CITY COMMISSION MEETING AGENDA
SEPTEMBER 11, 2017
7:30 PM

Municipal Building, 151 Martin, Birmingham, MI 48009

Navigating through the agenda:

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BIRMINGHAM CITY COMMISSION AGENDA
SEPTEMBER 11, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mark Nickita, Mayor

II. ROLL CALL

J. Cherilynn Mynsberge, City Clerk

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

Proclamations, Resolutions, Awards:

- Recognition of Police Officer Casey Pedersen who finished fifth in the world in the Cross-Fit competition at the 2017 World Police and Fire Games in Los Angeles.

Announcements:

- Public input on the Birmingham Parks and Recreation Master Plan will be sought during Field Day at the Farmers Market on Sunday, September 17th from 9:00 a.m. until 2:00 p.m. and at an Open House on Tuesday, October 3rd beginning at 5:30 p.m. Visit bhamgov.org/ParksRecPlan for more information.
- Sunday, September 17th is also the Farmers Market's Harvest Festival, celebrating the bounty of Michigan's harvest, from 9:00 a.m. until 2:00 p.m. in Municipal Parking Lot #6 on N. Old Woodward.
- Baldwin Public Library's Idea Lab is now open to the public. The Idea Lab is a makerspace which includes a laser cutter and 3D printer. Visit the Library at 300 W. Merrill or go on-line to www.baldwinlib.org/idealab for additional information.
- A new Birmingham Citizens Academy session begins on September 26th. Space is still available for Birmingham residents to take part in this free 8-week program. Applications are due September 22nd. Visit www.bhamgov.org/citizensacademy to download the application.
- The Birmingham Street Art Fair is coming up on Saturday, September 16th from 10:00 a.m. until 6:00 p.m. and Sunday, September 17th from 10:00 a.m. to 5:00 p.m. For more information visit www.theguild.org.
- Next, The Principal Shopping District, The City of Birmingham and Baldwin Public Library are proud to present "Boomer Summit, for Boomers & Beyond" on Saturday, October 14th at Birmingham Seaholm High School. Leaders from around the nation will offer ideas and inspiration for making the most of the next and best years ahead. Register at www.BirminghamNext.org.

Appointments:

A. Interviews for Board of Zoning Appeals
   1. Kevin Hart
   2. Peter Lyon
   3. A. Randolph Judd

B. To appoint _____ to the Board of Zoning Appeals as a regular member to serve a three-year term expiring October 10, 2020.

C. To appoint _____ to the Board of Zoning Appeals as a regular member to serve a three-year term expiring October 10, 2020.

D. To appoint _____ to the Board of Zoning Appeals as a regular member to serve a three-year term expiring October 10, 2020.

E. Interviews for Brownfield Redevelopment Authority
   1. Dan Haugen
   2. Harry Awdey

F. To concur in the Mayor's appointment of _____ to the City of Birmingham Brownfield Redevelopment Authority to serve the remainder of a three-year term to expire May 23, 2019.

G. Administration of Oath of Office 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.

A. Approval of City Commission minutes of August 28, 2017

B. Approval of warrant list, including Automated Clearing House payments, of August 30, 2017 in the amount of $3,770,596.47.

C. Approval of warrant list, including Automated Clearing House payments, of September 6, 2017 in the amount of $22,469,232.06.

D. To approve a request submitted by Our Shepherd Lutheran Church requesting permission to place a Nativity scene in Shain Park from November 23, 2017 to December 29, 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.

E. To approve the ballots for the November 7, 2017 election as submitted and to authorize the ballots to be printed.

F. To approve the contract for Barnum Park Field Improvements project to Homefield Turf and Athletic, Inc. in the amount of $21,900.00 from the Capital Projects Fund, account #401-751.001-981.0100. Also, to approve the purchase of the infield material from Natural Sand Company Incorporated from the Capital Projects Fund, account #401-751.001-981.0100. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.

G. To approve the street light agreement between the City of Birmingham and DTE Energy regarding the installation of street lights at 856 N. Old Woodward Ave. Further, to direct 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. To set a public hearing date of October 16, 2017 to consider an amendment to Article 9, Section 9.02, Definitions, to add a definition for personal services to the Zoning Ordinance.

V. UNFINISHED BUSINESS

None

VI. NEW BUSINESS

A. Resolution approving the continuation of the parking restrictions currently in place on Glenhurst, Frank, Haynes and Hazel St.

B. Resolution directing staff to issue the Request for Proposals for the solicitation of qualified development teams to plan and construct the North Old Woodward / Bates Street Parking and Site Development with the changes noted.

C. Resolution approving Option 1, improvements only at the two sidewalk areas under the bridge, of the proposal dated August 10, 2017 for the Maple Road Railroad Bridge Improvements Study with Walker Restoration Consultants in an amount not to exceed $7,175.00. Funds for this study will be used from Major Roads - Bridge Maintenance – Other Contractual Services account #202-449.002-811.0000.

OR

Resolution approving Option 2, improvements at the two sidewalk areas under the bridge and at the roadway areas under the bridge, of the proposal dated August 10, 2017 for the Maple Road Railroad Bridge Improvements Study with Walker Restoration Consultants in an amount not to exceed $8,775.00. Funds for this study will be used from Major Roads - Bridge Maintenance – Other Contractual Services account #202-449.002-811.0000.

D. Resolution adopting Board of Ethics Advisory Opinion 2016-03 as guidance for Commissioners with respect to serving on community based organizations.

E. Resolution amending Chapter 114, Utilities, Article VI, Storm Water Utility Fee, Section 114.402 – Calculation of Fees, to clarify the options for appeal on Single-Family Residential properties.

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 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.)

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

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

X. REPORTS

A. Commissioner Reports

B. Commissioner Comments

C. Advisory Boards, Committees, Commissions' Reports and Agendas

D. Legislation

E. City Staff

1. Parking Utilization Report (O'Meara)

XI. 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 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).

City of Birmingham
A Walkable Community

NOTICE OF INTENTION TO APPOINT TO BOARD OF ZONING APPEALS

At the regular meeting of Monday, September 11, 2017 the Birmingham City Commission intends to appoint three (3) regular members to the Board of Zoning Appeals to serve three-year terms to expire October 10, 2020.

Interested parties may recommend others or themselves for these positions by submitting a form available from the City Clerk's office. Applications must be submitted to the city clerk's office on or before noon on Wednesday, September 6, 2017. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Duties of Board

The Board of Zoning Appeals acts on questions arising from the administration of the zoning ordinance, including the interpretation of the zoning map. The board hears and decides appeals from and reviews any order, requirement, decision or determination made by the building official.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	**Criteria/Qualifications** Applicants shall be property owners of record and registered voters.
Kevin Hart, 2051 Villa Road, #403	Property Owner & Registered Voter
Peter Lyon, 1498 Yosemite Blvd.	Property Owner & Registered Voter
A. Randolph Judd, 1592 Redding	Property Owner & Registered Voter

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.

SUGGESTED ACTION:

To appoint _____ to the Board of Zoning Appeals as a regular member to serve a three-year term to expire on October 10, 2020.

To appoint _____ to the Board of Zoning Appeals as a regular member to serve a three-year term to expire on October 10, 2020.

To appoint _____ to the Board of Zoning Appeals as a regular member to serve a three-year term to expire on October 10, 2020.

BOARD OF ZONING APPEALS

Chapter 126 – Section 126-671 – Seven Members – Three Year Terms
Requirements – Property owners of record and registered voter

The Board of Zoning Appeals acts on questions arising from the administration of the zoning ordinance, including the interpretation of the zoning map. The board hears and decides appeals from and reviews any order, requirement, decision or determination made by the building official.

Last Name / Home Address	First Name	Home / Business / E-Mail	Appointed	Term Expires
Baiardi 2152 Manchester	**Kristen**	(313) 234-6228 *kbaiardi@gmail.com*	2/13/2017 Alternate	2/17/2020
Canvasser 369 Kimberly	**Jason**	(248) 231-9972 *jcanvasser@clarkhill.com*	11/23/2015 alternate	2/17/2020
Hart 2051 Villa	**Kevin**	(248) 4967363 *khartassociates@aol.com*	2/27/2012 (served as an alternate 2/27/12 - 10/13/14)	10/10/2017
Jones 1701 Winthrop Lane	**Jeffery R.**	(248) 433-1127 *j_rjones@sbcglobal.net*	6/12/2006	10/10/2019
Judd 1592 Redding	**A. Randolph**	(248)396-5788 (248) 396-5788 *arjudd@comcast.net*	11/13/1995 Attorney	10/10/2017
Lillie 496 S. Glenhurst	**Charles**	(248) 642-6881 *lilliecc@sbcglobal.net*	1/9/1984 Attorney	10/10/2019

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Lyon 1498 Yosemite	**Peter**	(248) 646-9337 (313) 805-5745	11/15/2002 Engineer	10/10/2017
Miller 544 Brookside	**John**	(248) 703-9384 *feymiller@comcast.net*	1/23/2012 (Served as alternate 01/11/10-01/23/12)	10/10/2018
Morganroth 631 Ann	**Erik**	(248) 762-9822 *emorganroth@comcast.net*	10/12/2015	10/10/2018

CITY BOARD/COMMISSION ATTENDANCE RECORD

Board/Commission: Board of Zoning Appeals **Year:** **2014**

Member Name	1/14	2/11	3/12	4/8	5/13	6/10	7/8	8/12	9/9	10/14	11/11	12/9	Total Mtgs. Att.	Total Absent	Percent Attend
David Conlin	P	A	P	A	NM	P	P	P	P	NA	NA	NA	6	2	75%
Jeffery Jones	P	P	P	P	NM	P	P	P	P	P	P	P	11	0	100%
Thomas Hughes	P	P	P	P	NM	P	P	A	A	P	P	P	9	2	82%
Randolph Judd	P	P	P	P	NM	A	P	A	P	P	P	A	8	3	73%
Charles Lillie	A	P	P	P	NM	P	P	P	P	P	P	P	10	1	91%
Peter Lyon	A	P	A	P	NM	P	P	P	A	P	A	P	7	4	64%
John Miller	P	P	P	P	NM	P	A	P	A	A	P	P	8	3	73%
Kevin Hart	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	P	P	P	3	0	100%
ALTERNATES															
Cynthia Grove	P	P	P	A	NM	A		P	P	P	A	P	7	3	70%
Kevin Hart	P			P	NM	P		A	P	N/A	N/A	N/A	4	1	80%
Rachel Loughrin	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A		A		0	1	0%
Members in attendance	7	7	7	7	0	7	6	6	6	7	6	7			

KEY: A = Absent
P = Present
NM = No Meeting

Department Head Signature

CITY BOARD/COMMISSION ATTENDANCE RECORD

Board/Commission: Board of Zoning Appeals **Year:** **2015**

Member Name	1/13	2/10	3/10	4/14	5/12	6/9	7/14	8/11	9/8	10/13	11/11	12/8	Total Mtgs. Att.	Total Absent	Percent Attend
Kevin Hart	P	P	P	P	P	P	P	NM	P	P	P	P	11	0	100%
Jeffery Jones	P	P	P	P	P	A	P	NM	P	P	P	P	10	1	91%
Thomas Hughes	P	P	A	P	P	P	P	NM	P	N/A	N/A	N/A	7	1	88%
Randolph Judd	P	P	A	A	P	P	P	NM	P	P	P	P	9	2	82%
Charles Lillie	P	A	P	P	P	P	P	NM	P	P	P	P	10	1	91%
Peter Lyon	P	P	P	P	A	P	P	NM	P	P	A	P	9	2	82%
John Miller	A	P	A	P	P	P	P	NM	A	P	P	P	8	3	73%
Erik Morganroth	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	P	P	2	0	100%
ALTERNATES															
Cynthia Grove	A	P	P	A	A	A			P	P	A		4	5	44%
Rachel Loughrin	P		P	P	A	P					A		4	2	67%
Members in attendance	7	7	6	7	6	7	7	0	7	7	6	7			

KEY: A = Absent
P = Present
NM = No Meeting

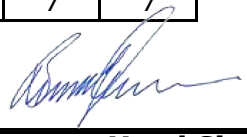
Department Head Signature

CITY BOARD/COMMISSION ATTENDANCE RECORD

Board/Commission: Board of Zoning Appeals **Year:** **2016**

Member Name	1/12	2/9	3/8	4/12	5/10	6/14	7/12	8/9	9/13	10/13	11/8	12/13	Total Mtgs. Att.	Total Absent	Percent Attend
Kevin Hart	P	A	P	P	P	A	P	A	P	P	P	P	9	3	75%
Jeffery Jones	P	P	P	P	P	P	P	P	A	P	P	P	11	1	92%
Randolph Judd	P	P	A	A	P	P	P	P	P	P	P	P	10	2	83%
Charles Lillie	A	A	P	P	P	P	A	P	P	P	P	P	9	3	75%
Peter Lyon	A	P	P	P	P	P	P	P	P	A	P	P	10	2	83%
John Miller	P	P	P	A	P	A	P	P	A	P	A	P	8	4	67%
Erik Morganroth	P	P	P	P	P	P	P	P	P	P	P	P	12	0	100%
ALTERNATES															
Cynthia Grove	P	P	A	P		A	A	A	P	A	A		4	6	40%
Jason Canvasser	P	P	P	P		P	P	P	P	P	P		10	0	100%
Members in attendance	7	7	7	7	7	6	7	7	7	7	7	7			

KEY: A = Absent
P = Present
NM = No Meeting



Department Head Signature

CITY BOARD/COMMISSION ATTENDANCE RECORD

Board/Commission: Board of Zoning Appeals **Year: 2017**

Member Name	1/10	2/14	3/14	4/18	5/9	6/13	7/11	8/8	9/12	10/17	11/14	12/5	Total Mtgs. Att.	Total Absent	Percent Attend
Kevin Hart	P	P	P	P	A	P	P	A					6	2	75%
Jeffery Jones	P	P	P	P	P	P	P	P					8	0	100%
Randolph Judd	P	P	P	A	P	P	P	P					7	1	88%
Charles Lillie	A	A	P	P	P	P	P	A					5	3	63%
Peter Lyon	A	P	P	P	A	P	P	P					6	2	75%
John Miller	P	P	P	A	P	P	A	P					6	2	75%
Eric Morganroth	P	P	P	P	P	P	P	P					8	0	100%
Reserved													0	0	#DIV/0!
Reserved													0	0	#DIV/0!
ALTERNATES															
Jason Canvasser	P	P		P	P		P	P					6	0	100%
Cynthia Grove	P	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	1	0	100%
Kristen Baiardi	N/A			P	P	P		P					4	0	100%
Reserved													0	0	#DIV/0!
Members in attendance	7	7	7	7	7	8	7	7	0	0	0	0			

KEY: **A = Absent**
P = Present
NM = No Meeting
NA = Not Appointed at this time

Department Head Signature

City of Birmingham
A Walkable Community

RECEIVED BY
AUG 23 2017
CITY CLERK'S OFFICE
CITY OF BIRMINGHAM

OFFICE USE ONLY
Meets Requirements? (Yes) No
(Will Attend) / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest BOARD OF ZONING APPEALS

Specific Category/Vacancy on Board _____

Name KEVIN HART

Phone 248.496.7363

Residential Address 2051 VILLA ROAD, #403

Email KHARTASSOCIATES@AOL.COM

Residential City, Zip BIRMINGHAM, MI 48009

Length of Residence 60 YEARS

Business Address 700 EAST MAPLE, SUITE 101

Occupation ARCHITECT

Business City, Zip BIRMINGHAM, MI 48009

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied I WAS BORN AND RAISED IN BIRMINGHAM. I HAVE RAISED THREE CHILDREN IN BIRMINGHAM AND HAVE OPERATED AN ARCHITECTURE FIRM IN BIRMINGHAM SINCE 1992. I WANT TO SERVE THIS COMMUNITY

List your related employment experience I HAVE BEEN PRACTICING RESIDENTIAL ARCHITECTURE AS A PROFESSIONAL FOR OVER 26 YEARS.

List your related community activities HAVE BEEN A MEMBER OF THE CITY OF BIRMINGHAM'S BZA FOR OVER FIVE YEARS.

List your related educational experience BACHELOR OF ARCHITECTURE FROM THE UNIVERSITY OF NOTRE DAME. GRADUATED MAY OF 1980.

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: NO.

Do you currently have a relative serving on the board/committee to which you have applied? NO.

Are you an elector (registered voter) in the City of Birmingham? YES

Signature of Applicant

Date 8/22/17

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to cmynsberge@bhamgov.org or by fax to 248.530.1080.

Updated 8/16/17

City of Birmingham
A Walkable Community

OFFICE USE ONLY
Meets Requirements? (Yes) No
(Will Attend) / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

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(Please print clearly)

Board/Committee of Interest Borad of Zoning Appeals

Specific Category/Vacancy on Board Regular Member

Name Peter Lyon

Phone _____

Residential Address 1498 Yosemite Blvd,

Email _____

Residential City, Zip Birmingham MI 48009

Length of Residence _____

Business Address _____

Occupation _____

Business City, Zip _____

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied _____

List your related employment experience Residential rental development 1989-2005
Engineer- 1997- Present Residential Building/Builder- 1987-2002

List your related community activities Board of Zoning Appeals: 2002- present, Vice-Chair: June 2017- present
Board of Building Trades Appeals: 2000-2002, President Birmingham Villas Homeowners Assoc.: 1993-1997

List your related educational experience _____
BSME- Univ of Michigan (1987) MBA- Univ of Michigan (1992)

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No

Do you currently have a relative serving on the board/committee to which you have applied? Yes

Are you an elector (registered voter) in the City of Birmingham? Yes

Signature of Applicant

August 23, 2017
Date

3A2

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to cmynsberge@bhamgov.org or by fax to 248.530.1080.

Updated 8/16/17

City of Birmingham
A Walkable Community

OFFICE USE ONLY
Meets Requirements? (Yes) No
(Will Attend) / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest: Board of Zoning Appeals

Specific Category/Vacancy on Board: member

Name: A. Randolph Judd

Phone: 248-396-5788

Residential Address: 1592 Redding

Email: arjudd2@gmail.com

Residential City, Zip: Birmingham MI 48009

Length of Residence: 43 years

Business Address: -None-

Occupation: Attorney

Business City, Zip: - None -

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied: I've been involved with Birmingham for 33 years. Resume attached.

List your related employment experience: see Resume

List your related community activities: see Resume

List your related educational experience: see Resume

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain:

NO

Do you currently have a relative serving on the board/committee to which you have applied? NO

Are you an elector (registered voter) in the City of Birmingham? Yes

A Randolph Judd
Signature of Applicant

August 19, 2017
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to cmynsberge@bhamgov.org or by fax to 248.530.1080.

Updated 8/16/17

A. RANDOLPH JUDD

1592 REDDING
BIRMINGHAM MI 48009
(248) 396-5788 (C)
EMAIL: arjudd2@gmail.com

RESUME

EDUCATION

OAKLAND UNIVERSITY B.A. ENGLISH;	1972
DETROIT COLLEGE OF LAW, JURIS DOCTOR; ***	1978

PROFESSIONAL

ATTORNEY (SEMI-RETIRED);	
STATE BAR OF MICHIGAN *(P28983);*	*1979 TO PRESENT*
AUTOMOBILE CLUB OF MICHIGAN, LEGAL DEPARTMENT;	1979 TO 1993
MEDIATOR: WAYNE COUNTY;	1984 TO PRESENT
PROFESSIONAL SCUBA INSTRUCTOR.	1993 TO PRESENT

CIVIC ACTIVITIES

CITY OF BIRMINGHAM, MICHIGAN:

BOARD OF ZONING APPEALS; **	*1995 TO PRESENT;*
CITY COMMISSIONER*;*	*1986 TO 1995*
MAYOR;	*1989 TO1990*
SISTER-CITY LIAISON *(RITTO, JAPAN);*	*1989 TO 1995*
BIRMINGHAM YOUTH ASSISTANCE ;*	*1986 TO 1995*
BIRMINGHAM SENIOR FOUNDATION;*	*1986 TO 1995*
TRAFFIC & SAFETY BOARD ;	*1984 TO 1986*
CELEBRATE BIRMINGHAM PARADE VOLUNTEER.	*2017*

PRIVATE ACTIVITIES:

LYON FOUNDATION, INC.****	*1975 TO PRESENT*
OAKLAND UNIVERSITY, JUDD FAMILY ENDOWED ARTS & HUMANITIES FUND : FOUNDER AND BOARD MEMBER;	1996 TO PRESENT
WAYNE STATE UNIVERSITY, LIBRARY ADVISORY BOARD;	*1996 TO 2000*

**CITY COMMISSION REPRESENTATIVE*
***VICE-CHAIR 2005 -2017*
****LAW REVIEW: NOTE AND COMMENT EDITOR*
****PRESIDENT 1980 TO PRESENT

NOTICE OF INTENTION TO APPOINT TO THE
CITY OF BIRMINGHAM
BROWNFIELD REDEVELOPMENT AUTHORITY

At the regular meeting of Monday, August 14, 2017 the Birmingham City Commission intends to appoint one member to the City of Birmingham Brownfield Redevelopment Authority to serve the remainder of a three-year term to expire May 23, 2019.

The authority shall have the powers and duties to the full extent as provided by and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the state of Michigan of 1996, as amended. Among other matters, in the exercise of its powers, the Board may prepare Brownfield plans pursuant to Section 13 of the Act and submit the plans to the Commission for consideration pursuant to Section 13 and 14 of the Act.

Members shall be appointed by the Mayor, subject to approval by the City Commission.

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 vote on appointments.

Applicant(s) Presented For City Commission Consideration:

Applicant Name	**Criteria/Qualifications** Applicants shall, in so far as possible, be residents of the City of Birmingham.
Dan Haugen	Resident – 1694 E. Melton Road
Harry Awdey	Resident – 1633 Graefield Road

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.

SUGGESTED ACTION:

To concur in the Mayor's appointment of _____to the City of Birmingham Brownfield Redevelopment Authority to serve the remainder of a three-year term to expire May 23, 2019.

BROWNFIELD REDEVELOPMENT AUTHORITY

Resolution # 04-123-05
5 members, three-year terms, appointed by the mayor subject to approval of the commission.

The authority shall have the powers and duties to the full extent as provided by and in accordance with the provisions of the Brownfield Redevelopment Financing Act, being Act 381 of the Public Acts of the state of Michigan of 1996, as amended. Among other matters, in the exercise of its powers, the Board may prepare Brownfield plans pursuant to Section 13 of the Act and submit the plans to the Commission for consideration pursuant to Section 13 and 14 of the Act.

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Gotthelf 363 Catalpa	**Beth**	(248) 227.6920 *gotthelf@butzel.com*	5/9/2005	5/23/2020
Runco 1556 Lakeside	**Robert**	(248) 388-8100 *rrunco@runcowaste.com*	5/9/2005	5/23/2020
Torcolacci 2849 Buckingham	**Daniella**	248-217-4805 *dtorcolacci@gmail.com*	10/27/2014	5/23/2019
Vacant				5/23/2019
Zabriskie 587 Watkins	**Wendy**	(248) 646-7543 (248) 743-6046 *jwzab@comcast.net*	5/9/2005	5/23/2018

City of Birmingham
A Walkable Community

RECEIVED BY
AUG - 8 2017
CITY CLERK'S OFFICE
CITY OF BIRMINGHAM

OFFICE USE ONLY
Meets Requirements? Yes No
Will Attend / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest Brownfield Redevelopment Authority

Specific Category/Vacancy on Board Vacancy

Name Dan Haugen

Phone 248 719 2911

Residential Address 1694 E Melton Rd

Email Daniel.L.Haugen@gmail.com

Residential City, Zip Birmingham, 48009

Length of Residence 1 Year

Business Address 1270 Pacific Dr

Occupation Electrical/Software Engineer

Business City, Zip Auburn Hills, 48326

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied

I have worked for an Industrial/Commercial Electrical Contractor in the past, and am somewhat familiar with NEC.

List your related employment experience

N/A

List your related community activities

This will be my first

List your related educational experience

As an Engineer, I am practical & logical

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain:

No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

Daniel L Haugen
Signature of Applicant

8/8/17
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to Cbrown@bhamgov.org or by fax to 248.530.1080.

Updated 05/11/17

City of Birmingham
A Walkable Community

RECEIVED BY
(By Mail)
AUG - 7 2017
CITY CLERKS OFFICE

OFFICE USE ONLY
Meets Requirements? (Yes) No
(Will Attend) / Unable to Attend

APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at www.bhamgov.org/boardopportunities.

(Please print clearly)

Board/Committee of Interest: Brownfield

Specific Category/Vacancy on Board: _____

Name: Harry Awdey

Phone: 586-453-4677

Residential Address: 1633 Graefield Rd

Email: hawdey@gmail.com

Residential City, Zip: Birmingham, MI 48009

Length of Residence: 1 month

Business Address: 550 W Merrill Ste 200

Occupation: Manager

Business City, Zip: Birmingham, MI 48009

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied

I previously served on the planning commission and board of review in a different municipality. I attended MML training and want to continue my service to the community.

List your related employment experience: I am employed as an underwriting manager for Conifer Holdings in Birmingham. Previously, I was a public entity underwriter for the Michigan Township Participating Plan.

List your related community activities: I am a member of the Players, Bayview Yacht Club and The American Legion SAL post 143. I previously served on the board of directors for MCREST and the MML Legislative Governance Committee.

