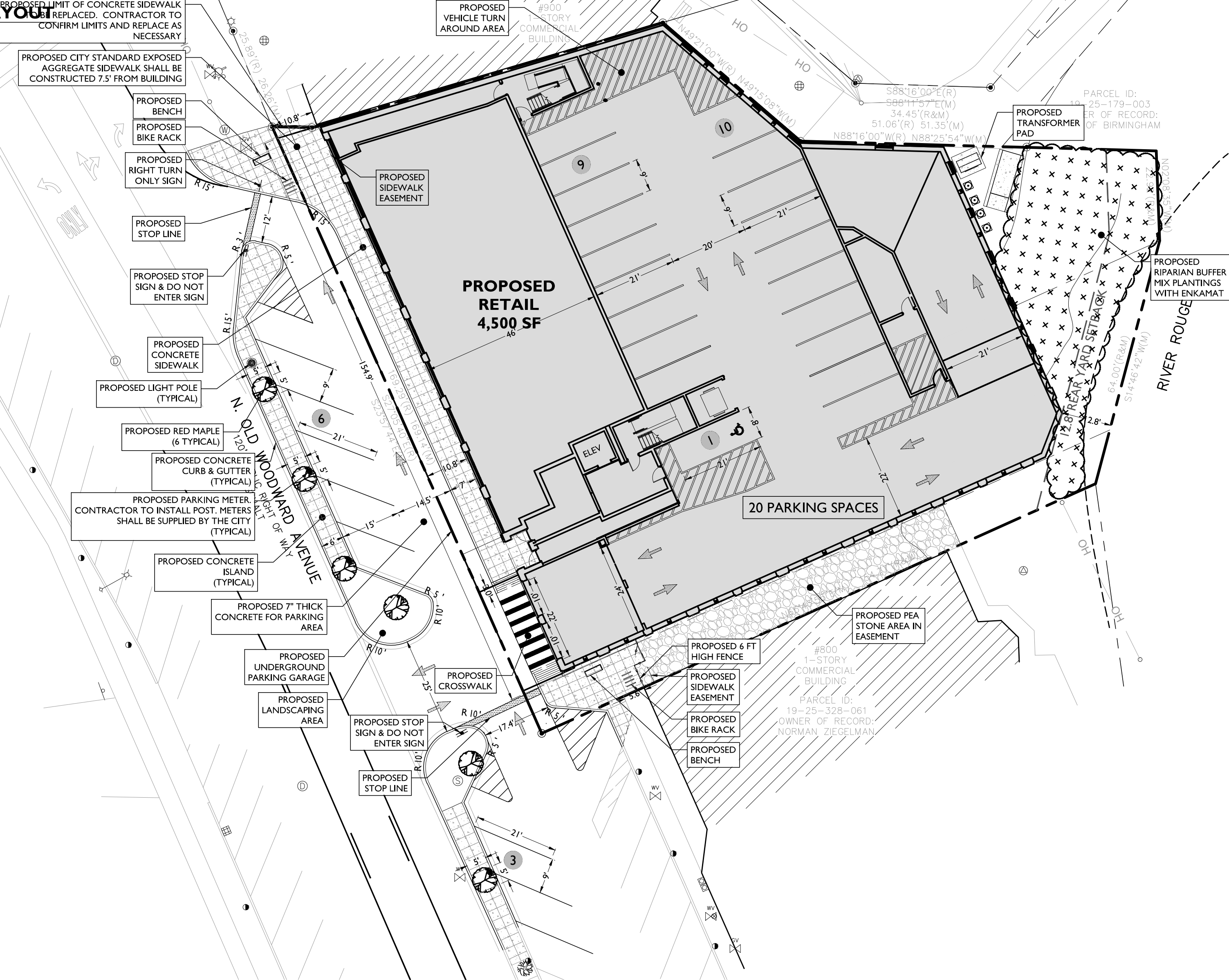


TABLE OF LAND USE AND ZONING		
PARCEL ID: 19-25-328-001		
DOWNTOWN BIRMINGHAM OVERLAY DISTRICT (D-2)		
PROPOSED USE		
DWELLING-MULTIPLE-FAMILY	PERMITTED USE	
RETAIL	PERMITTED USE	
ZONING REQUIREMENT	REQUIRED	PROPOSED
MINIMUM LOT AREA	N/A	24,718 SF (0.56 AC)
MAXIMUM BUILDING HEIGHT	3 STORIES	4 STORIES (V)
MAXIMUM OVERALL HEIGHT	56 FT	56 FT
BUILDING FOOTPRINT AREA	N/A	20,428 SF
FRONT YARD SETBACK	0 FT	0 FT
MINIMUM FRONT YARD SETBACK (PACADE)	0 FT	10.8 FT
MINIMUM SIDE YARD SETBACK	0 FT	0 FT
MINIMUM REAR YARD SETBACK*	12.8 FT	12.8 FT

(V) VARIANCE
* THE NORTHERN ADJACENT BUILDING PROVIDES A 12.8 FT REAR YARD SETBACK PER § 3.04(B)

OFF-STREET PARKING REQUIREMENTS		
CODE SECTION	REQUIRED	PROPOSED
§ 4.52 PK-08.A	RESIDENTIAL (2 OR LESS ROOMS):	20 SPACES AT GROUND LEVEL
	1.5 SPACES PER UNIT	45 SPACES ON LOWER LEVEL
	(1 UNITS)(1.5 UNITS) = 2 SPACES	
	RESIDENTIAL (3 OR MORE ROOMS):	
§ 9-12	2 SPACES PER UNIT	65 SPACES TOTAL ONSITE
	(25 UNITS)(2 UNITS) = 50 SPACES	9 SPACES IN PUBLIC R.O.W
	RETAIL	74 SPACES TOTAL
	1 SPACES PER 300 SF	
§ 3.04-C.7	(4,500 SF)(1/300 SF) = 15 SPACES	
	TOTAL: 2 + 50 + 15 = 58 SPACES	
	PARKING SPACE SIZE: 180 SF	180 SF (9 FT X 20 FT)
	MAXIMUM PARKING ACCESS WIDTH:	22 FT
§ 3.04-C.7	25 FT WIDE	

(V) VARIANCE

SYMBOL	DESCRIPTION
---	PROPERTY LINE
---	PROPOSED CURB
---	PROPOSED FLUSH CURB
---	PROPOSED SIGN
---	PROPOSED BUILDING
---	PROPOSED CONCRETE
---	PROPOSED TRAFFIC FLOW MARKINGS
---	PARKING STALL COUNTER

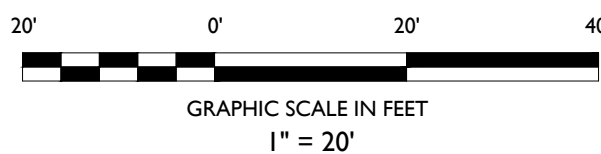
- GENERAL NOTES**
- THE CONTRACTOR SHALL VERIFY AND FAMILIARIZE THEMSELVES WITH THE EXISTING SITE CONDITIONS AND THE PROPOSED SCOPE OF WORK (INCLUDING DIMENSIONS, LAYOUT, ETC.) PRIOR TO INITIATING THE IMPROVEMENTS IDENTIFIED WITHIN THESE DOCUMENTS. SHOULD ANY DISCREPANCY BE FOUND BETWEEN THE EXISTING SITE CONDITIONS AND THE PROPOSED WORK, THE CONTRACTOR SHALL NOTIFY STONEFIELD ENGINEERING & DESIGN, LLC PRIOR TO THE START OF CONSTRUCTION.
 - THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS AND ENSURE THAT ALL REQUIRED APPROVALS HAVE BEEN OBTAINED PRIOR TO THE START OF CONSTRUCTION. COPIES OF ALL REQUIRED PERMITS AND APPROVALS SHALL BE KEPT ON SITE AT ALL TIMES DURING CONSTRUCTION.
 - ALL CONTRACTORS WILL, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFY AND HOLD HARMLESS STONEFIELD ENGINEERING & DESIGN, LLC, AND ITS SUB-CONSULTANTS FROM AND AGAINST ANY DAMAGES AND LIABILITIES INCLUDING ATTORNEY'S FEES ARISING OUT OF CLAIMS BY EMPLOYEES OF THE CONTRACTOR IN ADDITION TO CLAIMS CONNECTED TO THE PROJECT AS A RESULT OF NOT CARRYING THE PROPER INSURANCE FOR WORKERS COMPENSATION, LIABILITY INSURANCE, AND LIMITS OF COMMERCIAL GENERAL LIABILITY INSURANCE.
 - THE CONTRACTOR SHALL NOT DEVIATE FROM THE PROPOSED IMPROVEMENTS IDENTIFIED WITHIN THIS PLAN SET UNLESS APPROVAL IS PROVIDED IN WRITING BY STONEFIELD ENGINEERING & DESIGN, LLC.
 - THE CONTRACTOR IS RESPONSIBLE TO DETERMINE THE MEANS AND METHODS OF CONSTRUCTION.
 - THE CONTRACTOR SHALL NOT PERFORM ANY WORK OR CAUSE DISTURBANCE ON A PRIVATE PROPERTY NOT CONTROLLED BY THE PERSON OR ENTITY WHO HAS AUTHORIZED THE WORK WITHOUT PRIOR WRITTEN CONSENT FROM THE OWNER OF THE PRIVATE PROPERTY.
 - THE CONTRACTOR IS RESPONSIBLE TO RESTORE ANY DAMAGED OR UNDERMINED STRUCTURE OR SITE FEATURE THAT IS IDENTIFIED TO REMAIN ON THE PLAN SET. ALL REPAIRS SHALL USE NEW MATERIALS TO RESTORE THE FEATURE TO ITS EXISTING CONDITION AT THE CONTRACTOR'S EXPENSE.
 - CONTRACTOR IS RESPONSIBLE TO PROVIDE THE APPROPRIATE SHOP DRAWINGS, PRODUCT DATA, AND OTHER REQUIRED SUBMITTALS FOR REVIEW. STONEFIELD ENGINEERING & DESIGN, LLC WILL REVIEW THE SUBMITTALS IN ACCORDANCE WITH THE DESIGN INTENT AS REFLECTED WITHIN THE PLAN SET.
 - THE CONTRACTOR IS RESPONSIBLE FOR TRAFFIC CONTROL IN ACCORDANCE WITH MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, LATEST EDITION.
 - THE CONTRACTOR IS REQUIRED TO PERFORM ALL WORK IN THE PUBLIC RIGHT-OF-WAY IN ACCORDANCE WITH THE APPROPRIATE GOVERNING AUTHORITY AND SHALL BE RESPONSIBLE FOR THE PROCUREMENT OF STREET OPENING PERMITS.
 - THE CONTRACTOR IS REQUIRED TO RETAIN AN OSHA CERTIFIED SAFETY INSPECTOR TO BE PRESENT ON SITE AT ALL TIMES DURING CONSTRUCTION & DEMOLITION ACTIVITIES.
 - SHOULD AN EMPLOYEE OF STONEFIELD ENGINEERING & DESIGN, LLC, BE PRESENT ON SITE AT ANY TIME DURING CONSTRUCTION, IT DOES NOT RELIEVE THE CONTRACTOR OF ANY OF THE RESPONSIBILITIES AND REQUIREMENTS LISTED IN THE NOTES WITHIN THIS PLAN SET.

ZONING RELIEF TABLE		
DESIGN STANDARDS	REQUIRED	PROPOSED
§ 3.04-A.1	MAXIMUM BUILDING HEIGHT: 3 STORIES (56 FT)	4 STORIES (56 FT)

(V) VARIANCE

RIPARIAN PLANTING MIX		
BOTANICAL NAME	COMMON NAME	MIX PERCENTAGE
ELYTHIA VIRGINICA	VIRGINIA WILD RYE	20%
SORGHASTRUM NUTANS	INDIAN GRASS	16%
PANICUM CLANDESTINUM	DEERTONGUE	15%
ANDROPOGON GERARDII	BIG BLUESTEM	12.5%
PANICUM VIRGATUM	SWITCHGRASS	8%
CHAMAECRISTA FASCICULATA	PARTRIDGE PEA	5%
AGROSTIS PERENNANS	AUTUMN BENTGRASS	4%
VERBENA HASTATA	BLUE VERVAIN	4%
RUDBECKIA HIRTA	BLACK EYED SUSAN	3%
HELIOPSIS HELIANTHOIDES	OXEYE SUNFLOWER	3%
ASTER NOVAE-ANGLIAE	NEW ENGLAND ASTER	2.3%
JUNCUS EFFUSUS	SOFT RUSH	2%
EUPATORIUM PERULOSUM	BONESET	1%
EUPATORIUM FISTULOSUM	JOE PYE WEEED	1%
BAPTISIA AUSTRALIS	BLUE FALSE INDIGO	1%
VERNONIA NOYBORACENSIS	NEW YORK IRONWEED	1%
LOBELIA SIPHILITICA	GREAT BLUE LOBELIA	0.5%
MONARDA FISTULOSA	WILD BERGAMOT	0.5%
EUTHAMIA GRAMINIFOLIA	GRASSLEAF GOLDENROD	0.2%

(V) VARIANCE



STONEFIELD
engineering & design, llc.

Rutherford, NJ · Farmingdale, NY · Royal Oak, MI
www.stonefielddesign.com
28454 Woodward Avenue Royal Oak, MI 48067
Phone 248.247.1115

856 OLD NORTH WOODWARD
PROPOSED 4 STORY MULTI-FAMILY BUILDING WITH RETAIL

PARCEL ID: 19-25-328-001
856 NORTH OLD WOODWARD ROAD
CITY OF BIRMINGHAM
OAKLAND COUNTY, MICHIGAN

STATE OF MICHIGAN
JEFFREY A. MARTELL
ENGINEER
6201061001
MICHIGAN LICENSE NO. 6201061001
Landscape Architect

STONEFIELD
engineering & design, llc.

SCALE: 1" = 20' PROJECT ID: M-15120

TITLE:
FIRST FLOOR SITE PLAN

DRAWING:

C-3



NOTICE OF PUBLIC HEARINGS

BIRMINGHAM CITY COMMISSION
PUBLIC HEARING OF NECESSITY
PUBLIC HEARING OF CONFIRMATION

Meeting Date, Time, Location:	HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT Monday, July 10, 2017, 7:30 PM Municipal Building, 151 Martin	
Meeting Date, Time, Location:	HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT Monday, July 24, 2017, 7:30 PM Municipal Building, 151 Martin	
Location of Improvement	STREET	AREA
	RADNOR	MAPLE TO BERWYN
	BERWYN	MIDVALE TO AVON
	WESTCHESTER	LINCOLN TO MAPLE
	AVON	RADNOR TO S. GLENHURST
	LARCHLEA	LINCOLN TO MAPLE
	BRYN MAWR	CRANBROOK TO RADNOR
	PURITAN	MAPLE TO PINE
	WILLOW LANE	MIDLAND TO RAYNALE
	FAIRFAX	RAYNALE TO SUFFIELD
	Nature of Improvement:	2017 Cape Seal Program will consist of a double layer of chip seal and a slurry coat. Several street segments will also require road surface pulverization prior to cape seal treatment. Sidewalk crosswalk ramps will be reconstructed to meet ADA requirements, where applicable.
City Staff Contact:	Aaron Filipski, Public Services Manager 248.530.1701 afilipski@bhamgov.org	
Notice Requirements:	Mail to all affected property owners. Publish: June 18 & 25, 2017	
Approved minutes may be reviewed at:	City Clerk's Office 151 Martin, Birmingham, MI 48009	
Estimated Costs:	Estimated costs range from \$13.24/curb-foot to \$21.83/curb-foot and vary according to individual street dimensions and the required treatment.	
	Costs are assessed to property owners based on the following method:	
	85% of front-foot costs for all property fronting the improvement;	
	25% of side-foot costs for all residential property siding the improvement;	
	85% of side-foot costs for all improved business property siding the improvement;	
	25% of side-foot costs for all vacant business property siding the improvement.	
You or your agent may appear at the hearings to express your views; however, if you fail to protest either in person or by letter received on or before the date of the hearing, you cannot appeal the amount of the special assessment to the Michigan Tax Tribunal. Mail any correspondence to: City Clerk, P.O. Box 3001, Birmingham, MI 48012		

The property owner may file a written appeal of the special assessment with the State Tax Tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

All special assessments shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice) or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.



MEMORANDUM

Finance Department

DATE: July 12, 2017

TO: Joseph A. Valentine, City Manager

FROM: Teresa Klobucar, Deputy Treasurer

CC: Mark Gerber, Finance Director/Treasurer

SUBJECT: Resolution for Confirming S.A.D. # 879 –
2017-2018 Capeseal

For purposes of public street maintenance improvements that would specially benefit the following properties,

Larchlea	Lincoln to Maple
Westchester	Lincoln to Maple
Berwyn	Midvale to Avon
Radnor	Maple to Berwyn
Avon	Radnor to S. Glenhurst
Bryn Mawr	Cranbrook to Radnor
Puritan	Maple to Pine
Willow Lane	Midland to Raynale
Fairfax	Raynale to Suffield

it is requested that the City Commission adopt the following resolution confirming S.A.D. No. 879 at the regular City Commission meeting of July 24th, 2017. Comments during the hearing of confirmation are limited to those questions specifically addressing the assessment roll pursuant to Section 94-9 of the City Code. The hearing declaring the necessity of the Special Assessment District was held at the City Commission meeting of July 10th, 2017.

SUGGESTED RESOLUTION:

To confirm Special Assessment Roll No. 879, to defray the cost of public street maintenance of all properties fronting and/or siding on the improvement within the 2017-2018 Capeseal as listed in the table above:

WHEREAS, Special Assessment Roll, designated Roll No. 879, has been heretofore prepared by the Deputy Treasurer 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 07-192-17 provided it would meet this 24th day of July, 2017 for the sole purpose of reviewing the assessment roll, and

WHEREAS, at said hearing held this July 24th, 2017, 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. 879 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 one (1) payment as provided in Section 94-10 of the Code of the City of Birmingham at five and a quarter percent (5.25%) annual interest.

Parcel Number	Address	Total
19-26-201-003	1633 Quarton Rd.	\$28.68
19-26-201-004	1595 Fairfax Ave.	\$1,246.03
19-26-201-010	1465 Fairfax Ave.	\$1,382.56
19-26-201-011	1427 Fairfax Ave.	\$1,327.30
19-26-201-013	1493 Fairfax Ave.	\$1,210.28
19-26-202-001	1490 Fairfax Ave.	\$1,101.93
19-26-202-002	1444 Fairfax Ave.	\$956.74
19-26-202-003	1420 Fairfax Ave.	\$984.91
19-26-204-010	1393 Fairfax Ave.	\$1,053.17
19-26-204-011	1365 Fairfax Ave.	\$975.16
19-26-204-012	1333 Fairfax Ave.	\$1,246.03
19-26-204-013	1289 Fairfax Ave.	\$1,246.03
19-26-204-014	1261 Fairfax Ave.	\$1,300.21
19-26-204-015	1221 Fairfax Ave.	\$1,300.21
19-26-204-016	1195 Fairfax Ave.	\$866.81
19-26-204-017	1165 Fairfax Ave.	\$866.81
19-26-204-018	1141 Fairfax Ave.	\$866.81
19-26-204-019	1129 Fairfax Ave.	\$832.13
19-26-205-001	1378 Fairfax Ave.	\$1,330.55
19-26-205-002	1356 Fairfax Ave.	\$1,354.39
19-26-205-003	1340 Fairfax Ave.	\$1,137.68
19-26-205-004	1280 Fairfax Ave.	\$1,137.68
19-26-205-005	1252 Fairfax Ave.	\$1,137.68
19-26-205-006	1222 Fairfax Ave.	\$866.81
19-26-205-007	1194 Fairfax Ave.	\$866.81
19-26-205-008	1170 Fairfax Ave.	\$866.81
19-26-205-009	1150 Fairfax Ave.	\$866.81
19-26-205-010	1130 Fairfax Ave.	\$897.14
19-26-277-008	1095 Willow Lane	\$1,004.86
19-26-277-009	1077 Willow Lane	\$1,004.86
19-26-277-010	1053 Willow Lane	\$1,004.86
19-26-277-011	1025 Willow Lane	\$1,004.86
19-26-277-012	1001 Willow Lane	\$1,522.03
19-26-278-001	1084 Willow Lane	\$1,621.17
19-26-278-002	1066 Willow Lane	\$1,098.65
19-26-278-003	1000 Willow Lane	\$1,499.25
19-26-454-020	419 Puritan Ave.	\$935.15
19-26-454-021	385 Puritan Ave.	\$935.15
19-26-454-022	367 Puritan Ave.	\$935.15
19-26-454-023	339 Puritan Ave.	\$935.15
19-26-454-024	319 Puritan Ave.	\$935.15
19-26-454-025	287 Puritan Ave.	\$935.15
19-26-454-026	263 Puritan Ave.	\$935.15
19-26-454-027	245 Puritan Ave.	\$935.15
19-26-454-028	211 Puritan Ave.	\$935.15
19-26-454-029	183 Puritan Ave.	\$935.15

19-26-454-030	165 Puritan Ave.	\$935.15
19-26-454-034	133 Puritan Ave.	\$800.37
19-26-454-035	473 Puritan Ave.	\$899.38
19-26-454-036	Vacant	\$926.39
19-26-476-003	416 Puritan Ave.	\$935.15
19-26-476-004	384 Puritan Ave.	\$935.15
19-26-476-005	364 Puritan Ave.	\$935.15
19-26-476-006	340 Puritan Ave.	\$935.15
19-26-476-007	316 Puritan Ave.	\$935.15
19-26-476-008	286 Puritan Ave.	\$935.15
19-26-476-009	256 Puritan Ave.	\$935.15
19-26-476-010	236 Puritan Ave.	\$935.15
19-26-476-011	212 Puritan Ave.	\$935.15
19-26-476-028	184 Puritan Ave.	\$876.70
19-26-476-029	146 Puritan Ave.	\$1,502.20
19-26-476-030	476 Puritan Ave.	\$1,045.73
19-26-476-031	452 Puritan Ave.	\$946.84
19-35-101-003	2471 Radnor Dr.	\$1,758.11
19-35-101-004	2453 Radnor Dr.	\$1,521.72
19-35-101-005	2435 Radnor Dr.	\$1,519.42
19-35-101-006	2401 Radnor Dr.	\$2,377.75
19-35-101-011	2400 Devon Ln.	\$495.99
19-35-102-010	500 Bryn Mawr	\$1,405.15
19-35-102-013	300 Bryn Mawr	\$1,292.87
19-35-102-014	334 Bryn Mawr	\$1,236.66
19-35-102-015	366 Bryn Mawr	\$1,242.14
19-35-102-019	444 Bryn Mawr	\$1,264.76
19-35-102-020	488 Bryn Mawr	\$1,616.09
19-35-102-021	Vacant	\$983.70
19-35-102-025	394 Bryn Mawr	\$1,967.41
19-35-102-026	420 Bryn Mawr	\$983.70
19-35-103-001	2371 Radnor Dr.	\$3,012.36
19-35-103-006	365 Bryn Mawr	\$1,124.23
19-35-103-007	405 Bryn Mawr	\$1,405.29
19-35-103-008	411 Bryn Mawr	\$843.18
19-35-103-009	425 Bryn Mawr	\$1,335.03
19-35-103-010	449 Bryn Mawr	\$1,194.50
19-35-103-015	525 Bryn Mawr	\$1,682.70
19-35-103-018	340 Wellesley Dr.	\$702.57
19-35-103-032	457 Bryn Mawr	\$1,194.50
19-35-103-034	333 Bryn Mawr	\$1,686.35
19-35-103-037	463 Bryn Mawr	\$1,410.91
19-35-103-038	505 Bryn Mawr	\$2,026.99
19-35-103-039	275 Bryn Mawr	\$1,363.13
19-35-103-040	311 Bryn Mawr	\$885.33
19-35-104-001	325 Wellesley Dr.	\$724.49
19-35-104-014	320 Berwyn Rd.	\$2,058.27

19-35-104-017	420 Berwyn Rd.	\$868.69
19-35-104-018	444 Berwyn Rd.	\$856.45
19-35-104-019	468 Berwyn Rd.	\$978.80
19-35-104-023	560 Berwyn Rd.	\$1,449.85
19-35-104-025	348 Berwyn Rd.	\$2,071.75
19-35-104-026	412 Berwyn Rd.	\$978.80
19-35-104-028	490 Berwyn Rd.	\$1,760.99
19-35-104-029	540 Berwyn Rd.	\$1,391.73
19-35-105-001	2368 Radnor Dr.	\$1,315.33
19-35-105-013	2338 Radnor Dr.	\$2,436.51
19-35-105-014	2300 Avon Ln.	\$1,498.49
19-35-105-015	2276 Avon Ln.	\$2,497.48
19-35-105-016	2234 Avon Ln.	\$1,997.99
19-35-105-017	2210 Avon Ln.	\$1,331.99
19-35-105-018	2200 Avon Ln.	\$1,331.99
19-35-105-019	2180 Avon Ln.	\$1,331.99
19-35-105-020	2154 Avon Ln.	\$1,415.24
19-35-105-021	2130 Avon Ln.	\$1,581.74
19-35-105-022	2120 Avon Ln.	\$666.83
19-35-106-006	2259 Avon Ln.	\$3,367.94
19-35-106-007	2215 Avon Ln.	\$2,032.43
19-35-106-008	290 Berwyn Rd.	\$2,512.89
19-35-107-001	215 Berwyn Rd.	\$1,613.59
19-35-107-002	243 Berwyn Rd.	\$856.45
19-35-107-003	271 Berwyn Rd.	\$1,101.15
19-35-107-004	285 Berwyn Rd.	\$1,101.15
19-35-107-005	293 Berwyn Rd.	\$978.80
19-35-107-006	317 Berwyn Rd.	\$978.80
19-35-107-007	345 Berwyn Rd.	\$1,070.56
19-35-107-011	447 Berwyn Rd.	\$1,075.70
19-35-107-012	465 Berwyn Rd.	\$1,094.05
19-35-107-013	497 Berwyn Rd.	\$1,447.77
19-35-107-014	543 Berwyn Rd.	\$966.57
19-35-107-015	575 Berwyn Rd.	\$1,362.74
19-35-107-016	212 Argyle St.	\$541.41
19-35-107-030	377 Berwyn Rd.	\$1,547.36
19-35-107-031	395 Berwyn Rd.	\$734.10
19-35-107-032	425 Berwyn Rd.	\$734.10
19-35-127-031	2061 Avon Ln.	\$2,164.48
19-35-128-018	120 Westchester Way	\$989.77
19-35-128-019	142 Westchester Way	\$778.98
19-35-128-020	164 Westchester Way	\$778.98
19-35-128-021	186 Westchester Way	\$778.98
19-35-128-022	220 Westchester Way	\$778.98
19-35-128-023	250 Westchester Way	\$778.98
19-35-128-024	262 Westchester Way	\$830.91
19-35-128-025	272 Westchester Way	\$1,207.18

19-35-128-026	300 Westchester Way	\$1,162.80
19-35-128-027	342 Westchester Way	\$1,150.76
19-35-128-028	386 Westchester Way	\$1,150.76
19-35-128-029	400 Westchester Way	\$767.17
19-35-128-030	440 Westchester Way	\$1,062.24
19-35-128-031	466 Westchester Way	\$708.16
19-35-128-032	498 Westchester Way	\$1,062.24
19-35-128-035	540 Westchester Way	\$1,298.29
19-35-128-036	574 Westchester Way	\$708.16
19-35-128-037	596 Westchester Way	\$741.21
19-35-128-038	510 Westchester Way	\$826.19
19-35-129-002	145 Westchester Way	\$708.75
19-35-129-003	173 Westchester Way	\$877.76
19-35-129-004	181 Westchester Way	\$826.19
19-35-129-005	215 Westchester Way	\$826.19
19-35-129-006	233 Westchester Way	\$826.19
19-35-129-007	255 Westchester Way	\$708.16
19-35-129-008	271 Westchester Way	\$708.16
19-35-129-009	299 Westchester Way	\$708.16
19-35-129-010	307 Westchester Way	\$1,062.24
19-35-129-011	347 Westchester Way	\$1,062.24
19-35-129-012	367 Westchester Way	\$708.16
19-35-129-013	389 Westchester Way	\$708.16
19-35-129-014	415 Westchester Way	\$708.16
19-35-129-015	431 Westchester Way	\$708.16
19-35-129-016	459 Westchester Way	\$708.16
19-35-129-017	477 Westchester Way	\$708.16
19-35-129-018	499 Westchester Way	\$708.16
19-35-129-019	515 Westchester Way	\$708.16
19-35-129-020	531 Westchester Way	\$708.16
19-35-129-021	565 Westchester Way	\$708.16
19-35-129-022	573 Westchester Way	\$708.16
19-35-129-023	599 Westchester Way	\$708.16
19-35-129-025	142 Larchlea Dr.	\$732.85
19-35-129-026	160 Larchlea Dr.	\$736.32
19-35-129-027	208 Larchlea Dr.	\$736.32
19-35-129-030	264 Larchlea Dr.	\$946.70
19-35-129-031	286 Larchlea Dr.	\$631.13
19-35-129-032	314 Larchlea Dr.	\$631.13
19-35-129-035	360 Larchlea Dr.	\$841.51
19-35-129-039	474 Larchlea Dr.	\$841.51
19-35-129-040	492 Larchlea Dr.	\$841.51
19-35-129-041	518 Larchlea Dr.	\$1,051.89
19-35-129-042	550 Larchlea Dr.	\$1,051.89
19-35-129-043	590 Larchlea Dr.	\$1,051.89
19-35-129-044	438 Larchlea Dr.	\$786.29
19-35-129-045	450 Larchlea Dr.	\$686.36

19-35-129-046	220 Larchlea Dr.	\$946.70
19-35-129-047	328 Larchlea Dr.	\$841.51
19-35-129-048	390 Larchlea Dr.	\$841.51
19-35-129-049	1821 W. Maple Rd.	\$1,760.05
19-35-130-001	Vacant	\$340.32
19-35-130-003	Vacant	\$631.13
19-35-130-006	265 Larchlea Dr.	\$946.70
19-35-130-007	287 Larchlea Dr.	\$631.13
19-35-130-008	331 Larchlea Dr.	\$1,262.27
19-35-130-009	355 Larchlea Dr.	\$631.13
19-35-130-010	369 Larchlea Dr.	\$631.13
19-35-130-011	395 Larchlea Dr.	\$631.13
19-35-130-012	403 Larchlea Dr.	\$631.13
19-35-130-013	433 Larchlea Dr.	\$631.13
19-35-130-014	455 Larchlea Dr.	\$631.13
19-35-130-015	479 Larchlea Dr.	\$631.13
19-35-130-016	501 Larchlea Dr.	\$946.70
19-35-130-017	527 Larchlea Dr.	\$946.70
19-35-130-018	555 Larchlea Dr.	\$946.70
19-35-130-019	575 Larchlea Dr.	\$946.70
19-35-130-020	231 Larchlea Dr.	\$946.70
19-35-130-021	145 Larchlea Dr.	\$736.32
19-35-130-022	159 Larchlea Dr.	\$736.32
19-35-178-018	612 Westchester Way	\$850.50
19-35-178-019	664 Westchester Way	\$885.20
19-35-178-020	698 Westchester Way	\$885.20
19-35-178-021	732 Westchester Way	\$885.20
19-35-178-022	748 Westchester Way	\$944.21
19-35-178-023	760 Westchester Way	\$885.20
19-35-178-024	784 Westchester Way	\$1,003.23
19-35-178-025	820 Westchester Way	\$944.21
19-35-178-026	866 Westchester Way	\$1,144.86
19-35-178-027	910 Westchester Way	\$1,180.27
19-35-178-028	938 Westchester Way	\$1,180.27
19-35-178-029	956 Westchester Way	\$944.21
19-35-178-030	988 Westchester Way	\$944.21
19-35-178-031	1000 Westchester Way	\$944.21
19-35-178-032	1040 Westchester Way	\$944.21
19-35-178-033	1900 W. Lincoln St.	\$416.56
19-35-179-001	619 Westchester Way	\$1,416.32
19-35-179-004	695 Westchester Way	\$708.16
19-35-179-005	739 Westchester Way	\$1,003.23
19-35-179-006	767 Westchester Way	\$767.17
19-35-179-007	783 Westchester Way	\$708.16
19-35-179-008	811 Westchester Way	\$708.16
19-35-179-009	821 Westchester Way	\$708.16
19-35-179-010	835 Westchester Way	\$708.16

19-35-179-011	851 Westchester Way	\$708.16
19-35-179-012	897 Westchester Way	\$1,062.24
19-35-179-013	925 Westchester Way	\$1,062.24
19-35-179-014	945 Westchester Way	\$719.96
19-35-179-017	999 Westchester Way	\$826.19
19-35-179-020	608 Larchlea Dr.	\$631.13
19-35-179-021	632 Larchlea Dr.	\$683.73
19-35-179-022	700 Larchlea Dr.	\$894.11
19-35-179-023	708 Larchlea Dr.	\$946.70
19-35-179-028	826 Larchlea Dr.	\$683.73
19-35-179-029	840 Larchlea Dr.	\$683.73
19-35-179-030	852 Larchlea Dr.	\$894.11
19-35-179-031	898 Larchlea Dr.	\$894.11
19-35-179-032	930 Larchlea Dr.	\$946.70
19-35-179-033	950 Larchlea Dr.	\$946.70
19-35-179-034	982 Larchlea Dr.	\$715.29
19-35-179-035	1006 Larchlea Dr.	\$715.29
19-35-179-036	1056 Larchlea Dr.	\$778.40
19-35-179-037	1880 W. Lincoln St.	\$537.13
19-35-179-039	1800 W. Lincoln St.	\$482.08
19-35-179-040	665 Westchester Way	\$1,062.24
19-35-179-041	959 Westchester Way	\$932.41
19-35-179-042	732 Larchlea Dr.	\$946.70
19-35-179-043	768 Larchlea Dr.	\$1,262.27
19-35-179-044	1045 Westchester Way	\$1,062.24
19-35-180-001	621 Larchlea Dr.	\$631.13
19-35-180-002	653 Larchlea Dr.	\$631.13
19-35-180-003	675 Larchlea Dr.	\$631.13
19-35-180-004	695 Larchlea Dr.	\$631.13
19-35-180-005	719 Larchlea Dr.	\$946.70
19-35-180-006	753 Larchlea Dr.	\$946.70
19-35-180-007	799 Larchlea Dr.	\$946.70
19-35-180-008	827 Larchlea Dr.	\$946.70
19-35-180-010	883 Larchlea Dr.	\$788.92
19-35-180-011	925 Larchlea Dr.	\$788.92
19-35-180-012	939 Larchlea Dr.	\$915.14
19-35-180-013	955 Larchlea Dr.	\$978.26
19-35-180-014	1005 Larchlea Dr.	\$946.70
19-35-180-015	1055 Larchlea Dr.	\$946.70
19-35-180-016	1784 W. Lincoln St.	\$482.76
19-35-180-018	855 Larchlea Dr.	\$1,033.90
		\$282,820.07



MEMORANDUM

Department of Public Services

DATE: June 29, 2017

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Cape Seal – Public Hearing of Necessity

The Department of Public Services maintains nearly 26 miles of unimproved roadways through periodic cape seal treatment – a process that involves the application of a stone chip seal followed by a slurry microsurface. The result is a smoother, dust-free driving surface that resists damaging moisture intrusion into the gravel road base. Cape seal is an inexpensive maintenance option relative to the cost of installing a fully-engineered road, but because it is only a surface treatment, it is limited in its ability to remedy road drainage and profile issues.

Each year, DPS staff reviews unimproved streets and recommends streets for maintenance. Treatment age and existing conditions are considered when drafting the recommendations. The most common failure conditions include surface wear and loss, road center crowning, and alligator cracking. The streets identified for this project are as follows:

		Pulverize	Prep
Larchlea	Lincoln to Maple	x	
Westchester	Lincoln to Maple	x	
Berwyn	Midvale to Avon	x	
Radnor	Maple to Berwyn		x
Avon	Radnor to S. Glenhurst		
Bryn Mawr	Cranbrook to Radnor		x
Puritan	Maple to Pine		x
Willow Lane	Midland to Raynale		x
Fairfax	Raynale to Suffield	x	

Each exhibits one or more of the aforementioned conditions and the existing treatment age of each is at or exceeds the average expected lifespan of a cape seal treated road. Some streets, as indicated above, require surface pulverization prior to treatment in order to eliminate high road crowns that have resulted from numerous layers of chip seal from previous projects. The remaining streets will be prepped for treatment through patching.

Since 1948, the City policy for assessing street maintenance work on unimproved streets is conducted in accordance with the following:

- 85% of the front-foot costs for improvement are assessed on all property fronting the improvement;

- 25% of the side-foot costs for improvement are assessed on all residential property siding the improvement;
- 85% of the side-foot costs for improvement are assessed on improved business property siding the improvement and;
- 25% of side-foot costs for improvement are assessed on vacant business property siding on the improvement.

The balance of the cost, 15% and 75%, front- and side-footage respectively, is paid by the City.

The following illustrates the estimated per-foot costs for each street:

Larchlea	Lincoln to Maple	\$12.01	per foot
Westchester	Lincoln to Maple	\$13.48	per foot
Berwyn	Midvale to Avon	\$13.97	per foot
Radnor	Maple to Berwyn	\$21.83	per foot
Avon	Radnor to S. Glenhurst	\$19.02	per foot
Bryn Mawr	Cranbrook to Radnor	\$16.05	per foot
Puritan	Maple to Pine	\$13.35	per foot
Willow Lane	Midland to Raynale	\$15.30	per foot
Fairfax	Raynale to Suffield	\$12.38	per foot

These costs vary based on street width and the required preparation and quantity of material for each. Additionally, the Federal Americans with Disabilities Act requires sidewalk crossing ramps to be upgraded where applicable; in this project all streets have ramps subject to that requirement, and those costs are reflected in the listed estimates. Actual costs will be determined once the project is completed.

SUGGESTED RESOLUTION:

To determine necessity for the improvement to be known as 2017 Cape Seal Program-Public Street Improvement; further, approving the detailed cost estimates submitted by the Department of Public Services; further, creating a special assessment district and special assessments levied in accordance with benefits against the properties as described above; further that the following method of assessment be adopted: 85% of front-foot costs for improvement are assessed on all property fronting the improvement; 25% of side-foot costs for improvement are assessed on all residential property siding the improvement; 85% of side-foot costs for improvement are assessed on improved business property siding the improvement and; 25% of side-foot costs for improvement are assessed on vacant business property siding on the improvement; further, to direct the City Manager to prepare the special assessment roll and present the same to the City Commission for confirmation at the public hearing on Monday, July 24, 2017 at 7:30 p.m.

NOTICE OF PUBLIC HEARING
BIRMINGHAM CITY COMMISSION
AMENDMENT TO ZONING ORDINANCE

Meeting - Date, Time, Location:	Monday, July 24, 2017 7:30 PM Municipal Building, 151 Martin Birmingham, MI 48009
Nature of Hearing:	<p>To consider amendments to the Zoning Ordinance, Chapter 126:</p> <ul style="list-style-type: none"> • TO AMEND ARTICLE 03, SECTION 3.04(e), ARCHITECTURAL STANDARDS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE; • TO AMEND ARTICLE 03, TRIANGLE OVERLAY DISTRICT, SECTION 3.09, COMMERCIAL/MIXED USE ARCHITECTURAL REQUIREMENTS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE; • TO AMEND ARTICLE 04 DEVELOPMENT STANDARDS, SECTION 4.90, WN-01 (WINDOW STANDARDS) TO ALTER THE REQUIRED GLAZING ON COMMERCIAL BUILDINGS; • TO AMEND ARTICLE 07 ARCHITECTURAL DESIGN REQUIREMENTS, SECTION 7.05, REQUIREMENTS, TO REMOVE INCONSISTENT PROVISIONS; AND • TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD DEFINITIONS FOR CLEAR GLAZING AND LIGHTLY TINTED GLAZING. <p>A complete copy of the proposed ordinance amendments may be reviewed at the City Clerk's Office.</p>
City Staff Contact:	Jana Ecker 248.530.1841 jecker@bhamgov.org
Notice:	Publish: July 9, 2017
Approved minutes may be reviewed at:	City Clerk's Office

Should you have any statement regarding the above, you are invited to attend the meeting or present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice) or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.



MEMORANDUM

Planning Division

DATE: July 17, 2017

TO: Joseph A. Valentine, City Manager

FROM: Matthew Baka, Senior Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Public Hearing for Revised Window Standards

Pursuant to the direction of the City Commission, the Planning Board has continued to study glazing standards for commercial, multi-family residential and mixed use buildings.

On June 14, 2017, the Planning Board conducted a public hearing to consider draft amendments to the glazing requirements and definitions as follows:

- i) To amend Article 03 Downtown Overlay District, Section 3.04(e) Architectural Standards to require clear glazing at the first floor façade;
- ii) To amend Article 03 Triangle Overlay District, Section 3.09, commercial/mixed use architectural requirements to require clear glazing at the first floor façade;
- iii) To amend Article 04 Development Standards, Section 4.90, WN-01 (Window Standards) to alter the required glazing on commercial buildings;
- iv) To amend Article 07 Architectural Design Requirements, Section 7.05, Requirements, to remove inconsistent provisions; and
- v) To amend Article 9, Section 9.02, Definitions, to add definitions for clear glazing and lightly tinted glazing.

At the public hearing the Planning Board recommended that the City Commission approve the draft ordinance language, with the condition that the proposed language in section 3.04(e) and section 4.90 regarding the blocking of windows with opaque materials and furniture be amended to be consistent with similar language in section 3.09(B)(1) of the Zoning Ordinance. These changes have been made to the draft ordinance language as per the motion of the Planning Board.

On June 26, 2017, the City Commission set a public hearing to consider the recommendation of the Planning Board. Please see the attached draft language, staff report, and relevant research information and meeting minutes related to this subject.

SUGGESTED ACTION:

To consider APPROVAL of the following ordinance amendments:

- i) To amend Article 03 Downtown Overlay District, Section 3.04(e) Architectural Standards to require clear glazing at the first floor façade;
- ii) To amend Article 03 Triangle Overlay District, Section 3.09, commercial/mixed use architectural requirements to require clear glazing at the first floor façade;
- iii) To amend Article 04 Development Standards, Section 4.90, WN-01 (Window Standards) to alter the required glazing on commercial buildings;
- iv) To amend Article 07 Architectural Design Requirements, Section 7.05, Requirements, to remove inconsistent provisions; and
- v) To amend Article 9, Section 9.02, Definitions, to add definitions for clear glazing and lightly tinted glazing.

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 03 DOWNTOWN OVERLAY DISTRICT, SECTION 3.04, E ARCHITECTURAL STANDARDS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE.

Article 03, Section 3.04 E(7) shall be amended as follows:

Architectural standards. All buildings shall be subject to the following physical requirements:

Sections 1- 7 unchanged

7. **Clear glazing is required on the first floor.** ~~Glass shall be clear or Lightly tinted~~ **glazing is permitted on upper floors only. First floor Windows shall not be blocked with opaque materials or furniture, products, signs, blank walls or the back of shelving units or signs.** ~~Opaque applications shall not be applied to the glass surface.~~

Sections 8 – 16 unchanged

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 03 TRIANGLE OVERLAY DISTRICT, SECTION 3.09, COMMERCIAL/MIXED USE ARCHITECTURAL REQUIREMENTS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE.

Article 03, Section 3.09 b(1) shall be amended as follows:

3.09 Commercial/Mixed Use Architectural Requirements

A. unchanged

B. Windows and Doors:

1. Storefront/Ground Floor. Ground floors shall be designed with storefronts that have windows, doorways and signage, which are integrally designed and painted. No less than 70% of the storefront/ground floor façade between 1 and 8 feet above grade shall be clear glass panels and doorway. Glass areas on storefronts shall be clear glazing on the first floor. Clear glazing or lightly tinted glazing is permitted on upper floors. Mirrored glass is prohibited. Required window areas shall be either windows that allow views into retail space, working areas or lobbies, pedestrian entrances, or display windows set into the wall. Windows shall not be blocked with opaque materials or the back of shelving units or signs. The bottom of the window must be no more than 3 feet above the adjacent exterior grade.
2. Entranceway. The front entranceway shall be inset 3 feet from the front building wall.
3. Upper Stories. Openings above the first story shall be a maximum of 50% of the total façade area. Windows shall be vertical in proportion.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 04 DEVELOPMENT STANDARDS, SECTION 4.90, WN-01 (WINDOW STANDARDS) TO ALTER THE REQUIRED GLAZING ON COMMERCIAL BUILDINGS.

Article 04, section 4.90 WN-01 shall be amended as follows:

4.90 WN-01

This Window Standards section applies to the following districts:

O1, O2, P, B1, B2, B2B, B2C, B3, B4, MX, TZ3

The following window standards apply ~~on the front façade and any façade facing a street, plaza, park or parking area:~~

- A. Storefront Windows: Ground floor **façades** shall be designed with storefronts that have windows, doorways and signage, which are integrally designed. The following standards apply:
1. No less than 70% of a storefront/groundfloor façade between 1 and 8 feet above grade shall be clear glazing glass panels and doorway.
 2. **Only Clear glazing is permitted** on storefront **façades at the first floor** shall be clear. Lightly tinted glazing in neutral colors **above the first floor may be permitted**. Mirrored glass is prohibited.
 3. Required window areas shall be either pedestrian entrances, windows that allow views into retail space, working areas or lobbies. Display windows set into the wall may be approved by the Planning Board.
 4. **First floor** Windows shall not be blocked with opaque materials ~~or furniture, products, signs, blank walls or the back of shelving units~~ **or signs**.
 5. The bottom of the window shall be no more than 3 feet above the adjacent exterior grade.
 6. ~~Blank walls of longer than 20 feet shall not face a public street.~~
- B. ~~Upper Story Windows: Openings above the first story shall be a maximum of 50% of the total façade area. Windows shall be vertical in proportion.~~ **Ground floor building elevations: Building elevations on the ground floor that do not face a frontage line but contain a public entrance shall be no less than 30% clear glazing between 1 and 8 feet above grade.**

- C. Blank walls of longer than 20 feet on the ground floor façade shall not face a plaza, park, parking area or Public Street.**
- D. Upper Story Windows: Openings above the first story shall be a maximum of 50% of the total façade area. Windows shall be vertical in proportion.**
- E. To allow flexibility in design, these standards may be modified by a majority vote of the Planning Board, Design Review Board, and/or Historic District Commission for architectural design considerations provided that the following conditions are met:**
 - a. The subject property must be in a zoning district that allows mixed uses;**
 - b. The scale, color, design and quality of materials must be consistent with the building and site on which it is located;**
 - c. The proposed development must not adversely affect other uses and buildings in the neighborhood;**
 - d. Glazing above the first story shall not exceed a maximum of 70% of the façade area;**
 - e. Windows shall be vertical in proportion.**

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 07 ARCHITECTURAL DESIGN REQUIREMENTS, SECTION 7.05, REQUIREMENTS.

Article 07, section 7.05 shall be amended as follows:

7.05 Requirements

(See architectural design checklist on Site Plan Review application).

A. Building materials shall possess durability and aesthetic appeal.

~~B. A minimum of 50% of that portion of the first floor facade of a building with a commercial use(s) on the first floor and that faces a public street, private street, public open space or permanently preserved open space shall contain clear glazing.~~

BE. The building design shall include architectural features on the building facade that provide texture, rhythm, and ornament to a wall.

CE. Colors shall be natural and neutral colors that are harmonious with both the natural and man-made environment. Stronger colors may be used as accents to provide visual interest to the facade.

DE. The building design shall provide an interesting form to a building through manipulation of the building massing. This can be achieved through certain roof types, roof lines, and massing elements such as towers, cupolas, and stepping of the building form.

EE. These architectural elements shall be arranged in a harmonious and balanced manner.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD DEFINITIONS FOR CLEAR GLAZING AND LIGHTLY TINTED GLAZING

Article 9, Section 9.02

Clear Glazing – Glass and other transparent elements of building facades with a minimum visible light transmittance of 80%.

Lightly Tinted Glazing – Glass and other transparent elements of building facades with a minimum visible light transmittance of 70%.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Brown, City Clerk

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, OCTOBER 24, 2012
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held October 24, 2012. Chairman Robin Boyle convened the meeting at 6:30 p.m.

Present: Chairman Robin Boyle; Board Members Scott Clein, Carroll DeWeese, Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams;

Absent: Student Representative Kate Leary

Administration: Matthew Baka, Planning Specialist
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

10-180-12

FINAL SITE PLAN REVIEW

995 S. ETON (postponed from the meeting of October 10, 2012)

Saretsky, Hart, Michaels & Gould Law Firm

Two-story addition to building in existing outdoor courtyard

Ms. Ecker highlighted the proposal. The site located at 995 S. Eton is a one-story building that currently houses a law office. The petitioner intends to build a two-story addition at the southeast corner of the building (facing Cole Ave.) at the location of an existing outdoor courtyard. The addition will add 1,043 sq. ft. for a total of 5,423 sq. ft. The existing parking lot will remain, though new plantings are proposed to buffer the addition from the parking lot. The applicant proposes an aluminum and glass façade with swinging window treatments for the addition. The applicant is also proposing the installation of a new rooftop mechanical unit on the existing roof with mechanical screening to match existing screens. The existing site is zoned MX, Mixed Use. The law office is a permitted use within this district.

The increase in square footage increases the applicant's parking requirement by three spaces. The applicant intends to convert one barrier-free parking spot to an unrestricted parking spot, and seeks to utilize two on-street parking spaces on Eton St. toward their parking requirement in exchange for making improvements in the right-of-way. *In order to count these spaces, the applicant will be required to obtain approval from the City Commission. If approval is not granted, the applicant will be required to obtain a variance from the Board of Zoning Appeals ("BZA") or enter into a shared parking agreement that must be approved by the Planning Board.*

The second level of the south elevation on Cole St. does not meet the glazing requirements of the MX District. The applicant has agreed to reduce the amount of glazing on the second floor of the addition to comply with the maximum 50 percent glazing requirement. *If the glazing requirement is not met, a variance will be required from the BZA.*

All exterior design changes to the existing building will also be reviewed by the Design Review Board.

Mr. Roman Bonaslawski from Ron & Roman Architects was present for the applicant. With regards to the parking along Eton, if the Engineering Dept. believes there is a problem with the tightness of Cole as it resolves itself on Eton, he suggested the opportunity exists to make modifications on the south side of Eton if they believe it is too tight of a condition. Secondly, if there is opportunity to find 50 percent glazing going up from the top of the existing parapet they would prefer to have the glass up there or have it continue behind the louvers. It seems reasonable to add an additional tree on Cole. He requested that lighting not be a street improvement along Eton until there is a determination of what is happening along the entire Eton Corridor, and an understanding on how that street lighting can work.

Mr. Miles Hart from the law firm said their employee base is not growing. They need more space to spread out and into offices in order to have better working conditions. They don't have an issue with parking.

Mr. Williams thought the glazing on the second floor adds interest to the building. Mr. DeWeese agreed. To him it looks better if the top and bottom windows are the same size and the second floor is defined as starting at the top of the existing building.

There were no comments from the public at 8:55 p.m.

Motion by Ms. Whipple-Boyce

Seconded by Mr. DeWeese to approve the Final Site Plan and Design Review for

995 S. Eton, Saretsky, Hart, Michaels & Gould Law Firm, with the following conditions:

- 1. Applicant obtain approval of the City Commission for the use of two parking spaces on S. Eton or obtain a parking variance from the BZA;**
- 2. Applicant submit details for administrative approval for all landscaping, plant material, the location of the Knox box, and a recalculated glazing requirement on the south and east elevations that incorporates calculating the second floor glazing from the line of the existing building's roofline. A tree will be added on Cole.**
- 3. Applicant replace non cut-off light fixtures with cut-off fixtures to bring the site into compliance with the current ordinance;**
- 4. Applicant obtain approval from the Design Review Board for the proposed addition.**

Members of the public had no final comments at 9 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Whipple-Boyce, DeWeese, Boyle, Clein, Koseck, Lazar, Williams

Nays: None

Absent: None

10-183-12

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

- a. Communications (none)
- b. Administrative Approvals
 - 335 E. Maple Rd. – To slightly re-design the proposed storefront at grade level to include an additional entrance door for the office component of the building.
 - 953 S. Eton – Install five ton condenser on roof/"Lamsl" painted to match building. Height of unit: 33 in.; height of screening: 41 in.
- c. Draft Agenda for the Regular Planning Board Meeting on November 14, 2012
 - Park St. re-zoning application;
 - Max and Erma's space for Stoney Creek Steakhouse; and
 - 550 W. Merrill, School Administration Building, for office use.
- d. Other Business
 - 2013 Bistro Update – The City Commission has sent three bistros for the Planning Board to look at: What Crepe?, Birmingham Sushi, and Crush.
 - Mr. Baka thought it might be useful in the future to give this board the flexibility to vary from the glazing requirement. Board members also agreed that applicants should not be required to appear before two boards for their reviews.

**PLANNING BOARD MINUTES
FEBRUARY 27, 2013**

PUBLIC HEARING

1. TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 04 DEVELOPMENT STANDARDS, SECTION 4.83, WN-01 (WINDOW STANDARDS) TO ALLOW DESIGN FLEXIBILITY AS PERMITTED BY THE PLANNING BOARD, DESIGN REVIEW BOARD OR HISTORIC DISTRICT COMMISSION.

Chairman Boyle opened the public hearing at 7:38 p.m.

Mr. Baka recalled that on October 24, 2012 the Planning Board approved a two-story addition to the office building at 995 S. Eton. However, the applicant was forced to revise the architectural design of the addition in order to meet the window standards established in the Zoning ordinance. At that time, it was discussed whether the Ordinance could be amended to give the reviewing City board the authority to allow architects more creativity and flexibility when composing their designs by allowing variation from the window requirements.

On January 9, 2013 the Planning Board conducted a study session to discuss a draft ordinance amendment aimed at allowing the reviewing board the flexibility to modify the window standards. At that time, there was discussion regarding limiting the amendment to the upper stories of a building. Accordingly, the Planning Board set a public hearing for February 27, 2013 to review the draft ordinance.

Mr. Baka said that consideration of window standards normally would only go to one or two relevant boards. Mr. Koseck thought that requiring an applicant to appear before two boards adds confusion. The board's consensus was that either board could make the call.

No one from the public wished to speak on this matter at 7:45 p.m.

Motion by Mr. DeWeese

Seconded by Mr. Clein to recommend approval to the City Commission to amend Article 04, Section 4.83 Wn-01(Window Standards) to encourage flexibility in design. These standards may be waived by a majority vote of the Planning Board or Design Review Board and the Historic District Commission, when required, for architectural design considerations.

Motion carried, 7-0.

VOICE VOTE

Yeas: DeWeese, Clein, Boyle, Koseck, Lazar, Whipple-Boyce, Williams

Nays: None

Absent: None

**CITY COMMISSION MINUTES
MAY 6, 2013**

**05-148-13 PUBLIC HEARING – ZONING ORDINANCE
AMENDMENT WINDOW STANDARDS**

The Mayor opened the Public Hearing at 7:40 PM to consider an amendment to the Zoning Ordinance, Chapter 126, Article 04 Development Standards, Section 4.83, WN-01 (Window Standards).

Mr. Baka explained that the Planning Board requested a modification to the ordinance to allow some flexibility regarding window standards due to a recent site plan review. Mr. Currier recommended the Planning Board develop effective standards for when the second floor window requirements could be waived.

The Mayor closed the Public Hearing at 7:42 PM. The Commission took no action.

**PLANNING BOARD MINUTES
AUGUST 14, 2013**

**STUDY SESSION
Glazing Standards**

Ms. Ecker noted that on October 24, 2012 the Planning Board approved a two-story addition to the office building at 995 S. Eton. However, the applicant was forced to revise the architectural design of the addition in order to meet the window standards established in the Zoning Ordinance. At that time, several members of the Planning Board expressed support for the proposed design. It was discussed whether the Ordinance could be amended to authorize the reviewing City Board to give architects more creativity and flexibility when composing their designs by allowing variation from the window requirements.

On January 9, 2013 the Planning Board conducted a study session to discuss a draft ordinance amendment aimed at allowing the reviewing Board the flexibility to modify the window standards. At that time, there was discussion regarding limiting the amendment to the upper stories of a building. Accordingly, the Planning Board set a public hearing for February 27, 2013 to review the draft ordinance amendment.

On February 27, 2013 the Planning Board recommended approval to the City Commission.

On May 6, 2013 the City Commission reviewed the ordinance amendment and sent it back to the Planning Dept. The City Attorney asked for more specific requirements to be added that would allow the Planning Board to waive the glazing requirements on the upper levels.

The Planning Board reviewed the revised ordinance and changed the wording as follows:

" . . .To encourage flexibility in design these standards may be waived by a majority vote of the Planning Board and/or Historic District Commission for architectural design considerations. . . "

b. The scale, color, design and quality of materials of upper stories must be consistent with the building and site; and

c. The proposed development must not adversely affect other uses and buildings in the neighborhood.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Clein to schedule a public hearing on Glazing Standards for September 11, 1913.

Motion carried, 5-0.

VOICE VOTE

Yeas: Whipple-Boyce, Clein, Boyle, DeWeese, Williams

Nays: None

Absent: Koseck, Lazar

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, SEPTEMBER 25, 2013
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held September 25, 2013. Chairman Robin Boyle convened the meeting at 7:32 p.m.

Present: Chairman Robin Boyle; Board Members Scott Clein, Carroll DeWeese, Bert Koseck (arrived at 7:35 p.m.), Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Student Representative Arshon Afrakhteh

Absent: None

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

09-168-13

PUBLIC HEARING

Glazing Standards (rescheduled from September 11, 2013)

**TO CONSIDER AN AMENDMENT TO CHAPTER 126, ZONING, ARTICLE 04,
SECTION 4.83 WN-01 (WINDOW STANDARDS) TO ALLOW DESIGN
FLEXIBILITY AS APPROVED BY THE PLANNING BOARD, DESIGN REVIEW
BOARD AND/OR HISTORIC DISTRICT COMMISSION**

Chairman Boyle opened the public hearing at 7:37 p.m.

Mr. Baka advised that the Planning Board has been discussing whether the ordinance could be amended to give the reviewing City Board the authority to give architects more creativity and flexibility when composing their designs by allowing variation from the window requirements.

After several meetings on this topic, the Planning Board, at their August 14, 2013 meeting, held a study session detailing ordinance changes to the Glazing Standards and requested staff to set a public hearing date to consider amendments to Chapter 126, Article 04, section 24.83 B.

Mr. Williams received confirmation that the City Attorney is happy with the suggested ordinance amendments. Ms. Ecker verified that if a proposal goes before two different City boards, the Planning Board and the Historic District Commission ("HDC"), the HDC determination would take priority.

Chairman Boyle observed this is an example of the City listening to applicants and developers.

At 7:43 p.m. there were no comments from members of the audience.

Motion by Mr. Williams

Seconded by Mr. DeWeese to recommend approval by the City Commission to amend Article 04, Section 4.83 WN-01 (Window Standards) to allow design flexibility as permitted by the Planning Board, Design Review Board, and/or Historic District Commission.

There were no final comments from the audience at 7:44 p.m.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Williams, DeWeese, Boyle, Clein, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: None

The chairman formally closed the public hearing at 7:45 p.m.

In order to provide consistency throughout the ordinance, the Planning Staff recommends amending the first floor standards in the Triangle District and Section 4.83 to require 70% glazing between 1 and 8 ft. above grade.

Mr. Baka advised that the window standards apply on the front façade and any façade that includes the primary entrance where the façade faces a street, plaza, park or parking area. Blank walls are not permitted on elevations with public entrances.

It was concluded that a definition of "blank wall" is needed. Ms. Whipple-Boyce thought that some flexibility should be written into the ordinance. Say that blank walls are not permitted on elevations, period. Mr. Koseck thought this matter needs another layer of study so they don't end up with a bunch of windowless buildings or uninterrupted walls that don't make for good architecture. Mr. Baka clarified that what is being discussed does not apply in the Downtown or the Triangle. It only applies in areas that are more likely to have a stand-alone building. Ms. Lazar thought the board needs definite parameters to work with.

The board discussed that unique circumstances might allow flexibility in design to modify the standards. They decided to come back to that later after a little more thought.

Board members concluded that consideration of the Downtown Overlay would be a separate issue.

The consensus was to amend Article 04, section 4.83 WN-01 A and B and strike C. Further, amend Article 03, Section 3.09 b (1) Commercial/Mixed Use Architectural Requirements in the MX District as presented.

Motion by Mr. Boyle

Seconded by Mr. DeWeese to send this matter to a public hearing on November 11, 2015.

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, DeWeese, Clein, Jeffares, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: Williams

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, NOVEMBER 11, 2015
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on November 11, 2015. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Bert Koseck, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Stuart Jeffares, Daniel Share

Absent: Board Member Gillian Lazar; Student Representatives Scott Casperson, Andrea Laverty

Administration: Matthew Baka, Senior Planner
Sean Campbell, Asst. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

11-220-15

PUBLIC HEARINGS

1. TO AMEND ARTICLE 03 SECTION 3.09 (B) (1) TO REQUIRE GLAZING IN THE TRIANGLE DISTRICT BETWEEN 1 FT. AND 8 FT. ABOVE GRADE ON THE GROUND FLOOR;

AND

TO AMEND ARTICLE 04, SECTION 4.83 WN-01 (WINDOW STANDARDS) TO SPECIFY THAT THE REQUIRED 70% GLAZING IS BETWEEN 1 AND 9 FT. ABOVE GRADE ON THE GROUND FLOOR IN ALL ZONE DISTRICTS

Chairman Clein opened the public hearing at 7:34 p.m.

Mr. Baka recalled that at the October 14, 2015 Planning Board meeting the board discussed the issues related to the current window standards and the recurring need for applicants to seek variances from the Board of Zoning Appeals ("BZA"). Although it was acknowledged that additional changes need to be made beyond what is currently proposed, it was determined that there should be further study on certain aspects of the standards before additional changes can be recommended. It was decided however, that the standard of measuring the percentage of glazing on a site should be consistently measured between 1 and 8 ft. above grade. Accordingly, the Planning Board set a public hearing for November 11, 2015 to consider amendments to the window standards contained in the Zoning Ordinance.

The first floor glazing standards are inconsistent throughout the zones. In the Downtown

Overlay the 70% requirement is only applied between 1 and 8 ft. above grade. In the Triangle District and window standards of section 4.83, the 70% requirement is applied to the entire first floor. The result of this difference is that outside of the Downtown Overlay it requires a significantly larger amount of glazing to satisfy the requirement. A lot of developments are having a hard time meeting this standard. In order to provide consistency throughout the ordinance and still achieve the pedestrian and public interaction intended by the standards, the Planning Division recommends amending the first floor standards in the Triangle District and Section 4.83 to require 70% glazing between 1 and 8 ft. above grade. Staff believes that the addition of this provision to these two sections will significantly decrease the frequency of variance applications, while still achieving the intent of the standards.

The other proposed standard to be added to section 4.83 is that blank walls of longer than 20 ft. shall not face a public street.

There were no comments from the public at 7:36 p.m.

Motion by Mr. Boyle

Seconded by Mr. Williams to accept the amendments to the Zoning Ordinance as follows:

Article 04, section 4.83 WN-01

A. Storefront/Ground Floor Windows: Ground floors shall be designed with storefronts that have windows, doorways and signage, which are integrally designed. The following standards apply:

- 1. No less than 70% of the storefront/ground floor facade between 1 and 8 ft. above grade shall be clear glass panels and doorway.**
- 6. Blank walls of longer than 20 ft. shall not face a public street.**

Article 03, section 3.09 (b) (1)

B. Windows and Doors

1, Storefront/Ground Floor, Ground floors shall be designed with storefronts that have windows, doorways and signage, which are integrally designed and painted. No less than 70% of the storefront/ground floor facade between 1 and 8 ft. above grade shall be clear glass panels and doorway.

No one from the audience wished to comment at 7:37 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, Williams, Clein, Jeffares, Koseck, Share, Whipple-Boyce

Nays: None

Absent: Lazar

The chairman closed the public hearing at 7:38 p.m.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, MARCH 9, 2016
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on March 9, 2016. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Lisa Prasad; Student Representative Colin Cusimano

Absent: Board Members Bert Koseck, Gillian Lazar; Alternate Board Member Daniel Share

Administration: Matthew Baka, Senior Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

03-39-16

3. Glazing

Mr. Baka advised that over the past several years the Planning Board has performed site plan reviews where the board expressed support for the proposed design but the applicant has been forced to pursue variances because they were not able to meet the window standards contained in the Zoning Ordinance. Accordingly, the Planning Board has been holding study sessions on this topic to explore ways that the ordinance requirements can be altered so that fewer variances are sought but the objective of the window standards remains in place. The intent has been stated as the activation of the streets and public spaces of Birmingham by creating an interactive relationship between pedestrians and the users of the buildings in commercial areas.

During the study sessions held previously, the Board has discussed creating a waiver that is contingent on a set of criteria that would allow the Planning Board to waive the glazing requirements under certain circumstances. The City Commission has been hesitant to embrace this approach due to the subjective nature of such criteria. Accordingly, in previous study sessions the Planning Board developed a list of requirements that must be met in order to qualify for the exemption.

Another potential change that staff would like the Planning Board to discuss is combining the provisions of Article 04 and Article 07 into one set of standards that requires 70% glazing on the facades that face the street and then reducing the requirement to 50% on secondary facades that face parking areas and open space.

Mr. Baka recalled the Planning Board has been talking about glazing for quite a long time. The origination of the glazing requirements came from the Downtown Overlay Zone and/or the 2016 Plan where 70% glazing is required between 1 ft. and 8 ft. above grade. In the downtown that is just along the storefronts. When the Triangle Plan was created in 2006, glazing standards were also added. Then there were additions made to Article 4, the Development Standards which would apply to all commercial properties outside of the two Overlays. Last fall, an amendment was completed to make the three criteria consistent in that they were all being measured between 1 ft. and 8 ft. The Triangle and the General Commercial areas did not have that, so staff was forced to measure glazing for the whole facade which made it difficult for people to comply.

Right now section 4.90 dealing with all other commercial zones states that window standards requiring 70% glazing apply on the front facade and any facade facing a street, plaza, park, or parking area. The board has been talking about altering the language so that the requirements are not quite as difficult to meet. Staff has come up with a way to give this body the authority to waive those requirements if they see fit and has developed a list of requirements that must be met in order to qualify for the exemption:

To allow flexibility in design, these standards may be modified by a majority vote of the Planning Board, Design Review Board, and/or Historic District Commission for architectural design considerations provided that the following conditions are met:

- a. The subject property must be in a zoning district that allows mixed uses.
- b. The scale, color, design and quality of materials of upper stories must be consistent with the building and site on which it is located.
- c. The proposed development must not adversely affect other uses and buildings in the neighborhood.

Ms. Whipple-Boyce along with other members suggested adding the following:

- d. No less than 50% glazing between 1 ft. and 8 ft. above grade on the secondary facades that don't face a public or private street. Note that the primary facade faces the street and contains the address.

Mr. Baka advised that current standards for upper story windows say that openings above the first story shall be a maximum of 50% of the total facade area. Windows shall be vertical in proportion. It was discussed that current office design calls for expansive use of glazing on the upper floors. Board members considered allowing no more than 70% glazing on the upper floors. Chairman Clein suggested coming back next time with the language that was discussed for the first floor along with language that says that the second story can have no more than 70% glazing.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, APRIL 13, 2016
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on April 13, 2016. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams

Absent: Alternate Board Members Lisa Prasad, Daniel Share; Student Representative Colin Cusimano

Administration: Matthew Baka, Senior Planner
Sean Campbell, Asst. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

04-61-16

**STUDY SESSION
Glazing**

Mr. Baka recalled that the Planning Board has been holding study sessions on this topic to explore ways that the ordinance requirements can be altered so that fewer variances are sought but the intent of the window standards remains in place. The intent of the glazing requirements has been to activate the streets and public spaces of Birmingham by creating an interactive relationship between the pedestrians and the buildings in commercial areas.

Since the last study session an error was discovered in the Zoning Ordinance that has a significant effect on how the existing language is enforced. However, the Planning Division is of the opinion that this clerical error correction would bring the regulations back in line with the original intent of the window standards. This would eliminate the need for creating definitions for primary and secondary facades as discussed at the last study session. It will reduce the amount of glazing required on non-street facing facades and will reduce the number of variance requests, but will still provide glazing on elevations of buildings that face the street. The question is whether the board wants to add more requirements for non-street facing facades.

Board members decided to strike 4.90 WN-01 (C) (e) that states glazing on the ground floor facade shall not be reduced to less than 50% between 1 and 8 ft. above grade. Discussion considered whether glazing should be required on buildings where a public entrance not on the frontage line is in the back. It was thought there must be a minimum of 30% glazing between 1 and 8 ft. above grade.

Mr. Baka agreed to write out the changes for the board to see one more time before this topic goes to a public hearing.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, MAY 11, 2016
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on May 11, 2016. Vice-Chairperson Gillian Lazar convened the meeting at 7:30 p.m.

Present: Board Members Stuart Jeffares, Bert Koseck, Gillian Lazar, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Student Representative Colin Cusimano

Absent: Chairman Scott Clein; Board Member Robin Boyle.

Administration: Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

05-84-16

STUDY SESSION ITEMS

1. Glazing

Ms. Ecker recalled the only changes from the last meeting were:

(1) That the board determined they would like minimum glazing required on any façade that has a public entrance, even if it is not in the front. That alteration was made to Article 4.90 WN-01 (B) Ground floor building elevations that now states "Building elevations on the ground floor that do not face a frontage line but contain a public entrance shall be no less than 30% glazing between 1 and 8 feet above grade." However, if the façade is on a frontage line and faces the street, 70% glazing is required.

(2) Also (C) Blank walls of longer than 20 ft. on the ground floor shall not face a plaza, park, parking area or public street.

For Chairperson Lazar, Ms. Ecker explained that Article 4.90 WN-01 (B) (5) means the bottom part of the window has to be in the pedestrian zone, which is no more than 3 ft. above the adjacent exterior grade.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to set a public hearing for June 8, 2016 to consider the proposed changes to Article 04, Section 4.90 WN -01 and Article 07, Section 7.05 of the Zoning Ordinance to amend the glazing standards.

At 7:40 p.m. there was no public to comment on the motion.

Motion carried, 7-0.

ROLLCALL VOTE

Yeas: Williams, Lazar, Jeffares, Koseck, Share, Whipple-Boyce

Nays: None

Absent: Boyle, Clein

Planning Board Minutes
June 8, 2016

PUBLIC HEARING

1. To consider amendments to Article 04, section 4.90 WN-01 and Article 07, section 7.05 of the Zoning Ordinance to amend the glazing standards

Chairman Clein opened the public hearing at 7:40 p.m.

Mr. Baka recalled that the Planning Board has been holding study sessions on this topic to explore ways that the ordinance requirements can be altered so that fewer variances are sought but the intent of the window standards remains in place. The intent of the glazing requirements has been to activate the streets and public spaces of Birmingham by creating an interactive relationship between the pedestrians and the buildings in commercial areas. The Planning Board decided that the standard of measuring the percentage of glazing on a site should be consistently measured between 1 and 8 ft. above grade in all zoning districts. Accordingly, the board recommended approval of the proposed amendments to the City Commission, which were later adopted by the Commission. Since that time, the Planning Division has held several study sessions on the subject of window standards.

At the last study session the Planning Board discussed an error in the Zoning Ordinance that was discovered by staff and that has a significant effect on how the existing language is enforced. The definition of facade was inadvertently altered when the Zoning Ordinance was reformatted in 2005. The reformatting changed the definition of facade to the vertical exterior surface of a building that is set parallel to a setback line which is all four sides of the parcel; rather than a frontage line which is elevations that front on a public street. The change from frontage line to setback line significantly alters what is considered a facade.

This discovery eliminated a lot of the need to make drastic changes to the window standards. However, the board did determine that building elevations that have a public entrance should contain some element of glazing on elevations that are not on a frontage line. Accordingly, the board directed staff to draft a provision that requires 30% glazing between 1 and 8 ft. on those elevations. In addition, the Planning Division recommends adding Article 4, section 4.90 (C) to prevent blank walls longer than 20 ft. in most situations, and would also recommend the removal of Article 7, Processes, Permits and Fees, section 7.05 (B), Architectural Design Review, as it is out of place in this location, and would be best addressed in Article 4, Development Standards – Window Standards.

Also a section has been added to allow flexibility in architectural design considerations. These standards may be modified by a majority vote of the Planning Board, Design Review Board, and/or Historic District Commission provided certain conditions are met.

Discussion brought out that the ordinance dictates which board an applicant will appear before.

On May 11, 2016, the Planning Board discussed the proposed amendments to the glazing standards, and voted unanimously to set a public hearing for June 8, 2016. No changes have been made to the proposed language since that time.

There were no comments from the public on the proposed amendments at 7:52 p.m.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Share to recommend to the City Commission approval of the proposed changes to Article 04, section 4.90 WN-01 and Article 07, section 7.05 of the Zoning Ordinance to amend the glazing standards.

No one from the audience wished to discuss the motion at 7:53 p.m.

Motion carried, 6-0.

VOICE VOTE

Yeas: Whipple-Boyce, Share, Klein, Jeffares, Koseck, Lazar

Nays: None

Absent: Boyle, Williams

The chairman closed the public hearing at 7:53 p.m.

BIRMINGHAM CITY COMMISSION MINUTES
JULY 25, 2016
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Rackeline J. Hoff, Mayor, called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL:	Present,	Mayor Hoff Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Harris Mayor Pro Tem Nickita Commissioner Sherman
	Absent,	None

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, Assistant to the Manager Haines, DPS Director Wood, BPS Director Heiney, City Planners Ecker & Baka, Fire Chief Connaughton, Deputy Fire Marshal Campbell, Finance Director Gerber, Deputy Treasurer Klobucar, Police Chief Clemence

**07-241-16 PUBLIC HEARING TO CONSIDER ORDINANCE AMENDMENT
REGARDING GLAZING STANDARDS**

Mayor Hoff opened the Public Hearing to consider amendments to Zoning Ordinance – Glazing Standards at 9:54 PM.

Planner Baka explained that there are three sets of standards that govern how window standards are applied in the City – for the downtown overlay, the triangle district, and for all other commercial properties in the City which includes the rail district. He explained that as the Planning Board was reviewing projects, they started seeing projects that were forced to obtain variances to accomplish the design or had to alter the design of the façade in order to gain approval without a variance.

Mr. Baka explained the recommendation to add a provision that would require glazing on not just the frontage lines, but also on any side of the building where there is a public entrance. In certain situations, specifically along Woodward where there are only two sides to the building and there are rear entrances, a lot of stores need storage rooms and back of house type of situations. The recommendation includes a minimum requirement of 30% on secondary entrances, which is half of what is required on the front. The other recommendation is that no blank walls longer than twenty feet that face a plaza, park, parking area or street.

Mayor Pro Tem Nickita stated that the ability to provide glass on a passageway is one of the fundamental goals that is trying to be achieved and should be included as well. He

commented that it is identified in the 2016 Plan and is promoted throughout the retail is that glass must be clear. The City needs language that is enforceable and "lightly tinted" is not legally binding.

The Commission agreed to direct this back to the Planning Board to consider the changes as discussed.

The Mayor closed the Public Hearing at 10:16 PM.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, AUGUST 10, 2016
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on August 10, 2016. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Student Representative Colin Cousimano (left at 9 p.m.)

Absent: Board Members Robin Boyle, Stuart Jeffares; Alternate Board Members Lisa Prasad, Daniel Share

Administration: Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

08-140-16

STUDY SESSION ITEMS

1. Glazing Standards Update

Ms Ecker reported that at the July 25, 2016 City Commission meeting, a public hearing was held to consider proposed amendments to the current window standards in the Zoning Ordinance. The purpose of these amendments was to implement several minor changes to the standards contained in Article 04 of the Zoning Ordinance, as well as the elimination of additional standards in Article 07 that are in conflict with other areas of the Zoning Ordinance. The proposed changes would have added a requirement to have at least 30% glazing on rear elevations with a public entrance; increased the amount of glazing permitted on upper floors, prohibited blank walls longer than 20 ft. on all elevations facing a park, plaza or parking lot; and would also have provided the reviewing board with the flexibility to allow adjustments to the amount of glazing under specific conditions. The City Commission decided to send the draft ordinance back to the Planning Board for further consideration.

During the public hearing, the City Commission identified two additional issues that they would like the Planning Board to consider. These issues were the clarification or elimination of the provision that allows window glazing to be "lightly tinted." Currently there is no definition for the term "lightly tinted," so there is no objective standard that applicants must meet in order to comply with this standard. Secondly, The City Commission would like the Planning Board to consider whether there should be a glazing requirement in alleys and passages that are subject to the Via Activation Overlay Zone.

Therefore, there are two things the City Commission wants this board to look at, which is whether only clear glazing should be allowed; or if lightly tinted is allowed, define lightly tinted. The second issue is whether a minimum glazing standard should be added for facades that front on vias.

Ms. Whipple-Boyce thought 70% glazing is excessive for the side facing a via.

Discussion turned to tinted glass. Ms. Lazar thought there might be some accommodation for a building that will receive an excessive amount of sunlight. Mr. Koseck cautioned that the board should make sure what they are asking for is technically achievable. Once the glass is tinted it loses that interaction with the outside.

He continued that buildings need a back of the house. Mr. Williams maintained that the back of the building should have protection at the lower levels which is where the dumpster is located.

Ms. Whipple-Boyce favored having no tint on the windows. She doesn't think tint will determine whether or not people will cover their windows from the inside. As far as the via, maybe there is something that talks about locating a percentage of windows in the active part of the building. However, people should be encouraged to come to the street.

Chairman Clein said he is hearing support for no tinting except for energy code compliance, but making sure that it is enforceable.

Ms. Ecker noted the existing ordinance encourages more glazing and pedestrian scale details in the Via Activation Overlay without specific strict mandates. Mr. Williams thought what is currently in the ordinance is fine - it gives the board flexibility.

Chairman Clein suggested that the board come back to discuss this and consider language that still provides flexibility but addresses the significance of via glazing standards. Make sure that conversation is finalized because a commissioner did specifically call it out.

Ms. Ecker said she will find something that shows some of the limits of tint so the board is clear whether they are happy with no tint. She will investigate whether low-E coating counts as a tint, and what the Energy Code mandates. Further, she might be able to find samples.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JANUARY 11, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 11, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams

Absent: Alternate Board Members Lisa Prasad, Daniel Share

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary
Bruce Johnson, Building Official
Mike Morad, Building Inspector
Scott Worthington, Asst. Building Official
Jeff Zielke, Building Inspector

01-06-17

STUDY SESSION ITEMS

1. Window tinting requirements

Mr. Baka reported that at the July 25, 2016 City Commission meeting, a public hearing was held to consider proposed amendments to the current window standards in the Zoning Ordinance. The proposed changes would have added a requirement to have at least 30% glazing on rear elevations with a public entrance; increased the amount of glazing permitted on upper floors; prohibited blank walls longer than 20 ft. on all elevations facing a park, plaza or parking lot; and would also have provided the reviewing board with the flexibility to allow adjustments to the amount of glazing under specific conditions. These standards would have applied to every Commercial Zone in the City. The City Commission decided to send the subject back to the Planning Board for further consideration.

During the public hearing, the City Commission identified two additional issues that they would like the Planning Board to consider. These issues are whether only clear glazing should be allowed; or if lightly tinted is allowed, to provide a definition for lightly tinted. The second issue is whether a minimum glazing standard should be added for facades that face vias.

With respect to vias and passages, there is language in the ordinance that requires windows but not a certain amount. Sites directly adjoining a via must provide windows and doors overlooking the via to provide solar access, visual interaction and surveillance of the via. Additionally, the ordinance states walls facing vias shall include windows and architectural features customarily found on the front facade of a building. So, the issue is addressed, but not with concrete numbers.

Staff has conducted research with respect to window tinting, and determined there are three basic categories or ratings that are measured when evaluating the efficiency of a window, which are as follows:

- U-factor - measures the rate of heat transfer (or loss). Predominately determined by the number of glass panes and the type of gas barrier sealed between those panes.
- Solar Heat Gain Coefficient (SHGC) - measures how much heat from the sun is blocked. The lower the SHGC the more a product is blocking solar heat gain. SHGC can be controlled through tinting, reflective coatings or low-e coatings.
- Visible Transmittance (VT) - measures how much light comes through a window. The higher the VT, the higher the potential for daylighting. VT is generally controlled with tinting and reflective coatings.

Modern technology has gotten to a point where low-e coatings that don't have a tint are effective in blocking solar heat gain. From that point of view, the board should not be concerned about whether or not they are affecting the Energy Code.

Mr. Koseck spoke in favor of clear glass, and as in the AAA Building blinds can be added, such as for a western exposure. Ms. Whipple-Boyce was also in favor of maintaining clear glass on all floors along with specifying a VT percentage in the ordinance. People will want window treatments whether or not the glass is tinted.

No one from the public wished to join the discussion at 8:10 p.m.