List your related educational experience: BA Economics University of Michigan, Postgraduate Certificate in Management from Notre Dame

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain:

No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

Harry Awdey
Signature of Applicant

8/1/2017
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to Cbrown@bhamgov.org or by fax to 248.530.1080.

Updated 05/11/17

BIRMINGHAM CITY COMMISSION MINUTES
AUGUST 28, 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 7:32 p.m.

II. ROLL CALL

ROLL CALL:	Present,	Mayor Nickita
		Mayor Pro Tem Harris
		Commissioner DeWeese
		Commissioner Hoff
		Commissioner Sherman
	Absent,	Commissioner Bordman
		Commissioner Boutros

Administration: City Manager Valentine, City Clerk Brown, Police Chief Clemence, City Attorney Currier, City Planner Ecker, DPS Manager Filipski, City Engineer O'Meara, Birmingham Museum Director Pielack, DPS Director Wood

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

Mayor Nickita reported the City received a certificate, "In celebration of the 50th anniversary of the National Historic Preservation Act of 1966, the National Park Service, Department of the Interior congratulates Birmingham, Michigan on being a Certified Local Government and partner in the Federal preservation program since February 22, 2010."

Mayor Nickita read a proclamation recognizing September 2017 as National Recovery Month, and called upon citizens, government agencies, public and private institutions, businesses and schools, to recommit Michigan to increasing awareness and understanding of substance use, and the need for appropriate and accessible services to promote recovery. *Full text of the Proclamation appended to these minutes as Attachment A.*

Mayor Nickita read a proclamation extending sincere appreciation to Birmingham's Sister City of Ritto, Japan in recognition of the valuable sister city relationship, and offered Birmingham's best wishes to the residents of Ritto City for continued prosperity and well-being in the years ahead. *Full text of the Proclamation appended to these minutes as Attachment B.*

Mayor Nickita announced:

- The last day to pay taxes without penalty is Thursday, August 31, 2017.
- The Farmers Market continues on Sundays in September beginning at 9:00 a.m. – 2:00 p.m. in Municipal Parking Lot #6 on N. Old Woodward. Of special note, the Farmers Market Harvest Festival, celebrating the bounty of Michigan's harvest, will be held on September 17, 2017.

- The Birmingham Street Art Fair is coming up on Saturday, September 16th from 10:00 a.m. until 6:00 p.m., and Sunday, September 17th from 10:00 a.m. to 5:00 p.m. For more information, visit www.theguild.org.
- Applications for the 2017 Birmingham Citizens Academy are being accepted in the City Manager's Office now through September 22, 2017. The Citizens Academy begins September 25th and runs through November 13th. This interactive eight-week program is open to Birmingham residents 18 years or older and is designed to provide an informative learning experience for people who want a closer look at how the City operates. Classes are on Tuesday nights from 6:00 until 8:30 p.m. and on two Thursday nights. Applications can be found at bhamgov.org/citizensacademy. For more information call 248-530-1808 or email jhaines@bhamgov.org.

Mayor Nickita recognized Senator Marty Knollenberg.

Senator Knollenberg appeared before the Commission to provide an update regarding priorities and accomplishments of the state government. Budget highlights are as follows:

- Revenue sharing is up $18.8 million, and Birmingham will receive about 2% more than last year.
- Roads funding is up $231 million, which includes $131 million for local roads.
  - Birmingham will see a 3.5% funding increase, and it is estimated that will continue for the next few years.
- $35 million is budgeted for updating underground infrastructure such as water pipes. Birmingham will receive a portion of that.
- School aid has been increased by $415 million over last year, and Birmingham's funding for at-risk students has also been increased.
- The State is addressing the school retirement system's $30 billion deficit, but the State will not be telling cities how to manage their local retirement system as long as they are properly funding it.
- The State is working on the opiate epidemic with many bills to bring it to people's awareness.
- A bill was passed in the legislature to help cities save money for state trunkline road projects like I-75. The bill will save Royal Oak, Madison Heights and Troy $20 million in costs.
  - Please make the Senator aware of similar issues with which he can assist.

Mayor Pro Tem Harris inquired about the State Law that requires school districts to begin school after Labor Day unless they have filed a waiver with the Michigan Board of Education, and whether there is movement to change that. The Senator replied that he is Vice-Chair of Education, and he recently introduced legislation to allow school districts to begin before Labor Day if they so choose. All Oakland County schools will be eligible to start before Labor Day beginning in 2018. Waivers submitted under this legislation would last three years before requiring renewal.

IV. CONSENT AGENDA

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

08-236-17 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Sherman: Abstained from Item I based on discussion with the City Attorney.
- Commissioner Hoff: Item F, DPS Facility Generator Replacement
- Commissioner Deweese: Item A, Approval of August 14, 2017 minutes

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Harris:
To approve the Consent Agenda, with items A and F removed, and Commissioner Sherman's abstention from voting on Item I, Liquor License Transfer for Birmingham Teatro, noted.

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

B. Approval of warrant list, including Automated Clearing House payments, of August 16, 2017 in the amount of $626,029.98.

C. Approval of warrant list, including Automated Clearing House payments, of August 23, 2017 in the amount of $6,105,028.10.

D. Resolution approving the Contract for Ice Show Director with Brenda Willhite effective September 5, 2017 up to and including May 10, 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.

E. Resolution approving the purchase of one (1) new 2018 Ford Police Interceptor Utility from Gorno Ford through the State of Michigan extendable purchasing contract #071B1300005 in the amount of $30,637.00 from account #641-441.006.971.0100.

G. Resolution approving the purchase of holiday lights from Wintergreen Corporation for a total cost not to exceed $23,350.00. Funds are available from the General Fund-Community Activities Operating Supplies account #101-441.004-729.0000 for this purchase.

H. Resolution delegating to the Birmingham City Clerk and her authorized assistants, those being the members of her staff, the duties of the election commission for the November 7, 2017 General Election. *Formal resolution appended to these minutes as Attachment C.*

I. Resolution authorizing the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and approving the liquor license transfer for Birmingham Teatro that requests a transfer of Class C License issued under MCL 436.1521(A)(1)(B) located at 211 S. Old Woodward, Birmingham, Oakland County, MI 48009. Furthermore, pursuant to Birmingham City Ordinance, authorizing the City Clerk to complete the Local Approval Notice at the request of Birmingham Teatro approving the liquor license transfer request of Birmingham Teatro for the transfer of a Class C License to be issued under MCL 436.1521 (A)(1)(B) located at 211 S. Old Woodward, Birmingham, Oakland County, MI 48009.

J. Resolution approving the contract for 2017-2018 pavement marking handwork with Hart Pavement Striping Corporation in the amount of $87,690.00 for combined fall 2017 and spring 2018 paintings; further authorizing and directing the mayor and city clerk to sign

the contract on behalf of the city; further authorizing this budgeted expenditure from account number 202-303-001-937.0200.

K. Resolution extending the 2015-16 agreement with PK Contracting, Inc. for painting yellow centerline and white long line pavement markings in the amount of $10,027.00 for the 2017-2018 fiscal year; further authorizing and directing the mayor and city clerk to sign the agreement on behalf of the city; further authorizing this budgeted expenditure from account number 202-303-001-937.0200.

The Commission agreed to discuss items removed from the Consent Agenda at this time

08-237-17 DPS FACILITY GENERATOR REPLACEMENT (ITEM F)

Commissioner Hoff questioned offsetting the purchase of a $126,000 emergency generator by deferring a vehicle purchase previously budgeted for the 2017-2018 year.

DPS Manager Aaron Filipski replied that the replacement of an aerial truck was budgeted at $220,000 for the 2017-2018 year. After consulting with a mechanic, however, they determined DPS can use the truck for one more year, and so DPS is deferring its replacement in order to offset the costs of purchasing the emergency generator.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese:
To approve the service agreement with McNulty Electric, Inc. for the purchase, installation, and configuration of an emergency standby generator for the Department of Public Services facility in an amount not to exceed $126,000.00 from account #641-441.006-971.0100. Further, directing the Mayor and City Clerk to sign the agreement on behalf of the City

VOTE: Yeas, 5
Nays, 0
Absent, 2 (Bordman, Boutros)

08-238-17 APPROVAL OF AUGUST 14, 2017 CITY COMMISSION MEETING MINUTES (ITEM A)

Commissioner DeWeese asked that the vote for Resolution 08-228-17, Birmingham Theater Special Land Use Permit and Final Site Plan, recorded on Page 16 of the minutes be amended to change “Abstain” to “Recused”.

Moved by Commissioner DeWeese, seconded by Mayor Pro Tem Harris:
To approve the August 14, 2017 City Commission meeting minutes as amended.

VOTE: Yeas, 5
Nays, 0
Absent, 2 (Bordman, Boutros)

V. UNFINISHED BUSINESS

08-239-17 MULTI-MODAL TRANSPORTATION CONSULTING SERVICES REQUEST FOR PROPOSALS

From City Planner Ecker’s staff report to City Manager Valentine dated August 16, 2017:

- The Multi-Modal Transportation Board (MMTB) was charged with overseeing all City street projects, ensuring that they complied with the new Master Plan. They also were charged with overseeing new initiatives of a multi-modal nature, particularly those

recommended in the Master Plan. Finally, the new Board was charged with taking over the duties of the former Traffic & Safety Board.

- In 2014 the firm of Fleis and Vandenbrink was selected as the City's traffic consultant. This contract has now expired.
- On July 24, 2017, the City Commission extended the previous contract with Fleis and Vandenbrink for six months to allow staff time to go through the RFP process, and directed staff to issue a Request for Proposals (RFP) to seek qualified consulting firms.
- On August 3, 2017, the MMTB reviewed the draft RFP. The MMTB requested that language be added in the context sensitive planning section of the RFP encouraging creativity, innovation, and best practices. Board members also asked that the italics be removed from the headings, and that the word advice on the first page should be changed to advise. The MMTB voted unanimously to recommend approval of the RFP to the City Commission.
- On August 14, 2017, the City Commission requested the following modifications to the RFP, which are now included:
  - Under Consultant Skills and Experience change the introductory paragraph to read, "The successful multimodal transportation consultant submitting a proposal under this RFP must be able to demonstrate professional knowledge and experience in the following areas of expertise to assist the City of Birmingham, *in order of importance*".
  - Under Consultant Skills and Experience re-prioritize the three categories in order of importance:
    1. Context-Sensitive Planning and Urban Design.
    2. Multi-Modal Mobility Planning
    3. Traffic Engineering
  - Under Context-Sensitive Planning and Urban Design, change the second sentence to, "The consultant's team must include an urban design professional who has the skill set to conceptualize, design and graphically communicate multiple approaches, strategies and solutions for critical infrastructure projects, to be determined by the City Manager."

Commissioner Hoff expressed concern about the RFP only including a consultant regarding urban interests and wondered about including a representative for residential interests.

City Planner Ecker explained that "urban" is used to describe Birmingham as a whole because Birmingham is an urban market. On the MMTB there are three residents-at-large so the residential perspective is represented. The use of "urban" encompasses residential, multi-family, commercial, industrial and other uses, not just the downtown.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Sherman:
To direct staff to issue the Request for Proposals for the solicitation of qualified firms to provide multi-modal transportation consulting services to assist the MMTB and the City Commission in reviewing all transportation-related projects with the changes noted.

VOTE: Yeas, 5
Nays, 0
Absent, 2 (Bordman, Boutros)

08-240-17 CONTRACT FOR ALLEN HOUSE SIDING-MUSEUM

From Museum Director Pielack's staff report to City Manager Valentine dated August 28, 2017:

- For replacement and repair of the Allen House siding and trim, Jackie Hoist, AIA of H2A Architects, who is a Michigan Historical Architect per Secretary of Interior Standards 36CFR61, provided professional architectural services to the City of Birmingham to create drawings and bid documents according to required standards applied by the State Historic Preservation Office for the treatment of historic properties in preparation for an RFP.
- Her consultant role for the City includes approval of all contractor-provided materials and on site review of the project work in progress in collaboration with city staff.
- On July 19, 2017 the Historic District Commission reviewed and unanimously approved the documents.
- Two bids were received in response to the RFP; the Building Maintenance Supervisor and Museum Director made an initial review of the bids in consultation with the architect. Both bidders met the requirements of the bid.
- The two bids were widely disparate; L.G.K. Building, Inc., $ 57,430 vs. Grunwell-Cashero Co., $ 175,900.
- References were checked on the low bidder and all were positive.
- Further steps were then taken for additional meetings with both bidders. The architect, Building Maintenance Supervisor and Museum Director were in attendance; bidders were asked to give additional clarifications and understanding of the project. Both bidders attended and provided the information requested.
- A final review of all information with the architect confirmed that the low bidder, L.G.K. Building, Inc., was qualified to complete the project and should be recommended to receive the contract award.
- Per usual procedure, the bidder provided a signed agreement with city contract requirements. These include the required liability insurance certificate, and a performance bond. The performance bond is held by a third party, usually a bank or insurance company, in the contract amount as insurance that the contract will be satisfactorily completed per the specifications of the contract.
- At its meeting on August 14, 2017, the City Commission requested additional information about the recommended contractor due to the disparity between the two bids, to include a Dun and Bradstreet credit report, information on any tax liens or unpaid obligations, and additional references on recent comparable projects and projects on historic buildings
- The Oakland County Register of Deeds office was contacted and indicated there are no tax liens on record for this company.
- A Dun and Bradstreet report was acquired and showed low risk. Additional references were contacted.
- In addition, the architect provided a written report of her assessment of the recommended bidder as qualified to complete this project

In summary, Birmingham Museum Director Pielack stated that the initial city contractor review process, in combination with additional research by city staff, confirms that L.G.K. Building, Inc. has no outstanding credit or liability concerns, is highly recommended by references for past projects of a similar nature, meets all requirements for the project as determined by the architectural drawings and specifications, has provided a performance bond and certificate of liability insurance, and is the lowest qualified bidder.

Commissioner Hoff commented:

- She is still not comfortable, but will not vote against the project.
- She believes the architect to be very credible, but they have not worked with this specific contractor and have no prior knowledge of their qualifications.
- Because all the requested due diligence has been performed, she will accept the proposal.

Mayor Nickita noted the information has been double-checked, and the Commission has the ability to amend the process if it is not proceeding as desired. He believes there is merit to the concerns, but due diligence has been done and hopefully this will be a successful project.

Mayor Pro Tem Harris affirmed the Mayor's sentiments and acknowledged Commissioner Hoff's concerns. He also noted that the architect's letter made mention of L.G.K. Building, Inc.'s painting of the Hunter House 25 years ago, and that the job had turned out well, which provided him with comfort regarding this project moving forward.

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Harris:
To approve a service agreement with L.G.K. Building, Inc., for the replacement of Siding and Trim for the Allen House in the amount of $ 57,430.00, to be charged to account 401-804.002- 977.0000, and to direct the Mayor and City Clerk to sign the agreement on behalf of the City; further, to approve the appropriation and amendment to the 2017-2018 Capital Projects Fund budget as follows:

Capital Projects Fund
Revenues

Draw from Fund Balance 401-000.000-400.0000	$ 57,430

Expenditures:

Buildings – Allen House 401-804.002-977.0000	$ 57,430

VOTE: Yeas, 5
Nays, 0
Absent, 2 (Bordman, Boutros)

VI. NEW BUSINESS

08-241-17 PUBLIC HEARING FOR 375 S. ETON – DISTRICT LOFTS, SPECIAL LAND USE PERMIT AND FINAL SITE PLAN

Mayor Nickita recused himself due to business dealings with the applicant teams, based upon discussion with the City Attorney and City Manager. Mayor Nickita left the Commission room.

Mayor Pro Tem Harris opened the public hearing at 8:12 p.m.

From City Planner Ecker's staff report to City Manager Valentine dated August 18, 2017:

- The subject site, District Lofts, is located at 375 S. Eton, on the east side of Eton north of Villa.
- The parcel is zoned MX, Mixed Use.
- The applicant is applying for a Special Land Use Permit (SLUP) to allow a commercial use greater than 6000 sq.ft. in the Mixed Use (MX) zoning district. The proposed commercial use is a 10,039 sq.ft. office for Oppenheimer Financial. This space was previously proposed to be used as retail/residential, broken up into four tenant spaces, with each one under 6000 sq.ft. in size.

- Article 2, section 2.39, MX District requires that any permitted principal use with a total floor area greater than 6,000 sq.ft. shall obtain a SLUP.
- Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and SLUP, and then obtain approval from the City Commission for the Final Site Plan and SLUP.
- The Planning Board voted unanimously to recommend approval to the City Commission of the SLUP and Final Site Plan for 375 S. Eton, District Loft, on the condition that the applicant adds one or more entrances along S. Eton and obtains administrative approval for same.

City Planner Ecker added that changes to the exterior include some door modifications and adding 31 sq. ft. of stainless steel signage which meets ordinance requirements. There is sufficient parking for any uses on this site.

Commissioner Hoff requested further information on parking, observing that:

- 166 parking spaces are required for Big Rock.
- 90 spaces are required for The Reserve, but The Reserve has a capacity of 540 people.
- The ratio of spaces-to-people might contribute further to the parking problem in that area. Residents have expressed concerns about patrons parking on neighborhood streets, and the Commission is considering eliminating parking on one side of Eton, which would create the need for more spaces.

In addition, Commissioner Hoff expressed:

- Concerns that the timing of the shift from retail/residential to office-use zoning is not good.
- Curiosity as to whether there is a mix of uses required in the district, and if so, is first floor retail is required.

City Planner Ecker replied:

- Reviews are based on ordinance requirements.
- With regards to the subject space, the ordinance requires 33 parking spaces be provided.
- For the development as a whole, it would be necessary to supply 348 parking spaces according to the zoning requirements, and 430 are being supplied.
- Oppenheimer's clients will use parking spaces during the day, while parking for The Reserve will primarily be on evenings and weekends.
- A parking study performed in October 2016 found that 2500 parking spaces are available in the rail district, and the parking deck is vastly underutilized.
- There is a mixed-use requirement for the district, but it does not require first-floor retail. In the MX district there is no first-floor retail requirement like there is in the downtown and redline retail districts. The only prohibition in the MX district on the first-floor is single-family residential.

Victor Saroki appeared before the Commission representing the architects for District Lofts. Norm LePage, Owner of Big Rock, The Reserve, and District Lofts, along with John Kelley and J.C. Cataldo, both contractors and managers of the property, were also in attendance.

Mr. Saroki explained:

- The gross area of the ground floor of the building is 12,350 sq. ft.
- The usable area, which Oppenheimer will occupy, is approximately 10,000 sq. ft.

- The remaining space is the residential lobby, common area, stairs, and elevators.
- When coming in to do a project and propose some uses on a drawing before the Planning Board, it is not uncommon to leave some space designated for unidentified tenants.
- Oppenheimer is a good tenant, and while they had been previously considering a move to Bloomfield Hills, renting this space will keep them in Birmingham.
- An office user is a commercial user, and commercial space is being provided on the ground floor.
- The Reserve only actually accommodates 250 people, not 540 as previously quoted.
- Big Rock is a nighttime function, although they do a light lunch service, and The Reserve is entirely a nighttime function.
- Oppenheimer only uses the parking spaces 8:00 a.m. – 4:00 p.m.
- The users need parking spaces at different peak times.

Mr. Saroki also noted that the ordinance was designed to discourage big-box retailers or supermarkets from overwhelming the area with traffic by moving in, but that if the space had been divided into two 5,000 sq. ft. office users on each side, it would have conformed to the ordinance and would not have required a SLUP.

Commissioner DeWeese asked how easy it would be in the future to revert this space to its original intent.

Mr. Saroki explained that it would be very easy because the building will not have interior load-bearing walls. It is a steel frame building with columns so there is flexibility for tenant mix.

Mr. Saroki added that Oppenheimer employees will park in the parking structure, residents will use the underground parking, and clients of Oppenheimer will have access to six surface spots or to street parking on Villa. Oppenheimer does a lot of its business online, and does not anticipate much traffic from clients.

Commissioner Hoff mentioned the previous issue with Griffin Claw employee parking, and Mr. LePage assured the Commission that the employees are now parking in the structure.

City Planner Ecker confirmed for Commissioner Hoff that office use is permitted in the MX district on the first floor.

Mayor Pro Tem Harris clarified that Villa Road parking is on the east side of S. Eton, not on the west, neighborhood-side of S. Eton.

Mayor Pro Tem Harris closed the public hearing at 8:34.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Sherman:
To approve the Final Site Plan and Special Land Use Permit for 375 S. Eton to allow a commercial use greater than 6,000 sq.ft. on the ground floor at 375 S. Eton. *Formal resolution is appended to these minutes as Attachment D.*

Mayor Pro Tem Harris commented that he did take heed of Commissioner Hoff's parking concerns, but is persuaded by the applicant's compliance with the parking requirements set forth in the zoning ordinance. He also commented that if this presents a problem moving

forward, there will be multiple opportunities to revisit the situation as the Commission looks at the rail district.

Commissioner Hoff said she will support the motion despite some concerns, and believes that everything Mr. LePage has done is an asset to the rail district. City Planner Ecker confirmed for Commissioner Hoff the Commission has the option of rescinding the SLUP if there are issues by setting a public hearing to consider termination.

VOTE:	Yeas,	4
	Nays,	0
	Absent,	2 (Bordman, Boutros)
	Recused,	1 (Nickita)

Mayor Nickita returned to the Commission room and resumed the Chair.

08-242-17 RESOLUTION TO MEET IN CLOSED SESSION TO DISCUSS AN ATTORNEY/CLIENT PRIVILEGE COMMUNICATION IN ACCORDANCE WITH SECTION 8(H) 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.)

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To meet in closed session to discuss an attorney/client privileged communication in accordance with Section 8(H) of the Open Meetings Act.

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

Mayor Nickita did not anticipate any action coming from the closed session.

VII. REMOVED FROM CONSENT AGENDA

The items removed were discussed earlier in the meeting.

VIII. COMMUNICATIONS

None.

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

None.

X. REPORTS

08-243-17 CITY STAFF REPORTS

The Commission received the Parking Utilization Report, submitted by City Engineer O'Meara. Mayor Nickita pointed out he and the City Manager have discussed the method of documenting and have agreed on a digital monitoring system. Prime times of use are Tuesday, Wednesday, and Thursday between 10:00 a.m. and 2:00 p.m. City Manager Valentine added that future reports will include data representing Tuesday, Wednesday, and Thursday at 1:00 p.m., giving an indication as to the number of spaces available at those peak times.

XII ADJOURN

Mayor Nickita adjourned the meeting into closed session at 8:41 p.m. and reconvened the regular meeting at 9:00 p.m.

The regular meeting was adjourned at 9:00 p.m.

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J. Cherilynn Mynsberge, City Clerk

ATTACHMENT A

CITY OF BIRMINGHAM
PROCLAMATION

WHEREAS, substance use recovery is important for individual well-being and vitality, as well as for families, communities and businesses; and

WHEREAS, approximately 21.5 million people aged 12 or older had a substance use disorder in the past year, and 1 in 5 teens abuse prescription drugs before the age of 13; and

WHEREAS, last year 2,000 Michiganders died due to an opiod overdose, placing Michigan as the 7th highest number of deaths due to opiod overdose in the nation; and

WHEREAS, we will continue to educate and raise awareness of the risks and potential harm associated with prescription drug misuse, and we believe everyone facing substance use disorders deserves the benefit of recovery; and

WHEREAS, Friday, September 22, 2017, has been designated for Oakland County's 10th Annual Substance Use Recovery Celebration and Walk; and

WHEREAS, stigma and stereotypes associated with substance use disorders often keep people from seeking treatment that could improve their quality of life; and

WHEREAS, substance use disorders occur when the recurrent use of alcohol and/or drugs causes clinically or functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school or home; and

WHEREAS, substance use disorder recovery benefits individuals with substance use disorders by focusing on their abilities to live, work, learn, and fully participate and contribute to our society, and also enriches the culture of our community; and therefore,

BE IT RESOLVED that I, Mark Nickita, Mayor for the City of Birmingham, hereby recognize September 2017 as National Recovery Month, and call upon our citizens, government agencies, public and private institutions, businesses and schools, to recommit our state to increasing awareness and understanding of substance use, and the need for appropriate and accessible services to promote recovery.

On behalf of the City Commission and the residents of Birmingham this 28th day of August, 2017.

Mark Nickita, Mayor

ATTACHMENT B

CITY OF BIRMINGHAM
PROCLAMATION

WHEREAS, The City of Birmingham and the City of Ritto have been sister cities for the past 41 years; and

WHEREAS, The cities of Ritto and Birmingham have enjoyed a valuable sister city relationship which has allowed residents from the two cities the opportunity to share in one another's culture and traditions and to learn a great deal from one another in the process; and

WHEREAS, The Sister City program and Goodwill Missions have led to a number of lasting friendships between participants in both nations; and

WHEREAS, The City of Birmingham looks forward to continuing this mutually beneficial sister city relationship to foster further growth of friendly relations between the two cities; and

WHEREAS, The City of Ritto is located in Shiga Prefecture in the Kansai Region in Japan; and

WHEREAS, The Mayor of Ritto, Masahiro Nomura, is a highly respected and honored leader of the City of Ritto; and

WHEREAS, The City of Birmingham is grateful for the opportunity to promote cultural awareness and strengthened international relationships; and

THEREFORE, With sincere appreciation**,** I wish to recognize and congratulate Ritto for their many years of cultivating a strong relationship with the city of Birmingham.

BE IT RESOLVED that I, Mark Nickita, Mayor for the City of Birmingham, wish to extend my sincere appreciation on behalf of myself, the City Commission, and the Birmingham community to our Sister City of Ritto, in recognition of our valuable sister city relationship, and we offer our best wishes to the residents of Ritto City for continued prosperity and well-being in the years ahead.

On behalf of the City Commission and the residents of Birmingham this 14th day of August, 2017

Mark Nickita, Mayor

RESOLUTION
DELEGATING ELECTION COMMISSION DUTIES
AUGUST 28, 2017

Moved by Commissioner Sherman, seconded by Mayor Pro Tem Harris:

To delegate to the Birmingham City Clerk and her authorized assistants, those being the members of her staff, the following duties of the election commission for the November 7, 2017 General Election:

- Preparing meeting materials for the election commission, including ballot proofs for approval and a listing of election inspectors for appointment;
- Contracting for the preparation, printing and delivery of ballots;
- Providing candidates and the Secretary of State with proof copies of ballots;
- Providing notice to voters in the case of precinct changes/consolidations;
- Providing election supplies and ballot containers; and
- Preliminary logic and accuracy testing.

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

I, J. Cherilynn Mynsberge, 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 August 28, 2017.

_____
J. Cherilynn Mynsberge, City Clerk

RESOLUTION

THE RESERVE BANQUET FACILITY & THE ETON STREET/DISTRICT LOFTS SPECIAL LAND USE PERMIT 2017

WHEREAS, The Reserve Banquet Facility applied for and received on September 22, 2003 a Special Land Use Permit to allow construction of a 6,840.75 square foot banquet facility to operate past the hours of 11:00 p.m., such application(s) having been filed pursuant to the City Code;

WHEREAS, The Reserve Banquet Facility applied for and received on September 11, 2006 a Special Land Use Permit Amendment to permanently erect a metal tent structure adjacent to The Reserve, to construct two residential loft buildings containing 42 residential units, 5 live/work units and 7,000 square feet of commercial space, as well as a three story parking structure as amended on July 26, 2006 on the existing Big Rock and The Reserve property;

WHEREAS, the land for which the Special Land Use Permit was originally granted is located on the east side of S. Eton Street between Villa and Maple Road;

WHEREAS, the land is zoned B-2B (General Business) and MX (Mixed Use), which permits banquet facilities, residential lofts, live/work units and accessory parking structures as of right, permits commercial space over 6,000 square feet in size with a Special Land Use Permit, permits tents in connection with any permitted use for longer than ten days as part of a Special Land Use Permit, and which also permits operating hours to extend past 11:00 p.m. with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning, of the City Code requires Special Land Use Permits to be reviewed by the Birmingham City Commission;

WHEREAS, the applicant is requesting approval at this time to combine ground floor commercial units into one 10,039 square feet commercial space to house Oppenheimer Financial in conformance with the attached plan;

WHEREAS, the Planning Board on July 26, 2017 reviewed the application for Final Site Plan Review and a Special Land Use Permit and recommended approval with the following condition:

1) The applicant adds one or more entrances along S. Eton and obtain Administrative Approval for same;

WHEREAS, the Birmingham City Commission has reviewed The Reserve's and The Eton Street Lofts application for an amendment to the Special Land Use Permit as well as the standards for such review, as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED that this Commission determines that the standards imposed by the City Code have been met;

BE IT FURTHER RESOLVED, that the Birmingham City Commission approves The Reserve's Special Land Use Permit Amendment and the Final Site Plan and Design for 245, 325 and 375 S. Eton to allow the combination of ground floor commercial units into one 10,039 square feet commercial space to house Oppenheimer Financial, subject to the following condition:

1) The applicant adds one or more entrances along S. Eton and obtains Administrative Approval for same;

BE IT FURTHER RESOLVED that a failure to comply with any of the above conditions may result in the City taking such action as it deems in its sole discretion to assure compliance with the provisions of the Special Land Use Permit or, taking into consideration the nature of the failure to comply, the termination of the Special Land Use Permit itself.

BE IT FURTHER RESOLVED that The Reserve and The Eton Street Lofts and their heirs, successors and assigns shall be bound by all applicable ordinances of the City of Birmingham in effect at the time of the issuance of this permit and as they may be subsequently amended. Failure of The Reserve and The Eton Street Lofts to comply with all such ordinances of the City may result in the City taking such action as it deems in its sole discretion to assure compliance with the provisions of the Special Land Use Permit or, taking into consideration the nature of the failure to comply, the termination of the Special Land Use Permit itself.

BE IT FURTHER RESOLVED that the only limitations of this special land use permit are those expressly set forth in this Special Land Use Permit.

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, Michigan do hereby certify that the foregoing is a true and correct copy of the resolution by the Birmingham City Commission at its regular meeting held on August 28, 2017.

_____

J. Cherilynn Mynsberge, City Clerk

City of Birmingham
Warrant List Dated 08/30/2017

Check Number	Early Release	Vendor #	Vendor	Amount
252522	*	000103	39TH DISTRICT COURT	750.00
252523	*	000855	48TH DISTRICT COURT	100.00
252524	*	000855	48TH DISTRICT COURT	100.00
252525	*	000855	48TH DISTRICT COURT	200.00
252526	*	000855	48TH DISTRICT COURT	100.00
252527	*	000855	48TH DISTRICT COURT	100.00
252528	*	000855	48TH DISTRICT COURT	750.00
252529	*	000855	48TH DISTRICT COURT	95.00
252530	*	000855	48TH DISTRICT COURT	100.00
252531	*	000855	48TH DISTRICT COURT	100.00
252532	*	000855	48TH DISTRICT COURT	100.00
252533	*	000855	48TH DISTRICT COURT	46.00
252534	*	000146	6TH CIRCUIT COURT	500.00
252535		002284	ABEL ELECTRONICS INC	957.42
252536	*	007037	ACME PARTYWORKS	907.00
252537		007033	APPLIED IMAGING	904.36
252538		000500	ARTECH PRINTING INC	387.00
252540	*	007216	AT&T	80.82
252541	*	008422	AXIOM CONSTRUCTION SVCS GROUP LLC	157,206.85
252542		002231	BILLINGS LAWN EQUIPMENT INC.	63.24
252543		008503	BIRDIE IMAGING SUPPLIES, INC	889.20
252544	*	008543	CITY OF BIRMINGHAM #225	31,413.41
252545	*	001086	CITY OF BIRMINGHAM	487.13
252546	*	001086	CITY OF BIRMINGHAM	548.25
252547		003526	BOUND TREE MEDICAL, LLC	437.98
252548	*	008554	BOYNE MOUNTAIN RESORT	257.64
252549	*	001664	CHRIS BUSEN	72.58
252550		003907	CADILLAC ASPHALT, LLC	988.56
252551		000443	CCH INCORPORATED	902.00
252552	*	000444	CDW GOVERNMENT INC	517.28
252553		000603	CHEMCO PRODUCTS INC	210.00
252554		007710	CINTAS CORP	156.96
252555		000605	CINTAS CORPORATION	216.47
252556	*	007625	COMCAST	350.92
252557	*	007774	COMCAST BUSINESS	645.60
252558	*	000627	CONSUMERS ENERGY	55.00
252559		MISC	CONSUMERS ENERGY	50.00
252560		MISC	CONSUMERS ENERGY	50.00
252561		001367	CONTRACTORS CONNECTION INC	388.80
252562		008512	COOL THREADS EMBROIDERY	331.88
252563		004386	CYNERGY PRODUCTS	417.28
252564	*	006999	CHRISTOPHER DEMAN	95.39
252565	*	000187	JOHN DONOHUE	175.00

City of Birmingham
Warrant List Dated 08/30/2017

Meeting of 09/11/2017

Check Number	Early Release	Vendor #	Vendor	Amount
252566	*	000179	DTE ENERGY	12,625.22
252567	*	001077	DUNCAN PARKING TECH INC	2,540.50
252568		007684	ELITE TRAUMA CLEAN-UP INC.	50.00
252569		MISC	EMMETTS ENERGY	60.00
252570		005446	ETHNIC ARTWORK	304.00
252571		001495	ETNA SUPPLY	2,400.00
252572		000207	EZELL SUPPLY CORPORATION	157.02
252573		004514	FEDEX OFFICE	14.33
252574		007212	FOSTER BLUE WATER OIL	1,395.76
252575		000217	FOUR SEASON RADIATOR SERVICE INC	89.95
252576		007172	GARY KNUREK INC	176.95
252577	*	004878	GOVERNMENT FINANCE OFFICERS	150.00
252578		007347	GREAT LAKES AWARDS, LLC	20.00
252579		000245	GREAT LAKES POPCORN CO	199.85
252580		001377	HAGOPIAN CLEANING SERVICES	416.00
252581		003938	HART PAVEMENT STRIPING CORP	700.00
252582		MISC	HORMEL, RONALD F	170.00
252583		007794	IMPRESSIVE PRINTING & PROMOTIONS	824.00
252584		000340	INDUSTRIAL BROOM SERVICE, LLC	690.90
252585	*	000984	INTERNATIONAL CONTROLS	165.00
252586		003823	JAY'S SEPTIC TANK SERVICE	165.00
252587		003458	JOE'S AUTO PARTS, INC.	790.40
252588	*	008413	KARANA REAL ESTATE, LLC	8,118.29
252589	*	004085	KONE INC	1,586.25
252590	*	005327	L3 TECHNOLOGIES, INC.	290.00
252591		008188	LEARN TO SKATE USA	172.84
252592		005550	LEE & ASSOCIATES CO., INC.	762.08
252593		006817	LEXISNEXIS RISK DATA MANAGEMENT INC	122.65
252595		004479	MEGGITT TRAINING SYSTEMS INC	2,061.70
252596		001660	MICHIGAN CAT	157.85
252598		006461	MID AMERICA RINK SERVICES	2,206.00
252599		000230	MIKE SAVOIE CHEVROLET INC	324.05
252600		008160	MPARKS	715.00
252601		002251	MYERS TIRE - INDIANAPOLIS #42	48.58
252602	*	007755	NETWORK SERVICES COMPANY	1,617.16
252603		006359	NYE UNIFORM COMPANY	540.00
252604	*	001686	OAKLAND CO CLERKS ASSOC	40.00
252605	*	000477	OAKLAND COUNTY	22.86
252606		008548	OAKWAY MUTUAL AID ASSOCIATION	1,161.42
252607		004370	OCCUPATIONAL HEALTH CENTERS	46.00
252608		008197	PARKMOBILE LLC	2,087.25
252609	*	MISC	PATRICK M. FAUGHNAN	500.00
252610	*	001753	PEPSI COLA	1,002.65

City of Birmingham
Warrant List Dated 08/30/2017

Meeting of 09/11/2017

Check Number	Early Release	Vendor #	Vendor	Amount
252611		008066	PINNACLE PEAK HOLDING CORPORATION	343.05
252612		001883	PIONEER DOOR COMPANY INC	115.00
252613		001263	POSITIVE PROMOTIONS INC	883.94
252614	*	000801	POSTMASTER	261.37
252615		001062	QUALITY COACH COLLISION LLC	590.20
252616		006497	RNA FACILITIES MANAGEMENT	250.00
252617		001181	ROSE PEST SOLUTIONS	157.00
252618		007114	SHERWIN WILLIAMS COMPANY	63.44
252619		003785	SIGNS-N-DESIGNS INC	400.00
252620		007907	SP+ CORPORATION	3,615.00
252621		001369	SPEEDWAY LLC	260.27
252622		008549	STATEWIDE DOOR & SECURITY	240.00
252623		008550	SUNRISE CREDIT SERVICES, INC	55.00
252624		008507	SUPERFLEET MASTERCARD PROGRAM	99.80
252625		004355	SYMETRA LIFE INSURANCE COMPANY	29,693.08
252626		005645	TRAFFIC DATA COLLECTION LLC	675.00
252627	*	000158	VERIZON WIRELESS	137.86
252628		000969	VIGILANTE SECURITY INC	205.00
252629		004334	VILLAGE CONEY	24.90
252630		000299	WEINGARTZ SUPPLY	456.23
252631	*	001337	WILCOX BROS.	145.00
252632		000926	WRIGHT TOOL COMPANY	700.00
252633		000309	ZEP SALES AND SERVICE	258.80

Sub Total Checks:	$290,522.47
Sub Total ACH:	$3,480,074.00
Grand Total:	$3,770,596.47

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.

9/11/2017

City of Birmingham
ACH Warrant List Dated 8/30/2017

Vendor Name	Transfer Date	Transfer Amount
Automated Benefit Services, Inc.	8/28/2017	31,301.72
Cutwater Asset Management-July	**	3,499.02
	TOTAL	34,800.74

**Awaiting approval from Commission.
Cutwater Asset Management provides advisory and reporting services for the City's general investments. It was acquired by Bank of New York Mellon, N.A. in January 2015. As a result of the acquisition, they no longer accept checks as payment for services. Once the Commission approves this warrant list, the City will electronically transmit payment. These invoices will appear once a month on the ACH Warrant List.

City of Birmingham
Warrant List Dated 09/06/2017

Check Number	Early Release	Vendor #	Vendor	Amount
252635		003390	11 MILE TRUCK	1,570.00
252636	*	008552	14TH CIRCUIT COURT	899.00
252637	*	000855	48TH DISTRICT COURT	100.00
252638	*	000855	48TH DISTRICT COURT	100.00
252639	*	000855	48TH DISTRICT COURT	100.00
252640	*	006965	7UP DETROIT	235.80
252641		004627	A & L SYSTEMS	103.26
252642		008555	ABELL PEST CONTROL INC	40.00
252643	*	007013	AHEAD USA LLC	765.34
252644		007696	AMERICAN CLEANING COMPANY LLC	1,350.00
252645		007112	AMERICAN PAINTING LLC	2,240.00
252646		008246	ANCHOR BAY POWDER COAT, LLC	2,350.00
252647		000167	ANDERSON ECKSTEIN WESTRICK INC	2,250.00
252648	*	007033	APPLIED IMAGING	4,266.95
252649		000500	ARTECH PRINTING INC	94.00
252650		007479	ASB DISTRIBUTORS	52.40
252651	*	006759	AT&T	101.20
252652	*	006759	AT&T	121.98
252653	*	006759	AT&T	134.74
252654	*	005214	THE BANK OF NEW YORK MELLON	207,100.00
252655		007345	BEVERLY HILLS ACE	35.98
252656		002231	BILLINGS LAWN EQUIPMENT INC.	187.32
252657		007624	BIRMINGHAM OIL CHANGE CENTER, LLC	31.97
252658	*	001086	CITY OF BIRMINGHAM	844.79
252659		000542	BLUE WATER INDUSTRIAL	396.10
252660		008179	BUCCILLI GROUP, LLC	6,149.00
252661	*	003907	CADILLAC ASPHALT, LLC	2,421.00
252662		007875	CANFIELD EQUIPMENT SERVICE INC.	2,940.00
252663	*	000444	CDW GOVERNMENT INC	3,941.71
252664		008306	CHARTER TOWNSHIP OF BLOOMFIELD	63.44
252665		000605	CINTAS CORPORATION	35.00
252667	*	008044	CLUB PROPHET	590.00
252668	*	007625	COMCAST	229.88
252669		000619	THE COMMUNITY HOUSE	400.00
252670		006172	CONSTANT CONTACT, INC.	840.00
252671		002668	CONTRACTORS CLOTHING CO	557.54
252672		MISC	CROSS OF CHRIST LUTHERN CHURCH	100.00
252673		004386	CYNERGY PRODUCTS	195.70
252674	*	000956	DELTA TEMP INC	3,899.00
252675	*	000179	DTE ENERGY	10,277.06
252676		004671	ELDER FORD	550.88
252677	*	000936	FEDEX	504.07
252678	*	004514	FEDEX OFFICE	16.99

City of Birmingham
Warrant List Dated 09/06/2017

Meeting of 09/11/2017

Check Number	Early Release	Vendor #	Vendor	Amount
252679		007314	FLEIS AND VANDENBRINK ENG. INC	4,630.01
252680		001771	GOLF ASSOC. OF MICHIGAN	100.00
252681		004604	GORDON FOOD	856.65
252682		001531	GUNNERS METER & PARTS INC	925.00
252683		001447	HALT FIRE INC	808.92
252684		001415	HORNUNG'S PRO GOLF SALES INC	196.88
252685		000331	HUBBELL ROTH & CLARK INC	16,755.53
252686		008378	THE HUNTINGTON NATIONAL BANK	2,234,350.00
252687		001820	IIMC	200.00
252688		007035	INNOVATIVE OFFICE TECHNOLOGY GROUP	727.99
252689		000261	J.H. HART URBAN FORESTRY	29,457.04
252690		003458	JOE'S AUTO PARTS, INC.	154.36
252691		008551	M & K TRUCK CENTERS	279.98
252692		008551	M & K TRUCK CENTERS	128.03
252693		002076	MEMA	300.00
252694		006461	MID AMERICA RINK SERVICES	835.00
252695		000230	MIKE SAVOIE CHEVROLET INC	681.65
252696	*	000462	MOTOR CITY FASTENER INC	34.50
252697		001089	MUNICIPAL CODE CORP.	10.76
252698		001194	NELSON BROTHERS SEWER	180.00
252699		003567	NFPA	504.95
252700		006359	NYE UNIFORM COMPANY	350.70
252701		004370	OCCUPATIONAL HEALTH CENTERS	241.50
252702	*	000481	OFFICE DEPOT INC	4,867.23
252703	*	000481	OFFICE DEPOT INC	2.29
252704	*	003588	PATRIOT 2000 INC.	662.63
252705	*	001753	PEPSI COLA	359.52
252706	*	001341	PIFER GOLF CARS INC	671.15
252707		001062	QUALITY COACH COLLISION LLC	1,252.40
252708	*	008342	RAIN MASTER CONTROL SYSTEMS	29.85
252709		000286	RESIDEX LLC	1,976.62
252710		007336	REVIZE LLC	2,800.00
252711		002566	REYNOLDS WATER	169.20
252712	*	000478	ROAD COMM FOR OAKLAND CO	3,304.07
252713		001181	ROSE PEST SOLUTIONS	211.00
252714		005380	SALZBURG LANDSCAPE SUPPLY	2,495.00
252715		007697	SAVE THE MOMENT	72.00
252716		003785	SIGNS-N-DESIGNS INC	145.00
252717		000260	SPARTAN DISTRIBUTORS INC	1,667.25
252718		007831	STOPSTICK, LTD.	99.00
252719		006376	SUBURBAN CHRYSLER DODGE JEEP - TROY	44.40
252720		008381	SUPERIOR MANUFACTURING	3,422.85
252721		000275	TIRE WHOLESALERS CO INC	158.00

Meeting of 09/11/2017

City of Birmingham
Warrant List Dated 09/06/2017

Check Number	Early Release	Vendor #	Vendor	Amount
252722		002037	TOTAL ARMORED CAR SERVICE, INC.	714.83
252723		005645	TRAFFIC DATA COLLECTION LLC	600.00
252724		008371	TREDOC TIRE SERVICES	811.30
252725		007587	TRI-COUNTY AQUATICS, INC.	300.00
252726		000155	TYCO INTEGRATED SECURITY LLC	862.72
252727	*	005442	UPS	15.04
252728		007226	VALLEY CITY LINEN	116.20
252729	*	000931	VARSITY SHOP	109.98
252730	*	000158	VERIZON WIRELESS	839.77
252731	*	000158	VERIZON WIRELESS	50.49
252732	*	000158	VERIZON WIRELESS	727.21
252733	*	000158	VERIZON WIRELESS	1,833.57
252735		000969	VIGILANTE SECURITY INC	106.25
252736		000299	WEINGARTZ SUPPLY	59.97
252737		007278	WHITLOCK BUSINESS SYSTEMS, INC.	1,753.22

Sub Total Checks:	$2,585,201.56
Sub Total ACH:	$19,884,030.50
Grand Total:	$22,469,232.06

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.

9/11/2017

City of Birmingham
ACH Warrant List Dated 9/6/2017

Vendor Name	Transfer Date	Transfer Amount
Birmingham Schools	8/29/2017	7,584,440.44
Oakland County Treasurer	8/29/2017	12,277,895.63
Automated Benefit Services, Inc.	9/5/2017	21,694.43
	TOTAL	19,884,030.50

City of Birmingham
A Walkable Community

MEMORANDUM

City Clerk's Office

DATE: **August 30, 2017**

TO: **Joseph A. Valentine, City Manager**

FROM: **J. Cherilynn Mynsberge, City Clerk**

SUBJECT: **Special Event Request**
Nativity Scene

Attached is a special event application submitted by Our Shepherd Lutheran Church requesting permission to place a Nativity scene in Shain Park from November 22, 2017 to December 29, 2017.

The application has been circulated to the affected departments and approvals and comments have been noted.

The following events have either been approved by the Commission or are planned to be held in November and December and have not yet submitted an application. These events do not pose a conflict with the location of the Nativity Scene.

Event Name	Date	Location
Nativity Display	Nov 22 – Dec. 29	Shain Park
Tree Lighting/Winter Markt	Dec. 1 – Dec. ?	Shain Park
Menorah Display	Dec (dates unknown)	Shain Park

SUGGESTED RESOLUTION:
To approve a request submitted by Our Shepherd Lutheran Church requesting permission to place a Nativity scene in Shain Park from November 23, 2017 to December 29, 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.

17-0001039

CITY OF BIRMINGHAM
APPLICATION FOR SPECIAL EVENT PERMIT
PARKS AND PUBLIC SPACES

RECEIVED BY
AUG - 2 2017
CITY CLERK'S OFFICE
CITY OF BIRMINGHAM

I. EVENT DETAILS

- Incomplete applications will not be accepted.
- Changes in this information must be submitted to the City Clerk, in writing, at least three weeks prior to the event

FEES:

FIRST TIME EVENT:	**$200.00**
ANNUAL APPLICATION FEE:	**$165.00**

(Please print clearly or type)

Date of Application July 19, 2017

Name of Event 2017 Christmas Nativity Display

Detailed Description of Event (attach additional sheet if necessary)
Display of fiberglass nativity scene on wooden platform. (Picture on 8b)

Location Shain Park

Date(s) of Event 11/22/17-12/29/17 Hours of Event All day

Date(s) of Set-up 11/22/17 Hours of Set-up 9am-noon

Date(s) of Tear-down 12/29/217 Hours of Tear-down 9am-noon

Organization Sponsoring Event Our Shepherd Lutheran Church

Organization Address 2225 E 14 Mile Rd.

Organization Phone 248-646-6100

Contact Person David Priskorn

Contact Phone 248-705-7874

Contact Email dave@ourshepherd.net

II. EVENT INFORMATION

1. Organization Type Non-profit
(city, non-profit, community group, etc.)

2. Additional Sponsors or Participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.)
Lutheran Church of the Redeemer, 1800 W Maple, Bham. Gary Priskorn 644-4010
Ascension of Christ Luth Church, 16935 W 14 Mile, Beverly Hills. Charles Jackson 644-8890

3. Is the event a fundraiser? ☐ YES ☑ NO
List beneficiary
List expected income
Attach information about the beneficiary.

4. First time event in Birmingham? ☐ YES ☑ NO
If no, describe This display has been set up in Shain Park annually since 2005.

5. Total number of people expected to attend per day unknown

6. The event will be held on the following City property: (Please list)
☐ Street(s)
☐ Sidewalk(s)
■ Park(s) Shain Park

7. Will street closures be required? ☐ YES ☑ NO

8. What parking arrangements will be necessary to accommodate attendance? none

9. Will staff be provided to assist with safety, security and maintenance? ☑ YES ☐ NO

Describe Periodic inspection for damage and burned out light bulbs.

10. Will the event require safety personnel (police, fire, paramedics)? ☐ YES ☑ NO

Describe _____

11. Will alcoholic beverages be served? ☐ YES ☑ NO

If yes, additional approval by the City Commission is required, as well as the Michigan Liquor Control Commission.

12. Will music be provided? ☐ YES ☑ NO

☐ Live ☐ Amplification ☐ Recorded ☐ Loudspeakers

Time music will begin _____

Time music will end _____

Location of live band, DJ, loudspeakers, equipment must be shown on the layout map.

13. Will there be signage in the area of the event? ☑ YES ☐ NO

Number of signs/banners 1

Size of signs/banners 18" x 48"

Submit a photo/drawing of the sign(s). A sign permit is required.

14. Will food/beverages/merchandise be sold? ☐ YES ☑ NO

- Peddler/vendor permits must be submitted to the Clerk's Office, at least two weeks prior to the event.
- All food/beverage vendors must have Oakland County Health Department approval.
- Attach copy of Health Dept approval.
- There is a $50.00 application fee for all vendors and peddlers, in addition to the $10.00 daily fee, per location. A background check must be submitted for each employee participating at the event.

LIST OF VENDORS/PEDDLERS

(attach additional sheet if necessary)

VENDOR NAME	GOODS TO BE SOLD	WATER HOOK-UP REQUIRED?	ELECTRIC REQUIRED?

III. EVENT LAYOUT

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area

1. Will the event require the use of any of the following municipal equipment? *(show location of each on map)*

EQUIPMENT	QUANTITY	COST	NOTES
Picnic Tables		6 for $200.00	A request for more than six tables will be evaluated based on availability.
Trash Receptacles		$4.00 each	Trash box placement and removal of trash is the responsibility of the event. Additional cost could occur if DPS is to perform this work.
Dumpsters		$200.00 per day	Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.
Utilities (electric)	____ # of vendors requiring utilities	Varies	Charges according to final requirements of event.
Water/Fire Hydrant		Contact the Fire Department.	Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.
Audio System		$200.00 per day	Must meet with City representative.
Meter Bags / Traffic Cones / Barricades	# to be determined by the Police Department.		