Mr. Baka agreed to bring in samples of low-e coatings for next time as well as pictures of recent projects that have tinting for comparison purposes.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, FEBRUARY 8, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on February 8, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Member Lisa Prasad

Absent: Board Member Gillian Lazar; Alternate Board Member Daniel Share

Administration: Matt Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary
Bruce Johnson, Building Official
Mike Morad, Building Inspector
Scott Worthington, Asst. Building Official
Jeff Zielke, Building Inspector

02-26-17

STUDY SESSION ITEMS

1. Window Tinting Requirements

Mr. Baka noted that at their July 25, 2016 meeting, the City Commission identified two issues that they would like the Planning Board to consider. These issues were the clarification or elimination of the revision that allows window glazing to be "lightly tinted." Secondly the City Commission also asked the Planning Board to consider whether there should be a glazing requirement in alleys and passages that are subject to the Via Activation Overlay Zone.

Currently, the Via Activation Overlay standard does indicate a requirement for windows but does not set a specific percentage that is required. This would allow the Planning Board to evaluate projects on a case-by-case basis but does not provide a baseline or minimum amount of glazing that would be required in these spaces. The draft ordinance for building elevations with secondary entrances not on a frontage line would require 30% glazing on those elevations. The Planning Board may wish to consider a similar requirement in the vias.

Staff has conducted research with respect to window tinting and found there are three basic categories or ratings that are measured when evaluating the efficiency of glazing, which are as follows:

- U-factor - measures the rate of heat transfer (or loss). Predominately determined by the number of glass panes and the type of gas barrier sealed between those panes.
- Solar Heat Gain Coefficient ("SHGC") - measures how much heat from the sun is blocked. The lower the SHGC the more a product is blocking solar heat gain. SHGC can be controlled through tinting, reflective coatings or low-e coatings.
- Visible Transmittance ("VT") - measures how much light comes through a window. The higher the VT, the higher the potential for daylighting. VT is generally controlled with tinting and reflective coatings.

Modern technology has gotten to a point where low-e coatings that don't have a tint are effective in blocking solar heat gain. From that point of view, the board should not be concerned about whether or not they are affecting the Energy Code.

Comments received during the January 11, 2017 Planning Board meeting indicated general support for the use of clear glass only. However, the Planning Board requested Planning Staff to provide local examples of clear and tinted glass in the City and/or provide glass examples so that board members could view the levels of VT in person.

Mr. Baka passed around samples of clear and tinted glass. Also he identified recent local projects where clear glass and lightly tinted glass were used. Due to the ambiguity of the current glaze tinting regulations contained in the Zoning Ordinance, the City does not have any information on file as to the level of tinting that was applied to the examples provided in regards to VT. In general, 70% VT is considered light tinting.

Mr. Koseck announced he is in favor of clear glass on the first floor and lightly tinted on the floors above. Clear glass even has a green tint. It was discussed that the grey, black and bronze colors seem neutral. A light tint may not automatically be enough to deal with certain exposures to the sun. It may be necessary to use shades or blinds.

Ms. Whipple-Boyce was in favor of clear glass on all floors and indicated that most likely some sort of window treatment will be used. She likes the idea of evaluating the amount of glazing used in the vias on a case-by-case basis because of where back of the house uses may fall.

Mr. Baka said that with lightly tinted glazing there would be minimal filtration of the heat gain.

Ms. Ecker summarized the discussion. The board generally likes the idea of clear glass on the ground floor and some measure of grey or bronze tint allowed above. They prefer to keep the via glazing standards as they are and allow more glazing above.

Mr. Baka agreed to bring back some draft amendments at a future study session.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, MARCH 29, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on March 29, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle (arrived at 8 p.m.), Stuart Jeffares, Janelle Whipple-Boyce, Alternate Board Member Daniel Share, Bryan Williams; Student Representative Ariana Afrakhteh (left at 9:05 p.m.)

Absent: Board Members Bert Koseck, Vice Chairperson Gillian Lazar; Alternate Board Member Lisa Prasad

Administration: Matthew Baka, Sr. Planner

Jana Ecker, Planning Director
Mario Mendoza, Recording Secretary

03-68-17

STUDY SESSION ITEMS

1. Window Tinting

Mr. Baka recalled that the City Commission has held a public hearing and the Planning Board has held several study sessions to discuss the issue of window standards and examine potential changes to the ordinance to address the concerns of the City Commission. As a result of those discussions, a general consensus was reached that prohibiting the tinting of windows would promote the intent of the creating a pedestrian friendly interactive condition in the commercial areas of the City.

Accordingly, the Planning Board directed the Planning Staff to draft Zoning Ordinance amendments that would require clear glazing on the first floor and allow light tinting on the upper floors. The draft language also includes the original ordinance amendments that were recommended to the City Commission in July of 2016.

With regards to the treatment of glazing in passageways and vias, the Planning Board decided not to recommend a required amount of glazing in these spaces as it might impede important "back of house" functions and have a negative impact on businesses. Currently, the Via Activation Overlay Standard does indicate a requirement for windows but does not set a specific percentage that is required.

As currently written, this provision allows the Planning Board to evaluate projects on a case-by-case basis but does not provide a baseline or minimum amount of glazing that is required in these spaces.

Discussion concluded that clear glass must have a visual transmission level of at least 80%. Further, not less than 70% visual transmission qualifies as lightly tinted. (The lower the percentage, the darker the tint.) Ms. Whipple-Boyce indicated she does not think there should be any tinting on the upper floors either. Mr. Baka said he will add a definition of clear and lightly tinted to the draft language and bring it to another study session.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, MAY 10, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on May 10, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Student Representative Isabella Niskar

Absent: Student Representative Ariana Afrakhteh

Alternates: Lisa Prasad and Dan Share were not asked to attend

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

05-91-17

STUDY SESSION ITEMS

1. Window Tinting

Mr. Baka stated that the City Commission has held a public hearing and the Planning Board has held several study sessions to discuss the issue of window standards and examine potential changes to the Ordinance to address the concerns of the City Commission. As a result of those discussions, a general consensus was reached that prohibiting the tinting of windows would promote the intent of creating a pedestrian friendly interactive condition in the commercial areas of the City.

With regards to the treatment of glazing in passageways and vias, the Planning Board decided not to recommend a required amount of glazing in these spaces as it might impede important "back of house" functions and have a negative impact on businesses. Presently, the Via Activation Overlay Standard does indicate a requirement for windows but does not set a specific percentage that is required. As currently written, this provision allows the Planning Board to evaluate projects on a case-by-case basis but does not provide a baseline or minimum amount of glazing that is required in these spaces.

Discussions have concluded that clear glass must have a visual transmission level of at least 80%. Further, not less than 70% visual transmission qualifies as lightly tinted. (The lower the percentage, the darker the tint.)

On March 29, 2017, the Planning Board reviewed draft ordinance language and requested that it be revised to include definitions for clear glazing and lightly tinted glazing that have specific percentages of visual transmittance. Accordingly, those definitions have been drafted and are now incorporated. This draft language also

includes the original ordinance amendments that were recommended to the City Commission in July of 2016.

Chairman Clein made a change to 4.90 WN-01 (2) to say "Only clear glazing is permitted on storefront facades . . ."

Discussion from the public was taken at 8:15 p.m.

Mr. Steve Kalczynski from the Townsend Hotel said that regarding their second-story bakery it was strongly suggested they take the blinds down, so they put curtains up because of the need to block the sun.

Ms. Ecker suggested inserting the following provision to the Downtown Overlay Standard 3.04 prior to setting a public hearing: " First floor windows shall not be blocked with opaque materials or furniture, products, signs, blank walls, or the back of shelving units. This language could be added for purposes of discussion at the public hearing. It can always be taken out.

Mr. Koseck indicated his view is to have clear glass throughout the first floor of the City with a visual transmission level of 80%. If the sun is blazing in he is okay with a blind because it might go away, the use might change, etc. Further, above the first floor, blinds may be permitted.

Motion by Mr. Williams

Seconded by Mr. Jeffares that the Planning Board set a public hearing for June 14, 2017 to allow the public to comment on these proposed changes and for the Planning Board to make a recommendation to the City Commission on these issues.

There were no comments from the public at 8:30 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Jeffares, Boyle, Clein, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: None



MEMORANDUM

Planning Division

DATE: June 1, 2016

TO: Planning Board

FROM: Jana Ecker, Planning Director

SUBJECT: Public Hearing to consider amendments to Chapter 126, Zoning, Article 04, Section 4.90 WN-01 (WINDOW STANDARDS) and Article 07, section 7.05 (ARCHITECTURAL DESIGN REQUIREMENTS)

At the November 11, 2015 Planning Board meeting the Board held a public hearing to discuss proposed amendments to the current window standards in the Zoning Ordinance. The purpose of these amendments was to reduce the recurring need for applicants to seek variances from the Board of Zoning Appeals due to difficulty meeting those requirements. At that time it was acknowledged that additional changes needed to be made beyond what is currently proposed and it was determined that there needs to be further study on certain aspects of the standards before additional changes can be recommended. It was decided however, that the standard of measuring the percentage of glazing on a site should be consistently measured between 1 and 8 feet above grade. Accordingly, the Planning Board recommended approval of the proposed amendments to the City Commission, which were later adopted by the Commission. Since that time, the Planning Division has held several study sessions on the subject of window standards.

Background

Over the past several years the Planning Board has performed site plan reviews where the Planning Board expressed support for the proposed design but the applicant has been forced to pursue variances because they were not able to meet the window standards contained in the Zoning Ordinance. Accordingly, the Planning Board has been holding study sessions on this topic to explore ways that the ordinance requirements can be altered so that fewer variances are sought but the intent of the window standards remains in place. The intent of the glazing requirements has been to activate the streets and public spaces of Birmingham by creating an interactive relationship between the pedestrians and the buildings in commercial areas.

There are currently four sections of the Zoning Ordinance that regulate the amount of glazing, or windows, that are required in various commercial areas. Those sections are as follows:

Downtown Overlay

Article 03 section 3.04(E):

4. Storefronts shall be directly accessible from public sidewalks. Each storefront must have transparent areas, equal to 70% of its portion of the facade, between one and eight feet from the ground. The wood or metal armature (structural elements to support canopies or signage) of such storefronts shall be painted, bronze, or powder-coated.

6. The glazed area of a facade above the first floor shall not exceed 35% of the total area, with each façade being calculated independently.

7. Glass shall be clear or lightly tinted only. Opaque applications shall not be applied to the glass surface.

Triangle Overlay District

Article 03 section 3.09:

B. Windows and Doors:

1. Storefront/Ground Floor. Ground floors shall be designed with storefronts that have windows, doorways and signage, which are integrally designed and painted. No less than 70% of the storefront/ground floor façade between 1 and 8 feet above grade shall be clear glass panels and doorway. Glass areas on storefronts shall be clear, or lightly tinted. Mirrored glass is prohibited. Required window areas shall be either windows that allow views into retail space, working areas or lobbies, pedestrian entrances, or display windows set into the wall. Windows shall not be blocked with opaque materials or the back of shelving units or signs. The bottom of the window must be no more than 3 feet above the adjacent exterior grade.

All other Commercial zones

Article 04 section 4.90:

The following window standards apply on the front façade and any façade facing a street, plaza, park or parking area:

A. Storefront/Ground Floor Windows: Ground floors shall be designed with storefronts that have windows, doorways and signage, which are integrally designed. The following standards apply:

1. No less than 70% of the storefront/ground floor façade between 1 and 8 feet above grade shall be clear glass panels and doorway.
2. Glass areas on storefronts shall be clear or lightly tinted in neutral colors. Mirrored glass is prohibited.
3. Required window areas shall be either pedestrian entrances, windows that allow views into retail space, working areas or lobbies. Display windows set into the wall may be approved by the Planning Board.
4. Windows shall not be blocked with opaque materials or furniture, products, signs, blank walls or the back of shelving units.
5. The bottom of the window shall be no more than 3 feet above the adjacent exterior grade.
6. Blank walls of longer than 20 feet shall not face a public street.

- B. Upper Story Windows: Openings above the first story shall be a maximum of 50% of the total façade area. Windows shall be vertical in proportion.

In addition, there is an obscure section of the Zoning Ordinance that includes an additional provision that also regulates the amount of glazing required on commercial buildings. This section of the code only requires 50% clear glazing at street level.

Article 07 section 7.05, Architectural Design Review:

7.05 Requirements

- B. A minimum of 50% of that portion of the first floor facade of a building with a commercial use(s) on the first floor and that faces a public street, private street, public open space or permanently preserved open space shall contain clear glazing.

Potential changes

During recent site plan reviews where variances have been pursued, the subject properties have all been located outside of the overlay zones. Accordingly, the focus of the study sessions up to this point has been on the standards contained in Article 04 section 4.90, which affect all areas not within an overlay zone. The Board has discussed creating a waiver that is contingent on a set of criteria that would allow the Planning Board, Historic District Commission, or Design Review Board to alter the glazing requirements under certain circumstances. The Planning Board developed a list of criteria that must be met in order to qualify for the modification of the standards. The draft language of the waiver criteria is attached for your review.

Another potential change that was discussed at the previous Planning Board study session was combining the provisions of Article 04 and Article 07 into one set of standards that requires 70% glazing on the facades that face the street and then reducing the requirement to 50% on secondary facades that face parking areas and open space. At the last study session the Planning Board discussed an error that was discovered by staff in the Zoning Ordinance that has a significant effect on how the existing language is enforced. The definition of façade was inadvertently altered when the Zoning Ordinance was reformatted in 2005. The current definition of façade reads as follows:

Facade: The vertical exterior surface of a building that is set parallel to a **setback line**.

However, prior to the reformatting of the Zoning Ordinance the definition of facade read as follows:

Facade means the vertical exterior surface of a building that is set parallel to a **frontage line**.

The change from frontage line to setback line significantly alters what is considered a façade as a frontage line is defined as follows:

Frontage line: all lot lines that abut a public street, private street, or permanently preserved or dedicated public open space.

With this discovery the window standards would only be enforced on facades as defined in the Zoning Ordinance prior to the reformatting. As this is a clerical error, it will be corrected. This eliminates glazing required on non-street facing facades and will reduce the number of variance requests but will still provide glazing on elevations of buildings that face the street. Accordingly, the Planning Division is of the opinion that this clerical error correction would bring the regulations back in line with the original intent of the window standards. This would eliminate the need for creating definitions for primary and secondary facades as discussed at previous study sessions. As a result of this discovery, the Planning Board decided to eliminate the draft language that delineated between facades that face a street and those that do not. However, the Board did determine that building elevations that have a public entrance should contain some element of glazing. Accordingly, the Board directed staff to draft a provision that requires 30% glazing on those elevations that have a public entrance but do not face a frontage line. In addition, the Planning Division recommends adding Article 4, section 4.90(C) to prevent blank walls in most situations, and would also recommend the removal of Article 7, Processes, Permits and Fees, section 7.05(B), Architectural Design Review, as it is out of place in this location, and would be best addressed in Article 4, Development Standards – Window Standards, as noted above.

On May 11, 2016, the Planning Board discussed the proposed amendments to the glazing standards, and voted unanimously to set a public hearing for June 8, 2016. No changes have been made to the proposed language since that time. Draft ordinance language is attached for your review, along with relevant meeting minutes.

Suggested Action:

To recommend to the City Commission approval of the proposed changes to Article 04, Section 4.90 WN-01 and Article 07, Section 7.05 of the Zoning Ordinance to amend the glazing standards.



MEMORANDUM

Planning Division

DATE: June 9, 2017

TO: Planning Board

FROM: Matthew Baka, Senior Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Window Standards Public Hearing

At the July 25, 2016 City Commission meeting, a public hearing was held to consider proposed amendments to the window standards in the Zoning Ordinance. The purpose of these amendments was to implement several minor changes to the standards contained in Article 04 of the Zoning Ordinance, as well as the elimination of additional standards in Article 07 that are in conflict with other areas of the Zoning Ordinance. The proposed changes would have added a requirement to have at least 30% glazing on rear elevations with a public entrance, increased the amount of glazing permitted on upper floors, prohibited blank walls longer than 20' on all elevations facing a park, plaza or parking lot, and would also have provided the reviewing board with the flexibility to allow adjustments to the amount of glazing under specific conditions.

During the public hearing, the City Commission identified two additional issues that they would like the Planning Board to consider. These issues were the clarification or elimination of the provision that allows window glazing to be "lightly tinted". Currently there is no definition for the term "lightly tinted", so there is no objective standard that applicants must meet in order to comply with this standard. Secondly, The City Commission also asked the Planning Board to consider whether there should be a glazing requirement in alleys and passages that are subject to the Via Activation Overlay Zone. Accordingly, the City Commission sent the matter back to the Planning Board for further consideration. Please find attached the staff report presented to the Planning Board and City Commission, along with the proposed ordinance language and minutes from previous discussions on the topic.

Since that time, the Planning Board has held several study sessions to discuss this issue and examine potential changes to the ordinance to address the concerns of the City Commission. With regards to the treatment of glazing in passageways and vias, the Planning Board decided not to recommend a required amount of glazing in these spaces. While it was agreed that windows in alleys or vias are an important enhancement, it was also discussed that there are important "back of house" functions to most commercial businesses which must be accommodated and that requiring similar glazing percentages on the scale that is required on the building frontages may impede those functions and have a negative impact on businesses. Currently, the Via Activation Overlay standards

do indicate a requirement for windows but do not set a specific percentage that is required. The following is an excerpt from the Via Activation Overlay District in the Zoning Ordinance that contains the current regulations that deal with windows:

- H. Design Standards: All portions of buildings and sites directly adjoining a via must maintain a human scale and a fine grain building rhythm that provides architectural interest for pedestrians and other users, and provide windows and doors overlooking the via to provide solar access, visual interaction and surveillance of the via. To improve the aesthetic experience and to encourage pedestrians to explore vias, the following design standards apply for all properties with building facades adjoining a via:
1. Blank walls shall not face a via. Walls facing vias shall include windows and architectural features customarily found on the front facade of a building, such as awnings, cornice work, edge detailing or decorative finish materials. Awnings shall be straight sheds without side flaps, not cubed or curved, and must be at least 8 feet above the via at the lowest drip edge;

As currently written, this provision allows the Planning Board to evaluate projects on a case by case basis but does not provide a baseline or minimum amount of glazing that is required in these spaces.

Recent study sessions also included research and analysis of the various treatments and techniques that are commonly used to tint and provide filters for sunlight, heat, and UV radiation. On January 11, 2017, Planning staff provided information regarding the effect that permitting only clear glass windows would have on the ability to comply with the Michigan Energy Code. Based on conversations with the Building Department staff and research into the various aspects of window properties and technologies, it appears that requiring clear glass would not necessarily prevent someone from complying with the Energy Code. As detailed in the attached materials, there are three basic categories or ratings that are measured when evaluating the efficiency of a window, which are as follows:

1. **U-factor**: measures the rate of heat transfer (or loss). The U-factor rating is predominately determined by the number of panes of glass and the type of gas barrier sealed between those panes.
2. **Solar Heat Gain Coefficient (SHGC)**: measures how much heat from the sun is blocked. SHGC is expressed as a number between 0 and 1. The lower the SHGC, the more a product is blocking solar heat gain. SHGC can be controlled through tinting, reflective coatings or low-e coatings.
3. **Visible Transmittance (VT)**: measures how much light comes through a window. VT is expressed as a number between 0 and 1. The higher the VT, the higher the potential for daylighting. A typical clear glass window has a VT of approximately .80. VT is generally controlled with tinting and reflective coatings.

As a result of those discussions, a general consensus was reached that prohibiting the tinting of windows would promote the intent of the creating a pedestrian friendly

interactive condition in the commercial areas of the City. Accordingly, the Planning Board directed the Planning staff to draft Zoning Ordinance amendments that would require clear glazing on the first floor and allow light tinting on the upper floors.

On March 29, 2017 the Planning Board reviewed the draft ordinance language. As a result of that discussion the Planning Board requested that the draft language be revised to include definitions for clear glazing and lightly tinted glazing that have specific percentages of visual transmittance.

On May 10, 2017 the Planning Board reviewed the draft language for the new definitions. The Planning Board then set a public hearing for June 14, 2017 to consider a recommendation to the City Commission in regards to adopting the proposed amendments. The proposed draft ordinance language is attached to this report. This draft language also includes the original ordinance amendments that were recommended to the City Commission in July of 2016.

SUGGESTED ACTION

To make a recommendation of APPROVAL to the City Commission of the following zoning ordinance amendments:

TO AMEND ARTICLE 03 DOWNTOWN OVERLAY DISTRICT, SECTION 3.04, E ARCHITECTURAL STANDARDS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE;

TO AMEND ARTICLE 03 TRIANGLE OVERLAY DISTRICT, SECTION 3.09, COMMERCIAL/MIXED USE ARCHITECTURAL REQUIREMENTS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE;

TO AMEND ARTICLE 04 DEVELOPMENT STANDARDS, SECTION 4.90, WN-01 (WINDOW STANDARDS) TO ALTER THE REQUIRED GLAZING ON COMMERCIAL BUILDINGS;

TO AMEND ARTICLE 07 ARCHITECTURAL DESIGN REQUIREMENTS, SECTION 7.05, REQUIREMENTS TO REMOVE INCONSISTENT PROVISIONS; AND

TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD DEFINITIONS FOR CLEAR GLAZING AND LIGHTLY TINTED GLAZING.

**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JUNE 14, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 14, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Stuart Jeffares, Bert Koseck, Vice Chairperson Gillian Lazar, Janelle Whipple-Boyce, Alternate Board Members Daniel Share; Lisa Prasad

Absent: Board Members Robin Boyle, Bryan Williams; Student Representatives Ariana Afrakhteh, Isabella Niskar

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

06-111-17

PUBLIC HEARINGS

1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM AS FOLLOWS:

TO AMEND ARTICLE 03 DOWNTOWN OVERLAY DISTRICT, SECTION 3.04 (E) ARCHITECTURAL STANDARDS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE;

TO AMEND ARTICLE 03 TRIANGLE OVERLAY DISTRICT, SECTION 3.09, COMMERCIAL/MIXED USE ARCHITECTURAL REQUIREMENTS TO REQUIRE CLEAR GLAZING AT THE FIRST FLOOR FAÇADE;

TO AMEND ARTICLE 04 DEVELOPMENT STANDARDS, SECTION 4.90, WN-01 (WINDOW STANDARDS) TO ALTER THE REQUIRED GLAZING ON COMMERCIAL BUILDINGS;

TO AMEND ARTICLE 07 ARCHITECTURAL DESIGN REQUIREMENTS, SECTION 7.05, REQUIREMENTS TO REMOVE INCONSISTENT PROVISIONS; AND

TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD DEFINITIONS FOR CLEAR GLAZING AND LIGHTLY TINTED GLAZING.

The public hearing opened at 7:34 p.m.

Mr. Baka recalled that the City Commission has held a public hearing and the Planning Board has held several study sessions to discuss the issue of window standards and examine potential changes to the Ordinance to address the concerns of the City Commission. As a result of those discussions, a general consensus was reached that prohibiting the tinting of first floor windows would promote the intent of creating a pedestrian friendly interactive condition in the commercial areas of the City.

There are three sections of the ordinance that dictate how glazing on buildings is regulated: the Downtown Overlay District (much of Downtown); the Triangle Overlay District (bound by Woodward Ave., Adams, and Maple Rd.); and all other commercial properties.

For the Downtown Overlay It is proposed to now require clear glass on the first floor and light tinting on the stories above. It is also proposed that first-floor windows cannot be blocked by opaque materials or the backs of shelves. For the Triangle Overlay it is clarified that first-floor glazing shall be clear and that lightly tinted glazing is permitted on the upper floors. In all other commercial zones clear glazing is required on the first floor and lightly tinted on the floors above; and again the first-floor windows shall not be blocked with opaque materials or the backs of shelves. On elevations that are not a facade but also have a public entrance it is being considered that 30% clear glazing shall be provided between 1 and 8 ft. above grade as opposed to the 70% that is required for the other facades. Further, blank walls of longer than 20 ft. on the ground floor facade shall not face a plaza, park, parking area, or public street. This provision is already included in the Downtown and Triangle Overlays. Also, openings above the first story shall be a maximum of 50% of the total facade area and windows shall be vertical in proportion. The proposal eliminates Article 07.05 B that requires 50% glazing on first-floor facades.

Finally, the reviewing body is given some flexibility in these areas, without forcing applicants to go before the Board of Zoning Appeals to acquire a variance.

Definitions for clear glazing, and lightly tinted glazing are proposed to be added to Article 09 section 9.02.

Ms. Lazar received clarification that buildings which already have a manually applied screening material to keep out sunlight are considered grandfathered in for the duration of the tenancy. Also, something that obstructs the view into the window would be considered a violation. Thirdly, blinds or shutters are permitted.

Mr. Share noticed in section 3.09 (Triangle Overlay) there was no reference to furniture blocking windows, whereas in sections 4.90 (Window Standards) and 3.04 (Downtown Overlay) there are those references. The consensus was to reduce restrictions in sections 4.90 and 3.04 to make them the same as section 3.09. Basically furniture and products would be removed from those sections.

At 7:45 p.m. no one from the public had a comment on window glazing.

Ms. Whipple-Boyce announced she is not supportive of permitting tinting on the upper floors and for that reason she will not support the proposal tonight.

Motion by Mr. Share

Seconded by Ms. Lazar to recommend to the City Commission adoption of the proposed Ordinance changes to section 3.04 (E), section 3.09, section 4.90, section

7.05 and section 9.02 of the Zoning Ordinance to amend the glazing standards with the one modification discussed tonight.

Mr. Koseck thought everyone will sense the benefit of the clear glass at the first floor and will not notice the slight tinting above.

There were no public comments on the motion at 7:49 p.m.

Motion carried, 6-01.

VOICE VOTE

Yeas: Share, Lazar, Clein, Jeffares, Koseck, Prasad

Nays: Whipple-Boyce

Absent: Boyle, Williams

The Chairman closed the public hearing at 7:50 p.m.

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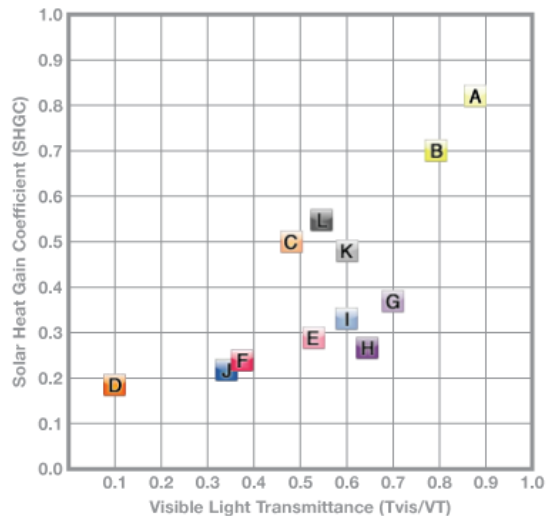
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Visible Transmittance (VT or Tvis)

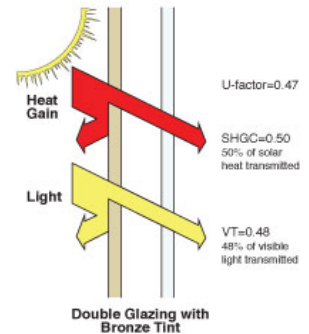
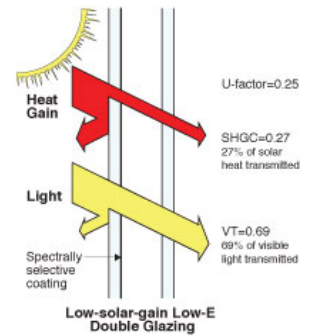
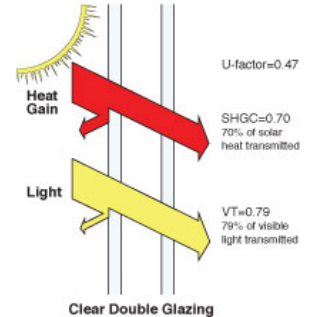
Visible transmittance is the amount of light in the visible portion of the spectrum that passes through a glazing material. A higher VT means there is more daylight in a space which, if designed properly, can offset electric lighting and its associated cooling loads. Visible transmittance is influenced by the glazing type, the number of panes, and any glass coatings. Visible transmittance of glazing ranges from above 90% for uncoated water-white clear glass to less than 10% for highly [reflective coatings](#) on tinted glass. A typical double-pane IGU had a VT of around 78%. This value decreases somewhat by adding a [low-E coating](#) and decreased substantially when adding a [tint](#) (see figure to the right). VT values for the whole window are always less than center-of-glass values since the VT of the frame is zero.

Light-to-Solar-Gain Ratio

In the past, windows that reduced solar gain (with tints and coatings) also reduced visible transmittance. However, new high-performance tinted glass and low-solar-gain low-E coatings have made it possible to reduce solar heat gain with little reduction in visible transmittance. Because the concept of separating solar gain control and light control is so important, measures have been developed to reflect this. The LSG ratio is defined as a ratio between visible transmittance (VT) and solar heat gain coefficient (SHGC).



The image illustrates the center-of-glass properties for the options used in the Facade Design Tool. A double-glazed unit with clear glass (B) has a visible transmittance (VT) of 0.79 and a solar heat gain coefficient (SHGC) of 0.70, so the LSG is $VT/SHGC = 1.12$. Bronze-tinted glass in a double-glazed unit (C) has a visible transmittance of 0.45 and a solar heat gain coefficient of 0.50, which results in an LSG ratio of 0.89. This illustrates that while the bronze tint lowers the SHGC, it lowers the VT even more compared to clear glass. The double-glazed unit with a high-performance tint (E) has a relatively high VT of 0.52 but a lower SHGC of 0.29, resulting in an LSG of 1.80—significantly better than the bronze tint. A clear double-glazed unit with a low-solar-gain low-E coating (H) reduces the SHGC significantly, to 0.27, but retains a relatively high VT of 0.64, producing an LSG ratio of 2.4—far superior to those for clear or tinted glass.



Center-of-glass visible transmittance values of double pane units.

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Solar Heat Gain Coefficient (SHGC)

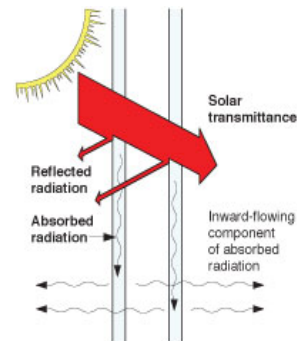
The second major energy-performance characteristic of windows is the ability to control solar heat gain through the glazing. Solar heat gain through windows is a significant factor in determining the cooling load of many commercial buildings. The origin of solar heat gain is the direct and diffuse radiation coming from the sun and the sky (or reflected from the ground and other surfaces). Some radiation is directly transmitted through the glazing to the building interior, and some may be absorbed in the glazing and indirectly admitted to the inside. Some radiation absorbed by the frame will also contribute to overall window solar heat gain factor. Other thermal (nonsolar) heat transfer effects are included in the U-factor of the window.

Window standards are now moving away from a previous standard referred to as Shading Coefficient (SC) to Solar Heat Gain Coefficient (SHGC), which is defined as that fraction of incident solar radiation that actually enters a building through the entire window assembly as heat gain. To perform an approximate conversion from SC to SHGC, multiply the SC value by 0.87.

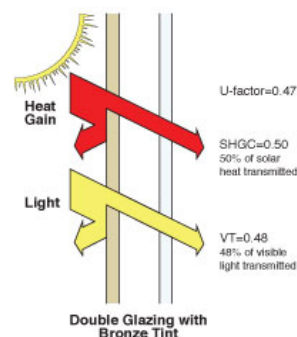
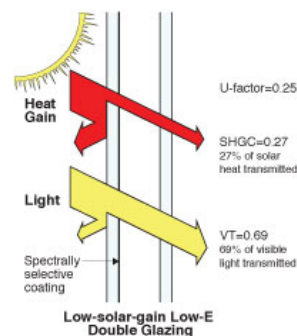
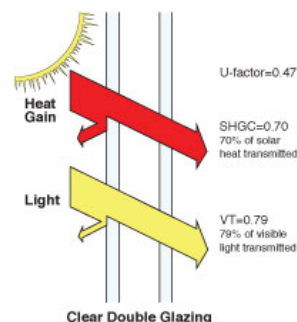
The SHGC is also affected by shading from the frame as well as the ratio of glazing and frame. The SHGC is expressed as a dimensionless number from 0 to 1. A high coefficient signifies high heat gain, while a low coefficient means low heat gain.

Solar heat gain is influenced by the glazing type, the number of panes, and any glass coatings. Solar heat gain of glazing ranges from above 80% for uncoated water-white clear glass to less than 20% for highly [reflective coatings](#) on tinted glass. A typical double-pane IGU has a SHGC of around 0.70.

This value decreases somewhat by adding a [low-E coating](#) and decreased substantially when adding a [tint](#) (see figure to the right). Since the area of a frame has a very low SHGC, the overall window SHGC is lower than the center-of-glass value.



Simplified view of the components of solar heat gain. Heat gain includes the transmitted solar energy and the inward flowing component of absorbed radiation.



Center-of-glass solar heat gain values of double pane units.

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U-factor (Insulating Value)

For windows, a principle energy concern is their ability to control heat loss. Heat flows from warmer to cooler bodies, thus from the inside face of a window to the outside in winter, reversing direction in summer. Overall heat flow from the warmer to cooler side of a window unit is a complex interaction of all three basic heat transfer mechanisms—conduction, convection, and long-wave radiation (see figure to the right). A window assembly's capacity to resist this heat transfer is referred to as its insulating value, or u-factor.

Conduction occurs directly through glass, and the air cavity within double-glazed IGUs, as well as through a window's spacers and frames. Some frame materials, like wood, have relatively low conduction rates. The higher conduction rates of other materials, like metals, have to be mitigated with discontinuities, or thermal breaks, in the frame to avoid energy loss.

Convection within a window unit occurs in three places: the interior and exterior glazing surfaces, and within the air cavity between glazing layers. On the interior, a cold interior glazing surface chills the adjacent air. This denser cold air then falls, starting a convection current. People often perceive this air flow as a draft caused by leaky windows, instead of recognizing that the remedy correctly lies with a window that provides a warmer glass surface (see figure to the right). On the exterior, the air film against the glazing contributes to the window's insulating value. As wind blows (convection), the effectiveness of this air film is diminished, contributing to a higher heat rate loss. Within the air cavity, temperature-induced convection currents facilitate heat transfer. By adjusting the cavity width, adding more cavities, or choosing a gas fill that insulates better than air, windows can be designed to reduce this effect.

All objects emit invisible thermal radiation, with warmer objects emitting more than colder ones. Through radiant exchange, the objects in the room, and especially the people (who are often the warmest objects), radiate their heat to the colder window. People often feel the chill from this radiant heat loss, especially on the exposed skin of their hands and faces, but they attribute the chill to cool room air rather than to a cold window surface. Similarly, if the glass temperature is higher than skin temperature, which occurs when the sun shines on heat-absorbing glass, heat will be radiated from the glass to the body, potentially producing thermal discomfort.

Determining Insulating Value

The U-factor (also referred to as U-value) is the standard way to quantify overall heat flow. For windows, it expresses the total heat transfer coefficient of the system (in Btu/hr-sf-°F), and includes conductive, convective, and radiative heat transfer. It represents the heat flow per hour (in Btus per hour or watts) through each square foot of window for a 1 degree Fahrenheit temperature difference between the indoor and outdoor air temperature. The insulating value or R-value (resistance to heat transfer) is the reciprocal of the total U-factor ($R=1/U$). The higher the R-value of a material, the higher the insulating value; the smaller the U-factor, the lower the rate of heat flow.

Given that the thermal properties and the various materials within a window unit, the U-factor is commonly expressed in two ways:

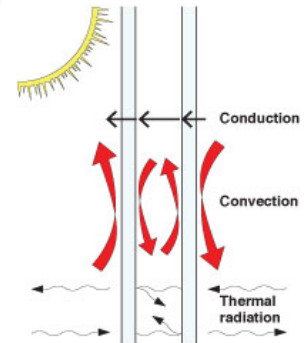
- The U-factor of the total window assembly combines the insulating value of the glazing proper, the edge effects in the IGU, and the window frame and sash.
- The center-of-glass U-factor assumes that heat flows perpendicular to the window plane, without addressing the impact of the frame edge effects and material.

The U-factor of the glazing portion of the window unit is affected primarily by the total number of glazing layers (panes), their dimension, the type of gas within their cavity, and the characteristic of coatings on the various glazing surfaces. As windows are complex three-dimensional assemblies, in which materials and cross sections change in a relatively short distance, it is limiting, however, to simply consider glazing. For example, metal spacers at the edge of an IGU have a much higher heat flow than the center of the insulating glass, which causes increased heat loss along the outer edge of the glass.

Overall U-factor

The relative impact of these "edge effects" becomes more important as the insulating value of the entire assembly increases, and in small units where the ratio of edge to center-of-glass area is high. Since the U-factors vary for the glass, edge-of-glass zone, and frame, it can be misleading to compare the U-factors of windows from different manufacturers if they are not carefully and consistently described. Calculation methods developed by the [National Fenestration Rating Council](#) (NFRC) address this concern.

In addition to the thermal properties of window assembly materials, weather conditions, such as interior/exterior temperature differential and wind speed, also impact U-factor. Window manufacturers typically list a winter U-factor for determined under relatively harsh conditions: 15 mph wind, 70 degrees Fahrenheit indoors, 0 degrees Fahrenheit outdoors. A specific set of assumptions and



Components of heat transfer through a window.

procedures must be followed to calculate the overall U-factor of a window unit using the NFRC method. For instance, the NFRC values are for a standard window size-the actual U-factor of a specific unit varies with size. Originally developed for manufactured window units, new methods are available to determine the U-factor of site-built assemblies.

The U-factor of a window unit is rated based on a vertical position. A change in mounting angle affects a window's U-factor. The same unit installed on a sloped roof at 20° from horizontal would have a U-factor 10–20% higher than in the vertical position (under winter conditions).

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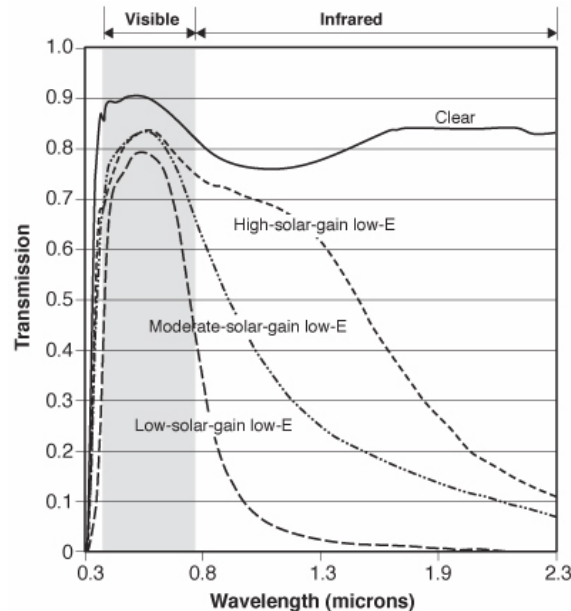
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Low-E Coatings

When heat or light energy is absorbed by glass, it is either convected away by moving air or reradiated by the glass surface. The ability of a material to radiate energy is called its emissivity. All materials, including windows, emit (or radiate) heat in the form of long-wave, far-infrared energy depending on their temperature. This emission of radiant heat is one of the important components of heat transfer for a window. Thus reducing the window's emittance can greatly improve its insulating properties.

Standard clear glass has an emittance of 0.84 over the long-wave portion of the spectrum, meaning that it emits 84% of the energy possible for an object at its temperature. It also means that 84% of the long-wave radiation striking the surface of the glass is absorbed and only 16% is reflected. By comparison, low-E glass coatings can have an emittance as low as 0.04. Such glazing would emit only 4% of the energy possible at its temperature, and thus reflect 96% of the incident long-wave, infrared radiation. Window manufacturers' product information may not list emittance ratings. Rather, the effect of the low-E coating is incorporated into the U-factor for the unit or glazing assembly.

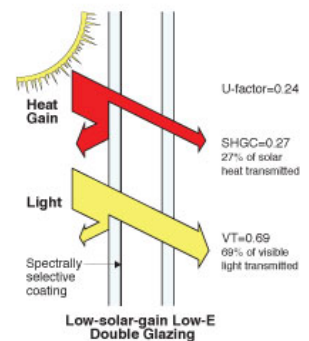
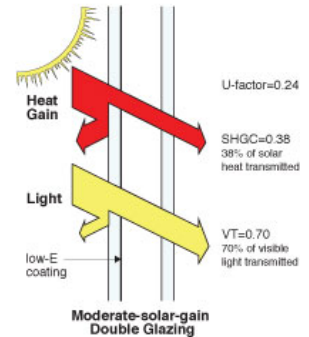
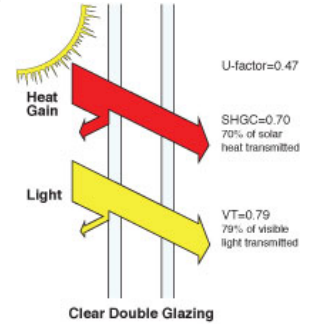
The solar reflectance of low-E coatings can be manipulated to include specific parts of the visible and infrared spectrum. This is the origin of the term spectrally selective coatings, which selects specific portions of the energy spectrum, so that desirable wavelengths of energy are transmitted and others specifically reflected. A glazing material can then be designed to optimize energy flows for solar heating, daylighting, and cooling.



Spectral transmittance curves for glazings with low-emittance coatings (Source: Lawrence Berkeley National Laboratory).

With conventional clear glazing, a significant amount of solar radiation passes through the window, and heat from objects within the space is reradiated back into the glass, then from the glass to the outside of the window. A glazing design for maximizing energy efficiency during underheated periods would ideally allow all of the solar spectrum to pass through, but would block the reradiation of heat from the inside of the space. The first low-E coatings, intended mainly for residential applications, were designed to have a high solar heat gain coefficient and a high visible transmittance to allow the maximum amount of sunlight into the interior while reducing the U-factor significantly. A glazing designed to minimize summer heat gains, but allow for some daylighting, would allow most visible light through, but would block all other portions of the solar spectrum, including ultraviolet and near-infrared radiation, as well as long-wave heat radiated from outside objects, such as pavement and adjacent buildings. These second-generation low-E coatings still maintain a low U-factor, but are designed to reflect the solar near-infrared radiation, thus reducing the total SHGC while providing high levels of daylight transmission (see figure to the right).

Low-solar-gain coatings reduce the beneficial solar gain that could be used to offset heating loads, but in most commercial buildings this is significantly outweighed by the solar control benefits. In commercial buildings, it is common to apply low-E coatings to both tinted and clear glass. While the



Center-of-glass values of double pane units with and without low-E coatings.

tint lowers the visible transmittance somewhat, it contributes to solar heat gain reduction and glare control. Low-E coatings can be formulated to have a broad range of solar control characteristics while maintaining a low U-factor.

There are two basic processes for making low-E coatings—sputtered and pyrolytic. Sputtered coatings are multilayered coatings that are typically comprised of metals, metal oxides, and metal nitrides. These materials are deposited on glass or plastic film in a vacuum chamber in a process called physical vapor deposition. Although these coatings range from three to possibly more than thirteen layers, the total thickness of a sputtered coating is only one ten thousandth the thickness of a human hair. Sputtered coatings often use one or more layers of silver to achieve their heat reflecting properties. Since silver is an inherently soft material that is susceptible to corrosion, the silver layer(s) must be surrounded by other materials that act as barrier layers to minimize the effects of humidity and physical contact. Historically, sputtered coatings were described as soft-coat low-E? because they offered little resistance to chemical or mechanical attack. While advances in material science have significantly improved the chemical and mechanical durability of some sputtered coatings, the glass industry continues to generically refer to sputter coat products as "soft-coat low-E."

Most sputtered coatings are not sufficiently durable to be used in monolithic applications; however, when the coated surface is positioned facing the air space of a sealed insulating glass unit, the coating should last as long as the sealed glass unit. Sputtered coatings have emittance as low as 0.02 which are substantially lower than those for pyrolytic coatings.

A typical pyrolytic coating is a metallic oxide, most commonly tin oxide with some additives, which is bonded to the glass while it is in a semi-molten state. The process by which the coating is applied to the glass is called chemical vapor deposition. The result is a baked-on surface layer that is quite hard and thus very durable, which is why pyrolytic low-E is sometimes referred to as "hard-coat low-E." A pyrolytic coating can be ten to twenty times thicker than a sputtered coating but is still extremely thin. Pyrolytic coatings can be exposed to air and cleaned with traditional glass cleaning products and techniques without damaging the coating.

Because of their inherent chemical and mechanical durability, pyrolytic coatings may be used in monolithic applications, subject to manufacturer approval. They are also used in multi-layer window systems where there is air flow between the glazings as well as with non-sealed glazed units. In general, though, pyrolytic low-E is most commonly used in sealed insulating glass units with the low-E surface facing the sealed air space

Low-solar-gain low-E coatings on plastic films can also be applied to existing glass as a retrofit measure, thus reducing the SHGC of an existing clear glass considerably while maintaining a high visible transmittance and lower U-factor. Other conventional tinted and reflective films will also reduce the SHGC but at the cost of lower visible transmittance. Reflective mirror-like metallic films can also decrease the U-factor, since the surface facing the room has a lower emittance than uncoated glass.

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The Facts About Windows & Daylighting

"Daylighting is the illumination of building interiors with sunlight or sky light and is known to affect visual performance, lighting quality, health, human performance, and energy efficiency."

"In terms of energy efficiency, daylighting can provide substantial whole-building energy reductions in nonresidential buildings through the use of electric light controls. Daylight admission can displace the need for electric lighting at the perimeter zone with vertical windows and at the core zone with skylights. Lighting and its associated cooling costs constitute 30-40% of a nonresidential building's energy use."

ASHRAE Handbook of Fundamentals

Why is Daylighting Important?

- **For Health and Well-Being**
Daylighting the interior space of buildings is an important consideration for architectural design. Studies have shown that increased daylighting improves worker productivity, provides for faster patient recovery, and improves students' grades. Additional benefits of daylighting include keeping our biological clocks in order and relieving stress. These benefits have long been recognized in Europe, where minimum amounts of daylighting and an opportunity to enjoy an exterior view are regulated.
- **For Energy Efficiency**
Daylighting, especially when integrated with lighting controls, can reduce the dependence on artificial lighting. Lighting systems not only add to electrical demand, they also create heat that must be removed with additional air-conditioning. Building design using perimeter work zones can take full advantage of the benefits of daylighting; and daylighting provides backup lighting whenever mechanical systems fail.
- **For Sustainable Design**
The trend towards designing buildings that meet present needs without compromising future needs includes an increased reliance upon daylighting and natural ventilation to reduce energy demand and to benefit occupants.

Daylighting and Windows

Visible Transmittance

The potential for daylighting buildings is directly related to the amount of fenestration area installed on the building envelope. It is also related to the amount of light allowed through those systems into the building. The ability of a fenestration product to transmit daylight is called Visible Transmittance (VT).

There are three important categories of light energy within the solar spectrum: ultraviolet (UV), visible, and infrared (IR). The visible transmittance of a fenestration system depends upon: 1) the amount of the visible light segment of the solar spectrum that is transmitted through the glass, and 2) the ratio of frame to glass, which depends upon the window design and frame type.

Spectrally Selective Glass

(keep the light, reduce solar gain)

In the past, developers used reflective or tinted glass products in many commercial buildings to reduce solar heat gain through windows. Unfortunately, these products also reduce the amount of visible light. This reduction in visible transmittance can lead to an increase in the amount of artificial lighting needed in buildings. To take advantage of potential savings from daylighting, the industry has seen growth in the use of spectrally selective glass. This type of glass has special

NFRC administers an independent, uniform rating and labeling system for the energy performance of fenestration products, including windows, curtain walls, doors, and skylights. For more information on NFRC, please visit our Web site at www.nfrc.org or contact NFRC directly at 301-589-1776.

properties that block or re-radiate infrared energy from the sun, reducing solar gain through the windows while maintaining higher levels of visible light transmittance. This type of product is also available for use in residential windows, typically with a spectrally selective low-e coating on the interior surface of insulating glass units.

Daylighting Considerations

The following are some issues that a design professional must consider when utilizing daylight. Seek the assistance of an expert consultant for more detailed information.


- Remember that the fenestration systems must have a source of daylight to be effective and that the fenestration must be able to transmit the visible light desired.
- Automated daylight lighting controls = energy savings.
- Modify daylighting needs to meet specific tasks (glare).
- Consider light shelves to help distribute daylight and provide shading.
- Incorporate indoor features to increase exposure to daylighting.
- Consider the LSG index, or a “visible light to solar heat gain ratio.” References to this index typically recommend an LSG of 1.25 or greater.

The NFRC 200 Standard

The industry standard for rating, comparing, and ranking the Visible Transmittance (and Solar Heat Gain Coefficient) of fenestration products is *NFRC 200 – Procedure for Determining Fenestration Product Solar Heat Gain Coefficients and Visible Transmittance at Normal Incidents*. This standard should be referenced for fenestration product performance on all architectural specifications.

Certified Visible Transmittance Ratings

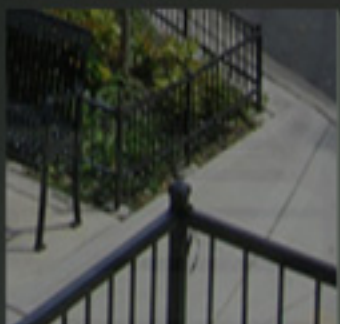
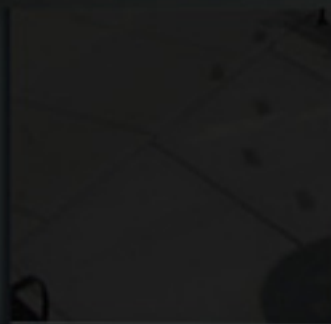
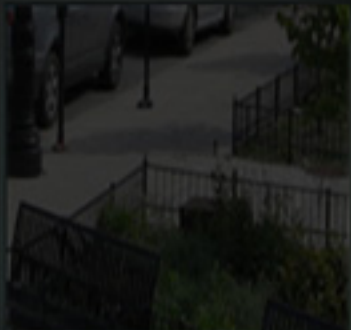
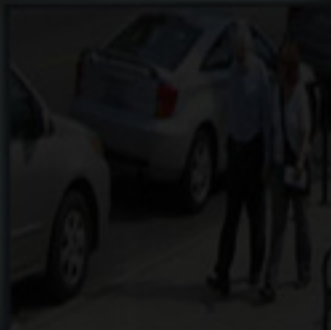
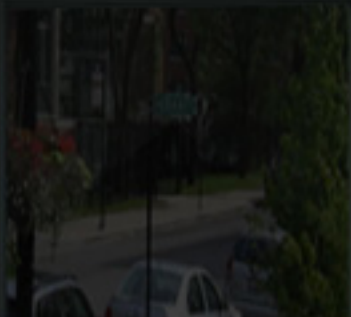
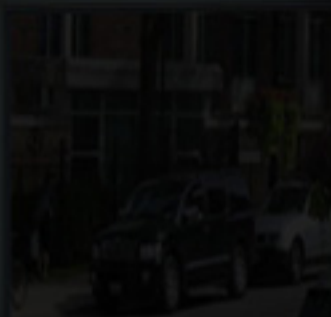
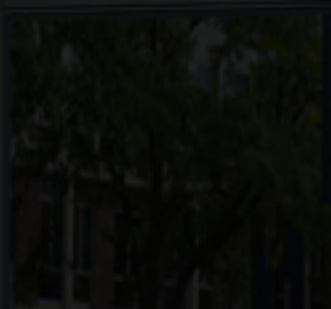
Any fenestration supplier or glazing contractor that wishes to obtain certified VT ratings can participate in NFRC’s Certification Program. This program authorizes them to place an *NFRC Label* on their products or a *Label Certificate* on site-built systems. Builders, architects, and code officials should use these certified ratings to compare products and to assure that products meet specifications and code requirements. Certified products appear in NFRC’s *Certified Products Directory*, which is available online at www.nfrc.org.

 World's Best Window Co. Millennium 2000+ Vinyl-Clad Wood Frame Double Glazing • Argon Fill • Low E Product Type: Vertical Slider	
ENERGY PERFORMANCE RATINGS	
U-Factor (U.S./I-P) A 0.35	Solar Heat Gain Coefficient B 0.32
ADDITIONAL PERFORMANCE RATINGS	
Visible Transmittance C 0.51	Air Leakage (U.S./I-P) D 0.2
Condensation Resistance E 51	
<small>Manufacturer stipulates that these ratings conform to applicable NFRC procedures for determining whole product performance. NFRC ratings are determined for a fixed set of environmental conditions and a specific product size. Consult manufacturer's literature for other product performance information. www.nfrc.org</small>	

- A U-Factor** measures how well a product prevents heat from escaping a home or building. U-Factor ratings generally fall between 0.20 and 1.20. The lower the U-Factor, the better a product is at keeping heat in. U-Factor is particularly important during the winter heating season. This label displays U-Factor in U.S. units. Labels on products sold in markets outside the United States may display U-Factor in metric units.
- B Solar Heat Gain Coefficient (SHGC)** measures how well a product blocks heat from the sun. SHGC is expressed as a number between 0 and 1. The lower the SHGC, the better a product is at blocking unwanted heat gain. Blocking solar heat gain is particularly important during the summer cooling season.
- C Visible Transmittance (VT)** measures how much light comes through a product. VT is expressed as a number between 0 and 1. The higher the VT, the higher the potential for daylighting.
- D Air Leakage (AL)** measures how much outside air comes into a home or building through a product. AL rates typically fall in a range between 0.1 and 0.3. The lower the AL, the better a product is at keeping air out. AL is an optional rating, and manufacturers can choose not to include it on their labels. This label displays AL in U.S. units. Labels on products sold in markets outside the United States may display AL in metric units.
- E Condensation Resistance (CR)** measures how well a product resists the formation of condensation. CR is expressed as a number between 1 and 100. The higher the number, the better a product is able to resist condensation. CR is an optional rating, and manufacturers can choose not to include it on their NFRC labels.

85%

Clear +
Clear



14%

30%

68%

**05%
VLT**

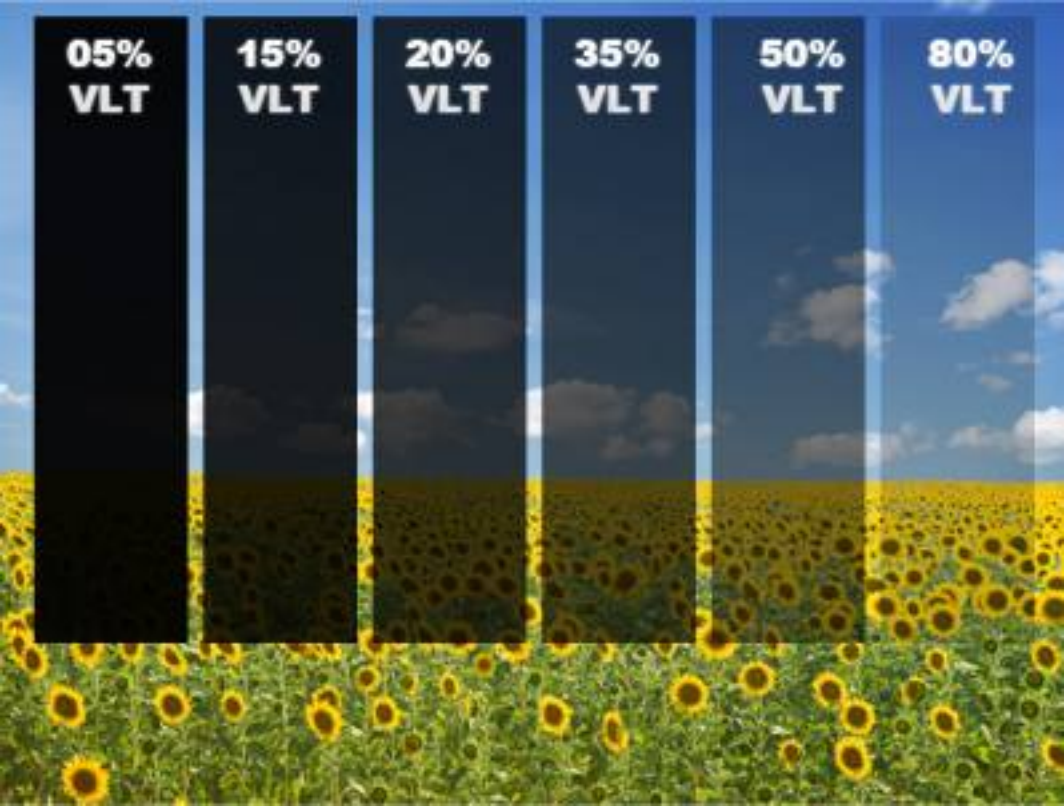
**15%
VLT**

**20%
VLT**

**35%
VLT**

**50%
VLT**

**80%
VLT**





CLEAR

70%

50%

35%

20%

10%

5%

City Glazing/Transparency Requirements

In the table shown below are the first floor facade transparency and tinting requirements (also referred to as “glazing”) for various Michigan municipalities as set forth in their respective zoning ordinances.

First Floor Transparency and Tinting Requirements by City		
Municipality	Transparency Requirement	Tinting Requirement
City Grand Rapids	Minimum of 60% transparency measured between 2 ft. and 8 ft. on storefront/ground floor facade	Minimum of 70% visible light transmission (VLT)
City of Traverse City	70-90% of total storefront/ground floor façade	Minimum of 70% VLT
City of Ferndale	50% of building façade at street level shall consist of windows	No tinting
City of Muskegon	60 – 80% transparency of first floor storefront/ground floor façade	Minimum of 70% VLT
West Bloomfield Township	N/A	Minimum of 75% VLT
Village of Douglas	Minimum of 60% transparency of storefront/ground level façade	Minimum of 70% VLT
City of Wyoming	60-80% transparency of storefront/ground level façade	Minimum of 70% VLT
City of Pontiac	50% minimum of storefront/ground level façade	No tinting



MEMORANDUM

Office of the City Manager

DATE: July 13, 2017

TO: Joseph A. Valentine, City Manager

FROM: Joellen Haines, Assistant to the City Manager

SUBJECT: Recommendation by the Ad Hoc Birmingham Brand Development Committee (BBDC) for a new Birmingham city logo

The Ad Hoc Birmingham Brand Development Committee (BBDC) was created July 22, 2016, to select and work with a design firm to assist in the process of filtering ideas for and recommending a new city logo. The Ad Hoc BBDC is comprised of one member from the Parks and Recreation Board, one member from the Birmingham Shopping District (BSD), one member from the Planning Board, two City Commissioners, and two at-large members drawn from different neighborhoods. The goal of the rebranding initiative is to establish a new brand (logo) that communicates Birmingham's image in a positive, evolving and refreshing way.

The Committee's first meeting took place Sept. 29, 2016, and McCann Detroit was selected October 17, 2016, to design a new city logo using the process determined by the City. This process involved having McCann conduct three stakeholder meetings which took place December 13, 14 and 15th, 2016. These meetings were designed to gather input about Birmingham from three core stakeholder groups, one representing residents, a second representing business owners, and a third representing current board or committee members. During these meetings, participants were asked a series of questions such as what Birmingham means to them, and what makes Birmingham different from other cities. As a follow up to these meetings, McCann provided a brief summary of this feedback in the attachment titled: "Diverse Stakeholders with Different Needs."

McCann presented their first designs to the Ad Hoc Committee on January 30, 2017, and the Committee held a total of nine public meetings, evaluating more than 50 logo designs. Toward the end of the process, the Committee directed McCann to focus on specific words to use as logo guideposts which included: Timeless/Classic, Distinctive/Unique, Fresh, Clean, Sophisticated/Refined. The Committee asked McCann to focus on the iconic historic side of Birmingham for inspiration, and eventually narrowed their logo selection down to three. They decided to vote on which design would be the one preferred design to recommend to the City Commission, with a second and third alternate.

On June 22, 2017, the final vote and recommendation for the Commission was for Logo #1 as their preferred recommendation, with Logo 2 and 3 as alternates in order of preference. The preferred Logo #1 uses an icon modelled after the Marshall Frederick's sculpture in Shain Park, along with the words "Birmingham" and "A Walkable City" tagline beneath the icon. The second choice was Logo #2, using the words only of Birmingham, with an elongated R, and tagline. The third choice was Logo #3, with a square icon resting above the word Birmingham, and

includes the tagline. See the attached designs marked Logo 1, Logo 2 and Logo 3. After identifying their first choice of Logo 1, the Ad Hoc Committee felt it would be beneficial for the City Commission to see the two alternates that came in second and third.

SUGGESTED RESOLUTION:

To approve Logo # 1 as the preferred logo by the Ad Hoc BBDC as the new Birmingham city logo,

Or,

To approve Logo ____ as the new Birmingham city logo.

DIVERSE STAKEHOLDERS WITH DIFFERENT NEEDS

RESIDENTS



- Sophisticated, professional, proud of their achievements, respectful, educated, many age ranges — but more mature, stylish, classic, progressive, open
- Friendly residents — you can say hello to anyone on the street — it doesn't matter who you are
- Close-knit, family-oriented community
- Active lifestyle, healthy, dog friendly — enjoy the many parks in the city
- See the city as quaint and charming

BUSINESSES



- Eclectic blend of businesses — restaurants, salons/spas, gift stores, art galleries, library, movie theaters, shops, grocery stores, technology, advertising, banking, doctors, lawyers, etc.
- Unique concepts and boutiques/individual proprietors — you will only find it here
- Birmingham is the perfect city to meet, network and ask people to come to
- City has stature and prestige — clients want to come to us

VISITORS



- Visit out of curiosity, come back for a treat
- Central place to meet with friends to shop, go to the movies or dine, exciting nightlife
- Perfect "date night" location
- See it as quiet, clean, safe (even at night)
- Enjoy the parks, recreation and community areas
- Viewed as walkable, but occasionally not pedestrian-friendly
- Viewed as unapproachable, elitist, pretentious by outsiders
- Tough to get in and out, traffic and parking are hurdles

BIRMINGHAM MEANS DIFFERENT THINGS TO DIFFERENT PEOPLE



LOGO GUIDEPPOSTS

Timeless/Classic

Distinctive/Unique

Fresh

Clean

Sophisticated/Refined



THE FINAL 3



LOGO 1

BIRMINGHAM
A WALKABLE CITY

LOGO 2



LOGO 3



LOGO 1

This logo is inspired by Birmingham resident Marshall Frederick's
"Freedom of the Human Spirit" sculpture.

The distinctive icon captures the essence and energy
of this focal point of Shain Park.

When combined with a classic font for the city name,
and balanced with the simple tagline, this logo embodies
the modern yet timeless nature of the city itself.

This logo is versatile. The elements can be used together, separately or
arranged differently, depending upon the specific application.



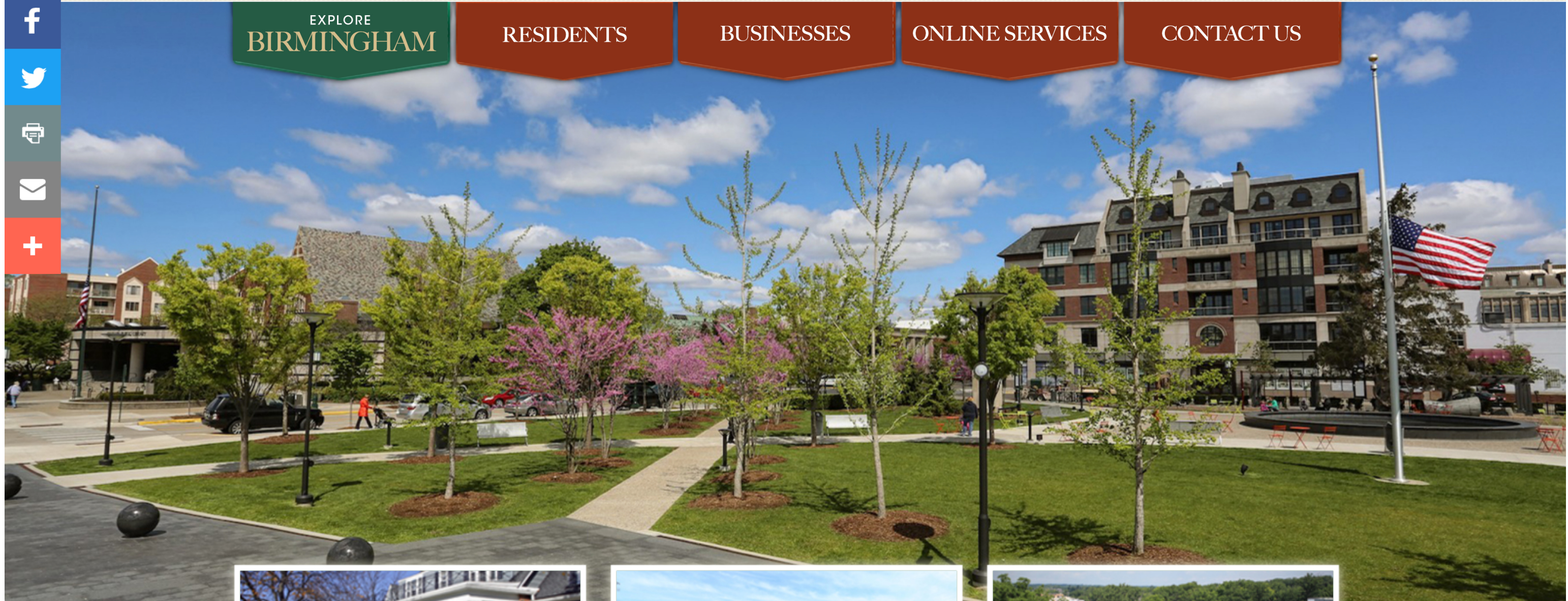
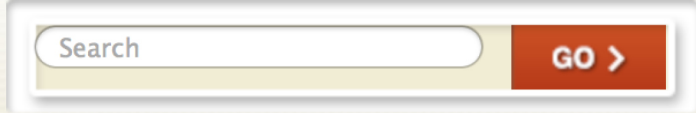
BIRMINGHAM

A WALKABLE CITY



BIRMINGHAM

A WALKABLE CITY










BIRMINGHAM
A WALKABLE CITY

HOLLY JOHNSON | Director of Marketing

151 Martin Street
Birmingham, MI 48012 | 248.530.1800



BIRMINGHAM
A WALKABLE CITY

151 Martin Street | Birmingham, MI 48012 | 248.530.1800



The background image is a faded, grayscale photograph of a modern, multi-story building at night. The building features a mix of brick and glass facades. On the right side, there are two prominent signs that read "McCAIN WORLDGROUP". The building has several balconies and large windows, some of which are illuminated from within. In the foreground, there is a street with a few cars and some trees. The overall scene is dimly lit, with the primary light sources being the building's interior lights and the streetlights.

LOGO 2

This logo uses a classic font that has been customized to represent the distinctive, unique nature of the city.

It has a fresh, sophisticated feel that lends itself to numerous applications.

BIRMINGHAM

A WALKABLE CITY

BIRMINGHAM

A WALKABLE CITY

BIRMINGHAM

A WALKABLE CITY

Search

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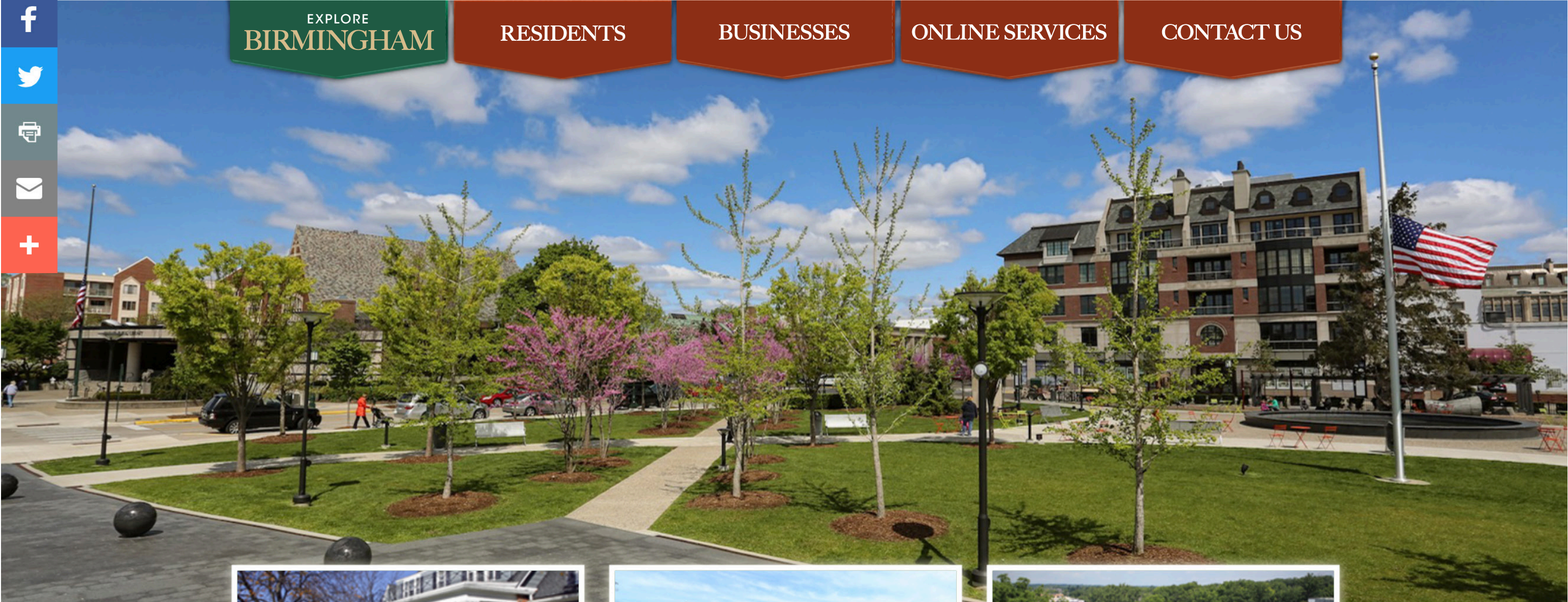
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- EXPLORE BIRMINGHAM
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LOGO 3

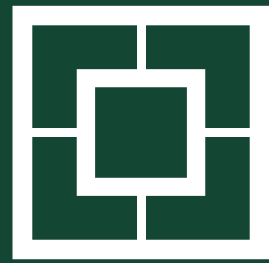
MCCANN WORLDGROUP
060
MCCANN WORLDGROUP

The icon of this logo represents the downtown as the center of the city surrounded by its neighborhoods.

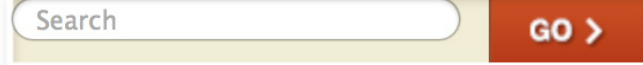
When combined with a classic serif font in upper and lowercase, it creates a clean, approachable look for the city.

The elements can be used together, separately or arranged differently, depending upon the specific application.

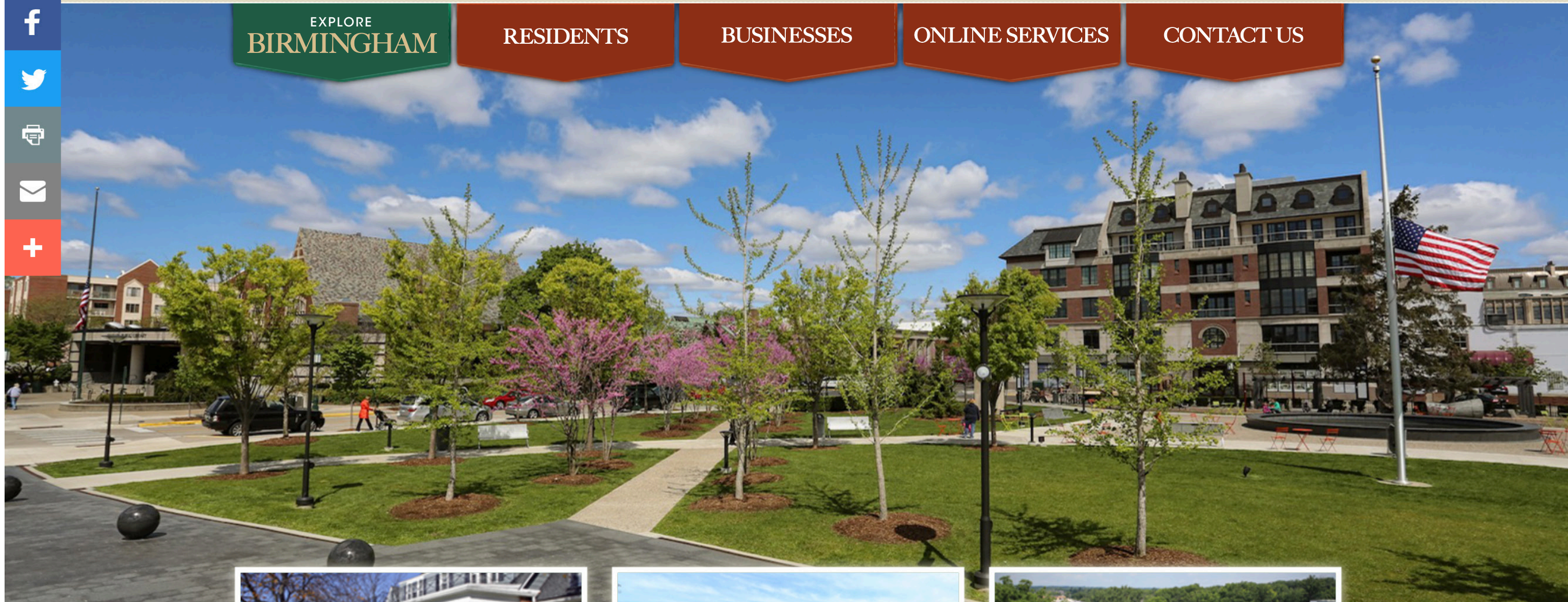




Birmingham
A Walkable City



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MEMORANDUM

Engineering Dept.

DATE: July 19, 2017

TO: Joseph Valentine, City Manager

FROM: Paul T. O'Meara, City Engineer

SUBJECT: S. Eton Rd. Corridor – Maple Rd. to Lincoln Ave.
Multi-Modal Transportation Board Recommendations

In 2016, the City Commission approved the installation of the Phase I Neighborhood Connector Route, as recommended by the Multi-Modal Transportation Board (MMTB), and originally suggested in the Multi-Modal Master Plan. The Phase I Route was intended to be installed last fall, however, no contractors responded to a bid solicitation for this work. As a result, this year it was added to a street paving project, our Contract #1-17(P), and is expected to be completed no later than September of this year. The Neighborhood Connector Route will be a system of signs and pavement markings that mark a suggested bicycle route that circles around the City. As shown on the attached map, a part of the route is intended to use the above noted half mile segment of S. Eton Rd., through the installation of signs and sharrows.

Also in 2016, the Commission appointed an Ad Hoc Rail District Committee to study the Rail District with respect to parking and traffic issues. A final report of this committee was received in December of last year. Since that time, the MMTB has studied the S. Eton Rd. recommendations at several meetings. A comprehensive set of recommendations was advertised and a public hearing was held at the Board's regularly scheduled meeting of June 1, 2017. (All owners and residents within 300 ft. of the S. Eton Rd. corridor were notified.) At the June 1 meeting, most of the S. Eton Rd. recommendations were endorsed by the Board, with the exception of the proposed pedestrian crossing island designed for the Maple Rd. intersection. Attendees at the hearing that represented Rail District businesses that frequently use large trucks expressed concern that the proposed island would cause undue hardship to their travel in and out of the district caused the Board to hold off on finalizing this area. The Board directed staff to survey and collect data on truck traffic from all the businesses within the Rail District so that a more informed decision could be made relative to how to design this intersection. That information was collected, and the Board met again on July 20 to finalize the design of the Maple Rd. area.

The results of that discussion, as well as a summary of all of the recommendations, follows below, starting from the north end of the corridor, and proceeding south.

Maple Rd. to Yosemite Blvd.

The Ad Hoc Rail District Committee identified four suggested changes on the first block of S. Eton Rd. They are as follows:

1. **Relocate the west side curb for the entire block from its current location to a point three feet closer to the center of the road.** Relocating the curb takes the extra space currently available on the one southbound lane of S. Eton Rd., and makes it available for an enhanced 8 ft. wide sidewalk (up from the existing 5 ft.). The recommendation came from the fact that the current sidewalk is the main walking path for residents who live to the southwest, and wish to walk to other areas east of the railroad tracks. Second, since the current sidewalk is directly adjacent to the traffic lane, the wider pavement would help make the block more pedestrian friendly.
2. **Install an island within the S. Eton Rd. crosswalk.** The original design from the Rail District Committee was sized to accommodate trucks that need up to a 40 ft. turning radius. This was based on the usual convention in the City that most trucks are of this size, or smaller. The island as designed would reduce the distance for pedestrians to have to cross the road unprotected from traffic. Although the traffic signal is timed so that most pedestrians can easily cross on one signal cycle, if for some reason they have to stop in the middle, they would be able to do so. The revised plan attached to this package depicts an island that is able to accommodate trucks with a 50 ft. turning radius.
3. **Install an enlarged pedestrian waiting area adjacent to the handicap ramp on the southeast corner of Maple Rd.** Since additional right-of-way exists in this area, the additional concrete is a relatively low cost improvement that will help make the area more pedestrian friendly.
4. **Install sharrows for bicycles on both the north and southbound lanes.** Several board members expressed concern that it is unfortunate that the City is designing improved biking facilities both north and south of this area, and yet the biking environment on this block could use more improvement. Due to the limited right-of-way, and the clear need to maintain three traffic lanes, no separate bike lane facility can be recommended in this area at this time.

As noted above, three businesses represented at the June 1 public hearing took issue with designing this intersection to a 40 ft. truck turning radius standard. The business people present reminded the Board that Maple Rd. & S. Eton Rd. are the only legal roads that can be used by large trucks to get in and out of the Rail District. (Other routes, such as E. Lincoln Ave. and S. Eton Rd. south to 14 Mile Rd. have restrictions on through truck traffic.) Of particular concern was Adams Towing, which stated they regularly drive larger trucks through the intersection, and that when towing an extremely long vehicle, such as a school bus, even the existing intersection is too small. Bolyard Lumber and Downriver Refrigeration, also represented at the June 1 meeting, made similar representations that they either own and operate, or have deliveries from third parties that regularly use larger trucks.

The Board asked staff to survey all businesses in the district to better understand the frequency of this type of traffic. Over 90 Rail District businesses were sent an email asking for input by answering a short survey about the number and size of trucks that were regularly used by their business. A total of 17 businesses responded. The MMTB reviewed the results at their meeting of July 20, 2017. In order to get as much feedback about this issue as possible, staff invited the three business people that attended the public hearing to come back and discuss the matter further at their July 20 meeting. The following conclusions were drawn:

- When entering the district, trucks with a turning radius in excess of 50 ft. would generally have to enter Eton Rd. heading eastbound only. Attempting to make a left on to Eton Rd. westbound is already not feasible for most of these trucks, due to the height limitations imposed by the adjacent railroad bridge. If the intersection is designed for trucks with a 50 ft. turning radius, trucks will be able to enter the district from Maple Rd., heading from either direction (assuming that they can clear the railroad bridge).
- When exiting the district, most trucks already make a left turn on to westbound Maple Rd. Making a right turn is difficult or impossible for most large trucks even today, again due to the height and size of the railroad bridge.
- With input from F&V, the Board concluded that trucks that require a 62 ft. turning radius are not frequent in this area. Those choosing to use these large trucks will have to use Maple Rd. to the west to enter and exit the area, which they likely already do today, due to the height and location of the adjacent railroad bridge. Designing the intersection for the largest trucks would make the installation of any island impractical.

To summarize, the southwest corner of the intersection is being moved in to provide a larger sidewalk area. Moving it any further, however, would restrict the important right turn movement from Maple Rd. on to Eton Rd. Installing the modified island shown on the revised plan takes advantage of the space in the intersection that is not generally used, and will improve the pedestrian crossing for those crossing Eton Rd. on the south side of Maple Rd.

Yosemite Blvd. to Villa Ave.

Initially, the City's consultant recommended keeping this block as is, except that the extra wide pavement on the northbound side would be marked to incorporate a buffered bike lane. However, the Board felt that this block is in need of pedestrian enhancements. They also felt that having northbound bikes ride on the west side of the street, then transition to a marked bike lane on the east side of the street for just one block was inconsistent. The Board recommended that the road be narrowed in order to provide enhanced sidewalks that are separated by a green space and City trees. The attached cross-section depicts this proposal. Features include:

- On the west side, adjacent the existing hair salon, a slightly wider City sidewalk, separated from traffic by a 4 ft. wide parkway that could support the installation of new trees.
- Two narrowed travel lanes at 15 ft. wide. The lane width would be too narrow to support parking, but is wider than the minimum to provide a more comfortable area for bikes to ride on the road. Sharrows would supplement the pavement.
- On the east side, adjacent the existing banquet hall, a wider sidewalk, separated from traffic by a 4 ft. wide parkway that could support the installation of new trees. The existing planting space between the sidewalk and the banquet hall would also remain.

Villa Ave. to Lincoln Ave.