2. Will the following be constructed or located in the area of the event? ☐ YES ☐ NO
(show location of each on map) NOTE: Stakes are not allowed.

TYPE	QUANTITY	SIZE
Tents/Canopies/Awnings (A permit is required for tents over 120 sq ft)		
Portable Toilets		
Rides		
Displays		
Vendors		
Temporary Structure (must attach a photo)		
Other (describe)		

SIGNATURE OF APPLICANT REQUIRED

EVENT NAME 2017 Christmas Nativity Display

EVENT DATE November 22, 2017 - December 29, 2017

The Birmingham City Commission shall have sole and complete discretion in deciding whether to issue a permit. Nothing contained in the City Code shall be construed to require the City Commission to issue a permit to an applicant and no applicant shall have any interest or right to receive a permit merely because the applicant has received a permit in the past.

As the authorized agent of the sponsoring organization, I hereby agree that this organization shall abide by all conditions and restrictions specific to this special event as determined by the City administration and will comply with all local, state and federal rules, regulations and laws.

Signature 8/1/17 Date

IV. SAMPLE LETTER TO NOTIFY ANY AFFECTED PROPERTY/BUSINESS OWNERS

- Organizer must notify all potentially affected residential property and business owners of the date and time this application will be considered by the City Commission. *(Sample letter attached to this application.)*

- Attach a copy of the proposed letter to this application. The letter will be reviewed and approved by the Clerk's Office. The letter must be distributed at least two weeks prior to the Commission meeting.

- A copy of the letter and the distribution list must be submitted to the Clerk's Office at least two weeks prior to the Commission meeting.

- If street closures are necessary, a map must be included with the letter to the affected property/business owners.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 07/19/2017

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	CONTACT NAME:	
Caudill Thornquist Group 2356 E Hill Road PO Box 8 Grand Blanc, MI 48439	PHONE (A/C, No, Ext): 866-565-2472	FAX (A/C, No): 877-314-5382
	E-MAIL ADDRESS:	

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Brotherhood Mutual Insurance Company	13528
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

Our Shepherd Lutheran
2225 E. 14 Mile Rd.
Birmingham, MI 48009

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC OTHER:	X		21M391459	05/15/2016	05/15/2019	EACH OCCURRENCE	$ 1,000,000.00
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000.00
							MED EXP (Any one person)	$ 10,000.00
							PERSONAL & ADV INJURY	$ 1,000,000.00
							GENERAL AGGREGATE	$ 10,000,000.00
							PRODUCTS - COMP/OP AGG	$ 10,000,000.00
								$
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB [ ] OCCUR EXCESS LIAB [ ] CLAIMS-MADE DED [ ] RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		21W391583	05/15/2017	05/15/2018	[ ] PER STATUTE [ ] OTH-ER	
							E.L. EACH ACCIDENT	$ 500,000.00
							E.L. DISEASE - EA EMPLOYEE	$ 500,000.00
							E.L. DISEASE - POLICY LIMIT	$ 500,000.00

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

In accordance with the Additional Insureds provision endorsed to the policy in the Liability and Medical Coverage Form (BGL-11), The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof is named as additional insured on policy #21M391459 in relation to the nativity display from 11/22/17 through 12/29/17.

CERTIFICATE HOLDER

City of Birmingham
151 Martin St.
PO Box 3001
Birmingham, MI 48009

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

OUR SHEPHERD LUTHERAN
Church • School • Child Care

Openly Sharing the Loving Christ!

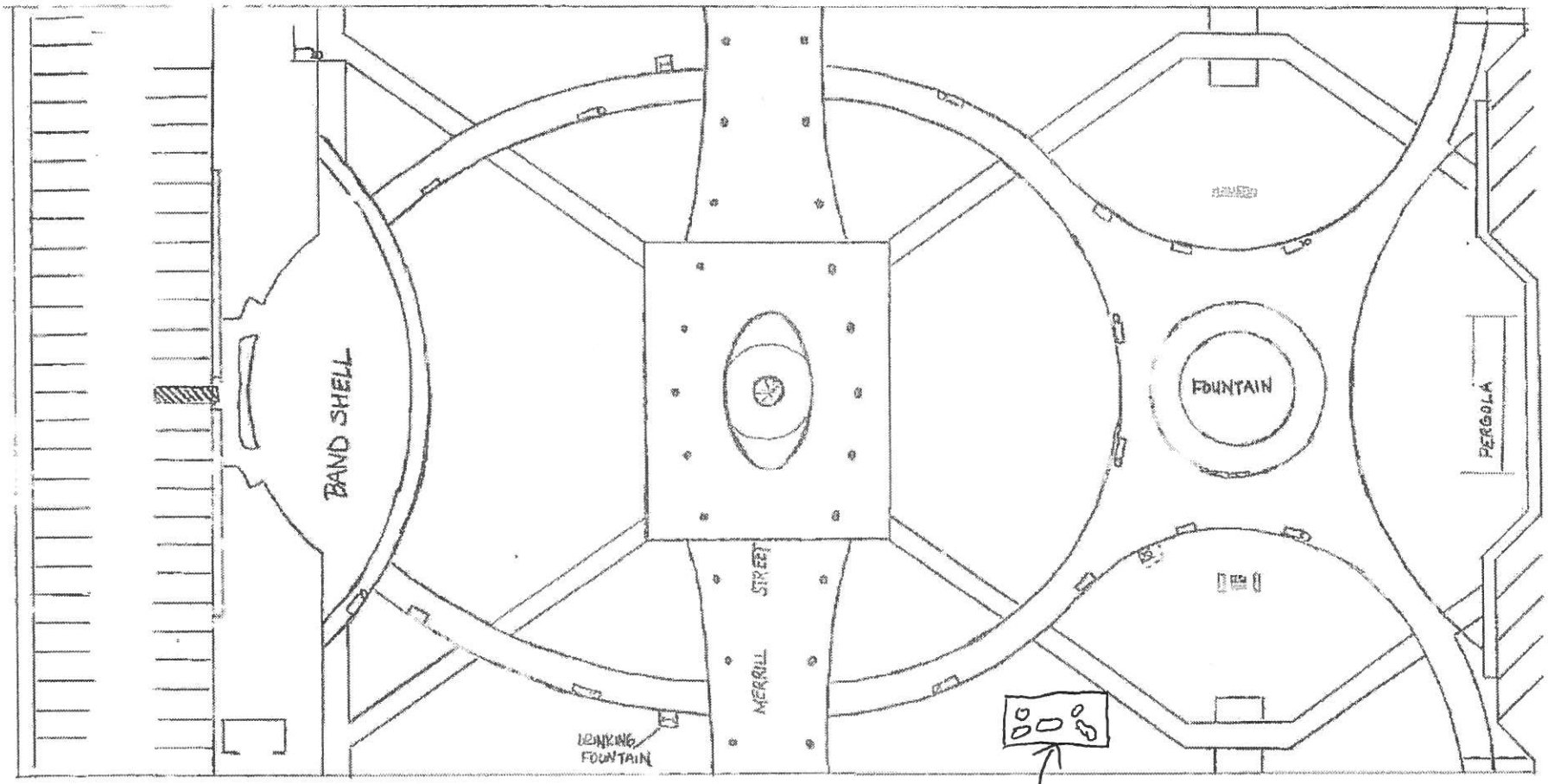
2225 E. 14 Mile Road • Birmingham, MI 48009
Phone: 248-646-6100 Fax: 248-646-6176
Email: churchoffice@ourshepherd.net
www.ourshepherd.net

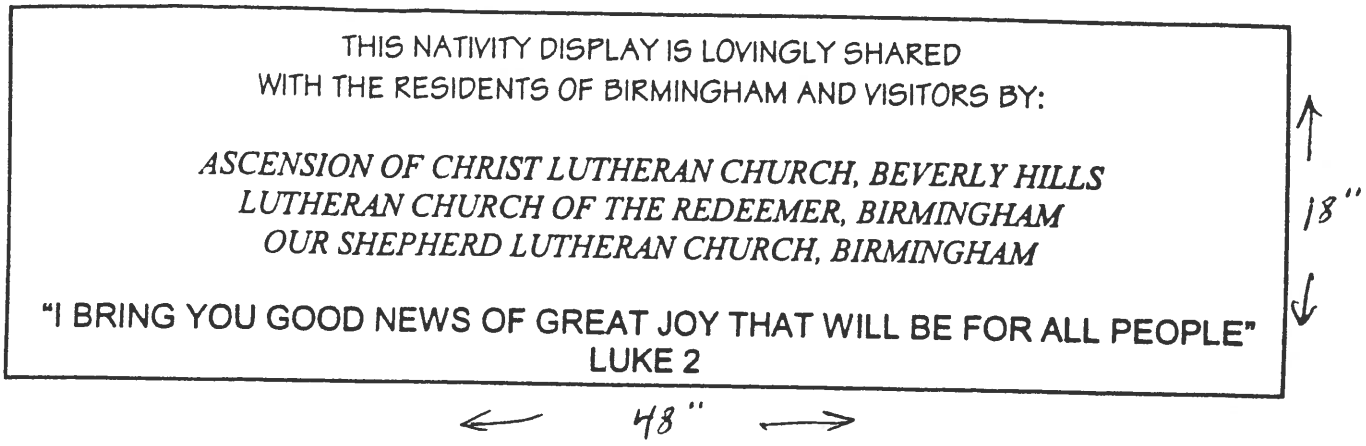
HOLD-HARMLESS AGREEMENT

To the fullest extent permitted by law, Our Shepherd Lutheran Church and any entity or person for whom Our Shepherd Lutheran Church 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 volunteers and others working on behalf of the City of Birmingham 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 of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, 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 activity/event. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of the City of Birmingham, its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

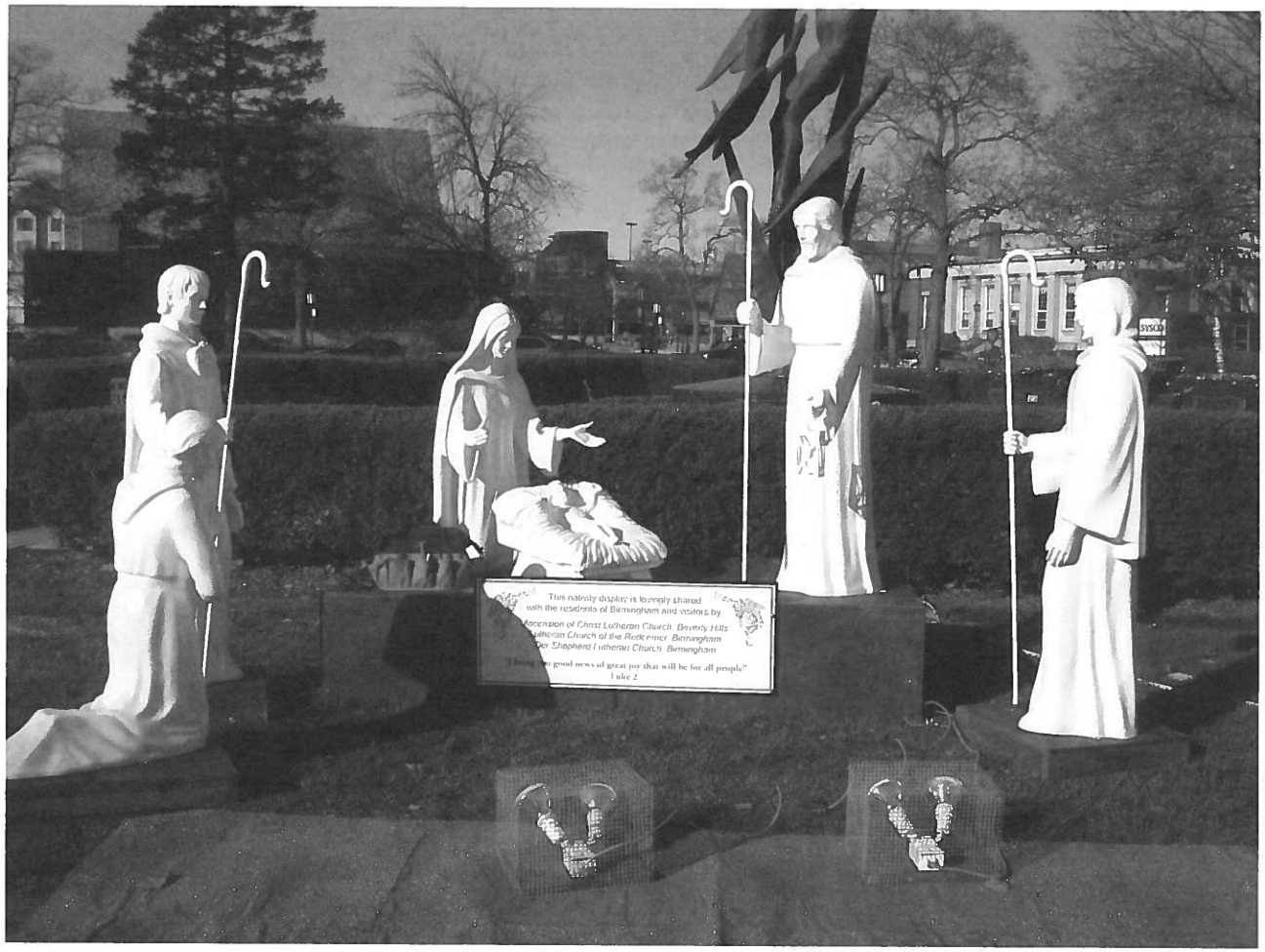
8/1/17

Applicant's Signature Date


BAND SHELL
FOUNTAIN
PERGOLA
MERRILL STREET
DRINKING FOUNTAIN
HENRIETTA STREET
MARTIN STREET
6 piece
Fiberglas Nativity



Text for free-standing sign/attached to front of wooden platform


This nativity display is lovingly shared
with the residents of Birmingham and visitors by
Ascension of Christ Lutheran Church, Beverly Hills
Lutheran Church of the Redeemer, Birmingham
Shepherd Lutheran Church, Birmingham
Luke 2

OUR SHEPHERD LUTHERAN
Church • School • Child Care
Openly Sharing the Loving Christ!

2225 E. 14 Mile Road • Birmingham, MI 48009
Phone: 248-646-6100 Fax: 248-646-6176
Email: churchoffice@ourshepherd.net
www.ourshepherd.net

SPECIAL EVENT REQUEST NOTIFICATION LETTER

Date: 08/21/2017
To: Resident/Property Owner/Business Owner

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the city commission will consider our request so that an opportunity exists for comments prior to this approval.

Event Information

NAME OF EVENT:	2017 Christmas Nativity Display
LOCATION:	Shain Park, East Side facing Henrietta
DATES OF EVENT:	Nov. 22, 2017 – Dec. 29, 2017
HOURS OF EVENT:	24 Hours/day

BRIEF DESCRIPTION OF EVENT: The display includes 6 fiberglass figures (Mary, Joseph, Baby Jesus and 3 Shepherds) with a sign identifying the 3 churches that share this display with the residents and visitors to the City of Birmingham. The same display has been placed since 2005.

DATE AND HOURS OF SETUP:	Nov. 22, 2017, 9-12 noon
DATE AND HOURS OF TEAR-DOWN:	Dec. 29, 2017, 9-12 noon

DATE OF CITY COMMISSION MEETING: 09/11/2017

The City Commission meets in Room 206 of the Municipal Building at 151 Martin at 7:30pm. A complete copy of the application to hold this special event is available for your review at the City Clerk's office. (248-530-1880) Log on to www.bhamgov.org/events for a complete list of special events.

EVENT ORGANIZER: Our Shepherd Lutheran Church
ADDRESS: 2225 E. 14 Mile Road, Birmingham, MI 48009
PHONE: 248-646-6100

FOR QUESTIONS ON DAY OF EVENT, CONTACT: David Priskorn, 248-646-6100

(Jointly sponsored with Lutheran Church of the Redeemer, Birmingham and Ascension of Christ Lutheran Church, Beverly Hills.)

DEPARTMENT APPROVALS

EVENT NAME 2017 NATIVITY DISPLAY

LICENSE NUMBER #17-00011037

COMMISSION HEARING DATE: SEPT 11, 2017

NOTE TO STAFF: Please submit approval by **AUG 7, 2017**

DATE OF EVENT: 11/22 – 12/29/17

DEPARTMENT	APPROVED	COMMENTS	PERMITS REQUIRED (Must be obtained directly from individual departments)	ESTIMATED COSTS (Must be paid two weeks prior to the event. License will not be issued if unpaid.)	ACTUAL COSTS (Event will be invoiced by the Clerk's office after the event)
PLANNING **101-000.000-634.0005** 248.530.1855	SC	No comments	N/A	$0	
BUILDING **101-000.000.634.0005** 248.530.1850	Pending				
FIRE **101-000.000-634.0004** 248.530.1900	JMC			$0	
POLICE **101-000.000.634.0003** 248.530.1870	SG	On duty personnel to provide extra patrol.		$0	$0
PUBLIC SERVICES **101-000.000-634.0002** 248.530.1642	CL	NO STAKES DRIVEN INTO THE GROUND OF ANY TYPE TO HOLD DOWN NATIVITY SCENE. 2). DEPARTMENT REPRESENTATIVE NEEDS TO MEET WITH ORGANIZATION REPRESENTATIVE ON THE PLACEMENT OF THE NATIVITY SCENE, TO AVOID DAMAGE TO PROPERTY, ELECTRICAL, ETC.		$0	
ENGINEERING **101-000.000.634.0002** 248.530.1839	A.F.	No Comments	None	$0	$0

SP+ PARKING	A.F.	No anticipated effect on parking system	None	$0	$0
INSURANCE 248.530.1807	CA	APPROVED	NONE	$0	$0
CLERK **101-000.000-614.0000** 248.530.1803		Notification letters to be mailed by applicant no later than 8/2717. Notification addresses on file in the Clerk's Office. Evidence of required insurance must be on file with the Clerk's Office no later than N/A.	Applications for vendors license must be submitted no later than N/A.	$165 (PD)	
				TOTAL DEPOSIT REQUIRED **$0**	**ACTUAL COST**

FOR CLERK'S OFFICE USE

Deposit paid _____

Actual Cost _____

Due/Refund_____

City of Birmingham
A Walkable Community

MEMORANDUM

City Clerk's Office

DATE: **September 1, 2017**

TO: **Joseph A. Valentine, City Manager**

FROM: **J. Cherilynn Mynsberge, City Clerk**

SUBJECT: **Election Commission Approval of Ballots for the November 7, 2017 General Election**

The Birmingham City Charter names the city commission as the election commission:

Chapter IV. – Registrations, Nominations and Elections
Section 22. - [Election commission.]

The city commission shall constitute the election commission for the city and shall perform all of the duties required of the city election commissions by the general laws of the state. It shall appoint the inspectors of election and fix their compensation.

The election commission is able to delegate some of its duties to the City Clerk and her authorized assistants, and adopted a resolution doing so on August 28, 2017.

One of the duties the election commission cannot delegate is the approving of ballots for a local election. Chapter 1, Page 7, of the Election Officials' Manual of the Michigan Bureau of Elections states the approval should be handled via an open meeting by election commission members. Chapter 9, Pages 1 & 2, of the manual further explains the election commission is responsible for checking the various proof ballots to make sure that they are free of errors and omissions.

The Oakland County Elections Division coordinates the printing of ballots for all municipalities in the County for all elections and has developed the attached "Ballot Layout Sign-Off Form" which lists the items on the ballots which should be reviewed.

The order of the races, Commissioner followed by Library Board Member, is set by the Birmingham City Charter, Chapter IV, Section 12. Michigan election law, MCL 168.569a, stipulates that candidate names must be rotated from one precinct to the next in cases where the number of candidates running for an office exceeds the number of candidates to be elected to the office.

I and my staff carefully reviewed the ballots and determined that they are free of errors and omissions. If the election commission agrees, I would respectfully request the ballots be approved and authorized for printing.

SUGGESTED RESOLUTION:
To approve the ballots for the November 7, 2017 election as submitted and to authorize the ballots to be printed.

EXCERPT
BIRMINGHAM CITY COMMISSION MINUTES
AUGUST 28, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

IV. CONSENT AGENDA

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

08-236-17 APPROVAL OF CONSENT AGENDA

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Harris:
To approve the Consent Agenda, with items A and F removed, and Commissioner Sherman's recusal on Item I noted.

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

H. Resolution delegating to the Birmingham City Clerk and her authorized assistants, those being the members of her staff, the following duties of the election commission for the November 7, 2017 General Election:

- Preparing meeting materials for the election commission, including ballot proofs for approval and a listing of election inspectors for appointment;
- Contracting for the preparation, printing and delivery of ballots;
- Providing candidates and the Secretary of State with proof copies of ballots;
- Providing notice to voters in the case of precinct changes/consolidations;
- Providing election supplies and ballot containers; and
- Preliminary logic and accuracy testing.

CITY AND TOWNSHIP ELECTION COMMISSIONS:

Note: The chart above outlines the composition of the local election commissions based on your jurisdiction's form of government. The only exception to the composition of the local election commission must be provided by a city charter.

City and Township Election Commission members are responsible for the following:

- Establishing precincts, including temporary precinct consolidations for non-State/ Federal elections;
- Establishing Absent Voter Counting Boards (AVCBs);
- Assessing voting equipment needs;
- Performing logic and accuracy testing for voting equipment. **NOTE:** Even if the county performs the programming for the local jurisdictions, it is still the responsibility of the local election commission to conduct pre-election logic and accuracy testing for their voting equipment prior to each election. Preliminary testing may be delegated to the local clerk; however, public accuracy testing must be conducted by the election commission or each members' designated representative.
- Authorizing the printing and provision of ballots for use in city, township, village and certain school district elections;
- Providing election supplies (including forms and ballot containers);
- Appointing precinct inspectors prior to each election, including AVCB members, Receiving Board members, precinct chairpersons and alternates; note that certified election inspectors must be appointed at least 21 days prior to the election and no more than 40 days prior to each election;
- Notifying major political parties of the appointment of election inspectors in federal and state elections; and
- Carrying out other election related duties for their respective jurisdictions.

Election Commission Responsibilities that should be handled via an Open Meeting by Election Commission Members:

- Approving of ballots
- Appointing precinct inspectors
- Public Accuracy Test
- Precinct Changes / Consolidations
- Adoption of resolution outlining delegated duties

Election Commission Duties that may be delegated to the Local Clerk or authorized assistant (note: Delegated duties should be documented via resolution):

- Preparing meeting materials for the Election Commission (ballots proof for approval, list of election inspectors for appointment, etc.)
- Preparing, printing and delivering ballots
- Providing candidates and the Secretary of State with proof copies of ballots
- Providing notice to voters in the case of precinct changes/consolidations
- Providing election supplies and ballot containers
- Preliminary logic and accuracy testing
- Notifying major political parties of certified precinct Inspector appointments (federal and state elections only)

SCHOOL ELECTION COORDINATING COMMITTEE:

Every school district has a School Election Coordinating Committee responsible for determining the details of how special school elections will be administered. The School Election Coordinating Committee is composed of a school election coordinator, the secretary of the school board and the clerks of all jurisdictions covered by the school district. For a school district wholly contained within a single jurisdiction, that clerk is the school election coordinator. In a school district that crosses jurisdiction lines the county clerk is the coordinator.

TYPES OF ELECTIONS

There are several types of elections conducted in Michigan. The following is an overview of the various types.

CHAPTER 9 ELECTION BALLOTS

TABLE CONTENTS

BALLOT PROOFING AND MICHIGAN BALLOT PRODUCTION STANDARDS:

All ballots must be prepared in conformance with Michigan's Ballots Production Standards. Adherence to the standards is compulsory for all election officials and vendors. A copy of the standards can be found on the Bureau of Elections website at www.michigan.gov/elections; under *"Information for Election Administrators"*.

Election ballots must always be carefully proofed to ensure that 1) they conform to all required legal and technical standards and 2) they are free of errors and omissions. The importance of ballot proofing cannot be over emphasized!

County Election Commission's Responsibilities: Ballots prepared for use at federal, state and countywide elections and certain school district elections are printed by the authority of the County Election Commission.

Local Election Commission's Responsibilities: Ballots prepared for use at city, township, village and certain school district elections are printed by the authority of the City, Township or County Election Commission.

Before the ballots are printed, the printer returns copies of the ballots to the appropriate Election Commission. The Commission is responsible for checking the various proof ballots to make sure that they are free of errors and omissions. A comprehensive check should include a careful review of the following:

- Ensure all office, candidates, and proposals are included
- Verify proper splits within a precinct
- Ballot heading including: 1) OFFICIAL BALLOT 2) election type 3) election date 4) county name, state 5) jurisdiction name and 6) precinct number
- Section headers – e.g.: PARTISAN SECTION, NONPARTISAN SECTION and PROPOSAL SECTION
- Office and proposal divisions – e.g.: STATE, COUNTY, CITY, TOWNSHIP
- Office titles – e.g.: CLERK, TREASURER, TRUSTEE
- Number to be elected – e.g.: Vote for not more than 1
- Placement of candidate names; form and spelling of candidate names; candidate name rotations; placement of special ballot designations
- Presentation and wording of ballot proposals

Proofing ballots is a tedious and time-consuming task – but the problems and embarrassment a complete proofing job can save on Election Day makes the task well worth the effort. If the Commission delegates ballot proofing to members of the clerk's staff, the task should be assigned to those in the office with the best eye for detail.

Responsibilities of Candidates and Department of State: Immediately after the proof ballots are delivered to the Election Commission, they forward the proofs to the Department of State's Bureau of Elections in Lansing for approval. The Commission also sends each candidate a proof ballot which lists the candidate's name.

- After sending proof ballots prepared for a state election, the county clerk must sign an affidavit that attests that proof ballots were mailed as required. The affidavit must list the candidates to whom the ballots were mailed, the addresses to which the ballots were mailed, and the dates on which the ballots were mailed.
- The Department of State's Bureau of Elections inspects the form of the proof ballots received from each Election Commission. (The Bureau of Elections does *not* check candidate name spellings or that all required offices are on the ballot.) If the ballots are in the proper form, the Bureau of Elections grants its approval of the ballots; if the ballots are not in the proper form, the Bureau of

BALLOT LAYOUT SIGN-OFF FORM

PLEASE PROOF IMMEDIATELY!

If there are corrections that need to be made, please indicate on the ballot proofs and send back to Oakland County via FAX at 248-858-1533.

Oakland County will not accept ballot corrections over the phone.

JURISDICTION NAME: CITY OF BIRMINGHAM

ELECTION DATE: NOVEMBER 7, 2017

Check the following items:

	Yes	No	N/A	
1.	☒	☐	☐	Races in correct order
2.	☒	☐	☐	Candidates' names are spelled correctly
3.	☒	☐	☐	"Votes for" verbiage correct
4.	☐	☐	☒	"Terms phrase" verbiage correct (if applicable, required for partial terms only)
5.	☒	☐	☐	Precinct numbering is correct
6.	☒	☐	☐	Is all spelling correct on ballot
7.	☐	☐	☒	Are the Districts correct (correct districts on ballot for each Precinct)
8.	☐	☐	☒	Proposition or question verbiage correct (if applicable)
9.	☒	☐	☐	Rotation (if applicable, for your jurisdiction only)
10.	☐	☐	☒	Candidate Party Affiliation (if applicable)

Once ballot proofing is finished please complete this form, sign and fax to Oakland County at 248-858-1533.

Are your ballots ready to be printed: Yes ☒ No ☐

By checking the above boxes and signing on the following line, you agree that you have proofed all of the above items. Oakland County is not financially responsible for any reprints that occur due to items covered in this sign off. In addition, you agree to check your ballot shipment upon receipt to verify the ballots and quantities are accurate.

Signature: Date:

Section 12. - [Form of ballot.]

The ballot for officers shall be in substantially the following form:

OFFICIAL BALLOT

Candidates for election to the city offices of (naming offices to be filled) of the City of Birmingham, Michigan, at the election held on the _____ day of _____ , 20 _____ . Completely darken the oval ⬭ opposite the names of the persons for whom you desire to vote.

FOR COMMISSIONERS

Vote for (Number to be elected)

(Here list the names of candidates with an oval at the left of each name. Also insert as many blank lines with an oval at the left thereof.)

FOR MEMBERS OF THE LIBRARY BOARD

Vote for (Number to be elected)

(Here list the names of candidates with an oval at the left of each name. Also insert as many blank lines with an oval at the left thereof.)

(Amend. of 4-7-69; Amend. of 11-8-11)

XIX. Candidate Name Rotations

Michigan election law, MCL 168.569a, stipulates that candidate names must be rotated on the ballot in specified instances to eliminate the chance that a candidate may be unfairly advantaged or disadvantaged in an election by his or her position on the ballot. (See: Promulgated Rule, R168.774(9))

When rotations are required, the candidate names are rotated from one precinct to the next. Ballot to ballot rotation, formerly employed when paper ballots were used, has been eliminated.

When rotation is required: The following outlines when candidate names must be rotated on the ballot:

- Candidate names are rotated on **non-partisan primary ballots and non-partisan general election ballots** in cases where the number of candidates running for an office exceeds the number of candidates to be elected to the office. (If the number of candidates filing for a judicial office in a non-partisan primary is equal to or less than the number of candidates to be elected to the office, the office does not appear on the ballot. If the number of candidates filing for a city office in a non-partisan primary is equal to or less than the number of candidates to be elected to the office, the office does not appear on the ballot unless otherwise provided under the city charter. If the number of candidates appearing on the ballot in a non-partisan general election is equal to or less than the number of candidates to be elected to the office, the candidates' names are listed alphabetically.)

- Candidate names are rotated on **partisan primary ballots** in cases where the number of candidates a party has running for an office exceeds the number of candidates to be elected to the office. (The names are listed alphabetically in cases where the number of candidates a party has running for an office is equal to or less than the number of candidates to be elected to the office.) Presidential Primary candidates are rotated in the same manner with the exception of "Uncommitted"; this selection is placed directly above the write-in line and *does not* rotate (see chapter IX Closed Presidential Primary for more information.)

- Candidate names are *not* rotated on **partisan general election ballots.** (In cases where there is more than one candidate to be elected to an office in a partisan general election, the candidates are listed alphabetically under each party.)

Rotation procedure: Candidate rotations are arranged by the printer and the election official responsible for printing the ballot. As a starting point, the candidates' names are placed in alphabetical order and are rotated by precinct. With each subsequent rotation, the name in the first position (top of column) is shifted to the last position (bottom of column). The rotations must be carefully planned to ensure that the various precinct rotations are – to the extent possible – evenly distributed throughout the village, city, township or county.

In elections involving federal, state and county offices, candidate names are rotated on a countywide basis. It is important that the rotation schedule that is observed within a county be consistently applied for all elections requiring countywide rotation. Consistency is important in ensuring the equal treatment for all candidates involved. The options are as follows:

Updated: 8/23/2017 8:37 AM

OFFICIAL CANDIDATE LIST
NOVEMBER 7, 2017 CITY GENERAL ELECTION

CITY OF BIRMINGHAM - COMMISSIONER - VOTE FOR NOT MORE THAN 3 - FOUR YEAR TERM

CANDIDATE	ADDRESS	PHONE NUMBER	E-MAIL	PETITIONS OR FEE	FILING DATE	WITHDRAWAL DATE
Rackeline Hoff	941 Arden Ln., Birmingham, MI 48009	[redacted]		Petitions	07/17/17	
Mark Nickita	752 E. Lincoln, Birmingham, MI 48009			Petitions	07/17/17	
Stuart Lee Sherman	1252 Stanley, Birmingham, MI 48009			Petitions	07/17/17	

CITY OF BIRMINGHAM - LIBRARY BOARD MEMBER - VOTE FOR NOT MORE THAN 3 - FOUR YEAR TERM

CANDIDATE	ADDRESS	PHONE NUMBER	E-MAIL	PETITIONS OR FEE	FILING DATE	WITHDRAWAL DATE
Ashley Aidenbaum	327 Southfield Rd. 2CS, Birmingham, MI 48009	[redacted]		Petitions	06/28/17	
Mike Kroll	1941 Washington Blvd., Birmingham, MI 48009			Petitions	06/27/17	
Melissa S. Mark	635 Puritan Ave., Birmingham, MI 48009			Petitions	06/26/17	
Frank Pisano	612 Davis Ave., Birmingham, MI 48009			Petitions	06/12/17	

Official Ballot

November 7, 2017 Election

Oakland County, Michigan
Birmingham, Precinct 1

8781

CITY

Commissioner

Vote for not more than 3

- [ ] Rackeline Hoff
- [ ] Mark Nickita
- [ ] Stuart Lee Sherman
- [ ]
- [ ]
- [ ]

Library Board Member

Vote for not more than 3

- [ ] Ashley Aidenbaum
- [ ] Mike Kroll
- [ ] Melissa S. Mark
- [ ] Frank Pisano
- [ ]
- [ ]
- [ ]

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Official Ballot

November 7, 2017 Election

Oakland County, Michigan
Birmingham, Precinct 2

8781

CITY

Commissioner

Vote for not more than 3

- [ ] Rackeline Hoff
- [ ] Mark Nickita
- [ ] Stuart Lee Sherman
- [ ] _____
- [ ] _____
- [ ] _____

Library Board Member

Vote for not more than 3

- [ ] Mike Kroll
- [ ] Melissa S. Mark
- [ ] Frank Pisano
- [ ] Ashley Aidenbaum
- [ ] _____
- [ ] _____
- [ ] _____

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Official Ballot

November 7, 2017 Election

Oakland County, Michigan
Birmingham, Precinct 3

8781

CITY

Commissioner

Vote for not more than 3

- [ ] **Rackeline Hoff**
- [ ] **Mark Nickita**
- [ ] **Stuart Lee Sherman**
- [ ]
- [ ]
- [ ]

Library Board Member

Vote for not more than 3

- [ ] **Melissa S. Mark**
- [ ] **Frank Pisano**
- [ ] **Ashley Aidenbaum**
- [ ] **Mike Kroll**
- [ ]
- [ ]
- [ ]

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Official Ballot

November 7, 2017 Election

Oakland County, Michigan
Birmingham, Precinct 4

8781

CITY

Commissioner

Vote for not more than 3

- [ ] **Rackeline Hoff**
- [ ] **Mark Nickita**
- [ ] **Stuart Lee Sherman**
- [ ]
- [ ]
- [ ]

Library Board Member

Vote for not more than 3

- [ ] **Frank Pisano**
- [ ] **Ashley Aidenbaum**
- [ ] **Mike Kroll**
- [ ] **Melissa S. Mark**
- [ ]
- [ ]
- [ ]

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Official Ballot

November 7, 2017 Election

Oakland County, Michigan
Birmingham, Precinct 5

8781

CITY

Commissioner

Vote for not more than 3

- [ ] Rackeline Hoff
- [ ] Mark Nickita
- [ ] Stuart Lee Sherman
- [ ]
- [ ]
- [ ]

Library Board Member

Vote for not more than 3

- [ ] Ashley Aidenbaum
- [ ] Mike Kroll
- [ ] Melissa S. Mark
- [ ] Frank Pisano
- [ ]
- [ ]
- [ ]

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Official Ballot

November 7, 2017 Election

Oakland County, Michigan
Birmingham, Precinct 6

8781

CITY

Commissioner

Vote for not more than 3

- [ ] Rackeline Hoff
- [ ] Mark Nickita
- [ ] Stuart Lee Sherman
- [ ] _____
- [ ] _____
- [ ] _____

Library Board Member

Vote for not more than 3

- [ ] Mike Kroll
- [ ] Melissa S. Mark
- [ ] Frank Pisano
- [ ] Ashley Aidenbaum
- [ ] _____
- [ ] _____
- [ ] _____

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Official Ballot

November 7, 2017 Election

Oakland County, Michigan
Birmingham, Precinct 7

8781

CITY

Commissioner

Vote for not more than 3

- [ ] **Rackeline Hoff**
- [ ] **Mark Nickita**
- [ ] **Stuart Lee Sherman**
- [ ]
- [ ]
- [ ]

Library Board Member

Vote for not more than 3

- [ ] **Melissa S. Mark**
- [ ] **Frank Pisano**
- [ ] **Ashley Aidenbaum**
- [ ] **Mike Kroll**
- [ ]
- [ ]
- [ ]

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Official Ballot

November 7, 2017 Election

Oakland County, Michigan
Birmingham, Precinct 8

8781

CITY

Commissioner

Vote for not more than 3

- [ ] **Rackeline Hoff**
- [ ] **Mark Nickita**
- [ ] **Stuart Lee Sherman**
- [ ]
- [ ]
- [ ]

Library Board Member

Vote for not more than 3

- [ ] **Frank Pisano**
- [ ] **Ashley Aidenbaum**
- [ ] **Mike Kroll**
- [ ] **Melissa S. Mark**
- [ ]
- [ ]
- [ ]

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Official Ballot

November 7, 2017 Election

Oakland County, Michigan
Birmingham, Precinct 9

8781

CITY

Commissioner

Vote for not more than 3

- [ ] Rackeline Hoff
- [ ] Mark Nickita
- [ ] Stuart Lee Sherman
- [ ]
- [ ]
- [ ]

Library Board Member

Vote for not more than 3

- [ ] Ashley Aidenbaum
- [ ] Mike Kroll
- [ ] Melissa S. Mark
- [ ] Frank Pisano
- [ ]
- [ ]
- [ ]

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City of Birmingham
A Walkable Community

MEMORANDUM

Department of Public Services

DATE: **September 1, 2017**

TO: **Joseph A. Valentine, City Manager**

FROM: **Lauren Wood, Director of Public Services**

SUBJECT: **Barnum Park Field Improvements**

Sealed bids were opened on Tuesday, August 15, 2017 for the cost to renovate the infield and outfield of the ball diamond and also the soccer area at Barnum Park. The work includes the addition of a better infield material, laser grading to promote proper drainage, re-aligning bases, top dressing of the lawn area with top soil, re-seeding and applying fertilizer to the lawn area. The ball diamond and lawn area otherwise known as an open space area, are commonly used by groups participating in organized sports such as girls softball and soccer. Two (2) bidders responded. The result of the sealed bids follows in the table below.

Company	Bid Amount
Homefield Turf and Athletic, Inc.	**$21,900.00**
Meridian Contracting Group, LLC	$44,401.00

This work is upkeep in nature and is necessary to ensure safety of all users and enjoyable play. The scope of work for the infield includes providing a topography survey and grading plan, marking and measuring the field for trimming, adding infield material provided by the City, laser grading the field to promote proper drainage, and re-aligning the pegs for bases, pitchers mounds, and home plate. The scope of work for the outfield and also the lawn/soccer area entails providing a topography survey and grading plan, balancing the site with a bulldozer to + or -.75 inches of prescribed grade, importing 125 tons of topsoil (provided by the City), laser grading to promote proper drainage, seeding with 50% Bluegrass and 50% Perennial Ryegrass, and applying starter fertilizer and mulch.

The Parks and Recreation Board, while not typically involved in the approval of field improvement projects, they are aware of this project and endorse the Department of Public Services maintaining and providing safe open space areas.

Homefield Turf and Athletic provided a complete bid and they are able to meet the completion date. This firm has experience and working knowledge of the project scope needed. This contractor specializes in this type of work and was the only bidder. Athletic

fields are their only business, not a sideline and they have over 40 years of experience. This company travels all over the State and even Country to perform athletic field work for Little League, High School, College and Minor and Major League Baseball and has an impressive portfolio of completed projects. A few recent projects include: Troy Athens High School, Everest Academy, University of Michigan, Western Michigan University, Alliance Bank Stadium Syracuse Chiefs Minor League, among many others. Homefield Turf and Athletic has performed work for the City of Birmingham as well, completing projects such as Kenning Park Ballfield Maintenance Project in 2013, Pembroke Park and Poppleton Park Infield Improvements in 2014, Crestview Lawn Repair in 2015, and Pembroke Lawn Repair in spring of 2017.

The Crestview Lawn Repair Project, done in 2015 for $9,400, was approximately 35,000 square feet or .8 acres. The Pembroke Park Lawn Repair project, done in early 2017 for $12,500, was approximately 66,000 square feet or 1.5 acres. The Kenning Park Ballfield Maintenance Project in 2013, for $15,008, was to improve 4 fields including 3 little league size fields and 1 softball size field, an average of $3,752 per field. The Pembroke and Poppleton Park Infield Improvements, done in 2014 for $14,650, was for 2 fields, a full size softball infield and a little league size field, an average of $7,325 per field. For all of the above referenced projects, the costs did not include the infield material or topsoil.

This project at Barnum is for the improvement of one infield, and the lawn repair and grading work of the open space/soccer area. The outfield and soccer area is approximately 1.5 acres. This project was budgeted to come in at a higher cost than previous projects, based on the work required, including the restoration needed at this irrigated, developed park. We recommended a budget of $35,000 to complete this project and the money was allocated for the 2017-2018 fiscal year. Funds will come from the Capital Projects Fund account #401-751.001-981.0100, for this project.

The Department of Public Services recommends awarding the Barnum Park Field Improvement project to Homefield Turf and Athletic, Inc. DPS is confident in their ability to provide the scope of work as specified.

In addition, the Department of Public Services recommends the purchase of the specified infield material, Duraedge Classic Infield mix, from the manufacturer in the amount of $9,400. This material was tested at Poppleton Park and the sole source supplier of this product is Natural Sand Company Incorporated.

SUGGESTED RESOLUTION

To approve the contract for Barnum Park Field Improvements project to Homefield Turf and Athletic, Inc in the amount of $21,900.00 from the Capital Projects Fund, account #401-751.001-981.0100. Also, to approve the purchase of the infield material from Natural Sand Company Incorporated from the Capital Projects Fund, account #401-751.001-981.0100. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.

ATTACHMENT A - AGREEMENT

For Barnum Park Field Improvements

This AGREEMENT, made this _____day of _____, 2017, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and Homefield Turf + Athletic, Inc., having its principal office at 4790 Pelton Rd Clarkston, MI 48346 (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham, through its Department of Public Services, is desirous of having field improvements done including infield resurfacing, laser grading, setting of plates, base anchors and mounds and re-grading, adding topsoil and seed to the outfield and lawn area at Barnum Park in the City of Birmingham.

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to perform field improvements described above at Barnum Park, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to perform field improvements including infield resurfacing, laser grading and setting plates, anchors, and mounds, outfield and lawn re-grading, .

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform infield resurfacing, laser grading and setting of plates, anchors and mounds and the Contractor's cost proposal dated 8/15, 2017 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.

2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed $21,900.00, as set forth in the Contractor's 8/15, 2017 cost proposal.

3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.

4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

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 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. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. 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: 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: Commercial General Liability and Motor Vehicle Liability Insurance, 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 employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

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.

18. 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.

WITNESSES:

CONTRACTOR

By: _____

Its: President

CITY OF BIRMINGHAM

_____

By: _____
Mark Nickita
Its: Mayor

_____

By: _____
J. Cherilynn Brown
Its: City Clerk

Approved:

Lauren A. Wood
(Approved as to substance)

Mark Gerber, Director of Finance
(Approved as to financial obligation)

Timothy J. Currier, City Attorney
(Approved as to form)

Joseph A. Valentine, City Manager
(Approved as to substance)

ATTACHMENT B - BIDDER'S AGREEMENT
For Barnum Park Field Improvements

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

Michael Robinson	8/15/17
BID PREPARED BY (Print Name)	**DATE**
President	8/15/17
TITLE	**DATE**
[signature]	homefieldathletic@sbcglobal.net
AUTHORIZED SIGNATURE	**E-MAIL ADDRESS**
Homefield Turf + Athletic Inc	
COMPANY	
4790 Pelton Rd	248 623-7198
ADDRESS	**PHONE**
NAME OF PARENT COMPANY	**PHONE**
ADDRESS	

ATTACHMENT D – SITE VISIT
For Barnum Park Field Improvements

In order to the bid to be considered valid, a site visit to Barnum Park must be completed by the contractor.

SITE VISIT

☒ Our company visited the job site

☐ Our company did not visit the job site

Reason: _____

ATTACHMENT C - COST PROPOSAL

For Barnum Park Field Improvements

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

Attach technical specifications for all proposed materials as outlined in the Contractor's Responsibilities section of the RFP (p. 6)

COST PROPOSAL	
Barnum Park Infield	
ITEM	**BID AMOUNT**
Infield Renovation per Specs	$ 5400.00
Other Miscellaneous (Attach Detailed Description)	$
TOTAL	$ 5400.00
Barnum Park Outfield and Lawn Area	
ITEM	**BID AMOUNT**
Outfield and Lawn Renovation per Specs	$ 16,500.00
Other Miscellaneous (Attach Detailed Description)	$
TOTAL	$ 16,500.00

GRAND TOTAL	$ 21,900.00

Firm Name Homefield Turf + Athletic Inc.

Authorized signature _____ Date 8/15/17

ATTACHMENT E - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM

Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

Michael Robinson	8/15/17
PREPARED BY (Print Name)	**DATE**
President	8/15/17
TITLE	**DATE**
[signature]	homefieldathletic@sbcglobal.net
AUTHORIZED SIGNATURE	**E-MAIL ADDRESS**
Homefield Turf + Athletic Inc	
COMPANY	
4790 Pelton Rd Clarkston, MI 48346	248 623-7198
ADDRESS	**PHONE**
NAME OF PARENT COMPANY	**PHONE**
ADDRESS	
20-0655412	
TAXPAYER I.D.#	

HOMEF-1 OP ID: AO

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08/31/2017

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 Szura Insurance Services 109 E. Fourth St. Rochester, MI 48307-2021 Matthew T. Szura	CONTACT NAME: Matthew T. Szura PHONE (A/C, No, Ext): 248-651-4487 FAX (A/C, No): 248-651-3751 E-MAIL ADDRESS:
INSURED Homefield Turf & Athletic, Inc Mike Robinson P.O. Box 1028 Clarkston, MI 48347	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A: EMC Insurance Companies — 21415 INSURER B: INSURER C: 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	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	X		5D5-90-74-18	01/04/2017	01/04/2018	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	X		5E5-90-74-18	01/04/2017	01/04/2018	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (PER ACCIDENT)	$ 1,000,000 $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $			5J5-90-74-18	01/04/2017	01/04/2018	EACH OCCURRENCE AGGREGATE	$ 2,000,000 $ 2,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N/A If yes, describe under DESCRIPTION OF OPERATIONS below			5H5-90-74-18	01/04/2017	01/04/2018	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 500,000 $ 500,000 $ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Birmingham including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof, are additional insureds in regard to general and auto liability as respects operations of the named insured. Such insurance is primary and non-contributory.

CERTIFICATE HOLDER

CITYBIR

City of Birmingham
151 Martin Street
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
Matthew T. Szura

City of Birmingham
A Walkable Community

MEMORANDUM

Engineering Dept.

DATE: **August 31, 2017**

TO: **Joseph Valentine, City Manager**

FROM: **Paul T. O'Meara, City Engineer**

SUBJECT: **The Pearl Building Development**
856 N. Old Woodward Ave.
DTE Energy Street Light Agreement

As you know, a mixed use structure is planned for a vacant parcel on the east side of N. Old Woodward Ave., immediately south of the Oak St. intersection. The developed retail buildings directly south of this parcel were developed with a separated bay of parking on City right-of-way, combined with a narrow sidewalk between the parking area and the property line. This area, on the outer edge of the Central Business District, has never had any pedestrian-sized street lights. When the existing separated parking facility was constructed in 2007, the City sidewalk was left at the existing 5 feet wide, due to lack of space. Overhead lighting was installed in the narrow median that separates the parking area from northbound N. Old Woodward Ave.

When the site plan for this development was prepared, it was decided to continue the existing theme from the south. As shown on the plan, although this parcel does not have as wide of a parking area as the parcels to the south, the City sidewalk and separated parking area will be continued across this parcel as space allows. The developer will build a new parking area that will provide a separated median from northbound traffic, six new public parking spaces, a driveway, and a City sidewalk, some on public right-of-way, and some on private property, over the developer's basement parking garage (all of the facilities will be constructed to appear as open and accessible public facilities at street level).

To continue the existing treatment to the south, one full size street light matching those to the south will be installed in the new median, designed to light both N. Old Woodward Ave., as well as the parking area and sidewalk. One post is proposed, with two lights suspended above. To help clarify the design, a site plan of the street level, and a picture of the existing conditions is attached to this report.

As is typically done as a part of the site plan review process, the owner is required to pay for the installation of the new street light. DTE Energy has prepared the attached contract for the installation of the lights and post by their contractor. The agreement is identical to those authorized for other street light agreements. The language has been reviewed and approved by the City Attorney's office. Once the agreement has been signed, we will return it to DTE for their signature and execution. Once the work has been completed to our satisfaction, we will invoice the owner for the full amount being charged ($6,456.36). A final Certificate of Occupancy will not be issued until payment has been received. We expect after the work is

complete, we will in turn be invoiced for the value of the work from DTE Energy, which will be charged to the streetscape account 401-901.009-981.0100, in the Capital Projects Fund.

It is recommended that the Commission authorize the Mayor to sign the attached Agreement for Municipal Street Lighting presented by DTE Energy relative to 856 N. Old Woodward Ave. All costs relative to this agreement will be charged to the owner and developer of the property.

SUGGESTED RESOLUTION:

To approve the street light agreement between the City of Birmingham and DTE Energy regarding the installation of street lights at 856 N. Old Woodward Ave. Further, to direct the Mayor to sign the agreement on behalf of the City. All costs relative to this agreement will be charged to the adjacent owner.

Exhibit A to Master Agreement

Purchase Agreement

This Purchase Agreement (this "Agreement") is dated as of June 20, 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:	47676724	
	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:	856 N Old Woodward Ave in Birmingham, as more fully described on the map attached hereto as Attachment 1.	
3. Total number of lights to be installed:	2	
4. Description of Equipment to be installed (the "Equipment"):	Install (2) – 280 watt Autobahn LED fixtures with gray housings mounted on (1) – 30' steel Code 87 post with twin davit arms on a concrete foundation. Post to be painted Birmingham green to match other steel posts in the vicinity. Remove (1) – 400 watt High Pressure Sodium cobra head mounted on a 30' steel Code 06 post.	
5. Estimated Total Annual Lamp Charges	$630.24	
6. Computation of Contribution in aid of Construction ("CIAC Amount")	Total estimated construction cost, including labor, materials, and overhead:	$8,347.08
	Credit for 3 years of lamp charges:	$1,890.72
	CIAC Amount (cost minus revenue)	**$6,456.36**
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) ☐ YES ☒ 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 **N/A** posts and **N/A** 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 _____N/A_____. 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: _____N/A_____ Title: _____N/A_____

Phone Number: _____N/A_____ Email: _____N/A_____

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 warrantees, 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.