As you may recall, the existing pavement on the majority of S. Eton Rd. consists of two center 10 ft. side travel lanes, supplemented with two 10 ft. wide concrete lanes. While there are various means to mark the pavement that could potentially work well with one or two bike lanes, the existing pavement material joint lines tend to reduce the number of choices that are

available. (It is not advisable to install pavement markings that are in conflict with the pavement joints, as motorists may be confused if asked to drive half of the vehicle on asphalt, and half on concrete.) The Ad Hoc Rail District Committee and the MMTB understand this limitation, and worked within it when considering new pavement marking options for this segment.

After much discussion, the Ad Hoc Rail District Committee recommended keeping parallel parking on both sides of the street. However, as a means to slow vehicles and encourage bicycles, the Committee recommended adding a 3 ft. wide marked buffer area between the travel lane and the parking lane. The buffer area would come from a narrowed parking lane (7 ft.), which would help keep parked cars as close to the edge of the street as possible. The buffer would also make the street feel narrower, which helps reduce speeds of vehicles. Sharrows were also recommended to encourage the sharing of the street between vehicles and bicycles.

The MMTB reviewed this recommendation and ultimately rejected it. The Board asked staff to consider various methods to work again within the limitations of the existing pavement, but to provide a means for an improved bicycle facility.

The MMTB is proposing the removal of parking on the southbound lane throughout the corridor. The extra ten feet of pavement would be marked to support an 8½ ft. wide two-way bike lane adjacent to the west side curb. The remaining 1½ ft. would be a marked buffer, supplemented with raised pavement markers that would help provide a physical separation of this area from the vehicles. If the Commission agrees with this recommendation, staff will study this item closer and provide a final, complete recommendation relative to the buffer method at a future City Commission meeting.

The idea of having northbound bicycles traveling on the west side of the street is unique, but it has been used successfully in other cities. Additional sidewalks and pavement markings would be required at the north and south ends of this segment to encourage the safe movement of bikes needing to enter or exit this area. A detailed discussion of the means of entry and exit will be provided at the meeting.

Finally, the Board recognized the need for improved pedestrian crossings on S. Eton Rd. from one side to the other. With that in mind, pedestrian bumpouts are recommended at the following intersections on the east side of S. Eton Rd., within the proposed parking lane:

Villa Ave.
Hazel St.
Bowers Ave.
Cole Ave.
Lincoln Ave.

Bumpouts, if installed, must be designed to accommodate expected truck turning movements, and will often require underground storm sewer changes. Cost estimates for this work have not yet been developed. Bumpouts would not be installed on the west side of S. Eton Rd., as they would conflict with the proposed two-way bike lane.

Summary

At this time, staff requests direction from the Commission relative to the recommendations being provided. Past discussions have indicated that the pedestrian improvements at the Maple Rd. intersection are of the highest importance. With that in mind, the Maple Rd. work had been bid as a part of the City's 2017 Concrete Sidewalk Program. The contractor for this program is currently working on other parts of the project, and if approval is given, the work identified above for the first block can proceed and be finished this year, at an estimated cost of \$68,000, including inspection. If the Commission approves the conceptual plans for the other blocks, staff will prepare preliminary cost estimates for this work, and return with suggested timetables for budgeting this work. With respect to timing and budgets, it is noted that:

1. The cost to implement the two-way bike facility will be relatively small compared to the significant change it will bring to the corridor.
2. The cost of the suggested changes between Yosemite Blvd. and Villa Ave. will be more substantial. Due to the special benefit that this work would bring to the adjacent properties, a special assessment district will be introduced for this element of the work,
3. The cost of the bumpouts will also be significant. It is assumed that the cost of this work would be charged to the Major Streets Fund, with the exception of the work at Bowers St. In that area, the three-way intersection will result in a longer bumpout improvement that will increase the streetscape area at this intersection, which will provide a benefit to the adjacent property owner.

Finally, it is noted that the MMTB has focused on the commercial segment of S. Eton Rd. partly in response to the Ad Hoc Rail District Committee Report, and partly due to the amount of input received from the public in this area. Nevertheless, the Board is aware that making recommendations about bike route improvements north of Lincoln Ave. raises questions about potential changes to the bike route south of Lincoln Ave. Given the different environment of S. Eton Rd. south of Lincoln Ave., the Board felt that it was best to focus on the commercial section first. Once that is resolved, it is their intent to study the remainder of S. Eton Rd. However, should the Commission feel that the section south of Lincoln Ave. should be studied before final decisions are made, a second resolution to defer this decision is provided below. Given the interest in proceeding with improvements in the area of Maple Rd., both resolutions are the same for that area.

SUGGESTED RESOLUTION A:

To endorse the Multi-Modal Transportation Board recommendations for S. Eton Rd. from Maple Rd. to Lincoln Ave., as described below:

1. Maple Rd. to Yosemite Blvd.
 - a. Relocation of the west side curb of S. Eton Rd. from Maple Rd. to Yosemite Blvd. three feet closer to the center, allowing the installation of an 8 ft. wide sidewalk behind the relocated curb.
 - b. Installation of a pedestrian island at the Maple Rd. & S. Eton Rd. intersection to improve safety for pedestrians crossing on the south side of Maple Rd.
 - c. Installation of a wider sidewalk adjacent to the handicap ramp at the southeast corner of Maple Rd. & S. Eton Rd.

- d. Installation of sharrows on green painted squares for both directions.
- 2. Yosemite Blvd. to Villa Ave.
 - a. Removal of the existing parking on the west side of the street.
 - b. Relocation of the curb and gutter on both sides of the street to accommodate 5 to 6.5 ft. wide sidewalks and 4 ft. wide green spaces with new City trees.
 - c. Installation of sharrows on green painted squares for both directions.
- 3. Villa Ave. to Lincoln Ave.
 - a. Removal of the existing parking on the west side of the street, replaced with an 8.5 ft. wide bi-directional bike lane and a 1.5 ft. buffer with raised markers.
 - b. Sidewalk improvements as needed at Villa Ave. and Lincoln Ave. to facilitate the bi-directional bike lane.
 - c. Installation of a 3 ft. wide buffer between the northbound travel lane and 7 ft. parking lane.
 - d. Curbed bumpouts at marked pedestrian crosswalks on the west side of the street, at the intersections of Villa Ave., Hazel Ave., Bowers Ave., Cole Ave., and Lincoln Ave.

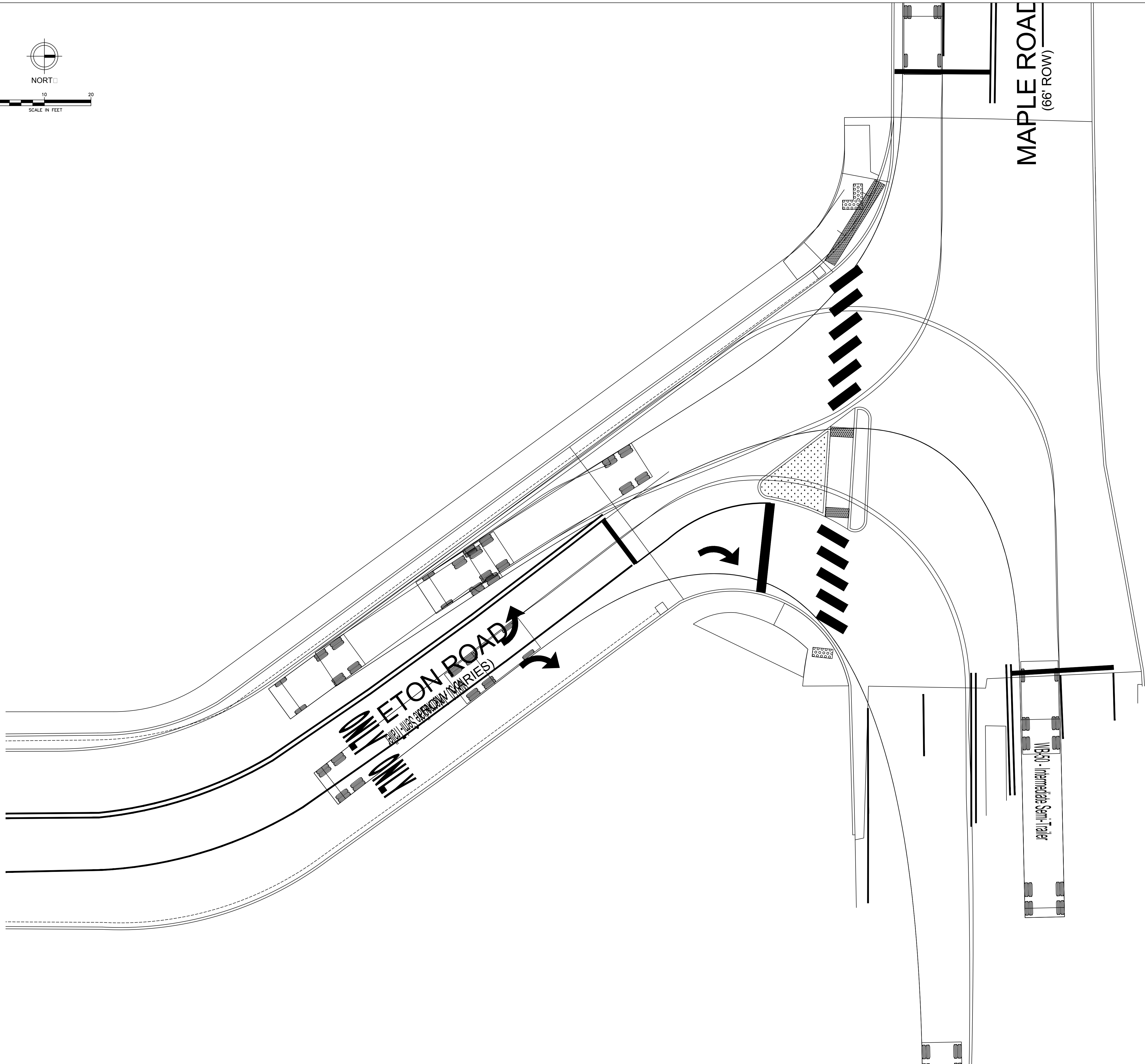
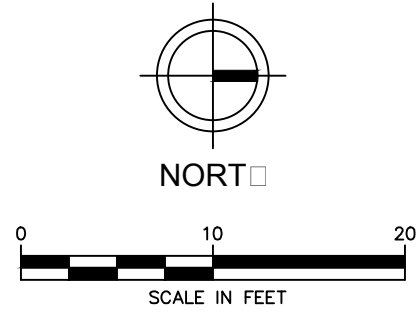
Further, to confirm that the work on the block south of Maple Rd. shall be included as a part of the 2017 Concrete Sidewalk Program, Contract #3-17(SW), at an estimated total cost of \$68,000, to be charged to account number 202-449.001-981.0100. In addition, for the remaining sections, to direct staff to prepare cost estimates and budget recommendations for further consideration by the Commission.

SUGGESTED RESOLUTION B:

To endorse the Multi-Modal Transportation Board recommendations for S. Eton Rd. from Maple Rd. to Yosemite Blvd., as described below:

- 1. Relocation of the west side curb of S. Eton Rd. from Maple Rd. to Yosemite Blvd. three feet closer to the center, allowing the installation of an 8 ft. wide sidewalk behind the relocated curb.
- 2. Installation of a pedestrian island at the Maple Rd. & S. Eton Rd. intersection to improve safety for pedestrians crossing on the south side of Maple Rd.
- 3. Installation of a wider sidewalk adjacent to the handicap ramp at the southeast corner of Maple Rd. & S. Eton Rd.
- 4. Installation of sharrows on green painted squares for both directions.

Further, to direct the Multi-Modal Transportation Board to study and provide recommendations for bike route improvements for the area of S. Eton Rd. from Lincoln Ave. to 14 Mile Rd.

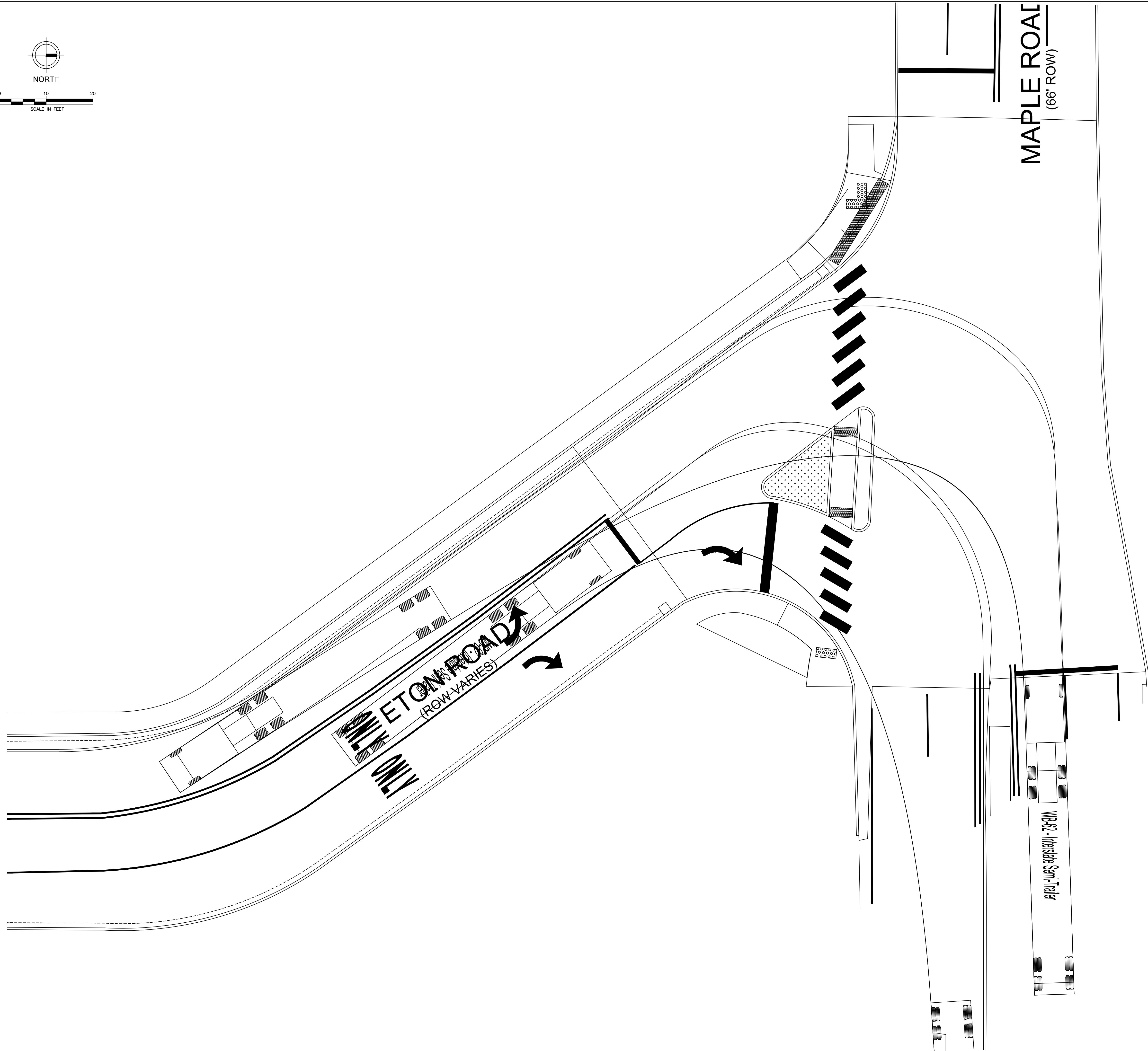
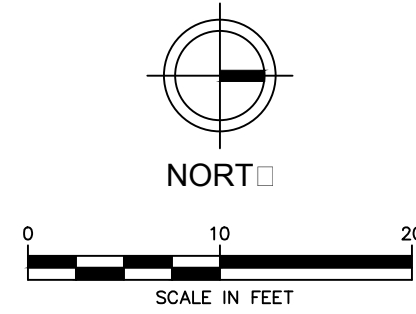


CITY OF BIRMINGHAM
OAKLAND COUNTY, MICHIGAN
SOUTH ETON AVENUE AT MAPLE ROAD
IMPROVEMENT PLAN

DESIGN TEAM:
LMS
CHECK BY:
DRAWING INFORMATION:
823801Civil
071417 stevent

MARCH 2017
F&V PROJECT NO.
823801

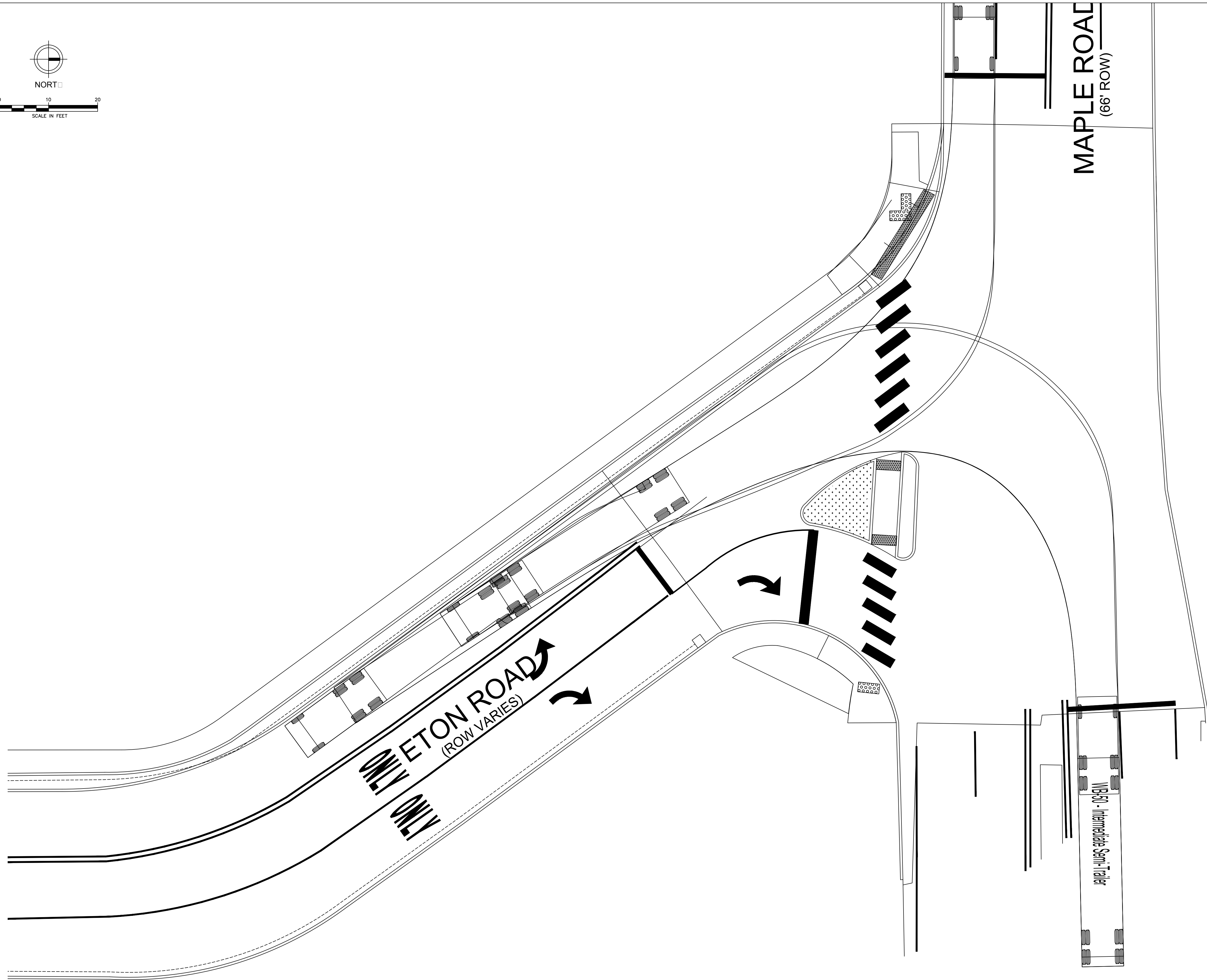
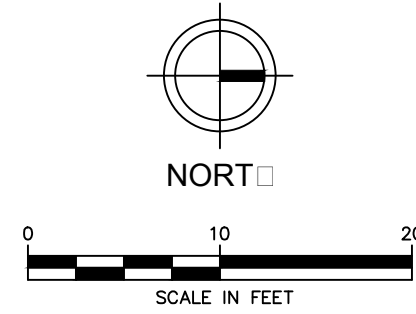
FLEIS&VANDENBRINK
DESIGN. BUILD. OPERATE.
27725 Stansbury Blvd, Suite #150
Farmington Hills, MI 48334
P: 248.536.0080
F: 248.536.0079



CITY OF BIRMINGHAM
OAKLAND COUNTY, MICHIGAN
SOUTH ETON AVENUE AT MAPLE ROAD
IMPROVEMENT PLAN

DESIGN TEAM:
LMS
CHECK BY:
DRAWING INFORMATION:
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MARCH 2017
F&V PROJECT NO.
823801



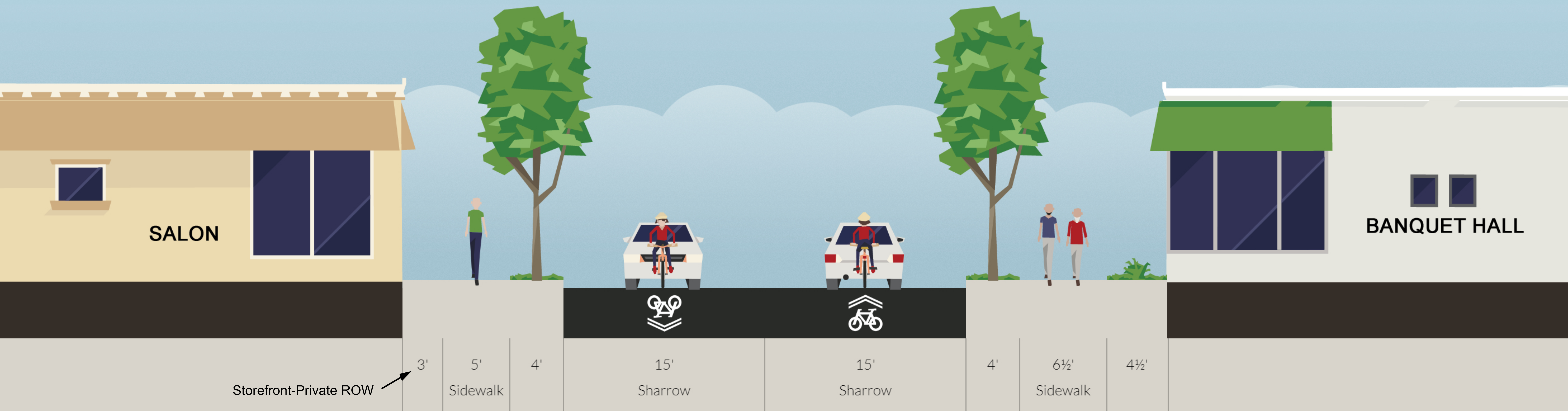
CITY OF BIRMINGHAM
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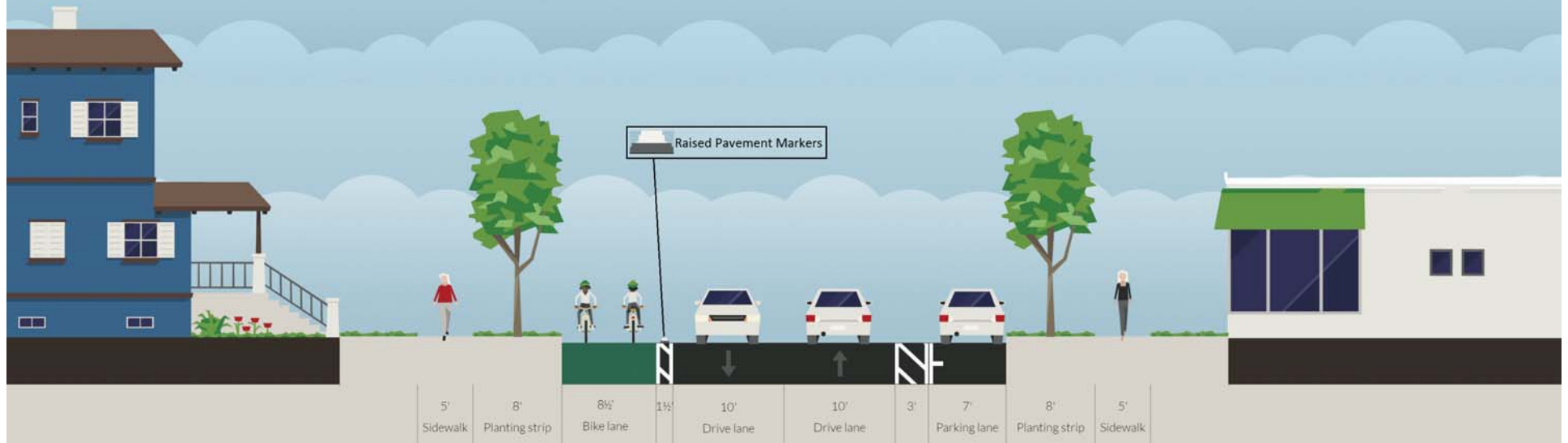
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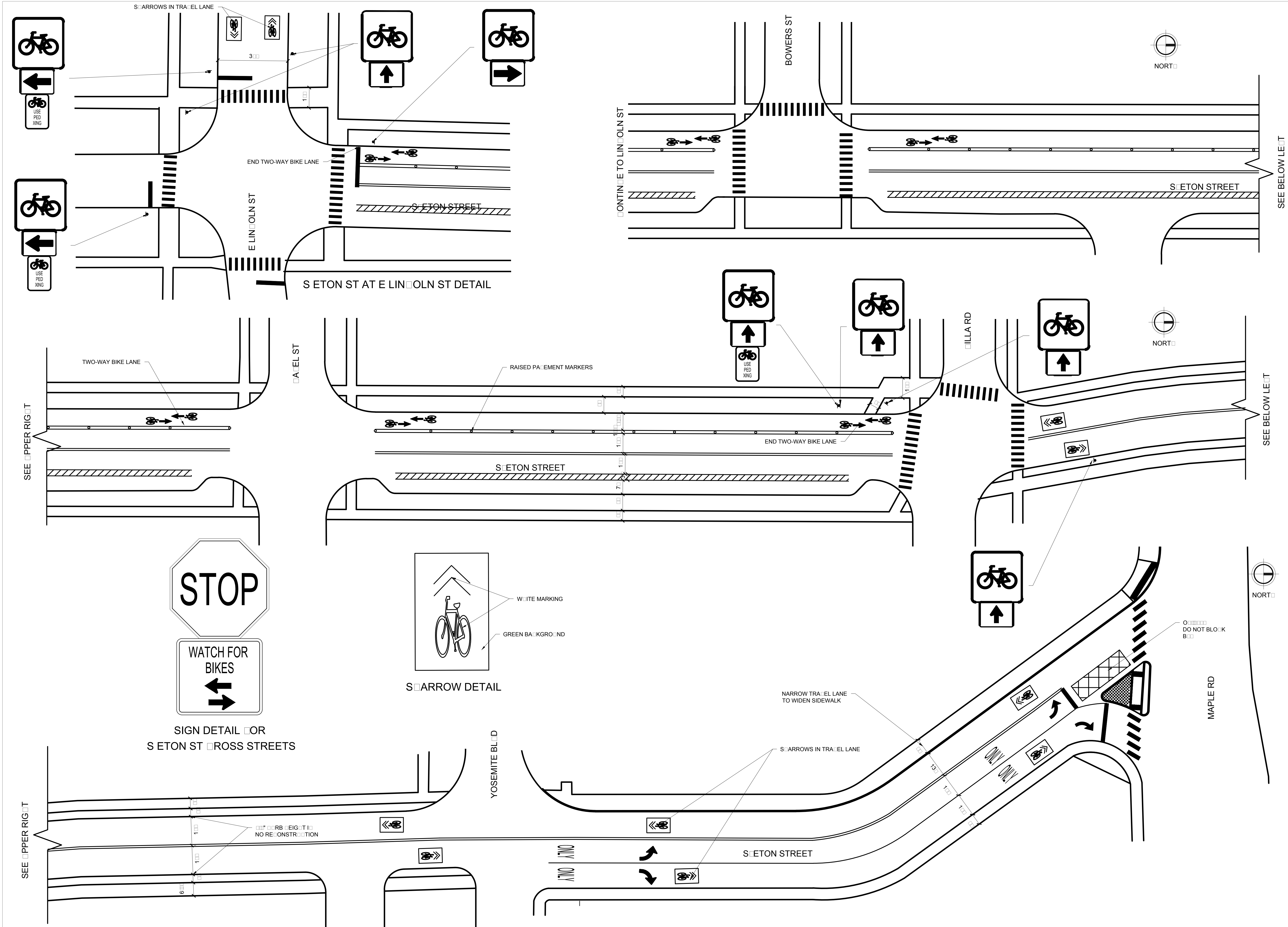
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S. Eton Street (Villa to Yosemite) –Looking North



S. Eton Street (Lincoln to Villa)-Looking North







Paul O'Meara <pomeara@bhamgov.org>

S. Eton between Maple and Lincoln

1 message

Jennifer Wheeler <jennybwheeler@gmail.com>
To: Paul O'Meara <pomeara@bhamgov.org>

Wed, Jul 19, 2017 at 9:03 PM

Dear Mr. O'Meara,

It was indicated on social media to send you our concerns regarding traffic on S. Eton between Maple and Lincoln for an upcoming meeting.

I have lived in the Torry Neighborhood for seven years and am a mother of two. My children and I often (multiple times a week, with summer sometimes several times a day) need to cross Eton to get to businesses in the rail district, Forest Hills and Kenning Park. The cars that stop are few and far between and I often feel scared while crossing. Typically I am pushing a large double stroller, so I find it would be hard to miss us, drivers just do not care.

Last year when I looked into this issue I was told there was a study being conducted. I asked if while Birmingham was coming up with a long-term solution, if we could have pedestrian crossing signs put up as a short-term solution, that way as cars zip by I could at least point to a visual to let them know they are breaking the law. I was happy to see the signs go up, and was not shocked when by the end of the first day they were knocked down. I do very much appreciate that DPS stays on top of putting them back up, almost daily, however think this should be a huge red flag to the seriousness of our neighborhoods traffic problem. If people cannot avoid stationary signs, how can we hope for them to avoid moving people??? I have also heard that these signs confuse people, which completely baffles me, it seems that stopping for pedestrians should be pretty common sense, yet it is not.

A long-term solution to this issue really needs to come sooner than later. I am honestly worried for the safety of not only my family but our community in general. I would love some sort of very visible flashing caution crosswalk, but you are the experts and I look forward to hearing what the plans are.

Thank you for your service to our community,

Jenny Wheeler
1665 Holland Street
jennybwheeler@gmail.com



Paul O'Meara <pomeara@bhamgov.org>

MMTB Meeting 7/201 message

Jay Yaldoo <yaldoo@comcast.net>
To: Paul O'Meara <pomeara@bhamgov.org>
Cc: Lara Edwards <lmedwards08@gmail.com>

Thu, Jul 20, 2017 at 11:10 AM

Hello Paul,

I was writing in regards to tonight's meeting about S Eton from Maple to Lincoln. Can you pass on to the board that I am still in support of their previous recommendations, specifically adding a dedicated bike line and removing on street parking on the west side of the street. I just want to add that they really need to protect the bike lane with something like pylons or similar. I sent a few pictures of protected bike lanes in other cities previously. If the bike lane is not protected drivers will use that lane to pass vehicles that are stopped waiting to turn left into businesses. This would be a huge safety issue for any bikers in the lane that may be read-ended by a motorist flying around the stopped vehicle.

Thank you,
Jay Yaldoo
1997 Haynes St



MEMORANDUM

Engineering Dept.

DATE: March 8, 2016

TO: Joseph Valentine, City Manager

FROM: Paul T. O'Meara, City Engineer

SUBJECT: Multi-Modal Transportation Master Plan
Neighborhood Connector Route

At the November 23, 2015 City Commission meeting, the Neighborhood Connector Route was presented. At that time, the following suggestions were made:

1. The Commission indicated a preference to installing signs only at each point where the route turns, using the bike symbol and an arrow. They also requested a visual of the specific bike symbol sign and arrow suggested.
2. The Commission requested that the Oak St. bike lanes be extended another block to the east to include the section between Lakepark Dr. and Lakeside Dr. (The existing pavement is wide enough to support this. A new striping plan to depict how this would be accomplished is attached to this package.)
3. The Commission requested that all property owners along the newly impacted streets be notified about the meeting being held in front of the MMTB.

In response, staff prepared the attached package of information and reviewed it with the Multi-Modal Transportation Board (MMTB) at their meeting of February 11. The package included the following information:

1. The map depicting where signs and pavement markings would be installed was revised. The plan now proposes a bike symbol sign and arrow to be installed in front of each proposed turn, as well as at significant crossings, such as Woodward Ave. The suggested bike sign combination is now attached as well for your review.
2. A plan for the block of Oak St. between Lakepark Dr. and Lakeside Dr. has been prepared, and is attached. Due to the wide existing pavement, there is plenty of space for two drive lanes, two bike lanes, and buffer zones between the two. Parking will have to be banned on this block to accommodate this change. Since there are no homes on this block, and parking demand has historically been very low, we do not see this as an issue.
3. Confirmation that all property owners along the route were notified.

The MMTB reviewed the changes, and concurred with the suggestions. The Board passed the following recommendation:

To recommend to the City Commission the implementation of a Neighborhood Connector Route in accordance with the attached map, installing bike symbol signs and arrows at each turning point, sharrow pavement markings at the beginning of each segment, and extension of the bike

lane on Oak St. between Lakepark Dr. and Lakeside Dr. Further, to include information about the Route on the City's website, and to notify all relevant websites that contain information relative to bike paths and routes.

To recommend to the City Commission the implementation of a Neighborhood Connector Route in accordance with the attached map, installing bike symbol signs and arrows at each turning point, sharrow pavement markings at the beginning of each segment, and extension of the bike lane on Oak St. between Lakepark Dr. and Lakeside Dr. Further, to include information about the Route on the City's website, and to notify all relevant websites that contain information relative to bike paths and routes.

A suggested resolution is provided below:

SUGGESTED RESOLUTION:

To concur with the recommendation of the Multi-Modal Transportation Board, and to direct staff to implement a Neighborhood Connector Route in 2016 as follows:

1. Per the revised map, the connector route will be denoted using signs and pavement markings as directed in this package, using the bike symbol sign with a white arrow on green background at all turns and key crossings, as well as sharrow pavement markings at similar locations,
2. Banning all street parking on Oak St. between Lakepark Dr. and Lakeside Dr. to allow the extension of the existing Oak St. bike lanes for one block to the east as depicted on the attached plan,
3. Installing a ten foot wide concrete off street bike path on W. Maple Rd. between Larchlea Dr. and Chesterfield Ave., to be constructed as a part of the W. Maple Rd. Resurfacing Project.

Once bids are received and the contract is ready for award, a separate motion awarding the Contract and authorizing the expenditures shall be returned to the Commission for approval.



February 4, 2016

TO: Property Owner

RE: Neighborhood Connector Route

In 2013, a Multi-Modal Transportation Master Plan was created and adopted for the City of Birmingham. The plan includes several ideas on how to modify city streets and pathways to encourage the use of alternative modes of transportation, such as walking, biking, or transit. Soon after, a Multi-Modal Transportation Board was formed to help oversee projects of this nature.

In the past few years, multi-modal ideas have helped improve sections of Oak St., Lincoln Ave., and N. Eton Rd.

The City is now considering the implementation of a Neighborhood Connector Route for bicycle travel within the City, as depicted on the attached map. The route would use existing streets where noted in blue. The route would be designated using simple signs that have a bike symbol and arrows. In addition, in areas where the route changes direction, a bike symbol with an arrow would be painted on the existing pavement. Similar symbols have already been added to parts of the streets noted above. While marked bike lanes have been built on some streets, that is not envisioned for the streets now under consideration. Traffic patterns would not be changed in any way. Rather, the signs and pavement markings would simply show bicyclists where to turn if they wish to use this route for a tour around the city.

The Multi-Modal Transportation Board will be discussing this issue at their next meeting, scheduled for **Thursday, February 11, 2016, at 6 PM**. The meeting will be held in Room 205, on the second floor of the Municipal Building (151 Martin St.). You are invited to attend if you wish to add any information to the discussion. Please use the Police Dept. entrance located on the Pierce St. side of the building.

If you have any questions, feel free to contact the Engineering Dept. at 248-530-1850.



MEMORANDUM

Engineering Dept.

DATE: February 4, 2016

TO: Multi-Modal Transportation Board

FROM: Paul T. O'Meara, City Engineer

SUBJECT: Neighborhood Connector Route

At the meeting of November 23, 2015, the City Commission reviewed the Multi-Modal Transportation Board (MMTB) recommendation for a Neighborhood Connector Route (details and minutes attached). At that time, the following suggestions were made:

1. The Commission indicated a preference to installing signs only at each point where the route turns, using the bike symbol and an arrow. They also requested a visual of the specific bike symbol sign and arrow suggested.
2. The Commission requested that the Oak St. bike lanes be extended another block to the east to include the section between Lakepark Dr. and Lakeside Dr. (The existing pavement is wide enough to support this. A new striping plan to depict how this would be accomplished is attached to this package.)
3. The Commission requested that all property owners along the newly impacted streets be notified about the meeting being held in front of the MMTB.

Considering the above modifications, the Commission asked for a final review and recommendation by the MMTB. A new suggested recommendation follows below:

SUGGESTED RECOMMENDATION:

To recommend to the City Commission the implementation of a Neighborhood Connector Route in accordance with the attached map, installing bike symbol signs and arrows at each turning point, sharrow pavement markings at the beginning of each segment, and extension of the bike lane on Oak St. between Lakepark Dr. and Lakeside Dr. Further, to include information about the Route on the City's website, and to notify all relevant websites that contain information relative to bike paths and routes.

forward, the City can certainly look at it. It has always been contemplated that any new structures going in would then be allocated in an entirely different calculation as the dynamics downtown have changed.

MOTION: Motion by Nickita, seconded by Sherman:

To accept the recommendation of the Advisory Parking Committee to include the property known as 369-397 N. Old Woodward Ave. into the Parking Assessment District, upon payment of a one-time inclusion fee of \$29,682.

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

**11-280-15 CREATION OF THE NEIGHBORHOOD CONNECTOR ROUTE
PHASE 1**

City Engineer O'Meara presented the recommendation to create neighborhood connector routes designed to encourage bike riding throughout the City. He explained that the Multi-Modal Transportation Board (MMTB) recommended "Share the Road" signs as opposed to the traditional arrow-type bike signs as the bicyclist are now using GPS. He noted that the bike symbol could be used at each turn.

Commissioner Bordman expressed concern with moving forward on this until the South Eton Corridor is fully discussed. She stated that she would like to see striping of bike lanes.

The Commission discussed the directional signage and sharrows. Mayor Pro Tem Nickita noted that sharrows are the fundamental baseline. He suggested exploring the idea of installing signs only at the turns. Commissioner Sherman stated that he would like to see the location of the sharrows.

Herb Knowles, 329 West Brown, suggested notifying residents that their street may be part of the bike path.

The Commission agreed to bring this item back with a diagram of the sign design and the reduced number of signs. In addition to notify residents of affected streets who are not currently on the bike path.

**12-281-15 RESIDENTIAL PERMIT PARKING
BATES STREET BETWEEN BROWN AND FRANK**

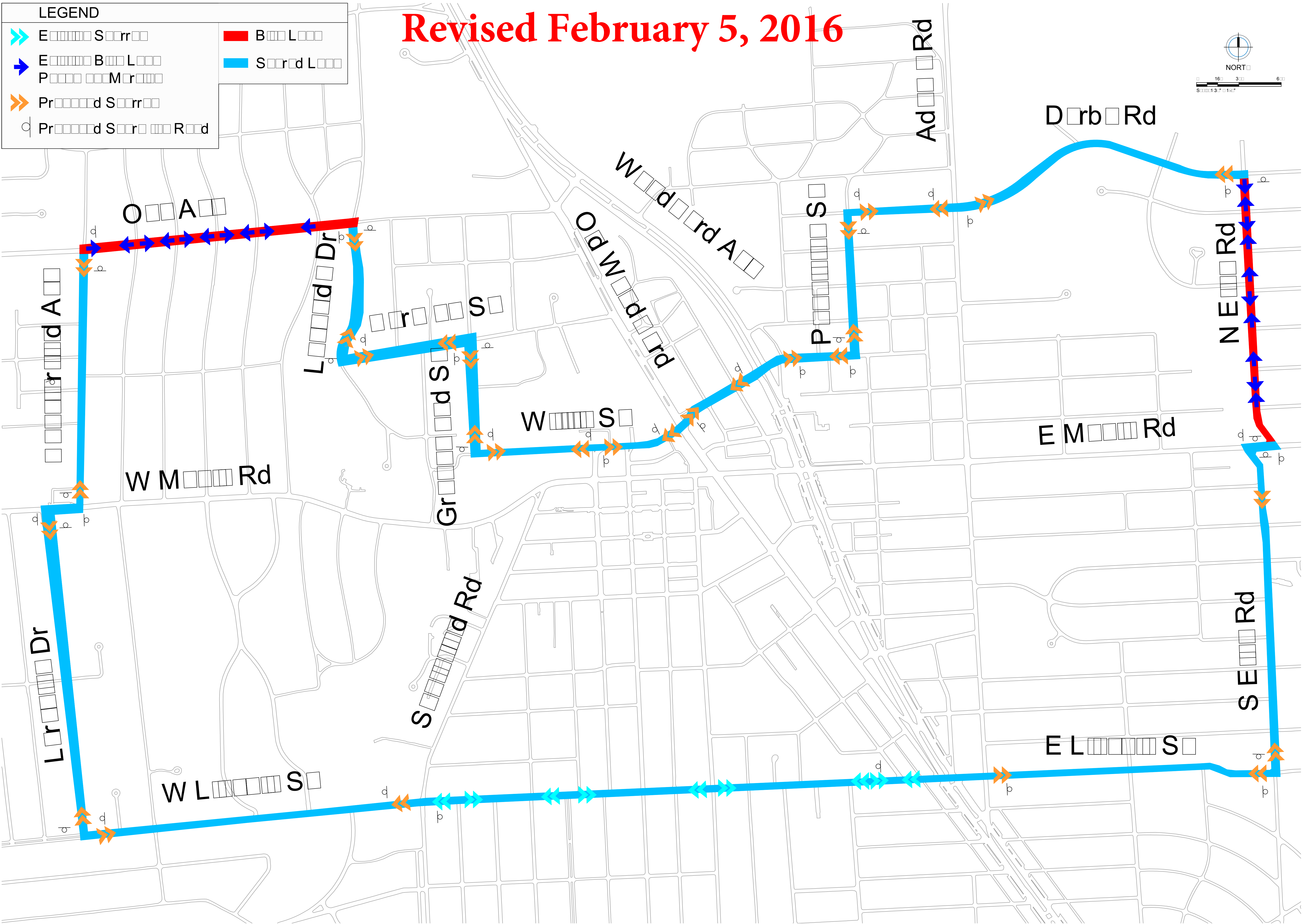
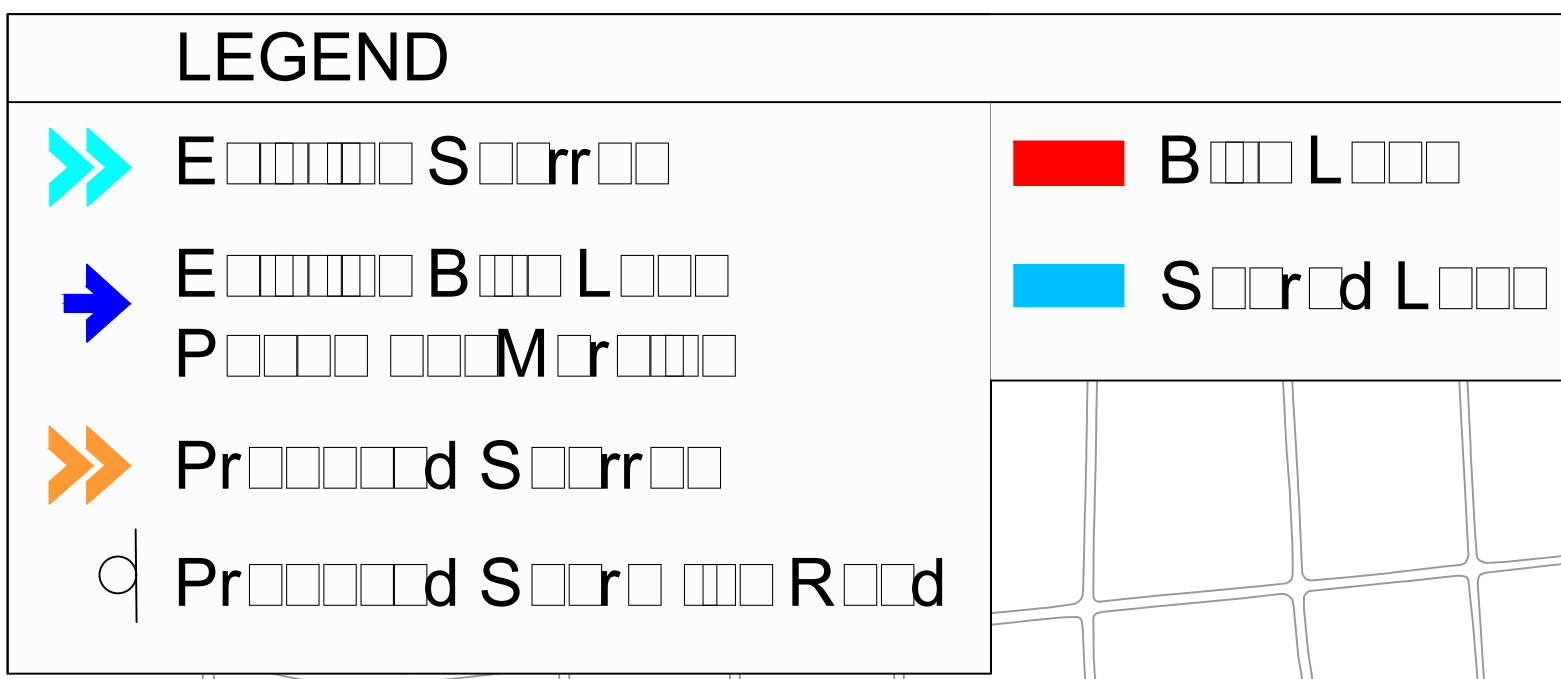
Commander Grewe presented the request for residential permit parking on Bates Street between Brown and Frank. He noted that 84% of the residents signed the petition and the Multi-Modal Transportation Board endorsed the petition as well.

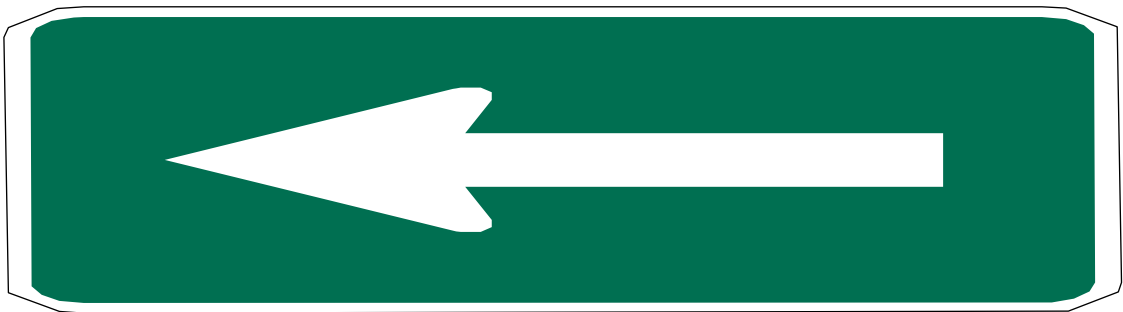
Mayor Pro Tem Nickita suggested a study be done to determine the actual parking capacity of the street to identify the reality of the situation in terms of numbers.

MOTION: Motion by Sherman, seconded by DeWeese:

To approve the installation of Residential Permit Parking for Bates Street between Brown and Frank at all times. Further, to direct the Chief of Police and the City Clerk to sign the traffic

Revised February 5, 2016



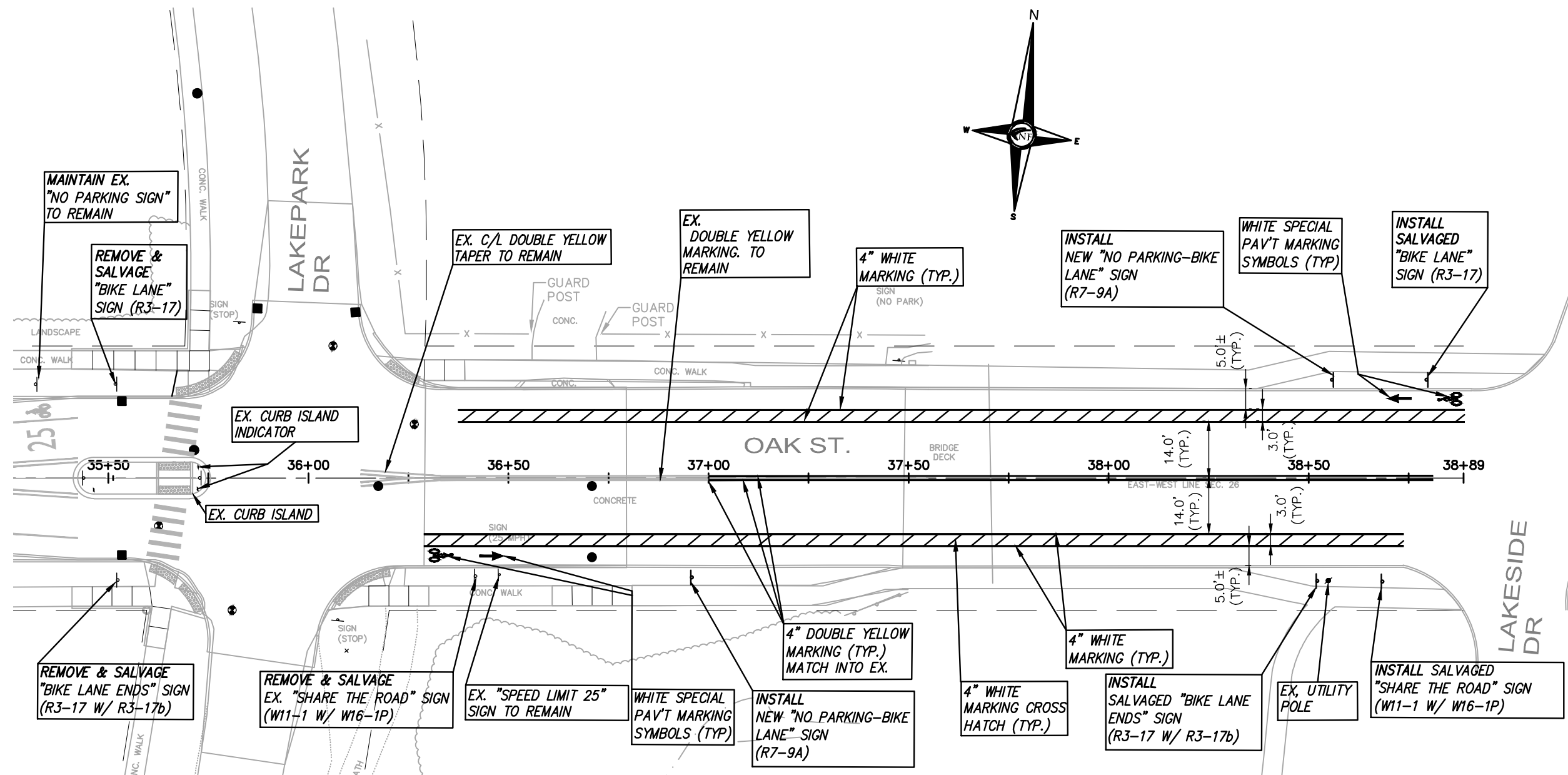




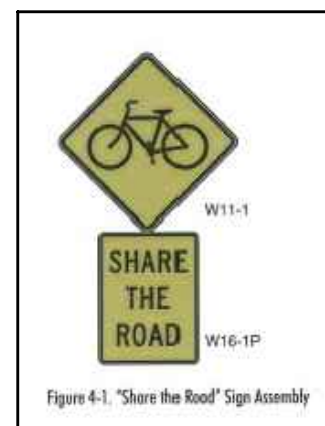
Know what's below
Call before you dig.

REVISIONS

DRAWN BY:
TW
DESIGNED BY:
BB
APPROVED BY:
BB
DATE:
January 6, 2016
SCALE:
1" = 30'



SIGN DETAIL - R7-9A
N.T.S.



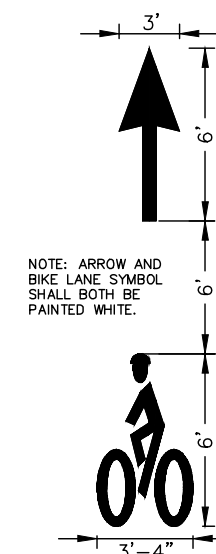
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Executive Summary

The Ad Hoc Rail District Committee was tasked with conducting research and analysis regarding parking, street design initiatives, and non-motorized safety to develop a plan with recommendations for the future of the Rail District along S. Eton. The Committee conducted a walking survey to assess the existing conditions of the Rail District. During this exercise, crosswalks issues, poor driver visibility at street corners, inconsistent sidewalks, and lack of bicycle facilities were noted. Based on the Committee's observations, several intersection and streetscape improvements were reviewed, a parking study was completed to review current parking demand, and a buildout analysis was conducted to calculate future parking needs. The Ad Hoc Rail District Committee's resulting findings include recommendations for intersection improvements to calm traffic and improve pedestrian comfort, exploring shared parking opportunities to more efficiently use off-street parking lots, and adding bicycle facilities to better accommodate bicyclists.



Newingham Dental – Completed 2014



District Lofts Phase 2 – Completed 2016



Irongate – Completed in 2016

Formation of the Committee

On January 11, 2016, the City Commission unanimously passed a resolution to establish the Ad Hoc Rail District Committee. The Committee was tasked with developing a plan to address the current and future parking demands, along with planning goals and multi-modal opportunities for the district in accordance with the following:

- a) Review the Eton Road Corridor Plan, Multi-Modal Transportation Plan, and previous findings of the Rail District Committee in order to identify and recommend how to best incorporate these elements into an integrated approach for this district.
- b) Calculate the long-term parking demands for both the north and south ends of the Rail District, while considering on-street and off-street parking, shared parking arrangements, use requirements and other zoning regulations which impact parking.
- c) Review planning and multi-modal objectives for the Rail District with the findings from the long-term parking calculations and develop recommendations to integrate planning and multi-modal elements with parking solutions. Recommendations should consider:
 - i. Considerations for on-street and off-street parking
 - ii. Road design initiatives
 - iii. Multi-modal uses
 - iv. Neighborhood input
 - v. Existing plans and findings
- d) Compile the committee's findings and recommendations into a single report to be presented to the City Commission by the end of the committee's term (December 31, 2016).

Goals and Objectives of Committee

The following goals and objectives were established by the Ad Hoc Rail District Committee to guide their discussions and recommendations for the future:

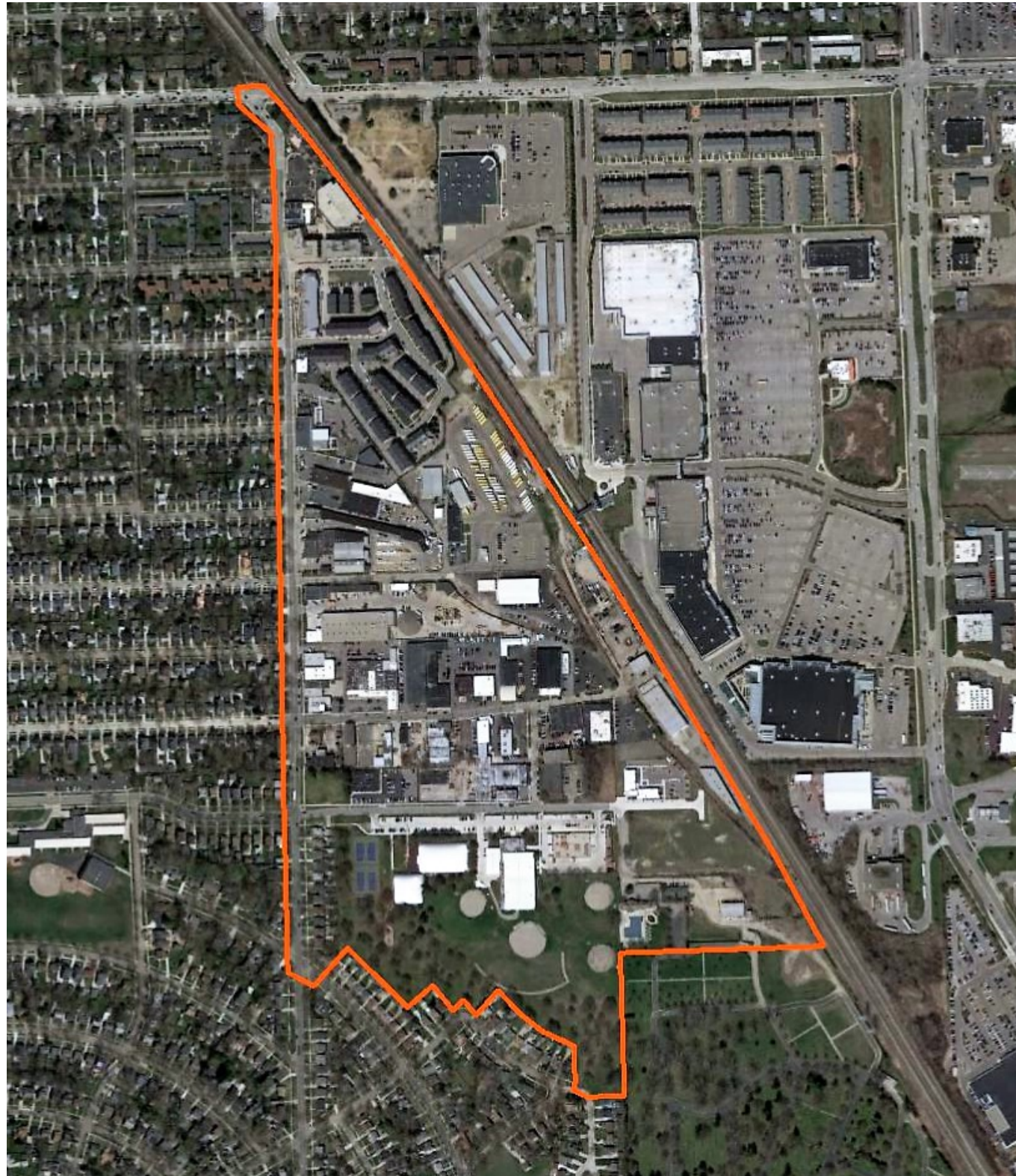
Goals

- i. Create an attractive and desirable streetscape that creates a walkable environment that is compatible with the adjacent residential neighborhoods.
- ii. Design the public right-of-way for the safety, comfort, convenience, and enjoyment for all modes of transportation throughout the corridor.
- iii. Facilitate vehicular traffic and parking without sacrificing the corridor's cycling and pedestrian experience.
- iv. Minimize the impacts of traffic on the existing residential neighborhoods.
- v. Recommend updates to the Rail District zoning regulations as needed to meet goals.

Objectives

- i. Use creative planning to promote a high quality, cohesive right-of-way that is compatible with the existing uses in the corridor.
- ii. Implement "traffic calming" techniques, where appropriate, to reduce speeds and discourage cut-through traffic on residential streets.
- iii. Enhance pedestrian connectivity through the addition of crosswalks, sidewalks, and curb extensions.
- iv. Improve accommodations for bicycle infrastructure on Eton Road.
- v. Create a balance between multimodal accessibility and parking provisions.

Rail District Study Area



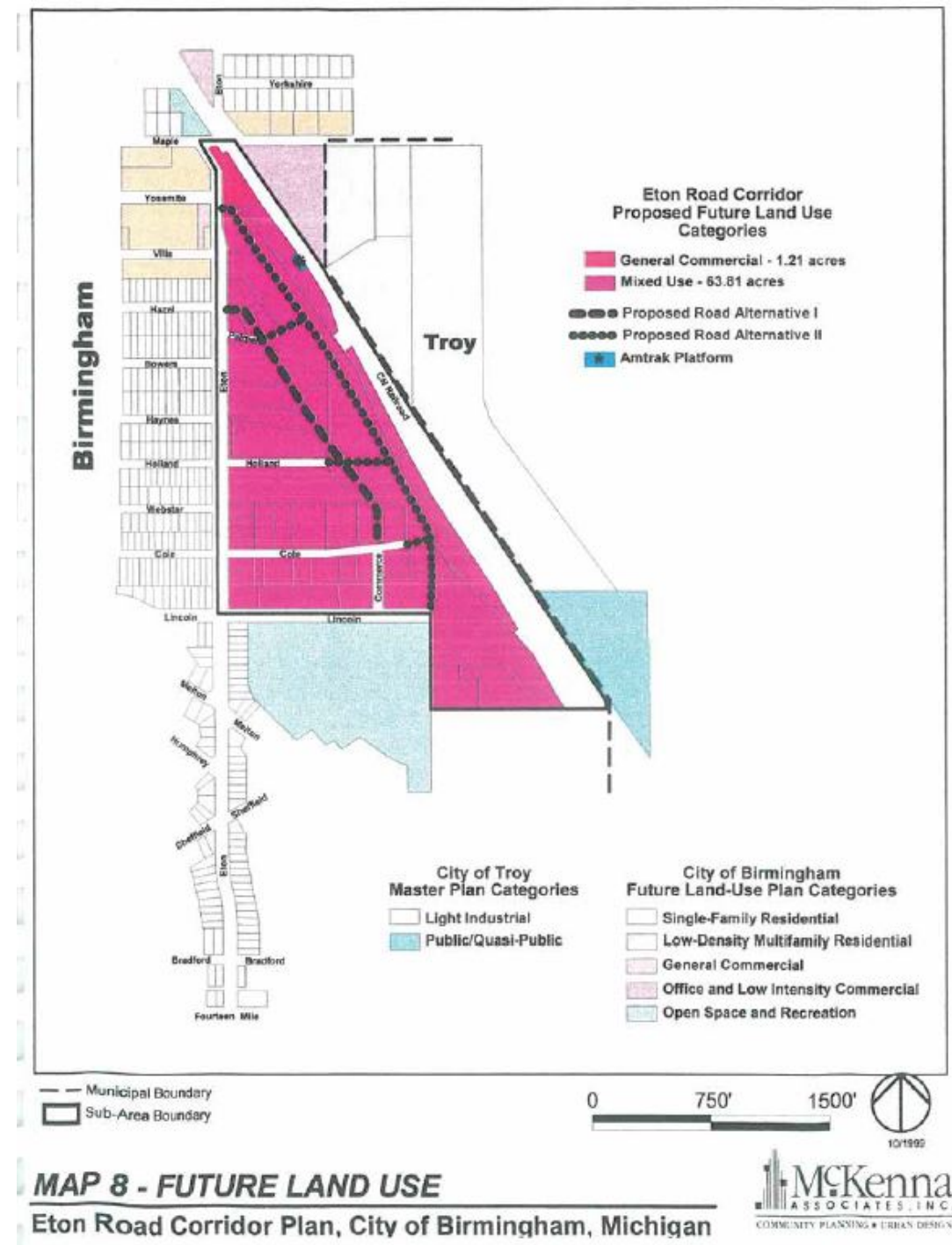
Eton Road Corridor Plan (1999)

Vision Statement: *“The Eton Road Corridor will be a mixed use corridor with a range of commercial, service, light industrial and residential uses that serve the needs of the residents of Birmingham. Creative site planning will be encouraged to promote high quality, cohesive development that is compatible with the existing uses in the corridor and adjacent single-family residential neighborhoods.”*

Much of the success that can be observed in the District today is owed to the recommendations contained in the Eton Road Corridor Plan (ERCP). Many of the recommendations have been implemented including the eastward extension of Villa and Hazel into the northern end of the District, the creation of the MX zoning classification, associated development regulations, and the addition of streetscape requirements.

However, many recommendations contained in the ERCP have not been fully implemented that specifically impact the circulation of vehicular, pedestrian, and bicycle traffic. These recommendations are as follows:

- A series of curb extensions and “chokers” at select intersections to create better visibility for pedestrians and to encourage lower speeds for motorists;
- To accommodate at least one protected bike lane, given that S. Eton is an important link in a regional bike system; and
- To discourage front parking and to place commercial and residential buildings closer to the road.



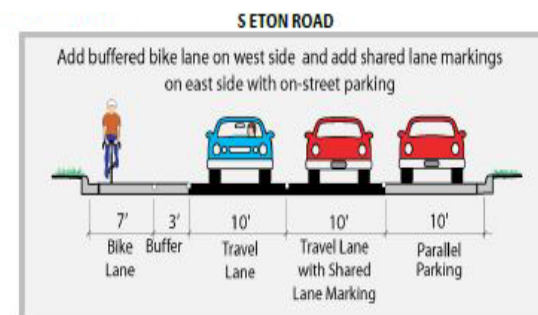
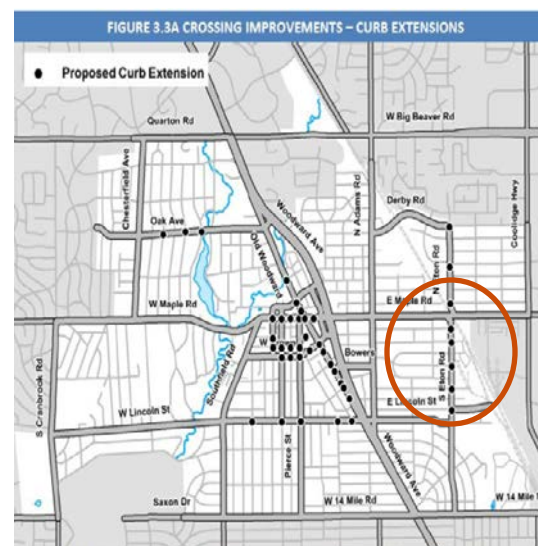
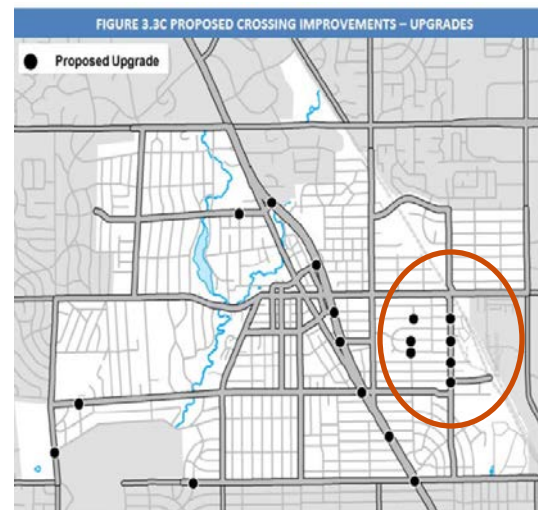
Multimodal Transportation Plan (2013)

Vision Statement: “The City of Birmingham seeks to build upon its brand as a walkable community. The purpose of this plan is to provide a document that the Community may reference when contemplating future actions regarding infrastructure, policies and programs. It is envisioned that this plan will guide improvements designed to give people additional transportation choices, thereby enhancing the quality of life in the City of Birmingham.”

Less than 3 years since its adoption, implementation of the Multimodal Transportation Plan (“MMTP”) is already well underway. Many areas identified in the plan that have not yet been retrofitted are at least at the forefront of multimodal discussion in the city. The Eton Road Corridor has proven to be one of those areas.

As demonstrated in the MMTP, there is an expressed community desire for a transportation network that adequately responds to the needs of various users and trip types. In order to achieve this vision for the Rail District, the MMTP recommends the following physical improvements:

- Completing sidewalks along Cole St.;
- Installing curb extensions on S. Eton Rd. at Yosemite, Villa, Bowers, Holland, and Cole;
- Improving crossing areas at Villa, Bowers, Holland and Cole; and
- Striping bike lanes on S. Eton via parking consolidation: shared lane markings from E. Maple to Villa; buffered bike lane and shared lane markings from Villa to E. Lincoln.



Zoning Analysis

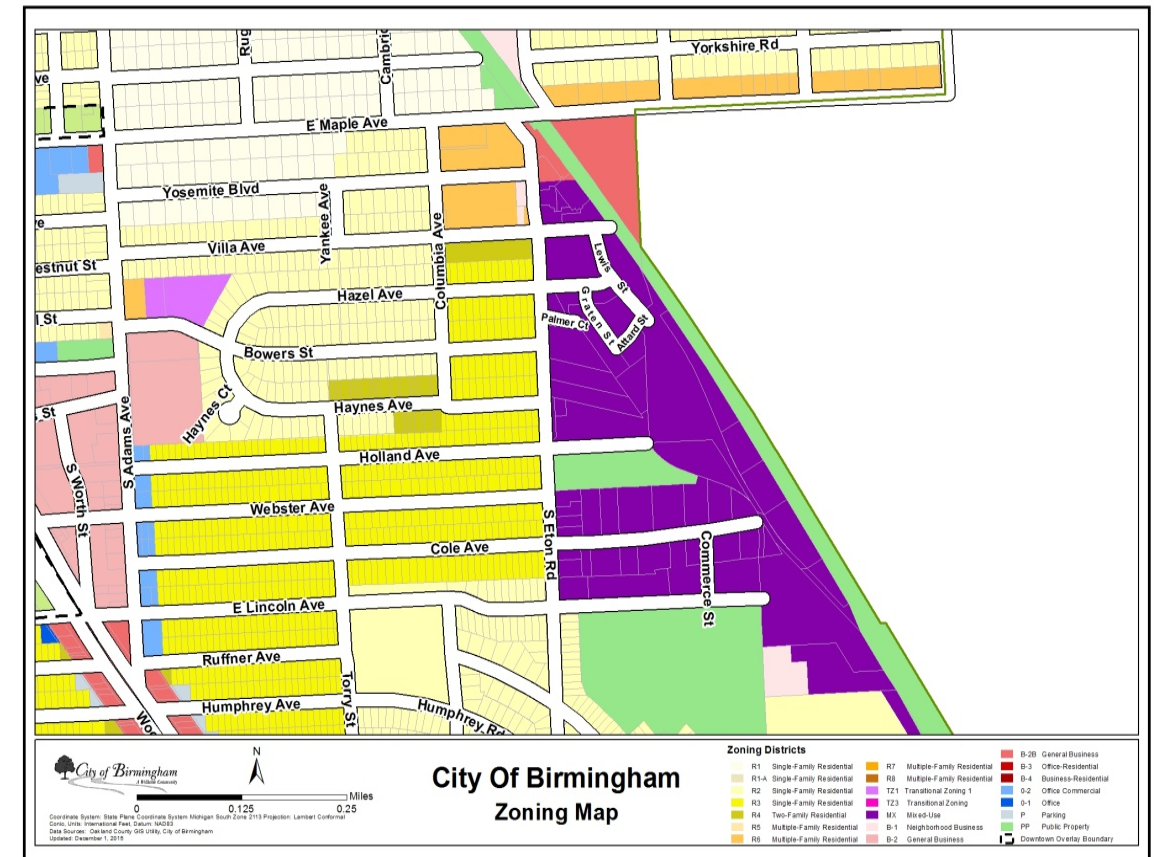
The majority of the S. Eton Corridor was zoned MX Mixed-Use, in accordance with the recommendation of the ERCP. The MX District was established with the intent to:

- Encourage and direct development within the boundaries of the Eton Road Mixed-Use District and implement the Eton Road Corridor Plan;
- Encourage residential and nonresidential uses that are compatible in scale within adjacent resident neighborhoods;
- Encourage the retention, improvement, and expansions of existing uses that help define the Eton Road Corridor;
- Allow mixed use developments including residential uses within the Eton Road Corridor; and
- Minimize the adverse effects of nonresidential traffic on the adjacent residential neighborhood.

With zero foot minimum front and side yard setback requirements, no required open space, and buildings permitted up to 4 stories in height, the MX District encourages a midrise, integrated urban form throughout the Corridor. However, a majority of the buildings in the district have not been developed to the new standards set forth in the current Zoning Ordinance. Many properties still contain single-use, one-story buildings that do not maximize their potential space.

The buildings that have been recently constructed are emblematic of the District's goal of creating appealing mixed-use buildings that complement the adjacent residential neighborhoods. The District Lofts, for example, demonstrate the potential of the District development standards with its well-fenestrated façades that abut the front and side lot lines, ground floor retail space and residential upper floors, and its sufficient parking facilities.

A fundamental goal of the Rail District is to “minimize the adverse effects of nonresidential traffic on the adjacent neighborhood,” but the current road design does little to provide a buffer between the MX and residential zones. Traffic, parking, and safety issues still persist to this day. Actions are recommended for Eton Rd that ease the transition from the residential neighborhood to the mixed use zone and provide safe access to the area's amenities for all modes of transportation.



Preliminary Assessment: Public Perception and Identification of Issues

Committee members reviewed and analyzed existing conditions in the Rail District. Discussion branched off into five main topics: *Rail District Design and Development*, *Pedestrian Safety/Amenities*, *Parking*, *Traffic*, and *Bicycles*. The committee's comments have been summarized into bullet points below.

Rail District Design & Development

- The committee members are pleased with new developments in the district. The development standards for the new buildings have created an overall appealing look.
- Parking in front of the older buildings is not favorable in the context of creating a more pedestrianized corridor.
- The Committee raised the point about how the Rail District ends at Lincoln. Members discussed extending the project area towards 14 Mile as the stretch south of Eton serves as a vital connection.
- The width of S. Eton is viewed as problematic, as it encourages cars to exceed the speed limit. Bump-out curbs are needed on S. Eton at necessary intersections between E. Maple and Sheffield as a way to narrow down the road, slow traffic, and make it easier to cross the street. This would create safer access to the parks, pool, and other amenities.
- The Committee proposed reviewing zoning uses and standards for the rail district. The recent improvements to W. Maple are also something the Committee wants to keep in mind as a good example when making recommendations for the Rail District.

Pedestrian Safety/Amenities

- The Committee is displeased with the lack of pedestrian safety in the Rail District. Committee members emphasized the importance of safe and adequate pedestrian crossing throughout the District, especially along S. Eton Rd. The idea is to have a complete network of sidewalks and crossings that encourage people to walk through the District.
- The intersection at S. Eton and Maple is not amenable to pedestrians, especially when they are attempting to get from S. Eton to N. Eton.
- The intersection at S. Eton and Cole, especially on the commercial side, is not safe from a pedestrian or vehicle standpoint.

Parking

- Parking was raised as a priority. The committee would like to see an evaluation of parking demand with respect to supply, and how to resolve the issue via structures, surface lots, and on-street locations.
- Parking along S. Eton, especially the southbound (west) side, was identified as a key focus of the committee. It was also mentioned that on street parking is an issue between Sheffield and 14 Mile.
- On-street parking spaces on S. Eton are seen as a problem as they inhibit the visibility of drivers and pedestrians and make it difficult for residents to back out of their driveways. Visibility should be considered in future parking studies.

Traffic

- Excessive speed heading southbound on S. Eton – especially from Lincoln to 14 Mile – was identified as an issue to be addressed moving forward.
- The Committee is concerned with the cut-through traffic that occurs on S. Eton
- The new Whole Foods is expected to increase the amount of traffic through the corridor, so the City should consider street designs that regulate speed and traffic, while ensuring a safe pedestrian experience.

Bicycles

- More emphasis should be placed on non-motorized transportation in the study area. More specifically, S. Eton should be designed to be safer for bicyclists.
- The bike route transition from N. Eton to S. Eton should be improved; however, a continuous bike lane may not be a feasible means by which to do this.
- The committee would like to widen the pedestrian area at the southwest corner of E. Maple and S. Eton in order to improve bicycle and pedestrian safety and to ease traffic flowing in and out.

Preliminary Assessment: Walking Survey

Committee members conducted a walking survey and inventory of the S. Eton Corridor. Findings are outlined below and on the pages that follow.



First stop - under the bridge at S. Eton/Maple Rd.

- Viaduct has a “bunker” feel
- Not a good corner to cross
- Widening the sidewalk would help calm traffic
- Bump-out/plaza at corner would be effective, but difficult
- A pedestrian island would help at this intersection



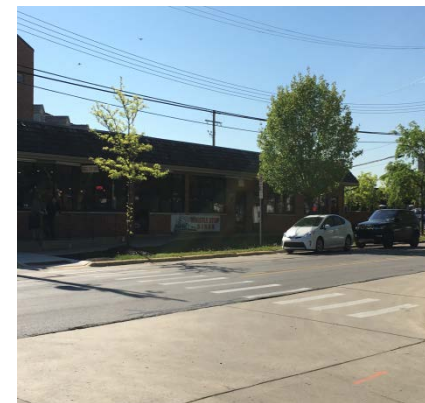
Second stop - Yosemite/S. Eton

- Drivers are not fully aware of pedestrians around this stretch of S. Eton
- A crosswalk is needed here
- Bump-out curbs may be necessary
- A bike lane could start around here
- The street begins to narrow down closer to beauty shop
- Bump-out and bike lane might contradict each other



Third stop – Villa/S. Eton

- Possible bump-out curbs here
- Visibility is very obstructed at this corner



Fourth stop – Hazel/S. Eton

- A crosswalk is needed at the Whistle Stop
- A crosswalk would help slow traffic
- S. Eton improvements must be consistent



Fifth stop - Bowers/S. Eton

- This is area is a destination and should receive a large crossing with different treatment, such as a plaza in the center
- This stop does not warrant a stop sign, but controls should be built to calm traffic speed
- People who come to eat at Griffin Claw don't know where to park



Preliminary Assessment: Walking Survey (Continued)



Sixth stop – Haynes/S. Eton

- It was noted that parking could occur along the dividing island at Bolyard Lumber



Seventh stop – Holland/S. Eton

- A double crosswalk exists here but it is not a natural crossing spot



Eighth stop – Webster/S. Eton

- Curbs are terrible here
- Bump-out curbs are suggested for this location
- Yellow no parking lines may be too long next to driveways



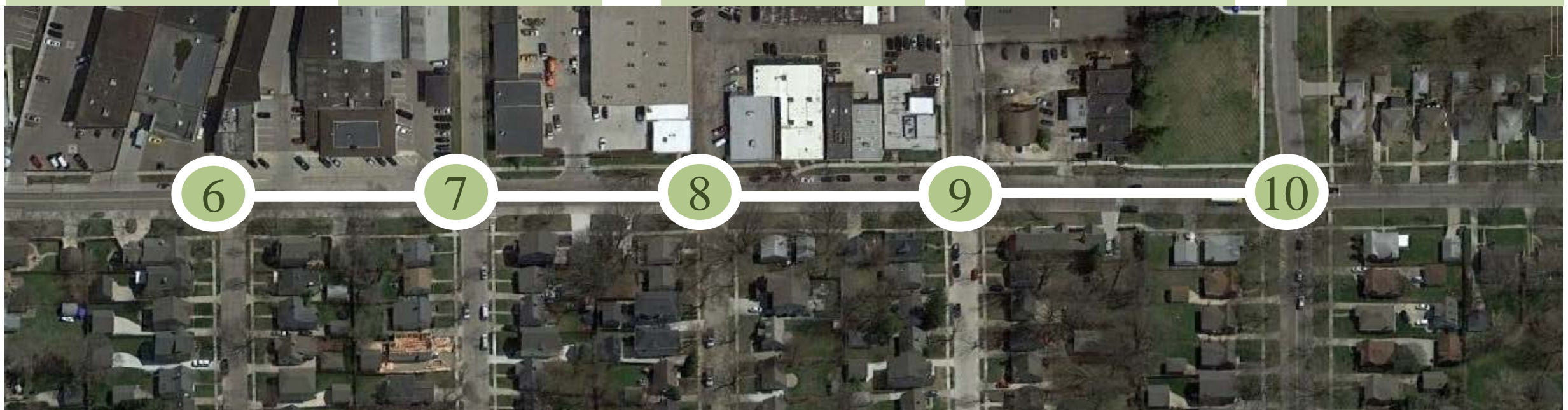
Ninth stop – Cole/S. Eton

- Bump-outs are recommended on the four corners
- Many interesting shops to the east

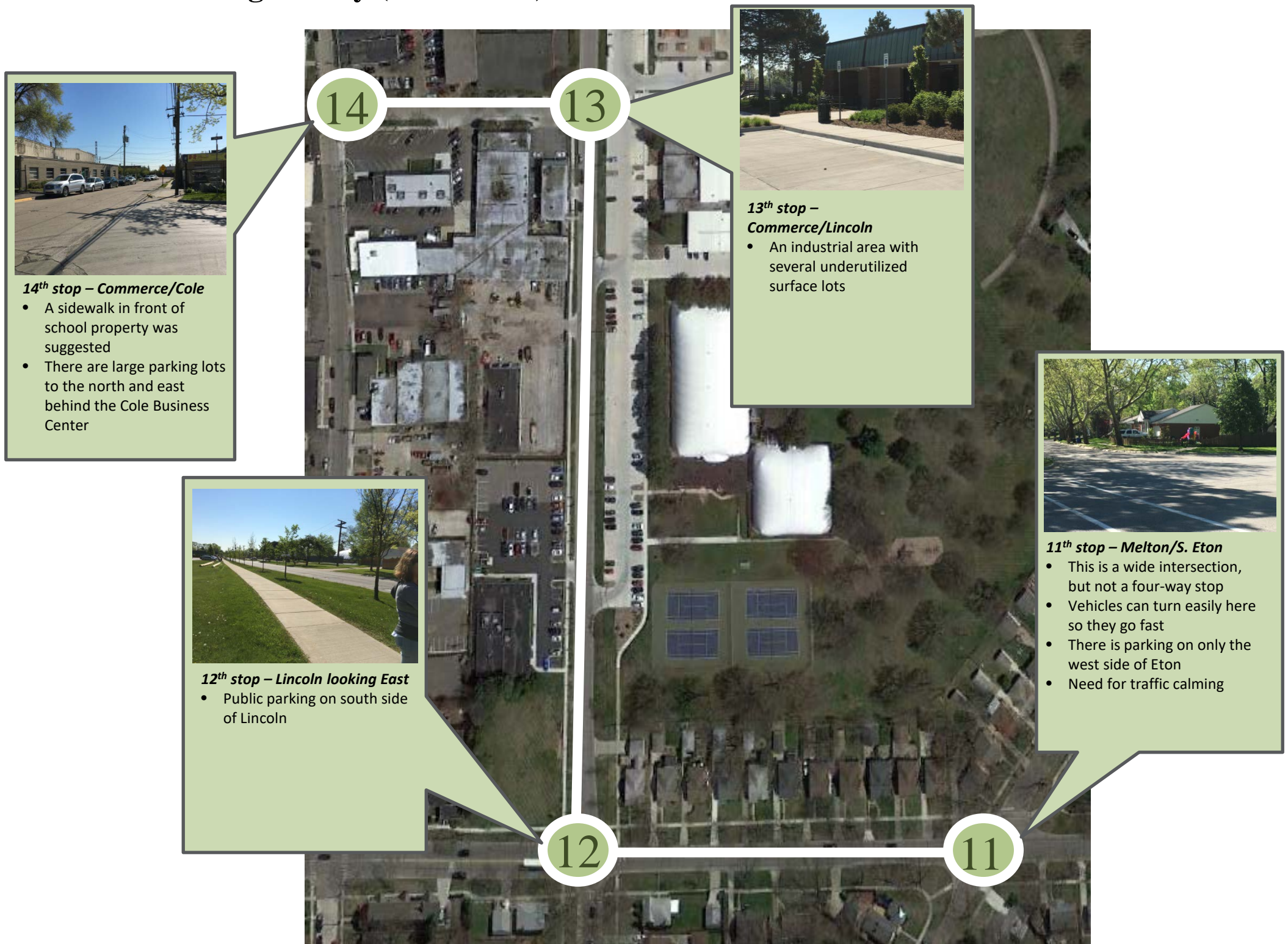


Tenth stop – Lincoln/S. Eton

- This is a prominent corner
- There should be something that demarcates commercial from residential
- Well defined crosswalks here
- Future streetscape improvements should be considered



Preliminary Assessment: Walking Survey (Continued)



Preliminary Assessment: Walking Survey (Continued)



16th stop – Cole Business Center Lots

- There is much parking to the north and east behind Cole Business Center with underutilized parking
- Two adjoining parking lots are blocked from each other by a wall (no shared access)

15th stop – Commerce and Cole

- Sidewalks needed in front of the school property
- Several surface parking lots in front of buildings that are not full



18th stop – Northbound S. Eton

- Yellow curbing was noted in front of Down River Refrigeration
- Angled parking was not supported at this location by Multi Modal Transportation Board
- Sidewalk is incomplete in front of Roy Schecter and Vocht office
- No sidewalk connection from S. Eton to Robot Garage area



17th stop – DPS/Down River Refrigeration

- Inefficient use of parking around Down River Refrigeration
- High traffic egress area south of DPS
- Poor area lighting

Concepts Considered Within Study Area

Based on the issues identified in the preliminary assessment of the study area and a review of the ERCP and MMTP, the Committee considered numerous improvements for the right of way at specific locations. In addition to the concepts illustrated below in the area of S. Eton and Maple, the Committee discussed purchasing property on the southwest corner of the intersection to widen the sidewalk and create a pedestrian plaza at the corner to enhance pedestrian safety and comfort. Additionally, the Committee talked about improving the viaduct underpass on E. Maple through the use of paint and lighting.