****

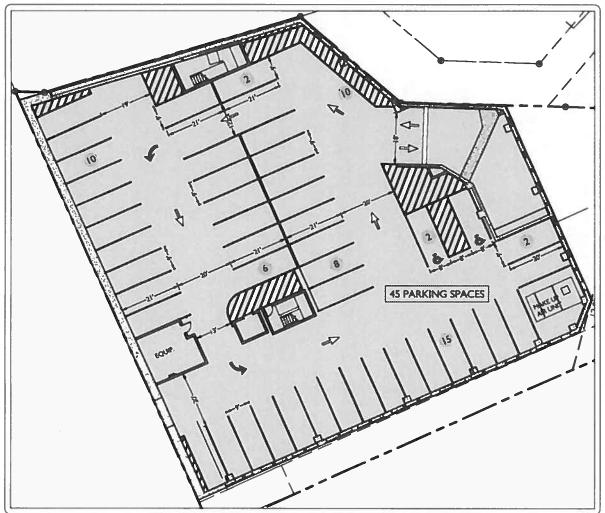
Company and Customer have executed this Purchase Agreement as of the date first written above.

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]



BASEMENT FLOOR LAYOUT

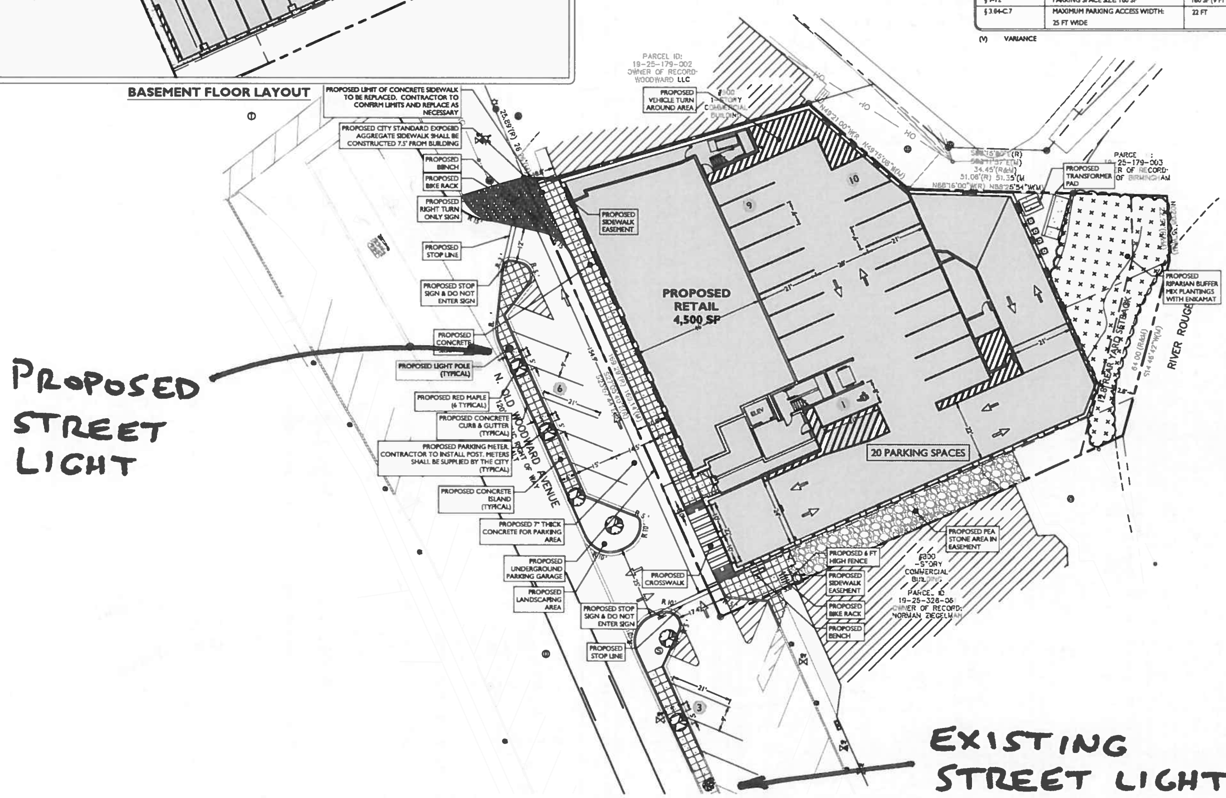


TABLE OF LAND USE AND ZONING

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(FACADE)	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	<u>RESIDENTIAL (2 OR LESS ROOMS):</u> 1.5 SPACES PER UNIT (1 UNITS)(1.5/UNITS) = 2 SPACES <u>RESIDENTIAL (3 OR MORE ROOMS):</u> 2 SPACES PER UNIT (25 UNITS)(2/UNITS) = 50 SPACES <u>RETAIL</u> 1 SPACES PER 300 SF (4,500 SF)(1/300 SF) = 15 SPACES <u>TOTAL</u>: 2 + 50 + 15 = 58 SPACES	20 SPACES AT GROUND LEVEL 45 SPACES ON LOWER LEVEL **65 SPACES TOTAL ONSITE** 9 SPACES IN PUBLIC R.O.W <u>**74 SPACES TOTAL**</u>
§ 9-12	PARKING SPACE SIZE: 180 SF	180 SF (9 FT X 20 FT)
§ 3.04-C.7	MAXIMUM PARKING ACCESS WIDTH: 25 FT WIDE	22 FT

(V) VARIANCE

SYMBOL	DESCRIPTION
— — —	PROPERTY LINE
═══	PROPOSED CURB
═ ═ ═	PROPOSED FLUSH CURB
⊥	PROPOSED SIGN
▭	PROPOSED BUILDING
▭	PROPOSED CONCRETE
⇦	PROPOSED TRAFFIC FLOW MARKINGS
(12)	PARKING STALL COUNTER

GENERAL NOTES

1. 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.
2. 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.
3. ALL CONTRACTORS WILL, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFY AND HOLD HARMLESS STONEFIELD ENGINEERING & DESIGN, LLC AND IT'S 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.
4. 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.
5. THE CONTRACTOR IS RESPONSIBLE TO DETERMINE THE MEANS AND METHODS OF CONSTRUCTION.
6. 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
7. 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 CONTRACTORS EXPENSE.
8. 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
9. THE CONTRACTOR IS RESPONSIBLE FOR TRAFFIC CONTROL IN ACCORDANCE WITH MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, LATEST EDITION.
10. 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.
11. THE CONTRACTOR IS REQUIRED TO RETAIN AN OSHA CERTIFIED SAFETY INSPECTOR TO BE PRESENT ON SITE AT ALL TIMES DURING CONSTRUCTION & DEMOLITION ACTIVITIES.
12. 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
ELYMUS VIRGINICUS	VIRGINIA WILDRYE	20%
SORGHASTRUM NUTANS	INDIANGRASS	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 VERVIAN	4%
RUDBECKIA HIRTA	BLACKEYED SUSAN	3%
HELIOPSIS HELIANTHOIDES	OXEYE SUNFLOWER	3%
ASTER NOVAE-ANGLIAE	NEW ENGLAND ASTER	2.3%
JUNCUS EFFUSUS	SOFT RUSH	2%
EUPATORIUM PERFOLIATUM	BONESET	1%
EUPATORIUM FISTULOSUM	JOE PYE WEED	1%
BAPTISIA AUSTRALIS	BLUE FALSE INDIGO	1%
VERNONIA NOVEBORACENSIS	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

20' 0' 20' 40'
GRAPHIC SCALE IN FEET
1" = 20'

ISSUE	DATE	BY	DESCRIPTION
13	08/28/2017	MPH	REVISED PER CITY ENGINEERING COMMENTS
12	05/23/2017	MPH	REVISED PER CITY ENGINEERING COMMENTS
11	04/03/2017	JAM	REVISED PER CITY ENGINEERING COMMENTS
10	02/22/2017	JAM	REVISED PER CITY ENGINEERING COMMENTS
9	01/23/2017	JAM	ISSUED FOR BID/PERMITS
8	01/04/2017	JAM	UPDATED PER LATEST BUILDING FOOTPRINT
7	08/19/2016	JAM	SUBMISSION FOR ENGINEERING APPROVAL
6	06/24/2016	JAM	REVISED FOR FINAL SITE PLAN APPROVAL
5	04/12/2016	JAM	REVISED PER CITY COMMENTS & ZONING BOARD SUBMISSION
4	03/10/2016	JAM	REVISED PER CITY COMMENTS & ZONING BOARD SUBMISSION

NOT APPROVED FOR CONSTRUCTION

STONEFIELD
engineering & design, llc.
Rutherford, NJ · Farmingdale, NY · Royal Oak, MI
www.stonefieldeng.com
28454 Woodward Avenue Royal Oak, MI 48067
Phone 248.247.1115

SITE DEVELOPMENT PLANS

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

MICHIGAN LICENSE No. 6201063061
LICENSED PROFESSIONAL ENGINEER

STONEFIELD
engineering & design, llc

SCALE: 1" = 20' PROJECT ID: M-15128

TITLE: FIRST FLOOR SITE PLAN

DRAWING: C-3

Image capture: Oct 2016 © 2017 Google United States

Image capture: Oct 2016 © 2017 Google United States

City of Birmingham
A Walkable Community

MEMORANDUM

Planning Division

DATE: **August 10, 2017**

TO: **Joseph A. Valentine, City Manager**

FROM: **Jana L. Ecker, Planning Director**

SUBJECT: **Set a Public Hearing to Add a Definition of Personal Services to Article 9, section 9.02, Definitions, of the Zoning Ordinance**

On June 19th, 2017 the City held a joint workshop session with the Planning Board and City Commission to discuss current planning issues. One of the issues discussed was the Planning Board's study of permitted uses in the Redline Retail District. The City Commission indicated the desire for the Planning Board to draft a definition of personal services to clarify which types of services, if any, should be permitted in the Redline Retail District.

Subsequent to the joint meeting, the City Manager directed the Planning Board to postpone the public hearing that the Board had previously scheduled for July 12, 2017, to allow the Planning Board to conduct an additional study session to further discuss and focus in on a proposed definition for personal services to send to the City Commission.

On July 12, 2017, the Planning Board opened a public hearing to consider amendments to Article 03 section 3.04 to exclude community uses in the Redline Retail District and Article 09, Definitions to define Personal Services. The public hearing was immediately closed and the Planning Board postponed the public hearing to August 9, 2017 to allow the Planning Board to hold an additional study session on July 12, 2017 specifically with regards to drafting a definition for personal services as directed by the City Manager.

On August 9, 2017, the Planning Board conducted a public hearing to consider the draft amendment to the definition section of the Zoning Ordinance to consider adding a definition for personal services in Article 9, section 9.02 to clarify the uses permitted in the Redline Retail District. After much discussion and public input, the Board forwarded the draft definition to the City Commission for review, but voted unanimously not to recommend approval of the draft definition of personal services, but to recommend that the City Commission expedite the comprehensive master plan update.

Accordingly, the Planning Division requests that the City Commission set a public hearing date of **October 16, 2017** to consider an amendment to Article 9, section 9.02 of the Zoning Ordinance to add a definition for personal services. Please see the attached draft language, staff report, and relevant meeting minutes related to this subject.

SUGGESTED ACTION:

To set a public hearing date of October 16, 2017 to consider an amendment to Article 9, Section 9.02, Definitions, to add a definition for personal services to the Zoning Ordinance.

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 A DEFINITION FOR PERSONAL SERVICES, TO ADD A DEFINITION FOR PERSONAL SERVICES.

Personal Services: An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers, including, but not limited to, personal care services, services for the care of apparel and other personal items, but not including business to business services, medical, dental and/or mental health services.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

_____
Mark Nickita, Mayor

_____
Cherilynn Brown, City Clerk

	Business Name	Current Status	Type of Service	Use Type	Address	Previous Use	How do they fit?
2017							
	Jeff Glover & Associates	Open	Real Estate	Personal Service	330 Hamilton Row	Sydney Blake (Hair Salon)	Sells homes/property
	MA Engineering	Open	Engineering services	Personal Service	400 S. Old Woodward #100	Greens Art Supply (Art Supply Store)	Sells engineering/tech services
2016							
	Kirsch Leach + Associates	Open	Law Office	Personal Service	144 W. Maple		Sells legal advice/services
	Seeger Studios	Closed	Photography	Personal Service	239 S. Old Woodward	Ribbons (Gift Baskets)	Sold photography services
	Tri Phase Construction	Open	Construction	Personal Service	359 S. Old Woodward	Right off the Sheep (Yarn Store)	Sells contracting services
	Detroit Trading Company	Open	Marketing/ Consulting	Personal Service	670 S. Old Woodward	Bo Concept (Furniture store)	Sells website/tech services
	Birmingham Realty, LLC	Open	Real Estate	Personal Service	217 S. Old Woodward	Fleur Detroit (Florist)	Sells homes/property
2015							
	Resolute Building Intelligence	Open	Data Solutions	Personal Service	139 S. Old Woodward		Sells technology services
	Seeds Marketing & Design	Open	Marketing Agency	Personal Service	170 W. Maple	Complex Boutique (Clothing Store)	Sells marketing services
	MadDog Technology	Open	Business Applications	Personal Service	233 Pierce	The Designate (Limo Service)	Sells technology services
	Lenderful	Open	Mortgage Lender	Personal Service	235 Pierce	Stacey Leuliette (Gift Shop)	Sells mortgages
	Womens Excellence, Birmingham	Open	Health Clinic	Personal Service	511 Pierce	George Moser (Gynecology)	Sells health/wellness services (grandfathered)
	Real Ryder Revolution	Open	Fitness	Personal Service	555 S. Old Woodward		Sells fitness classes
	Resolute	Open	Building optimization	Personal Service	139 S Old Woodward	Tactical Allocation Group (Real Estate)	Sells consulting services
	Hit Ultimate Fitness	Open	Personal Training	Personal Service	555 S. Old Woodward		Sells personal training services
	Emagine Palladium Theatre	Open	Movie Theater	Personal Service	209 Hamilton Row		Sells movie tickets/concessions (grandfathered)
	Edward Jones	Open	Financial consulting	Personal Service	1000 S. Old Woodward, #105		Sells financial services
	Luxe Homes Design+Build	Open	Custom home builder	Personal Service	360 Hamilton Row	Illusions by Sherri (Fitness Studio)	Sells contracting/design services
2014							
	Zoom Artistic Photography	Closed	Photography	Personal Service	217 S. Old Woodward		Sold photography services
	Urban Kids Photography	Closed	Photography	Personal Service	251 E. Merrill		Sold photography services
	HappyDino Playcare	Closed	Daycare	Personal Service	375 Hamilton Row		Sold daycare services
	Huntington Learning Center	Open	Tutoring	Personal Service	375 Hamilton Row	Happy Dino Playcare (Daycare)	Sells tutoring services
	Bank of America	Closed	Banking	Personal Service	99 W. Maple		Former banking service
	Birmingham Tango	Open	Dance Studio	Personal Service	555 S. Old Woodward		Sells dance lessons
	Shain Park Realtors	Open	Real estate	Personal Service	260 Martin		Sells homes/property
2013							
	Snap Fitness	Closed	Fitness	Personal Service	101 Willits		Sold fitness classes
	The UPS Store	Closed	Shipping/Receiving	Personal Service	330 E. Maple		Sold shipping services/products
	Yak Academy	Closed	Language Classes	Personal Service	555 S. Old Woodward		Sold language tutoring services
	Incwell	Open	Business management consultant	Personal Service	110 Willits		Sells consulting/startup product sales services
	Vibe Credit Union	Closed	Banking	Personal Service	163 West Maple Road	Zumba Mexican Grille (Restaurant)	Former banking service
	Shift Digital	Open	Digital marketing & technology	Personal Service	348 E. Maple	Sotheby's (Real Estate)	Sells marketing services
2012							
	Lutz Real Estate Investments	Open	Real Estate	Personal Service	300 S. Old Woodward		Sells homes/property
	Realtors	Open	Real Estate	Personal Service	442 S. Old Woodward		Sells homes/property
	Redi Property Management	Open	Property Management	Personal Service	600 N. Old Woodward		Sells management services
	Pandora Media	Open	Radio broadcaster	Personal Service	380 N. Old Woodward, #100		Sells media services
	Centigrade Inc.	Open	Advertising	Personal Service	135 N. Old Woodward		Sells advertising services
	Brogan & Partners	Open	Advertising	Personal Service	800 N Old Woodward #100		Sells advertising services
2011							
	Q10/ Lutz Real Estate Investments	Open	Financial services/ Real estate	Personal Service	300 S. Old Woodward	Max Brook Realtors (Real Estate)	Sells financial/real estate services

	SAIC USA	Open	Logistics Services	Personal Service	322 N. Old Woodward	Leonard & Co. (Stock Broker)	Sells logistical services
	The Investment Consulting Group	Open	Financial Consulting	Personal Service	500 S. Old Woodward	Coldwell Banker Schweitzer (Real Estate)	Sells financial services
2010							
	Cactus Media	Open	Marketing Agency	Personal Service	176 N. Old Woodward		Sells marketing services
	Birmingham Geek	Open	Computer Repair	Personal Service	195 W. Maple	1-800 Flowers (Florist)	Sells computer repair services
	UM Detroit	Open	Media Planning	Personal Service	205 Hamilton Row		Sells consulting services
	Restoration Vein Center	Open	Vein Care	Personal Service	538 N. Old Woodward		Sells health/wellness services
	Cranbrook Realtors	Open	Real Estate	Personal Service	555 S. Old Woodward		Sells homes/property
	Coldwell Banker	Open	Real Estate	Personal Service	294 E. Brown	Century 21	Sells homes/property
	Edward Jones	Open	Financial consulting	Personal Service	700 N. Old Woodward, #102		Sells financial services
	GSTV	Closed	Advertising services	Personal Service	255 S. Old Woodward	Ligne Roset (Furniture Store)	Sold advertising services
2009							
	TD Ameritrade	Open	Financial Consulting	Personal Service	105 Willits		Sells financial services
	Beal Bank	Open	Banking	Personal Service	301 N. Old Woodward		Banking services
	Cranbrook Realtors	Open	Real estate	Personal Service	555 S. Old Woodward #22-U		Sells homes/property
2008							
	NuImage MedSpa	Open	Cosmetic Surgery/Spa	Personal Service	538 N. Old Woodward		Sells costmetic/beauty services
	Hall and Hunter	Open	Real estate	Personal Service	442 S. Old Woodward	Horn of Plenty (Gift Baskets)	Sells homes/property
	Wunderlich Securities	Open	Financial planning	Personal Service	260 E. Brown St #150		Sells financial services
2007							
	Google	Open	Software & Technology	Personal Service	110 Willits		Sells technology services
	Birmingham Investments	Open	Financial planning	Personal Service	361 E. Maple Rd	GMAC Mortgage (Real estate)	Sells financial services
	Pluto	Open	Video production	Personal Service	400 Hamilton Row		Sells video/media services

E. Definition of retail

Ms. Ecker described the issue as the city's definition of retail in the ordinance, and people who would like the definition to be more specific. She said this comes up at the shopping district level. The retailers downtown want to see more retail. For the most part, the general public wants to see an active retail type use whether it is retail or restaurant. There is some debate on what percentage of each. The building owners have a different view.

Commissioner Nickita thinks this is long overdue for discussion. He feels it needs to be re-examined and cleaned up.

The consensus is to continue discussion on the definition of retail.

There were no public comments.

Planning Board Minutes
March 29, 2017

5. Definition of Retail

Ms. Ecker observed that over the past decade, there has been an ongoing desire by some City Boards and Commissions to review the current definition of retail to ensure that we are encouraging true retail downtown, and not allowing office and other service uses to dominate. The issue is specifically relevant in the Downtown Overlay, where retail use is required in the first 20 ft. of depth for all buildings in the Redline Retail District.

As defined in Article 9, retail uses include the direct sale of products from the premises, but also include restaurants, entertainment and the purchase, sale or exchange of personal services. No definition for personal services is provided. Personal financial services, beauty services, banking services, real estate services, advertising services and other similar uses have been permitted within the Redline Retail District under the umbrella of personal services, provided that there is a display area for the sale or exchange of such goods and services in the first 20 ft. of the storefront, and the storefront is open to the public during regular business hours. Concern has been raised that this small display area 20 ft. in depth is not sufficient to create an activated, pedestrian-friendly retail district.

In the past, both the Planning Board and the Birmingham Shopping District Board have expressed concern with the existing retail definition, and have considered alternative definitions to tighten the definition of retail to include only shops which sell products, not financial, real estate or other such personal services. On the other hand, many property owners in the past have expressed concerns about tightening up the definitions as they desire the flexibility to lease space to a wider range of users in order to avoid vacancies.

Reviewing the research on other cities retail policies, one issue maybe that the Red Line Retail District is too big. Perhaps the City should target the Maple/Woodward core area for the strict definition of retail and then allow some of the service uses around that. Another recommendation may be to change the definition of retail use by eliminating "community and commercial uses." It would still keep in uses that would fall under entertainment. Another option is to include language that talks about what percentage of sales comes from the actual sale of products.

Mr. Share said maybe part of the answer is that mandatory true retail needs to be compressed and street activation needs to be the principle. The national market trend is that the retail footprint is shrinking and it is anchored by entertainment and by food. Ms. Whipple-Boyce commented she does not like to see offices on the first floor. They create horrible dead strips of nothing. Maybe the idea is to shrink the retail district if the market trend is shifting.

No one had an issue with removing "community and commercial uses" from the definition of retail use. Mr. Jeffares suggested looking at Walnut Creek, CA and Hinsdale, IL for ideas about encouraging retail activity.

Consensus was that this topic will need further discussion.

DEFINITION

Personal service business

HTTPS://DEFINEDTERM.COM/A/DEFINITION/36084

Personal service business means an establishment engaged primarily in providing services involving the care of a person or apparel, such as; shoe repairs, laundry and dry- cleaning, beauty and barber shops, clothing/costume rental, tanning, other personal grooming facilities and domestic assistance services. This does not include massage parlors, health care services, exercise establishments, nor funeral services.

ADDED BY RICK OWENS

Endorse (44) Share Flag

DOCUMENT

Zoning Code

RELATED ENTITIES

City of Bremerton, Washington

DEFINITION STATISTICS

Word Count

57

Letter Count

348

FLESCH-KINCAID READABILITY

Reading Ease

10.2

Grade Level

Graduate School

RELATED TOPICS

construction | zoning | property | building | real estate | development

16.04.470 Motel or hotel. "Motel" or "hotel" means a single building or group of detached or semi-detached buildings containing guest rooms or apartments, with automobile storage space provided on the site for such rooms or apartments provided in connection therewith, which group is designed and used primarily for the accommodation of transient automobile travelers, and not containing individual cooking facilities.

16.04.475 New construction. "New construction" means the construction of a new building, construction of an addition to an existing building, or construction of a habitable mezzanine or second floor in an existing building. Except in the case of a new building, new construction results in a net increase in gross floor area. New construction does not include interior alterations, tenant improvements, repairs, maintenance or reconstruction of buildings destroyed by catastrophe.

16.04.480 Nonconforming use. "Nonconforming use" means a use or structure that does not conform to the regulations of the district in which it is situated.

16.04.490 Nursery school. "Nursery school" means a facility licensed by the appropriate state or county agency for the day care or instruction of seven or more children.

16.04.500 Open space. "Open space" means that portion of the building site open, unobstructed and unoccupied from the ground upward; including walkways, landscaping, uncovered patios and uncovered recreation facilities.

16.04.510 Parking space. "Parking space" means an accessible, paved and usable space on the building site, or adjacent lot, for the parking of a standard automobile.

16.04.520 Permitted use. "Permitted use" means a regular activity to be conducted on a building site, which activity is allowed by the regulations of the district wherein located, without a use permit.

16.04.530 Person. "Person" includes any individual, city, county, partnership, corporation, cooperative, association, trust or any other legal entity, including the state and the federal government.

16.04.535 Personal services. "Personal services" means barber shops, beauty salons, launderettes, dry cleaning, shoe repair and other similar service businesses.

16.04.540 Professional office. "Professional office" means an office for the conduct of the following types of uses: Accountant, architect, attorney, chiropractor, optometrist, chiropodist, engineer, surveyor, drafting service, designer, dentist, physician and surgeon.

16.04.550 Research and development. "Research and development" means a scientific or engineering investigation leading to the manufacture of new material or equipment and including the making of prototypes but not including the manufacture of such material or equipment.

16.04.554 Residential care facility, large. "Large residential care facility" means any facility, place, or building that is maintained and operated to provide twenty-four (24)-hour care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual and licensed by the state of California for occupation by seven (7) or more persons.

Palo Alto

(113) "Patio cover" is defined in subsection (24), Canopy.

(113.1) "Porch" means a roofed open area, at tached to or part of the building and with direct access to the residence. Please see definition for "vaulted entry feature" for similar structures greater than 12 feet in height.