S. Eton and Maple Intersection

Existing



Proposed



Design Concept 1

At the southeast corner of S. Eton and Maple, there is a lot of activity but very little room to work with to make any drastic changes. As suggested during the walking tour, the pavement at this corner could be extended into the grass area to provide a more comfortable pedestrian space.

Existing



Proposed



Design Concept 2

Another option at this location could be to create a bump-out to give motorists better visibility of pedestrians attempting to cross and to shorten the length of road crossings for pedestrians.

Design Concept 3

The Committee discussed constructing a pork chop-shaped pedestrian island as an alternative to a bump-out. A pedestrian refuge could effectively channel drivers to slow down and gives pedestrians the ability to wait on it instead of having to rush across the street during a short traffic light interval.

The committee recommended hiring a consultant to evaluate traffic calming measures and pedestrian improvements at this complex intersection.

Existing



Proposed



S. Eton Intersections

Bump-out curbs were considered for the intersection of S. Eton and Yosemite (shown to the right) and could be coupled with striped crosswalks for additional safety. Having a bump-out at this intersection would help demarcate between the commercial area and residential area.

Additional bump out curbs and crosswalk improvements were also suggested along S. Eton at Villa Road, Hazel St, Webster St., Cole St, Lincoln, Melton, Sheffield and 14 Mile Road.

Existing



Proposed



S. Eton and Bowers Intersection

Committee members recognized this area as being of significant importance as it marks the approximate center of the Rail District. Accent materials of different textures and/or colors could be added to intersection to remind people that it is a place for both pedestrians and cars. As shown in the suggested rendering, the concept is coupled with curb bump outs, benches, and on-street bike racks, as well as pedestrian crosswalk improvements to create a plaza condition. Alternatively, the east side of S. Eton at this intersection could be extended to narrow the street further and provide more space for street trees and plantings.

The committee recommended hiring a consultant to study possible improvements to this intersection.

Existing



Proposed



S. Eton Corridor (Maple to Lincoln)

Following the recommendation of the MMTP, the Committee discussed the option of adding bicycle facilities to S. Eton by adding sharrows for northbound bicycle traffic, eliminating parking on the west side (also recommended by the MMTP), and giving southbound traffic a 10 foot protected bike lane that includes a 3 foot buffer zone.

Existing



Proposed



Parking Inventory and Study

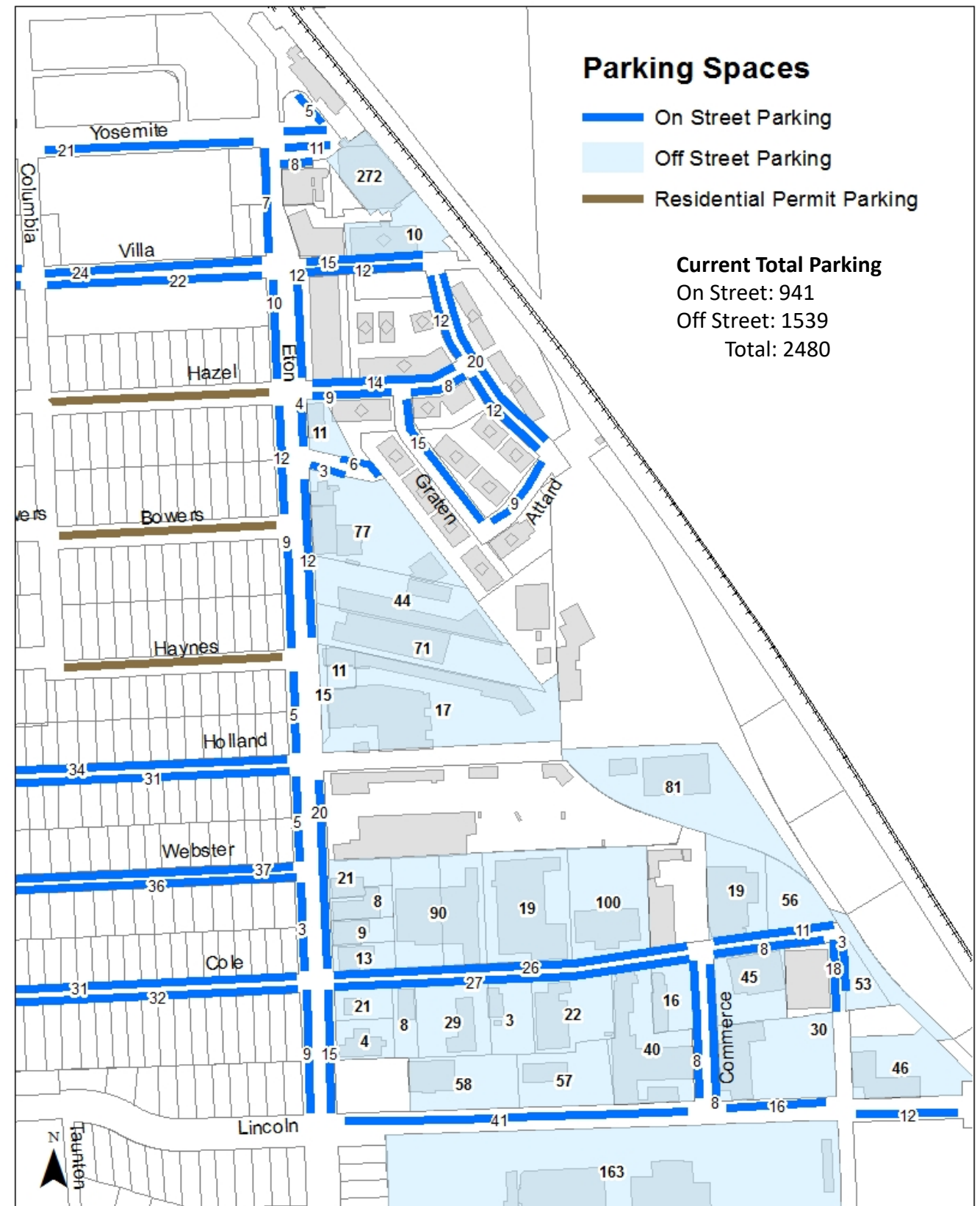
A Parking inventory was completed in the study area for a better understanding of when and where parking spaces are being utilized. A map of total spaces was created for private lots and on street parking. The results are illustrated in Figure 1, and show an existing parking count of 2,480 spaces in the study area and surrounding neighborhood.

A parking study was also completed to determine parking utilization in the study area. Parking counts were conducted by city staff at 4, 5, and 6pm on Friday September 23rd and Wednesday September 30th, and the data was then analyzed.

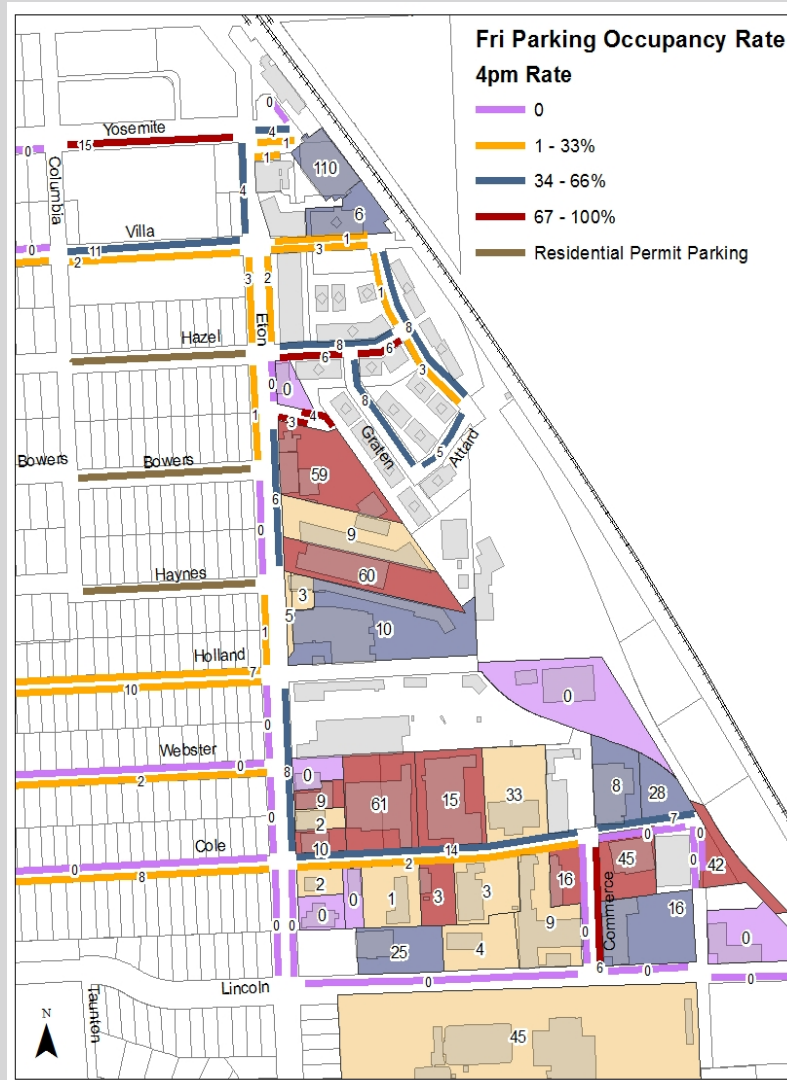
The consulting firm Fleis and Vandenbrink was contracted to create a report for the count studies and provide summary tables showing available spaces, occupied spaces, and percent occupancy rate for the north and south zones of the study area. An analysis and conclusion based upon the findings was then made for off street and on street parking situations in each of the zones.

Count data was then entered into a map for each day and time of the study. The maps on the following pages indicate the total counts for each hour of on street and off street parking spaces, and color code the percent occupancy rate in classes for 0, 1-33%, 34-66%, and 67-100%. These maps are shown side by side to visually illustrate the intensities of parking in the district, and how the parking occupancy rates change from 4-6pm in the study area.

Figure 1



Friday Parking Count: 4:00 PM



S. Eton Rd

- 9 out of 60 spaces on the west side are used
- 16 out of 63 spaces on the east side are used

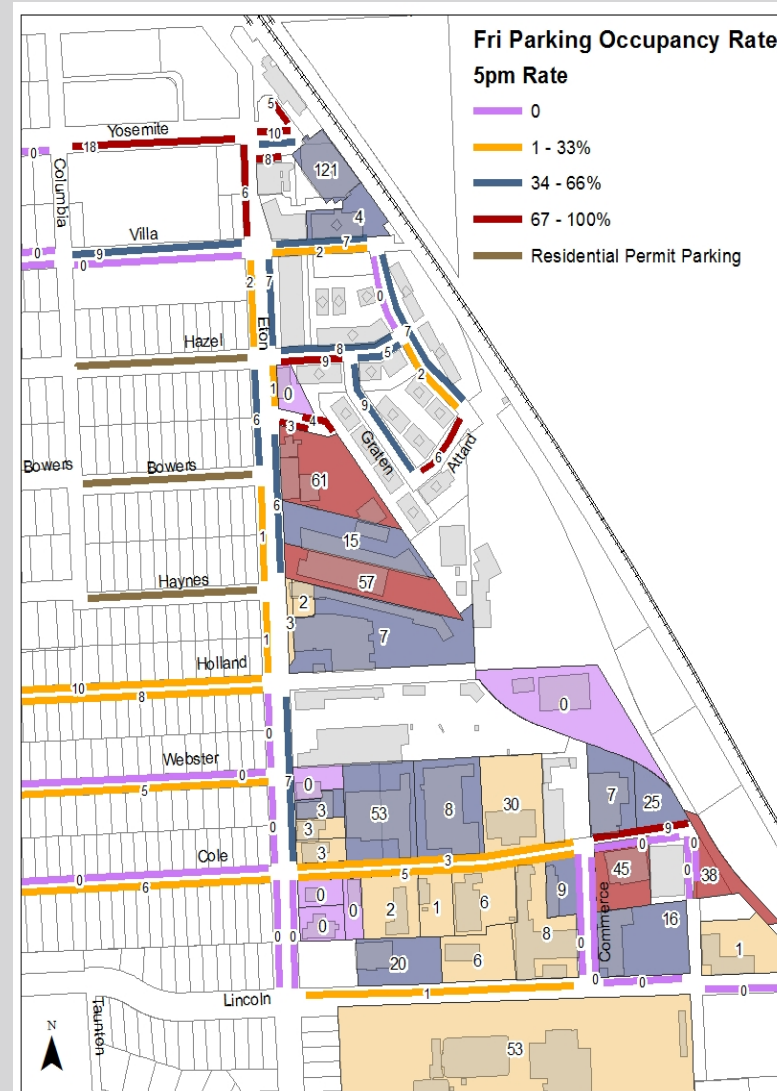
Off Street Parking

- Parking lots off of Cole Street at or near capacity
- Griffin Claw already above 66% capacity

Residential Parking

- Yosemite and Villa experience overflow throughout the evening.
- Villa stays between 33-66% occupancy rate throughout the Friday study.

Friday Parking Count: 5:00 PM



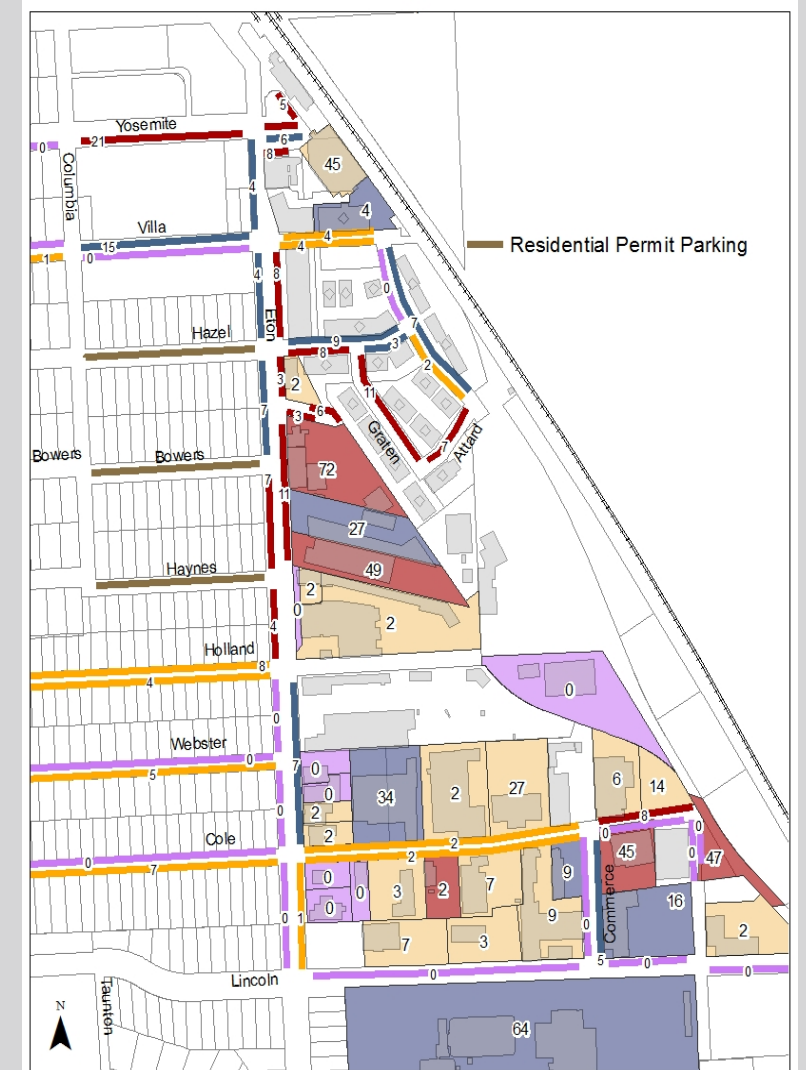
S. Eton Rd

- 16 out of 60 spaces on the west side are used
- 21 out of 63 spaces on the east side are used

Off Street Parking

- The lots off of Cole Street begin to clear out
- Two of the parcels above 66% are auto repair shops with outdoor vehicle storage.

Friday Parking Count: 6:00 PM



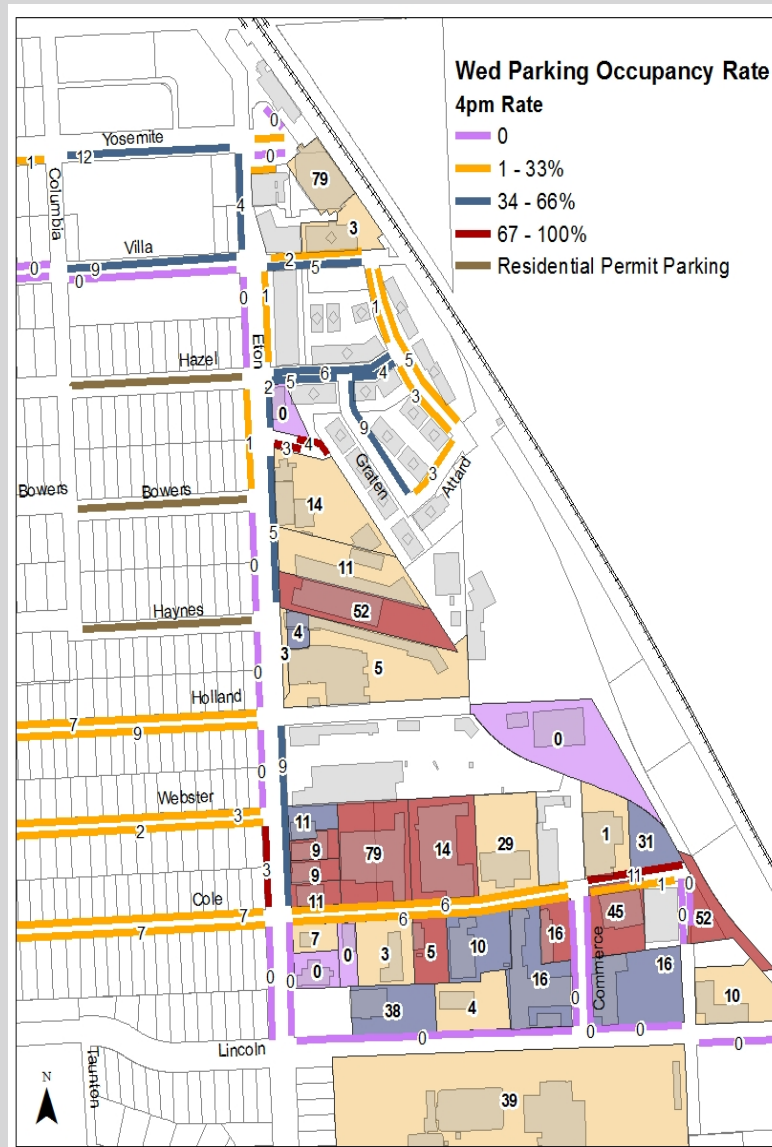
S. Eton Rd

- 26 out of 60 spaces on the west side are used
- 30 out of 63 spaces on the east side are used
- *the highest occupancy throughout the study
- 0 spaces on west side, south of Holland are used the entire evening

Off Street Parking

- Griffin Claw parking lot reaches capacity.
- Only 2 of 11 spaces are used in Whistle Stop.
- 0 spaces are used outside of Bolyard Lumber.
- Robot Garage/Watch Hill lot never exceeds 66%.

Wed. Parking Count: 4:00 PM



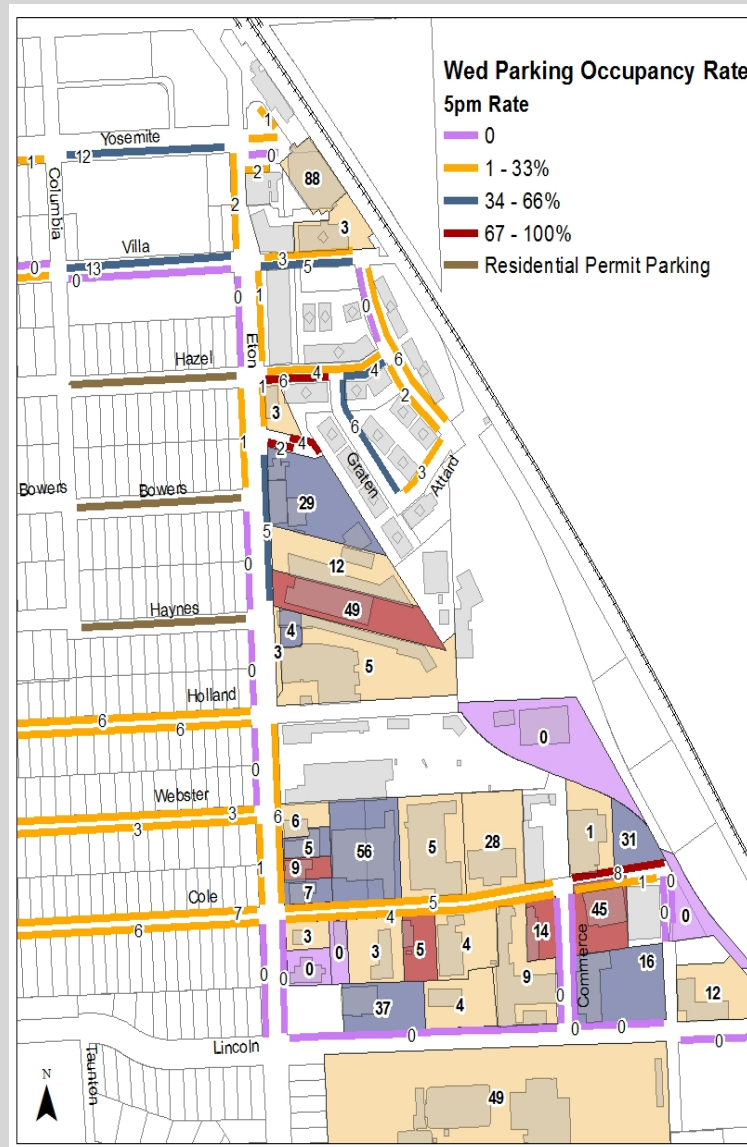
S. Eton

- 7 out of 60 spaces on the west side are used
- 17 out of 63 spaces on the east side are used

Off Street Parking

- Cole Street's highest occupancy rate for off street lots occurs on weekday during regular business hours.

Wed. Parking Count: 5:00 PM



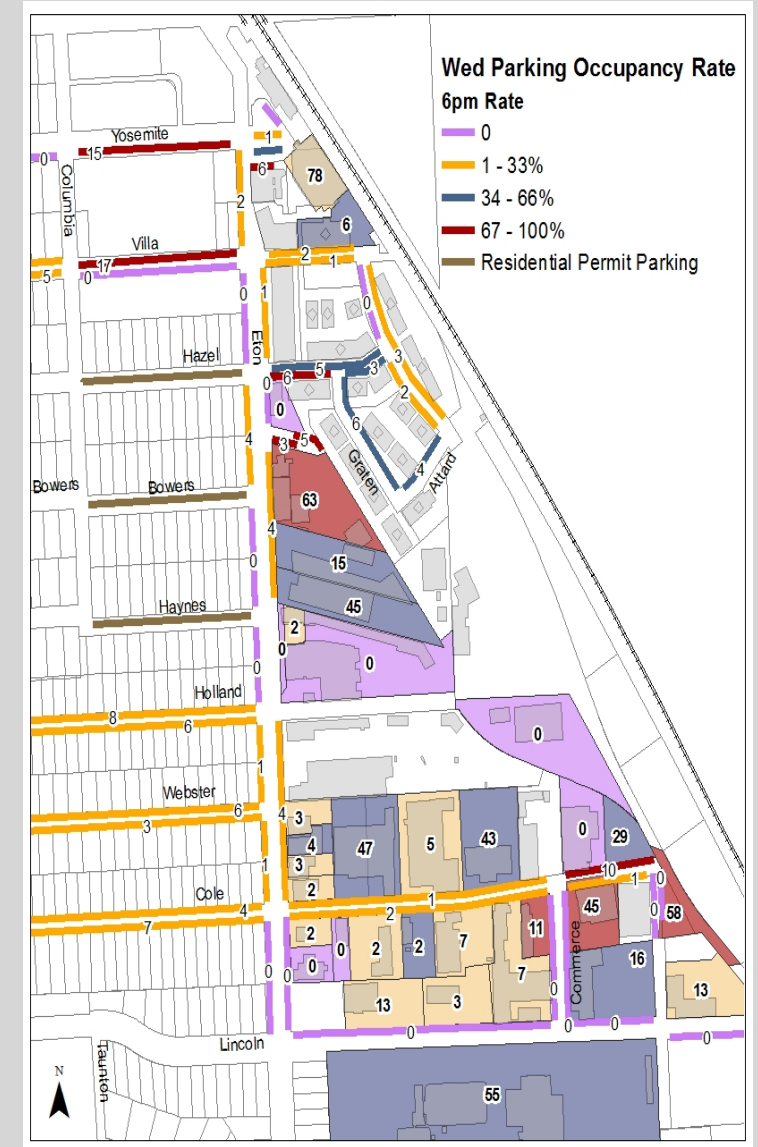
S. Eton

- 4 out of 60 spaces on the west side are used
- 13 out of 63 spaces on the east side are used
- *lowest occupancy in the study

Off Street Parking

- The majority of Cole Street parking lots clear out after 5 pm.

Wed. Parking Count: 6:00 PM



S. Eton

- 8 out of 60 spaces on the west side are used
- 9 out of 63 spaces on the east side are used
- *lowest occupancy in the study

Off Street Parking

- Griffin Claw's peak parking hours increase during the evening while the rest of the parcels show a decrease in use.
- Shared Parking agreements work best when adjacent or nearby parcels have different peak parking times.

Existing Parking Analysis

For the section north of Holland Road, the parking study by Fleis and Vandenbrink concluded:

- 1) Off street and on-street parking demand is high and the existing spill over parking is impacting Yosemite Boulevard and Villa Road.
- 2) The parking garage beside Big Rock and The Reserve is underutilized.
- 3) Griffin Claw had the most utilized parking lot in north zone.
- 4) The least occupied lots were Whistle Stop and Bolyard Lumber.
 - a) Together these two parcels contain 39 parking spaces, which could be an opportunity for shared parking agreement during nights and weekends.
- 5) During the peak hour there were no available spaces on Northbound Eton between Haynes and Palmer, or southbound Eton between Holland and Bowers.

For the section south of Holland Road, the parking study by Fleis and Vandenbrink concluded:

- 1) The highest parking demand in this area occurs during weekday daytime hours.
- 2) Many off street parking lots along Cole Street were near capacity at 4pm, then relatively vacant after 5pm.
 - a) This may be an opportunity for shared parking agreements to relieve some parking demand in the north zone.
- 3) On street parking is not significantly impacted by the commercial properties.
- 4) The residential neighborhood to the west is not significantly impacted by spillover parking from the Rail District.

The parcel in front of Bolyard Lumber between the street and the building contains 15 parking spaces and is considered public right of way. Based upon the data from the study, these spaces are underutilized. On Friday September 23rd at 6pm, 0 spaces in front of Bolyard Lumber were used, while the east and west side of S. Eton were at or near capacity north of Holland. Better signage could be used to inform drivers and direct them into these spaces to alleviate parking congestion elsewhere.

The parking lots adjacent to Griffin Claw are also considered underutilized at evening hours. During peak parking time, Whistle Stop on the north side utilized 2 of the 11 spaces at 6pm, while 27 out of 44 spaces were utilized in the Robot Garage/Watch Hill parking lot at 6pm. Both of these parking lots have signs indicating parking is for their business only. Whistle Stop, Robot Garage, and Watch Hill have different peak parking hours with Griffin Claw which could be an opportunity for a shared parking agreement.

The on street parking south of Holland is considered underutilized as well. Zero cars parked on the west side of S. Eton between Holland and Lincoln on Friday, while the Wednesday count maxed out at 3 cars. The east side of S. Eton between Holland and Lincoln also had low parking rates. This side had a number of counts with a value of 0, and its maximum occupancy rate never reached above 66%.

Findings

The parking study shows that there is an abundance of parking throughout the study area. However, much of the parking is privately owned for a single use. Parking demand is high for restaurant uses in the evenings and weekends while the office uses have daytime peak parking periods. Shared parking arrangements throughout the study area should be encouraged to maximize the efficiency of existing parking in commercial areas and to eliminate spillover parking into residential areas.

The data from the parking study also supports the Multimodal Transportation Plan's recommendation to eliminate parking on the west side of Eton and use the space for a bike lane. The count data suggests that the study area has enough spaces to accommodate for the loss of parking on the west side of Eton. The highest count for this section was 26 on Friday, September 23rd at 6pm. If these spaces were removed, drivers could still find space in front of Bolyard Lumber and S.Eton between Holland and Lincoln. Available spaces could increase if adjacent businesses entered into shared parking agreements and removed 'business parking only' signs as well, as noted above.

Build-out Analysis

A build-out analysis was conducted to determine the future parking needs of the Rail District. This study involved examining the current state of development in the Rail District and demonstrating which buildings were likely to be redeveloped to their maximum size per the MX (Mixed-Use) zoning district provisions. Recently developed buildings and businesses not likely to change within the next 20 years were highlighted in blue, while properties with the potential for redevelopment were highlighted in red. See Figure 2.

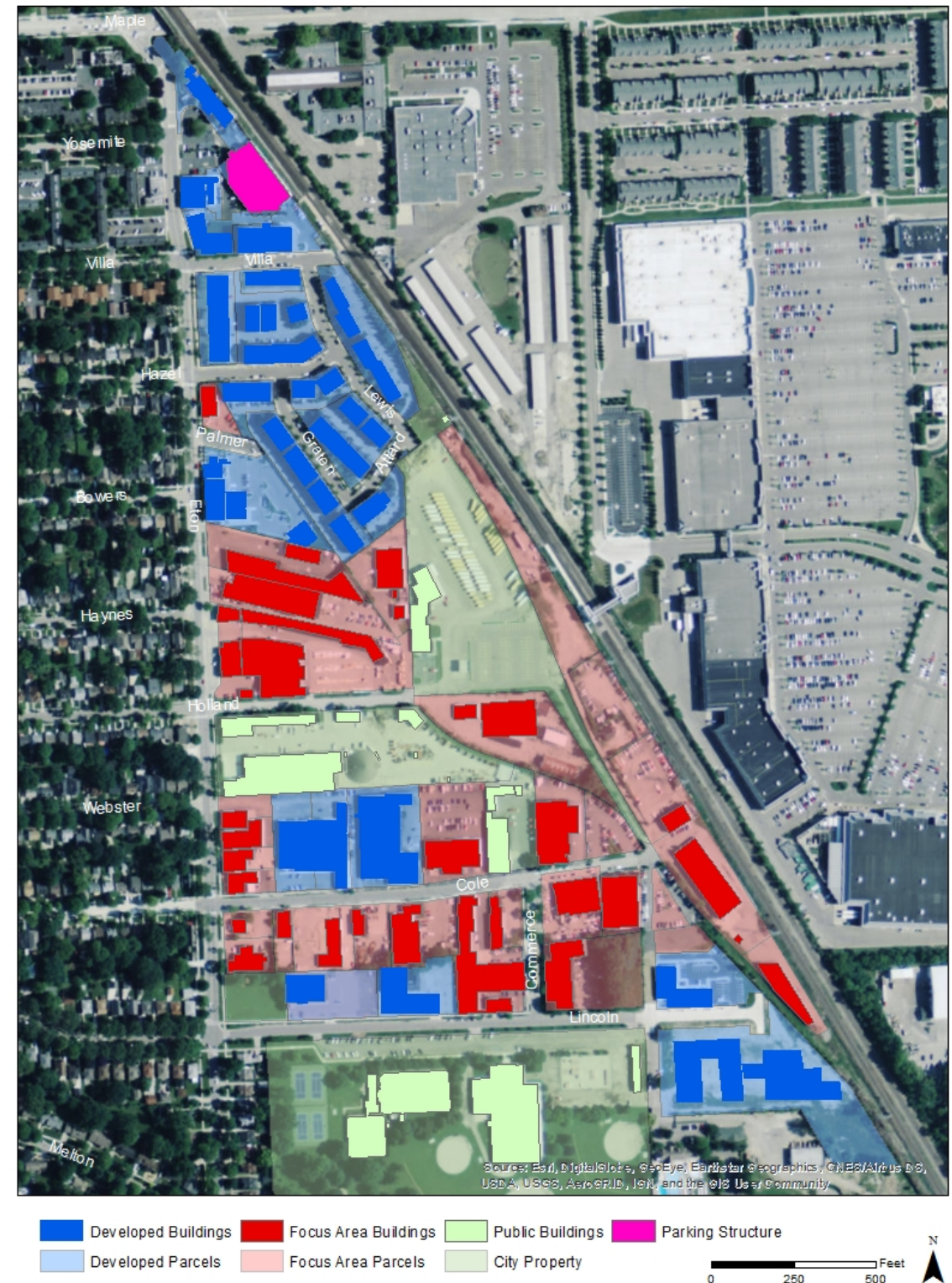
The ratio of developable parcel space vs actual building space was calculated for the properties highlighted in blue. This value is used as the Percent of Maximum Build-Out percentage. This build out rate was then used as a projection for the focus area highlighted in red. The assumption is that future buildings in the focus area will occupy a similar value of their total parcel space as those recently developed in blue.

The projected build-out square footage for the focus area was then used to calculate the additional number of parking spaces that would be required based on probable square footage and land uses.

A build-out analysis is predicated on many underlying assumptions. Presupposing the realistic and sometimes even most extreme conditions can generate a fairly accurate assessment of the issue at hand and help to envision future scenarios. The following assumptions were applied in the Rail District build-out analysis:

- All parcels in the focus area were assumed to be developed as four story, mixed use buildings, the maximum number allowed in the MX zone.
- All first floor uses were assumed to be retail/office, requiring one parking spot per 300 sq ft.
- Floors two, three, and four were assumed to be residential, requiring one parking space per 1000 sq ft of floor area.
- Percentage of Maximum Build Out = $\frac{\text{Building Floor Area} * \text{Number of Stories}}{\text{Parcel Area} * 4 \text{ Stories}}$

Figure 2: Identifying Parcels with Potential for Redevelopment



Build-out Analysis

Existing Condition:

Figure 3 is a rendering of the Rail District's current build out. It also includes buildings approved for construction in the near future. The blue represents buildings that are unlikely to change within the next 20 years. Note that the northern section has a higher density of recent developments that occupy a larger portion of their parcel space than the older buildings in red. The restaurants and mixed-use structures in blue are clustered together with a combination of parking uses including a three story parking deck highlighted in pink, underground parking, on street parking, and private garages.

The red area indicates buildings that have not recently been re-developed or undergone significant renovation and still fit the previous zoning category. They are predominantly one story industrial buildings with large surface parking lots. These sites have been identified as a focus area for potential re-development in the build out analysis.

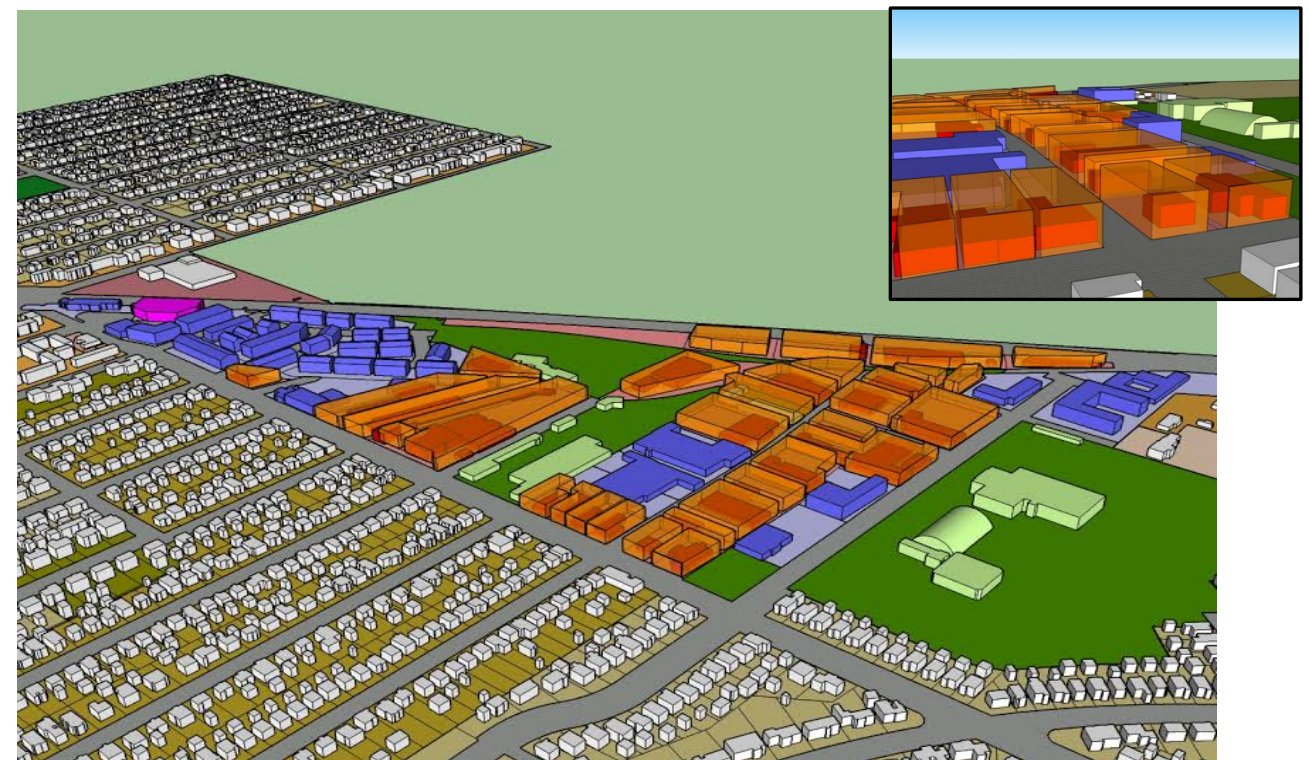
Future Buildout:

The transparent orange space pictured in Figure 4 indicates the maximum build out space for properties likely to redevelop in the Rail District. The MX zone allows up to 4 stories, and the orange is meant to help visualize the difference between the current build out in red, and what is now possible within the MX zone. The percentage of current built out space vs maximum build out is included in Tables 1 and 2 as the Current Percent of Maximum Build Out value on the far right column.

Figure 3



Figure 4



Existing Build-out Analysis

Based on development patterns over the past 15-20 years, it is rare for a landowner to use 100% of their developable space (highlighted in orange on Table 1). This is due to development standards such as side and rear setback requirements, access to parking and drop off space, required parking spaces, and right of way improvements. Table 1 compares the maximum build out values for different building uses, based on actual development that has occurred.

The addresses listed in Table 1 are properties not expected to significantly change within the next 20 years. They contain a mix of single story restaurants like Griffin Claw and The Reserve, single story industrial buildings converted into commercial uses such as the Cole Street multi-business spaces (as shown in white on Table 1), and multi-story, mixed used buildings including District Lofts and Crosswinds (as shown in blue on table 1). The build-out rates of properties not expected to significantly change within the next 20 years range from 6% to 62%, with an average of 26%.

Griffin Claw has a build out value of only 8% because it is a large parcel with 70% of its surface area dedicated to parking. The other 30% is occupied by a one story brewery and restaurant space. Because Griffin Claw is a restaurant, it also has a higher parking requirement than retail, office, and residential uses. Parcels with large surface lot parking areas and single story uses score lower percentage values in the maximum build out analysis.

The addresses highlighted in red on Table 2 correspond with the parcels shown in red on Figure 3, and those properties that have been identified as the focus area likely for redevelopment.

Table 1: Recent Development

Business	Address	Parcel Sq. Ft.	1st Floor Building Sq. Ft.	# of Stories	% Building on Parcel	Total Building Sq. Ft	Max Build Out Space	Current % of Max Build Out
Assumptions					Footprint/ Parcel	Footprint * # of Stories	Parcel Area *4 Stories	Current Build Sq. Ft/ Max Build
Big Rock	245 S ETON ST	28,237	9,151	1	32%	9,151	112,948	8%
The Reserve	325 S ETON ST	13,404	9,305	1	69%	9,305	53,616	17%
Griffin Claw	575 S ETON ST	66,333	20,248	1	31%	20,248	265,332	8%
Cole St. Multi-Business	2211 COLE ST	62,872	36,800	1	59%	36,800	251,488	15%
Cole St. Multi-Business	2121 COLE ST	66,700	33,502	1	50%	33,502	266,800	13%
(Combined w/ 2121)	2099 COLE ST	-	-	-	-	-	-	-
Armstrong White	2125 E LINCOLN ST	38,454	9,739	1	25%	9,739	153,816	6%
Dentist & Doctor Office	2425 E LINCOLN ST	42,970	12,363	1	29%	12,363	171,880	7%
Sheridan Retirement	2400 E LINCOLN ST (W SIDE)	164,428	30,664	4	19%	149,322	657,712	23%
Sheridan Retirement	2400 E LINCOLN ST (E SIDE)	(Combined)	26,666	1	-	(East +West)	-	-
CrossWinds (16 Buildings)	GRATEN, LEWIS, & HAZEL ST	253,702	97,184	4	38%	388,736	1,014,808	38%
Future Mixed Use	2000 VILLA ST	12,837	8,004	4	62%	32,016	51,348	62%
District Lofts	375 S ETON ST	20,180	10,391	4	51%	41,564	80,720	51%
District Lofts	2051 VILLA RD # 101	27,316	12,171	4	45%	48,685	109,264	45%
Irongate	401 S ETON ST	31,045	15,000	2.5	48%	37,500	124,180	30%
Future Mixed Use	2159 E LINCOLN ST	35,226	16,577	4	47%	66,310	140,904	47%
Total		863,704	347,766	-	40%	895,241	3,454,816	26%

Build-out Analysis

Table 2: Focus Area with Potential for Redevelopment

Parcel Address	Parcel Sq. Footage	1st Floor Building Sq. Footage	% Building on Parcel	Est. Total Building Sq. Footage	Est. Max Build Out	Current % of Max Build Out
Assumptions		Building Floor Area	Floor Area / Parcel	Building Floor Area * # of Stories	Parcel Area * 4 Stories	Total Build Sq. Ft. / Max Build
501 S ETON	11,331	3,959	35%	3,959	45,326	9%
653 S ETON	54,444	24,705	45%	24,705	217,776	11%
677 S ETON	55,569	22,184	40%	22,184	222,275	10%
707 S ETON	7,335	2,602	35%	5,205	29,338	18%
953 S ETON	10,080	5,003	50%	5,003	40,320	12%
995 S ETON	11,200	4,263	38%	4,263	44,800	10%
925 S ETON	14,016	3,901	28%	3,901	56,062	7%
929 S ETON	11,104	7,146	64%	7,146	44,416	16%
757 S ETON	111,124	49,332	44%	55,640	444,496	13%
1041 S ETON	11,677	1,771	15%	1,771	46,706	4%
1081 S ETON	14,992	6,036	40%	6,036	59,968	10%
2203 HOLLAND	38,614	10,945	28%	10,945	154,456	7%
2200 HOLLAND	89,215	19,404	22%	19,404	356,860	5%
2275 COLE	55,729	14,241	26%	14,241	222,917	6%
2333 COLE	36,071	20,381	57%	20,381	144,285	14%
2330 COLE	36,451	13,057	36%	13,057	145,805	9%
2499 COLE	47,389	4,052	9%	4,052	189,554	2%
2388 COLE	33,531	Parking Lot	-	-	-	-
2182 COLE	20,754	2,816	14%	2,816	83,017	3%
2254 COLE	36,634	13,011	36%	13,011	146,536	9%
2300 COLE	17,196	5,682	33%	5,682	68,784	8%
2010 COLE	34,468	7,190	21%	7,190	137,871	5%
2006 COLE	10,877	3,185	29%	3,185	43,507	7%
2388 COLE	22,202	16,429	74%	16,429	88,807	19%
2400 COLE	62,645	19,461	31%	19,461	250,580	8%
2450 COLE	23,422	9,192	39%	9,192	93,687	10%
2295 E LINCOLN	53,994	33,402	62%	33,402	215,978	15%
2125 E LINCOLN	38,470	9,739	25%	9,739	153,879	6%
2335 E LINCOLN	61,009	15,992	26%	15,992	244,035	7%
Vacant	65,025	Vacant	-	-	-	-
Vacant	43,240	Vacant	-	-	-	-
Total	1,139,807	349,080	31%	357,991	3,992,042	9%

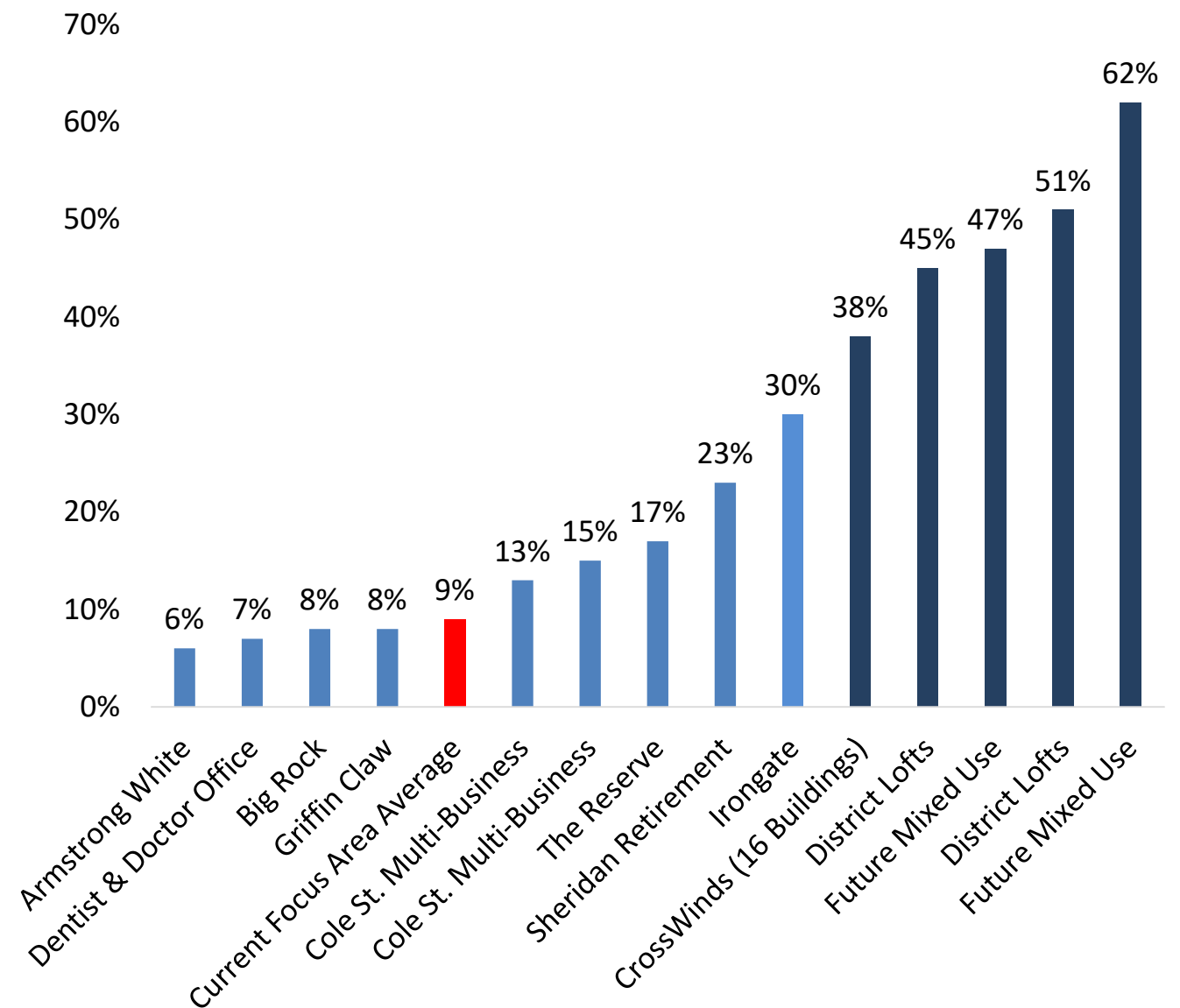
Determining Future Build-out

Figure 5 illustrates the range of current build out within the study area. the light blue and dark blue columns represent buildings that are assumed to remain the same within the next 20 years. The light blue represents existing single use buildings. These buildings have lower values because most are one story in height, and do not maximize their square footage. The Sheridan Retirement home will be four stories, but has a large surface parking area throughout its parcel. Irongate ranges from two to three stories in height, and uses garage parking to maximize its space.

The dark blue columns in Figure 5 represent mixed-use buildings that are approved to be four stories in height, and they average a 49% build out rate. These buildings score higher values because they maximize their height and square footage, and contain enclosed parking with building area above.

The focus area's current build out rate ranges from 3% to 19% with an average of 9%, which is highlighted in the red column in Figure 5. All of the buildings in the focus area are one story with large surface parking lots. For future projections, it is important to determine how the Rail District would change if the buildings in the focus area were transformed from a 9% average build out to anywhere between 30-50%, similar to recent development projects in the study area.

Figure 5: Percent of Maximum Build Out



Future Build-out Analysis

Table 3 illustrates the parking necessary for projected build-outs in the focus area. The three scenarios increase the focus area from its current 9% build-out to 30%, 40%, and 50% build out rates. These three values were selected by the committee based on recent development trends in the area with regards to size and mix of office/retail, restaurant, and residential uses.

Required parking spaces were then calculated from the floor area values at 30%, 40%, and 50% of maximum build out values. The first floor of the hypothetical build outs were assumed to be retail/office, requiring 1 space per 300 sq. ft, and floors 2-4 were assumed to be residential, requiring 1 parking space per 1000 sq ft. The total values are shown at the bottom of Table 3. The difference between these values and the existing number of parking spaces was then calculated to illustrate how many additional parking spaces would be required if the focus area developed at a 30%, 40%, and 50% build out rate (see Table 4).

Table 3: Parking Projection

Parcel Address	Current Parcel Sq. Footage	Est. Max Build Out	Parking Requirement	Parking Requirement	Max Build Out Parking Requirement	Required Parking	Required Parking	Required Parking
Assumptions		Parcel Area *4 Stories	Retail: 1st Floor 1 per 300 sq. ft.	Residential: Floors 2-4 1 per 1000 sq. ft.	100% Build Out	50% Build Out	40% Build Out	30% Build Out
501 S ETON	11,331	45,326	38	34	72	36	29	22
653 S ETON	54,444	217,776	181	163	345	172	138	103
677 S ETON	55,569	222,275	185	167	352	176	141	106
707 S ETON	7,335	29,338	24	22	46	23	19	14
(Off Site)	65,025	-	-	-	-	-	-	-
757 S ETON	111,124	444,496	370	333	704	352	282	211
2203 HOLLAND	38,614	154,456	129	116	245	122	98	73
2200 HOLLAND	89,215	356,860	297	268	565	283	226	170
953 S ETON	10,080	40,320	34	30	64	32	26	19
995 S ETON	11,200	44,800	37	34	71	35	28	21
2275 COLE	55,729	222,917	186	167	353	176	141	106
2333 COLE	36,071	144,285	120	108	228	114	91	69
2330 COLE	36,451	145,805	122	109	231	115	92	69
925 S ETON	14,016	56,062	47	42	89	44	36	27
929 S ETON	11,104	44,416	37	33	70	35	28	21
2499 COLE	47,389	189,554	158	142	300	150	120	90
(Off Site)	43,240	-	-	-	-	-	-	-
2388 COLE	33,531	-	-	-	-	-	-	-
2182 COLE	20,754	83,017	69	62	131	66	53	39
2254 COLE	36,634	146,536	122	110	232	116	93	70
2300 COLE	17,196	68,784	57	52	109	54	44	33
2010 COLE	34,468	137,871	115	103	218	109	87	65
1041 S ETON	11,677	46,706	39	35	74	37	30	22
1081 S ETON	14,992	59,968	50	45	95	47	38	28
2006 COLE	10,877	43,507	36	33	69	34	28	21
2295 E LINCOLN	53,994	215,978	180	162	342	171	137	103
2125 E LINCOLN	38,470	153,879	128	115	244	122	97	73
2335 E LINCOLN	61,009	244,035	203	183	386	193	155	116
2388 COLE	22,202	88,807	74	67	141	70	56	42
2400 COLE	62,645	250,580	209	188	397	198	159	119
2450 COLE	23,422	93,687	78	70	148	74	59	45
Total	1,139,807	3,992,042	3,327	2,994	6,321	3,160	2,528	1,896

*Not
Probable

*Not Probable

Parking Requirement for Future Build-out

Projecting future development is a complicated task. In this analysis, trends from recent developments in the Rail District are extrapolated into the focus area, and then basic assumptions are used to calculate how many extra parking spaces would be required. Although it is an inexact science, having a general idea of future parking needs is an important task. Doing so helps predict how many additional cars could be traveling through the district and how much parking is needed in the future. This can have an impact on traffic signals, road speeds, safety precautions, parking counts, and road design.

Detailed analysis of recent development trends show an average build-out of 26% within the study area. Based on these findings, the potential build out rates of 30%, 40%, and 50% were used, assuming that future developments will try to maximize available space and build four stories. The Ad Hoc Rail District Committee recommended reliance on the 30% build out rate for the buildout analysis to allow for a combination of mixed use, four story buildings which average around 50%, and single story office and restaurant uses which average around 10%, consistent with recent development trends.

There are currently 826 parking spaces in the parking lots within the focus area. Table 4 illustrates additional parking needed based on the build out projections, which range from an additional 1,070 parking spaces if the focus area is built out to 30%, 1702 spaces at 40%, and 2,334 spaces if the focus area is built out to 50% buildout.

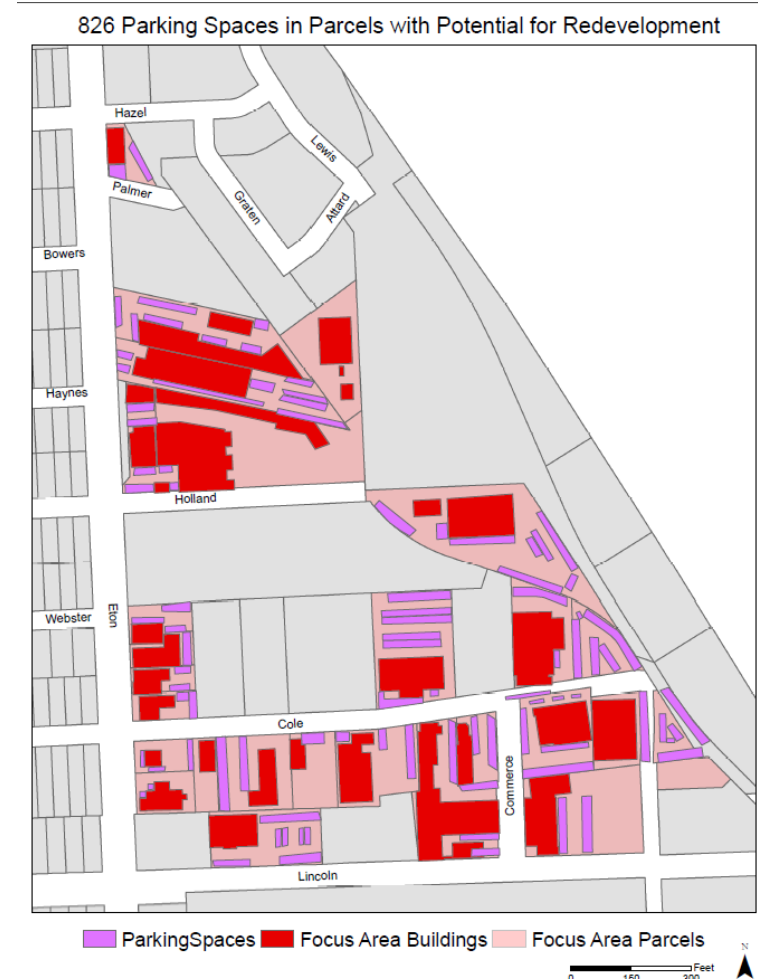
If future development trends towards buildings with less of an upfront cost than 4 stories and underground parking, the additional parking spaces required would drop substantially. Also, the 1,070 additional parking spaces at 30% build out projection is based on an assumption that every parcel identified in red in Figure 3 and Table 2 is redeveloped. We have seen a large amount of repurposing in the Rail District, especially on Cole Street, and if future land owners choose repurposing of current buildings over redevelopment, the projected parking spaces would see a substantial drop as well.

Many of the parcels in the focus area do not have enough space to provide required parking for 4 stories of retail and residential uses unless they build an underground parking facility. Based on recent development trends in the area, this is unlikely to occur and thus, buildout rates will likely remain in the 20-30% range of maximum build-out, requiring less than 1,070 additional parking spaces in the study area. It is important to note that based on the current standards, all of these additional parking spaces must be provided by individual property owners and/or developers. Thus, the City need only focus on encouraging an efficient use of private parking facilities, and ensuring good right-of-way design to accommodate additional vehicle traffic and balance the needs of non-motorized users. The provision of additional public parking is not warranted now, nor in the near future.

Table 4: Future Parking Needs

Focus Area Build Out Rate	Projected Parking Spaces	Projected Additional Spaces
Current	826	-
100%	6,321	5,495
50%	3,160	2,334
40%	2,528	1,702
30%	1,896	1,070

Figure 6



Recommendations

The following recommendations are offered by the Ad Hoc Rail District Committee.

Recommendation 1: Improve Pedestrian Crossings

Issues: Some crosswalks and intersections along S. Eton Road are dangerous due to the lack of visibility they create for pedestrians attempting to cross the street. Traffic is heavy and often exceeds the posted speed limit.

Recommendation: Construct bump-out curbs throughout the study area.

A bump-out curb is a traffic calming method in which a sidewalk is extended to reduce the crossing distance at intersection. In doing so, sight distance and sight lines for pedestrians are improved, vehicles are encouraged to slow down, and parked cars are prevented from obstructing crosswalk areas.

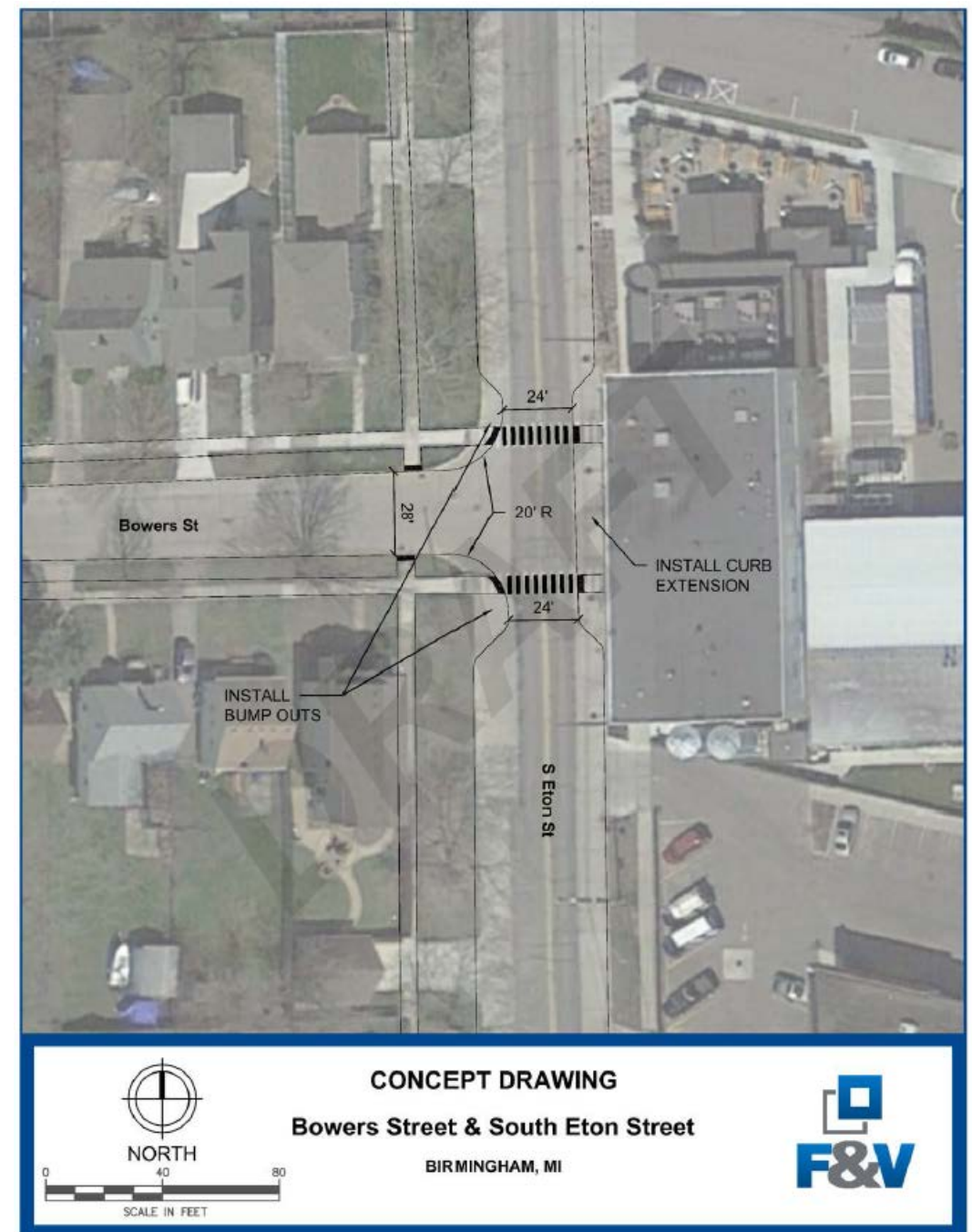
Building on the recommendations of the MMTP, the Committee identified additional intersections that appeared to be strong candidates for bump-out curbs. The map to the right illustrates the possible locations for bump-outs along S. Eton that were identified as priorities for further study. Intersections along S. Eton are as follows: Maple, Yosemite, Villa, Hazel, Bowers, Holland, Webster, Cole, Lincoln, Melton, Sheffield and 14 Mile Road.

Please also note the sample engineering drawing of proposed improved pedestrian crossings at Bowers and S. Eton. As demonstrated, the installation of two bump-out curbs and a curb extension at this intersection could provide a safer, more visible pedestrian crossing point without obstructing right and left turn accessibility for vehicles. The Committee further recommends the use of accent materials to create a plaza feel at this intersection. Benches, planters, and bicycle parking are also recommended.

Possible Bump-out Locations



Sample Engineering Drawing of Bump-out Curbs



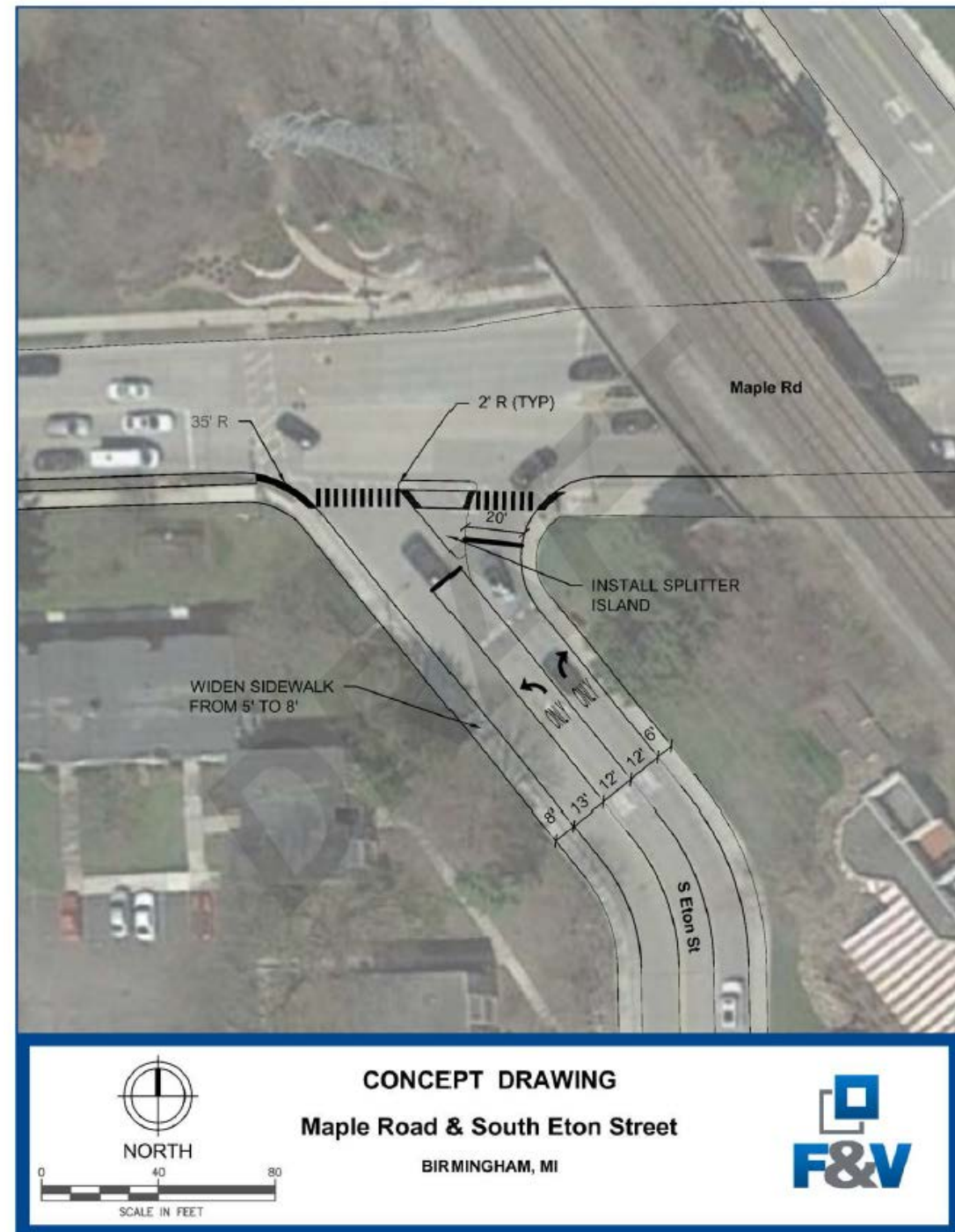
Recommendation 2: Intersection Improvements at Maple & S. Eton

Issues: The intersection of E. Maple and S. Eton does not provide a safe pedestrian experience. With a crossing distance of 88 feet, pedestrians are expected to traverse a very wide street in a short amount of time. This intersection, especially at the southwest corner, exhibits visual barriers that make it difficult for vehicles turning right to detect a crossing pedestrian.

Recommendations: Install a splitter island at the crosswalk at S. Eton and Maple, widen the sidewalk on the west side of S. Eton, restripe S. Eton to realign lanes, and add enhanced crosswalk markings.

Elevated splitter islands are installed on roads with low visibility and high vehicle speeds as a way to call attention to an approaching intersection and to urge drivers to slow down. The splitter island also provides pedestrians with refuge for crossing traffic and provides greater detectability of the pedestrians by motorists.

Sample Engineering Drawing of Proposed Improvements



Recommendation 3: Accommodate Bicycling on S. Eton

Issues: There are a significant number of bicyclists who traverse along S. Eton Road. The current road conditions in the Rail District are not favorable to those travelling by bicycle because no demarcation exists between the parking lanes and the driving lanes. Additionally, the inconsistent pavement treatment (asphalt and concrete) along S. Eton creates a seam between the driving and parking lanes, presenting an obstacle for bicyclists. Suggestions have been made to organize the street in order to make conditions safer for cyclists.



As shown in the picture above, a bicyclist rides through a narrow stretch of S. Eton where cars are parked on both sides. Bicyclists in the Corridor currently share lanes with vehicle traffic.

Recommendations: Add sharrows and buffers to S. Eton from Yosemite to 14 Mile. Maintain sharrows and accommodate parking south of Lincoln where possible. See illustration to the right for the preferred street design option.

While it is common to channel on-street bicyclists using a single line to divide the street lane, there are other alternatives such as a shared lane or “sharrow,” which can comfortably accommodate bikes on the street without a designated lane.

The Committee reviewed several options for bike lanes along S. Eton, but recommended providing sharrow markings with 3’ buffers. Unlike the other options that explored designated bike lanes, this design allows for comfortable bicyclist passage without the elimination of on-street parking, it works well given the current inconsistent pavement treatment along S. Eton, and allows for the addition of curb bump outs all along S. Eton.

Preferred Option: Use of Sharrows and Buffers



- Mark 7’ Parking Space – 3’ Buffer – 2x10’ Driving Lane – 3’ Buffer – 7’ Parking Space

Recommendation 4: Encourage Shared Parking

Issue: Many properties are dominated by excessively large parking lots that are not being efficiently used. Vast parking lots in the district are vacated after peak business hours and remain empty throughout the evening because of restricted access, while other lots overflow around restaurants in the evenings.



Empty parking lots can be found throughout the study area.

Shared parking is a land use strategy that efficiently uses parking capacity by allowing adjacent and/or compatible land uses to share spaces, instead of providing separate spaces for separate uses. Often, a shared parking agreement is put in place between two or more property owners and the jurisdiction to ensure parking spaces on a site are made available for other uses at different times throughout the day.

Recommendation: Encourage shared parking in the district by providing the zoning incentives for properties and/or businesses that record a shared parking agreement. Incentives could include parking reductions, setback reductions, height bonuses, landscape credits, or similar offers.

Amend the shared parking provisions to simplify the calculations to determine required parking based on industry standards and eliminate the need to hire a consultant to prepare shared parking studies. See table to the right for an example of a shared parking calculation from Victoria Transport Policy Institute.

Sample Shared Parking Occupancy Rates Table

*This table defines the percent of the basic minimum needed during each time period for shared parking.
(M-F = Monday to Friday)*

Uses	M-F	M-F	M-F	Sat. & Sun.	Sat. & Sun.	Sat. & Sun.
	8am-5pm	6pm-12am	12am-6am	8am-5pm	6pm-12am	12am-6am
Residential	60%	100%	100%	80%	100%	100%
Office/ Warehouse /Industrial	100%	20%	5%	5%	5%	5%
Commercial	90%	80%	5%	100%	70%	5%
Hotel	70%	100%	100%	70%	100%	100%
Restaurant	70%	100%	10%	70%	100%	20%
Movie Theater	40%	80%	10%	80%	100%	10%
Entertainment	40%	100%	10%	80%	100%	50%
Conference/Convention	100%	100%	5%	100%	100%	5%
Institutional (non-church)	100%	20%	5%	10%	10%	5%
Institutional (church)	10%	5%	5%	100%	50%	5%

Courtesy of Victoria Transport Policy Institute

Recommendation 5: Add Wayfinding Signage

Issue: Currently, the Eton Rail District lacks any uniform signage to help navigate drivers, pedestrians, and bicyclists to their desired destination. Long dead-end streets such as Cole St. and Holland St. where many businesses are located do not have any signage along S. Eton, the main thoroughfare of the Rail District.

Recommendation: Install gateway signage at the north and south ends of the study area and install wayfinding signage throughout the Rail District to direct people to destinations and parking.

Wayfinding and signage are tools that provide information relating to direction, distance, and location. Signs have an important role in the public right of way and can enhance an area's sense of place.

Design Concept for Wayfinding Signage at S. Eton and Lincoln Entrance



Mr. Manda agreed that it is design criteria and priorities and the process involves putting those in order and evaluating. If having a medium to large size trucks in the downtown is not a desirable criteria, that will have an impact on the intersections, curves and details.

Mayor Nickita commented that we are very close. There are some subtleties to the midblock crossings. He confirmed with Mr. Manda that the width of the crossing on Maple is 10 feet. It may be too close to Old Woodward. He said that is another priority criteria issue. Surely, parking is a priority, but also designing a pedestrian crossing in the most appropriate way is a very important priority. He thinks we have to minimize the parking loss by doing it at the via and not at the Social crossing. We can explore options on how to address a couple of medians in the way we discussed achieving the goals.

Mayor Pro Tem Harris recognized we are on a tight timeline, and wondered if an additional iteration will affect the timeline.

City Manager Valentine said we are very tight on the timeline, and as we move forward, that will push things back. It would be an additional two weeks before the next meeting. Mr. Manda said that is enough time to revise and bring back. Mayor Nickita said it is very important to do this as well as we can.

Mayor Nickita clarified the items discussed which include diminishing the width of midblock crosswalks to maximize parking wherever that is possible, and some of the options for the medians in two locations. The only other median we did not discuss is the alley located by Pierce. He suggested designing something there that would be similar to the other median designs, perhaps smaller and with a rolling curb. Mr. Manda said that is a very narrow alley. Mayor Nickita suggested that we might consider recommending a traffic pattern question on whether that is done one way or the other. He suggested looking at the use at that alley to determine if there is another option.

01-03-17 FINAL REPORT OF THE AD HOC RAIL DISTRICT REVIEW COMMITTEE

City Planner Ecker provided background and history of the Ad Hoc Rail District Review Committee established by the City Commission on January 11, 2016, to study existing and future conditions and to develop a recommended plan to address parking, planning and multi-modal issues in the Rail District and along S. Eton Road ("the Rail Plan").

Over the past eight months, the Ad Hoc Rail District Review Committee has worked to identify issues in the Rail District and along S. Eton, and to develop a plan with recommendations to address parking, planning and multi-modal issues in the Rail District, as directed by the City Commission. The Ad Hoc Rail District Review Committee requested funds to hire a consultant to review some of the intersection design concepts discussed by the Committee, and to conduct an analysis of parking in the study area. Based on the Committee's direction, the findings outlined in the consultant's report, and the input of the public, a draft of the Ad Hoc Rail District Report requested by the City Commission has been prepared. On December 5, 2016, the Ad Hoc Rail District Review Committee held their final meeting to review and approve their final report. After much discussion, the Ad Hoc Rail District Review Committee voted to recommend approval of the final report to the City Commission, with minor changes. All of the requested changes have been made.

Ms. Ecker introduced Sean Campbell, Assistant Planner and Brooks Cowen, Planning Intern who provided assistance with the GIS analysis of parking and intersection design.

Ms. Ecker explained the goals and objectives of the committee which included:

Goals:

To create an attractive and desirable streetscape that creates a walkable environment that is compatible with the adjacent residential neighborhoods.

To design the public right-of-way for the safety, comfort, convenience, and enjoyment for all modes of transportation throughout the corridor.

To facilitate vehicular traffic and parking without sacrificing the corridor's cycling and pedestrian experience.

To minimize the impacts of traffic on the existing residential neighborhoods.

To recommend updates to the Rail District zoning regulations as needed to meet goals.

Objectives:

To use creative planning to promote a high quality, cohesive right-of-way that is compatible with the existing uses in the corridor.

To implement "traffic calming" techniques, where appropriate, to reduce speeds and discourage cut-through traffic on residential streets.

To enhance pedestrian connectivity through the addition of crosswalks, sidewalks, and curb extensions.

To improve accommodations for bicycle infrastructure on Eton Road.

To create a balance between multimodal accessibility and parking provisions.

Ms. Ecker said the concerns were apparent during the tour. Key areas identified were S. Eton and Maple. Discussion included widening the sidewalk on the west side of the street for a bigger safety zone for pedestrians. Widening the sidewalk on the east side of S. Eton was also suggested to create a bigger plaza area there as well. They also discussed adding a splitter island to give a pedestrian island in the middle for people walking across. Several intersections up and down S. Eton were also looked at and the need for additional bump outs, and better striping. The intersection at S. Eton and Bowers was felt to be an important area with a great deal of activity. Bump outs and using different accent material in that area to create a plaza feel which would remind vehicles to slow down in the area.

Ms. Ecker noted a parking inventory and study were conducted. The study revealed there are 2,480 parking spaces in the district as a whole. There are 941 on-street parking spaces, 1539 parking spaces on individual private properties. The north end of the district has more a need for parking at different times. The south end is busier during the working day, but it clears out at 5:00 PM.

It was noted that the entire west side of S. Eton was never at full capacity. The highest use was around Griffin Claw with 28 out 60 spaces that were full on a Friday night.

Ms. Ecker discussed future build-outs and how they reached some of the conclusions. She explained that the issue became clear because they have to self-park, maximum build-out will not be done, and the biggest issue is that there is no shared parking in the area. That keeps the development down to roughly 26-30% of what could be done under the ordinance. Many of the parcels in the focus area do not have enough space to provide required parking for

four stories of retail and residential uses unless they build an underground parking facility. Based on recent development trends in the area, this is unlikely to occur and thus, buildout rates will likely remain in the 20-30% range of maximum build-out, requiring less than 1,070 additional parking spaces in the study area. It is important to note that based on the current standards, all of these additional parking spaces must be provided by individual property owners and/or developers. Thus, the City need only focus on encouraging an efficient use of private parking facilities, and ensuring good right-of-way design to accommodate additional vehicle traffic and balance the needs of non-motorized users. The provision of additional public parking is not warranted now, nor in the near future.

The recommendations of the committee include:

Construct bump-out curbs throughout the study area;

Install a splitter island at the crosswalk at S. Eton and Maple, widen the sidewalk on the west side of S. Eton, restripe S. Eton to realign lanes, and add enhanced crosswalk markings;

Add sharrows and buffers to S. Eton from Yosemite to 14 Mile. Maintain sharrows and accommodate parking south of Lincoln where possible.

Encourage shared parking in the district by providing the zoning incentives for properties and/or businesses that record a shared parking agreement. Incentives could include parking reductions, setback reductions, height bonuses, landscape credits, or similar offers;

Install gateway signage at the north and south ends of the study area and install wayfinding signage throughout the Rail District to direct people to destinations and parking.

Mayor Nickita commended the committee on the depth and problem solving that was undertaken.

Commissioner Bordman said the study was so thorough. She was very impressed that the committee was able to figure out the real parking needs.

Mayor Pro Tem Harris questioned what incentives there might be for shared parking. Ms. Ecker said perhaps landscaping requirements could be relaxed, but we would ask the Planning Board to study that in more detail.

Commissioner DeWeese noted there might be an economic incentive.

Commissioner Hoff asked about the southeast corner of S. Eton and Maple intersection and if the property is city property. She also asked if the Whole Foods operation was studied by the committee. Commissioner Hoff expressed concern that traffic on S. Eton will be increased. The committee's concern was with the speed of the traffic.

Mayor Pro Tem Harris asked why the committee did not recommend a dedicated bike lane. Ms. Ecker said there were a couple of issues including the bump out incompatibility as well as the pavement material issue.

Commissioner DeWeese noted that we can accept the report and use it for a general guideline. City Manager Valentine confirmed that any recommendation will be brought back to the Commission for consideration.

Mayor Nickita asked if this addressed the edge condition that has been an issue and do we need to include something in the Zoning Ordinance. Ms. Ecker said it was not discussed in

detail. She said currently there is a regulation in the ordinance that does not allow parking in the first twenty feet of depth.

Mayor Nickita said this helps bring attention to a very under-utilized area of the city, and land owners do not realize that they are sitting on potential redevelopment value if they work together at shared parking for example.

MOTION: Motion by Sherman, seconded by Bordman:

To accept the final report of the Ad Hoc Rail District Review Committee, and forward same to the Multi-Modal Transportation Board for their consideration in finalizing the design of the S. Eton corridor, and to the Planning Board, and direct the Planning Board to add Recommendations 4 (Encourage Shared Parking) and 5 (Add Wayfinding Signage) from the final report to their Action List for further study, and to develop a way to implement the shared parking, and to correct the crosswalk marking within the final report as discussed.

Larry Bertollini expressed concern about the recommended options, and focusing on both sides of Maple and S. Eton, and visibility concerns.

Mayor Nickita suggested going forward to study with and without parking on both sides, and how it may affect speed. We know people tend to speed up when parking is removed on one side.

VOTE: Yeas, 7
 Nays, None
 Absent, None

01-04-17 MONTHLY PARKING PERMIT RATE INCREASES

City Engineer O'Meara explained that monthly permit rates at the structures have been adjusted on several occasions over the years, usually to reflect the difference in demand at the various parking structures. Recently, increases at all five structures were implemented in the summer of 2014, and again in 2015. As demand for parking spaces grew, increases were considered justified not only because of high demand, but also to help build a savings account in the parking system fund for potential upcoming construction.

In April of this year, staff reviewed the rates with the Advisory Parking Committee (APC), and recommended a package of increases that would primarily impact both the monthly and daily rates in the parking structures. Raising the lower priced meters so that all meters were \$1 per hour was also suggested. Other changes were included as well, designed to reduce demand in the parking structures, and to encourage employees to consider the City's off-site parking options. The APC was not inclined to recommend any changes at that meeting.

Staff refined the package based on APC input, and also provided options on how to charge the daily rate. At the May meeting, the APC approved a recommendation that included several items, with the two significant changes impacting the monthly and daily rates in the structures.

The suggested increase for most of the lower cost parking meters was not agreed to. At the June 6, 2016 Commission meeting, the recommendations of the APC were discussed. Most of the package was approved that evening including the daily rate at the structures. The monthly rate structure was not changed at that time, and the City Commission asked at the time to consider being more aggressive.



MEMORANDUM

Planning & Engineering Department

DATE: January 27, 2017

TO: Multi-Modal Transportation Board

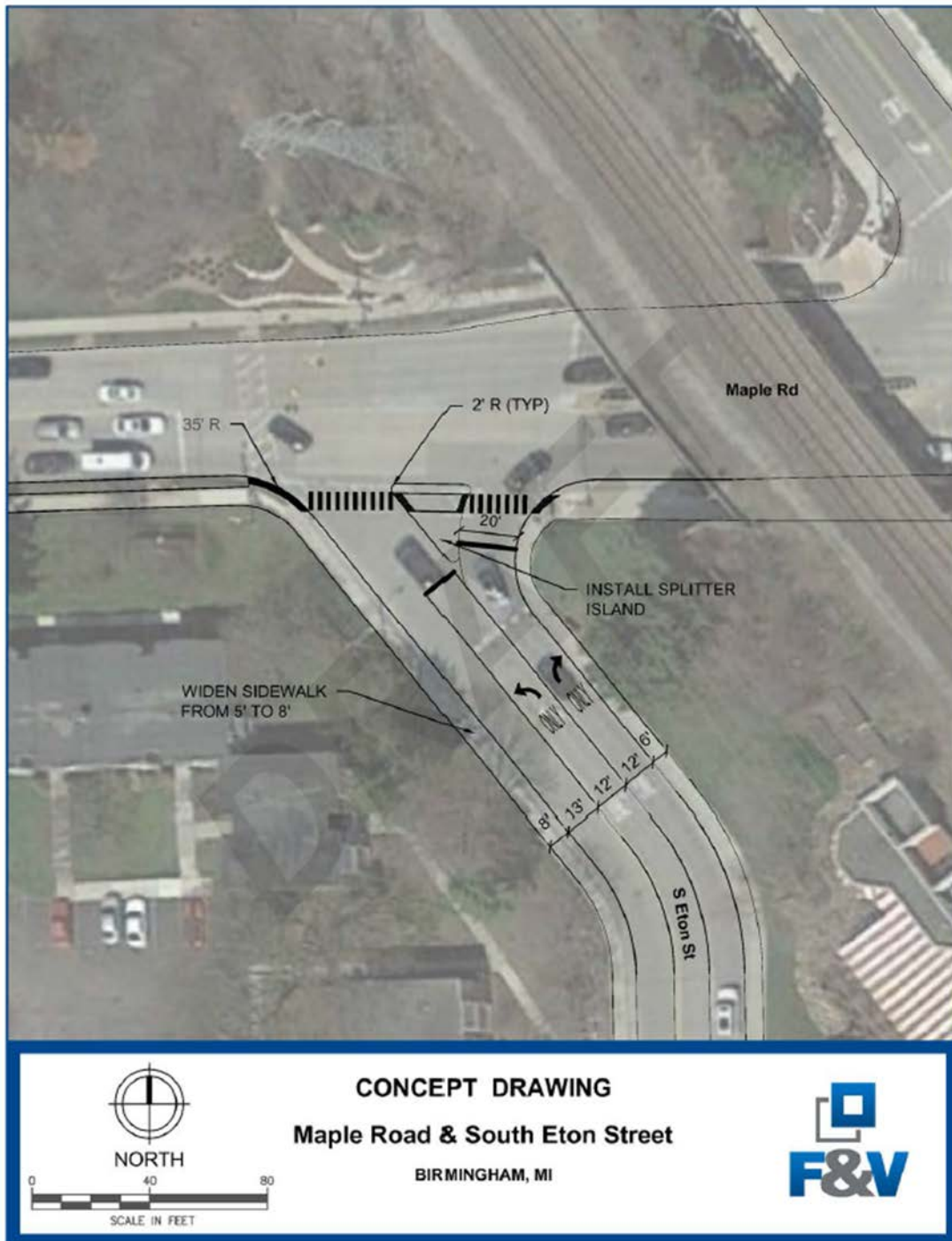
FROM: Paul T. O'Meara, City Engineer
Brooks Cowan, Planning Intern

SUBJECT: Intersection Improvements at Maple Rd. & S. Eton Rd.

On January 9, 2017, the City Commission reviewed and endorsed the final recommendations of the Ad Hoc Rail District Committee. The final report, as presented to the Commission, is attached, as well as the minutes from that meeting. Today's report focuses on the recommendation to install pedestrian improvements for the intersection of Maple Rd. and S. Eton Rd.

In the spring of 2016, the committee conducted a walking audit of the area and deemed this intersection unsafe for people who wish to cross the street. The committee found it difficult to traverse the 88 foot wide intersection within the allotted crossing time. It was determined that actions should be taken to shorten the walkable distance between the east and west part of the intersection, possibly installing a refuge island in the middle, and improving the pavement markings to increase driver awareness of pedestrian crossing areas.

A concept drawing has been provided by Fleis and Vandenbrink that encourages pedestrian friendly changes for the intersection. A splitter island is proposed between the right turn and left turn lanes on northbound Eton. This is meant to provide refuge for pedestrians who cannot cross the 88 ft wide intersection within the allotted signal time. Stop bars for the left and right turn lanes on northbound Eton would be relocated closer to Maple, adjacent to the splitter island. Widening the sidewalks on both sides from 5' to 8' is also proposed at this intersection. Doing so effectively reduces the crosswalk distance at Eton, provides more space and safety for sidewalk users, and narrows the adjacent driving lanes which may reduce travel speeds. Additional continental striping to increase driver awareness of the pedestrian crossing is proposed as well. Please see attached image below for designs. An engineering analysis of each follows.



The south leg of this intersection (S. Eton Rd.) was reconstructed in 2009. A part of the engineering plan sheet for this project is attached to this report, for reference.

PEDESTRIAN SPLITTER ISLAND

Construction of the splitter island is feasible at this time, provided funds are budgeted. The existing concrete could be sawcut and removed, and new concrete curbs and sidewalk could be installed. The excess space south of the island could be landscaped with perennial plantings to be maintained by the Dept. of Public Services. Only plantings that can handle the difficult conditions would be recommended (salt in winter, lack of water in summer). Other traffic islands are now being maintained by City staff in a similar manner.

The cost of this improvement is estimated at \$10,000.

WIDENED SIDEWALK, WEST SIDE

As shown on the attached 2009 construction plan, there is no additional right-of-way on the southwest corner of this intersection. The Multi-Modal Master Plan suggests a widened 8 ft. wide sidewalk (up from the present 5 ft.). There is no room to do this in the direction away from the road without first purchasing right-of-way, and constructing a retaining wall to hold back the existing hill. This may prove to be a difficult venture. A second alternative, as suggested by the report, is to narrow the southbound lane of S. Eton Rd. by three feet, reconstructing the curb. This would provide new space for a widened sidewalk for this area. To maintain positive drainage, the majority of the existing sidewalk would have to be removed as well. It is important to consider that this is the only designated truck route into the Rail District commercial area. Since the splitter island would already be narrowing the intersection, and making left turns from Maple Rd. to S. Eton Rd. will be more difficult, it is recommended that the island be installed first. Actual conditions can then be monitored to see if the road narrowing on the west side is an appropriate future measure.

WIDENED SIDEWALK, EAST SIDE

The Ad Hoc Rail District plan suggested widening the existing sidewalk on Maple Rd. from the Eton Rd. ramp to the railroad bridge. However, right-of-way is again a problem. A widened sidewalk could be installed in the arc area of the walk directly south of the SE corner handicap ramp. Adding sidewalk here would not require removal of any existing concrete, and would be a simple improvement valued at about \$1,000.

As a first step toward improving pedestrian conditions at this intersection, it is recommended that \$11,000 be added to the 2017-18 fiscal year budget, within the Sidewalk Fund, to pay for the installation of a landscaped splitter island and widened sidewalk at the southeast corner of the intersection of Maple Rd. and S. Eton Rd.

SUGGESTED RECOMMENDATION

To recommend to the City Commission that \$11,000 be budgeted within the Sidewalk Fund for pedestrian crossing improvements at the intersection of Maple Rd. and S. Eton Rd. Funding would allow the installation of a landscaped splitter island and widened sidewalk at the southeast corner of the intersection.



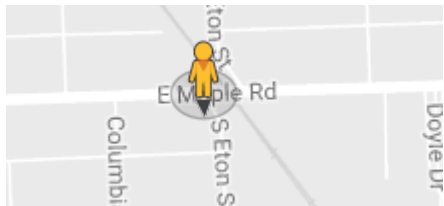
2000 E Maple Rd

Maple Rd. & S. Eton Rd. Looking South



Image capture: Oct 2016 © 2017 Google

Birmingham, Michigan
Street View - Oct 2016





139 S Eton St

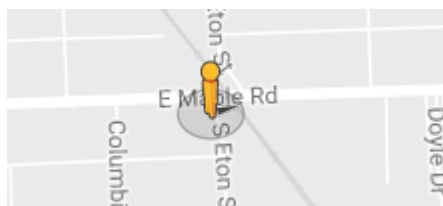
Maple Rd. and S. Eton Rd., Looking NE



Image capture: Aug 2015 © 2017 Google

Birmingham, Michigan

Street View - Aug 2015



**CITY OF BIRMINGHAM
MULTI-MODAL TRANSPORTATION BOARD
THURSDAY, FEBRUARY 2, 2016
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Multi-Modal Transportation Board held Thursday, February 2, 2016.

In the absence of both the Chairperson and Vice-Chairperson, it was agreed that Ms. Slanga would take over the chair.

Chairperson Johanna Slanga convened the meeting at 6:34 p.m.

1. ROLL CALL

Present: Board Members Lara Edwards, Amy Folberg, Daniel Rontal, Johanna Slanga, Michael Surnow

Absent: Chairperson Vionna Adams; Vice-Chairperson Andy Lawson

Administration: Lauren Chapman, Asst. City Planner
Jana Ecker, Planning Director
Scott Grewe, Operations Commander
Paul O'Meara, City Engineer
Carole Salutes, Recording Secretary

Also Present: Mike Labadie from Fleis & Vandenbrink
("F&V"), Transportation Engineering Consultants.

2. INTRODUCTIONS

Lauren Chapman, Asst. Planner for the City, was introduced.

3. REVIEW AGENDA (no change)

4. APPROVAL OF MINUTES, MEETING OF DECEMBER 1, 2016

Motion by Mr. Surnow

Seconded by Mr. Rontal to approve the Minutes of December 1, 2016 as presented.

Motion carried, 5-0.

VOICE VOTE

Yeas: Surnow, Rontal, Edwards, Folberg, Slanga

Nays: None

Absent: Adams, Lawson

**5. SAXON DR. AND LATHAM RD.
Crosswalk Installation**

Mr. O'Meara recalled that in 2015, the Police Dept. was approached with complaints about traffic volumes and speeds on Saxon Rd., located in the southwest corner of Birmingham. Residents expressed concerns with the amount of traffic as well as the speeds that occur in that area. It is a wide right-of-way, and the street acts as an extension of Fourteen Mile Rd. so it tends to lend itself to speeds faster than the 25 mph speed limit.

Saxon Dr. is a border street, with Beverly Hills sharing jurisdiction of this road. Working with representatives from both sides of the street, the City of Birmingham took the lead in discussing the various options with the interested residents. By the middle of 2015, various issues and ideas were explored, and it was decided that the residents would petition the City for a complete road reconstruction. Over 50% of the owners on both sides endorsed the idea, and after receiving an information booklet a neighborhood meeting was held in the summer of 2016. After the meeting, enough residents changed their minds, and decided to no longer support the project. Cost was a major factor.

Currently, there is no sidewalk connection for pedestrians to cross Saxon Dr., other than at Southfield Rd. The intersection is noted in the Master Plan as a location within Phase 3. It is provided as a suggested improvement, as Latham Rd. is listed as part of a Phase 3 neighborhood connector route. Not only would the improvement help improve the crossing for pedestrians, the pavement markings should help encourage more responsible speeds on Saxon Dr. from motorists passing through the area.

The Beverly Hills Village Board has already signed an agreement approving this project, and their commitment to 50% of the cost, based on the cost estimate of about \$21,000.. Staff recommends making some storm sewer changes where needed and adding painted crosswalks that would encourage drivers to watch for pedestrians and potentially slow down.

If the Multi-Modal Board endorses this project, it will be forwarded to the City Commission for final approval of the funds. The Engineering Dept. will then add it

to the 2017 Concrete Sidewalk program contract documents, and oversee the construction of this improvement during the 2017 construction season.

Dr.. Rontal did not necessarily think the crosswalk lines would slow cars down. Mr. O'Meara said the residents originally asked for a stop sign but it wasn't warranted by traffic volume. If residents aren't able to help pay for more substantial improvements, this is what can be recommended.. A crosswalk is an attempt to show that cars should slow down for pedestrians at this intersection. Ms. Edwards suggested adding two white lines and a middle yellow dotted line in order to get cars into a more narrow space on Saxon. However, it was noted that at 22 ft. the road is already narrow, and additionally residents have often said a line down the middle would make the road feel like a major street.

Mr. O'Meara indicated that the residents felt a crosswalk would help to calm traffic. He noted the Master Plan calls for a crossing improvement at that intersection.

Board members were in agreement that installing crosswalks would not slow the traffic and alleviate the residents' concerns. Mr. Labadie did not think painting the road would help too much. As an inexpensive solution he suggested adding a couple of flashing speed limit signs. Commander Grewe said one sign could be budgeted for this stretch of road, but only for westbound traffic.

Consensus was to go back to Beverly Hills and the residents and offer at least a speed sign for the westbound traffic and see if that helps. Perhaps Beverly Hills would be willing to split the cost of a speed sign for eastbound traffic. Staff was encouraged to discuss the speed sign, paint markings, etc., with both Beverly Hills and the residents.

6. MAPLE RD. AND S. ETON RD. Crosswalk Improvements

Ms. Ecker offered background. The Ad Hoc Rail District Committee was set up by the City Commission to look at a number of issues in the Rail District. They spent a year studying what is going on in that area. Tonight the board will specifically focus on the intersection of Maple Rd. and Eton Rd. The recommendations provide a way to shorten the entire width to cross Eton Rd.. A splitter island in the middle between the right and left turn lanes is suggested along with enhanced crosswalk markings, expanding the sidewalk, and changing the lane configuration. Board members agreed they don't want to encourage people to stand on the splitter island in the middle of Eton Rd.. Ms. Ecker thought that the island calms traffic, and she doesn't imagine too many pedestrians will stand on it because they can get across because of all of the

green time on Maple Rd. She likes the idea of dotted lines to direct cars coming off of westbound Maple Rd. and going south on Eton Rd.

Commander Grewe said for westbound traffic stopped on the east side of the intersection he would suggest moving the stop line further west so when a vehicle makes a left turn to go south on Eton Rd. the radius isn't so sharp. Mr. Labadie noted the stop bar needs to be located so that drivers can see the signal. Chairperson Slanga cautioned that signage should be placed far enough back so people will know which lane to be in to make their turn.

Board members recommended that Mr. Labadie should study this further to ensure large trucks can make a nice clean turn; look at adding dotted lines to show the left track turning radius coming from westbound Maple Rd. south on Eton Rd.; also study moving the westbound Maple Rd. stop bar location and possibly extending the median at that same location. Additionally, study how to accommodate bikes through that intersection. The recommendation from the Ad Hoc Rail District Study Committee was to widen the sidewalks from 5 ft. to 8 ft. on the whole block of Eton Rd. going south. The board was in agreement.

7. MAPLE RD. AND SOUTHFIELD RD. Crosswalk Improvements

Mr. O'Meara recounted some safety issues that have occurred over the years at this intersection. In 2015 safety issues at the Maple Rd. & Southfield Rd. intersection were studied by the City's traffic consulting firm, Fleis & Vandenbrink ("F&V"). Lane configuration changes to Maple Rd. were approved, and subsequently put into place in October as a trial, and later approved for permanent status in June, 2016. During the studies, it became clear that the crash patterns at this intersection are such that safety could be improved if the intersection was relocated further west, allowing for the creation of a 90° intersection.

In 2016, it was determined that the relocation of this intersection may qualify for federal funding. Further, it was decided that since Maple Rd. is planned for reconstruction further east (in downtown), if safety funding was awarded, it would be an appropriate time to address both areas within the same construction project. The City directed F&V to apply for federal funding for this potential safety improvement. The application is currently pending, and should be announced in May of 2017.

In December, Commissioner DeWeese expressed concerns about the crosswalk that appear similar to those that have been raised in the past. The speed of northbound right turning vehicles continues to be an issue. The matter was referred to F&V in preparation for a review by the MMTB. Since a major change will require significant spending, and since a federal funding application is currently pending, F&V suggested a change in



MEMORANDUM

Engineering Dept.

DATE: February 24, 2017

TO: Multi-Modal Transportation Board

FROM: Paul T. O'Meara, City Engineer

SUBJECT: Maple Rd. & S. Eton Rd. Improvements

As you know, the Ad Hoc Rail District Committee finished its work, and submitted a report of recommendations to the City Commission in December, 2016. The attached report dated January 27, 2017, summarizing suggested improvements at the Maple Rd. was reviewed by the Multi-Modal Transportation Board at its meeting of February 2, 2017. At that time, the following comments were raised:

1. There was concern that the island may not permit left turns from Maple Rd. on to southbound S. Eton Rd. Various ways to correct that were discussed, such as moving the westbound Maple Rd. stop bar west, or extending the island at the center pillar of the railroad bridge.
2. Provide a cost estimate for narrowing the street to allow for a wider sidewalk on the west side of the block.
3. Consider again how bikes may be accommodated in this area.

Staff worked with F&V to consider these items, and offers the following responses:

1. F&V considered truck turns in this area when it designed the island several months ago. The attached drawing depicts the turning radius for a 50 ft. semi-truck trailer to make the left turn from Maple Rd. on to southbound S. Eton Rd. The island allows for the turning movement. Also shown on this drawing is how right turns are also accommodated for these large trucks from S. Eton Rd. on to eastbound Maple Rd. No adjustments are needed to the island design. The other ideas that were expressed, such as moving the westbound stop bar, or extending the island at the center pillar, are not recommended.
2. In order to widen west side sidewalk from Maple Rd. to Yosemite Blvd., three feet of S. Eton Rd. must be removed, a new curb section must be installed, and then a new eight foot wide sidewalk can be installed in place of the existing five foot wide sidewalk. The total cost for this portion of the work is estimated at \$53,000. The total cost of the three improvement areas now being considered are:

Splitter island	\$20,000
Landscaping at island	\$ 1,000
Widened handicap ramp area at SE corner	\$ 1,000
Widened sidewalk and ramps on W side	<u>\$53,000</u>
TOTAL	\$75,000

3. Both N. Eton Rd. & S. Eton Rd. have been part of a marked bike route for decades. It is also part of the new Neighborhood Connector route that has been approved by the City Commission, and is planned to be installed this spring. The Maple Rd. intersection, and the two blocks of Eton Rd. north and south of the intersection have always been a poor segment in the route for bicyclists. The railroad bridge conflict at this intersection is significant, and remains a multi-million dollar problem that will not be easy to fix. Further, when Eton Rd. was impacted by the railroad in 1930, a small 50 ft. right-of-way was left for these short diagonal sections, to make room for the railroad.

In order to process the large traffic demand on S. Eton Rd. at the Maple Rd. intersection, a minimum of three lanes must be provided, with two northbound storage lanes to queue while waiting to enter Maple Rd. in both directions. Once three lanes are provided, as well as sidewalks on both sides, there is no extra right-of-way left. (That is why the sidewalks are constructed immediately behind the curb on both sides of the street.)

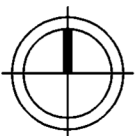
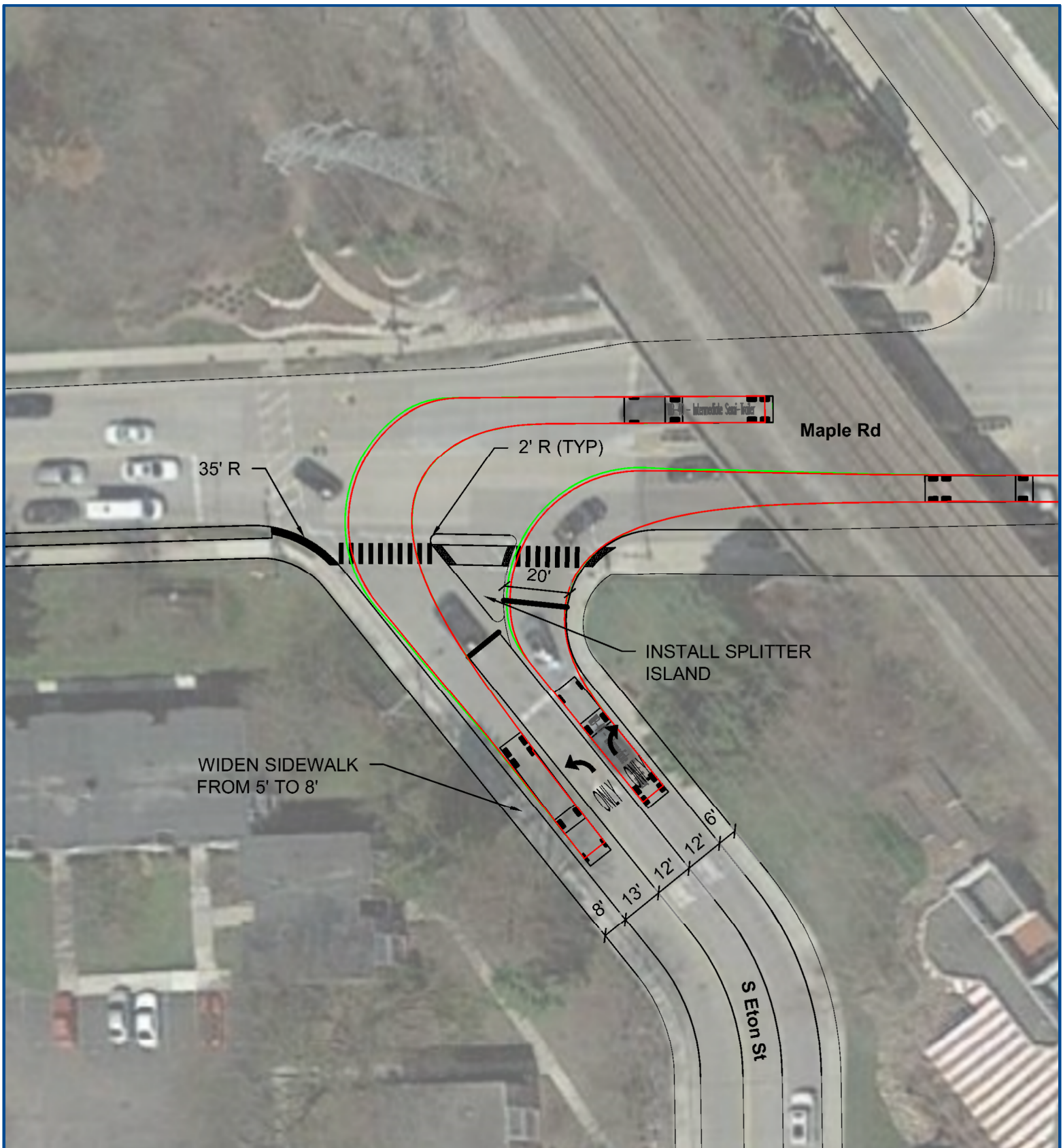
The only extra space available on the street is currently in the southbound lane, which is now being suggested for removal, to widen the west side sidewalk. While this proposal improves the pedestrian environment, it will compromise the bicyclist experience. The MMTB may wish to consider if the \$53,000 suggested improvement on the west side of S. Eton Rd. is wise when it is in fact leaving no extra space for southbound bicyclists on this Neighborhood Connector Route.

No funding is currently being provided in the current or upcoming budget for these improvements. A suggested recommendation at this time can then be moved forward to the City Commission in time for them to consider an adjustment to the recommended fiscal year 2017-18 budget:

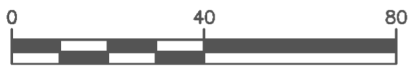
SUGGESTED RECOMMENDATION:

To recommend to the City Commission that the City prioritize the Ad Hoc Rail District Committee's recommendations for changes to S. Eton Rd. from Maple Rd. to Yosemite Blvd. including:

1. Landscaped splitter island to improve the S. Eton Rd. south side crosswalk at Maple Rd.
2. Enlarged handicap ramp area at the southeast corner of the intersection.
3. Relocation of the west side curb and gutter section to allow for a widened eight foot sidewalk on the entire length from Maple Rd. to Yosemite Blvd.



NORTH



SCALE IN FEET

CONCEPT DRAWING
Maple Road & South Eton Street
BIRMINGHAM, MI



DRAFT

**CITY OF BIRMINGHAM
MULTI-MODAL TRANSPORTATION BOARD
THURSDAY, MARCH 2, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Multi-Modal Transportation Board held Thursday, March 2, 2017.

Chairperson Vionna Adams convened the meeting at 6:04 p.m.

1. ROLL CALL

Present: Chairperson Vionna Adams; Board Members Lara Edwards, Amy Folberg, Johanna Slanga

Absent: Board Members Vice-Chairperson Andy Lawson, Daniel Rontal, Michael Surnow

Administration: Lauren Chapman, Asst. City Planner
Jana Ecker, Planning Director
Scott Grewe, Operations Commander
Paul O'Meara, City Engineer
Carole Salutes, Recording Secretary

Also Present: Mike Labadie from Fleis & Vandenbrink
("F&V"), Transportation Engineering Consultants.

2. INTRODUCTIONS (none)

3. REVIEW AGENDA (no change)

4. APPROVAL OF MINUTES, MEETING OF FEBRUARY 2, 2017

Motion by Ms. Slanga

Seconded by Ms. Folberg to approve the Minutes of February 2, 2017 as presented.

Motion carried, 4-0.

VOICE VOTE

Yeas: Slanga, Folberg, Adams, Edwards

Nays: None

Absent: Lawson, Rontal, Surnow

5. SAXON RD. IMPROVEMENTS
Norfolk Dr. to Southfield Rd.

Mr. O'Meara recalled that at the February Multi-Modal Transportation Board ("MMTB") meeting, the City presented a proposal to install a marked, improved crosswalk at the intersection of Saxon Dr. and Latham Dr./Norchester Rd. This is in the Multi-Modal Master Plan as a suggested improvement for the area. Also, the residents on Saxon are unhappy because there are too many cars and too much speeding.

Last month, staff presented a \$21,000 improvement that both Birmingham and Beverly Hills could pay for out of their general funds. Beverly Hills has already gone on record to say that they will contribute. The ditches would be filled in, storm sewer issues would be re-worked, and concrete sidewalks could be extended across the four corners of the intersection. Pavement markings would be installed on both sides to identify the crossing.

Last month, when the idea was reviewed by the MMTB, the following questions and concerns were raised:

1. Board members were not convinced that the crosswalk improvement would make much difference in addressing the issue of traffic speeds and volumes.
2. Board members felt that other ideas had more merit:
 - Flashing speed indicator signs for both directions if suitable locations can be found.
 - Pavement markings, consisting of a skip or double yellow down the middle, and white edge lines throughout the corridor. However, Mr. Labadie, the Police, and some of the residents do not endorse that suggestion.
 - Installation of a "25" pavement marking legend for westbound traffic, west of Southfield Rd., as weather permits. Mr. O'Meara indicated that idea can be pursued.

Staff initiated conversations with the two neighborhood representatives for Saxon Rd. relative to these ideas. Ms. Susan Randall on the Birmingham side and Mr. Pete Webster on the Beverly Hills side were present to provide their input.

Mr. Pete Webster, 32906 Balmoral, said he is in close communication with the vast majority of the residents from Southfield to the Birmingham Country Club and beyond. They are well aware of the problem and aware of the need to address a number of different issues. Anything that can be done would be helpful, whether it is the flashing speed indicator; a crosswalk to help pedestrians integrate into the pedestrian network; or a raised sidewalk on the east side of the crossing.

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March 2, 2017

Page 3

Ms. Slanga observed that putting stripes on the road at the crosswalk doesn't solve the speeding problems or shorten the crossing. Mr. Webster said independent of that, the markings are extremely valuable because they demarcate where people should cross plus they remind drivers where people do cross. He suggested installing a traffic island in the roadway just west of Southfield to calm traffic entering the residential area. It may be beneficial to put in speed humps.

Ms. Susan Randall, 1220 Saxon, said an average of 5,500 cars a day go down their street at speeds up to 60 or 70 mph. She was in favor of the recommendations for a painted crosswalk and to make it slightly raised so that it is a hump, not a bump. She does not like the idea of a flashing light but is in favor of the "25" to be painted east of Southfield. With respect to installing an island, the residents do not want to do a U-turn out of their driveway by turning west to go east. She doesn't know if they will agree to that.

Mr. Tom Randall, 1220 Saxon, was not impressed with the flashing lights. They only work when police are present.

Mr. O'Meara said a little island isn't a bad idea from a cost standpoint, but there is a driveway issue. The idea of a raised crosswalk has not been studied. Mr. Labadie advised that with an island there would not be enough room on either side to make a U-turn.

Ms. Chris Arbor, 18837 Saxon, suggested trying removable speed bumps for a while to see if they work. Mr. O'Meara voiced the concern that this is an unimproved road with gravel shoulders and people that are irritated by the bump would just drive around it. Residents would not want that problem in front of their house.

Mr. Labadie said the speed humps are an effective way to control speed. However, right after going over the hump, people will increase their speed, similar to unwarranted STOP signs. He would like to see current speed and volume data before a decision is made on some of these ideas. He thought the sidewalk and the crosswalk are great ideas and they should be moved forward.

Motion by Ms. Edwards

Seconded by Ms. Folberg to recommend to the City Commission the approval of the following improvements for Saxon Dr. The installation of crosswalks on the east and west sides of the Latham Dr./Norchester Rd. intersection, in accordance with the Multi-Modal Master Plan. including pavement markings, to be funded 50% by the City of Birmingham, and 50% by the Village of Beverly Hills.

Motion carried, 4-0.

VOICE VOTE

Yeas: Edwards, Folberg, Adams, Slanga

Nays: None

Absent: Lawson, Rontal, Surnow

Commander Grewe said the Police Dept. has a black box that is a speed monitor/counter and goes on a tree so no one knows what it is and they don't react differently when they see it on the road. It will capture both sides of the road. It can be installed as soon as possible.

Mr. Steve Still, 1190 Saxon, hoped there would be a "Stop for Pedestrians" sign in the crosswalk.

**6. MAPLE RD. AND S. ETON RD.
Crosswalk Improvements**

Mr. O'Meara noted that the Ad Hoc Rail District Committee finished its work, and submitted a report of recommendations to the City Commission in December 2016. The report dated January 27, 2017, summarizing suggested improvements at Maple Rd. and S. Eton Rd. was reviewed by the MMTB at its meeting of February 2, 2017. At that time, the primary concern was whether the proposed new island was sized appropriately to allow large trucks to make a left turn from Maple Rd. onto southbound Eton Rd. It has been demonstrated that the island leaves sufficient room for a large truck to make the turn.

Ms. Ecker said at the last meeting the board had several concerns that staff has now investigated:

- It works to increase the sidewalk width from 5 ft. to 8 ft. Landscaping can be added to the splitter island at the south end.
- It is not recommended to move the westbound Maple Rd. stop bar west.
- Turn lane hash marks are not needed and they would soon be worn off.
- . Paint the curbs around the new island with something reflective that makes them stand out.

Motion by Ms. Folberg

Seconded by Ms. Edwards to recommend to the City Commission that the City prioritize the Ad Hoc Rail District Committee's recommendations for changes to S. Eton Rd. from Maple Rd. to Yosemite Blvd. including:

- 1. Landscaped splitter island to improve the S. Eton Rd. south side crosswalk at Maple Rd.**
- 2. Enlarged handicap ramp area at the southeast corner of the intersection.**

3. Relocation of the west side curb and gutter section to allow for a widened 8 ft. sidewalk on the entire length from Maple Rd. to Yosemite Blvd.

Motion carried, 4-0.

VOICE VOTE

Yeas: Folberg, Edwards, Adams, Slanga

Nays: None

Absent: Lawson, Rontal, Surnow

**7. POPPLETON AVE. PAVING
Knox Ave. to Maple Rd.**

Mr. O'Meara recalled the MMTB discussed the above planned City project at its meeting of December 1, 2016. A recommendation to approve the three-lane cross-section presented at that time was passed. It was noted that this segment is identified as part of a future Neighborhood Connector Route, but that due to the lack of right-of-way, the City will be unable to make improvements to the road that would allow for an improved environment for bicyclists. The MMTB recommended that further study be given to this issue before this Connector Route is finalized in the future.

During further study of this block, it was noted that this is the only available route for trucks to enter and exit the loading dock for the adjacent Kroger store. Due to the narrow right-of-way, the existing pavement at the Maple Rd. and Poppleton Ave. intersection was not constructed to accommodate these large trucks. Due to heavy traffic volumes and the narrow street, trucks have to routinely drive over the curb to exit Poppleton Ave.

Staff's suggested street design shows the new road to be about 18 in. wider, and a standard 25 ft. radius at both corners is recommended (the current radii, particularly on the NW corner, are smaller, and are not recommended on a truck route). To summarize, a minor expansion of the road, particularly to the west, will better accommodate the multiple trucks that need to use this intersection daily, while extending the length of the crosswalk for those crossing Maple Rd. on the west side of the intersection by about 5 ft. Doing so will remove the current ongoing maintenance issue that is present at the northwest corner of this intersection.

To ensure that this is appropriate, F&V will study the traffic signal timing to make sure that there is sufficient green time to allow pedestrians to safely cross Maple Rd. with this new condition.



MEMORANDUM

Engineering Dept.

DATE: April 5, 2017

TO: Multi-Modal Transportation Board

FROM: Paul T. O'Meara, City Engineer

SUBJECT: S. Eton Rd. – Villa Ave. to Lincoln Ave.
Proposed Cross-Section

As you know, the City Commission appointed several residents to a temporary study group known as the Ad Hoc Rail District Committee early in 2016. The group was charged with studying parking and zoning issues within the Rail District. Lara Edwards acted as the Multi-Modal Transportation Board (MMTB) representative. Overseen by the Planning Dept., their final report was prepared late last year, and reviewed by the City Commission at their meeting of January 9, 2017.

The MMTB first focused on the suggested crosswalk island construction at the S. Eton Rd. and Maple Rd. intersection. A recommendation has been prepared, and will be considered for final approval by the City Commission at their meeting of April 13, 2017. If approved, the Engineering Dept. is set to complete this work during the summer of 2017, in time for the opening of the nearby Whole Foods grocery store located just east of this location.

The next significant recommendation from the Ad Hoc Committee for the MMTB to consider is the cross-section on the bulk of the road, from Villa Ave. to Lincoln Ave. As shown on Page 30 of the final committee report, three different cross-sections for this section of S. Eton Rd. were considered:

- Design Option 1: Removing on-street parking on the west (residential) side of the street in favor of a 7 ft. wide bike lane and 3 ft. wide buffer area.
- Design Option 2: Removing on-street parking on the west (residential) side of the street, narrowing the remaining drive lanes and parking lane to allow room for southbound and northbound bike lanes.
- Design Option 3: Narrow the existing parking lanes on both sides to provide a buffer between parked cars and the travel lanes, and add sharrows to the travel lanes.

Although the vote was not unanimous, the Ad Hoc Rail District Committee voted in favor of Option 3. Details relative to the decision-making process will be available at the meeting. The cross-section, if changed, will have a significant impact on the S. Eton Rd. corridor. There are strong feelings from stakeholders in the area that would be interested in having input on the final decision. It is suggested that the MMTB discuss the issue to better understand the issues at stake, as well as how the Ad Hoc Committee came to their conclusion. It is then suggested that a public hearing be scheduled for the next regular MMTB meeting, inviting interested parties along the corridor to submit their input or attend the next meeting, so that a final MMTB

recommendation can be prepared for the City Commission. A suggested recommendation is provided below:

SUGGESTED RECOMMENDATION:

To accept the Ad Hoc Rail District Committee's recommendation to add buffer lanes and sharrows on S. Eton Rd. from Villa Ave. to Lincoln Ave.

**CITY OF BIRMINGHAM
MULTI-MODAL TRANSPORTATION BOARD
THURSDAY, APRIL 13, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Multi-Modal Transportation Board held Thursday, April 13, 2017.

Vice Chairman Andy Lawson convened the meeting at 5:35 p.m.

1. ROLL CALL

Present: Vice-Chairman Andy Lawson; Board Members Lara Edwards, Daniel Rontal, Johanna Slanga, Michael Surnow; Alternate Member Katie Schaefer

Absent: Chairperson Vionna Adams; Board Member Amy Folberg

Administration: Lauren Chapman, Asst. City Planner
Jana Ecker, Planning Director
Austin Fletcher, Asst. City Engineer
Scott Grewe, Operations Commander
Paul O'Meara, City Engineer
Carole Salutes, Recording Secretary

Also Present: Mike Labadie from Fleis & Vandenbrink
("F&V"), Transportation Engineering Consultants.

2. INTRODUCTIONS

The new alternate, Katie Schaefer, introduced herself and board members welcomed her and introduced themselves.

3. REVIEW AGENDA (no change)

4. APPROVAL OF MINUTES, MEETING OF MARCH 2, 2017

Motion by Ms. Slanga

Seconded by Ms. Edwards to approve the Minutes of March 2, 2017 as presented.

Motion carried, 6-0.

VOICE VOTE

Yeas: Slanga, Edwards, Lawson, Rontal, Schaefer, Surnow

Nays: None

Absent: Adams, Folberg

5. S. ETON RD. CROSS-SECTION

Ms. Ecker recalled the Ad Hoc Rail District Committee met during 2016. The group was charged with studying parking and zoning issues within the Rail District. Their final report was reviewed by the City Commission at their meeting of January 9, 2017. One recommendation from their report was to accommodate bicycling on S. Eton Rd. in some way. The committee voted to use sharrows and buffers and did not wish to remove parking on either side of the street. However, a parking study has revealed there is clearly no shortage of parking in the area. The Ad Hoc Committee's preferred option was to reconfigure S. Eton Rd. on each side so there is a 7 ft. parking lane, a 3 ft. buffer zone, and a 10 ft. driving lane with a sparrow. It was then noted that 46 spaces would be lost if parking was removed on the west side.

Ms. Edwards, who was a member of the Ad Hoc Committee, said their thought was if there is parking on both sides there can be bumpouts at the intersections. That would slow traffic and make crossing much safer for pedestrians and vehicles. Mr. Surnow observed that every time you mix bikes and cars on a high traffic street you are really asking for danger. He saw no reason not to eliminate parking on the west side of the street and create a protected bike lane.

Mr. O'Meara reminded the board that this one-half mile was approved by the City Commission as part of the Neighborhood Connector Route around the entire city.

After further discussion, board members concluded that S. Eton Rd. needs a protected bike lane that allows bi-directional traffic; and therefore they were not in agreement with the Ad Hoc Committee's preferred option that would put bikers in the road alongside cars.

The group wanted to know for next time the width that is needed for a bi-directional bike lane; how it is linked to other bike routes, north and south and within the community; and how bumpouts and a bike lane can be accommodated.

This topic was opened to the public at 6:25 p.m.

Mr. Dan Isaacson said he lives north of Maple Rd. and east of Adams. He suspected if there was a high quality, safe bike lane on S. Eton Rd. his family

would use it. He received confirmation that traffic islands are not workable along there because of the road width.

Mr. Labadie did not think demand would ever be so great that a bi-directional bike lane would be a bad idea. Ms. Slanga added it would provide some sort of structure to the west (residential) side of S. Eton Rd. Mr. Labadie said the bike lane would be safe, but vehicle speeds may not reduce as they would if there was parking on both sides. He liked Design Option 1 which is removing on-street parking on the west side of the street in favor of a 7 ft. wide bike lane and a 3 ft. wide buffer area.

Mr. Jerry Yaldoo, 1997 Haynes, spoke in favor of the dedicated bike lane and removing the parking. He does not feel comfortable backing out of his driveway with a parked car there.

6. W. MAPLE RD. CROSSING AT ROUGE RIVER

Ms. Chapman recalled the Planning Dept. was asked to look into options to connect the Quarton Lake Trail (north of Maple Rd.) and the Linden Park Trail (south of Maple Rd.) across W. Maple Rd. Such a connection would increase access and safety for trail users. The Multi-Modal Transportation Plan ("MMTP") was adopted by the City in 2013. It is a response to the growing demand for alternative forms of travel and the need to improve the safety of those who choose to walk, bicycle, or take transit. The Plan recommends enhanced pedestrian crossings on W. Maple Rd.

Installing a pedestrian bridge, boardwalk, or tunnel would eliminate pedestrian and vehicular conflict by allowing pedestrians to cross independent of the traffic on the street. A mid-block crossing island has also been proposed.

Once across W. Maple Rd., there is no connection from the public sidewalk to the trail south of W. Maple Rd. near the river. At their March 7th meeting, the Parks and Recreation Board voted to pursue a trail connection south of Maple Rd. from the sidewalk to the proposed location of trail connection bridge at lower Baldwin; opting for the western connection. The board also voted to support an at-grade pedestrian crossing on W. Maple Rd. just west of Baldwin Rd.

An at-grade crossing island on W. Maple Rd. at Baldwin Rd. with rectangular rapid flash beacons was recommended in the Multi Modal Transportation Master Plan ("MMTP") and could be constructed to allow safe pedestrian crossings for trail users between the Quarton and Linden trails. This is the only spot that a pedestrian crossing really works. The only issue with the island is there would need to be talks with the resident at the corner of Hawthorne and Maple Rd. to relocate his driveway so that it would not be obstructed by the island.



MEMORANDUM

Engineering Dept.

DATE: April 4, 2017

TO: Joseph Valentine, City Manager

FROM: Paul T. O'Meara, City Engineer

SUBJECT: S. Eton Rd. at Maple Rd.
Proposed Crosswalk Improvements

At the meeting of December 12, 2016, the City Commission reviewed the findings of the Ad Hoc Rail District Committee. The report was endorsed, and several boards were asked to research various recommendations further for action.

For the Multi-Modal Transportation Board (MMTB), it was determined that the proposed crosswalk improvements at the S. Eton Rd. and Maple Rd. intersection should be the first priority, given the planned opening of a new Whole Foods grocery store to the east of this intersection, and the potential increase in pedestrian traffic that this new commercial activity will bring.

F&V, the City's traffic consultant, had prepared a conceptual drawing (to scale) of the various parts of the proposed improvement. Using that drawing as a basis for discussion, the MMTB reviewed the proposal at their meetings of February 2 and March 2, 2017. At the March 2, 2017 meeting, the following recommendation was passed:

To recommend to the City Commission that the City prioritize the Ad Hoc Rail District Committee's recommendations for changes to S. Eton Rd. from Maple Rd. to Yosemite Blvd. including:

- 1. Landscaped splitter island to improve the S. Eton Rd. south side crosswalk at Maple Rd.*
- 2. Enlarged handicap ramp area at the southeast corner of the intersection.*
- 3. Relocation of the west side curb and gutter section to allow for a widened eight foot sidewalk on the entire length from Maple Rd. to Yosemite Blvd.*

If the Commission agrees to this construction, staff would like to complete the work in the most efficient means possible. F&V has prepared a more detailed plan of the improvements (attached), to allow this work to be included in the larger 2017 Concrete Sidewalk Program bidding documents. As referenced in the MMTB recommendation, the work is composed primarily of three parts:

- 1. Splitter island** – Given the current size of the intersection, a splitter island as shown can successfully be installed splitting the left and right turn lanes, while not changing the traffic patterns of the intersection. Existing concrete can be removed, replaced with new curb and gutter, and approximately 18 feet of new sidewalk that will act as a refuge area for pedestrians crossing Eton Rd. The triangular area south of the sidewalk

could be landscaped with perennials, under the direction of the City's landscape maintenance staff. The total construction cost of this work is estimated at \$21,000.

2. **Enlarged handicap ramp area at the SE corner** – The dashed line on the plan represents the existing property lines. At the southeast corner, additional public land is available to allow for a wider, more ample waiting area at the handicap ramp. An oval shaped piece of concrete is proposed here to enhance the existing sidewalk on this corner, at a cost of \$1,000.
3. **West side curb relocation** – As a part of the discussion with the Ad Hoc Rail District Committee, there was discussion about the existing sidewalks being installed immediately behind the curb, in close proximity to traffic. This was done due to the limited right-of-way available on this block. Since most of the neighborhood would use the west side sidewalk, and since the existing southbound lane is wider than normal, it was recommended that the west side curb and gutter section could be removed and replaced with a new curb three feet further east, for the entire block, as shown. Moving the curb would allow the existing five foot wide sidewalk to then be replaced with an eight foot wide sidewalk, providing extra space for pedestrians in this area. This work is estimated at \$53,000.

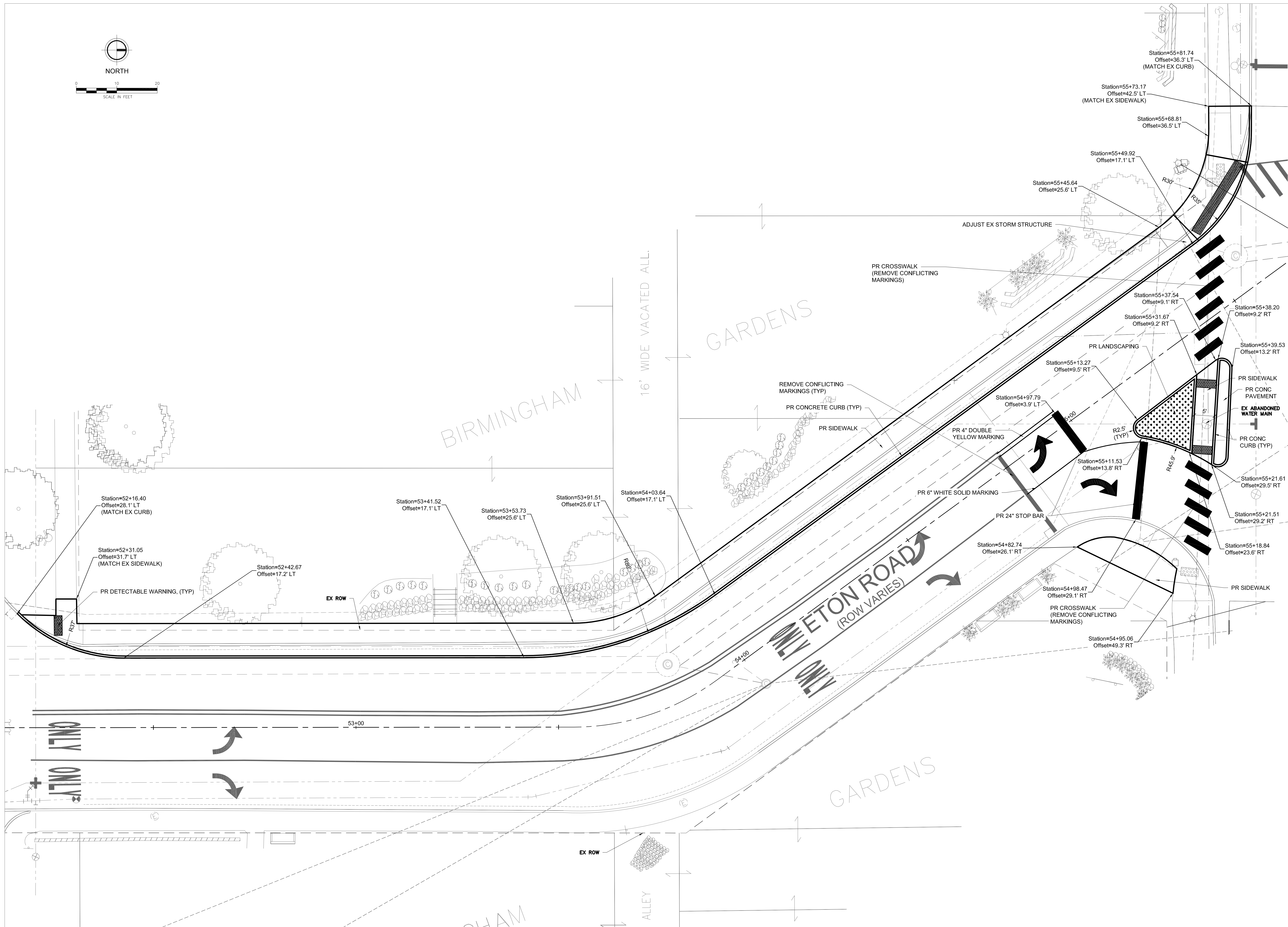
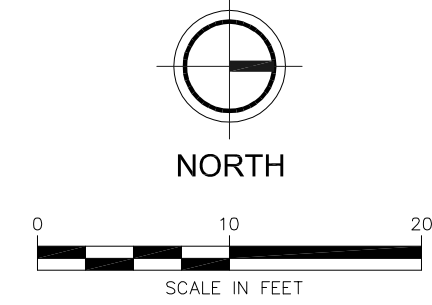
The MMTB endorsed all three parts of the proposal. There was detailed discussion about two elements of the design:

1. Given that the road would be narrowed, there was uncertainty about how trucks turning from westbound Maple Rd. on to S. Eton Rd. would be able to maneuver in this area. After further review and discussion, F&V was able to clarify that the design provides the proper amount of space to make this turn, and once accustomed to the change, traffic should be able to manage fine.
2. There was concern that some pedestrians may feel uncomfortable if they are “trapped” on the splitter island due to the traffic signals changing. F&V noted that the green time provided for Maple Rd. is substantial, and that pedestrians will have ample time to make this crossing fully from one side of the street to the other.

No funding was authorized for this work. If the Commission authorizes the concept, funding for the current fiscal year budget will have to be authorized as a part of the contract award for the 2017 Concrete Sidewalk Replacement Program. A suggested resolution is provided below:

SUGGESTED RESOLUTION:

To authorize the sidewalk and crosswalk improvements at the Maple Rd. & S. Eton Rd. intersection, as recommended by the Multi-Modal Transportation Board, and to direct staff to include this work as a part of the 2017 Concrete Sidewalk Replacement Program, Contract #2-17(SW).



REVISION:

CITY OF BIRMINGHAM
OAKLAND COUNTY, MICHIGAN
SOUTH ETON AVENUE AT MAPLE ROAD
IMPROVEMENT PLAN

DESIGN TEAM:

LMS

CHECK BY:

DRAWING INFORMATION:

823801 Civil

032417 lindsay

MARCH 2017

FAV PROJECT NO.

823801

BIRMINGHAM CITY COMMISSION MINUTES
APRIL 13, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL: Present,	Mayor Nickita
	Mayor Pro Tem Harris
	Commissioner Bordman
	Commissioner Boutros
	Commissioner Hoff
	Commissioner Sherman
Absent,	Commissioner DeWeese

Administration: City Manager Valentine, City Attorney Currier, City Clerk Brown, Police Chief Clemence, Fire Chief Connaughton, City Planner Ecker, Police Commander Grewe, Building Official Johnson, City Engineer O'Meara, DPS Director Wood

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

Mayor Nickita announced Commissioner Hoff was honored by Michigan State University's College of Communication Arts and Sciences with an Outstanding Alumni Award.

04-86-17 APPOINTMENTS TO BROWNFIELD REDEVELOPMENT AUTHORITY

Robert Runco was present and was interviewed by the Commission. Beth Gotthelf was not able to attend.

Commissioner Hoff noted both Mr. Runco and Ms. Gotthelf are seeking reappointment and were inaugural members of the Board.

MOTION: Motion by Commissioner Boutros:

To appoint Robert Runco to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2020.

MOTION: Motion by Commissioner Hoff:

To appoint Beth Gotthelf to the Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2020.

Vote on Robert Runco

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

Vote on Beth Gotthelf

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

04-87-17: APPOINTMENTS TO BOARD OF BUILDING TRADES APPEALS

Benjamin Stahelin and Dennis Mando were present and were interviewed by the Commission.

Mr. Stahelin confirmed for Commissioner Bordman that his wife serves on the Board of Review.

City Manager Valentine noted the Board has not met in approximately ten years.

Mr. Mando commented he has served on the Board for more than nine years. He stated he has been a mechanical contractor for 35 years and has performed work in Birmingham and surrounding communities. He verified for Commissioner Bordman that he has not worked for the City of Birmingham.

MOTION: Motion by Mayor Pro Tem Harris:
To appoint Benjamin Stahelin to the Board of Building Trades Appeals to serve a three-year term to expire May 23, 2020.

MOTION: Motion by Commissioner Bordman:
To appoint Dennis Mando to the Board of Building Trades Appeals to serve a three-year term to expire May 23, 2020.

Vote on Benjamin Stahelin

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

Vote on Dennis Mando

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

04-88-17: APPOINTMENTS TO HOUSING BOARD OF APPEALS

Neither Chris McLogan nor David Frink was able to attend. Brian Blaesing provided notice that he does not wish to be reappointed.

Commissioner Sherman pointed out both applicants are seeking reappointment. He noted one has served on the Board for 16 years and the other was interviewed by the Commission recently.

MOTION: Motion by Commissioner Sherman:
To appoint Chris McLogan to the Housing Board of Appeals to serve a three-year term to expire May 4, 2020.

MOTION: Motion by Commissioner Boutros:

To appoint David Frink to the Housing Board of Appeals to serve a three-year term to expire May 4, 2020.

Vote on Chris McLogan

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

Vote on David Frink

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

Commissioner Boutros announced an opening on the Housing Board of Appeals.

Commissioner Hoff read the qualifications for the Board, "Applicants shall be qualified by education or experience in building construction administration, social services, real estate, or other responsible positions".

Mayor Nickita reminded residents that the City announces openings on boards on the City's web site and at City Commission meetings.

The City 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.

04-89-17 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Bordman – Item G (Purchase of Larvicide Material)
- Commissioner Hoff – Item A (City Commission Minutes of March 27, 2017)
 - Item E (Medical Marijuana Operation/Oversight Grant)
 - Item F (High Intensity Drug Trafficking Area Agreement)
 - Item H (Lawn and Landscape Services Contract)

MOTION: Motion by Mayor Pro Tem Harris, seconded by Commissioner Boutros:
To approve the Consent Agenda, with items A, E, F, G, and H removed.

ROLL CALL VOTE:	Yeas,	Commissioner Harris Commissioner Boutros Commissioner Hoff Commissioner Sherman Commissioner Bordman Mayor Nikita
	Nays,	None
	Absent,	1 (DeWeese)

- B. Approval of warrant list, including Automated Clearing House payments, dated March 29, 2017 in the amount of \$393,256.29.
- C. Approval of warrant list, including Automated Clearing House payments, dated April 5, 2017 in the amount of \$342,587.68.
- D. Resolution authorizing the 2017 Sidewalk Repair Program, and directing the Engineering Department to notify the owners of subject property of the City's intention to replace sidewalks adjacent to their properties
- I. Resolution approving the purchase and planting of 106 trees from KLM Landscape for the 2017 spring tree purchase and planting project for a total project cost not to exceed \$32,550.00, charged to account numbers 203-449.005-819.0000, 202-449.005-819.0000, 203-449.005-729.0000 and 202-449.005-729.0000, and authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.
- J. Resolution awarding the Springdale Pavilion New Concrete Floor Contract to Luigi Ferdinandi & Son Cement Co. in an amount not to exceed \$57,900.00, charged to account number 401-751.001-981.0100 and authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

The Commission agreed to discuss the removed items at this time.

04-90-17 PURCHASE OF LARVICIDE MATERIAL

Commissioner Bordman reminded the public of the importance of patrolling one's property and removing standing water to eliminate the ability of mosquitos to lay eggs or for the eggs to hatch.*

MOTION: Motion by Commissioner Bordman, second by Commissioner Sherman:
To approve the purchase of the larvicide material from Clarke Mosquito Control in the amount not to exceed \$8,109.40, waiving the normal bidding requirements based on the government regulated pricing for this type of material, charged to account number 590-536.002-729.0000.

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

04-91-17 PARKS AND CITY PROPERTY LAWN AND LANDSCAPE SERVICES CONTRACT

Commissioner Hoff asked why the City's current vendor, Birmingham Lawn Maintenance & Snow Removal, Inc., increased their price by a significant amount. DPS Director Wood said Birmingham Lawn did not offer an explanation for the price increase, but she noted the new contract contains an increased scope of work over the current contract.

Director Wood confirmed for Commissioner Hoff:

- The City has been satisfied with Birmingham Lawn's work.
- Progressive Irrigation, Inc. is familiar to the City and had favorable reference checks.
- The subject quote does not include irrigation service.
- Progressive Irrigation is the current contractor for irrigation services with the City.
- The subject contract includes mowing of grass and noxious weeds for lots in violation of City ordinance, the costs of which are recouped by charging the violators.

MOTION: Motion by Commissioner Hoff, second by Commissioner Bordman:
To award the Parks and City Property Lawn and Landscape Services Contract to Progressive Irrigation, Inc. DBA Pro Turf Management Lawn for a four (4) year Agreement in the amount of \$541,320.00 plus amounts for ordinance enforcement and fertilization/weed control services, charged to account numbers 203-449.003-937.0400, 202-449.003-937.0400, 101-751.000-811.0000, 101-441.003-811.0000, and 591-537.002-811.0000, and authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

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

04-92-17 APPROVAL OF CITY COMMISSION MINUTES OF MARCH 27, 2017
Commissioner Hoff explained that the indented paragraph on Page 4 should be omitted.

MOTION: Motion by Commissioner Hoff, second by Commissioner Bordman:
To approve the City Commission minutes of March 27, 2017 as corrected.

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

**04-93-17 2017 MICHIGAN MEDICAL MARIJUANA OPERATION AND
OVERSIGHT GRANT SUB RECIPIENT AGREEMENT; and
04-94-17 2017 HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA) SUB
RECIPIENT AGREEMENT**

In response to Commissioner Hoff's request for more information Police Chief Clemence explained the agreements secure the City's portion of Federal grant funding in the case of the HIDTA Grant and of state grant funding in the case of the MMOO Grant. He further noted both grants are specifically allocated to cover overtime for narcotics enforcement activities. He indicated \$4,100 is expected from HIDTA, and a little over \$7,000 from MMOO.

MOTION: Motion by Commissioner Hoff, second by Commissioner Sherman:
To approve the 2017 Michigan Medical Marijuana Operation and Oversight Grant Sub recipient Agreement between the City of Birmingham and Oakland County and authorizing the Mayor and City Manager to sign the agreement on behalf of the City.

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

MOTION: Motion by Commissioner Hoff, second by Commissioner Boutros:
To approve the Program Year 2017 High Intensity Drug Trafficking Area (HIDTA) Sub recipient Agreement between the County of Oakland and the City of Birmingham and authorizing the Mayor and City Manager to sign the agreement on behalf of the City

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

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

**04-95-17 PUBLIC HEARING – SLUP AMENDMENT AT 250 N. OLD
WOODWARD – EMAGINE PALLADIUM/FOUR STORY BURGER**

Mayor Nickita opened the public hearing at 7:59 PM.

City Planner Ecker provided background information:

- In December of 2016 the petitioner changed the business name and concept to Four Story Burger. The City's Zoning Ordinance requires approval from the City Commission for a name change.
- During the liquor license renewal hearings the City Commission set a public hearing for April 13, 2017 to consider terminating the Special Land Use Permit (SLUP).
- The petitioner submitted a complete application to the Planning Department seeking a SLUP amendment for the name change. There is no change in ownership.
- The Planning Board, on March 22, 2017, recommended approval of the SLUP amendment.
- No exterior signage is proposed at this time. The building owner would pursue any exterior changes separately.

Commissioner Sherman confirmed the City received a letter from Mr. Jon Goldstein, CH Birmingham, LLC, DBA Emagine Palladium, indicating that neither he nor Mr. Paul Glanz would be available to attend the public hearing. Commissioner Sherman stated the Commission had made it clear their attendance was necessary as the owners. He desired to postpone the public hearing because of Mr. Goldstein's and Mr. Glantz's absence.

Commissioner Bordman supported postponing the public hearing and stated her disappointment that the owners have been unable meet with the Commission on an item of such importance to them and to the City.

Mayor Pro Tem Harris questioned the business' ability to sell liquor and operate should the Commission postpone consideration of a SLUP Amendment. City Manager Valentine confirmed the business would continue to operate at status quo.

Mayor Nickita pointed out the owners have had three opportunities for a dialogue with the Commission on the issue of the SLUP violation and have consistently failed to appear.

Commissioner Hoff supported postponing the public hearing because it is an important issue, and she has questions for the owners. She felt the situation is more than a name change.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Bordman:
To postpone until May 8, 2017 the public hearing to consider an amendment to the Special Land Use Permit and Final Site Plan Review for 250 N. Old Woodward, Emagine Palladium Theatre and Ironwood Grill restaurant to allow the establishment to change their name to Emagine Palladium Theatre and Four Story Burger.

Patrick Howe, attorney representing CH Birmingham, LLC, was present and introduced the third owner of Emagine Palladium, Lauren Goldstein. Mr. Howe confirmed he and Ms. Goldstein are

authorized to act on behalf of Mr. Goldstein and Mr. Glantz. He was unable to confirm whether they would be available on May 8, 2017.

Mrs. Goldstein confirmed she is one of three owners of the business. She admitted the name change in violation of the SLUP was done in the wrong way and in the wrong order and, with apology, stated her commitment to rectifying the situation.

Commissioner Hoff indicated she believes violation is very serious and wants to talk to the two main partners.

Commission Boutros said he would respect Ms. Goldstein's position as an owner, believes Mr. Goldstein's letter to the Commission expresses a sincere wish to correct the SLUP, and stated he does not support postponing the public hearing.

Mayor Pro Tem Harris remarked on the seriousness of the SLUP process and commented he believes the owners are sincere in their wish to address the situation. He stated he has no objection to holding the public hearing as scheduled and noted the Planning Board has recommended unanimously that the SLUP amendment be approved.

Commissioner Sherman was firm in his belief that Mr. Goldstein and Mr. Glantz are making the business decisions and that Ms. Goldstein is not involved in the day-to-day operation. He was in favor of postponing the public hearing so that Mr. Goldstein and Mr. Glantz could attend.

Commissioner Bordman expressed her belief that Mr. Howe, having represented the owners in the original request for the SLUP, should have known Commission approval was required for a name change.

Mr. Howe indicated he was not asked to assist with the name change. Ms. Goldstein confirmed Mr. Howe was not consulted until the City notified the owners they were in violation of the SLUP.

Mayor Nickita stated he does not recall another entity causing such complexity and having such inconsistent representation from the ownership team. He said he wants to know who is in charge and what is actually going on. Mr. Howe clarified that he was brought in two weeks ago to take over and finish the project. He reiterated he was not involved in the name change or in past discussion regarding the SLUP amendment.

Commissioner Bordman called the question.

VOTE: Yeas, 4
 Nays, 2 (Harris, Boutros)
 Absent, 1 (DeWeese)

The public hearing was postponed until May 8, 2017.

**04-96-17 PUBLIC HEARING – SLUP TERMINATION AT 250 N. WOODWARD
 – EMAGINE PALLADIUM/IRONWOOD GRILL**

Mayor Nickita opened the public hearing at 8:18 PM.

City Planner Ecker confirmed the Commission set the public hearing based on concerns over the SLUP violation and that the two public hearings are tied together

MOTION: Motion by Harris, seconded by Sherman:

To postpone until May 8, 2017, the public hearing to consider termination of the Special Land Use Permit at 250 N. Woodward – Emagine Palladium/Ironwood Grill.

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

04-97-17 SPECIAL EVENT – HAVDALAH IN THE PARK.

Deborah Morosohk, Director of Education at Temple Beth Al El*, explained Havdalah is an approximately 10-minute short Jewish blessing ceremony at end of Sabbath consisting of singing with guitar accompaniment. The event is proposed for two Saturdays, 6:30 – 7:30 and is intended to be a fun family event for people from the synagogue. She confirmed for Commissioner Hoff that the service will take place in Shain Park, that the event is open to the public, and that attendance is anticipated to be around 30 people.

Commissioner Hoff expressed concern about the July 22 date because the Day on the Town event is the same day.

City Manager Valentine confirmed that Day on the Town will end just before Havdalah in the Park begins.

Clerk Brown confirmed for Commissioner Hoff that Temple Beth Al sent out the required notice letter.

MOTION: Motion by Commissioner Bordman, seconded by Commissioner Sherman:

To approve a request from Temple Beth El to hold Havdalah in the Park in Shain Park, on June 17, 2017 and on July 22, 2017 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, 6
 Nays, None
 Absent, 1 (DeWeese)

04-98-17 SPECIAL EVENT – HIGH OCTANE EVENT ON WILLITS STREET.

Mr. Darakjian explained he is requesting the closure of Willits Street for the safety of attendees and so the cars can be parked at an angle to allow for more cars to be displayed. He noted the event typically fills the parking spaces on both sides of the street with approximately 30 cars, and additional cars are parked in the Bates Street lot.

Fire Chief Connaughton explained closing the road poses problems should the Fire Department have to respond to a fire. The response would be within three minutes with two engines, an aerial truck, a rescue truck, and there would not be time for the cars to be moved if they were in the way. Normally all operations would happen on Willits Street because a minimum of 18' feet is need for set up, and there is not enough room in Willits Alley.

Mayor Nickita and all five of the Commissioners who were present liked the idea of the event but did not support closing Willits Street due to the concerns expressed by Chief Connaughton. Commissioners also cited concerns with traffic flow due to the Old Woodward closures.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:

To deny a request from Darakjian Jewelers to hold High Octane on Willits Street between N. Bates St. and N. Old Woodward Ave. on June 25, July 16, August 20, September 17, and October 8, 2017 based on objections to the closing of Willits Street from the Fire Department, Police Department, and Engineering.

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

04-99-17 SIDEWALK AND CROSSWALK IMPROVEMENTS AT MAPLE AND S. ETON INTERSECTION.

City Engineer O'Meara explained both the Ad Hoc Rail District Review Committee and the Multi-Modal Transportation Board have reviewed the proposal and, in conjunction with Fleis & Vandenbrink (F&V), the City's traffic consultant, recommend improvements consisting of three primary parts:

1. Splitter island. Given the current size of the intersection, a splitter island as shown can successfully be installed splitting the left and right turn lanes, while not changing the traffic patterns of the intersection. Existing concrete can be removed, replaced with new curb and gutter, and approximately 18 feet of new sidewalk that will act as a refuge area for pedestrians crossing Eton Rd. The triangular area south of the sidewalk could be landscaped with perennials, under the direction of the City's landscape maintenance staff. The total construction cost of this work is estimated at \$21,000.
2. Enlarged handicap ramp area at the southeast corner. At the southeast corner, additional public land is available to allow for a wider, more ample waiting area at the handicap ramp. An oval shaped piece of concrete is proposed here to enhance the existing sidewalk on this corner, at a cost of \$1,000.
3. West side curb relocation. As a part of the discussion with the Ad Hoc Rail District Committee, there was discussion about the existing sidewalks being installed immediately behind the curb, in close proximity to traffic. This was done due to the limited right-of-way available on this block. Since most of the neighborhood would use the west side sidewalk, and since the existing southbound lane is wider than normal, it was recommended that the west side curb and gutter section could be removed and replaced with a new curb three feet further east, for the entire block, as shown. Moving the curb would allow the existing five foot wide sidewalk to then be replaced with an eight foot wide sidewalk, providing extra space for pedestrians in this area. This work is estimated at \$53,000.

The entire package is estimated to be about \$75,000.00.

City Engineer O'Meara stated staff would like to include the sidewalk and crosswalk improvements in the 2017 Concrete Sidewalk Program, if the Commission approves the proposal.

In response to questions from Commissioner Hoff, City Engineer O'Meara and City Planner Ecker confirmed:

- The sidewalk on Eton would be 8' wide.
- The sidewalk on Maple would be 5' wide with a grass buffer between the sidewalk and the road.
- There would be no grass bumper on the Eton side, just as it exists currently, because the right-of-way is too narrow.
- The design contains no bump outs. The island will be curbed, and the whole west side of the block will be removed and replaced closer into the road so the southbound driving lane would be narrower.
- The City's traffic engineering consultant, F&V, provided the design plans which do show the following turns could be made: turning onto Maple, turning from Maple onto Eton, turning westbound from Maple, and making a left onto Eaton.

Mayor Nickita asked for details about the process that took the plan from a conceptual idea to the design specifications as presented.

City Engineer O'Meara confirmed he was not involved in development of the design drawing and that the Multi-Modal Transportation Board considered the same drawing that is before the Commission.

City Planner Ecker noted:

- The Ad Hoc Rail District Committee was tasked to look at several issues on the South Eton corridor, which they did in 2016.
- The biggest complaints about the corridor were that it is not pedestrian friendly, the road is too wide, cars are going every which way, pedestrians not protected, and vehicular speed is too fast.
- The Committee discussed three alternatives and chose the proposal being considered by the Commission as the best alternative.
- The Committee received approval from the Commission to hire F&V to review the plan to determine its practicality.
- The Committee came up with conceptual idea, and F&V detailed the specifics.

Mayor Nickita commented he agrees with some aspects of the conceptual idea such as diminishing the amount of exposed crosswalk and providing a mid-crossing island for pedestrians. He was very concerned, however, with other aspects. He explained:

- The intersection is currently challenging and unsafe for pedestrians,
- When Whole Foods opens pedestrian and non-motorized traffic is going to increase.
- The acute angle for southbound turns from westbound Maple is fundamentally problematic.
- The white stop bar is almost always ignored by motorists, and at this intersection it is located 30' from the crosswalk. Cars are going to ignore the stop bar and encroach into the crosswalk, resulting in cars turning left from Maple either clipping the car in the crosswalk or having to slow down to maneuver around the car. Trucks trying to make the turn may require the car in the crosswalk to back up.

Mayor Nickita concluded the design does not take into account the way people will actually use the intersection, which creates a difficult situation with the threat of crashes and congestion. He commented he does not feel the logistics have been explored thoroughly enough to resolve the

issues in a manner that would be best for the intersection, best for the users, and that will actually be used in the way it is designed to be used.

Commissioner Bordman noted she had similar concerns with vehicular encroachment into the crosswalks. She also questioned the plan's lack of consideration for bicyclists.

City Planner Ecker responded that the Multi-Modal Transportation Board met at 5:30 today and discussed, among other items, the cross section for South Eton. The Ad Hoc Rail District Review Committee Report did not recommend a specific bike lane. The Committee recommended parking, three foot buffer zones for the opening of car doors, and two 10' lanes for sharrows. The Multi-Modal Board is now leaning toward a multi-directional bike lane. City Planner Ecker relayed the thought that perhaps the Maple and S. Eton intersection improvements should be postponed to consider the impacts of including a bi-directional bike lane in the plan.

Commissioner Sherman suggested sending this back with the comments that have been made for further review.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Boutros:
To refer the proposal for sidewalk and crosswalk improvements at the Maple Road and S. Eton Road intersection back to Multi-Modal Transportation Board for further study based on the City Commission's comments and to consider the idea of including a multi-directional bike lane.

City Manager Valentine commented changes may impact the timing of construction. He explained the intersection improvements, being mostly concrete work, would be included in the sidewalk project which is being completed this year. Changes may delay the project.

Mayor Nickita wanted to know if there is a way to get the project done this year.

City Engineer O'Meara confirmed that the sidewalk program has already been put out to bid and consideration of awarding the bid is planned to be on the Commission's April 24, 2017 agenda. He suggested the costs of the proposed intersection improvements remain in the contract with the understanding that the concept may change. Any changes to the intersection improvement plan could be made in time for construction to still happen between now and August.

City Manager Valentine noted changing the scope of the intersection project may change the cost, but pointed out price can't be known at this point. He felt the City could proceed as suggested by City Engineer O'Meara with the idea that the intersection the project may need to be eliminated from the contract at some point. He clarified any decisions as to the addition of bike lanes or modifications to the sidewalks are yet to be determined.

Commissioner Hoff wondered if there were incremental improvements that could be made while waiting for revised plans and commencement of construction. City Engineer O'Meara commented that any incremental steps would be temporary and therefore not cost effective. He felt there is time for the Multi-Modal Board to reconsider the project in light of the Commission's comments and still keep in sync with the time frame of the Whole Foods opening.

In response to a question from Mayor Pro Tem Harris, City Engineer O'Meara confirmed the bidders for the 2017 sidewalk program are aware of the intersection project because it is included in the bid document.

Commissioner Boutros emphasized the importance of completing the intersection improvements this year. City Engineer O'Meara confirmed changes in the intersection project could be addressed as change orders to the contract.

Resident Benjamin Stahelin agreed with the need to widen the sidewalk, believed the white stop bar will be ignored, felt spending \$75,000 on the project as presented would be a waste of money, and felt the safest and most cost effective solution would be to install stop signs at each intersection

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

04-100-17 ORDINANCE AMENDING PART II OF CHAPTER 74, OFFENSES AGAINST PROPERTY.

Police Commander Grewe confirmed the reason to amend the ordinance is to address identity theft and fraud. He noted the amendments mirror state law.

Commissioner Bordman explained that due to recent personal experience with her credit card being used fraudulently, this issue is close to her heart. She asked why "debit card" is not specifically listed as one of the instruments. She noted the omission of "debit card" is inconsistent with other language. Attorney Currier responded the way the state law reads "any instrument" would include debit card. Commissioner Bordman felt "debit card" ought to be mentioned since "credit card" is specifically mentioned.

Commissioner Hoff asked why the fine is limited to "not more than \$500". Attorney Currier explained the City is limited by the City Charter as to the amount of fines for misdemeanors. Commissioner Hoff was concerned that the fine was too limited for larger thefts. Attorney Currier explained that restitution is not precluded.

In response to a question from Mayor Pro Tem Harris, Attorney Currier explained the City is authorized to charge civil infractions and misdemeanors through local ordinance.

MOTION: Motion by Sherman, seconded by Boutros:

To amend Part II of the City Code, Chapter 74, Offenses, Article IV, Offenses against Property to include the following eight new ordinances and authorizing the Mayor and the City Clerk to sign the ordinance amendments on behalf of the City:

1. Section 74-101: Illegal Use of State Personal Identification Card and Section 74-101(A) – Penalty for Violation of Section 74-101; and
2. Section 74-102: Definitions; and
3. Section 74-103: Stealing, Taking Title, or Removing Financial Transaction Device; Possession of Fraudulent or Altered Financial Transaction Device and Section 74-103(A) – Penalty for Violation of Section 74-103; and
4. Section 74-104: Use of Revoked or Cancelled Financial Transaction Device with Intent to Defraud and Section 74-104(A) – Penalty for Violation of Section 74-104; and
5. Section 74-105: Sales to or Services Performed for Violator and Section 74-105(A) – Penalty for Violation of Section 74-105; and



MEMORANDUM

Engineering Dept.
Planning Dept.
Police Dept.

DATE: April 28, 2017

TO: Multi-Modal Transportation Board

FROM: Paul T. O'Meara, City Engineer
Jana Ecker, Planning Director
Scott Grewe, Operations Commander

SUBJECT: S. Eton Rd. – Maple Rd. to Lincoln Ave.
Multi-Modal Improvements

At the March and April meetings, the Multi-Modal Transportation Board (MMTB) discussed the recommendations of the Ad Hoc Rail District Committee. A recommendation was also passed on to the City Commission focused on changes at Maple Rd.

Maple Rd. to Yosemite Blvd.

The MMTB sent a recommended plan of improvements to the far north block of S. Eton Rd. to the City Commission, which was reviewed at their meeting of April 13, 2017. Minutes of that meeting are attached. The Commission expressed concern relative to certain design elements, and encouraged the Board to consider a larger bumpout at the southwest corner of the Maple Rd. intersection.

Other concerns expressed by the Commission included:

- The acute turn for vehicles from eastbound Maple Rd. to S. Eton Rd. is problematic.
- The white stop bars may be ignored, causing problems for both motorists and pedestrians.
- The Board should consider the inclusion of a multi-directional bike lane.

F&V prepared the attached memo and conceptual plan that considers this option. Highlights of the memo include:

1. The City can reduce the length of the S. Eton Rd. pedestrian crossing using either plan included in the memo. The most significant benefit of the original recommendation with the refuge island includes a shorter crosswalk length with an intermediate break. While there was concern expressed about the proposed locations of the stop bars, the design actually allows the stop bars to be closer to the intersection than they are currently.
2. The design without the refuge island keeps the intersection more open. The design reduces the angle for turning traffic from westbound Maple Rd. on to S. Eton Rd. However, it makes the angle for eastbound traffic on to S. Eton more extreme. As a result, the stop bar must be left in its current position, further back from the

intersection. The resulting crosswalk length is approximately five feet longer than that with the island design, and there is no refuge.

As has been discussed previously by the Board, all agree that the design does not provide any enhancement for bike traffic. However, the narrow right-of-way in this area, plus the clear need for three lanes of traffic at this intersection, requires that bikes be encouraged through the intersection with the use of sharrows. The only way to provide space for a separate bike lane facility would be to purchase right-of-way, construct a retaining wall on the west side and make significant changes to the existing road. It is presumed that the City is not in a position to make such an investment at this time.

The Board is asked to consider the benefits and drawbacks of both designs, and provide a new recommendation to the Commission.