(114) "Personal service" means a use providing services of a personal convenience nature, and cleaning, repair or sales incidental thereto, including:

(A) Beauty shops, nail salons, day spas, and barbershops;

(B) Self-service laundry and cleaning services; laundry and cleaning pick-up stations where all cleaning or servicing for the particular station is done elsewhere; and laundry and cleaning stations where the cleaning or servicing for the particular station is done on site, utilizing equipment meeting any applicable Bay Area Air Quality Management District requirements, so long as no cleaning for any other station is done on the same site, provided that the amount of hazardous materials stored does not at any time exceed the threshold which would require a permit under Title 17 (Hazardous Materials Storage) of this code;

(C) Repair and fitting of clothes, shoes, and personal accessories;

(D) Quick printing and copying services where printing or copying for the particular service is done on site, so long as no quick printing or copying for any off-site printing or copying service is done on the same site;

(E) Internet and other consumer electronics services;

(F) Film, data and video processing shops, including shops where processing for the particular shop is done on site, so long as no processing for any other shop is done on the same site; and

(G) Art, dance or music studios intended for an individual or small group of persons in a class (see "commercial recreation" for other activities).

(114.2) "Porte-cochere" means a covered structure attached to a residence or adjacent to a residence and erected over a driveway, which is completely open on three or more sides and used for the temporary unloading and loading of vehicles.

(114.3) "Privacy" means a reasonable expectation that personal activities conducted within and around one's home will not be subject to casual or involuntary observation by others. Complete or absolute privacy is not a realistic expectation.

(115) "Private educational facility" means a privately owned school, including schools owned and operated by religious organizations, offering instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California.

(116) "Professional office" means a use providing professional or consulting services in the fields of law, architecture and architectural design, engineering, accounting, and similar professions, including associated product testing and prototype development, but excluding product manufacturing or assembly and excluding the storage or use of hazardous materials in excess of permit quantities prescribed in Title 15 of the Municipal Code.

Law Dictionary

personal service

noun

Legal Definition of PERSONAL SERVICE

1 : a service based on the intellectual or manual efforts of an individual (as for salary or wages) rather than a salable product of his or her skills

2 : physical delivery of process to a person to whom it is directed or to someone authorized to receive it on that person's behalf

From the M-W Editors

Personal Services. Establishments providing non-medical services to individuals as a primary use. Examples of these uses include:

- barber and beauty shops
- clothing rental
- dry cleaning/laundry pick up stores with limited equipment (no on-site plant)
- home electronics and small appliance repair
- laundromats (self service laundries)
- locksmiths
- massage (licensed, therapeutic, non-sexual)
- pet grooming with no boarding
- shoe repair shops
- tailors
- tanning salons

These uses may also include accessory retail sales of products related to the services provided.

Personal Services - Restricted. Personal services that may tend to have a blighting and/or deteriorating effect upon surrounding areas and which may need to be dispersed to minimize their adverse impacts. Examples of these uses include:

- check cashing stores
- fortune tellers
- palm and card readers
- pawnshops
- psychics
- spas and hot tubs for hourly rental
- tattoo and body piercing services

Pharmacy, Medical Supplies. A retail store that sells prescription drugs, and/or other medical supplies.

Planning Commission. The City of San Ramon Planning Commission, appointed by the San Ramon City Council in compliance with Government Code Section 65101, referred to throughout this Zoning Ordinance as the "Commission."

Planning Permit. Authority granted by the City to use a specified site for a particular purpose. "Planning Permit" includes Use Permits, Minor Use Permits, Limited Term Permits, Variances, Minor Variances, Design Review, Master Development Plans, and Zoning Clearances, as established by Division D6 (Planning Permit Procedures) of this Zoning Ordinance.

Plant Nursery. A commercial agricultural establishment engaged in the production of ornamental plants and other nursery products, grown under cover either in containers or in the soil on the site, or outdoors in containers. The outdoor production of ornamental plants in the soil on the site is instead included under "Crop Production, Horticulture, Orchard, and Vineyard." Also includes establishments engaged in the sale of these products (e.g., wholesale and retail nurseries) and commercial-scale greenhouses (home greenhouses are included under "Residential Accessory Use or Structure"). The sale of house plants or other nursery products entirely within a building is also included under "Retail, general."

Porch. A covered but otherwise open platform that provides a transition between the interior of a building and the public space of the street.

Santa Rosa, CA

mobile homes ("Mobile Home, RV and Boat Sales"), or building or landscape materials ("Building and Landscape Materials Sales"). Outdoor display and sales shall comply with the standards for "Outdoor Displays and Sales" in Section 20-42.110.

Outdoor Storage. See "Storage—Outdoor."

P. Definitions, "P."

Parcel. See "Lot, or Parcel."

Parking Cash-Out/Transit Incentive Programs. Cash-out parking programs allow employees to be paid cash by their employers for not parking a vehicle in the parking area associated with their business, rather than the employer subsidizing employee parking by providing on-site spaces or paying for monthly permits. Transit incentive programs work similarly, with employees being provided free transit passes instead of subsidized parking.

Parking Facility, Public or Commercial. Parking lots or structures operated by the City, or a private entity providing parking for a fee. Does not include towing impound and storage facilities, which are instead defined under "Storage—Outdoor."

Paved, Pavement. For the purposes of vehicle parking and access, paving materials include concrete, asphalt, paver units and stones, and turf block.

Pedestrian Orientation. Any physical structure or place with design qualities and elements that contribute to an active, inviting and pleasant place for pedestrians including:

1. Building façades that are highly articulated at the street level, with interesting uses of material, color, and architectural detailing, located directly behind the sidewalk;
2. Design amenities related to the street level such as awnings, paseos, arcades;
3. Visibility into buildings at the street level;
4. A continuous sidewalk, with a minimum of intrusions into pedestrian right-of-way;
5. Continuity of building façades along the street with few interruptions in the progression of buildings and stores;
6. Signs oriented and scaled to the pedestrian rather than the motorist;
7. Landscaping; and
8. Street furniture.

Pedestrian Oriented Use. A land use that is intended to encourage walk-in customers and that generally does not limit the number of customers by requiring appointments or otherwise excluding the general public. A pedestrian oriented use provides spontaneous draw from sidewalk and street due to visual interest, high customer turnover, and social interaction.

Pen. Enclosed area of sufficient size where hens may be secured. Typically includes a covered area.

Person. Any individual, firm, partnership, corporation, company, association, joint stock association; city, county, state, or district; and includes any trustee, receiver, assignee, or other similar representative thereof.

Personal Services. Establishments providing non-medical services to individuals as a primary use. Examples of these uses include:

- barber and beauty shops
- clothing rental
- dry cleaning pick-up stores with limited equipment
- home electronics and small appliance repair
- laundromats (self-service laundries)
- locksmiths
- pet grooming with no boarding

- shoe repair shops
- tailors
- tanning salons

These uses may also include accessory retail sales of products related to the services provided.

Personal Services—Restricted. Personal services that may tend to have a potentially offensive effect upon surrounding areas and which may need to be dispersed to minimize their adverse impacts. Examples of these uses include:

- check cashing stores
- fortune tellers
- palm and card readers
- psychics
- soup kitchens
- spas and hot tubs for hourly rental
- tattoo and body piercing services

Petroleum Product Storage and Distribution. A facility for the bulk storage and wholesale distribution of gasoline, diesel fuel, and/or other fuels and petroleum products.

Pharmacy. A retail store that primarily sells prescription drugs, that may also sell non-prescription drugs and medical supplies, other health car products, and a limited variety of convenience items. Where specifically identified as an allowable use by Division 2, a pharmacy is distinguished from "drug store, pharmacy" as included under the definition of "General Retail" by its emphasis on prescription drug sales as the primary business activity. See also "Accessory Retail and Services."

Planning Commission. The City of Santa Rosa Planning Commission, appointed by the Santa Rosa City Council in compliance with Government Code Section 65101, referred to throughout this Zoning Code as the "Commission."

Plant Nursery. A commercial agricultural establishment engaged in the production of ornamental plants and other nursery products, grown under cover either in containers or in the soil on the site, or outdoors in containers. The outdoor production of ornamental plants in the soil on the site is instead included under "Crop Production, Horticulture, Orchard, Vineyard." Also includes establishments engaged in the sale of these products (e.g., wholesale and retail nurseries) and commercial-scale greenhouses (home greenhouses are included under "Residential Accessory Use or Structure"). The sale of house plants or other nursery products entirely within a building is also included under "General Retail."

Primary Structure. A structure that accommodates the primary use of the site.

Primary Use. The main purpose for which a site is developed and occupied, including the activities that are conducted on the site a majority of the hours during which activities occur. See also "Accessory Use."

Primary Zoning District. The zoning district applied to a site by the Zoning Map, to which an overlay zoning district may also be applied.

Private Residential Recreation Facility. A privately-owned, non-commercial outdoor recreation facility provided for residential project or neighborhood residents, including swimming pools, swim and tennis clubs, park and sport court facilities. Does not include golf courses and country clubs, which are separately defined.

Printing and Publishing. An establishment engaged in printing by letterpress, lithography, gravure, screen, offset, or electrostatic (xerographic) copying; and other establishments serving the printing trade such as bookbinding, typesetting, engraving, photoengraving and electrotyping. This use also includes establishments that publish newspapers, books and periodicals; establishments manufacturing business forms and binding devices. "Quick printing" services are included in the definition of "Business Support Services."

Produce Stand. A temporary business location that sells raw, unprocessed fruits, vegetables, nuts, and other produce in its raw or natural state, and that is accessory to an on-site or adjacent agricultural operation.

Property Line. The recorded boundary of a parcel of land.

Proposed Project. A proposed new structure, new addition to an existing structure, or area of other new site development; these do not include the alteration of any portion of an existing structure other than an addition.

Public Safety Facility. A facility including ambulance dispatch facilities, fire stations, other fire prevention and fire fighting facilities, police and sheriff substations and headquarters, including interim incarceration facilities.

Q. Definitions, "Q."

Qualifying Resident. A senior citizen or other person eligible to reside in senior citizen housing.

Quasi-Public. A use owned or operated by a non-profit, religious or eleemosynary institution and providing education, cultural, recreational, physical fitness, religious or similar types of public programs.

R. Definitions, "R."

Recommend. In the context of City review of a planning permit application, "recommend" means that the review authority makes a recommendation to a higher decision-making body.

Recreational Vehicle (RV). A motor home, travel trailer, truck camper, or camping trailer, with or without motive power, originally designed for human habitation for recreational, emergency, or other occupancy, which:

1. Contains less than 320 square feet of internal living room area, excluding built-in equipment, including wardrobe, closets, cabinets, kitchen units or fixtures, and bath or toilet rooms; and
2. Contains 400 square feet or less of gross area measured at maximum horizontal projections; and
3. Is built on a single chassis; and
4. Is either self-propelled, truck-mounted, or permanently towable on the highways without a towing permit.

Recreational Vehicle Park. A site where one or more lots are used, or are intended to be used, by campers with recreational vehicles or tents. Recreational vehicle parks may include public restrooms, water, sewer, and electric hookups to each lot and are intended as a higher density, more intensively developed use than campgrounds. May include accessory retail uses where they are clearly incidental and intended to serve RV park patrons only.

Recycling Facility. This land use type includes a variety of facilities involved with the collection, sorting and processing of recyclable materials.

1. **Collection facility.** A center where the public may donate, redeem or sell recyclable materials, which may include the following, where allowed by the applicable zoning district:
    a. Reverse vending machines;
    b. Small collection facilities which occupy an area of 350 square feet or less and may include:
        (1) A mobile unit,
        (2) Bulk reverse vending machines or a grouping of reverse vending machines occupying more than 50 square feet, and
        (3) Kiosk-type units which may include permanent structures;
    c. Large collection facilities which occupy an area of more than 350 square feet and/or include permanent structures.
2. **Mobile recycling unit.** An automobile, truck, trailer, or van used for the collection of recyclable materials, carrying bins, boxes, or other containers.
3. **Processing facility.** A structure or enclosed space used for the collection and processing of recyclable materials for shipment, or to an end-user's specifications, by such means as baling, briquetting, cleaning, compacting, crushing, flattening, grinding, mechanical sorting, re-manufacturing and shredding. Processing facilities include the following types, both of which are included under the definition of "Scrap and Dismantling Yards," below:
    a. Light processing facility occupies an area of under 45,000 square feet of collection, processing and storage area, and averages two outbound truck shipments each day. Light processing facilities are

TORONTO CITY CLERK

Clause embodied in Report No. 4 of the Scarborough Community Council, as adopted by the Council of the City of Toronto at its meeting held on May 21, 22 and 23, 2002.

7

Definition of Personal Service Shop Uses in Neighbourhood Commercial and Community Commercial Zones in the East District Zoning By-laws - TF WPS 2001 0004

(City Council on May 21, 22 and 23, 2002, adopted this Clause, without amendment.)

The Scarborough Community Council recommends the adoption of the following report (December 6, 2001) from the Director of Community Planning, East District:

Purpose:

To report on the review of the definition of Personal Service Shop uses in the East District Zoning By-laws and seek Council direction.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that this report embodying the request of City Council of November 6, 7, and 8, 2001, be forwarded to the New Zoning By-law Project staff for consideration in the preparation of a comprehensive Zoning By-law for the City of Toronto.

Background:

City Council on November 6, 7, and 8, 2001, adopted a resolution of Scarborough Community Council requesting the Director of Community Planning, East District, to review the East District Zoning By-laws with a view to more clearly defining "Personal Service Uses" therein, having regard for the new type of business known as "Aromatherapy Clinics", and the clearer definition of Personal Service Uses in the former North York Zoning By-laws, and report thereon to the Scarborough Community Council.

Comments:

Personal Service Shop is not defined in any of the Scarborough Community Zoning By-laws, however, the following definition is included in the Scarborough Employment Districts Zoning By-law:

Personal Service Shop:

shall mean land, buildings or structures or parts thereof used for the beautifying or grooming of persons or care of their apparel.

Although not defined in any of the Scarborough Community Zoning By-laws, "Personal Service Shops", "Service Shops" or "Personal Services" generally are permitted uses in the following zones in all communities;

- Neighbourhood Commercial (NC); and
- Community Commercial (CC).

These uses are not permitted in the Upper Rouge, which does not have these zones. The Milliken, Morningside and Rouge Community By-laws permit only barber shops and beauty parlours in Neighbourhood Commercial zones. In addition, some communities also permit Personal Service Shops in Office (OU) zones.

The Scarborough Employment Districts Zoning By-law permits Personal Service Shops or Service Shops in areas zoned as follows:

- Community Commercial Zone (CC);
- District Commercial Zone (DC);
- Special District Commercial Zone (SDC);
- Commercial/Residential Zone (CR);
- City Centre Commercial Zone (CCC);
- Mixed Employment Zone (ME); and
- Office Uses Zone (OU).

Also, the City Centre Town Square Zone (CCTS) permits only certain service uses and service shops, which are specified.

The Personal Service Shop, Service Shop, or Personal Service zoning has been interpreted to permit businesses for personal grooming and care, and typically include beauty parlours, barbershops, masseuses, tobacconists, florists, shoe shine stands, magazine and newspaper outlets, dry cleaning and laundry services, and souvenir and jewellery shops and kiosks. Aromatherapy Clinics and Spas would also be considered permitted uses. The current situation allows Scarborough Buildings staff a certain degree of flexibility in determining the types of uses permitted under this zoning category but also introduces the possibility of inconsistency.

The definitions and permissions of Personal Service Shop, Service Shop, Personal Service zoning, called "Personal Grooming Establishment" in the former City of Toronto, were briefly examined for all former municipalities across the City. Except for the former Cities of Etobicoke and York, which do not define Aromatherapy Clinics or any of the foregoing uses, but permit these uses under "Retail Uses" and "Retail Store" respectively, the other municipalities generally define and permit these uses in a similar manner to that in Scarborough.

The North York Zoning By-law permits Personal Service Shops in commercial and industrial zones and defines Personal Service Shop as follows:

> "Personal Service Shop" shall mean the use of a building or part of a building for personal grooming services and, without limiting the generality of the definition includes beauty parlours, hair styling, manicures, massages, aroma-therapy, acupuncture, and similar uses; but does not include a business office, professional office, professional medical office, or an adult entertainment parlour.

The task of determining a common definition for Personal Service Shop and amending up to thirty-three Scarborough Community Zoning By-laws and possibly the Employment Districts Zoning By-law is labour intensive, potentially costly, and would also involve extensive research to identify existing operations which would be affected, and those which would be rendered non-conforming.

City Council adopted the Planning and Transportation Committee's recommendations for the New Zoning By-law Project on November 6, 7, and 8, 2001. The objective of this project is to produce a single, simplified, comprehensive Zoning By-law that applies to the entire City, blending the standards and regulations of existing by-laws with new regulations. Rather than undertake work on individual components of current Zoning By-laws affecting an entire municipality, it would be prudent to refer this Council request and other similar requests to the New Zoning By-law Project for integration into the new city-wide By-law.

Conclusions:

In light of the above noted Council approval to produce a new Zoning By-law city-wide, general reviews of zoning definitions and/or permissions should more appropriately be directed to the New Zoning By-law Project.

Contact:

Errol Chapman, Planner, Community Planning Division, Scarborough Civic Centre
Telephone: 416-396-4250; Fax: 416-396-4265; e-mail: echapman@city.toronto.on.ca

The Scarborough Community Council also submits the following report (April 22, 2002) from the Director of Community Planning, East District:

Purpose:

To report on the review of the definition of Personal Service Shop uses in Neighbourhood Commercial and Community Commercial zones in the East District Zoning By-laws.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that the staff report dated December 6, 2001, recommending that this matter be forwarded to the New Zoning By-law Project staff for consideration in the preparation of a comprehensive Zoning By-law for the City of Toronto, be recommended for City Council adoption.

Background:

Scarborough Community Council on February 25, 2002, deferred consideration of the report dated December 6, 2001, from the Director of Community Planning, East District, requesting a report to the Scarborough Community Council on May 7, 2002, providing a clear definition between Neighbourhood Commercial and Community Commercial for Personal Service Shop type of uses.

Comments:

Official Plan

A review of the Scarborough Official Plan commercial policies in the mid-1970's resulted in market area sizes and populations to be served being incorporated into the Official Plan in 1978 to assist in defining the hierarchy of commercial designations as should be built.

These policies envisaged that Neighbourhood Commercial zones would encompass areas with a radius of 0.4 kilometres serving a population of up to 10,000 within centres of up to 1,400 square metres. Community Commercial zones would encompass areas with a radius of 1.5 kilometres serving a population of 15,000 to 30,000 within centres of between 3,700 to 10,000 square metres.

Staff reviews in 1995-1997 of the Scarborough Official Plan suggested that commercial development patterns in Scarborough did not conform to hierarchical strategies and policies adopted in 1978 for commercial zones. Planning staff recommended deletion of these policies. Work in this regard was suspended after amalgamation and has been superseded by the preparation of the new Official Plan for the City, which is to be considered by the Planning and Transportation Committee on May 27, 2002.

Zoning By-laws

The Zoning By-laws generally permit Personal Service Shops in Neighbourhood Commercial zones and, because land use permissions in the commercial hierarchy are cumulative, such uses are also permitted in Community Commercial zones. A list of permissions for Personal Service Shops, Service Shops and Personal Services in Scarborough Community By-laws by zone is attached. (Attachment 1).

Personal Service Shops typically include beauty and hair styling parlours, barbershops, custom tailors and dressmakers, dry cleaning and laundry services and, subject to adequate documentation of certification, masseuses and Holistic Centres, including Aromatherapy Clinics and Spas.

Although Personal Service Shop is not defined in any of the Scarborough Community Zoning By-laws, the following definition is included in the Scarborough Employment Districts Zoning By-law:

Personal Service Shop:

shall mean land, buildings or structures or parts thereof used for the beautifying or grooming of persons or care of their apparel.

Scarborough's Zoning Examiners do not make any distinction between the types of Personal Service Shops regardless of whether the use is located in a Neighbourhood Commercial or Community Commercial zone.

The task of re-defining Personal Service Shop uses would require review of up to thirty-three Scarborough Community Zoning By-laws and possibly the Employment Districts Zoning By-law. This work would involve extensive research to identify existing operations which would be affected, and assessment of the impacts of proposed changes on these establishments, including owners' rights and reactions to those which would be rendered non-conforming. Such a review would also necessitate extensive public input. As experienced from the work to separate automotive uses into distinct categories, re-defining a category of use is labour intensive, time consuming, and potentially costly. Such a review could not be completed in time in order to provide the Scarborough Community Council meeting of May 7, 2002, with a clear definition between Neighbourhood Commercial and Community Commercial for Personal Service Shop type uses, as requested.

The first phase of the New Zoning By-law Project has been approved. An element of the first phase is an analysis of similarities and differences in existing zoning By-laws, as the initial step towards harmonization. A review of Personal Service Shop definitions in a comprehensive manner would be appropriate in the context of the New Zoning By-law Project.

Conclusions:

This matter should be forwarded to the New Zoning By-law Project staff for consideration in the preparation of a comprehensive Zoning By-law for the City of Toronto as recommended in my previous report on this matter dated December 6, 2001.

Contact:

Errol Chapman, Planner, Community Planning Division, Scarborough Civic Centre
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(The attachment referred to in the foregoing report was included in the Agenda for the Scarborough Community Council meeting held on May 7, 2002, and a copy thereof is on file in the Office of the City Clerk, Scarborough Civic Centre.)

Planning Board Minutes
May 10, 2017

2. Definition of Retail

Ms. Ecker advised that last week Planning Staff was directed by the City Manager to come up with a temporary ordinance amendment that would halt the conversion of first-floor retail space to quasi office/quasi retail uses. The City Commission talked about that on May 8 and in the end they voted in favor of directing the Planning Board to bring back to them by July 24 an ordinance amendment that would be a temporary measure of relief until the board's overall discussion of retail is completed. Further, they have asked the board to consider an ordinance amendment that would temporarily stop personal services and community uses from being on first-floor retail space Downtown while the board studies the full issue. They want personal services to be defined.

After researching the subject, Ms. Ecker thought the best example of defining Personal Services came from the City of Bremerton, Washington:

> Personal Service Business means an establishment engaged primarily in providing services involving the care of a person or apparel, such as: shoe repairs, laundry and dry cleaning, beauty and barber shops, clothing/costume rental, tanning, other personal grooming facilities and domestic assistance services. This does not include massage parlors, health care services, exercise establishments, nor funeral services.

At their meeting on May 8 it seemed the majority of Commission members appeared to value the beauty services as something that drives activity Downtown.

Mr. Boyle noted this is the fundamental problem of a form based code. It is not easy to take that form and assume you will get what you want in it.

Ms. Lazar observed the board needs to remember that offices like McCann Erickson that have moved into town have increased foot traffic, which also helps the retail. Chairman Clein said this board can either craft a measure for the presumed short term that solves a policy issue that the City Commission has already come to a conclusion on, and then come back and try and make it right; or they can continue to spin until the joint meeting.

Board members decided to add personal services to the definition of retail and to add a definition personal service that includes retail bank branches. Then in the Downtown Overlay, community uses should not be considered retail, but personal services should be allowed.

Consensus was to send this matter back to Staff for due consideration and they will bring back appropriate definitions to the next meeting. Also, invite the BSD Director to that meeting. The board can talk about scheduling a public hearing at that time.

NAJOR

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May 19, 2017

Jana Ecker
Planning Director
City of Birmingham
151 Martin Street
Birmingham, MI 48009

Dear Jana,

I am writing to express my opposition of the proposed amendment to define retail in the City of Birmingham Downtown Overlay. I understand the concerns of some individuals, who want to see only retail shops on the first floor. While this may seem like a good idea, the reality is that retail is constantly shrinking due to the presence of online sales. The days of "retail" as we know are gone. Today companies like Amazon have completely changed the way people shop for their goods. Retailers are closing stores in record numbers. This is a serious issue that cannot be ignored by the City of Birmingham, when making such important decisions.

Instead of amending the definition to further restrict the uses on the Overlay District, the City should complete the necessary due diligence, to provide evidence that this amendment will provide positive "retail" results. If Birmingham were turning away traditional "brick and mortar" retailers due to a lack of space, then the proposed changes would be critical. However, if the spaces are not able to be filled due to online competition, Birmingham will experience a tremendous amount of first floor vacancy.

We also know that parking is a huge issue in Downtown Birmingham. I commend the City, as they have taken aggressive action to address the issue, by designing a new parking deck project on N. Old Woodward. However, eliminating first floor uses such as real estate brokerages and financial services will not solve our parking problem, it will create vacancies that will not be filled due to lack of concepts. Building new parking decks, as well as incorporating them into new developments, will be the ultimate long term solution.

In conclusion, the majority of retail being built today is either restaurant or service oriented. We already have a number of restaurants in Downtown Birmingham. We need to DIVERSIFY the potential uses for first floor space, not restrict or limit the uses in an already shrinking sector.

For these reasons and more, I respectfully request your and the Planning Board's denial of these amendment changes until there is a complete support among the Birmingham Community.

Sincerely,

Brian Najor
President

Simon Group Holdings

Victor (Faiz) Simon
President of Real Estate

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May 19, 2017

Jana Ecker
Planning Director
City of Birmingham
151 Martin Street
Birmingham, MI 48009

Dear Jana,

I am writing to respectfully express my opposition of the proposed amendment to define retail in the City of Birmingham Downtown Overlay. We currently own more than 3 buildings in the Birmingham area. It is no secret that retail shopping is a large part of the Birmingham's economic stimulation. However, by no means is retail the only reason in why the city is visited and should not be regarded as such. Most if not all businesses today, retail included, are transitioning from tangible storefronts to digital accessibility. Superpowers such as Amazon and eBay have completely altered the way in which our society attains its goods, causing retail stores to close at record rates. This change in society must not be ignored by the city when making a crucial decision in defining retail in Birmingham.