SUGGESTED RECOMMENDATION:

After further review, the Multi-Modal Transportation Board recommends that the City Commission authorize improvements to S. Eton Rd. from Maple Rd. to Yosemite Blvd. that include:

1. _____ to improve the south leg crosswalk at the Maple Rd. intersection.
2. An enlarged sidewalk ramp area at the southeast corner.
3. Relocation of the west side curb from Maple Rd. to Yosemite Blvd., and the construction of an eight foot wide sidewalk on the west side of the block.

Further, while the Board acknowledges that improved bike features would be beneficial, existing right-of-way and traffic demands do not allow improvements other than sharrows and bike route signs (as a part of the previously approved Neighborhood Connector Route) at this time.

Yosemite Blvd to Lincoln Ave. Bike Lane Proposal

The MMTB first discussed the Ad Hoc Rail District's recommendation for the typical cross-section at its regular April meeting. The majority of the Board chose not to affirm the Ad Hoc committee recommendation of installing pedestrian bumpouts at several intersections, keeping parking legal on both sides of the street, and adding sharrows for bike traffic in both directions. Due to the continued desire to reduce sight distance issues on the west side of the street, the Board asked staff to explore the feasibility of a two-directional bike lane on the west edge of the road, using the existing southbound parking lane area. F&V has prepared the attached plan accordingly. The following features are noted:

1. The block between Yosemite Blvd. and Villa Rd. is different from the others in that there are commercial uses on both sides of the street. Parking is legal on the southbound side, and is an important feature for the adjacent businesses. Parking is not legal on the northbound side, but the northbound lane is wider as a result. It is recommended that southbound bikes continue sharing the road with traffic, similar to the block to the north. For northbound bikes, a buffered bike lane can be provided as a good transition

from the section to the south (discussed below) to the shared traffic mode required to the north.

2. The remaining section from Villa Rd. to Lincoln Ave. would all be treated similarly. Parking would be removed for southbound traffic, providing a 10 ft. wide area for a marked, two-directional bike facility. While unique in this area, such facilities have been implemented elsewhere with success. The following features are noted:

- Signs and sidewalk/crosswalk changes would be required at Villa Rd. to allow northbound bikes to transition from the west side of the road back to the east side of the road. A diagonal section of concrete would be constructed southwest of the intersection to encourage bikes to use the west and north leg marked crosswalks to cross both streets. When using these facilities, bike riders are required to dismount and walk their bikes. There are not any officially endorsed signs in Michigan for this purpose. Examples of suggested signs for this purpose appear in the pictures below. They would be added at the beginning of the diagonal concrete section as bicyclists leave the road. Input from the Board as to which sign is preferable is requested. Wide 10 ft. ramps and marked crosswalks are proposed on the west and north legs of the intersection to encourage joint use between bikes and pedestrians. Northbound bikes would then begin using the buffered single direction bike lane as they proceed north of the intersection.



- The unique bike lane feature may come as a surprise to unsuspecting motorists wishing to enter S. Eton Rd. from the various intersecting streets. As noted on the plan, a new unique sign is recommended, added to each stop sign currently posted along the district, warning motorists to look both ways for bikes before proceeding.
- At Lincoln Ave., sign and sidewalk/crosswalk changes are required, similar to Villa Rd. The north, west, and south legs of the intersection would be widened to 10 ft. each, and signs would encourage northbound Eton Rd. bikes, as well as eastbound Lincoln Ave. bikes using the Connector Route to dismount and use the crosswalks to get in the correct location for use of the bi-directional bike lane.
- As was noted previously, the Ad Hoc Committee recommended bumpouts at several intersections. If the bi-directional bike lane is provided, bumpouts would only be built on the east sides of the selected intersections, in order to safely accommodate bike traffic.

Implementation

The timing of the above features are on different tracks. The changes in the area of Maple Rd. have not been budgeted, but are considered a priority in order to provide improvements to this area in conjunction with the planned opening of the adjacent Whole Foods grocery store. In

order to fast-track this work, funding was included in the recently awarded 2017 Concrete Sidewalk Program. It is hoped that a final design can be endorsed by the Commission in time to allow construction in either July or August of this year.

The proposed bike lane facility represents a significant change to the corridor that will impact both the commercial and residential property owners in the area. It is suggested that a public hearing wherein all owners within 300 ft. of the corridor be invited to the next MMTB meeting to provide input before a final recommendation is prepared. You may recall in the summer of 2016, the Board recommended Phase I of a Neighborhood Connector Route that provided a bike loop around Birmingham. We attempted to implement this work late last year, but failed to get any bidders to this small contract. It has been rebid as part of a larger construction contract, and should now be implemented this summer. The design approved last summer included simple sharrows for this leg of S. Eton Rd. We plan to delay the connector route work in this area until a final design is approved by the Commission, with the hope that the pavement markings and sidewalk changes can still be implemented during the 2017 construction season. The more extensive bumpout work at several intersections involves more work that will have to be budgeted in a future budget cycle.

Given the above time parameters, it is hoped that the Board can arrive at a final recommendation in June, and then prepare a final complete recommendation involving both elements for the Commission to consider thereafter. A resolution setting a public hearing is provided below.

SUGGESTED RESOLUTION:

To set a public hearing regarding the S. Eton Rd. corridor bi-directional bike lane proposal for the regular Multi-Modal Transportation Board meeting of June 1, 2017, at 6 PM.

April 13, 2017

VIA EMAIL

Mr. Paul O'Meara
City Engineer
City of Birmingham
151 Martin Street
Birmingham, MI 48012

RE: Maple Road & S. Eton Crosswalk

Dear Mr. O'Meara,

The purpose of this letter is to provide an overview of the proposed S.Eton Road approach at Maple Road and compare to an alternate intersection design. This evaluation provides a summary of the differences from the proposed design and the alternate design. The figures associate with the proposed design and the alternate are attached.

Proposed Intersection Design (Splitter Island)

As part of the study F&V performed for the Ad Hoc Rail District Commission the addition of pedestrian islands on South Eton was evaluated. The existing pedestrian crossing on the south leg of the intersection is approximately 88 feet due to the skew of the intersection. According to the *AASHTO Guide for Planning, Design, and Operation of Pedestrian Facilities* a pedestrian refuge should be considered when crossing distance exceeds 60 feet. The proposed raised splitter island, as shown in the attached figure would give the pedestrian a refuge for crossing traffic and provide greater detectability of the pedestrians by motorists. In addition, the splitter island has been designed to accommodate the right-turn movement of trucks and the stop-lines have been located accordingly as shown on the figure. The key findings with this design are summarized below:

- Stop-lines are moved closer to the intersection, providing an additional queuing at the intersection for two vehicles (one in each lane).
- The total crosswalk distance is 59-feet, with a 23-foot pedestrian refuge.

Alternate Intersection Design (Bump-out)

The alternate intersection design considered realigning the approach, with reduced radius on the west approach, from the existing 34-feet to 25-feet; thus, reducing the crossing distance without the construction of a splitter island. This alternative design was evaluated to determine the impact on the stop-line location and pedestrian crossing distance. The key findings with this design are summarized below:

- Stop-lines remain unchanged from the existing condition.
- The total crosswalk distance is 65-feet.
- Significant drainage modification would be required to accommodate the bump-out on the approach.

Stop Line Location

The following guidance regarding stop lines is provided in the MMUTCD Section 3B.16:

- Stop lines shall consist of solid white lines extending across approach lanes to indicate the point at which the stop is intended or required to be made.
- Stop lines should be 12 to 24 inches wide and should be placed a minimum of 4 feet in advance of the nearest crosswalk line at controlled intersections.
- Stop lines should be located no less than 40 feet and no more than 180 feet from the signal heads. Where the nearest signal head is located between 150 feet and 180 feet beyond the stop line, engineering judgment of the conditions shall be used to determine if the provision for a supplemental near-side signal face would be beneficial.

The existing stop-line location provides a distance of 110 feet from the stop-line to the signal head and the proposed design is 85 feet from the stop-line to the signal head.

Conclusions

- The results of the analysis show the proposed design with pedestrian splitter island provides less conflicting crossing distance overall, by providing a pedestrian refuge.
- The proposed design will move the stop-lines *closer* to the intersection than the existing condition, providing additional queueing at this intersection for two vehicles.
- Both the existing and proposed stop-lines provide acceptable placement.

If you have any questions, please feel free to contact us.

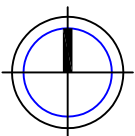
Sincerely,

FLEIS & VANDENBRINK



Michael J. Labadie, PE
Group Manager

Attached: Figures 1-3



NORTH



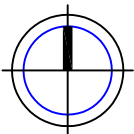
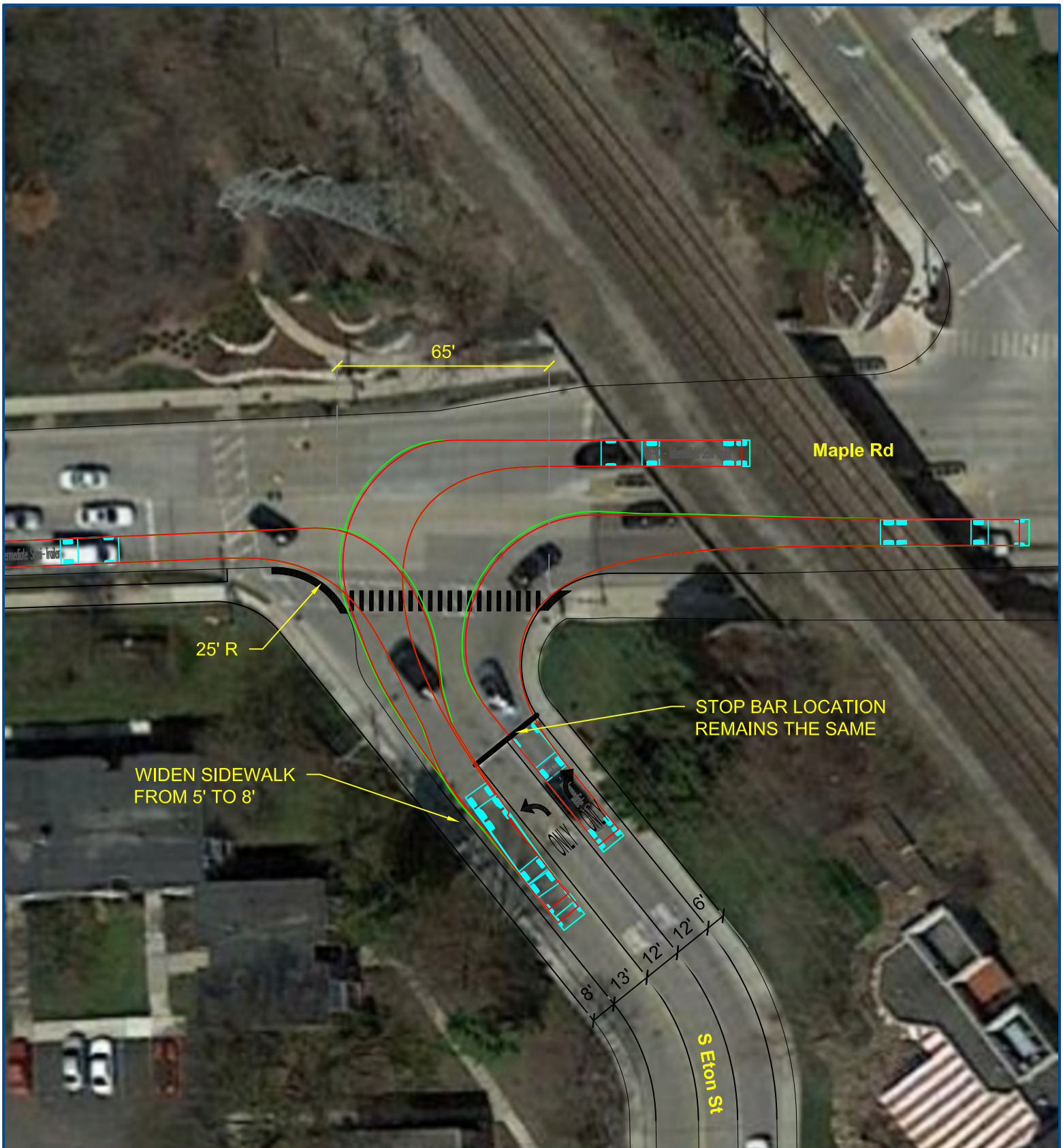
SCALE IN FEET

SPLITTER ISLAND CONCEPT DRAWING

Maple Road & South Eton Street

BIRMINGHAM, MI





NORTH



SCALE IN FEET

NO SPLITTER ISLAND CONCEPT DRAWING

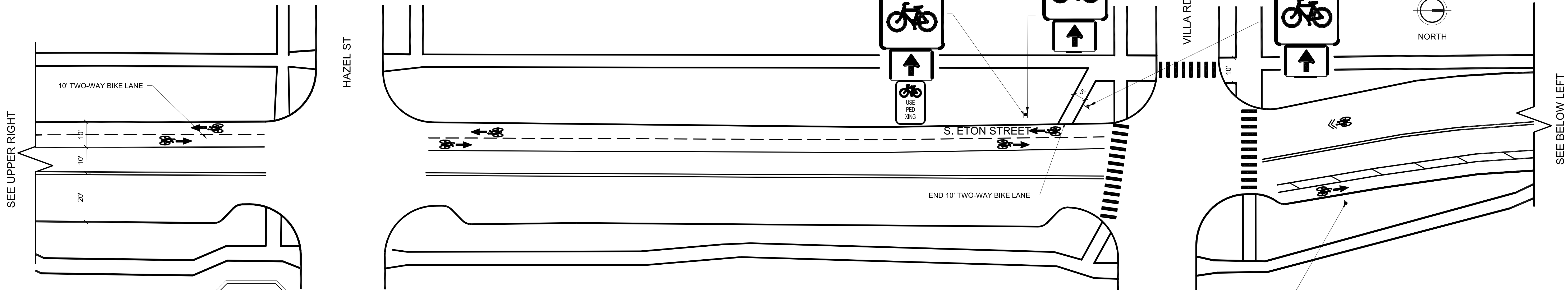
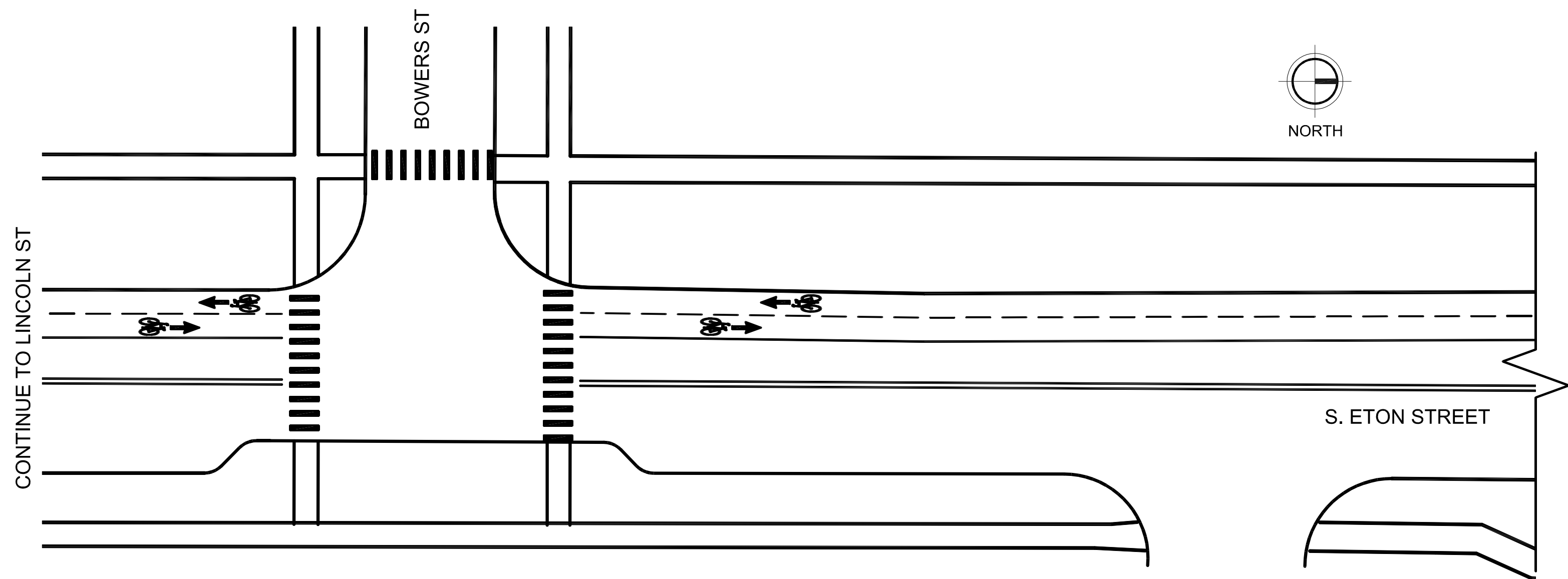
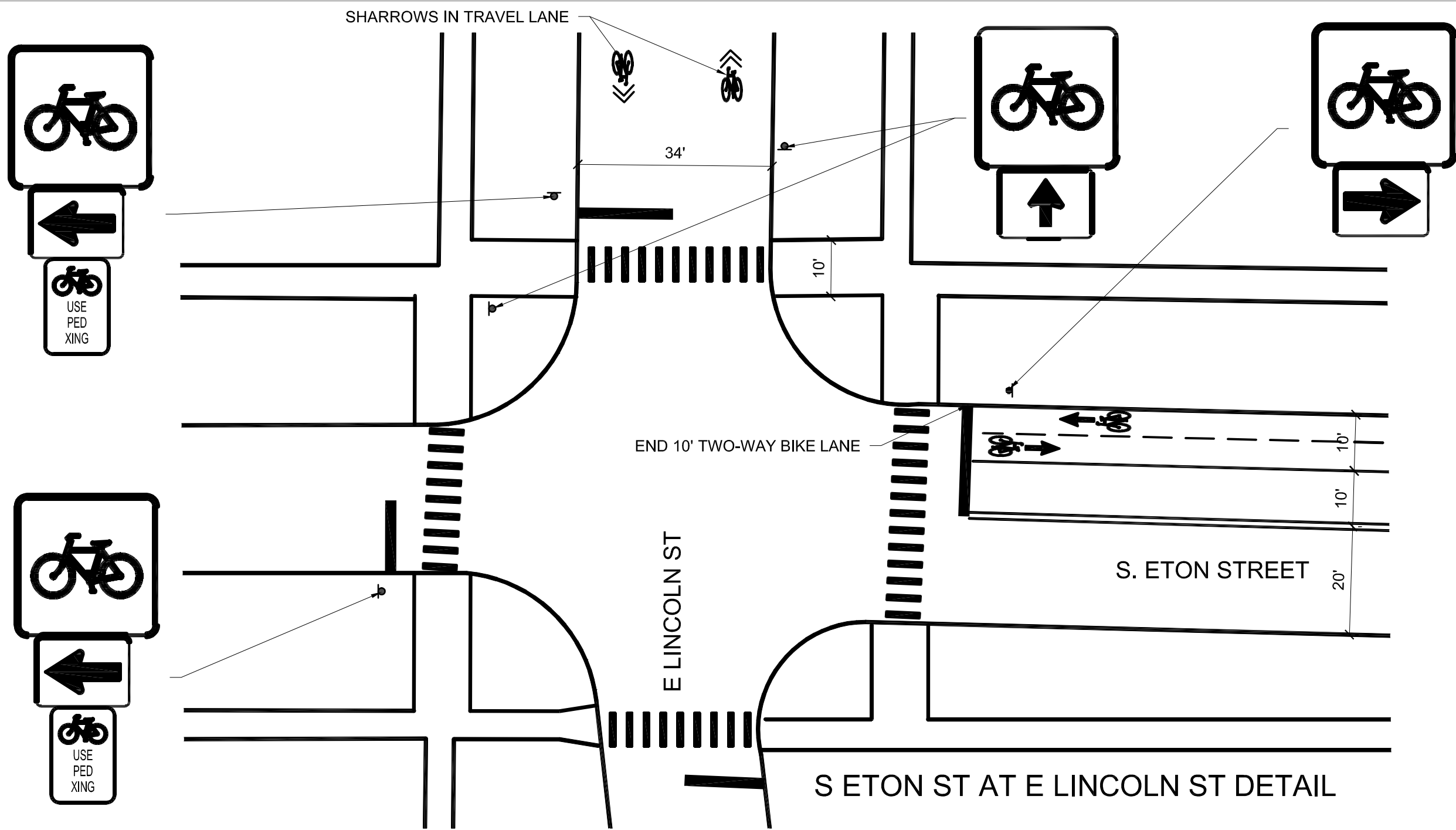
Maple Road & South Eton Street

BIRMINGHAM, MI

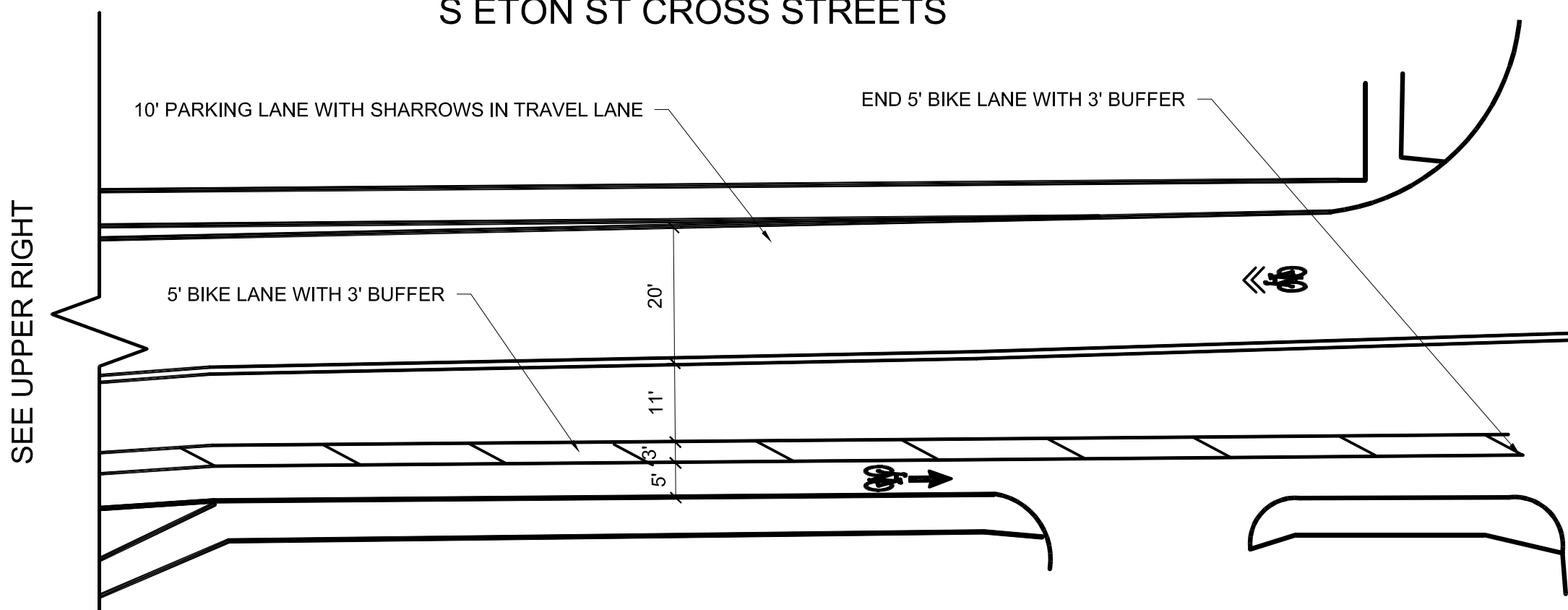


S. Eton Street (northbound)

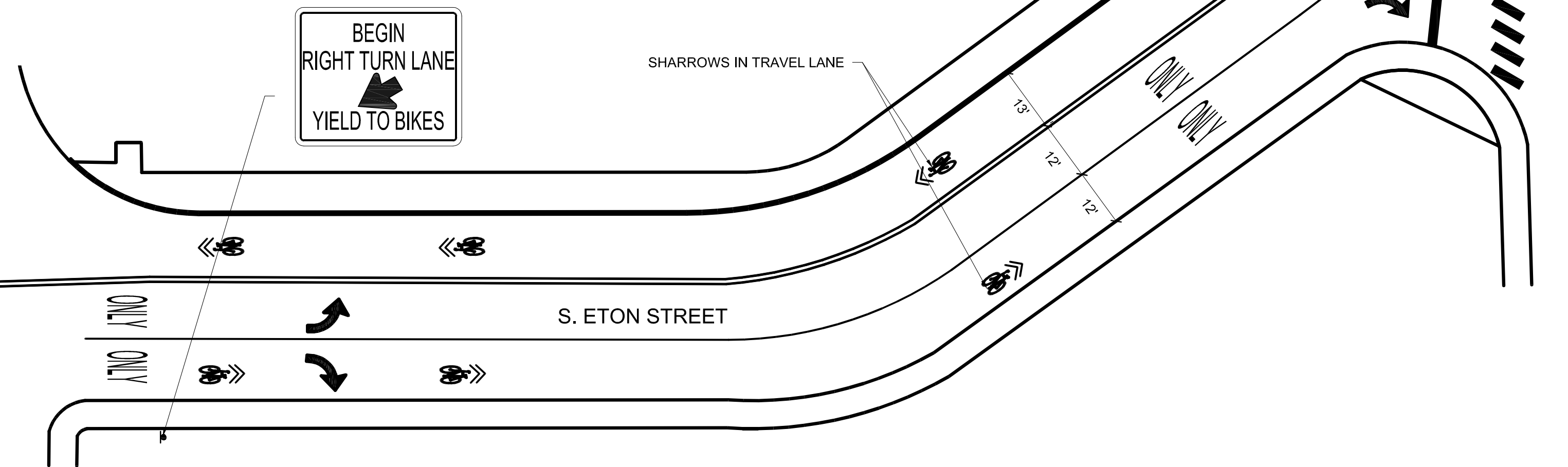




SIGN DETAIL FOR
S ETON ST CROSS STREETS



YOSEMITE BLVD



MAPLE RD

SEE BELOW LEFT

SEE BELOW LEFT

Jana Ecker <jecker@bhamgov.org>

RE: Eton Road Traffic

1 message

Applebaum, Joel D. <JApplebaum@clarkhill.com>

Thu, Apr 13, 2017 at 11:09 AM

To: Jami Statham <jami.statham@gmail.com>, "jecker@bhamgov.org" <jecker@bhamgov.org>

I would like to join in Jami's email below and the concern about traffic. It is apparent that motorists are either unaware of or willing to cavalierly disregard the law about yielding to pedestrians in crosswalks; a problem made more urgent given that motorists generally exceed the 25 mile an hour speed limit on Eton and, of course, on Adams. Jami's concerns apply equally, if not more so, to the situation on Adams, which is now being used as a Woodward service drive.

Joel D. Applebaum
CLARK HILL PLC
[248.988.5883](tel:248.988.5883) (direct) | [248.988.2503](tel:248.988.2503) (fax) | [248.417.3958](tel:248.417.3958) (cell)

-----Original Message-----

From: Jami Statham [<mailto:jami.statham@gmail.com>]

Sent: Thursday, April 13, 2017 10:35 AM

To: jecker@bhamgov.org

Cc: Applebaum, Joel D.

Subject: Eton Road Traffic

Hi Jana,

I would like to share my concern regarding traffic on Eton. I live on Holland near Eton. While we really enjoy having so many places we can get to from our home on foot, such as Griffin Claw, the Robot Garage, and the park, crossing Eton has become treacherous. I discussed this issue with neighbors and our city manager a few months ago and our city manager stated that improvements are being explored. In the mean time, it was agreed that the crosswalk reminder signs placed in the center of the road in downtown Birmingham would also be placed on Eton. We are still waiting on those signs. Without them, crossing Eton often involves a difficult game of chicken with on coming traffic or requires a walk blocks out of the way to Lincoln (itself a busy intersection).

I have a three year old and I'm becoming increasingly concerned over the safety of crossing in our neighborhood. Your attention to this issue is much appreciated. Further, if could let us know when we can expect to see the crosswalk reminders on Eton, I would appreciate it.

Best regards,

Jami

Jami A. Statham

[\(313\) 613-2822](tel:313.613.2822)

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Jana Ecker <jecker@bhamgov.org>

South Eton Corridor, meeting tonight

1 message

Andrew Haig <amhaig@yahoo.com>

Thu, Apr 13, 2017 at 1:07 PM

Reply-To: Andrew Haig <amhaig@yahoo.com>

To: "jecker@bhamgov.org" <jecker@bhamgov.org>

Cc: "jvalentine@bhamgov.org" <jvalentine@bhamgov.org>

Dear Ms Ecker, my name is Andrew Haig & I live in the Torry sub.

I understand that there is a meeting tonight about the South Eton Corridor & it's expansion, plans, update etc. Unfortunately I am not able to attend it at the posted time for several personal reasons, however I would like to let you know of several of my thoughts on this general issue that appears to be growing in it's contentious nature in our part of the city.

Traffic volume on S. Eton:

Very high, too high for the type of street.

I have met with Mr Valentine & seen some proposals for traffic calming, however I do feel, and I expressed this to him at the time, that they are insufficient in scope & ability to calm traffic volume

Traffic speeds on S. Eton

Also too high, I am not sure that the calming measures proposed will slow anyone down sufficiently. I actively avoid walking with my young family along Eton due to volume & speeds as I do not feel that it is safe enough for me to have toddlers walking with me or my wife.

S. Eton road vehicle rating (not sure if this is expressed correctly)

Due to the existing & the new businesses in the Rail district, we are seeing more & more large Semi trucks on the road. As I understand it, the road between Lincoln & 14 mile is not rated for large semi trucks. Realistically, the entire street is not rated for them & their impact. The road will need to be fully de rated once the traffic calming is in place as there will be insufficient space for them. I know that several residents are frequently inconvenienced by tractor trailer units parking in front of their driveways already, and this is with the wider road up by the Irongate, Griffin Claw, Auto Europe part of the street. Once the road is narrower, then these trucks will literally stop in the middle of the road & create a significant hazard & traffic congestion issue - which will push vehicles to now use the side streets as 'rat runs' to get around them.

Side streets leading to & from S. Eton, parallel to Lincoln

Mr Valentine & the Birmingham Police department kindly shared data showing traffic volume & speed data measurements from all of these roads. There are certain streets such as Cole that show shockingly high volumes today, due to the build up of businesses on the east side of S. Eton, with many residents expressing alarm at the speed & volume of traffic passing through these previously quiet neighborhoods. TO my point above about potential street obstruction by large trucks, this will only get worse and cause significant additional levels of resentment & public dissatisfaction. Any study of the S. Eton corridor should expand to include the entire Torry sub & surrounding area to evaluate the impact this will have, or it will simply be an 'ignoring of the problem' that will potentially need something very unfortunate to happen one day before it gets attention. Let's try to avoid this unfortunate possibility before it happens as it is a lot easier to plan ahead rather than to correct issues.

Lincoln Yard Bistro:

Multiple issues that have never been addressed in any forum I am aware of, or with the residents surrounding the location.

I understand, appreciate & welcome the development of the city, let's be very clear on that, however:

Traffic: There are 3 routes to get to Lincoln Yard: North from 14 mile, South from Maple, East on Lincoln.

None of which are suitable for higher volumes of late night or evening "happy hour" traffic volumes & also the potential for impaired or distracted drivers in the middle of residential neighborhoods.

Having been nearly hit by an SUV while crossing the crosswalk in front of Our Shepherd in well lit conditions, I feel that it is not responsible of the city to have granted this location.

Street lighting & marking is insufficient for this type of traffic

Noise. As I have understood it, the bistro will have rooftop seating. A question - has a noise study been conducted in the subdivision to understand the noise transfer levels that will radiate from a rooftop level? I highly doubt this.

If we take the average decibel level of a rooftop restaurant, at the correct height above the ground & radiate it at the time of day at which the restaurant will be in operation, I would like to see dB readings taken in a radial pattern at different distances from this location to understand just how much greater than the current ambient noise levels we will have to suffer, especially on the nice summer evenings & nights when most residents are going to bed with their windows open. This is brought up here as I feel it is part & parcel of the overall development of the area, which is directly linked to the development of the corridor and it is a factor that has been ignored completely. There are insufficient large, mature evergreen type trees in place that would help disperse the noise level all year round. To add them would change the development plan and the nature of the landscape - not taken into account for the environmental aspect.

I realise that this is a lot to digest, however these are some of the primary thoughts I have in mind when I think about the Eton corridor & it's development, as I feel that there has been far too little total community impact & consultation taken into account & we are being conscripted into things we do not all fully know about, understand or agree with.

What does it take for this to be fully re-investigated and a resident approved poll taken of all residents within a reasonable radius of the development corridor?

Please let's do it right before it is too late & the City receives no end of issues from highly irate residents, who I suspect, collectively, have far more time, resources & expertise available to them through their own personal networks that I suspect anyone realises. How about we all work together to USE these resources before they get turned into a counterproductive force?

I look forward to having more involvement if possible and also to additional discussions with the City and residents on this matter as I feel it is important to all of us who have invested so much of our lives & personal finances into this highly desirable city, to further improve our little corner of the world.

Yours,

Andrew Haig.

DRAFT

**CITY OF BIRMINGHAM
MULTI-MODAL TRANSPORTATION BOARD
THURSDAY, MAY 4, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Multi-Modal Transportation Board held Thursday, May 4, 2017.

Vice Chairman Andy Lawson convened the meeting at 6 p.m.

1. ROLL CALL

Present: Vice Chairman Andy Lawson; Board Members Lara Edwards, Amy Folberg, Daniel Rontal, Michael Surnow; Alternate Member Katie Schaefer

Absent: Chairperson Vionna Adams; Board Member Johanna Slanga

Administration: Jana Ecker, Planning Director
Scott Grewe, Operations Commander
Paul O'Meara, City Engineer
Carole Salutes, Recording Secretary

Also Present: Julie Kroll and Mike Labadie from Fleis & Vandenbrink ("F&V"), Transportation Engineering Consultants

2. INTRODUCTIONS

3. REVIEW AGENDA (no change)

4. APPROVAL OF MINUTES, MEETING OF APRIL 13, 2017

Motion by Mr. Rontal

Seconded by Mr Surnow to approve the Minutes of April 13, 2017 as presented.

Motion carried, 6-0.

VOICE VOTE

Yeas: Rontal, Surnow, Edwards, Folberg, Lawson, Schaefer

Nays: None

Absent: Adams, Slanga

5. LAWDALE AVE. RECONSTRUCTION

Mr. O'Meara recalled that last month the board discussed a parking restriction on the block of Lawndale Ave. north of Oakland Blvd. This discussion pertains to the block south of Oakland Blvd., which operates as a one-way street (northbound only), and is currently signed for No Parking. Funds were budgeted for spot concrete patching. Upon close review this past month, it appeared that most of the street should be replaced and staff concluded that a change in width may be appropriate.

In the 1970's, the crossover at Oakland Blvd. was closed, making it more difficult to use Oakland Blvd. from downtown and traffic demand on Lawndale Ave. likely was cut by over 50%. Currently it is only a benefit to residential traffic headed to the immediate neighborhood. With the reduced traffic demand, the one-way traffic configuration, and no parking, the 24 ft. width seemsexcessive.

Presently, large trucks sit on Lawndale Ave. adjacent to the Holiday Inn Express to unload packages. When this occurs, there needs to be enough width to drive past the truck to enter the neighborhood. With that in mind, a 20 ft. width pavement would be sufficient.

A review of the Multi-Modal Master Plan confirmed that there is a proposal to add a sidewalk along the south side of Oakland Blvd. between Lawndale and Woodward Ave. and relocate the crosswalk. The existing handicap ramps at the corner of Oakland Blvd. will be updated to meet current standards as a part of this project. In terms of adding landscaping in the median, it was discussed that street trees could be added along Lawndale that would be tall enough to see underneath. A permit from MDOT will be needed to complete a portion of the landscaping.

Given that the purpose for this street has changed over the years, and since other modes of traffic such as bikes would have a difficult time accessing this street from Woodward Ave., staff sees this as a good opportunity to reduce the amount of pavement and to save some money.

Motion by Mr Rontal

Seconded by Ms. Folberg to recommend to the City Commission the approval of the plan for a 20 ft. wide road on Lawndale Ave. between Oakland Ave. and Woodward Ave., and to encourage staff to work with MDOT to improve the Woodward Ave. crosswalk in conjunction with their project, and also explore the possibility of landscaping with trees on the eastern side of the triangular island.

Ms. Folberg thought that Parks and Recreation should be informed of this change.

At 6:15 there were no comments from the public.

Motion carried, 6-0.

VOICE VOTE

Yeas: Rontal, Folberg, Edwards, Lawson, Schaefer, Surnow

Nays: None

Absent: Adams, Slanga

6. S. ETON RD. - MAPLE RD. TO LINCOLN AVE.

Ms. Ecker recalled that at the March and April meetings, the MMTB discussed the recommendations of the Ad Hoc Rail District Committee. A recommendation was also passed on to the City Commission focused on changes to the intersection of S. Eton and Maple Rd.

Maple Rd. to Yosemite Blvd.

The Commission expressed concern relative to certain design elements, and encouraged the board to consider a larger bumpout at the southwest corner of the Maple Rd. intersection.

Other concerns expressed by the Commission included:

- The acute turn for vehicles from eastbound Maple Rd. to S. Eton Rd. is problematic.
- The white stop bars may be ignored, causing problems for both motorists and pedestrians.
- The Board should consider the inclusion of a multi-directional bike lane.

Ms. Julie Kroll indicated as far as the stop bar location F&V looked at a couple of options. The first option was the addition of a splitter island. By proposing the splitter island they were able to move the stop bars closer to the intersection than they currently are. That adds two more spaces for vehicle queuing and also improves sight distance for the intersection.

The other option they looked at was a bumpout. That increased the crosswalk distance and reduced queuing space for vehicles, compared to the splitter island proposal. It was noted that it is not possible to do both the splitter island and the bumpout.

Multi-Modal Transportation Board Proceedings

May 4, 2017

Page 4

Ms. Ecker thought the splitter island is the best way to go. More people will be legally stopping where they are supposed to. The intersection is not perfect because it is at an odd angle.

Mr. O'Meara recalled that board members agreed previously that the design does not provide any enhancement for bike traffic because of the narrow right-of-way in this area, plus the clear need for three lanes of traffic at this intersection.

Moving south of Villa Ave., Ms. Kroll demonstrated how a bi-directional bike lane on the west side of S. Eton Rd. would work along with some additional signage. Board members expressed some concerns about the ingress/egress of a biker and discussed a protected bike lane along with the possibility of walking bikes across S. Eton Rd. at the Yosemite or Villa intersection in order to continue north in the bike lane.

Everyone liked the bi-directional bike lane except it would have to cut off at the most needed point where the road narrows.. The bike lane should go all the way north to Maple Rd. on the west side where people can walk across Maple Rd. in the crosswalk and then continue on N. Eton Rd. where there are bike lanes on each side.

The board wanted staff to go back and look at the option, regardless of how much it costs, of keeping the bi-directional bike lane all the way up to Maple Rd. The Board would like to see what is involved in acquiring land, installing a retaining wall, how much it would cost, and then coming back. This would be Plan A to take to the public and then send to the Commission.

Discussion continued regarding Plan B if land acquisition is not possible. Plan B is as shown from Lincoln to Villa, with a bi-directional bike lane on the west side of the street, currently as shown 5 ft. in each direction. Bumpouts on the east side of the street could be installed at several of the intersections with enhanced crossings. From Villa to Yosemite, add enhanced sharrows with a green background, eliminate the on-street parking for the businesses on the west side, and all the way down to Lincoln.

After much discussion, the Board favored the elimination of the northbound bike lane, adding 3 ft. to the sidewalks on either side (8 ft. sidewalks), and a 4 ft. landscaped grass area with street trees on the east and west sides from Villa to Yosemite. From Yosemite to Maple Rd. the proposal would stay as before with an 8' wide expanded sidewalk on the west side of S. Eton.

Commander Grewe suggested that maybe the alternative in that area is to encourage bikers to get on the sidewalk and walk their bikes.

Board members went on to explore various buffers that would protect the bike lanes. It was concluded that the center line in the bi-directional bike lanes could be eliminated. If that doesn't work, a centerline can always be added later. Low profile barriers were preferred within 1.5 ft., such as turtle bumps, oblong low bumps, and linear barriers.

It was suggested that a public hearing wherein all owners within 300 ft. of the corridor be invited to the next MMTB meeting to provide input before a final recommendation is made. It is planned to delay the connector route work in this area until a final design is approved by the Commission, with the hope that the pavement markings and sidewalk changes can still be implemented during the 2017 construction. The more extensive bumpout work at several intersections involves more work that will have to be budgeted in a future budget cycle.

Motion by Dr. Rontal

Seconded by Ms. Folberg to set a public hearing regarding the S. Eton Rd. corridor bi-directional bike lane proposal as amended this evening for the regular Multi-Modal Transportation Board meeting of June 1, 2017 at 6 p.m.

Modifications made tonight are from Villa to Yosemite to add enhanced sharrows, eliminate parking on the west side, and eliminate the northbound bike lane on the east side as shown on the plans and make both sidewalks on the east and west side an additional 3 ft. wide (8 ft.) plus a 4 ft. green boulevard with street trees up to Yosemite. Then from Yosemite to Maple Rd., continue with the plans as shown which are enhanced sharrows and a widened sidewalk to 8 ft. on the west side of the street. The bi-directional bike lane will be 8.5 ft. plus 1.5 ft. for a buffer of some sort, whether it be turtle bumps, oblong low, or linear barriers.

No one from the public wished to discuss the motion at 8:10 p.m.

Motion carried, 6-0.

VOICE VOTE

Yeas: Rontal, Folberg, Edwards, Lawson, Schaefer, Surnow

Nays: None

Absent: Adams, Slanga

The Vice-Chairman asked board members to travel this route on their bikes before the public meeting next month.

7. MEETING OPEN TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA



MEMORANDUM

Engineering Dept.

DATE: May 25, 2017

TO: Multi-Modal Transportation Board

FROM: Paul T. O'Meara, City Engineer

SUBJECT: S. Eton Rd. – Maple Rd. to Lincoln Ave.
Multi-Modal Improvements

As you know, the Multi-Modal Master Plan, finalized in 2014, proposed changes to the above half-mile collector street that also serves as the westerly boundary of the Rail District. In March, 2016, the City Commission approved the installation of a Neighborhood Connector Route that would provide a marked, signed route for bicyclists circling around the City. The signing and pavement markings are now incorporated in a larger project that has been awarded, and implementation is set for this summer. For this segment, this initial plan called for leaving the road operating as it is, but adding sharrows through this half mile corridor.

Soon after, amid continued requests for changes from the community, the City Commission appointed the Ad Hoc Rail District Committee to study parking demand and multi-modal issues in this area. Their final report was submitted to the City Commission in December, 2016.

Early this year, the Multi-Modal Transportation Board (MMTB) focused on potential improvements to the Maple Rd. & S. Eton Rd. intersection. In April, the City Commission reviewed a recommended design that featured the installation of a "splitter island" between the two northbound Eton Rd. lanes, providing a refuge for pedestrians crossing Eton Rd. at Maple Rd. The proposal also recommended the relocation of the west side curb for the block between Maple Rd. and Yosemite Blvd., which allows the widening of the west side sidewalk for the entire block. The Commission had reservations about the intersection design, and directed the matter back to the MMTB for further discussion.

At the May, 2017 meeting, staff presented a new concept for S. Eton Rd. from Yosemite Blvd. to Lincoln Ave., generally proposing a two-lane bike lane along the west side of the road, resulting in the removal of parking on this section. The Board generally endorsed the plan, but made several suggestions for the block north of Villa Ave. Those changes were incorporated in a revised plan, which is attached. A public hearing to present these ideas to the community was scheduled for the June 1, 2017 meeting. Hundreds of postcards were sent to all owners and tenants within 300 ft. of the S. Eton Rd. corridor, inviting them to submit comments or attend the hearing. The following summarizes the current plan:

MAPLE RD. TO YOSEMITE BLVD.

As requested, the MMTB again studied the design for Multi-Modal improvements on this block. The alternate design for installing a bumpout on the southwest corner was considered. However, since it resulted in a longer crossing for pedestrians, it was rejected in favor of the

splitter island design. Discussion was also held about the lack of a bike lane opportunity in this area. The Board determined that due to the lack of right-of-way, and the need for three vehicular lanes, the installation of sharrows is all that can realistically be envisioned at this time.

The Board also discussed the issue of the location of the stop bars relative to the proposed island. It was noted that the new stop bar locations are actually closer to the intersection than the current ones. The consultant is recommending large hatched pavement markings in front of the left lane stop bar, to help discouraging drivers from occupying this area. Since it is not clear to what extent this problem will exist, it is recommended that these markings be placed after construction, if needed.

The Board continues to support the relocation of the west side curb in order to widen the west side sidewalk for the entire block.

YOSEMITE BLVD. TO VILLA AVE.

The plan presented by staff at the last meeting had proposed maintaining parking on the west side, and installing a buffered bike lane for northbound traffic. The board made several suggestions, which have been incorporated on the new attached plan and cross-section. Features of the new plan include:

- Removal and replacement of the sidewalks so that they would be a consistent 8 ft. wide.
- Relocation of the curb and gutter section on both sides of the street to accommodate both the wider sidewalks, as well as a 4 ft. wide green space with City trees.
- Removal of the public parking on the west side of the street (consistent with the proposal further south).
- Installation of enhanced sharrows for both directions.

Now that this block has been laid out using actual measurements, it is noted that the southbound lane will remain wider than the southbound lane, as it is currently. We do not recommend using this extra space for some form of marked bike lane, as it is important that northbound bikes cross Eton at Villa Ave., where sight distance is better. If a marked bike lane was provided for just southbound bikes on this block, it may encourage northbound bikes to use this area as well, which is not recommended.

VILLA AVE. TO LINCOLN AVE.

The plan has been refined in this area with the following features:

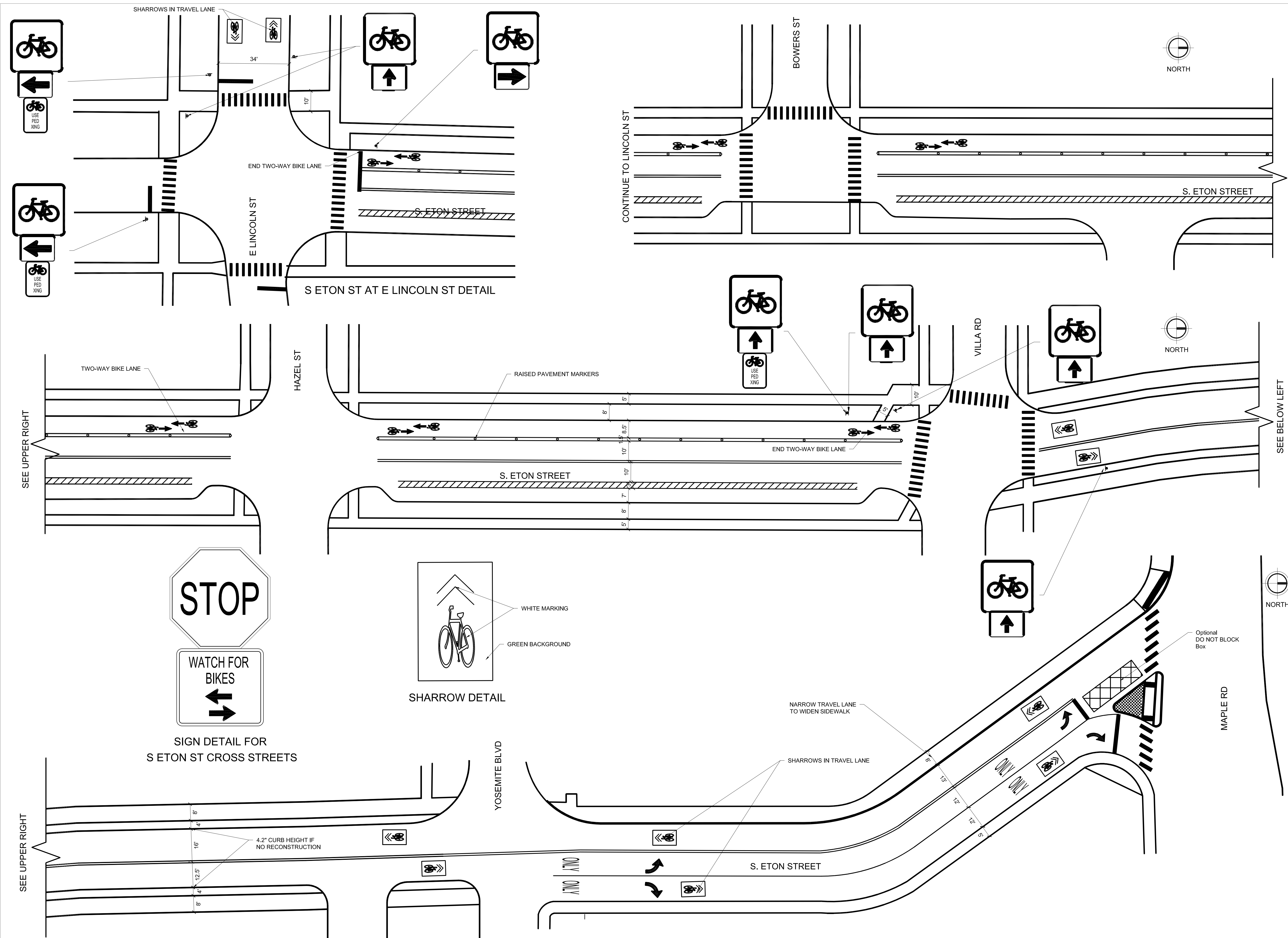
- The centerline pavement marking has been removed from the two-way bike lane.
- The bike lane has been narrowed to 8.5 ft., to allow for a 1.5 ft. wide buffer area that will be supplemented with some form of raised markers. If this proposal moves forward to construction, staff will investigate various options to determine which one will work best.
- Though not called out on the plan, the public hearing notice identified the following locations for suggested bumpouts on the west side of the street, in accordance with the Ad Hoc Rail District Committee recommendation:
Villa Ave., Hazel Ave., Bowers Ave., Cole Ave., and Lincoln Ave.

The design otherwise remains the same. Should the Board wish to proceed with this design, a suggested recommendation follows.

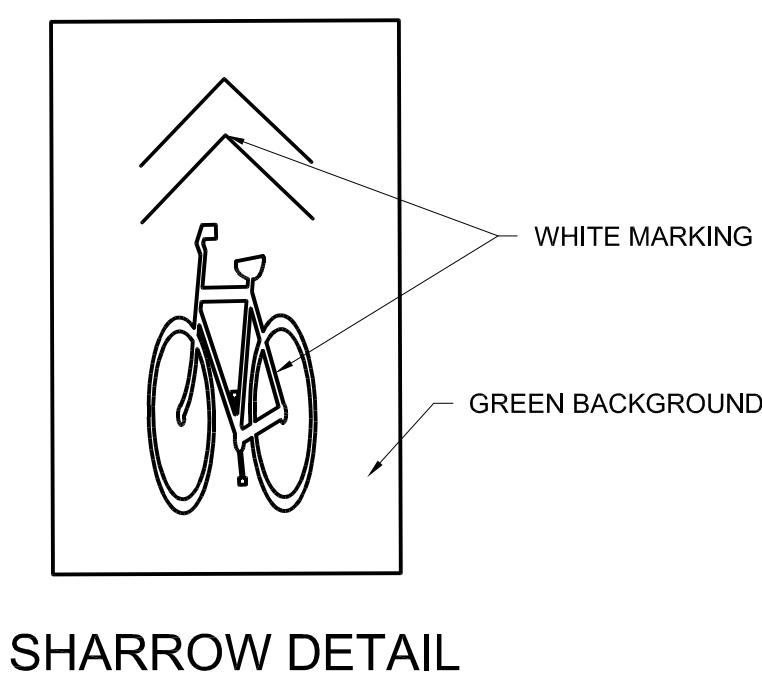
SUGGESTED RECOMMENDATION:

To recommend that the City Commission approve and budget for the following Multi-Modal improvements to S. Eton Rd. from Maple Rd. to Lincoln Ave.:

1. Maple Rd. to Yosemite Blvd.
 - a. Installation of a splitter island at the Maple Rd. pedestrian crosswalk, located between the two northbound lanes of S. Eton Rd.
 - b. Relocation of the west side curb and gutter to accommodate an 8 ft. wide sidewalk along the entire block.
 - c. Installation of a wider sidewalk adjacent to the handicap ramp at the southeast corner of Maple Rd.
 - d. Installation of sharrows on green painted squares for both directions.
2. Yosemite Blvd. to Villa Ave.
 - a. Removal of the existing parking on the west side of the street.
 - b. Relocation of the curb and gutter on both sides of the street to accommodate 8 ft. wide sidewalks and 4 ft. wide green spaces with new City trees.
 - c. Installation of sharrows on green painted squares for both directions.
3. Villa Ave. to Lincoln Ave.
 - a. Removal of the existing parking on the west side of the street, replaced with an 8.5 ft. wide bi-directional bike lane and a 1.5 ft. buffer with raised markers.
 - b. Sidewalk improvements as needed at Villa Ave. and Lincoln Ave. to facilitate the bi-directional bike lane.
 - c. Installation of a 3 ft. wide buffer between the northbound travel lane and 7 ft. parking lane.
 - d. Curbed bumpouts at marked pedestrian crosswalks on the west side of the street, at the intersections of Villa Ave., Hazel Ave., Bowers Ave., Cole Ave., and Lincoln Ave.



S ETON ST AT E LINCOLN ST DETAIL



SEE BELOW LEFT

SEE BELOW LEFT

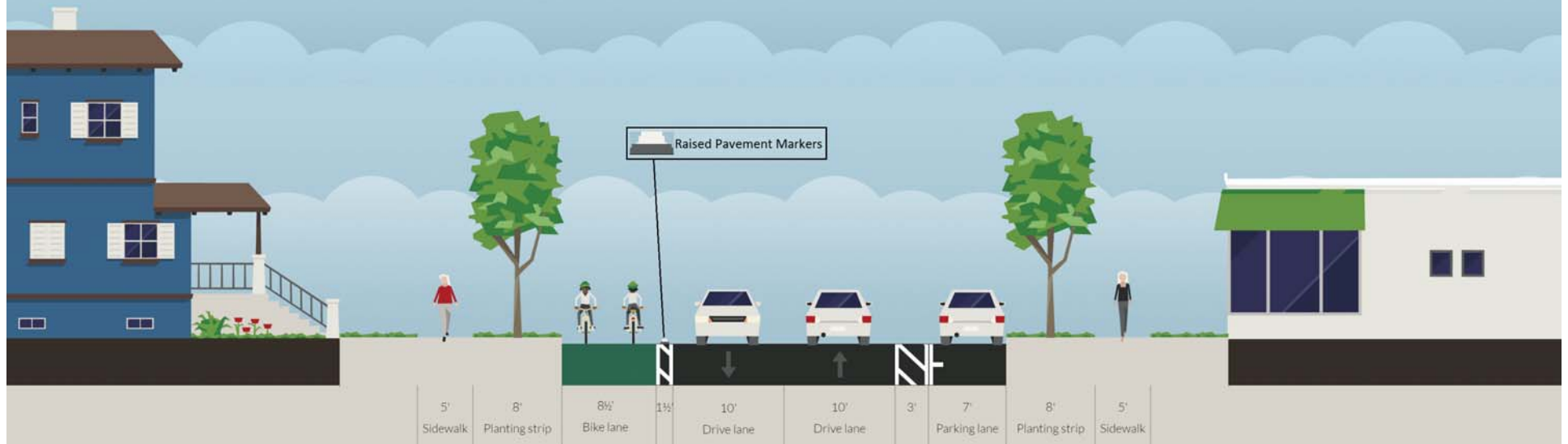
SEE UPPER RIGHT

SEE UPPER RIGHT

S. Eton Street (Villa to Yosemite)-Looking North



S. Eton Street (Lincoln to Villa)-Looking North



CITY OF BIRMINGHAM
S. ETON RD. – MAPLE RD. TO LINCOLN AVE.

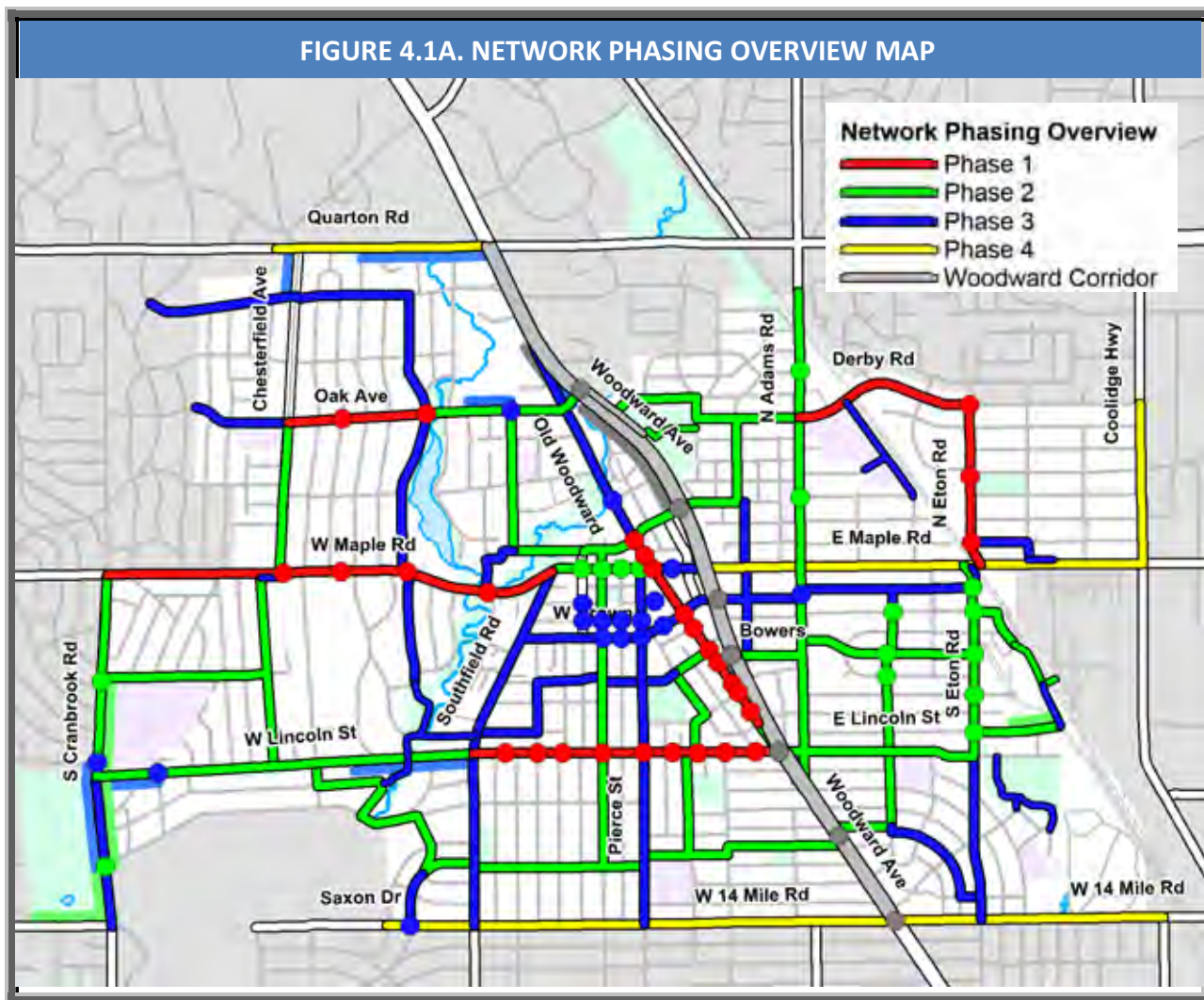
The Multi-Modal Transportation Board is a volunteer group appointed by the City Commission to make recommendations for public street improvements in accordance with the Multi-Modal Master Plan. A public hearing is scheduled on **Thursday, June 1, 2017, at 6:00 P.M.** at the Birmingham Municipal Bldg. (151 Martin St.) to discuss the above corridor. Please enter through the Police Dept. on the Pierce St. side of the building. Proposals include the installation of a pedestrian island improvement at Maple Rd., the removal of on-street parking on the west side, installation of a bike lane on the existing pavement, and pedestrian bumpouts at the intersections of Villa, Hazel, Bowers, Cole, and Lincoln. Please go to www.bhamgov.org/government/boards/MMTB_board.php for details. You may also call the Engineering or Planning Depts. at 248-530-1850 if you have questions.

If you wish to submit written comment for the Board to consider, please send to pomeara@bhamgov.org no later than May 25, 2017.

CITY OF BIRMINGHAM
S. ETON RD. – MAPLE RD. TO LINCOLN AVE.

The Multi-Modal Transportation Board is a volunteer group appointed by the City Commission to make recommendations for public street improvements in accordance with the Multi-Modal Master Plan. A public hearing is scheduled on **Thursday, June 1, 2017, at 6:00 P.M.** at the Birmingham Municipal Bldg. (151 Martin St.) to discuss the above corridor. Please enter through the Police Dept. on the Pierce St. side of the building. Proposals include the installation of a pedestrian island improvement at Maple Rd., the removal of on-street parking on the west side, installation of a bike lane on the existing pavement, and pedestrian bumpouts at the intersections of Villa, Hazel, Bowers, Cole, and Lincoln. Please go to www.bhamgov.org/government/boards/MMTB_board.php for details. You may also call the Engineering or Planning Depts. at 248-530-1850 if you have questions.

If you wish to submit written comment for the Board to consider, please send to pomeara@bhamgov.org no later than May 25, 2017.



CONCURRENT STUDIES

Numerous concurrent studies were underway on the Woodward Avenue Corridor during the creation of this plan. Due to this occurrence, implementation recommendations for this corridor were not provided. Details on the Woodward Avenue Corridor can be found under the Specific Area Concept Plans.

CITY OF BIRMINGHAM MULTIMODAL TRANSPORTATION PLAN NETWORK IMPLEMENTATION PLAN



4.2 PHASE 1

PHASE 1: OVERVIEW

Many of the routes in Phase 1 may be implemented as part of the City's Capital Improvement Plan (CIP). A Capital Improvement Plan is a short-range plan, usually five to ten years which identifies capital projects and provides planning schedules and options for financing the plan. CIP roadway projects generally fall into two categories, resurfacing and reconstruction. Resurfacing projects typically only affect the surface of the roadway, whereas in a reconstruction project the existing roadway, curb and sidewalk may be completely removed and reconstructed. Incorporating the proposed improvements with the CIP is a cost effective way to implement the facilities as it will reduce mobilization costs and help to consolidate roadway closures.

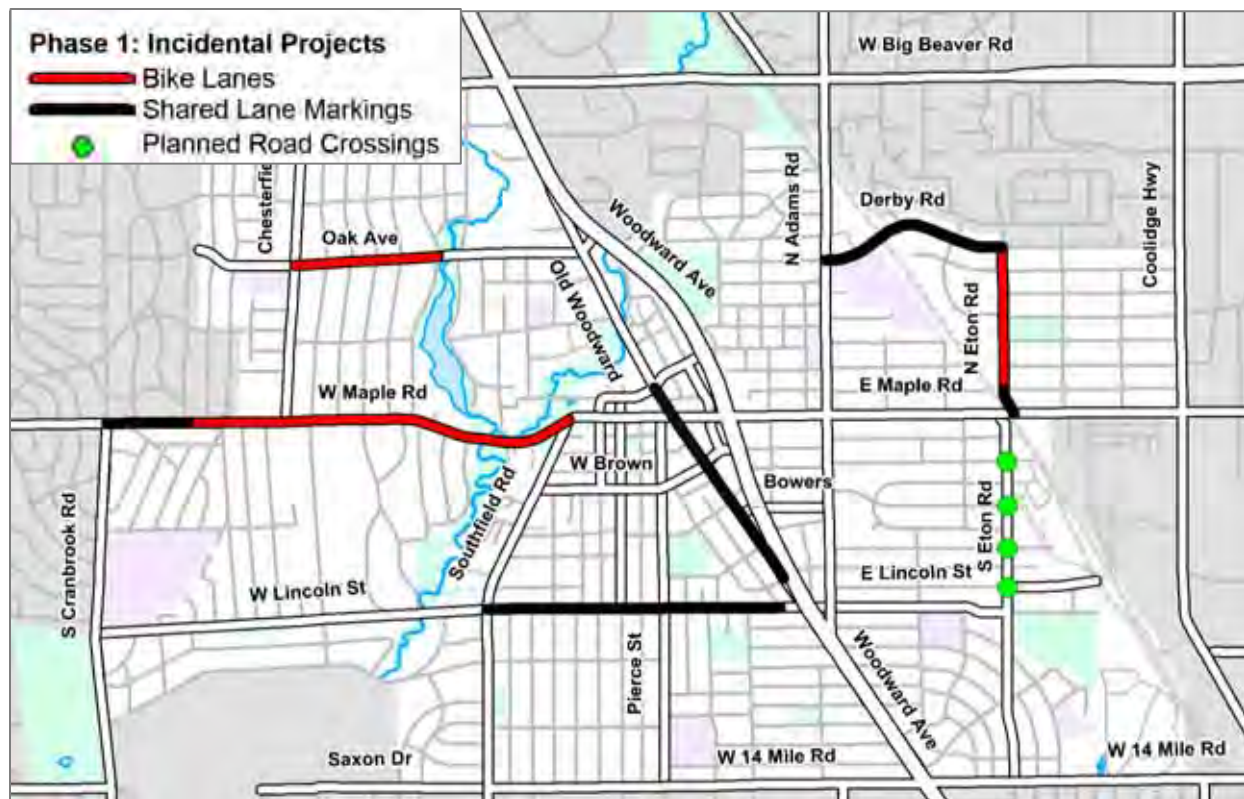
The following pages provide a more detailed breakdown of Phase 1.

FIGURE 4.2A. PHASE 1



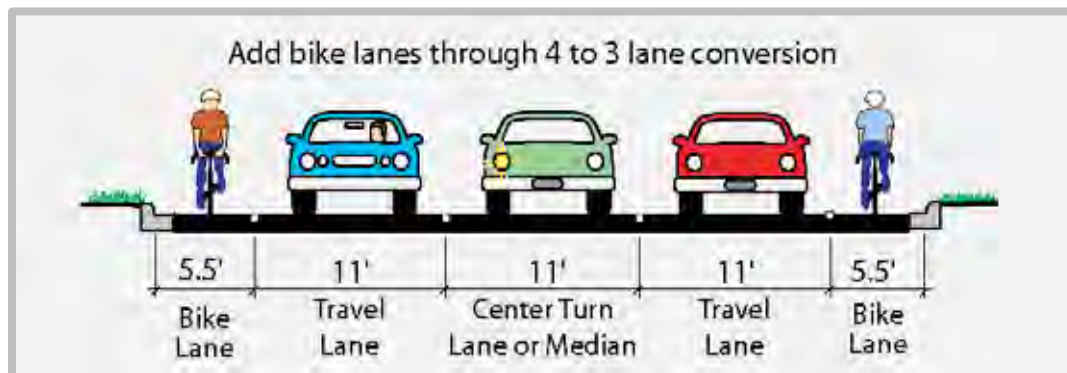
PHASE 1: INCIDENTAL PROJECTS

The following is a list of projects that could be implemented as part of the City's Capital Improvement Plan (CIP) with incidental costs.



Add bike lanes to W Maple Road between Waddington Street and Southfield Road through a four-lane to three-lane conversion as part of the 2015 road resurfacing project.

W MAPLE ROAD



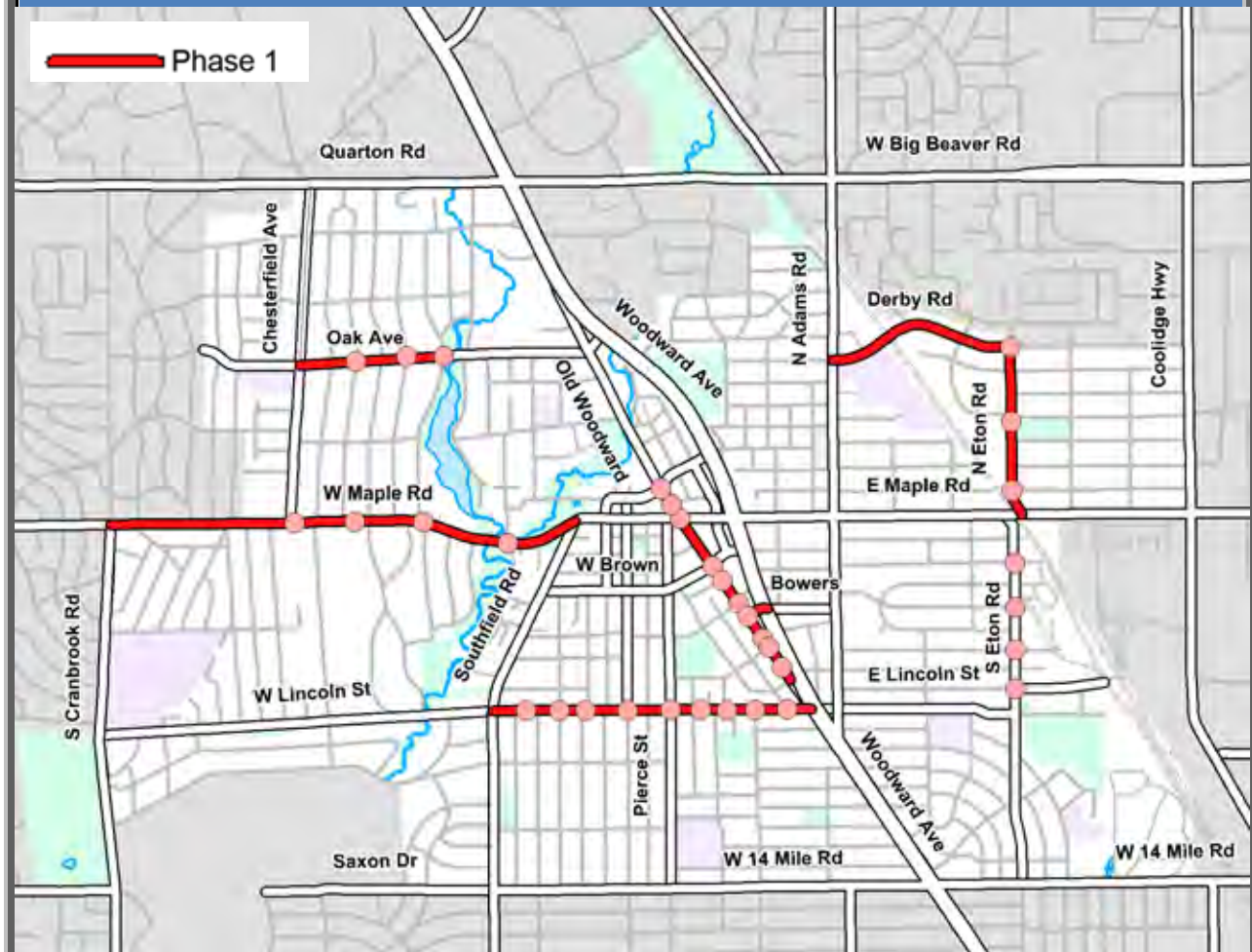
Add shared lane markings to the following corridors:

- Derby Road between N Adams Road and the Railroad Overpass (2013 reconstruction project)
- Derby Road between the Railroad Overpass and N Eton Road (2014 resurfacing project)
- Lincoln Street between Southfield Road and Ann Street (2014 resurfacing project)
- N Eton Road between Yorkshire Road and E Maple Road (2014 reconstruction project)
- W Maple Road between Cranbrook Road and Waddington Street (2015 resurfacing project)
- N Old Woodward Avenue between Willits Street and W Maple Road (2016 reconstruction project)
- S Old Woodward Avenue between W Maple Road and E Brown Street (2016 reconstruction project)
- S Old Woodward Avenue between E Brown Street and Landon Road (2017 reconstruction project)

Four new road crossings are planned on S Eton Road between E Maple Road and E Lincoln Street in 2013. The plans for these crossing include basic improvements such as pavement markings. As part of Phase 2 it is recommended that curb extensions be implemented at these crossing locations as well.

PHASE 1 INCIDENTAL PROJECTS:				
Road	From	To	Quantity	Unit
Bike Lanes:				
N Eton Rd	Yorkshire Rd	Derby Rd	0.40	MI
W Maple Rd	Waddington St	Southfield Rd	1.12	MI
Oak Ave	Chesterfield Ave	Lake Park Dr	0.40	MI
Shared Lane Markings (placed every 200' - 250'):				
Derby Rd	N Adams Rd	Railroad Overpass	0.17	MI
Derby Rd	Railroad Overpass	N Eton Rd	0.36	MI
Lincoln St	Southfield Rd	Ann St	0.80	MI
W Maple Rd	Cranbrook Rd	Waddington St	0.20	MI
N Old Woodward Ave	Willits St	W Maple Rd	0.10	MI
S Old Woodward Ave	W Maple Rd	E Brown St	0.17	MI
S Old Woodward Ave	E Brown St	Landon Rd	0.43	MI
Road Crossings				
S Eton Rd	at Villa Rd		1	EACH
S Eton Rd	at Bowers St		1	EACH
S Eton Rd	at Holland St		1	EACH
S Eton Rd	at Cole St		1	EACH

FIGURE 4.2B. PHASE 1 SUMMARY MAP



APPROXIMATE COST ESTIMATE FOR PHASE 1: \$1,300,000

APPROXIMATELY 4.5 MILES OF NEW MULTI-MODAL FACILITIES ARE PROPOSED IN PHASE 1:

- 2 MILES OF BIKE LANES
- 2.3 MILES OF SHARED LANE MARKINGS
- 0.1 MILES OF COLORED SHARED LANE MARKINGS
- 0.1 MILES OF SIDEWALK (NOT SHOWN ON MAP)
- 31 ROAD CROSSING IMPROVEMENTS
- 2 TREE EXTENSIONS
- 44 BICYCLE PARKING HOOPS (NOT SHOWN ON MAP)
- 5 BUS SHELTERS (NOT SHOWN ON MAP)

CITY OF BIRMINGHAM MULTIMODAL TRANSPORTATION PLAN NETWORK IMPLEMENTATION PLAN



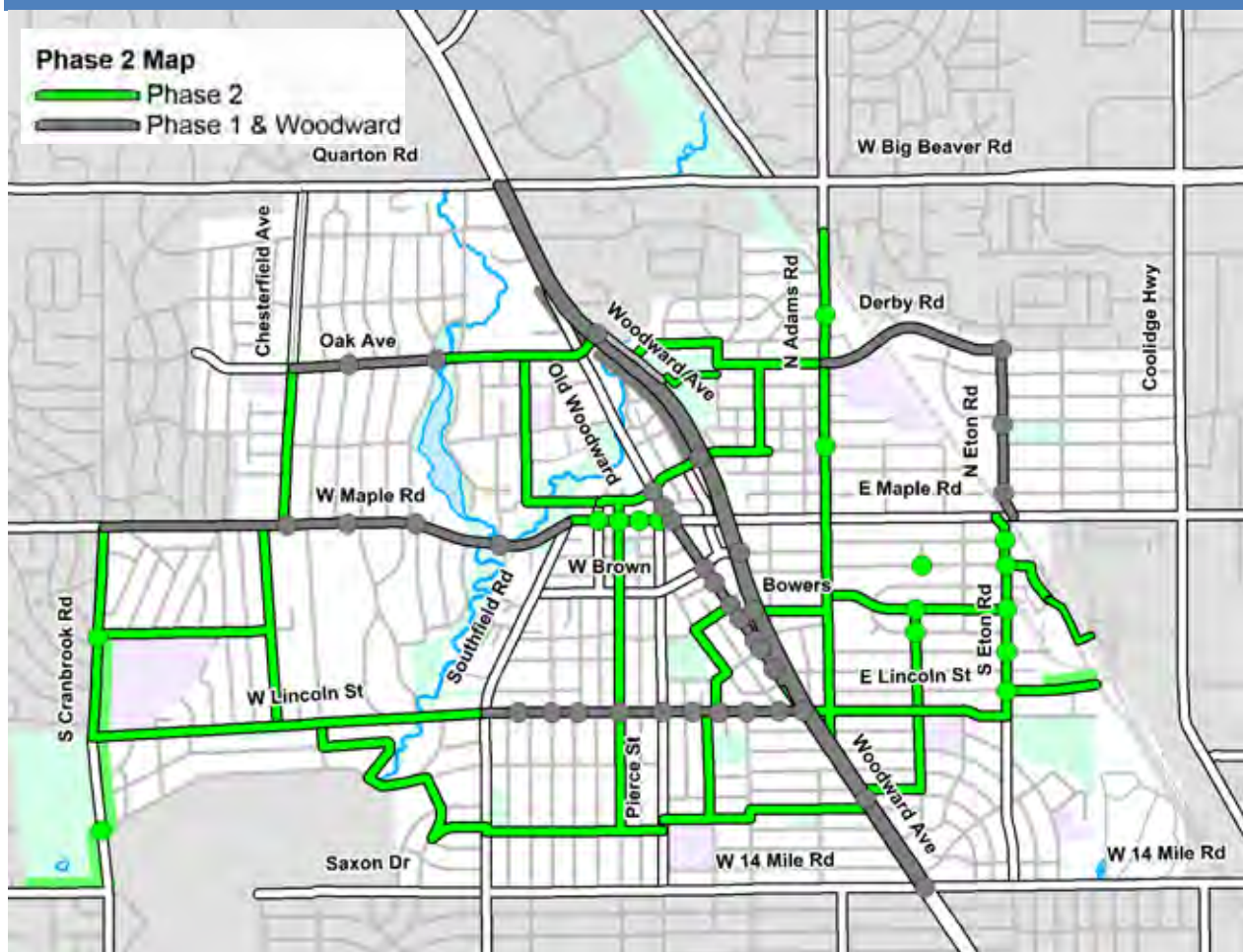
4.3 PHASE 2

PHASE 2: OVERVIEW

Phase 2 objective is to provide connections across the community and create a backbone for the City's long-range multi-modal system. This phase achieves this by building on the existing multi-modal system.

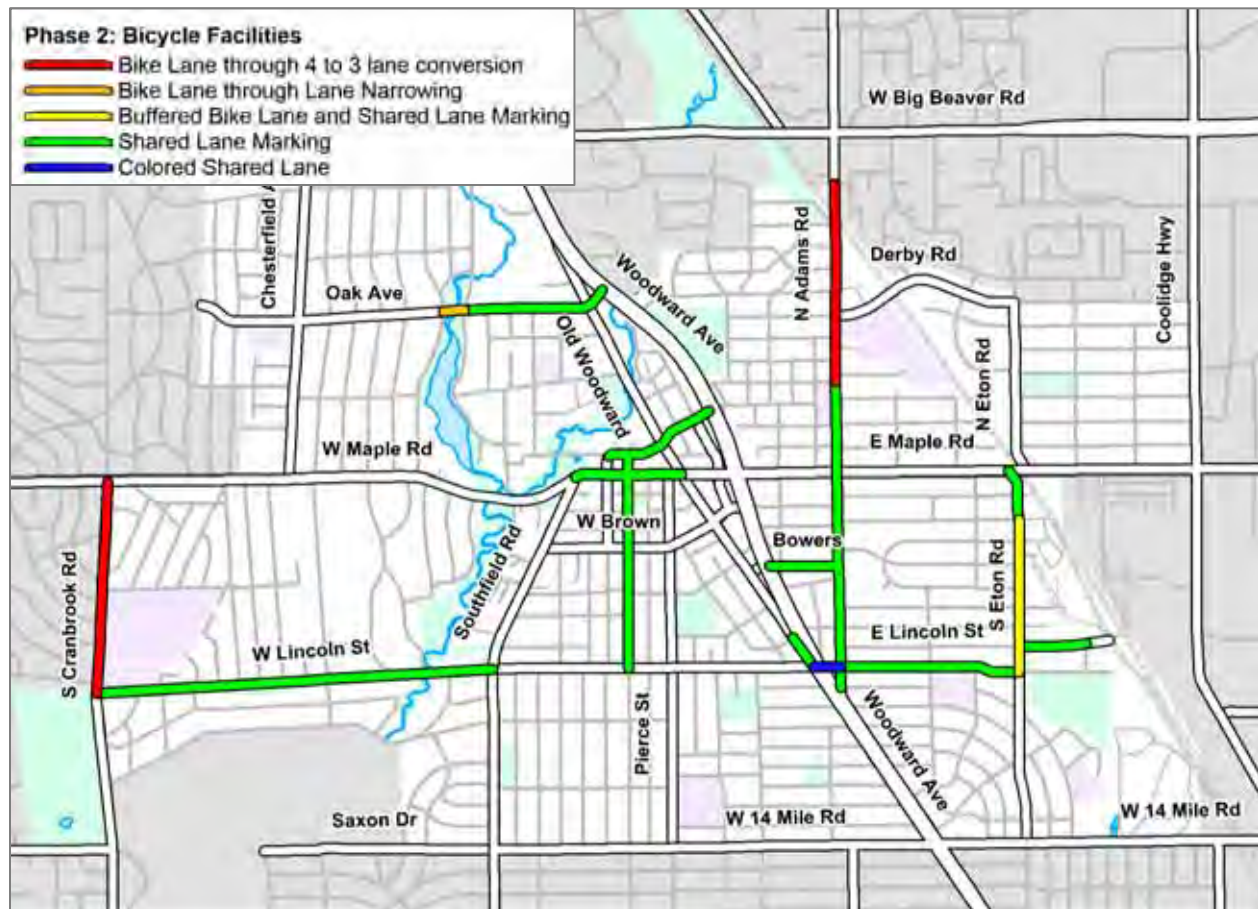
The following pages provide a more detailed breakdown of Phase 2.

FIGURE 4.3A. PHASE 2



PHASE 2: PROPOSED BIKE FACILITIES

The following provides a list of on-road bike facilities that can be implemented in the near-term with minimal changes to the roadway. Please note that at time of implementation all bike facilities should be accompanied by appropriate signage.



On S Eton Road between Yosemite Boulevard and E Lincoln Street, remove parking on the west side of the street and add a buffered bike lane. On the east side of the street keep on-street parking and add a shared-lane marking. The buffer between the bike lane and travel lane should be cross hatched.

S ETON ROAD





Paul O'Meara <pomeara@bhamgov.org>

MMTB PUBLIC HEARING 6/1/17

2 messages

Alice Thimm <adthimm@att.net>

Sat, May 20, 2017 at 6:03 PM

To: "Paul T. O'Meara" <pomeara@bhamgov.org>

Paul, here's my letter for the public hearing, reformatted, please let me know if you have any questions or concerns. Thank you!

I and many others have a concern with S. Eton from Maple to Lincoln. There was a study to rebuild the road and a very good plan was provided to the City by Norman Cox of Greenway Collaborative. Adoption of the plan presented at that time addresses and would resolve a serious safety issue that has existed for too long. For any vehicle or pedestrian wanting to enter or cross S. Eton from any of the side streets along the west side of S. Eton Road, it poses a very dangerous situation. When cars are parked along the west side of S. Eton, anyone wanting to cross or enter the road needs to actually enter the lane of southbound traffic in order to see around the cars parked either to the right or left of the side street.

Any residents living on the side streets that corner on S. Eton have the use of their driveways, garages, and, parking for them is also available in the street in front of their home. Except as a choice or for convenience, there is no need for those residents to park on S. Eton which is also the case for beauty shop customers who are provided an on-site parking lot which I've never seen full. Parking is however needed on the east side of the road for the businesses but no parking should be permitted on the west side as it is definitely a safety issue for so many.

It would also be good to see a safe connection of the bike lane on N. Eton to a designated bike lane along the west side of S. Eton going down to Lincoln. There are many bikers in the Pembroke Manor neighborhood who now either walk or ride their bikes to the new brewery, the businesses in the Rail District, and all the facilities at Kenning Park. Connected bike lanes would insure safer travel. Also, if a bike lane would be planned for Lincoln across to Woodward, it would further provide an east-west connection to destinations.

I encourage the adoption and implementation of the Greenway Collaborative S. Eton Road plan or a comparable MMTB plan which would specify a designated safe bicycle lane, bump-outs, and especially and most importantly, no parking on the west side of S. Eton from Maple to Lincoln.

Sincerely,

Alice Thimm

Sent from my iPad

Paul O'Meara <pomeara@bhamgov.org>

Mon, May 22, 2017 at 8:40 AM

Draft To: Alice Thimm <adthimm@att.net>

You did get it fixed - thanks. I will include this one

[Quoted text hidden]

--



Paul O'Meara <pomeara@bhamgov.org>

Fwd: 2013 LETTER FROM COX

1 message

Paul O'Meara <pomeara@bhamgov.org>
To: Paul O'Meara <Pomeara@bhamgov.org>

Mon, May 22, 2017 at 8:43 AM

----- Forwarded message -----

From: **Alice Thimm** <adthimm@att.net>
Date: Thu, May 18, 2017 at 10:08 PM
Subject: Fwd: 2013 LETTER FROM COX
To: "Paul T. O'Meara" <pomeara@bhamgov.org>

(This email was sent to resident Alice Thimm from Norman Cox, writer of the Multi-Modal Master Plan, in 2013.) - Ed.

Hi Alice,

Thanks for the e-mail and sorry for the delay in my responding, but I think you will like the answers. Regarding your concern regarding pedestrians crossing South Eaton from the side streets I share your concern. That is why we have proposed curb extensions at those locations (see pages 51 and 98).

Also, there will not be any parking on the west side of South Eaton (see page 93) as there will be a buffered bike lane where parking is currently permitted. Parking will only be permitted on the east side for businesses as you suggest.

Which of course means there is indeed the bike lane connection that you suggest (see page 93). For north bound bikes there will be a shared lane marking adjacent to the on-street parking on the east side of the road.

The pages I reference are from the October 14 draft. The page numbers have shifted around some in the past few revisions. You can download that version here. <http://greenwaycollab.com/Projects/Birmingham/BMMTP.html>.

FYI, there is a public hearing on the plan at the City Commission meeting on November 25th at 7:30.

Thanks for your involvement in the project. Your email made my day, I don't think in 20 years of practice I have ever been 3 for 3 in being able to say we have already addressed someone's suggestions.

Thanks,

- Norm

Norman Cox, PLA, ASLA
The **Greenway** Collaborative, Inc.
205 Nickels Arcade, Ann Arbor, MI 48104-2409
T: [734-668-8848](tel:734-668-8848) C: [734-239-5967](tel:734-239-5967)

Sent from my iPad



Jana Ecker <jecker@bhamgov.org>

BIKE LANES

1 message

Alice Thimm <adthimm@att.net>

Thu, May 18, 2017 at 11:56 AM

To: "Jana L. Ecker" <jecker@bhamgov.org>

Jana, this is a picture that Mark Nikita took. Everything about this appears to be perfect and perhaps the MMTB could view it and get some ideas for bike lanes on South Eton. Please show the Board if the issue will still be discussed now or in the future. I know the public hearing has been set for June 1st.

You're aware of my opinion that this is purely a "safety" issue for anyone crossing or entering Eton that needs to be addressed by prohibiting vehicle parking on the West side of the road.

Thank you,

Alice Thimm

Sent from my iPad



063E483F-7618-4E04-9645-2E5C07C9E0B0.JPG
1400K



Jana Ecker <jecker@bhamgov.org>

Birmingham Multi Modal meeting June 1st - input in case I am unable to attend

1 message

Andrew Haig <amhaig@yahoo.com>

Wed, May 24, 2017 at 1:41 PM

Reply-To: Andrew Haig <amhaig@yahoo.com>

To: "jvalentine@bhamgov.org" <jvalentine@bhamgov.org>, "jecker@bhamgov.org" <jecker@bhamgov.org>, "sgrewe@bhamgov.org" <sgrewe@bhamgov.org>, "pomeara@bhamgov.org" <pomeara@bhamgov.org>

Dear Mr O'Meara,

I am hoping to be able to attend the Multi Modal meeting on June 1st in person, but should personal issues prevent that happening I would like to have my thoughts & suggestions laid out on the table as ones for discussion & consideration for the changes to the South Eton corridor.

We have had many local discussions within the community along Eton (North & South) about the traffic, congestion, speeds, distracted drivers and growth of commerce in the immediate surrounding area. Some of it has been incredibly positive & helpful some of it has been quite depressing & upsetting - the full spectrum of emotions. I know that Mr Valentine is aware of many of the discussions held online via the website / app called NextDoor which has been a great forum for us all to interact with one another and he may be able to help with any specific details.

Specifically S. Eton:

Issues today:

- High traffic volumes that are forecast to increase significantly with the opening of Whole Foods.
- Parking issues with the growth of S. Eton commerce
- High traffic speeds on S. Eton & the perpendicular filter streets, (Cole Street being one that is recorded with much higher volumes than others)
- Driver behaviours in this general neighbourhood: Ignoring pedestrians on crossings, pulling out of stop signs without looking, high speed, 'buzzing' bicycles, intentional destruction of the pedestrian crossing signs etc. - all documented
- Resident concerns about traffic volumes, drivers & noise with the potential of Lincoln Yard being no longer a Bistro option but a full blown Class C restaurant & open air venue

Scope (As I understand it):

- To optimise the traffic flow, parking and overall usability and livability of the S. Eton corridor while not detrimentally affecting resident quality of life or Commerce

Proposals on the table:

- Detailed on your website already - I won't waste anyone's time. (I am very pleased to see the optional 'do not block' box on the Maple intersection, Not sure if that was partly down to my discussion with Mr Valentine or not but this is really needed!)

Personal suggestions for further enhancements to the plan:

- I gave Mr Valentine some photos & video's of well established traffic control & Management methods that have been used in the village where I grew up for the last 20 years, Summary of which is: Street narrowing in key areas such as pedestrian crossings, Traffic flow priority via use of chicanes & traffic priority - traffic coming OUT of the control section has priority in a 1 lane chicane, traffic coming IN must wait for outgoing traffic to clear before they can move around the chicane to enter the control zone. This has proven VERY effective at managing flow and does tend to dissuade what we call 'rat runners' from using it as a short cut in peak traffic times as they are guaranteed to be stuck in traffic by taking this route. It does not impede emergency vehicles whatsoever as they roadway is designed with sufficient width etc. for their free passage (and all other normal emergency vehicle

traffic laws in force too) Also the use of creative lane paint to give the impression of narrowing lanes is very helpful too - used all over Europe to great effect.

- De-rating the road. I understand that the road south of Lincoln is rated only for specific sizes of vehicle, why not have this be universal along both North & South Eton as these are now predominantly residential access area's. Exceptions may be made during business hours for deliveries to & from specific businesses such as Auto Europe or Griffin Claw, but there must be very tight rules on where these heavy large vehicles may park. Currently they routinely block roads & driveways causing distress to residents. More can be discussed offline
- Limiting traffic to residents only and or making N & S Eton, no entry roads during rush hours. This is already in place on Cooper avenue south of 14 mile opposite S. Eton & it 'mostly' adhered to by the majority of drivers. Driver education is required but it is not without direct local precedent in it's deployment & effectiveness.
- Speed bumps have been discussed but I feel that they would not be appropriate for Eton, due to emergency vehicle access etc., however in the perpendicular feeder streets that only rarely get such vehicle traffic they may have some deterrent value. Or the other option we use back where I come from is an axle twister - alternating dip & bump to force a vehicle to twist over them, very uncomfortable & only needs to be about 2" to have an effect that is memorable (expensive) if driven over at speed.... Cole Street as one example is used by a significant number of people in a hurry to get to the businesses on Cole, east of Eton & it is a significant source of distress to the residents in that street. - you may have noticed the rate of turnover of houses sold on that street compared to other parallel streets, it is not pretty.
- Pedestrian crossing traffic lights - only activated by push button. These would permit a lot of the children and disabled residents to easily & safely cross Eton and would only stop traffic flow upon demand. If we wanted to, they could also be radar activated that when a speed threshold is exceeded they would automatically turn red to stop the traffic & maintain a lower net speed along the street. This is very, very easy to do with current technology. Having these & any other lights be freestanding pole mounted & not suspended would be very fitting with the environment and also be very visible to pedestrians & bikes as well.

Future proofing

The proposal for a bistro that was withdrawn & pending an upgrade to a full Class C restaurant for Lincoln Yard has a lot of the same residents being negatively affected. Traffic flow & parking is also one part of this and as such, Lincoln needs to be included in any plan as this will be a direct conduit for patrons of this & of the other Rail District businesses.

Any measures taken along Eton need to be aligned & copied along Lincoln too so that this does not become another out of control situation, you know as well as I do it is cheaper to do it all when everyone is planning & building adjacent, than to stop & restart later.

My wife & I have nearly been flattened by an SUV while crossing the crosswalk in the middle of Our Shepherd, by a driver who ignored us in the road & looked disgusted that we were in his way as he passed us doing over 40mph. Similar traffic measures will be needed along Lincoln to avoid similar issues.

The curve on Lincoln between Eton & Our Shepherd is of particular concern to me, especially for any alcohol serving establishment or for anyone coming out of a business late at night. This will be a very misleading curve for many people coming out late at night & I foresee many vehicles ending up in offset frontal collisions, landing in front yards of the 8 or so houses along that curve, or much worse, hitting pedestrians on the crossing in that curve. Realistically, if it is a nice enough evening for people to want to go out to a restaurant, it is nice enough for residents to want to go for a walk, walk the dog etc. and to be crossing or on the sidewalks at night. No one wants to be roadkill for just enjoying their neighbourhood.

Noise from the open patio is of great concern to me, as the buildings in the area & trees are not sufficiently high enough to block the horizontal noise transfer from the proposed rooftop. Anything that could be put in place to block or mitigate that sound would not be very compatible with the residential neighbourhood, or any traffic control measures, as large trees take too long to grow & large structures are not compatible with the roadway, traffic plans, parking or neighbourhood character. This is a somewhat related topic in that a large restaurant would bring large traffic volumes, parking issues etc. all of which need to be managed in the plan. Right now, anything bigger than a bistro sized

establishment is not compatible with the area whatsoever for any of these reasons & will cause many more issues for the residents of this area who already feel very marginalised because we don't live in the expensive part of Birmingham - see comments made on Nextdoor if you don't believe me.

Conclusion:

- There are more options possible that are not yet on the table.
- Resident anger is driving a need for a clear plan with dates, but it must be one which the affected community is able to live with, or there will be some horrendous backlash that will destroy property value & the community at large
- Clearer communication to the residents is needed. I only found out about the meeting via a posting on Nextdoor as I did not get the postcard with the information. I am very, very disappointed by this.
- A total approach is needed. Not parcelling it into sections & hoping that the rest of the influenced area will not be of concern, limiting the Eton study to not reach 14 mile was probably too scope constrained.
- I am willing to add as much time & effort as I can offer with full time job & family constraints, to help move us all forward together and to help keep community involvement, please let me know what I can do to more actively support the overall initiative, as it is one of great merit that I personally feel only needs a little more adjustment / fine tuning to get to a mutually agreeable solution for all parties.

Thank you for taking the time this!

Yours sincerely,

Andrew Haig
[248-5069979](tel:248-5069979)

Cc. Mr Valentine, Ms Ecker, Mr Grewe

Also published as an open letter to Nextdoor.com. URL: https://torrycommunityassoc.nextdoor.com/news_feed/?post=51710694

**MMTB Public Hearing**

1 message

Jay Yaldoo <yaldoo@comcast.net>

To: Paul O'Meara <pomeara@bhamgov.org>

Cc: Jana Ecker <jecker@bhamgov.org>, Lara Edwards <lmedwards08@gmail.com>

Good Morning,

I am unable to attend the public hearing June 1st regarding the recommendations for S Eton Road, however I would like my comments considered.

I reviewed the recommendations made by the MMTB and I agree with all of them.

I think a dedicated bike lane will make S Eton safer for bicyclists traveling and will connect the other bike lanes throughout the city. I strongly agree that the bike lane needs to a protected street and only stands to get busier with Whole Foods opening this year. I feel the bike lane needs to be protected with barriers not turtle bumps. If it is not obvious to drivers that they can use that lane to pass vehicles that are stopped waiting to turn left. Not all drivers know that you can not drive over a solid white line and may not even notice the turtle bumps. I have seen bike lanes in other cities so you can see what those protected bike lanes look like.

Thank you,

Jerry Yaldoo

1997 Haynes Street







MEMORANDUM

Engineering Dept.
Planning Dept.
Police Dept.

DATE: April 28, 2017

TO: Multi-Modal Transportation Board

FROM: Paul T. O'Meara, City Engineer
Jana Ecker, Planning Director
Scott Grewe, Operations Commander

SUBJECT: S. Eton Rd. – Maple Rd. to Lincoln Ave.
Multi-Modal Improvements

At the March and April meetings, the Multi-Modal Transportation Board (MMTB) discussed the recommendations of the Ad Hoc Rail District Committee. A recommendation was also passed on to the City Commission focused on changes at Maple Rd.

Maple Rd. to Yosemite Blvd.

The MMTB sent a recommended plan of improvements to the far north block of S. Eton Rd. to the City Commission, which was reviewed at their meeting of April 13, 2017. Minutes of that meeting are attached. The Commission expressed concern relative to certain design elements, and encouraged the Board to consider a larger bumpout at the southwest corner of the Maple Rd. intersection.

Other concerns expressed by the Commission included:

- The acute turn for vehicles from eastbound Maple Rd. to S. Eton Rd. is problematic.
- The white stop bars may be ignored, causing problems for both motorists and pedestrians.
- The Board should consider the inclusion of a multi-directional bike lane.

F&V prepared the attached memo and conceptual plan that considers this option. Highlights of the memo include:

1. The City can reduce the length of the S. Eton Rd. pedestrian crossing using either plan included in the memo. The most significant benefit of the original recommendation with the refuge island includes a shorter crosswalk length with an intermediate break. While there was concern expressed about the proposed locations of the stop bars, the design actually allows the stop bars to be closer to the intersection than they are currently.
2. The design without the refuge island keeps the intersection more open. The design reduces the angle for turning traffic from westbound Maple Rd. on to S. Eton Rd. However, it makes the angle for eastbound traffic on to S. Eton more extreme. As a result, the stop bar must be left in its current position, further back from the

intersection. The resulting crosswalk length is approximately five feet longer than that with the island design, and there is no refuge.

As has been discussed previously by the Board, all agree that the design does not provide any enhancement for bike traffic. However, the narrow right-of-way in this area, plus the clear need for three lanes of traffic at this intersection, requires that bikes be encouraged through the intersection with the use of sharrows. The only way to provide space for a separate bike lane facility would be to purchase right-of-way, construct a retaining wall on the west side and make significant changes to the existing road. It is presumed that the City is not in a position to make such an investment at this time.

The Board is asked to consider the benefits and drawbacks of both designs, and provide a new recommendation to the Commission.

SUGGESTED RECOMMENDATION:

After further review, the Multi-Modal Transportation Board recommends that the City Commission authorize improvements to S. Eton Rd. from Maple Rd. to Yosemite Blvd. that include:

1. _____ to improve the south leg crosswalk at the Maple Rd. intersection.
2. An enlarged sidewalk ramp area at the southeast corner.
3. Relocation of the west side curb from Maple Rd. to Yosemite Blvd., and the construction of an eight foot wide sidewalk on the west side of the block.

Further, while the Board acknowledges that improved bike features would be beneficial, existing right-of-way and traffic demands do not allow improvements other than sharrows and bike route signs (as a part of the previously approved Neighborhood Connector Route) at this time.

Yosemite Blvd to Lincoln Ave. Bike Lane Proposal

The MMTB first discussed the Ad Hoc Rail District's recommendation for the typical cross-section at its regular April meeting. The majority of the Board chose not to affirm the Ad Hoc committee recommendation of installing pedestrian bumpouts at several intersections, keeping parking legal on both sides of the street, and adding sharrows for bike traffic in both directions. Due to the continued desire to reduce sight distance issues on the west side of the street, the Board asked staff to explore the feasibility of a two-directional bike lane on the west edge of the road, using the existing southbound parking lane area. F&V has prepared the attached plan accordingly. The following features are noted:

1. The block between Yosemite Blvd. and Villa Rd. is different from the others in that there are commercial uses on both sides of the street. Parking is legal on the southbound side, and is an important feature for the adjacent businesses. Parking is not legal on the northbound side, but the northbound lane is wider as a result. It is recommended that southbound bikes continue sharing the road with traffic, similar to the block to the north. For northbound bikes, a buffered bike lane can be provided as a good transition

from the section to the south (discussed below) to the shared traffic mode required to the north.

2. The remaining section from Villa Rd. to Lincoln Ave. would all be treated similarly. Parking would be removed for southbound traffic, providing a 10 ft. wide area for a marked, two-directional bike facility. While unique in this area, such facilities have been implemented elsewhere with success. The following features are noted:

- Signs and sidewalk/crosswalk changes would be required at Villa Rd. to allow northbound bikes to transition from the west side of the road back to the east side of the road. A diagonal section of concrete would be constructed southwest of the intersection to encourage bikes to use the west and north leg marked crosswalks to cross both streets. When using these facilities, bike riders are required to dismount and walk their bikes. There are not any officially endorsed signs in Michigan for this purpose. Examples of suggested signs for this purpose appear in the pictures below. They would be added at the beginning of the diagonal concrete section as bicyclists leave the road. Input from the Board as to which sign is preferable is requested. Wide 10 ft. ramps and marked crosswalks are proposed on the west and north legs of the intersection to encourage joint use between bikes and pedestrians. Northbound bikes would then begin using the buffered single direction bike lane as they proceed north of the intersection.



- The unique bike lane feature may come as a surprise to unsuspecting motorists wishing to enter S. Eton Rd. from the various intersecting streets. As noted on the plan, a new unique sign is recommended, added to each stop sign currently posted along the district, warning motorists to look both ways for bikes before proceeding.
- At Lincoln Ave., sign and sidewalk/crosswalk changes are required, similar to Villa Rd. The north, west, and south legs of the intersection would be widened to 10 ft. each, and signs would encourage northbound Eton Rd. bikes, as well as eastbound Lincoln Ave. bikes using the Connector Route to dismount and use the crosswalks to get in the correct location for use of the bi-directional bike lane.
- As was noted previously, the Ad Hoc Committee recommended bumpouts at several intersections. If the bi-directional bike lane is provided, bumpouts would only be built on the east sides of the selected intersections, in order to safely accommodate bike traffic.

Implementation

The timing of the above features are on different tracks. The changes in the area of Maple Rd. have not been budgeted, but are considered a priority in order to provide improvements to this area in conjunction with the planned opening of the adjacent Whole Foods grocery store. In

order to fast-track this work, funding was included in the recently awarded 2017 Concrete Sidewalk Program. It is hoped that a final design can be endorsed by the Commission in time to allow construction in either July or August of this year.

The proposed bike lane facility represents a significant change to the corridor that will impact both the commercial and residential property owners in the area. It is suggested that a public hearing wherein all owners within 300 ft. of the corridor be invited to the next MMTB meeting to provide input before a final recommendation is prepared. You may recall in the summer of 2016, the Board recommended Phase I of a Neighborhood Connector Route that provided a bike loop around Birmingham. We attempted to implement this work late last year, but failed to get any bidders to this small contract. It has been rebid as part of a larger construction contract, and should now be implemented this summer. The design approved last summer included simple sharrows for this leg of S. Eton Rd. We plan to delay the connector route work in this area until a final design is approved by the Commission, with the hope that the pavement markings and sidewalk changes can still be implemented during the 2017 construction season. The more extensive bumpout work at several intersections involves more work that will have to be budgeted in a future budget cycle.

Given the above time parameters, it is hoped that the Board can arrive at a final recommendation in June, and then prepare a final complete recommendation involving both elements for the Commission to consider thereafter. A resolution setting a public hearing is provided below.

SUGGESTED RESOLUTION:

To set a public hearing regarding the S. Eton Rd. corridor bi-directional bike lane proposal for the regular Multi-Modal Transportation Board meeting of June 1, 2017, at 6 PM.

Mayor Nickita and all five of the Commissioners who were present liked the idea of the event but did not support closing Willits Street due to the concerns expressed by Chief Connaughton. Commissioners also cited concerns with traffic flow due to the Old Woodward closures.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:

To deny a request from Darakjian Jewelers to hold High Octane on Willits Street between N. Bates St. and N. Old Woodward Ave. on June 25, July 16, August 20, September 17, and October 8, 2017 based on objections to the closing of Willits Street from the Fire Department, Police Department, and Engineering.

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

04-99-17 SIDEWALK AND CROSSWALK IMPROVEMENTS AT MAPLE AND S. ETON INTERSECTION.

City Engineer O'Meara explained both the Ad Hoc Rail District Review Committee and the Multi-Modal Transportation Board have reviewed the proposal and, in conjunction with Fleis & Vandenbrink (F&V), the City's traffic consultant, recommend improvements consisting of three primary parts:

1. Splitter island. Given the current size of the intersection, a splitter island as shown can successfully be installed splitting the left and right turn lanes, while not changing the traffic patterns of the intersection. Existing concrete can be removed, replaced with new curb and gutter, and approximately 18 feet of new sidewalk that will act as a refuge area for pedestrians crossing Eton Rd. The triangular area south of the sidewalk could be landscaped with perennials, under the direction of the City's landscape maintenance staff. The total construction cost of this work is estimated at \$21,000.
2. Enlarged handicap ramp area at the southeast corner. At the southeast corner, additional public land is available to allow for a wider, more ample waiting area at the handicap ramp. An oval shaped piece of concrete is proposed here to enhance the existing sidewalk on this corner, at a cost of \$1,000.
3. West side curb relocation. As a part of the discussion with the Ad Hoc Rail District Committee, there was discussion about the existing sidewalks being installed immediately behind the curb, in close proximity to traffic. This was done due to the limited right-of-way available on this block. Since most of the neighborhood would use the west side sidewalk, and since the existing southbound lane is wider than normal, it was recommended that the west side curb and gutter section could be removed and replaced with a new curb three feet further east, for the entire block, as shown. Moving the curb would allow the existing five foot wide sidewalk to then be replaced with an eight foot wide sidewalk, providing extra space for pedestrians in this area. This work is estimated at \$53,000.

The entire package is estimated to be about \$75,000.00.

City Engineer O'Meara stated staff would like to include the sidewalk and crosswalk improvements in the 2017 Concrete Sidewalk Program, if the Commission approves the proposal.

In response to questions from Commissioner Hoff, City Engineer O'Meara and City Planner Ecker confirmed:

- The sidewalk on Eton would be 8' wide.
- The sidewalk on Maple would be 5' wide with a grass buffer between the sidewalk and the road.
- There would be no grass bumper on the Eton side, just as it exists currently, because the right-of-way is too narrow.
- The design contains no bump outs. The island will be curbed, and the whole west side of the block will be removed and replaced closer into the road so the southbound driving lane would be narrower.
- The City's traffic engineering consultant, F&V, provided the design plans which do show the following turns could be made: turning onto Maple, turning from Maple onto Eton, turning westbound from Maple, and making a left onto Eaton.

Mayor Nickita asked for details about the process that took the plan from a conceptual idea to the design specifications as presented.

City Engineer O'Meara confirmed he was not involved in development of the design drawing and that the Multi-Modal Transportation Board considered the same drawing that is before the Commission.

City Planner Ecker noted:

- The Ad Hoc Rail District Committee was tasked to look at several issues on the South Eton corridor, which they did in 2016.
- The biggest complaints about the corridor were that it is not pedestrian friendly, the road is too wide, cars are going every which way, pedestrians not protected, and vehicular speed is too fast.
- The Committee discussed three alternatives and chose the proposal being considered by the Commission as the best alternative.
- The Committee received approval from the Commission to hire F&V to review the plan to determine its practicality.
- The Committee came up with conceptual idea, and F&V detailed the specifics.

Mayor Nickita commented he agrees with some aspects of the conceptual idea such as diminishing the amount of exposed crosswalk and providing a mid-crossing island for pedestrians. He was very concerned, however, with other aspects. He explained:

- The intersection is currently challenging and unsafe for pedestrians,
- When Whole Foods opens pedestrian and non-motorized traffic is going to increase.
- The acute angle for southbound turns from westbound Maple is fundamentally problematic.
- The white stop bar is almost always ignored by motorists, and at this intersection it is located 30' from the crosswalk. Cars are going to ignore the stop bar and encroach into the crosswalk, resulting in cars turning left from Maple either clipping the car in the crosswalk or having to slow down to maneuver around the car. Trucks trying to make the turn may require the car in the crosswalk to back up.

Mayor Nickita concluded the design does not take into account the way people will actually use the intersection, which creates a difficult situation with the threat of crashes and congestion. He commented he does not feel the logistics have been explored thoroughly enough to resolve the

issues in a manner that would be best for the intersection, best for the users, and that will actually be used in the way it is designed to be used.

Commissioner Bordman noted she had similar concerns with vehicular encroachment into the crosswalks. She also questioned the plan's lack of consideration for bicyclists.

City Planner Ecker responded that the Multi-Modal Transportation Board met at 5:30 today and discussed, among other items, the cross section for South Eton. The Ad Hoc Rail District Review Committee Report did not recommend a specific bike lane. The Committee recommended parking, three foot buffer zones for the opening of car doors, and two 10' lanes for sharrows. The Multi-Modal Board is now leaning toward a multi-directional bike lane. City Planner Ecker relayed the thought that perhaps the Maple and S. Eton intersection improvements should be postponed to consider the impacts of including a bi-directional bike lane in the plan.

Commissioner Sherman suggested sending this back with the comments that have been made for further review.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Boutros:
To refer the proposal for sidewalk and crosswalk improvements at the Maple Road and S. Eton Road intersection back to Multi-Modal Transportation Board for further study based on the City Commission's comments and to consider the idea of including a multi-directional bike lane.

City Manager Valentine commented changes may impact the timing of construction. He explained the intersection improvements, being mostly concrete work, would be included in the sidewalk project which is being completed this year. Changes may delay the project.

Mayor Nickita wanted to know if there is a way to get the project done this year.

City Engineer O'Meara confirmed that the sidewalk program has already been put out to bid and consideration of awarding the bid is planned to be on the Commission's April 24, 2017 agenda. He suggested the costs of the proposed intersection improvements remain in the contract with the understanding that the concept may change. Any changes to the intersection improvement plan could be made in time for construction to still happen between now and August.

City Manager Valentine noted changing the scope of the intersection project may change the cost, but pointed out price can't be known at this point. He felt the City could proceed as suggested by City Engineer O'Meara with the idea that the intersection the project may need to be eliminated from the contract at some point. He clarified any decisions as to the addition of bike lanes or modifications to the sidewalks are yet to be determined.

Commissioner Hoff wondered if there were incremental improvements that could be made while waiting for revised plans and commencement of construction. City Engineer O'Meara commented that any incremental steps would be temporary and therefore not cost effective. He felt there is time for the Multi-Modal Board to reconsider the project in light of the Commission's comments and still keep in sync with the time frame of the Whole Foods opening.

In response to a question from Mayor Pro Tem Harris, City Engineer O'Meara confirmed the bidders for the 2017 sidewalk program are aware of the intersection project because it is included in the bid document.

Commissioner Boutros emphasized the importance of completing the intersection improvements this year. City Engineer O'Meara confirmed changes in the intersection project could be addressed as change orders to the contract.

Resident Benjamin Stahelin agreed with the need to widen the sidewalk, believed the white stop bar will be ignored, felt spending \$75,000 on the project as presented would be a waste of money, and felt the safest and most cost effective solution would be to install stop signs at each intersection

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

04-100-17 ORDINANCE AMENDING PART II OF CHAPTER 74, OFFENSES AGAINST PROPERTY.

Police Commander Grewe confirmed the reason to amend the ordinance is to address identity theft and fraud. He noted the amendments mirror state law.

Commissioner Bordman explained that due to recent personal experience with her credit card being used fraudulently, this issue is close to her heart. She asked why "debit card" is not specifically listed as one of the instruments. She noted the omission of "debit card" is inconsistent with other language. Attorney Currier responded the way the state law reads "any instrument" would include debit card. Commissioner Bordman felt "debit card" ought to be mentioned since "credit card" is specifically mentioned.

Commissioner Hoff asked why the fine is limited to "not more than \$500". Attorney Currier explained the City is limited by the City Charter as to the amount of fines for misdemeanors. Commissioner Hoff was concerned that the fine was too limited for larger thefts. Attorney Currier explained that restitution is not precluded.

In response to a question from Mayor Pro Tem Harris, Attorney Currier explained the City is authorized to charge civil infractions and misdemeanors through local ordinance.

MOTION: Motion by Sherman, seconded by Boutros:

To amend Part II of the City Code, Chapter 74, Offenses, Article IV, Offenses against Property to include the following eight new ordinances and authorizing the Mayor and the City Clerk to sign the ordinance amendments on behalf of the City:

1. Section 74-101: Illegal Use of State Personal Identification Card and Section 74-101(A) – Penalty for Violation of Section 74-101; and
2. Section 74-102: Definitions; and
3. Section 74-103: Stealing, Taking Title, or Removing Financial Transaction Device; Possession of Fraudulent or Altered Financial Transaction Device and Section 74-103(A) – Penalty for Violation of Section 74-103; and
4. Section 74-104: Use of Revoked or Cancelled Financial Transaction Device with Intent to Defraud and Section 74-104(A) – Penalty for Violation of Section 74-104; and
5. Section 74-105: Sales to or Services Performed for Violator and Section 74-105(A) – Penalty for Violation of Section 74-105; and

April 13, 2017

VIA EMAIL

Mr. Paul O'Meara
City Engineer
City of Birmingham
151 Martin Street
Birmingham, MI 48012

RE: Maple Road & S. Eton Crosswalk

Dear Mr. O'Meara,

The purpose of this letter is to provide an overview of the proposed S.Eton Road approach at Maple Road and compare to an alternate intersection design. This evaluation provides a summary of the differences from the proposed design and the alternate design. The figures associate with the proposed design and the alternate are attached.

Proposed Intersection Design (Splitter Island)

As part of the study F&V performed for the Ad Hoc Rail District Commission the addition of pedestrian islands on South Eton was evaluated. The existing pedestrian crossing on the south leg of the intersection is approximately 88 feet due to the skew of the intersection. According to the *AASHTO Guide for Planning, Design, and Operation of Pedestrian Facilities* a pedestrian refuge should be considered when crossing distance exceeds 60 feet. The proposed raised splitter island, as shown in the attached figure would give the pedestrian a refuge for crossing traffic and provide greater detectability of the pedestrians by motorists. In addition, the splitter island has been designed to accommodate the right-turn movement of trucks and the stop-lines have been located accordingly as shown on the figure. The key findings with this design are summarized below:

- Stop-lines are moved closer to the intersection, providing an additional queuing at the intersection for two vehicles (one in each lane).
- The total crosswalk distance is 59-feet, with a 23-foot pedestrian refuge.

Alternate Intersection Design (Bump-out)

The alternate intersection design considered realigning the approach, with reduced radius on the west approach, from the existing 34-feet to 25-feet; thus, reducing the crossing distance without the construction of a splitter island. This alternative design was evaluated to determine the impact on the stop-line location and pedestrian crossing distance. The key findings with this design are summarized below:

- Stop-lines remain unchanged from the existing condition.
- The total crosswalk distance is 65-feet.
- Significant drainage modification would be required to accommodate the bump-out on the approach.

Stop Line Location

The following guidance regarding stop lines is provided in the MMUTCD Section 3B.16:

- Stop lines shall consist of solid white lines extending across approach lanes to indicate the point at which the stop is intended or required to be made.
- Stop lines should be 12 to 24 inches wide and should be placed a minimum of 4 feet in advance of the nearest crosswalk line at controlled intersections.
- Stop lines should be located no less than 40 feet and no more than 180 feet from the signal heads. Where the nearest signal head is located between 150 feet and 180 feet beyond the stop line, engineering judgment of the conditions shall be used to determine if the provision for a supplemental near-side signal face would be beneficial.

The existing stop-line location provides a distance of 110 feet from the stop-line to the signal head and the proposed design is 85 feet from the stop-line to the signal head.

Conclusions

- The results of the analysis show the proposed design with pedestrian splitter island provides less conflicting crossing distance overall, by providing a pedestrian refuge.
- The proposed design will move the stop-lines *closer* to the intersection than the existing condition, providing additional queueing at this intersection for two vehicles.
- Both the existing and proposed stop-lines provide acceptable placement.

If you have any questions, please feel free to contact us.

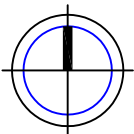
Sincerely,

FLEIS & VANDENBRINK

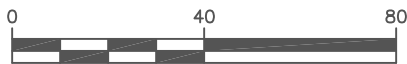


Michael J. Labadie, PE
Group Manager

Attached: Figures 1-3



NORTH



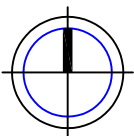
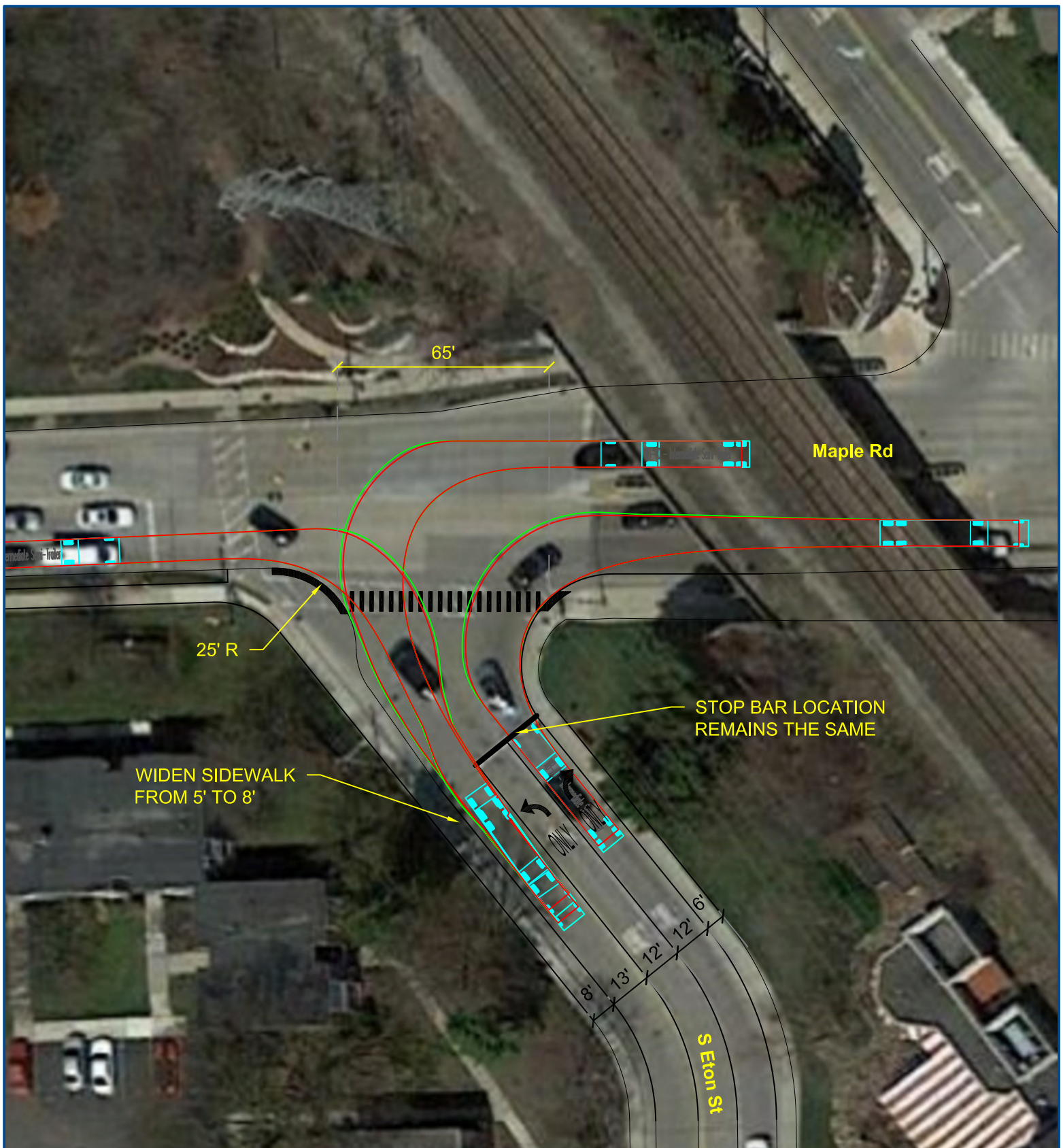
SCALE IN FEET

SPLITTER ISLAND CONCEPT DRAWING

Maple Road & South Eton Street

BIRMINGHAM, MI





NORTH



SCALE IN FEET

NO SPLITTER ISLAND CONCEPT DRAWING

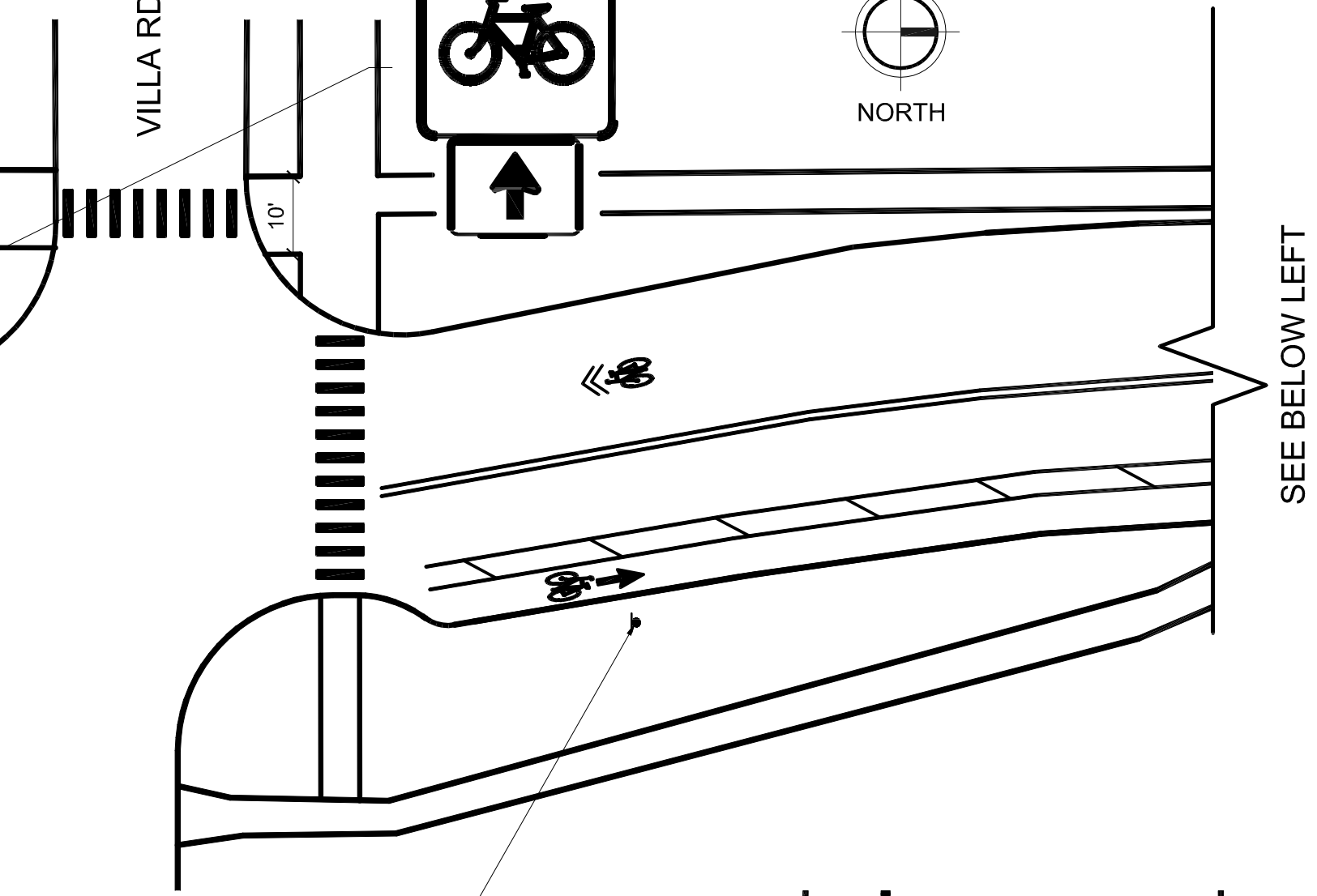
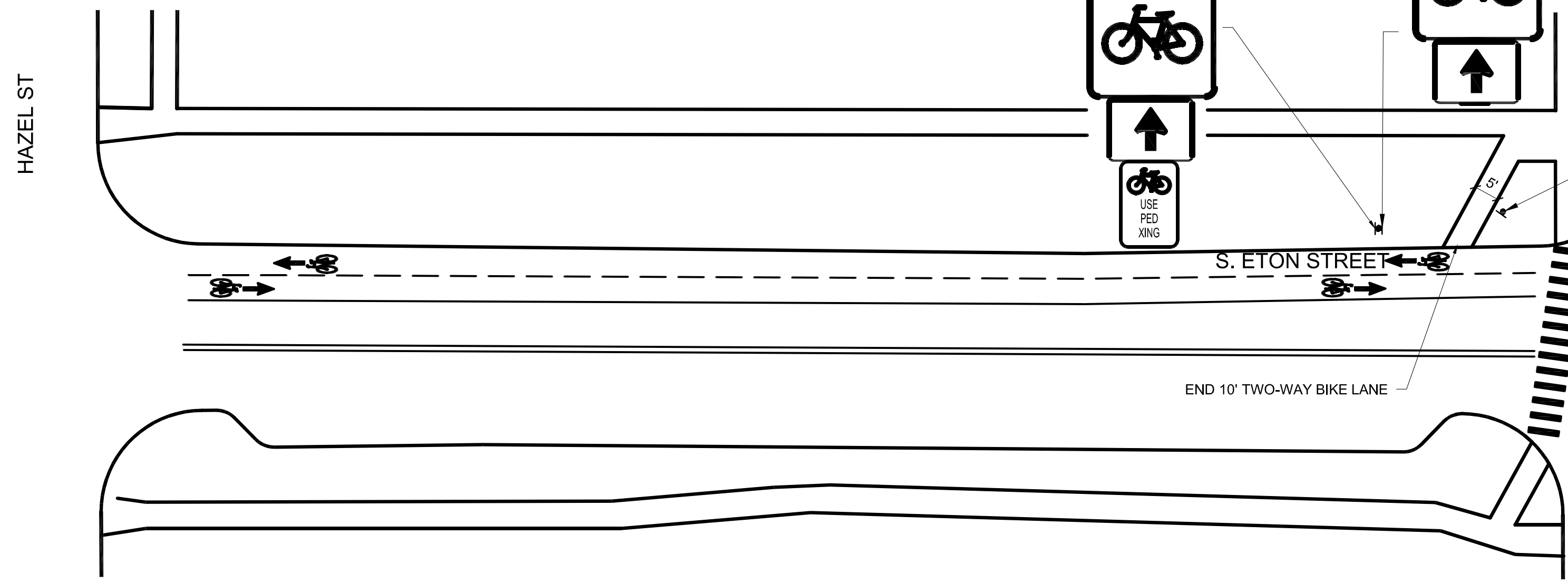
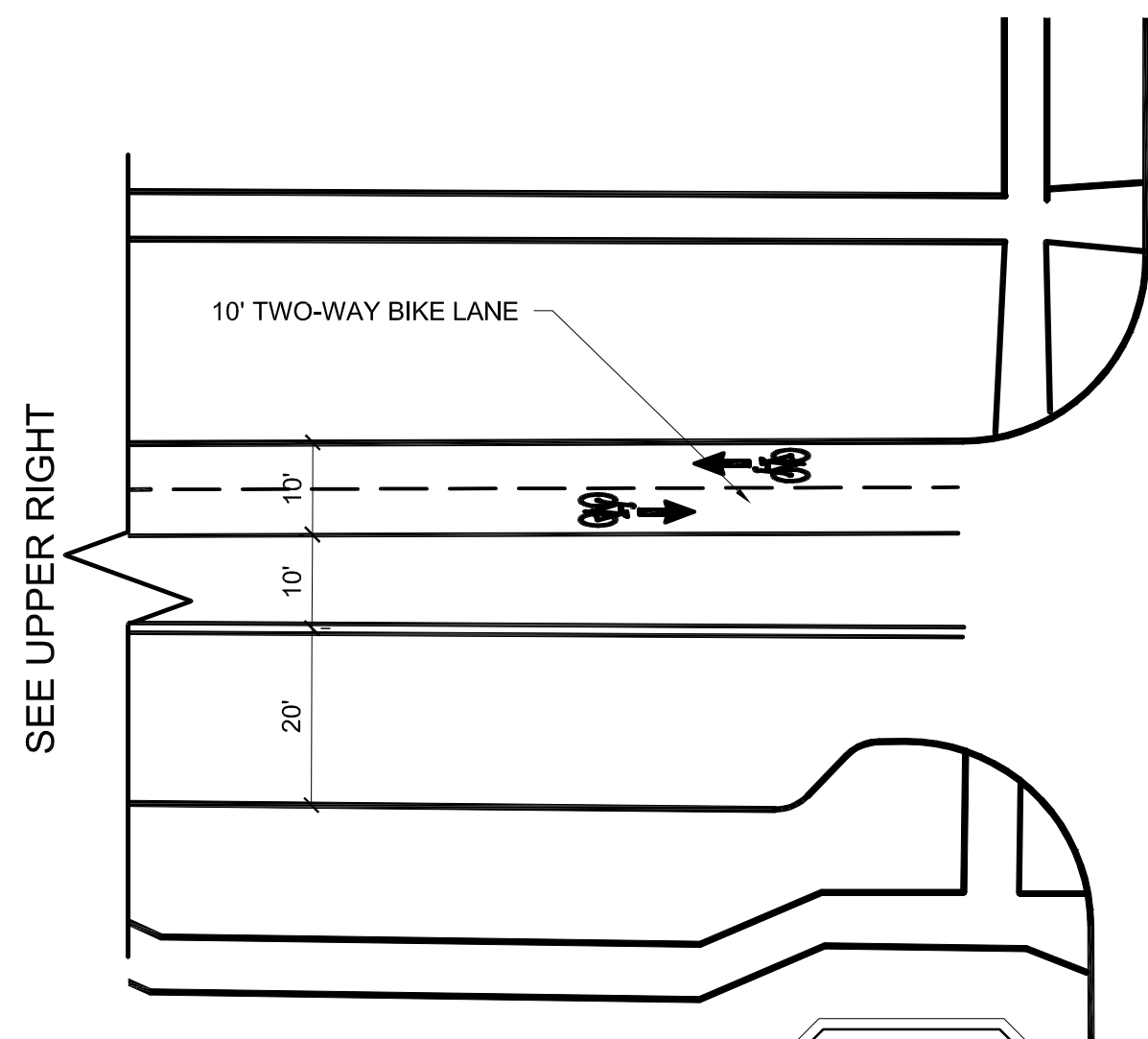
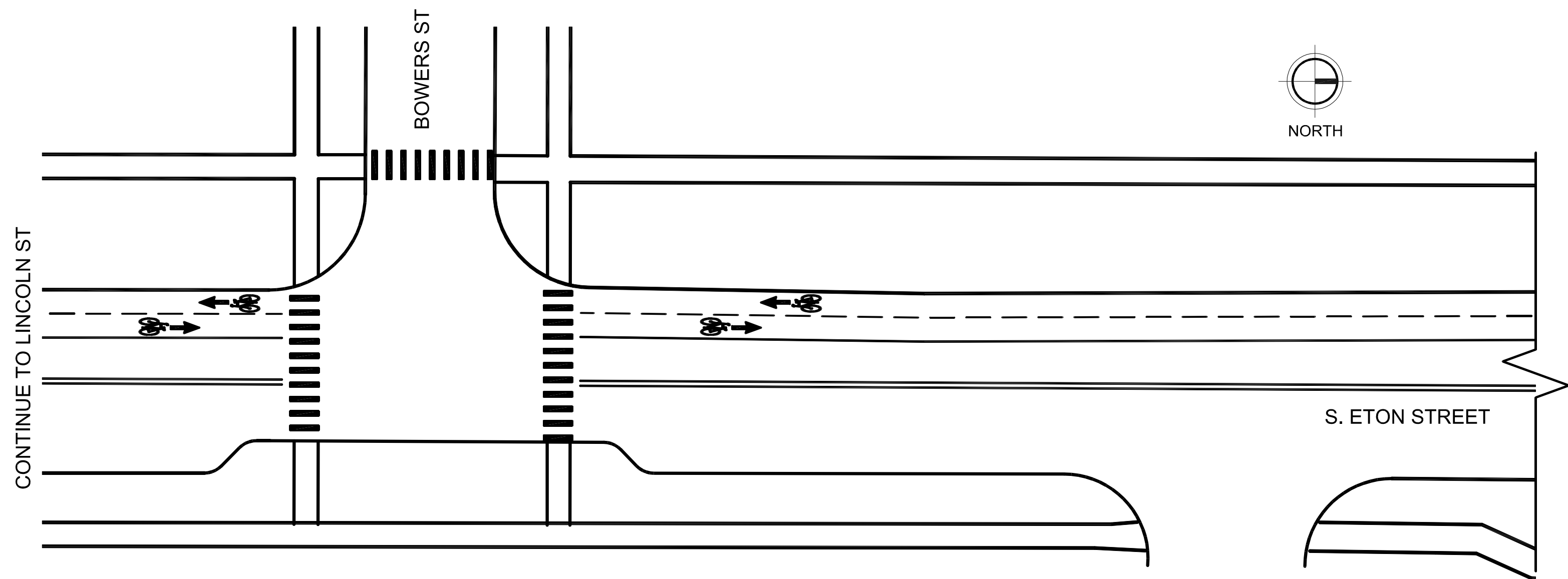
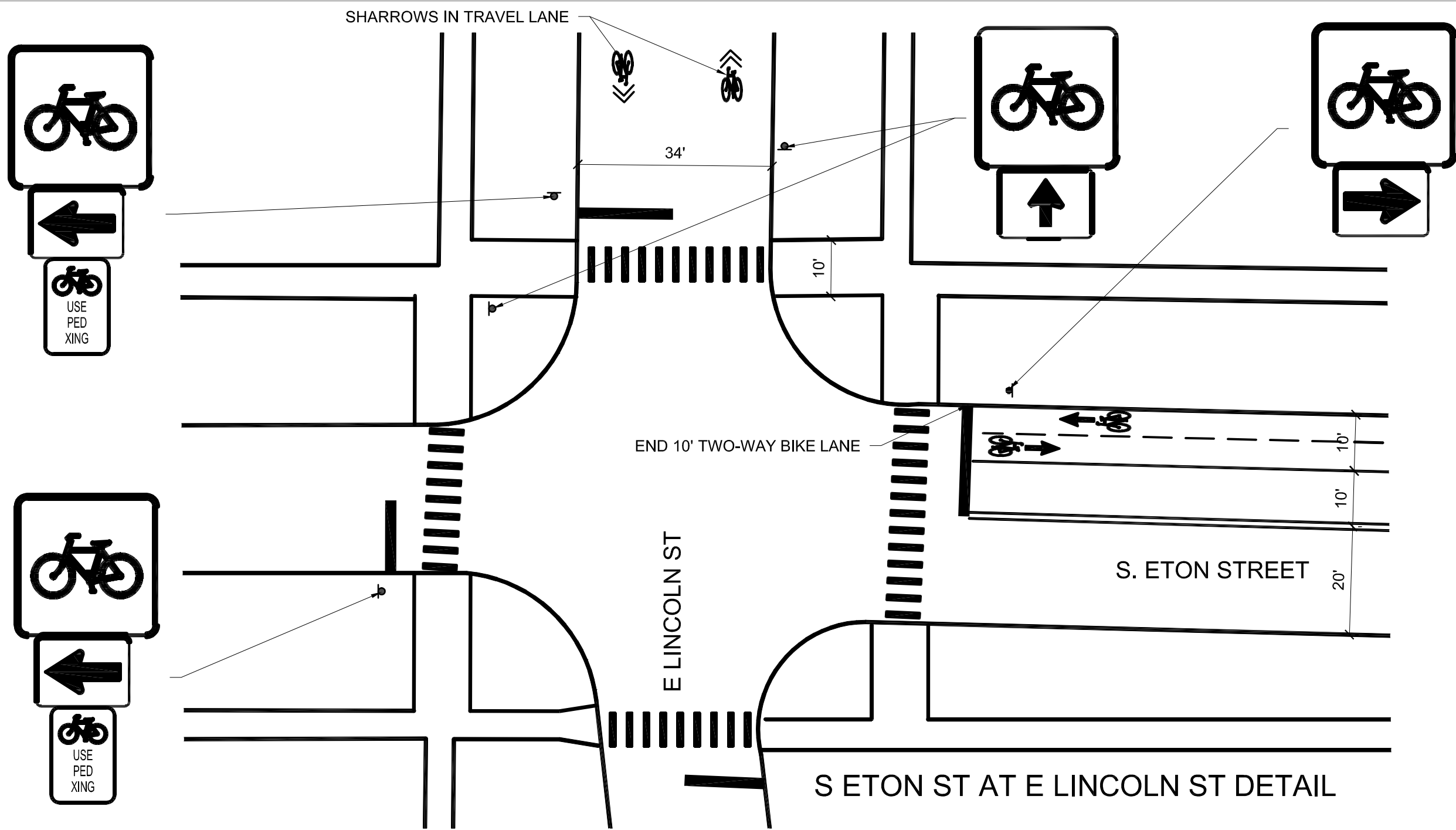
Maple Road & South Eton Street

BIRMINGHAM, MI

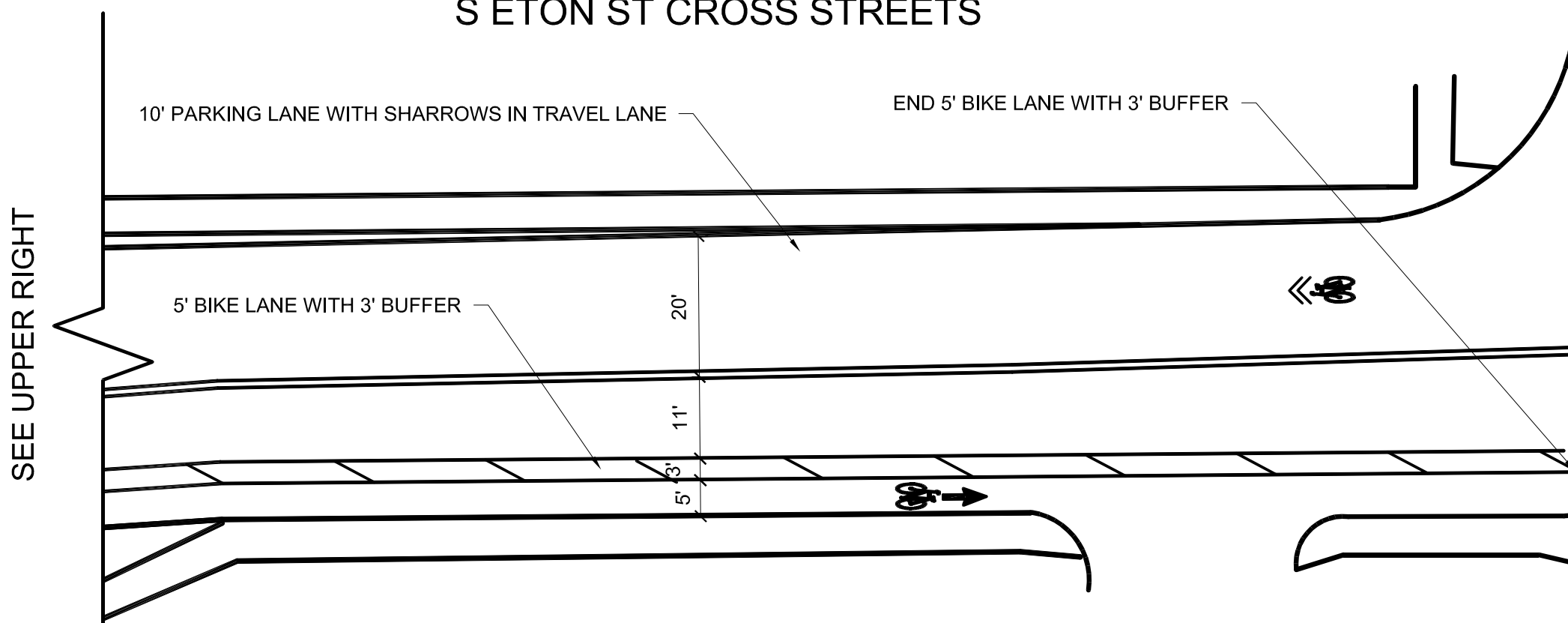


S. Eton Street (northbound)

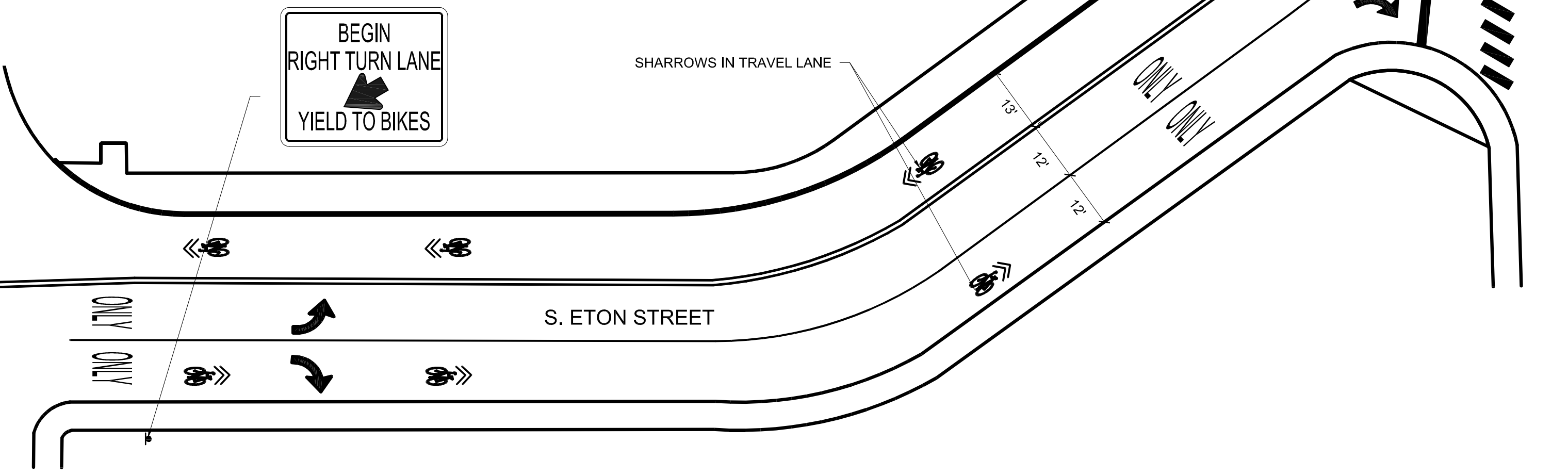




SIGN DETAIL FOR
S ETON ST CROSS STREETS



YOSEMITE BLVD



MAPLE RD

DRAFT

**CITY OF BIRMINGHAM
MULTI-MODAL TRANSPORTATION BOARD
THURSDAY, JUNE 1, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan**

Minutes of the regular meeting of the City of Birmingham Multi-Modal Transportation Board held Thursday, June 1, 2017.

Chairperson Vionna Adams convened the meeting at 6:01 p.m.

1. ROLL CALL

Present: Chairperson Vionna Adams; Board Members Lara Edwards, Amy Folberg, Vice-Chairman Andy Lawson, Daniel Rontal, Johanna Slanga, Michael Surnow

Absent: Alternate Members Daniel Isaksen, Katie Schaefer

Administration: Mark Clemence, Police Chief
Jana Ecker, Planning Director
Austin Fletcher, Asst. City Engineer
Scott Grewe, Operations Commander
Paul O'Meara, City Engineer
Lauren Chapman, Asst. City Planner

Also Present: Julie Kroll and Mike Labadie from Fleis & Vandenbrink ("F&V"), Transportation Engineering Consultants

2. INTRODUCTIONS

Daniel Isaksen, new alternate board member.

3. REVIEW AGENDA (no change)

4. APPROVAL OF MINUTES, MEETING OF MAY 4, 2017

Motion by Mr. Rontal

Seconded by Mr. Surnow to approve the Minutes of May 4, 2017 as presented.

Motion carried, 7-0.

VOICE VOTE

Yeas: Rontal, Surnow, Adams, Edwards, Folberg, Lawson, Slanga

Nays: None

Absent: None

5. S. ETON RD. - MAPLE RD. TO LINCOLN AVE.

The public hearing opened at 6:06 p.m.

Mr. O'Meara recalled that at the May, 2017 meeting, staff presented a new concept for S. Eton Rd. from Yosemite Blvd. to Lincoln Ave., generally proposing a two-way bike lane along the west side of the road, resulting in the removal of parking on this section. The board generally endorsed the plan, but made several suggestions for the block north of Villa Ave. Those changes were incorporated in a revised plan. A public hearing to present these ideas to the community was scheduled for the June 1, 2017 meeting and notices were sent to all owners and tenants within 300 ft. of the S. Eton Rd. corridor.

Mr. O'Meara's presentation covered three sections along S. Eton Rd.:

Maple Rd./S. Eton Rd. Intersection

The proposal was to add a raised island that would allow pedestrians to cross S. Eton Rd. at Maple Rd. with a break in the middle, along with other design features. The main adjustment, based on new information from users, was to change the northwest corner of the island and to move the left turn lane stop bar back where it is today. This allows large vehicles to make the turn from Maple Rd. onto S. Eton Rd.

Mr. Labadie said this scheme makes the intersection more controlled. He thought people would pay more attention and it would be safer for pedestrians.

Yosemite Blvd. to Villa Ave.

In this block there are businesses on both sides of the street. Last month the board came up with several suggestions, including eliminating parking on the southbound side; and narrowing the street so that the sidewalk would be 8 ft. wide on both sides and there would be room for a 4 ft. grass strip with trees on both sides. There would not be space for a bike lane but there would be sharrows. It is important that northbound bikes cross Eton Ave. at Villa Ave., where the sight distance is better.

Villa Ave. to Lincoln Ave.

It is proposed to remove parking on the southbound side and open up the space for a two-way bike corridor with a 1.5 ft. wide buffer area that would be supplemented with some form of raised markers. Bumpouts are suggested at Villa Ave., Hazel Ave., Bowers Ave., Cole Ave., and Lincoln Ave. It is cautioned

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that every time someone stops to make a left turn everyone else is stopping as well, Discussion considered that two bollards may be needed on the north end of the bike lane to force bikers to stop and get off. The south side is a little less busy.

At this time the chairperson opened up discussion from the public.

Mr. Michael Kopmeyer, 1351 Bennaville, thought the bike lane proposal trivializes bicycle travel. Bikes have a right to be on the road and they should be respected by automobile drivers and not be trivialized.

Mr. Terry Adams, Bob Adams Towing, 2499 Cole; and Mr. Brian Bolyard, Bolyard Lumber, 777 S. Eton, recited some issues that could occur with the proposed design on the corner. If the stop line on northbound Eton Rd. can be kept where it is, it would be a great plus for the corner. A stop bar closer to Maple Rd. would cause more of an issue with tractor-trailers. Mr. Adams indicated the majority of truck traffic will head west off of S. Eton Rd. because of the 13 ft. 2 in. bridge to the east. Mr. Bolyard noted 42 to 48 ft. combined length trailers need to turn off of S. Eton Rd. every day. Mr. Adams commented the overall length that he could tow is 78 ft. Mr. Labadie advised that you don't design for the one extreme situation. This plan will accommodate a WB 40, which means a 45 ft. long trailer tractor, and that encompasses most everything that goes through there today.

Ms. Ecker noted this board's job is to balance not just the automobile traffic, but all of the users. The point of looking at this intersection is to make it more friendly for all modes of travel. She hasn't seen any plans come across for the Rail District that would require large vehicles, other than during construction.

Mr. Andrew Haig, 1814 Banbury, thanked the board for proposing an island that would make it easier for pedestrians. However, he suggested removing the island, pulling the stop line back, and moving the crossing and lights further south, away from the intersection. For the bike lanes, raise the height of the road two or three inches overall, and perhaps add bollards.

Ms. Melanie Mansenior with Downriver Refrigeration, 925 S. Eton Rd. was worried about the amount of trucks going in and out of the S. Eton Rd./Maple Rd. intersection because that is the only ingress and egress for truck traffic through the Rail District. She received clarification that 30 to 40% of currently accessible parking on S. Eton Rd. will be eliminated. Ms. Ecker added a detailed parking study was done last year that indicated there is not a parking problem overall in that area. Ms. Mansenior replied that it will impact her particular location if the parking spots across the street are eliminated. Currently there not enough spots and people park in their lot. More people will do so if the spaces across the street are removed.

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Ms. Ecker noted the board has to balance everyone's interests. They have heard repeatedly in the past from residents that that they want those spaces to go away because of concerns with site distance pulling in and out of their driveways along with being blocked in.

Ms. Cindy Cherum, 1622 S. Eton Rd., a member of the Ad Hoc Rail District Review Committee, wanted this group to remember that in this plan there is an entire side of S. Eton Rd. that has not been looked at. Mr. O'Meara responded that the board decided to focus on the section north of Lincoln Ave. first, and then study the area to the south.

Ms. Sherry Markus, 1382 Ruffner, expressed her confusion about why they would slow down the traffic so much and spend so much money for that pedestrian area. Presently traffic is backed up all the way to Coolidge in the evening. This plan will slow things down even more. Mr. Labadie advised the whole intersection and its access points will change. A recent study has concluded that delays on Maple Rd., even with the additional traffic from Whole Foods, should improve. There will be push buttons for pedestrians that will allow Maple Rd. to get more time.

In response to Ms. Markus, Ms. Ecker explained that over the last several years there have been many complaints about issues in this area. Crossings are not safe, traffic goes too fast, no one stops for pedestrians. Further, people have complained about sight distance, pulling in and out, about where trucks are parking, and where employees are parking. Therefore, the City Commission created the Ad Hoc Study Committee. The splitter island affords a safe haven for pedestrians when they are crossing the street.

Ms. Markus thought the bike lane is silly and goes nowhere. She observed that with parking on Cole St. cars cannot get through. It was discussed that everything in the plan has been designed specifically to slow traffic along S. Eton Rd. Dr. Rontal noted the concept of the bike lane to nowhere is a little disingenuous because Birmingham has had a 20-year plan that creates a bike route for people to commute through the City. The plan is being completed in a phased fashion.

Mr. Larry Bertollini, 1301 Webster, asked if a mockup could be created that includes the splitter island. He hoped that trucks pulling out of side streets would have enough slop so there would not be head-on collisions. He would like to see some diagrams showing other areas where there is a bump-out that would prove turning trucks have space to get in and out of where they are going. Mr. O'Meara responded they won't neglect that. Mr. Bertollini added his main concern is for bikes wanting to cross where the transition is made. That is scary, and therefore he is not really sold on the concept. He would not object to eliminating the two-way and going back to a lane on the other side.

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Mr. Michael Kopmeyer spoke again to say he fully endorses the idea of moving the crosswalk back a bit. He suggested stop signs at Haynes and Villa to give a pause for pedestrians to establish themselves in the intersection.

Mr. Andrew Haig came forward once more to inform the group that Auto Europe vehicles don't have much ground clearance and can't clear a curb at all.

The chairperson wrapped up the public comments part of the evening at this time.

Mr. O'Meara asked Mr. Labadie to comment on the idea of moving the Maple Rd. crosswalk further south. Mr. Labadie said moving the crosswalk has other ramifications about being able to see the pedestrians and a few other things that are not accepted practice.. Visibility of the signals would be substandard as well. The suggested option addresses everything they are trying to accomplish and still stays within accepted practice.

Ms. Slanga was not convinced that in the future people would not optimize their supply chains and go with fewer deliveries and larger trucks. Therefore she advocated cutting back the island a little more to make it a bit easier for the large trucks to get through. The 50 ft. truck is accommodated by the plan right now but it doesn't accommodate the 62 ft. truck. Mr. Labadie indicated they can work on that when it goes into design. Mr. Bolyard noted they are all for the design, but it has to get better. Driver capabilities must be factored in. Mr. Surnow's thought was to make the island whatever the bare minimum is to accommodate the trucks, but yet provide a margin of safety to the pedestrians.

Discussion considered why this is the only place trucks can come and go from the Rail District. Mr. O'Meara indicated that Lincoln and S. Eton further south are considered residential streets..

The Chairperson took public comments.

Mr. Adams said this design concerns any delivery truck that is bringing commodities to the businesses in the Rail District and is exiting to go east on Maple Rd. They will make the turn, but either the light pole or the walk or don't walk post is going down. The driver cannot protrude out enough to turn and make the trailer axels stay outboard of the curb.

Mr. Lawson announced there is opposition to the proposed design that would cut commerce off to the Rail District. He didn't see how the board could vote for the splitter island. Dr. Rontal added the board now has dramatically different information. They thought a 50 ft. trailer would be long enough to accommodate, but they are hearing from the businesses in the District that 50 ft. is probably not

long enough. More information about the number of trucks coming and going into the district is needed. He thinks the board needs some time to review the new data.

Motion by Mr. Lawson

Seconded by Dr. Rontal to recommend that the City Commission approve and budget for the following Multi-Modal improvements to S. Eton Rd. from Maple Rd. to Yosemite Blvd.:

- a. Further study of installation of a splitter island at Maple Rd.**
- b. Relocation of the west side curb and gutter to accommodate an 8 ft. wide sidewalk along the entire block.**
- c. Installation of a wider sidewalk adjacent to the handicap ramp at the southeast corner of Maple Rd.**
- d. Installation of sharrows on green painted squares for both directions.**

Mr. Lawson amended his motion but the amendment failed and therefore the board voted on his original motion.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Rontal, Adams, Edwards, Folberg, Surnow

Nays: Lawson, Slanga

Absent: None

Mr. O'Meara clarified that everything from Maple Rd. to Lincoln Ave. must be agreed upon as a package before this is returned to the Commission.

The public hearing closed.

6. OAKLAND AVE - WOODWARD AVE. TO LAWNSDALE AVE.

Mr. O'Meara advised that last month, MMTB reviewed and approved plans to reconstruct Lawndale Ave. south of Oakland Ave. The plan was forwarded to the City Commission for their meeting of May 22, 2017, and was subsequently approved.

While reviewing the plan, further questions were raised about the pedestrian environment on this section of Oakland Ave. The existing handicap ramp at the southeast corner of the Oakland Ave. & Lawndale Ave. intersection encourages pedestrians to cross in the middle of the Lawndale Ave. intersection, which is not



MEMORANDUM

Engineering Dept.

DATE: July 14, 2017

TO: Multi-Modal Transportation Board

FROM: Paul T. O'Meara, City Engineer

SUBJECT: S. Eton Rd. – Maple Rd. to Lincoln Ave.

At the Multi-Modal Transportation Board (MMTB) meeting of June 1, a public hearing was held to review and discuss the various components of multi-modal improvements now being considered for S. Eton Rd. between Maple Rd. and Eton Rd. The Board was ready to approve the majority of the proposal, outside of the pedestrian island at Maple Rd. New information found that week determined that the proposal to build an island that could accommodate 40 ft. truck turning radii may be too small caused the Board to hesitate on this feature. The Board asked staff to survey all businesses in the Rail District, and return the issue at the following meeting.

A survey was distributed to all businesses in the Rail District, allowing for quick response through the internet. A total of 99 businesses were sent the message requesting input, and 17 responses back were received; details are attached. Only one business responded indicating that they have trucks longer than 60 ft., while that one and another indicated that they receive deliveries from trucks longer than 60 ft. A larger number received deliveries from trucks in the 40 to 60 ft. range (7), while only one again actually owned such large vehicles. The sample size was disappointingly small.

The three Rail District businesses that appeared at the public hearing last time have been invited to come back for this meeting as well.

To assist with this discussion, additional truck turning radius drawings generated by a computer program have been attached for your reference. The drawings now include:

1. A picture of all three turning movements when driving a truck with a 50 ft. turning radius.
2. A picture of all three turning movements when driving a truck with a 62 ft. turning radius.
3. A picture of the proposed island now modified to allow for a 50 ft. truck turning radius.

At this time, the Board must make the decision about what type of pedestrian improvement is appropriate for this location. Here are some things to consider:

1. It appears that trucks greater than 40 ft. may be more common than was thought, but from the data given, it is unclear if the majority of those would fall between 40 and 50 ft., or not. Hopefully additional information can be gathered at the meeting.

2. The Board may wish to not consider the right turn movement out of S. Eton Rd. As shown on the drawings, even the 40 ft. turning radius cannot make this turn if the island is provided. At the last meeting, it appeared that such turns are not common now, given the tight turn already required to keep clear of the railroad bridge center column. Drivers of trucks needing to leave the district can make a left turn on to Maple Rd. with any of the designs.
3. If the Board determines that the intersection needs to be designed to accommodate the largest standard truck (62 ft.), then no island feature can be installed. The currently proposed road narrowing on the west side of the block could proceed.
4. Even if no island is installed a more enhanced bumpout on the southwest corner cannot be installed if the intersection is going to accommodate either a 50 or 62 ft. truck turning radius.
5. Generally, beneficial street designs should not be removed to accommodate a vehicle that does not generally get driven through the area. Extremely large vehicles, such as the example of Adams Towing pulling a bus, is a rare circumstance. They have indicated that such tows are already difficult through this intersection, and that other routes are often selected to make this trip.

It is recommended that the results of the truck survey be reviewed, input from the public be received, and then a decision made on what sized trucks the Board feels that this intersection should be designed to. The entire S. Eton corridor package then needs to be formalized in a recommendation to the Commission. Two suggested recommendations are listed below that provide alternatives for the above question on which size trucks should be accommodated. Recommendation B eliminates the island at Maple Rd. from the recommendation. Only the block directly south of Maple Rd. has been changed from the recommendation prepared for the last meeting:

SUGGESTED RECOMMENDATION A (DESIGNED FOR 50 FT. TRUCK TURNING AT MAPLE RD.):

To recommend to the City Commission the following package of multi-modal transportation improvements for S. Eton Rd. from Maple Rd. to Lincoln Ave.:

1. Maple Rd. to Yosemite Blvd.
 - a. Relocation of the west side curb of S. Eton Rd. from Maple Rd. to Yosemite Blvd. three feet closer to the center, allowing the installation of an 8 ft. wide sidewalk behind the relocated curb.
 - b. Installation of a pedestrian island at the Maple Rd. & S. Eton Rd. intersection to improve safety for pedestrians crossing on the south side of Maple Rd.
 - c. Installation of a wider sidewalk adjacent to the handicap ramp at the southeast corner of Maple Rd. & S. Eton Rd.
 - d. Installation of sharrows on green painted squares for both directions.
2. Yosemite Blvd. to Villa Ave.
 - a. Removal of the existing parking on the west side of the street.
 - b. Relocation of the curb and gutter on both sides of the street to accommodate 8 ft. wide sidewalks and 4 ft. wide green spaces with new City trees.
 - c. Installation of sharrows on green painted squares for both directions.

3. Villa Ave. to Lincoln Ave.
 - a. Removal of the existing parking on the west side of the street, replaced with an 8.5 ft. wide bi-directional bike lane and a 1.5 ft. buffer with raised markers.
 - b. Sidewalk improvements as needed at Villa Ave. and Lincoln Ave. to facilitate the bi-directional bike lane.
 - c. Installation of a 3 ft. wide buffer between the northbound travel lane and 7 ft. parking lane.
 - d. Curbed bumpouts at marked pedestrian crosswalks on the west side of the street, at the intersections of Villa Ave., Hazel Ave., Bowers Ave., Cole Ave., and Lincoln Ave.

SUGGESTED RECOMMENDATION B (DESIGNED FOR 62 FT. TRUCK TURNING AT MAPLE RD.):

To recommend to the City Commission the following package of multi-modal transportation improvements for S. Eton Rd. from Maple Rd. to Lincoln Ave.:

1. Maple Rd. to Yosemite Blvd.
 - a. Relocation of the west side curb of S. Eton Rd. from Maple Rd. to Yosemite Blvd. three feet closer to the center, allowing the installation of an 8 ft. wide sidewalk behind the relocated curb.
 - b. Installation of a wider sidewalk adjacent to the handicap ramp at the southeast corner of Maple Rd. & S. Eton Rd.
 - c. Installation of sharrows on green painted squares for both directions.
2. Yosemite Blvd. to Villa Ave.
 - a. Removal of the existing parking on the west side of the street.
 - b. Relocation of the curb and gutter on both sides of the street to accommodate 8 ft. wide sidewalks and 4 ft. wide green spaces with new City trees.
 - c. Installation of sharrows on green painted squares for both directions.
3. Villa Ave. to Lincoln Ave.
 - a. Removal of the existing parking on the west side of the street, replaced with an 8.5 ft. wide bi-directional bike lane and a 1.5 ft. buffer with raised markers.
 - b. Sidewalk improvements as needed at Villa Ave. and Lincoln Ave. to facilitate the bi-directional bike lane.
 - c. Installation of a 3 ft. wide buffer between the northbound travel lane and 7 ft. parking lane.
 - d. Curbed bumpouts at marked pedestrian crosswalks on the west side of the street, at the intersections of Villa Ave., Hazel Ave., Bowers Ave., Cole Ave., and Lincoln Ave.



MEMORANDUM

Police Department

DATE: July 13, 2017

TO: Multi-Model Transportation Board

FROM: Scott Grewe / Operations Commander

SUBJECT: Commercial Traffic on S. Eton

In an attempt to obtain more information regarding the amount and size of commercial vehicles used on S. Eton a survey was sent to addresses in the Rail District. On June 21st post cards were sent out requesting their participation in the survey. On July 13th the surveys were reviewed and below are the results.

1. 58% of respondents stated their business requires the use of a commercial vehicle.
 - a. Respondents who stated the use commercial vehicles estimated how many times per day their vehicles used S. Eton.
 - i. 17.65% 1 to 3 times.
 - ii. 17.65% 4 to 7 times.
 - iii. 11.76% 7 to 10 times.
 - iv. 11.76% 15 or more times.
 - b. They also provided the estimated truck lengths used by their business.
 - i. 5.88% 10' to 20' vehicle.
 - ii. 29.41% 20' to 40' vehicle.
 - iii. 5.88% 40' to 60' vehicle.
 - iv. 5.88% 60' to 80' vehicle.
2. 87.5% stated they receive deliveries from companies using commercial vehicles.
 - a. Respondents estimated how many deliveries they received per week.
 - i. 41% 1 to 3 deliveries.
 - ii. 35.29% 4 to 7 deliveries.
 - iii. 11.76% 7 to 10 deliveries
 - iv. 11.76% more than 10 deliveries.
 - b. Estimated length of delivery vehicles.
 - i. 31.25% 0 to 20' vehicle.
 - ii. 12.5% 20' to 40' vehicle.
 - iii. 43.75% 40' to 60' vehicle.
 - iv. 12.50% 60' to 80' vehicle.

All responses have been attached for review.

Create better surveys faster. Upgrade to add users and get team collaboration tools. [View pricing →](#)

City of Birmingham S. Eton Commercial Traffic Review

[Summary](#) → [Design Survey](#) → [Collect Responses](#) → [Analyze Results](#)

CURRENT VIEW

[+ FILTER](#) [+ COMPARE](#) [+ SHOW](#)

No rules applied

Rules allow you to **FILTER**, **COMPARE** and **SHOW** results to see trends and patterns. [Learn more >](#)

SAVED VIEWS (1)

Original View (No rules applied)[+ Save as...](#)

EXPORTS

SHARED DATA

No shared data

Sharing allows you to share your survey results with others. You can share all data, a saved view, or a single question summary. [Learn more >](#)[Share All](#)

RESPONDENTS: 17 of 17

[Export All](#)[Share All](#)

Question Summaries



Data Trends



Individual Responses

PAGE 1

Q1

[Export](#)

What is the name and address of your business?

Answered: 17 Skipped: 0

Responses (17)[Text Analysis](#)[My Categories](#)

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Showing 17 responses

Bob Adams Towing Inc 2499 Cole St Birmingham, MI 48009

7/11/2017 1:56 PM [View respondent's answers](#)

Downriver Refrigeration Supply 925 S. Eton

7/3/2017 8:47 AM [View respondent's answers](#)

2015 Hazel st., Ste. C, Birmingham, MI 48009

6/30/2017 2:29 PM [View respondent's answers](#)

2051 Villa Rd. #202

6/28/2017 11:59 PM [View respondent's answers](#)

Big Rock Chophouse The Reserve

6/27/2017 3:54 PM [View respondent's answers](#)

LaurenAssociates, 2254 Cole Many other tenants in building that use commercial vehicles

6/27/2017 3:37 PM [View respondent's answers](#)

Canine Academy

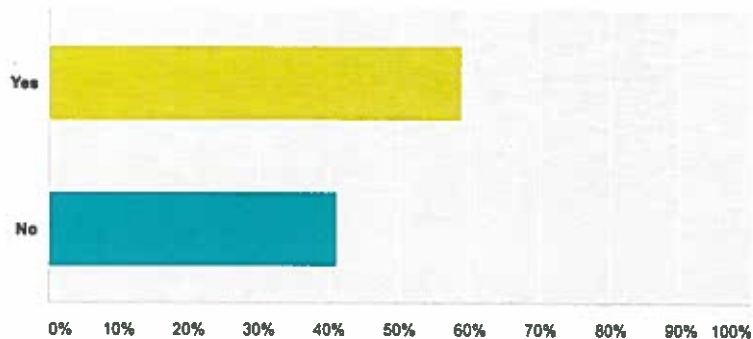
6/28/2017 3:48 PM [View respondent's answers](#)

Q2

[Customize](#)[Export](#)

Does the operation of your business require the use of commercial vehicles?

Answered: 17 Skipped: 0



Answer Choices	Responses
Yes	58.82% 10
No	41.18% 7
Total	17

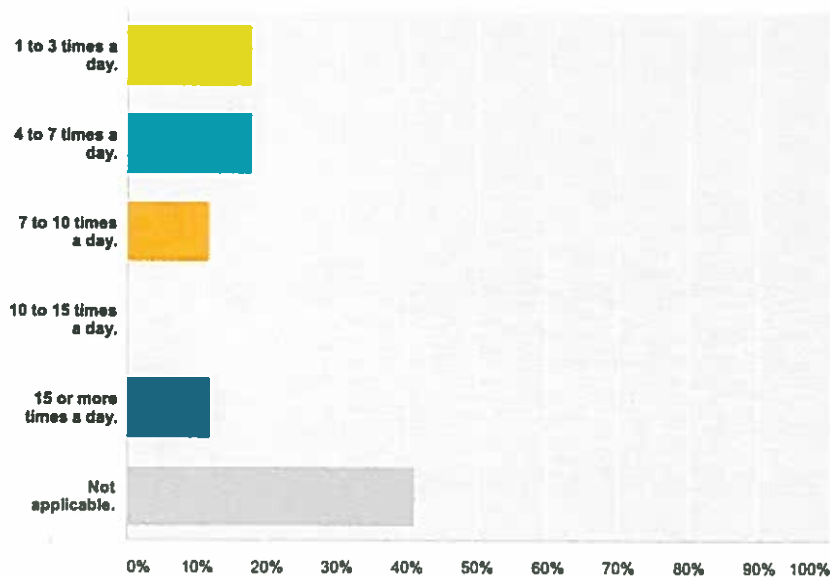
Q3

Customize

Export

Approximately how many times per day do your commercial vehicles use S. Eton in a day?

Answered: 17 Skipped: 0



Answer Choices	Responses
1 to 3 times a day.	17.65% 3
4 to 7 times a day.	17.65% 3
7 to 10 times a day.	11.76% 2
10 to 15 times a day.	0.00% 0
15 or more times a day.	11.76% 2
Not applicable.	41.18% 7
Total	17

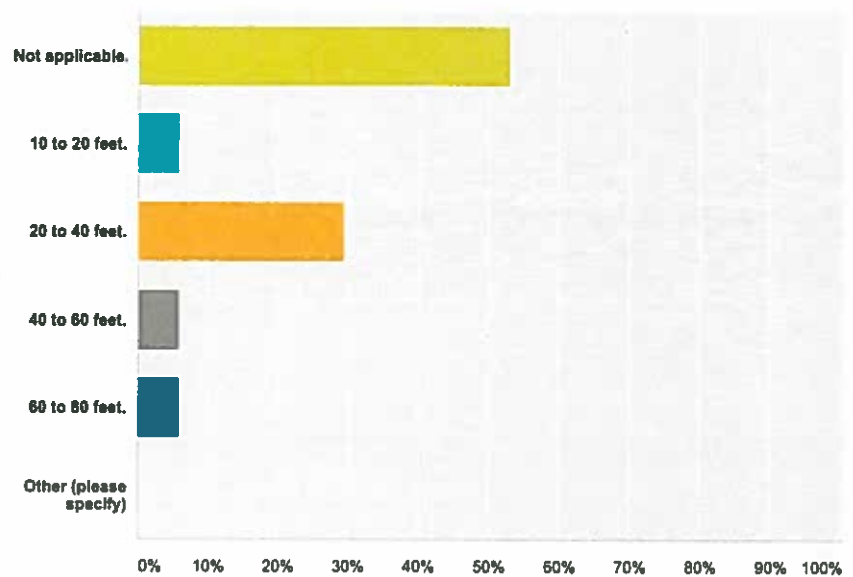
Q4

Customize

Export

What is the overall length of your largest commercial vehicle including the trailer?

Answered: 17 Skipped: 0



Answer Choices	Responses	
▼ Not applicable.	52.94%	9
▼ 10 to 20 feet.	5.88%	1
▼ 20 to 40 feet.	29.41%	5
▼ 40 to 60 feet.	5.88%	1
▼ 60 to 80 feet.	5.88%	1
▼ Other (please specify)	0.00%	0
Total		17

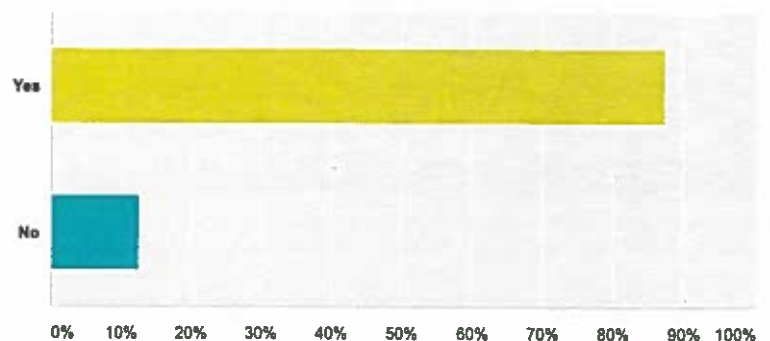
Q5

Customize

Export

Do you receive deliveries from companies using commercial vehicles?

Answered: 16 Skipped: 1



Answer Choices	Responses	
▼ Yes	87.50%	14
▼ No	12.50%	2
Total		16

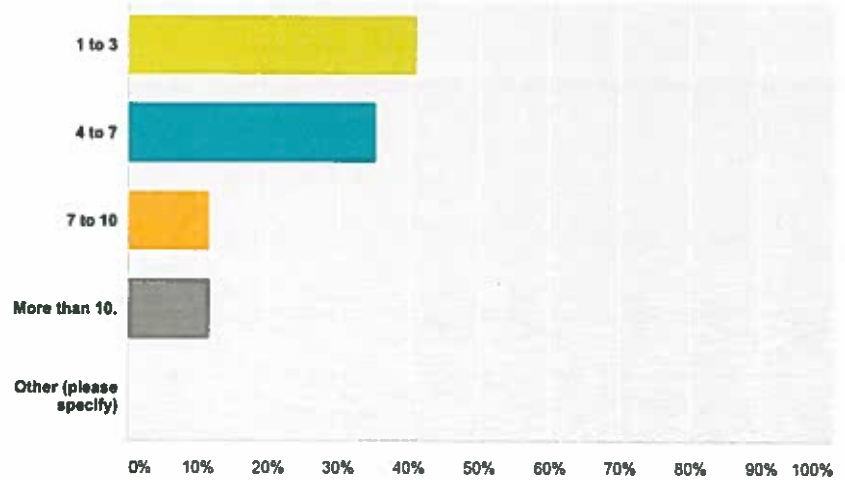
Q6

Customize

Export

How many times per week (on average) do you receive deliveries?

Answered: 17 Skipped: 0



Answer Choices	Responses	
1 to 3	41.18%	7
4 to 7	35.29%	6
7 to 10	11.76%	2
More than 10.	11.76%	2
Other (please specify)	0.00%	0
Total		17

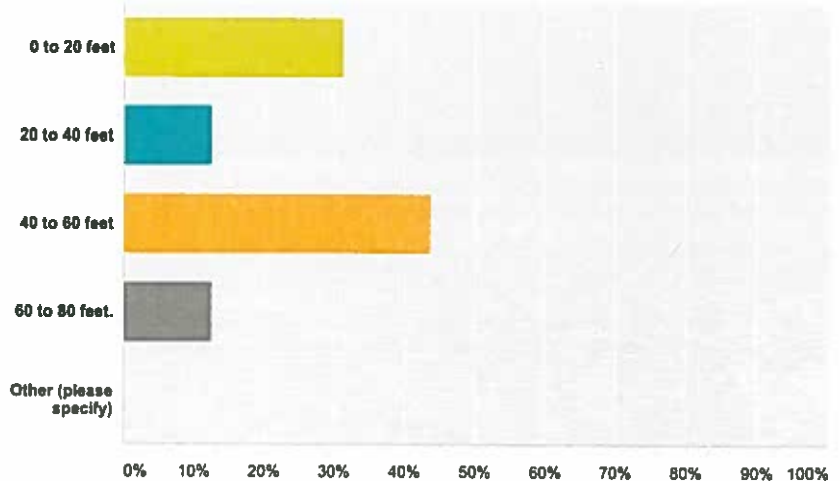
Q7

Customize

Export

How long do you believe is the longest commercial vehicle used to make your deliveries?

Answered: 16 Skipped: 1



Answer Choices	Responses	
▼ 0 to 20 feet	31.25%	5
▼ 20 to 40 feet	12.50%	2
▼ 40 to 60 feet	43.75%	7
▼ 60 to 80 feet	12.50%	2
▼ Other (please specify)	Responses	0.00% 0
Total		16

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Q1: What is the name and address of your business?

Bob Adams Towing Inc
2499 Cole St
Birmingham, MI 48009

Q2: Does the operation of your business require the use of commercial vehicles?

Yes

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

15 or more times a day.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

60 to 80 feet.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

1 to 3

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

60 to 80 feet.

Q1: What is the name and address of your business?

Downriver Refrigeration Supply
925 S. Eton

Q2: Does the operation of your business require the use of commercial vehicles?

Yes

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

1 to 3 times a day.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

20 to 40 feet.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

4 to 7

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

60 to 80 feet.

Q1: What is the name and address of your business?

2015 Hazel st., Ste. C, Birmingham, MI 48009

Q2: Does the operation of your business require the use of commercial vehicles?

No

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

Not applicable.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

Not applicable.

Q5: Do you receive deliveries from companies using commercial vehicles?

No

Q6: How many times per week (on average) do you receive deliveries?

1 to 3

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

0 to 20 feet

Q1: What is the name and address of your business?

2051 Villa Rd. #202

Q2: Does the operation of your business require the use of commercial vehicles?

No

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

4 to 7 times a day.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

Not applicable.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

1 to 3

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

Respondent skipped this question

Q1: What is the name and address of your business?

Big Rock Chophouse
The Reserve

Q2: Does the operation of your business require the use of commercial vehicles?

Yes

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

7 to 10 times a day.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

20 to 40 feet.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

More than 10.

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

40 to 60 feet

Q1: What is the name and address of your business?

LaurenAssociates, 2254 Cole

Many other tenants in building that use commercial vehicles

Q2: Does the operation of your business require the use of commercial vehicles?

Yes

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

4 to 7 times a day.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

40 to 60 feet.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

More than 10.

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

40 to 60 feet

Q1: What is the name and address of your business?

Canine Academy

Q2: Does the operation of your business require the use of commercial vehicles?

Yes

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

1 to 3 times a day.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

10 to 20 feet.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

1 to 3

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

0 to 20 feet

Q1: What is the name and address of your business?

Roy, Shecter & Vocht, P.C.

Q2: Does the operation of your business require the use of commercial vehicles?

No

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

Not applicable.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

Not applicable.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

4 to 7

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

0 to 20 feet

Q1: What is the name and address of your business?

Deneweth Properties
707/717 S. Eton

Q2: Does the operation of your business require the use of commercial vehicles?

No

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

Not applicable.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

Not applicable.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

4 to 7

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

20 to 40 feet

Q1: What is the name and address of your business?

Newingham Dental Center
2425 E. Lincoln St. #110
Birmingham, MI 48009

Q2: Does the operation of your business require the use of commercial vehicles?

No

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

Not applicable.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

Not applicable.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

1 to 3

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

0 to 20 feet

Q1: What is the name and address of your business?

2205 Holland Street

Q2: Does the operation of your business require the use of commercial vehicles?

Yes

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

15 or more times a day.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

20 to 40 feet.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

1 to 3

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

40 to 60 feet

Q1: What is the name and address of your business?

2305 Cole Street

Q2: Does the operation of your business require the use of commercial vehicles?

No

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

Not applicable.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

Not applicable.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

4 to 7

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

40 to 60 feet

Q1: What is the name and address of your business?

Griffin Claw Brewery
575 S. Eton

Q2: Does the operation of your business require the use of commercial vehicles?

Yes

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

Not applicable.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

Not applicable.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

7 to 10

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

40 to 60 feet

Q1: What is the name and address of your business?

Dogtopia

Q2: Does the operation of your business require the use of commercial vehicles?

No

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

Not applicable.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

Not applicable.

Q5: Do you receive deliveries from companies using commercial vehicles?

Respondent skipped this question

Q6: How many times per week (on average) do you receive deliveries?

1 to 3

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

0 to 20 feet

Q1: What is the name and address of your business?

1081 S Eton Street

Q2: Does the operation of your business require the use of commercial vehicles?

Yes

Q3: Approximately how many times per day do your commercial vehicles use S. Eton in a day?

1 to 3 times a day.

Q4: What is the overall length of your largest commercial vehicle including the trailer?

Not applicable.

Q5: Do you receive deliveries from companies using commercial vehicles?

Yes

Q6: How many times per week (on average) do you receive deliveries?

7 to 10

Q7: How long do you believe is the longest commercial vehicle used to make your deliveries?

20 to 40 feet

DATE: July 17, 2017

TO: Joseph A. Valentine, City Manager

FROM: Matthew Baka, Senior Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: 361 E. Maple – Historic Designation Removal Request

The owner of the property located at 361 E. Maple has requested that the City Commission consider removing the historic designation their building as a contributing historic resource within the City of Birmingham. The property owner has submitted an application to the Planning Board requesting to demolish the building as part of a redevelopment proposal.

The process for removing designation from a property or structure as a contributing historic resource is outlined in section 127 of the City Code. Section 127-5, **Establishing additional, modifying, or eliminating historic districts**, states the following:

- (a) *The city commission may at any time establish by ordinance additional historic districts, including proposed districts previously considered and rejected, may modify boundaries of an existing historic district, or may eliminate an existing historic district. Before establishing, modifying, or eliminating a historic district, the standing historic district study committee, as established in section 127-4, shall follow the procedures as stated in section 127-4. The committee shall consider any previously written committee reports pertinent to the proposed action.*
 - (b) *In considering elimination of a historic district, a committee shall follow the procedures set forth in section 127-4, as amended for the issuance of a preliminary report, holding a public hearing, and issuing a final report but with the intent of showing one or more of the following:*
 - (1) *The historic district has lost those physical characteristics that enabled the establishment of the district.*
 - (2) *The historic district was not significant in the way previously defined.*
 - (3) *The historic district was established pursuant to defective procedures.*
- (Ord. No. 1880, 7-24-06)

The first step in the process towards considering eliminating the historic designation of this property is for the City Commission to pass a resolution directing the Historic District Study Committee to commence with the creation of a study committee report as outlined in section 127-4 of the City Code.

In accordance with sec. 127-04 of the City Code, when directed by a resolution passed by the city commission, the standing historic district study committee shall meet and do all of the following:

(1) Conduct a photographic inventory of resources within each proposed historic district following procedures established by the state historic preservation office of the state historical center.

(2) Conduct basic research of each proposed historic district and historic resources located within that district.

(3) Determine the total number of historic and non-historic resources within a proposed historic district and the percentage of historic resources of that total. In evaluating the significance of historic resources, the committee shall be guided by the criteria for evaluation issued by the United States secretary of the interior for inclusion of resources in the National Register of Historic Places, as set forth in 36 CFR Part 60, and criteria established or approved by the state historic preservation office of the state historical center.

(4)

Prepare a preliminary historic district study committee report that addresses at a minimum all of the following:

a. The charge of the committee.

b. The composition of committee membership.

c. The historic district(s) studied.

d. The boundaries of each proposed historic district in writing and on maps.

e. The history of each proposed historic district.

f. The significance of each district as a whole, as well as the significance of sufficient number of its individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria.

(5) Transmit copies of the preliminary report for review and recommendations to the city planning board, the state historic preservation office of the Michigan Historical Center, the Michigan Historical Commission, and the state historic preservation review board.

(6) Make copies of the preliminary report available to the public pursuant to Section 399.203(4) of Public Act 169 of 1970, as amended.

(7) Not less than 60 calendar days after the transmittal of the preliminary report, the historic district study committee shall hold a public hearing in compliance with Public Act 267 of 1976, as amended. Public notice of the time, date and place of the hearing shall be given in the manner required by Public Act 267. Written notice shall be mailed by first class mail not less than 14 calendar days prior to the hearing to the owners of properties within the proposed historic district, as listed on the most current tax rolls.

The report shall be made available to the public in compliance with Public Act 442 of 1976, as amended.

(8) After the date of the public hearing, the committee and the city commission have not more than one year, unless otherwise authorized by the city commission, to take the following actions:

a. The committee shall prepare and submit a final report with its recommendations and the recommendations, if any, of the city planning board and the historic district commission, to the city commission as to the establishment of a historic district(s). If the recommendation is to establish a historic district(s), the final report shall include a draft of the proposed ordinance(s).

b. After receiving a final report that recommends the establishment of a historic district(s), the city commission, at its discretion, may introduce and pass or reject an ordinance(s). If the city commission passes an ordinance(s) establishing one or more historic districts, the city shall file a copy of the ordinance(s), including a legal description of the property or properties located within the historic district(s) with the register of deeds. The city commission shall not pass an ordinance establishing a contiguous historic district less than 60 days after a majority of the property owners within the proposed historic district, as listed on the tax rolls of the local unit, have approved the establishment of the historic district pursuant to a written petition.

(9) A writing prepared, owned, used, in the possession of, or retained by a committee in the performance of an official function of the historic district commission should be made available to the public in compliance with Public Act 442 of 1976, as amended.

Thus, to consider the applicant's request for the removal of the historic designation on 361 E. Maple the City Commission may wish to direct the Historic District Study Committee "HDSC") to prepare a report as outlined in Sec. 127-4 of the City Code.

Please note that the previous direction of the City Commission to the HDSC to study 927 Purdy has been completed, and the study has been forwarded to the State Historic Preservation Office for review. Once the State has provided their feedback on the report, it will be forwarded to the City Commission for further action.

SUGGESTED ACTION:

The City Commission approves the attached resolution directing the Historic District Study Committee to prepare a study committee report for 361 E. Maple as outlined in section 127-4 of the City Code.

**361 E. MAPLE
HISTORIC DESIGNATION ELIMINATION REQUEST
JULY 24, 2017**

WHEREAS, the owner of the Property located at 361 E. Maple have requested that their property be removed as a contributing resource in the Central Business District Historic District within the City of Birmingham,

WHEREAS, The land for which the Historic designation is sought is located on the north side of Maple between Park and N. Old Woodward Ave.,

WHEREAS, Section 127-5 of the City Code, Historic Districts, requires that the City Commission pass a resolution directing the Historic District Study Committee to prepare a Study Committee Report;

WHEREAS, The Birmingham City Commission has reviewed the request of the property owner and has found that a Study Committee Report to determine the historic merit of the structure at 361 E. Maple is warranted;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission directs the Historic District Study Committee to prepare a Study Committee Report as outlined in section 127-4 of the City Code for the property located at 361 E. Maple:

I, Cherilynn Brown, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and, correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on July 24, 2017.

Cherilynn Brown, City Clerk

124 Peabody

Birmingham

Michigan

48009

CHRISTOPHER J LONGE AIA
ARCHITECTURE

Matthew Baka, Senior Planner
c/o City of Birmingham
151 Martin Street
Birmingham, Michigan 48009

July 5, 2017

Re: 361 East Maple Road
Historic designation

Matthew;

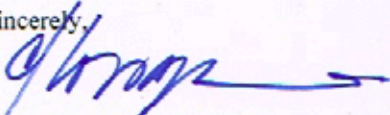
As you know we have submitted design drawings for Final Site Plan and Design Review.

At this time we are (will be) respectfully requesting that the Hawthorne Building @ 361 East Maple Road be 'un-designated' as Locally Designated Historic Building since the building itself is not significant in the way previously defined (see the attached documents) and should alternatively be considered a 'non-contributing resource'.

We are therefore requesting that the Planning board application be processed. We will make the proper application to the HDC at the appropriate time.

Should there be any questions regarding this request – please give me a call.

Sincerely,



Christopher J. Longe, AIA

T 248 258 6940

F 248 258 5568

HAWTHORNE BUILDING

361 East Maple



This neat, and tidy, one story, one bay, reddish face brick store, with attractive limestone trim was built in 1927. In 1929, the shed at the rear of the property was removed. It was the home of the Bell Telephone Company offices for several years during the 1940's. The building has been well kept and is an example of good, small store design from the 1920's. The fascia has a typical signage band defined with patterned brick and limestone. (The existing signage does not conform to the signage band). The parapet has a slight pediment and limestone urns at the party walls. Part or all of the pressed metal storefront may be original. Although the structure is simple and conservative, its good condition and original condition make it a candidate for a valuable visual anchor in the preservation of the north side of East Maple.

6-1-83

Check Telephone Mus. off

CITY OF BIRMINGHAM

BUILDING-SITE INVENTORY FORM

Fill in as applicable - Attach 5" x 7" or 8" x 10" black and white photo with negative.

Identification

1. Building or Site Name Hawthorne
Birmingham Business Machine Bldg.
2. Street address 361 East Maple City Birmingham
3. Legal description 08-19-25-456-027

4. Ownership: Public _____ Private ✓
5. Present Owner C. B. Barnes Address 835 Purdy ^{Birmingham} 48609
6. Zoning B-4
7. Use: Original Commercial Present Commercial

Description

8. Site: Open land _____ woodland _____ landscaped _____
Buildings ✓ if so, what? One story, red brick.
9. Building material: Clapboard _____ stone _____ brick ✓ shingles _____
board & batten _____ stucco _____ other limestone trim
10. Structural material: Wood frame _____ masonry load bearing wall ✓
other _____
11. Condition: Excellent _____ good ✓ fair _____ deteriorated _____
12. Integrity: Original site ✓ moved _____, if so, when? _____
from where? _____
13. Alteration: Unaltered ✓ altered _____, if so when? _____
How? _____
Architect _____
14. Related outbuildings and property: barn _____ garage _____ shed _____
shop _____ greenhouse _____ landscape features _____ other None

15. Surroundings of the building or site: Open land _____ woodland _____
densely built up _____ Commercial ☒ residential _____ other _____
16. Notable features of building or site attractive example of
1920's small commercial building.
17. Threats to building or site: None known ☒ zoning _____ roads _____
developers _____ deterioration _____ other _____

Significance

18. Architectural significance

Date of construction: Actual 1927 estimated _____

Architect: _____

Builder: _____

Are original plans on file? _____ Notations on original plan and specifications _____

19. Historical significance: none.

20. Sources (for primary and secondary sources, give complete facts of publication: author, title, place of publication, date): _____

City assessment data.

Obituary.

Prepared by Max B. Horton Date May 3, 1983

Address 787 Greenwood Telephone No. 644-5389

Organization Historic District Commission



MEMORANDUM

Office of the City Manager

DATE: July 20, 2017

TO: City Commission

FROM: Joseph A. Valentine, City Manager

SUBJECT: Request for Closed Session – Performance Evaluation

Annually, reviews are done for city staff and objectives are set for the year. This process is started following a personnel evaluation of the City Manager to align objectives throughout the organization. In alignment with this process I request the City Commission meet in closed session to consider my personnel evaluation pursuant to Section 8(a) of the Open Meetings Act (Act 267 of 1976). A 2/3 roll call vote of the City Commission is not required to call a closed session permitted under Section 8(a).

SUGGESTED ACTION:

To meet in closed session for consideration of the city manager's performance evaluation as requested by the city manager according to section 8(a) of the Open Meetings Act.



NOTICE OF INTENTION TO APPOINT TO THE ADVISORY PARKING COMMITTEE

At the regular meeting of Monday, August 14, 2017, the Birmingham City Commission intends to appoint three regular members to the Advisory Parking Committee to serve terms expiring September 4, 2020. One of the members must be a representative of a downtown commercial large retail business. One of the members must be an employee in the downtown area. One of the members must be a restaurant owner.

A vacancy exists for a building owner to fulfill the remainder of a three-year term to expire September 4, 2018.

Interested citizens may submit an application available at the City Clerk's Office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the city clerk's office on or before noon on Wednesday, August 9, 2017. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and voter on appointments.

Committee Duties

The Advisory Parking Committee shall provide guidance to the City Commission in the management of Birmingham's Auto Parking System. The Committee shall recognize parking requirements of the CBD and fairly assess the costs to users. It will provide for attractive, maintained and safe facilities.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
The majority of the members shall be residents. <ul style="list-style-type: none">One member shall be a representative of a downtown commercial large retail businessOne member shall be an employee in the downtown areaOne member shall be a restaurant owner	08/09/2017	08/14/2017

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.



NOTICE OF INTENTION TO APPOINT TO DESIGN REVIEW BOARD

At the regular meeting of Monday, August 14, 2017 the Birmingham City Commission intends to appoint two members to the Design Review Board to serve three-year terms to expire September 25, 2020.

Interested parties may submit an application available from the city clerk's office on or before noon on Wednesday, August 9, 2017. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

The function and duty of the Design Review Board is to advise the City Commission in regard to the proper development of the city. The Design Review Board is specifically charged with carrying out the goals, objectives and intent of the city's adopted master plan and urban design plan and other development-oriented plans which may subsequently be adopted. The Design Review Board is authorized to advise and cooperate with the City Commission, city Planning Board, Historic District Commission and other city advisory boards and cooperate with the planning, historic district and legislative bodies of other governmental units in any area outside the boundaries of the city.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
<ul style="list-style-type: none">Members shall represent, insofar as possible, different occupations and professions such as, but not limited to, the legal profession, the financial or real estate professions, and the planning or design professions. The appointee will replace a member who held membership in a historic preservation organization.	08/09/17	08/14/07

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.



NOTICE OF INTENTION TO APPOINT TO HISTORIC DISTRICT COMMISSION

At the regular meeting of Monday, August 14, 2017 the Birmingham City Commission intends to appoint two members to the Historic District Commission to serve three-year terms to expire September 25, 2020.

Interested parties may submit an application available from the city clerk's office on or before noon on Wednesday, August 9, 2017. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

The function and duty of the Historic District Commission is to advise the City Commission with respect to the proper development of the city with primary emphasis upon the city's established historic districts, sites, properties and historic resources. The Commission is also authorized to recommend for the guidance of the City Commission amendments to the City Code relating to the control and development of lands within historic districts.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
<ul style="list-style-type: none">• A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation.• Must be a resident	08/09/17	08/14/17

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

CITY OF BIRMINGHAM
BOARD OF ETHICS
ADVISORY OPINION 2016-03

DECISION

On October 27, 2017, the Birmingham City Commission adopted a resolution requesting the Birmingham Board of Ethics to issue an advisory opinion on the following question:

Is there a conflict of interest with City Commissioners serving as board members for community-based organizations that rely on the City for funding, and what actions should be followed if they wish to serve on boards that make requests to the City Commission?

QUESTION PRESENTED

The question presented seems simple, but the answer is not. Following two hearings to obtain and review relevant information, the Board of Ethics restates the question this way:

Is it a violation of the City of Birmingham's code of ethics for a member of the Birmingham City Commission to serve as a member of a board of directors of, or an advisory committee to, a community-based organization that solicits or receives funding from the city when the particular seat on that board or committee is reserved for a city commissioner and the City Commission by resolution appoints a particular commissioner to that seat?

SUMMARY OF ANSWER

The Board of Ethics answers the question in three parts.

(1) The Board of Ethics holds that a city commissioner's membership on the board of directors of a community-based organization at the request of that organization and upon the approval of the City Commission does not per se violate the code of ethics. But the Board also holds that:

- the commissioner is barred by the code of ethics from participating in that organization's consideration of a request to the city for funding, license, or other substantial support from the city,

- the commissioner is disqualified from participating in the city's consideration of any such request from that organization, and
- the commissioner's participation in fund-raising activity for the organization could result in a conflict of interest if the party from whom the gift is sought has business before the city.

(2) The Board of Ethics holds that a city commissioner's participation on an advisory committee of a community-based organization at the request of that organization and upon the approval of the City Commission does not per se violate the code of ethics. But the commissioner's participation in fund-raising activity for the organization could result in a conflict of interest if the party from whom the gift is sought has business before the city.

(3) The Board of Ethics finds that, even where no conflict of interest arises, the commissioner's participation on such a board of directors or advisory committee could be deemed imprudent or politically undesirable.

STATEMENT OF FACTS

The Board convened two public hearings on this matter to gather and discuss the facts. On December 16, 2016, City Manager Joseph Valentine and City Attorney Timothy Currier appeared and presented information to the Board. On February 6, 2017, City Commissioner Patty Bordman joined Messrs. Valentine and Currier to present additional information. The Board thanks Ms. Bordman, Mr. Valentine, and Mr. Currier for their efforts.

The organization known as NEXT-Your Place to Stay Active & Connected ("NEXT") is a registered assumed trade name for the Birmingham Area Seniors Coordinating Council ("BASCC"), a community-based organization founded decades ago to promote the welfare of senior citizens in our community. NEXT has traditionally reserved one or more seats on its board of directors for municipal representatives, in this case a Birmingham city commissioner. The custom is that NEXT asks the Birmingham City Commission to appoint a commissioner to that board seat. At the present time, Commissioner Patty Bordman is the city's municipal representative. She serves as a voting member of the NEXT board of directors. The Board of Ethics takes administrative notice that BASCC is a Michigan non-profit, directorship-based corporation, organized on a non-stock basis. (BASCC Articles of Incorporation (July 1, 1981)).

Similarly, Birmingham Youth Assistance ("BYA") is a long-standing community organization dedicated to promoting youth and reducing delinquency in the Birmingham community. As with NEXT, it is BYA's custom to request the City Commission to

appoint a commissioner to serve on its General Citizens Committee (“GCC”). That committee meets up to nine times a year. The city commissioner is expected to attend as many GCC meetings as possible, volunteer to participate in one or more BYA community outreach activities, and “support” BYA fund-raising activities. The BYA understands that the city commissioner might be faced with a conflict of interest and has stated that fund raising is an “optional” activity for a GCC member, yet it stresses how important fund raising is to the success of its mission. (BYA letter to Joe Valentine (October 3, 2016)). The Board of Ethics takes administrative notice that BYA is a Michigan non-profit, directorship-based corporation, organized on a non-stock basis. (BYA Articles of Incorporation (June 14, 1967)). As such, the GCC appears not to be the BYA’s governing board. The BYA has asked that the city appoint Commissioner Andrew Harris to its GCC.

City commissioner participation with NEXT and BYA is a long-standing city practice, viewed as beneficial both to the community organizations and the city. Among other benefits, the organizations receive input through official city channels on important matters and presumably derive prestige and connections from city commissioner participation in their activities. In turn, the city, which provides grant funding to NEXT and BYA, can be directly informed about their activities and needs and can monitor how the city’s appropriated funds are used. Former Commissioner Scott Moore served on the NEXT board for a decade or longer. Former Commissioner Tom McDaniel was the City Commission’s representative to BYA for many years until his term as commissioner ended in November 2015.

More recently, various city commissioners have properly expressed concern that participation with NEXT and BYA potentially presents a conflict of interest. At the outset, the Board of Ethics notes that NEXT and BYA, and not a particular commissioner, seek city commissioner participation on their boards. Requests from NEXT and BYA typically come directly to the city. Information provided at the hearings indicates that both organizations view these seats as a “city” seat. Mr. Valentine said that in these cases, the commissioners, through their public roles, are asked to serve with NEXT and BYA. Mr. Currier confirmed that the commissioners are appointed to a “city seat” on the respective boards, and the appointment is made by the city, not by the organizations. Thus, procedurally, the City Commission votes on a resolution determining which commissioner takes the NEXT or BYA seat, thereby authorizing that commissioner to participate in their respective activities.

Due to their concerns about a potential conflict of interest, city commissioners have discussed the role a commissioner might play on the NEXT board of directors or the BYA committee. Those discussions have included whether the commissioner should be a voting member, a non-voting member, or merely a liaison, and whether or to what extent a commissioner could raise funds or do other things to support either organization. During the Board hearing, both Mr. Valentine and Mr. Currier pointed out that, traditionally, the commissioner sitting on the NEXT board or BYA committee would

neither participate in discussing requests for city funding at the organization level nor vote on such requests at the City Commission level. The Board received information, however, that in the past a city commissioner might occasionally have voted in a NEXT meeting about a funding request to the city but then did not participate in the City Commission's consideration of that request.

JURISDICTION

Several factors make this case complicated. A commissioner's role with these community organizations is potentially very broad. But that role is expressly authorized by the City Commission. And the case involves not just compliance with the code of ethics, which is within the jurisdiction of the Board, but also questions of political conduct which are not within our jurisdiction. Thus, while the Board of Ethics endeavors to help the City Commission and all city officials and employees meet the requirements of the code of ethics, the Board must remain mindful of its jurisdiction. The code provides:

When there is a question or a complaint as to the **applicability of any provision of this code to a particular situation**, that question or complaint shall be directed to the board of ethics. It shall then be the function of the board of ethics to conduct hearings and/or issue an advisory opinion, as applicable.

Birmingham City Code § 2-325(b) (emphasis added).

Chapter 2 of the applicable procedural rules gives added jurisdictional guidance:

The rules of this chapter apply to the situation where a city official or employee, the City Commission, or another city commission, board or committee, as defined in the Code of Ethics ("the requesting party"), **requests an advisory opinion as to whether the requesting party's conduct or anticipated conduct, or that of a city official, employee, commission, board or committee under the requesting party's authority, conforms to the Code of Ethics.** The party whose conduct is sought to be reviewed, if it is someone other than the requesting party, is called the "subject party."

Board of Ethics Procedural Rules, Chapter 2, Preamble (emphasis added). After the requesting party initiates the request for the advisory opinion, the duty of the Board of Ethics is defined but limited:

The board **will determine whether the conduct or anticipated conduct of the requesting party or the subject party, as the case may be, conforms to the Code of Ethics.** The board will make its decision upon a vote of a majority of the board based upon the evidence in the record and controlling law. The board will

issue its decision in the form of a written opinion advisory opinion. The advisory opinion, and any dissenting or concurring opinion, will be stated in writing. Once they are issued, the opinions are final.

Id. Rule 215 (emphasis added).

In this instance, the City Commission has requested guidance on whether it is in a conflict of interest, or is placing its commissioners in a conflict of interest, by authorizing commissioners to sit on the NEXT board or the BYA committee. Based on the language of the code of ethics and the procedural rules, the Board of Ethics finds that it has jurisdiction to determine whether commissioner participation on the board or a committee of a community-based organization as set forth in the question presented violates the code.

The Board of Ethics also notes, however, that it lacks jurisdiction to offer a binding opinion on the propriety or wisdom of that participation. The code of ethics and Board precedent establish that the Board deals in cases, not abstract propositions. Nevertheless, the Board serves as an educational resource for the city and thus offers observations it hopes will guide the City Commission and individual commissioners.

APPLICATION OF THE CODE OF ETHICS

At its core, the city's code of ethics is a conflict of interest ordinance. Its foundational premise is that "public office and employment are public trusts. For government to operate properly, each city official, employee, or advisor must earn and honor the public trust by integrity and conduct." Birmingham Code of Ethics § 2-230. Thus, all city officials and employees must avoid conflicts between their private interests and the public interest. *Id.* They must be independent, impartial, and responsible to the people. *Id.* They must make governmental decisions and policy in proper channel governmental channels, and they may not use public office for personal gain. *Id.*

Through the code, the city intends that "city officials and employees avoid any action . . . which might result in or create the appearance of:

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a city decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the city government.

Id. § 2-323.

A key question relevant to this opinion was raised several times in the Board's hearing: if there is a conflict of interest, whose conflict is it? Notably, the code's conflict of interest provisions pertain to the conduct of city officials and employees, not to the city as a governmental entity. A "city official" or "employee" is defined to include:

a person elected, appointed or otherwise serving in any capacity with the city in any position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the city, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions.

Id. § 2-322 (emphasis added). The City Commission, being a governmental body, is not "a person" within the meaning of the code of ethics. Thus, its conduct as a body is not regulated by the code.

The code of ethics has specific conflict of interest provisions, of which an important one is that "no official or employee of the city shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties." *Id.* § 2-324(a)(6).

Specifically, a conflict of interest exists if:

- a. The city official or employee has any financial or personal interest, beyond ownership of his or her place of residence, in the outcome of a matter currently before that city official or employee, or is associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or may be adverse to the public interest in the proper performance of said official's or employee's governmental duties, or;
- b. The city official or employee has reason to believe or expect that he or she will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity, or;
- c. The public official has any other prohibited interest as defined by state statutes relating to conflicts of interest.

Id. § 2-324(a)(10).

DISCUSSION OF POTENTIAL CONFLICTS OF INTEREST

There is No Per Se Conflict of Interest

Under the code of ethics, the City Commission's appointment of a city commissioner to the NEXT board of directors or the BYA committee does not in and of itself result in a conflict of interest.

The Board of Ethics notes first that the City Commission itself makes the appointments through governmental action that assigns to the commissioner a governmental duty. It does not necessarily result in a conflict of interest because, by definition, it is not "adverse to the public interest in the proper performance of said official's or employee's governmental duties." *Id.* § 2-324(a)(10)(a). Likewise, the appointment does not necessarily result in "service [that] is incompatible or in conflict with the discharge of [a commissioner's] official duties" or in "employment [that] may tend to impair his or her independence of judgment or action in the performance of his or her official duties." *Id.* § 2-324(a)(6). It hardly need be questioned that the City Commission has the authority to prescribe certain duties of its members, although as will be seen below that authority is not unlimited.

Moreover, there is no showing on this record that the commissioner has reason to believe that he or she will derive a monetary gain or suffer a monetary loss by reason of his or her official activity. *Id.* § 2-324(a)(10)(b). And the Board of Ethics is aware of no other legal prohibition on this appointment. *Id.* § 2-324(10)(c).

Accordingly, under these facts, a commissioner serving in the role of a NEXT board or BYA committee member is not, solely by virtue of that appointment, in a conflict of interest situation within the meaning of the code of ethics. What matters is what the commissioner does in that role.

But a Potential Conflict of Interest Exists

That said, the Board of Ethics finds that such an appointment could result in incompatible service resulting in a prohibited conflict of interest, especially if the appointment is to an organization's board of directors. In fact, the Board notes an important legal distinction between a city commissioner's service as a member of the NEXT board and a member of the BYA committee.

The BYA GCC is merely an advisory committee whose members owe to BYA whatever duty it establishes. A city commissioner's appointment by the City Commission to the BYA committee is not "incompatible or in conflict with the discharge of his or her official duties," because the City Commission's authorizing resolution determines the appointment to be compatible. While the independence of judgment of a commissioner who joined a volunteer advisory board on his or her own volition could be called into question, under the present facts the City Commission is

fully informed of the relationship between the commissioner and the BYA and its potential effect on the commissioner's city duties, one of which is defined by City Commission resolution to be membership on the BYA committee. As merely an advisory committee, the GCC does not control the BYA or set its policy.

By contrast, a city commissioner's service on the NEXT board of directors creates a substantial potential for a conflict of interest because the board of directors is NEXT's corporate governing body. Under Michigan law, directors of a corporation owe the corporation a fiduciary duty. *Wagner Electric Corp. v. Hydraulic Brake Co.*, 269 Mich. 560, 564; 257 N.W. 884 (1934). Directors must act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believe to be in the best interests of the corporation. MCL § 450.2541.

Because of that fiduciary duty, a city commissioner who participated in the corporation's consideration of a request for funding, license, or other special benefit from the city would be in a conflict between his or her "private interests and the public interest," Birmingham Code of Ethics § 2-230, and for being "associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter." *Id.* § 2-324(a)(10)(a). Clearly, a commissioner's independence of judgment or action in the performance of his or her official duties could be impaired or called into question by participating as a fiduciary in matters before the corporation's board.

The code of ethics also provides that "[n]o official or employee of the city shall participate, as an agent or representative of the city, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest." *Id.* § 2-324(a)(7). Under this provision, a commissioner serving on the NEXT board of directors would be disqualified from voting on a City Commission resolution to appropriate funds, grant a license, or provide special services or consideration to NEXT.

The fact that the City Commission appoints its commissioner to the NEXT board does not cure the conflict. Although the appointment certainly constitutes city business and becomes one of the appointed commissioner's official duties, the appointment imposes upon the commissioner competing, irreconcilable fiduciary duties on matters that involve both NEXT and the city. The code of ethics is an ordinance that takes precedence over City Commission resolutions. Absent an amendment to the code, the City Commission cannot by resolution authorize a commissioner or anyone else to conduct city business in a way that violates the code's conflict of interest prohibitions. To do so would "be adverse to the public interest in the proper performance of said official's or employee's governmental duties."

Of course, a city commissioner's service as a member of the NEXT board of directors or the BYA committee would include tasks and duties unrelated to business with the city, which thus would not necessarily result in a conflict of interest. Accordingly, membership on that board or committee is not a conflict of interest per se, and our holding is distinguishable from our earlier decision involving Ralph L. Seger, Complaint No. 2004-02 (June 8, 2004). In the *Seger* case, the respondent, then a member of the city's general investment committee and Barnum steering committee, was also a fiduciary in an organization—a fund to prosecute litigation against the city—whose sole purpose was adverse to the city. The Board held that the respondent could serve in one capacity or the other but not both. The code of ethics does not require city commissioners serving on the NEXT board or BYA committee to make that election.

That said, the Board of Ethics holds that a city commissioner may not consistent with the code of ethics participate in consideration of any matter before the NEXT board of directors related to a matter that could come before the city of Birmingham or that could “result in or create the appearance of” using public employment or office for private gain, giving or accepting preferential treatment, or affecting adversely the confidence of the public or the integrity of the city government. Specifically, the code bars a commissioner from participating in NEXT's consideration of a request for funding, license, special services, or benefits from the city. The commissioner is likewise disqualified from participating in the city's consideration of any request from NEXT.

As noted above, the code of ethics does not prohibit a city commissioner from serving as a member of a community organization's advisory committee such as the BYA GCC. But a commissioner serving in that role must remain mindful of the potential for a conflict. He or she must be vigilant if any of the organization's business comes before the city and must make the judgment as to whether to disclose or recuse himself or herself in the matter before the city. Even if the risk of that conflict is less than the one facing a member of the NEXT board, that risk is real and depends on a variety of circumstances. An important one concerns fund raising.

Therefore, before the city considers whether to appoint a commissioner to the board or advisory committee, or as a liaison to or in any other capacity with, a community organization, the city is well advised to (1) examine the requirements of the requesting organization and (2) make the organization understand the constraints or restrictions placed on the city or the commissioner in his or her efforts on behalf of the organization.

Special Consideration of Fund-raising and Outreach Activity

A substantial potential conflict raised at the hearings on this case involves fund-raising and outreach activity by the commissioner on behalf of the community organization. Two provisions of the Code bear on this question.

First, “[n]o official or employee of the city shall directly or indirectly, solicit or accept **any gift** or loan of money, goods, services or other thing of value **for the benefit of any person or organization, other than the city, which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties.**” *Id.* § 2-324(a)(4) (emphasis added). In this case, the commissioner is assigned to the organization as part of his or her city duties. Thus any perceived attempt to secure advantages for NEXT or BYA by seeking funds from other sources is not unreasonable; rather, it is authorized by the City Commission. So long as the City Commission knows that fund raising or outreach could be a part of those duties, those activities are not a per se violation of the code of ethics.

Given the holdings above, a city commissioner who solicited gifts for NEXT would be disqualified from participating in City Commission consideration of any matter that involves NEXT; thus, participation on the NEXT board would not tend to influence the manner in which the commissioner performs his or her official duties with the city with respect to NEXT.

But that is not the end of the inquiry. A city commissioner who solicited gifts for NEXT or BYA would still need to remain vigilant about whether the solicitation presents a conflict with respect to the third party whose gift is being solicited. If that third party ends up having business before the city, the commissioner’s solicitation could result in a tendency to influence the manner in which the commissioner performs his or her official duties as to the third party.

Similarly, “[n]o official or employee of the city shall use, or attempt to use, **his or her official position to secure, request or grant unreasonably any special consideration**, privilege, exemption, advantage, contract **or preferential treatment** for himself, herself, or **others**, beyond that which is available to every other citizen.” *Id.* § 2-324(a)(8) (emphasis added). Again, to the extent that the city official solicited funds on behalf of NEXT or BYA from a person doing business with the city, that solicitation could be viewed as an attempt to secure a special consideration or preferential treatment for that person in violation of the code of ethics. Even were there no direct conflict, the solicitation could result in the “appearance of . . . giving or accepting preferential treatment,” “losing complete independence or impartiality of action,” or affecting adversely the confidence of the public or the integrity of the city government in violation of code of ethics. *Id.* § 2-323.

Finally, the Board notes that improper use of public office to secure donations to non-profit organizations can result in legal liability. For instance, the Michigan State Ethics Act contains a provision nearly identical to section 2-324(a)(4) of the city’s code of ethics cited on the preceding page:

A public officer or employee shall not solicit or accept a gift or loan of money, goods, services, or other thing of value for the benefit of a person or organization, other than the state, which tends to influence the manner in which the public officer or employee or another public officer or employee performs official duties.

MCL § 15.342(4). Violation of this statute, which applies to certain state officials but not those of the city of Birmingham, can result in a civil fine of \$500. *Id.* § 15.342(b)(3). In other jurisdictions, public officials' more egregious attempts to secure donations have resulted in prosecutions for extortion.

HOLDING AND CONCLUSION

The Board of Ethics holds on the facts presented that the code of ethics does not bar a city commissioner from serving, by the appointment of the City Commission, as a member of the NEXT board of directors or the Birmingham Youth Assistance General Citizens Committee. Because that service is part of the commissioner's duties on behalf of the city, there is no conflict of interest per se.

But because members of the NEXT board of directors have a fiduciary duty to NEXT, a city commissioner serving on that board may not participate in consideration of any matter potentially adverse to the city, especially a request for funding, license, or any special consideration from the city, and the commissioner further is disqualified from participating in City Commission consideration of any matter involving NEXT.

Furthermore, a commissioner raising funds from or performing outreach with a third party on behalf of those organizations must use care to ensure that his or her efforts do not result in a conflict with regard to any business the third party may have before the city.

FURTHER GUIDANCE

The Board of Ethics does not have jurisdiction to render a binding opinion on matters not involving compliance with the code of ethics. But in its educational role and having received and considered a number of questions on the topic during the hearings on this case, the Board offers the following thoughts to aid the City Commission in its governance.

(1) The Board's response to many of the issues presented above might be different if the city commissioner had joined the community organization board or committee on his or her own volition rather than by assignment by the City Commission. The code of ethics is clear that city officials and employees may not use their official position to obtain a benefit for themselves or others. But the Board declines to opine further on how the Code of Ethics might limit or affect the conduct of a commissioner in

that instance because the potential circumstances to be considered are so varied as to make the question unripe for current decision.

(2) The question was raised about whether the City Commission should ever appoint a commissioner to serve on the board or committee of a community organization. On one hand, appointment of a commissioner looks as if the city is favoring that organization over others. On the other hand, organizations like NEXT and BYA are important to the city and receive substantial support from it, while the city benefits from the oversight provided by the assigned commissioners, who in turn keep the city better informed on how its tax dollars are being spent.

The balance to be achieved is a political question we leave to the City Commission. But the decision in this case makes clear that such an appointment comes with costs to the city. The city could be subjected to criticism for playing favorites. The individual commissioner may be disqualified from acting on matters before the city that concern the organization, contrary to the job the people elected the commissioner to do. And the commissioner would always have to remain vigilant about the potential for a conflict.

(3) A related question was whether, assuming the City Commission assigns a commissioner to sit on the board or committee of a community organization, the commissioner should be a voting member, a non-voting member, or merely a liaison. The answer depends on the city's goal in having the commissioner serve on the organization's board or committee. If the city needs or wishes to exert an amount of formal control over the organization, a seat on its board of directors would not be unreasonable, understanding that the commissioner has a fiduciary responsibility to the corporation. But membership on a corporation's board of directors brings legal duties, responsibilities, and potential liabilities for the commissioner that the city might not want its commissioner to assume or undertake. And given the holding in this case, membership on the board also disqualifies the commissioner from participating in the organization's request for support from the city and from participating in the city's consideration and action on that request.

If on the other hand the city merely needs or wants to exchange information with the organization or monitor its activities, a lesser role such as non-voting membership or liaison might be more appropriate but just as beneficial to the city as would be a board membership. Whether such a role is acceptable to the community organization is a matter for its own judgment.

Further, if merely exchanging information is the goal, maybe no formal participation by a city commissioner is needed at all. Rather, the city could require the organization to report periodically to the City Commission or city staff as a condition of receiving its grant from the city.

Thus, on this issue, the Board of Ethics would counsel the city to use the least intrusive means to achieve its goal. Doing so minimizes the prospect for a conflict of interest. The safest, cleanest way to avoid conflicts is for city commissioners to have no formal role with any organization that comes before the city. That is a policy question for the city to address.

(4) For more reading on this general topic, the Board of Ethics refers the City Commission to an excellent article published in 2008 by the Institute for Local Government titled "Commitment to Non-profit Causes and Public Service: Some Issues to Ponder." This article discusses a number of the concerns and questions raised in this case, including the importance of public perception, the price the city pays for having its members serve on community boards or committees, fund-raising for nonprofits, special problems involving governmental-affiliated non-profit organizations, and political questions that can arise from the relationships between governments and community organizations. The article can be found on line at:

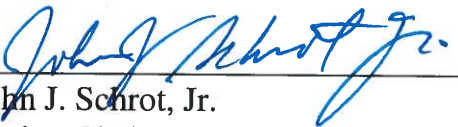
https://www.ca-ilg.org/sites/main/files/file-attachments/resources__Everyday_Ethics_AugOctDec08_0.pdf

The Board appends the article in full with the permission of the Institute for Local Government, 1400 K Street, Suite 205, Sacramento, California, 95814-3916.

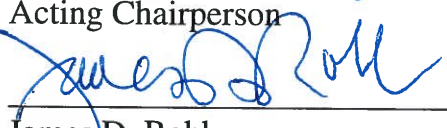
CONCLUSION

The Board of Ethics thanks the Birmingham City Commission for the opportunity to consult and comment on this important issue. The Board commends the commission and the city manager for raising it.

Approved:



John J. Schrot, Jr.
Acting Chairperson



James D. Robb
Member

Board member Sophie Fierro-Share did not participate in the consideration or decision of this case.



Everyday Ethics for Local Officials

Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder

August, October, December 2008

QUESTION

I just completed my first campaign for public office and am happy to report that I won. One of the issues that came up in the campaign was my extensive involvement in nonprofits in our area. I am the executive director of one nonprofit and serve on the board of another. I volunteer for a third. I think my extensive community involvement is one reason I was elected, but what issues should I be alert to now that I'm an elected official? I don't want to make any missteps.

ANSWER

First, congratulations on your election and your commitment to your community. You must be aware of many issues now that you are an elected official. And there are several ways to slice the ethical issues facing an elected official involved in nonprofits.

You will have both ethical and legal considerations to weigh. This column addresses the ethical considerations as well as the legal considerations.

The Distinction Between the Law And Ethics

You can consider the law as a minimum standard of conduct for your behavior. The law determines what you *must* do. If you make a misstep regarding various ethics laws, you will likely face some kind of penalty. Some penalties are financial, and others can cost you your freedom in terms of jail time. Ethics laws are something you should take very seriously.

However, determining whether a given course of action complies with the law should not be the end of your analysis. The law creates a floor for conduct, not a ceiling. Just because a given course of action is *legal* doesn't mean it is ethical or that the public will perceive it as such.

And of course, for elected officials, there can be serious consequences for real or perceived ethical missteps - the public has the right to not return its elected officials to office during each election. In other situations, the public can remove a public official from office through a recall.

Making Ethical Decisions as a Public Official

The key thing to keep in mind regarding public service ethics is that the guiding principle for your decisions must be **what best serves the overall public interest in your community**. In some cases, the public's interest and the particular cause championed by one of the nonprofits you're involved with may align. In other cases, they will not.

Let's take a simple example. Nonprofit organizations invariably are short on resources. The issue may arise whether your public agency should provide funding to (or continue to fund) your nonprofit.

Putting aside legal issues associated with participating in such a decision, the ethical issue is whether **such funding is in the public's best interest as a whole**. Just as nonprofits typically are short on money, so are public agencies. It's not unusual for a community's needs to outstrip its resources. Elected officials play an important role in the budgeting process by deciding the most important uses for taxpayer dollars.

Let's say one of the nonprofit organizations in which you are involved is the local chamber of commerce. The mission of a chamber of commerce is typically to promote and enhance a community's economic vitality and support the interests of the business community. A good argument can be made that a healthy business environment benefits everyone in a community.

For More Information About These Issues

To learn more about legal and ethical issues discussed in this column, see the following related "Everyday Ethics" columns, online at www.ca-ilg.org/everydayethics:

- Extortion and honest services fraud, December 2006;
- Bias and fair process requirements in adjudicative decision-making, October 2006;
- Giving public funds to nonprofits, April 2005;
- First Amendment issues, June 2008; and

Where to seek advice on these issues and the limitations of such advice, June 2007.

However, if funds are scarce, funding the chamber of commerce may mean not funding important public services. A challenge you face as a decision-maker is how to weigh and evaluate such trade-offs. The key ethical issue you face is whether your loyalty to your nonprofit's interests conflicts with your duty of loyalty to the public's interests.

In your public service, the public must be convinced that you are putting their interests ahead of all others. This includes putting the public's interests ahead of those of the nonprofits with which you are affiliated (as well as your own personal financial interests, of course).

Be aware of the strong temptation to rationalize in these kinds of situations. Rationalizing involves starting with a conclusion and then essentially reasoning backwards from that conclusion.

In our example, you would start with the conclusion that supporting the chamber of commerce is in the public's interest and, therefore, it makes sense to budget money for that purpose. A less rationalizing approach is to begin with an analysis of the community's pressing needs and then allocate money to those. Strengthening the business environment may legitimately be one of those interests, but supporting the chamber may or may not be the best way for the agency to do that.

Rod Wood, city manager of Beverly Hills, explains the issue this way:

I believe participating in nonprofit organizations and their good works is beneficial for us all. However, I decline opportunities to sit on the boards of directors of nonprofits, and I encourage council members and executive staff to do likewise. This way, there is no conflict with our first duty and oath of office to the city. If someone does sit on a board and that organization has business before the city, I believe the appropriate course of action is to disclose the relationship and abstain from actions involving the organization.

Wood goes on to observe that people are very passionate about the nonprofits with which they are associated, and it's easy for other nonprofits to feel slighted if an organization in which a city official is involved receives some benefit from the city.

The Importance of Public Perception

Most members of the public will not know a public official's motivations and reasoning. This is where the issue of public perception is important to public servants. *It is important not only that public servants do the right thing, but also that the public perceives the right thing has been done.*

Why should you care about public perception? There are two very practical reasons. The first is that as a public official, you are a steward of the public's trust. The public's trust and confidence in both you and your agency are vital to your ability to lead and accomplish things in your community.

The second reason is that the public's perceptions will play a determining role in their decision to have you represent their interests. If you fall short of the public's expectations, you are not likely to keep your position as an elected official.

The hard truth about public perception is that the public will necessarily have incomplete information. They will not know what your considerations were in analyzing whether to fund the chamber of commerce. Moreover, for better or worse, the public tends to have a rather cynical attitude toward public officials' motivations. Frequently, the public concludes that public officials are motivated to act based on a desire to serve special interests instead of the public's interest.

It's important to note that, in the minds of many, "special interests" are not just limited to private, for-profit organizations. As the *New York Times* noted: "We still think of special interests as groups that have obtained a backdoor influence on law or policy, whether it's purchased by campaign contributions or bartered for political support."¹ The question for a local elected official to ponder is whether the public might reasonably conclude that the official's relationship with a nonprofit might be a form of "backdoor influence" on the agency's decision.

Another element of the public's analysis relates to perceptions of whether a public official can be loyal to the public's interests and the interests of a nonprofit organization with which the official is affiliated. It is always best to follow one lead, not two. And it's best for a public official and the public served to have the same focus --- the public's best interest.

What to Do?

If you find yourself in a situation in which you earnestly believe you can not put aside your loyalty to a nonprofit organization's cause and make a decision based on what serves the public's interest, then you should step aside from decision-making related to that organization.

Let's say, however, you earnestly believe that you can make a decision solely based on the public's interests. In such a situation, you are still well advised to consider stepping aside from the decision-making process if you believe the public might reasonably question whether your loyalty to a nonprofit organization is motivating your decision. Stepping aside will underscore your commitment to the public's trust and confidence in both your decision-making process and that of your agency.

If the situation is public, such as a vote on a request for funding, explain your decision in terms of those values:

Everyone knows that I am a strong supporter both of business in general and the chamber of commerce in particular. In fact, I am a member of the chamber's board of directors.

As a public official, I have a solemn duty to put the public's interest first in all of my decision-making. I put a high value on the public's trust in my decision-making. Because of my relationship with the chamber, I am going to abstain on this decision, so there is no question in the public's mind as to whether my decision is based on my loyalty to the public's interests or my loyalty to the chamber's interests.

Again, this is wholly separate from a legal analysis of whether, in certain situations, the law makes this decision for you and requires you to step aside from the decision-making process.

Too High a Price?

Some officials might reasonably feel that such an approach elevates form over substance --- that they were elected to office precisely because of their commitment to the causes espoused by their nonprofit organizations. They may believe that by not participating in the decisions that matter most to their organizations, they would be letting their supporters down.

In some communities, local officials are encouraged to resign their positions on nonprofit boards of directors when they take public office. This can reduce concerns that an official's decision is affected by conflicting organizational loyalties. In other situations, the official reaches the conclusion that whatever cause he or she is championing is so important that they go with that position and figure the voters will have the ultimate say on whether the official is doing the right thing. The middle ground is for public officials to disclose their affiliations with a nonprofit organization when voting on an issue affecting the nonprofit, so the public at least is aware of the relationship and can evaluate the official's actions accordingly.

Ultimately, the ethical issues are judgment questions for each official to resolve. There are, however, situations in which the law makes the call on what's OK for a public official. A number of laws govern a public official's actions with respect to nonprofit organizations, and that topic will be the focus of the next two "Everyday Ethics" columns.

More "Everyday Ethics" Articles On the Law

The February 2004 "Everyday Ethics" column addressed fund-raising issues for local officials. The February 2006 column talked about mass mailing restrictions, which can come up when public funds support an organization and that organization in turn produces mailed publications that feature an official's name or photo.

All past "Everyday Ethics" columns are online at www.ca-ilg.org/everydayethics.

Fundraising Caveats

In fundraising or similar situations, public officials must take extraordinary care to separate their roles as fundraisers or representatives of a nonprofit and as public officials. They must strive to ensure that people from whom they've solicited a contribution for a charitable cause understand that such a contribution will not favorably influence their decision on a separate matter. Using one's official position to, in essence, force donations to nonprofits violates state and federal laws that prohibit extortion² and protect the public's right to officials' honest services.³

It doesn't necessarily matter that a public official doesn't financially benefit from a donation to a nonprofit. A few members of a committee bidding for the right to host the Olympic Winter Games found this out the hard way when they were successfully prosecuted for bribing and providing gifts to members of the International Olympic Committee (IOC). The court held that the site committee need not have obtained personal gain from their actions, but only needed to intend to deprive the public of the IOC members' honest services.⁴

To create a degree of transparency in this area, the law says that the public has a right to know who is giving big money to charitable causes at a public official's request. Under the law, when contributions from a single person or entity reach \$5,000 over the course of a year, the official needs to write a memo to be kept with the agency's custodian of records explaining this information:

- Which organization or person contributed
- What amount (of \$5,000 or more) to
- Which cause, and
- When the money was given.

Some agencies have created a form to facilitate complete reporting. This disclosure needs to be made within 30 days of reaching the \$5,000 threshold.⁵

The disclosure requirement applies if the public official is the one who requests or suggests that the donor make the donation. It also applies if the request for a donation is made by letter and the public official's name appears on the solicitation (including as part of the letterhead). If the official's name appears on a grant application, even as part of a listing of the board of directors, the disclosure requirement applies.⁶ In fact, any time someone donates to a cause in "cooperation, consultation, coordination or concert with" a public official, the disclosure requirement applies.⁷

What does the disclosure accomplish? It is one piece of information that can enable the public or media to assess if there is any correlation between a donation and a public

official's decision. The goal is to avoid the perception or reality that someone receives special treatment by virtue of having donated to a public official's favorite causes.

As an ethical matter, it's best to avoid asking for donations from those who have matters pending with one's agency (or soon will). This way, the would-be donor does not feel like the decision to donate will affect how the official acts on the donor's pending matter. This relates to the ethical value of fairness. It also avoids any claims by a donor that a public official is trying to secure such contributions in exchange for a favorable decision.

Seeking donations from agency employees presents similar ethical issues. Employees may feel they can't say "no" without a risk that it could affect their employment. This is why the law prohibits public officials from seeking campaign contributions from employees.⁸ The same principle of fairness suggests that public officials voluntarily refrain from asking employees to contribute to the officials' favorite causes.

Reporting Meals, Travel, Gifts and Expense Reimbursement

Most board members and volunteers for nonprofit organizations are unpaid. However, the nonprofit may pay for travel expenses and food or make other gestures that show appreciation to those who serve the nonprofit. A question under the ethics laws is whether these gestures should be treated as gifts, income or neither.

If the nonprofit is a 501(c)(3) organization, the issue is whether the public official has provided services or something else to the organization, such as a speech or participation on a panel. If the public official provided services of equal or greater value to the 501(c)(3), then travel reimbursement is not reportable and not subject to a value limit.⁹ If the public official has not provided services, then reimbursement of travel expenses from the 501(c)(3) is reportable but not subject to the value limit, as long as the travel is reasonably related to a governmental purpose or issue of public policy.¹⁰

For nonprofit organizations that are not 501(c)(3) eligible, the issue is whether travel expenses, meals and other gestures from the nonprofit are a form of compensation to the nonprofit's leadership or volunteers. If so, then their value should be reported as income on an official's Statement of Economic Interests, particularly if the value totals \$500 or more.¹¹ For these gestures to qualify as income (as opposed to gifts), an official needs to be able to demonstrate that he or she provided services equal to or greater than the value of the reimbursements, meals and other gestures.¹² (Note that reimbursement for travel or meals is not reportable as income for purposes of state and federal tax laws.)

If no services were provided for the gestures, then the gestures' value is reportable as a gift if they total \$50 or more in a calendar year.¹³ The same is true if the payments are for purely social or recreational activities paid for by the nonprofit.¹⁴ The value of the gestures cannot total more than the annual gift limit (\$420 for 2009-10).¹⁵ The exception is a gesture that is a personalized item (like a plaque) whose value doesn't exceed \$250. Such personalized items do not need to be reported as either a gift or income.¹⁶

Agency Financial Transactions With the Nonprofit

There may be times when the nonprofit has business with the agency. The nonprofit may want to lease agency property or perform services for the agency. It may be seeking a donation to support its operations or an event (see "For Whom the Whistle Blows," April 2005, *Western City*, on legal requirements related to making donations to nonprofits, online at www.westerncity.com). It's important to note that there are two different laws an attorney will need to analyze for a public official if one of these situations exists.

1. One is a prohibition against public officials having certain kinds of interests in contracts involving their agency. Attorneys call this a "1090" issue, which refers to the section of the Government Code where the prohibition appears. The prohibition applies to public officials having a financial interest in a contract, but it is important to keep in mind that the definition of "financial interest" is very broad, and so is the definition of "contract."
2. The other is the Political Reform Act's provisions that require public officials to step aside from decisions and the decision-making process if they have a financial interest in the decision. As with the prohibitions relating to contracts, the definition of "financial interest" is broad, and the analysis of how the prohibition applies is quite complex.

The complexity of the analysis required under both laws makes it advisable to consult with your agency counsel as early as possible about these issues.

Section 1090 and Contract Issues

Let's look more closely at the rules related to contracts and nonprofits. When a member of a decision-making body has a financial interest in a contract, the contract cannot occur¹⁷ --- that's the rule. Nonprofits present special issues because they are not owned by anyone and no one reaps a profit in connection with their activities. As a result, public officials may think that this proscription does not apply.

The ban does apply though, because nonprofits are sources of income and provide other benefits to a variety of individuals, as discussed in the October column. Those benefits --- as well as the close relationship a public official may have with a nonprofit --- can cause the public to question whether a public official is putting the general public's interests first in a given situation.

What is a public official to do if he or she has the kinds of financial ties covered by the law with a nonprofit? Typically, the official must disclose the relationship and not participate in any decision-making related to the nonprofit.

The decision-making process is not limited to the final vote on a matter. The public official needs to step aside from all phases leading up to the contract's approval, including

preliminary discussions, negotiations, compromises and planning.¹⁸ If the official doesn't and attempts to influence his or her colleagues, the official and the agency lose the benefit of the exception that allows the contract to be entered into.¹⁹ This requirement assures the public that no preferential treatment is occurring because of a nonprofit's connection with one or more public officials.

The official must step aside in situations that involve:

- **A Nonprofit Officer** --- When an elected official is an officer of the nonprofit (for example, president) and the agency wishes to support the nonprofit;²⁰ and
- **A Nonprofit Employee** --- When an elected official or his or her spouse or partner works for the nonprofit, and the agency wishes to support the nonprofit.²¹

Note, however, that the official does *not* have to step aside if: 1) he or she is a non-compensated officer of a tax-exempt organization; and 2) one of the nonprofit's purposes is to support the functions of his or her public agency.²² Also, just being a non-salaried member of the nonprofit doesn't require a public official to step aside from the decision-making process, all other things being equal.²³ (For both of these exceptions to apply, the relationship needs to be disclosed in the agency's official records.) If, however, there is a question about whether the official's relationship biases his decision, he should speak with agency counsel about bias issues.

Note that if the financial arrangement pre-dates the official's service on the decision-making body, there is no problem as long as there is no change or renewal of the arrangement.²⁴ As an example, the attorney general said that a city could continue to lease property to a nonprofit organization even though a newly elected council member is a paid executive director for the nonprofit.²⁵

What about being a member of a nonprofit's board of directors? Attorneys disagree on the best interpretation of the statutory language. The attorney general believes that being a board member is akin to being an officer, which means board members must step aside from the decision-making process when it comes to agency financial relationships with their nonprofits.²⁶ Some attorneys believe that the concept of being an "officer" of a nonprofit is limited to those positions specified as "officers" under state law related to nonprofits.²⁷

The question in this situation is: On which side do you want to err? If the official participates in decision-making related to the contract, the contract may be void.²⁸ There are other penalties for purposeful failure to disclose one's status, including loss of office.²⁹ To be safe, nonprofit board members may want to disclose and step aside from the decision-making process until the appellate courts provide guidance on this point.

About Those Agency-Affiliated Nonprofits

In some situations, public agencies will create nonprofit organizations to support a worthwhile objective. Because of the close tie to the public agency's interests, public officials sometimes sit on the nonprofit's governing board. These situations can create complex legal and ethical issues because the agency's and nonprofit's interests are so closely intertwined.

For example, what if an agency decides to use its authority when approving a lease, permit or other entitlement to require a contribution to the agency's nonprofit? The idea can make complete sense, as apparently was the case in one Northern California city. The nonprofit supported the operation of a national park. Most of the buildings and land within the park are owned and maintained by the city. One of the responsibilities of board members is fundraising.

The city's holdings in the park apparently included land that a company sought to lease for aggregate mining. The lease required environmental review. The council member/board member had the idea that one of the mitigation measures for the mining operation could include a \$250,000 contribution to the nonprofit to support the operations of the park. The company apparently agreed to do so, and the council member/board member asked staff to include the commitment in the conditions for project approval.

When asked if the council member/board member could participate in the decision-making relating to the lease, the attorney general said he could. This was largely because the nonprofit was so closely affiliated with the city and therefore the council member did not have a direct or indirect financial interest in the lease.³⁴ The special statutory provisions for nonprofits formed to support public agency objectives played a strong role in the attorney general's analysis.

How might an official handle such a situation to minimize questions about the dual role an elected official/board member might be playing? One is to consult with the management and legal staff about the contribution idea. Agency attorneys can analyze whether the law permits an agency to ask for this kind of gesture in this situation. For example, if this were a situation not involving city land, the city's requirements would need to satisfy the laws relating to permissible exactions.³⁵ Management staff can work with planning staff and get their input on the concept.

Getting buy-in on the merits of the approach (in an open meeting, of course) is another option. That helps make the idea to support the nonprofit's activities the agency's idea, as opposed to the individual elected official's idea.

Political Reform Act and Financial Interest Issues

The previous installment of this column analyzed the issue of travel reimbursement and other things an official might receive from a nonprofit. Such gifts or income can be the basis for having to disqualify oneself from participating in public agency decisions involving the nonprofit. A threshold issue is whether the official has received reportable income of \$500 or more or reportable gifts of \$390 (\$420 in 2009-10) or more within the 12 months preceding the decision. If so, the next series of questions to be analyzed by either the Fair Political Practices Commission (FPPC) or agency counsel is whether it is reasonably foreseeable that a public official's decision would have a material financial effect on the nonprofit.³⁰

Another situation of potential concern is an official doing business with a nonprofit --- for example, when the nonprofit is a customer or client of a business in which a public official is involved. In such a case, a public official is well advised to speak with either the FPPC or agency counsel about whether the disqualification requirements of the Political Reform Act apply.

For example, the FPPC recently advised one public official not to participate in a decision on funding a nonprofit organization when his consulting firm provided services to the nonprofit. The FPPC did the analysis required under the Political Reform Act. Key issues were whether the official had received income of \$500 or more from the nonprofit during the 12-month period before the decision and whether the financial effect of the decision met the materiality standards under the act.³¹ The FPPC also strongly advised the official to get advice from the attorney general on how the prohibitions against having an interest in contracts apply.³²

Bias Issues

In situations where an official is applying an agency's policies to a specific situation (for example, in a permit or entitlement situation), one must be aware of the potential for bias. Bias is a common-law or judge-made law, concept. The issue to be concerned with is whether one's participation in a decision will subject the decision to invalidation.

For example, a planning commissioner ghost-wrote an article in a community newsletter that was critical of a project that ultimately came before the planning commission. When the project was turned down, the project proponent challenged the outspoken commissioner's participation in the decision. The theory was that the commissioner had prejudged the merits of the application before the public hearing and couldn't fairly determine whether the project satisfied the city's requirements.³³ The appellate court agreed and set aside the decision.

When a decision-maker is applying existing policies to a specific situation, the decision-maker is acting more like a judge. In legal jargon, the official is acting in a quasi-judicial capacity. When one acts in this capacity, certain fair process requirements apply that

don't apply when a decision-maker is enacting those policies in the first place (and acting in a legislative capacity).

When an official is affiliated with a nonprofit organization that has strongly held views on a matter, the official should consult with agency counsel about whether the official will be acting in a quasi-judicial capacity. If so, the official should ask him or herself if he or she can truly be fair in applying the policies to the specific situation. If not, stepping aside satisfies one's legal and ethical obligations.

Even if an official feels he or she can be fair, another step in analyzing bias is consideration of whether the applicant and others will *perceive* the official as fair. Has the official made statements that suggest that the official has pre-judged the matter? Is there evidence that could be presented to a court to suggest bias? If so, it may be wise to step aside from the decision-making process.

For more information on bias and fair process requirements in adjudicative decision-making, see the "Everyday Ethics" column from October 2006 (online at www.westerncity.com).

Conclusion

When considering all the good and worthy things nonprofits contribute to a community, it can be very tempting to just think about those worthy ends and not think about the means used to achieve those ends. Some officials may even believe that the ends justify the means.

It's important to know that ethics laws make it very clear that the means by which a public official pursues worthwhile ends do matter. Using improper means can result in fines, jail time and other penalties, including the loss of one's standing in the community.

And of course, the laws just create the minimum standards for determining proper means. Merely satisfying the minimum requirements of the law may not satisfy either one's own or one's constituents' standards for what is appropriate. Dr. Martin Luther King Jr. encouraged everyone striving to make the world a better place to use means that are as pure as the end one seeks --- in other words, worthy ends never justify questionable means.

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Endnotes:

¹ Nunberg, Geoffrey, "The Language Lobby: The Lost Vocabulary of Disinterested Politics" *New York Times* at *NYTimes.com* (Sept. 14, 2003) (accessed May 12, 2008).

² See Cal. Penal Code § 518; 18 U.S.C. § 1951.

³ *U.S. v. Kemp*, 379 F. Supp. 2d 690, 697-98 (E.D. Penn. 2005), *aff'd* 500 F.3d 257 (3d Cir. 2007), *cert. denied*, 128 S. Ct. 1329 (2008).

⁴ *U.S. v. Welch*, 327 F.3d 1081 (10th Cir. 2003); *U.S. v. Silvano*, 812 F.2d 754, 760 (1st Cir. 1987). *Cf. U.S. v. Bloom*, 149 F.3d 649 (7th Cir. 1998) (finding personal gain necessary).

⁵ Cal. Gov't Code § 82015(b)(2)(B)(iii).

⁶ Cal. Code Regs. § 18225.7(a) ("Made at the behest of" means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.")

⁷ Sundberg Opinion , FPPC Advice A-05-087 (May 27, 2005).

⁸ Cal. Gov't Code § 3205.

⁹ Cal. Gov't Code §§ 82030(b)(2). See FPPC, Limitations and Restrictions on Gifts, Honoraria,

Travel and Loans: A Fact Sheet for Local Officials (January 2007) at 7. (<http://www.fppc.ca.gov/factsheets/giftlocal.pdf>). See also Benninghoven Advice Letter, FPPC No. I-93-298. (October 15, 1993); Kidwell Advice Letter, FPPC No. A-00-103 (September 14, 2000) .

¹⁰ Cal. Gov't Code § 89506(a)(2). See FPPC imitations and Restrictions on Gifts, Honoraria, Travel and Loans: A Fact Sheet for Local Officials (January 2007) at 8.

(<http://www.fppc.ca.gov/factsheets/giftlocal.pdf>). *See also* Benninghoven Advice Letter, FPPC No. I-93-298. (October 15, 1993); Kidwell Advice Letter, FPPC No. A-00-103 (September 14, 2000).

¹¹ Benninghoven Advice Letter, FPPC No. I-98-177 (November 12, 1998); Benninghoven Advice Letter, FPPC No. I-93-298. (October 15, 1993).

¹² Cal. Gov't Code § 82028(a).

¹³ Cal. Gov't Code § 87207(a)(1).

¹⁴ Kidwell Advice Letter, FPPC No. A-00-103 (September 14, 2000).

¹⁵ 2 Cal. Code Regs. § 18940.2; Cal. Gov't Code § 89503.

¹⁶ 2 Cal. Code Regs. § 18942 (a)(6).

¹⁷ Cal. Gov't Code § 1090.

¹⁸ *See Stigall v. City of Taft*, 58 Cal. 2d 565, 569-71, 25 Cal. App. 441, 443-44 (1962).

¹⁹ *See* Cal. Gov't Code § 1091(c) ("This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.")

²⁰ Cal. Gov't Code § 1091(b)(1); *see also* 89 Cal. Op. Att'y Gen. 258 (2006).

²¹ Cal. Gov't Code § 1091(b)(1); *see also* 89 Cal. Op. Att'y Gen. 258 (2006); 85 Cal. Op. Att'y Gen. 76 (2002).

²² Cal. Gov't Code § 1091.5(a)(8) (a noninterest includes "That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records"; an officer is "noncompensated" even if he or she receives expense reimbursements).

²³ Cal. Gov't Code § 1091.5(a)(7) (defining nonprofit membership as a non-interest). *See also* Attorney General Conflicts of Interest (2004) at 90 ("...this office believes that the reference to "members" [in section 1091(b)(1)] refers to persons who constitute the membership of an organization rather than to person who serve as members of the Board of Directors of such organizations.")

²⁴ *See City of Imperial Beach v. Bailey*, 103 Cal. App. 3d 191, 162 Cal. Rptr. 663 (4th Dist. 1980).

²⁵ 85 Cal. Op. Att'y Gen. 176 (2002).

²⁶ Cal. Gov't Code § 1091(b)(1). *See also* Attorney General Conflicts of Interest (2004) at 90 ("...this office believes that the reference to "members" [in section 1091(b)(1)] refers to persons who constitute the membership of an organization rather than to person who serve as members of the Board of Directors of such organizations.")

²⁷ Cal. Gov't Code §§ 1091(d)(specifying that willful failure to comply with the remote interest requirements is punishable under section 1097), 1097 (specifying that violations are "punishable by a fine

of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state").

²⁸ See Cal. Gov't Code § 1091(c) ("This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.")

²⁹ Cal. Gov't Code §§ 1091(d) ("The willful failure of an officer to disclose the fact of his or her interest is a contract pursuant to this section is punishable as provided in Section 1097"), 1097 ("Every officer . . . who willfully violates any of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.").

³⁰ See Cal. Gov't Code § 87100 and following; 2 Cal. Code Regs. § 87200 and following. See also Pavlovich Advice Letter, FPPC No. A-94-391 (January 05, 1995).

³¹ See Mattas Opinion, FPPC Advice A-08-035 (April 08, 2008).

³² See Mattas Opinion, at n. 2.

³³ *Nasha L.L.C. v. City of Los Angeles*, 125 Cal. App. 4th 470, 483-842, 22 Cal. Rptr. 3d 772, 780-81 (2d Dist. 2004).

³⁴ See 88 Cal. Op. Att'y Gen. 32 (2005).

³⁵ The Institute offers resources on these issues at http://www.ca-ilg.org/index.jsp?displaytype=§ion=land&zone=ilsg&sub_sec=land_property&tert=land_property_fees.