In place of amending the definition to further restrict the uses on the Overlay District, the City should complete the necessary due diligence, to provide evidence that this amendment will provide beneficial results in the city's retail space. The amendment would be understandable if Birmingham were turning away traditional "brick and mortar" retailers due to a lack of space. However, Birmingham could experience alarming levels of first floor vacancies should online competition prevent these first floor spaces from being filled.
Parking is also a huge issue in Downtown Birmingham. I commend the City, as they have taken aggressive action to address the issue. However, if you eliminate first floor uses such as real estate brokerages and financial services, it will not solve our parking problem, it will create vacancies that will not be filled due to lack of concepts. Building new parking decks, as well as incorporating them into new developments, will be the ultimate long term solution. It is obvious that the city is seeing expansion and will need to keep up with the demands of the increasing city population.

In summary, the Birmingham market is saturated with restaurants or service oriented business, which can be improved. We already have a number of restaurants in Downtown Birmingham. Diversification would have potential uses for first floor space, not restrict or limit the uses in an already shrinking sector. The city of Birmingham is thriving and its potential is just getting started.

These are the concerns I have and I respectfully request you and the Planning Board's denial and reevaluation of these amendment changes until there is a complete support among the Birmingham Community. I hope to see you and the board of directors make the right decision.

Sincerely,

Faiz Simon
Managing Partner at Simon Group Holdings

ALDEN DEVELOPMENT GROUP

To: Jana Ecker
May 24, 2017
Subject: Proposed First Floor Retail Amendment, City Of Birmingham, MI

Dear Jana,

I wanted to send you a quick note regarding the proposed amendment to define retail space in the downtown CBD. As you are aware, due to increased technology and shopping opportunities through non-traditional methods, retail as 'traditionally defined' is changing. Traditional brick-and-mortar retail shops are closing at a higher pace and this is reflective not just in the Birmingham market, but is occurring on a national level in properties we own and operate and beyond. This is bringing us, as landowners and operators, a unique challenge that needs a creative approach to combat. Although we are aware that a number of people in town have their own definition of what true retail is, due to the evolving nature of the consumer marketplace, flexibility is critical to keep storefronts full and local market economies flourishing. If this amendment is passed, we foresee a tremendous potential issue of first floor vacancy city wide in the CBD.

It would be a good approach for the city to take a step back and investigate further if this would be a true positive step in the right direction. The truth lies in the existing first floor vacancies in the downtown CBD currently. If the city was turning away traditional retailers currently due to lack of available space, that would be a different story. I know that we share a concern that is being echoed by other landowners in town. In this day and age, vacancies are a direct correlation to changing times in traditional retail and the consumer shopping experience.

There is also some discussion that non-traditional retail is creating this 'enormous' parking issue. Eliminating non-traditional first floor uses will simply create vacancies that will remain long term and will not solve the parking issues at all. The root of the parking issue is the nature of a growing community and antiquated decks with limited capacity that the city is taking excellent steps in exploring long-term solutions by expansion and redevelopment.

As you are aware, we are super supportive of all city efforts, want to be good neighbors and stewards of land in our small community while keeping our heads down and are staying in our lane with our existing projects. But, we felt compelled to speak out on this issue.

Best regards,

Matthew Shiffman

189 W Merrill St Birmingham, MI 48009 | Phone #: (248) 430-8888

Planning Board Minutes
May 24, 2017

1. Definition of Retail

Ms. Ecker advised that over the past decade, there has been an ongoing desire by some City Boards and Commissions to review the current definition of retail to ensure that we are encouraging true retail Downtown, and not allowing office and other service uses to dominate. The issue is specifically relevant in the Downtown Overlay, where retail use is required in the first 20 ft. of depth for all buildings in the Redline Retail District. The City Commission talked about that on May 8, 2017 and they directed the Planning Board to move forward with ordinance amendments to provide temporary relief to halt the addition of first-floor non-retail uses into storefronts in Downtown while the Planning Board continues to study the issue of retail uses Downtown.

On May 10, 2017, the Planning Board discussed the direction from the City Commission to consider an ordinance amendment that would temporarily stop some of the uses that fall under the current undefined category of personal services and to stop community uses from being permitted in first-floor retail space Downtown while the board studies the full issue. After extensive discussion, the board directed the matter back to staff to provide ordinance language that would define personal services to include beauty salons and clothing services and other similar uses, and to allow personal services as defined within the Redline Retail District, but to exclude office, medical and quasi-office uses, and amend the definition of retail to include retail bank branches along with personal services as newly defined.

In addition, the Planning Board requested that the Birmingham Shopping District ("BSD") Director attend the Planning Board meeting on May 24, 2017. Ms. Tighe was not available to attend the meeting, but forwarded a copy of the BSD's latest retail study for Downtown Birmingham to assist the Planning Board in their review of this issue. The BSD is also working on a comparison between the market analysis that was done several years ago and the most current analysis to see what the changes have been in the different categories.

In response to the Chairman, Ms. Ecker advised that as proposed there would not be a time limit on the ordinance change. Mr. Jeffares had a concern that this is the right mechanism because the study might go on for years while they would see plywood go up on windows.

Motion by Mr. Williams
Seconded by Ms. Lazar to receive and file letters from Matthew Shiffman of Alden Development Group dated May 24, 2017 and from Faiz Simon of Simon Group Holdings dated May 19, 2017. Both letters oppose the proposed change.

Motion carried, 7-0.

VOICE VOTE
Yeas: Williams, Lazar, Boyle, Jeffares, Koseck, Prasad, Whipple-Boyce
Nays: None
Absent: Clein

Mr. Williams said he is a free market person and he thinks the market should dictate what goes into the stores. Ms. Lazar stated she did a drive-by of the businesses that are no longer there. There are four on W. Maple Rd. and four on N. Old Woodward Ave. She questioned the rationale behind stymieing a landlord from filling his space. At least it would look like there is activity. Mr. Jeffares thought the City should do some things to encourage retail such as solving the parking problem. If people can't find a place to park they won't come to Birmingham to shop. It would be better to solve that issue than to declare a moratorium that might last for a long time.

Ms. Prasad said she has noticed that most retailers close pretty early in the evening when there is a fair number of people going in and out of the first-floor offices. The business she has seen so far haven't really taken away from activation of the streets. Chairman Boyle observed if the City wants to keep the streets activated perhaps the merchants should be asked to make some modest changes in terms of hours, lighting, shades, litter, door openings etc. adjacent to their properties.

The Chairman took discussion from the public at 7:47 p.m.

Mr. Brian Najor, owner of buildings at 100-167, 600-640, and 720-726 N. Old Woodward Ave., noted there is a significant amount of change going on in retail today. He thought it is probably a big mistake to impose the proposed changes at this time when there is so much unknown. He encouraged further discussion prior to making changes. This temporary change to the ordinance could go on for years. He feels owners could be facing some challenges in filling space here. The City should be expanding its uses and keeping things open to bring in new tenants. Also, other building owners, Ted Fuller and James Esshaki, have indicated they are strongly opposed to the ordinance change.

Ms. Lazar felt there should be further discussion and consideration at another meeting so that more property owners can weigh in.

Ms. Whipple-Boyce indicated she is concerned about prime retail spaces being consumed with office use. She would very much like to see the board come up with a plan for this. Small retail stores in downtowns like ours are thriving in other communities and thriving here. Mr. Koseck said it concerns him not to put an end date on the study. Mr. Williams noted there is no factual basis that retailers are waiting and unable to find space to lease. The City Commission hasn't given the Planning Board the facts to be able to develop a proposal.

Chairman Boyle said this discussion should be continued in order to ask for evidence from retailers, building owners, and others. Mr. Jeffaries thought Ms. Tighe should be asked about the state of retail in the City.

Ms. Ecker noted that the City Commission in their meeting on May 8, 2017 was adamant that they wanted this matter moved forward to a public hearing and then back to the Commission in with all due haste.

Motion by Mr. Jeffares
Seconded by Mr. Williams to continue the discussion on the definition of retail to June 14, 2017.

Mr. Brian Najor received clarification that the board is not moving forward to June 14 for a public hearing on the proposed ordinance amendments. This discussion will be continued on June 14 to get more information and to get more people to weigh in.

Motion carried, 7-0.

VOICE VOTE
Yeas: Jeffares, Williams, Boyle, Koseck. Lazar, Prasad, Whipple-Boyce
Nays: None
Absent: Clein

Consensus was to limit the June 14, 2017 agenda to two items, the public hearing on glazing, and the retail discussion.

City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Retail Uses Downtown

1 message

Eric Wolfe <elwolfe1@comcast.net> Tue, Jun 13, 2017 at 12:54 PM
To: Jana Ecker <jecker@bhamgov.org>
Cc: Joe Valentine <jvalentine@bhamgov.org>

Dear Jana,

I would like the following thoughts to be communicated to the Planning Board for their 6/14/17 meeting concerning retail and permitted uses in the redline retail district:

1) We all know what retail is, and it does not include residential real estate brokerage offices, digital marketing companies, advertising agencies, Gas Station TV or the Vibe Credit Union. This credit union, which might sound like it's a retail banking facility, doesn't have an employee. It is simply tying up prime retail space for a well lit lobby and an ATM. I heard some comments at your last meeting concerning the "activation" of the street. It should be obvious, although it seems to escape some of your Board members (who are real estate brokers), that when individuals meet with their residential real estate broker, they have only that destination in mind. They are not "activating" the street by any reasonable definition. They might have lunch, but they certainly are not planning on shopping. These brokerages and other traditional office users tie up valuable retail space, overburden the parking situation, and are clearly detrimental to the perpetuation of a thriving shopping district.

2) The former chairman and current member of the Planning Board suggested that Landlords have an obligation as well. I couldn't agree more. When a Landlord has units of 4000 sf and more, the easy solution is to say that there are no tenants, so please help us by bending the retail definition. It's high time they subdivided their units to more desirable sizes. I have been a real estate developer for 30 years, have spoken to several retail real estate brokers recently, and have learned that the sweet spot is 1500-2000 sf units. It isn't surprising that your proposal is opposed primarily by the most well-financed developers in town, some of whom have new developments under way. They should be well aware that if their units are sized properly, it might cost them a few peanuts more to build, but they will actually find "retail" users! Instead, they complain about the market, the malls, and national retailer and chain store closings. That is not the target market for downtown Birmingham. There are countless examples of successful unique, boutique shopping districts around the country that don't sacrifice their shopping district mix every time the market slows down or new challenges emerge. I would suggest Newbury Street in Boston, or Oak Street in Chicago as good examples. Also, despite widespread commentary to the contrary, e-commerce retail sales currently represent only 8.5% of total retail sales (according to the US Bureau of the Census, see https://fred.stlouisfed.org). An interesting, vibrant retail district will draw customers. It's been proven all over the world.

3) Flexibility on rent is a huge factor. The cost of a retail location in downtown Birmingham is astronomical. Lower the rent, to the actual market rate, and the stores will be occupied. It's simple supply and demand. Instead we hear the cries of well-heeled developers who have showed their lenders a pro forma with unattainable retail rates. Other than Starbucks, there are very few traditional retailers that can pay $40/sf.

4) It would be helpful if the vacant storefronts didn't look like abandoned businesses. Again, Landlords would seemingly rather not spend a dime than to give a future tenant a head start by demolition to the "white box" as successful retail landlords do routinely. A "white box" would give the appearance of a healthy retail district.

5) Parking continues to be a major concern of my customers. Whether there are spaces in the nearest garage or not, the widely held perception is that Birmingham is a terrible parking environment. I suggest severely restricting the use of

Shain Park, Old Woodward, and surrounding streets for events. These events are not unique, can be found in the next town the next week, and are just killing business for everyone (except restaurants perhaps). During the Village Fair, dozens and dozens of spaces were taken out of commission for 6 days in the heart of the nice weather shopping season, when customers enjoy walking through downtown. Add to that the dozens of spaces out of commission for months and months due to new developments on Old Woodward, the reputation of aggressive parking enforcement, and customers will naturally just go elsewhere. Inexplicably, thehe APC continues to propose raising parking rates, when there is free parking just about everywhere in this region, with fewer and fewer reasons to shop in Birmingham.

6) PSD assessments are an additional burden. My store is charged a pro rata share of what my Landlord pays, which I believe is based on street frontage. I don't know if multi level buildings are charged based on only their street frontage, but if so, this should be reconsidered, along with any other manner of bringing down PSD costs. I recall that the $30,000 Christmas tree in Shain Park was partially paid for by the PSD, meaning the retailers are paying. I don't think that's fair. What else is being allocated to the PSD? I have no problem paying for sidewalk snow removal and the beautiful flowers, but that's about it.

I know, and I appreciate, that all of you have the best intentions and desire a healthy retail district. I don't believe you need "experts" to see what the problem is. We are all shoppers. Why would *you* visit downtown Birmingham? Are there enough interesting retailers to justify searching and paying for parking, compared to the nearby alternatives?

Thank you for your time and consideration.

Eric Wolfe

Detroit Guitar

City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Red Line District

1 message

James Esshaki <jesshaki@esscodevelopment.com> Wed, Jun 14, 2017 at 1:15 PM
To: James Esshaki <jesshaki@esscodevelopment.com>

Dear members of the Planning Board:

I would like to begin this discussion by noting downtown Birmingham's unique structure. It is a bustling and balanced hybrid of business-to-business and business-to-consumer establishments, as well as an enviable residential environment. Birmingham's stakeholders – from residents to business owners to landlords to consumers – are proud to be part of the fabric of the city, largely because of this unique composition. I am here (writing) to express my many concerns about the proposed changes to zoning ordinances that would restrict use in the Redline Retail District.

I am deeply invested, both personally and financially, in Birmingham's overall constitution. I am the sole proprietor of Essco Development Company, which owns and manages three major real estate properties (over 150,000 square feet) in Birmingham: the Plaza of Birmingham, Park Plaza and the Wabeek Building. Decades of experience in property management here afford me a uniquely qualified perspective on your proposed changes.

My concerns are as follows:

- The proposal is based on unsubstantiated assumptions without any feasibility studies;
- Birmingham is not the city of choice for major national retailers, but rather small boutiques and independently owned retail outlets;
- Birmingham is at least as much of a service-oriented community as it is a major shopping district;
- Any retailer that desires to come to Birmingham can be accommodated. I don't know of any retailers to date who have been turned away for lack of available space;
- Several of the spaces that would be affected in the Redline Retail District are not conducive for retail and would become empty should the current tenants vacate if the proposed ordinance was enacted.
    - Some buildings are not situated at the street level and are several steps above grade. Examples include the Birmingham Mansion, Bird and the Bread and Flemings.
    - Secondary locations with hardly any foot traffic (ie. google)
    - Large spaces of 8,000+ square feet having narrow frontage and almost no window space (ie. google, The Bird and the Bread, Schechter Investments)
- Many of the existing large first-floor spaces are not divisible and too deep for retail users;
- Removing existing office tenants seriously would diminish day traffic in the downtown area, which would impact retail stores, restaurants, hotels, etc.
- Retailers are shrinking with the increase in internet sales. Several have gone out of business. The growth of companies such as google, Microsoft, Facebook and the like are the ones requiring more space. The city of Birmingham should do their everything possible to attract those types of businesses;

- Some people have suggested shrinking the Redline Retail District. The same concerns noted above apply, regardless of the size of this area. Furthermore, certain landlords and business owners would be targeted, while others would see no impact.

In conclusion, the proposed ordinance, if enacted, will severely and irreversibly damage this beautiful and thriving city. I will continue to oppose this effort and encourage my colleagues to do the same to prevent unnecessary harm and disservice our community.

PLANNING BOARD MINUTES
WEDNESDAY, JUNE 14, 2017

1. Definition of Retail

Mr. Share recused himself because of a conflict of interest. Ms. Lazar also recused herself based on her part ownership of a commercial building in Birmingham.

Chairman Clein reiterated this is not a public hearing. The only action the board could take tonight would be if they decided to set a public hearing. This board does not approve or deny any ordinance language, they only make a recommendation to the City Commission.

He explained that the City Commission has sent forth instructions to the Planning Board to study and provide a recommendation along with a directive for a particular course of action.

Ms. Ecker advised the Planning Board has been assessing this matter for probably six months or so. Specifically the City Commission directed the Planning Board to hold a public hearing on amendments to Article 3, section 3.04 (C) (6) of the Downtown Overlay District and the Redline Retail District to take away Community Uses and Personal Service Uses as permitted uses on the first floor. They also specifically directed the board to state what would be included in retail and to come up with the definitions of Personal Services and Community Uses.

This proposal clarifies exactly what uses would be allowed on the first floor within the Redline Retail District. This is what the City Commission has asked the Planning Board to consider as a temporary measure while the board further discusses the bigger picture of retail. It would halt some of the changes they have been concerned about in terms of the types of tenants that have been coming in on the first floor and the parking implications of those tenants.

Ms. Ecker advised that the Planning Division has been working with the City Manager and the Birmingham Shopping District ("BSD") to obtain all relevant data as to the current mix of uses on the first floor in the Redline Retail District and the changes to this mix that have occurred since the inception of the 2016 Plan in 1996. Discussion followed regarding information provided by the BSD data base regarding office uses on the first floor in the Redline Retail District.

Mr. Jeffares observed the proposal would be a temporary fix but it would turn into a permanent change if the board's study continues on for a long period of time.

Motion by Ms. Whipple-Boyce
Seconded by Mr. Koseck to add the following communications to the record:
Mr. Eric Wolfe in favor of the proposed ordinance changes;
Mr. James Esshaki opposed;

Mr. Rick Huddleston opposed.

Motion carried, 5-0.

VOICE VOTE
Yeas: Whipple-Boyce, Koseck, Clein, Jeffares, Prasad
Nays: None
Recused: Lazar, Share
Absent: Boyle, Williams

At 8:09 p.m. the chairman invited members of the public to speak.

Mr. Richard Huddleston said he represents VS Birmingham Holdings, LLC, the owner of Birmingham Place which contains 108,000 sq. ft. of office and retail. It was noted that the portion of his building that fronts on S. Old Woodward Ave. is in the Redline Retail District. They are opposed to the ordinance proposal because they believe that landlords need more flexibility to deal with 21st Century retail. He wondered if Birmingham can sustain increasing the vacancy rate by 30 or 40% and still retain the viable Downtown that everyone knows and loves.

Mr. Peter Sobelton indicated he is a resident and also a commercial property owner in Birmingham. He highlighted what most recently occurred at Fairlane Towne Center where Lord and Taylor had a 250,000 sq. ft. location. That has been converted to office use for 1,500 Ford Motor Co. employees. There was an immediate increase in traffic and the most significant increase was at the food and beverage courts. He encouraged that people not be put in a position where they are forced into only one area of commerce; i.e., retail.

Ms. Rene Acho, resident and business owner in Birmingham, said to jeopardize the balance that Downtown has had for so many years could be detrimental. Everyone can remember what happened in 2008 and 2009 when all of the retailers went down and no one was there to take those spaces. That could again be an issue for all of us.

Mr. Bedros Avedian said he owns 261-275 E. Maple Rd., the Jos. A Bank Building. Also, he owns 297-323 E. Maple Rd. He went on to name a number of Downtown businesses that have failed. He has had to reduce rents but his taxes haven't gone down. That is a big hit on all of the real estate owners.

Mr. Ken Kajoian who lives on Lakepark and owns two buildings in the Redline Retail District thought the proposed plan does not allow for the diversity that is needed in Birmingham. He noticed that Hamilton is not in the Redline Retail District and that is not equitable. He agreed it is nice to have more retail, but with the dynamics of the economy and what is going on with retail, that is not viable right now.

Ms. Jeanette Smith was present on behalf of James Esshaki. She thought the board ought to take time to really understand the data and understand what could happen as others have said. Blanket rules open the door to some issues. She asked the board to consider Birmingham's realities, the market forces at work, and the retail landscape that is changing rapidly. Keep the landlords empowered to do what they do best.

Mr. Paul Chicorian said he is Executive Manager Director for Colliers International, a commercial real estate firm. Also he is a resident at 1076 Fairfax. He believes if this change were approved it would severely damage the City and its residents. During the slowdown buildings were empty and landlords couldn't get tenants. Now things are better, and it may seem like a good idea to switch everything to retail. But if the economy goes back into a slowdown which it inevitably will, Birmingham will have vacancies and ultimately Gypsy retails will come in and out. The present mix is ideal, so don't try to fix it.

Mr. Mark Alhermizi indicated he lives on Frank and has been a commercial tenant for the last ten years. He rents about 3,000 sq. ft. of office space in a commercially zoned building. He currently is looking for 6,000 sq. ft. and his options are extremely limited. This proposed change would only make it more difficult or impossible to attract more business prospects to this great town.

Mr. Dan Jacob noted he has been a broker in Birmingham for 28 years. He has done the majority of brokerage deals in town. It is the daytime population that co-exists with the residential that gives Birmingham its synergy. Services are needed from the people that work in town. It would be really devastating if the landlords' hands were tied so they didn't have flexibility that is reactive to the times. It is necessary to be cognizant of who wants to be here and who does not. He explained it isn't like retailers are knocking on our door, they don't have that urgency to come here.

Mr. Brian Najor said he owns several buildings Downtown. He wanted to echo everything he has heard tonight. It troubles him the board is trying to make a very important decision but doesn't have all of the facts. He has heard a lot about why this change shouldn't be done but hasn't heard a lot about why it should. Obviously more needs to be done in terms of studies. The proposal that has been discussed seems very counterintuitive. Everyone that has spoken tonight has provided evidence and facts and understands the market. He urged the City Commission to walk down the streets and talk to the owners, retailers, and the real estate brokers in order to educate themselves on where the market is today.

Mr. Dan Jacob spoke again to ask for a foot traffic study. That is very critical when you want to restrict uses to only retail and not allow quasi retail.

Chairman Clein clarified this volunteer board is not attempting to push a particular change up to the City Commission. The board was asked to start studying retail and its definition. That study would need to include all of the details that have been discussed this evening. The reason everyone is here tonight is that the City Commission passed a resolution specifically asking this board to do exactly what is at hand. The Planning Board is grappling with the same questions that the audience asks. What is the data; why are we doing this; all of these questions. The board is trying to work through a process that was specifically requested of them by the elected leaders who set policy.

Ms. Christine Jackson, the owner of Scandia Home, stated that she has lost the other two retail stores that are on her block. Now she doesn't get a lot of foot traffic. She is a destination store so people still tend to come. She proposed there will need to be some type of a compromise. Perhaps the Redline District could be narrowed down some more so all of the retailers are in context to one another. That way they will prosper and won't go out of business. Brick and mortar is different from on-line and there will always be people who want to come and experience what they are buying.

Mr. Richard Sherer stated that he presently owns 175-185 W. Maple Rd. and his sister has several stores on Pierce. His property at 185 W. Maple Rd. has been vacant for a year. That is his reality, and to further constrict restricts free enterprise and he is entirely opposed. He questioned what the ordinance proposes to do for building owners who have long-term skin in the game.

Mr. Matt ~~Ferrill~~ **Farrell**, CEO and founder of Core Partners, a commercial brokerage company, spoke. They property manage, broker, and advise on commercial real estate transactions throughout the State of Michigan. He is opposed to the intended implication. His company tries to educate their clients that flexibility, creativity and an open market are key when it comes to marketing and advertising commercial real estate space. Any limiting factors to that and further hampering will change the result of the market condition. The reason the vacancy factor in Birmingham is in the 6% range when you look at office, retail, and multi-family combined has nothing to do with the rental rates, walkability, or urbanization; but has everything to do with being able to accommodate people coming in and out of town and the parking constraints.

Mr. Kevin Denha, the owner of 700 N. Old Woodward Ave. in the Redline Retail District as well as the building on Lincoln and Adams where Great Harvest Bread is located, added a couple of things. He thought any tweak to the ordinance needs to be analyzed very seriously and also questions why this is happening.

Mr. James Esshaki, Essco Development, said he owns three buildings that are all being affected by the proposed legislation: Park Plaza, Plaza of Birmingham, and the Wabeek Building. He noted the following:

These buildings were purchased and built based on existing ordinances. If the City were to enforce the new ordinances, it would have a devastating effect on real estate. It would reduce the value of his holdings by 20 to 30%.
He does not know of any retailer who wanted to come to this town that has been turned away.
Birmingham is not a retail destination as large cities are. Large national tenants will not come here because it is not conducive to their type of product. So, chasing these people is like chasing moonbeams.
If office tenants close down and people try to replace the spaces with retail, a lot of foot traffic will be lost across the City. The retail may have six or seven employees versus 100 or 150 office workers.
There are spaces that would have to be made retail where retail could not fit, such as Google and Schecter. These will end up as permanent vacancies.

Chairman Clein announced he would not support the proposed amendment to restrict uses. The board has not had spent enough time having the detailed discussions and reviewing relevant data to support restricting uses in this way. However, the City Commission has directed the board to set a public hearing. At the joint Planning Board/City Commission meeting on Monday of next week he will be expressing his concerns about the process.

Mr. Koseck indicated the one comment he thought was brilliant was that maybe the Redline Retail District needs to be changed. He feels uncomfortable with pushing the proposal to a public hearing because he thinks it needs study. This matter can be discussed at the joint meeting.

Mr. Jeffares observed the amount of information that came out tonight was extremely helpful. Hopefully more information can be obtained from the BSD so the best possible choice can be made.

Ms. Ecker stated the direction from the City Commission is clear. The Planning Board should hold a public hearing, review it, and decide on a recommendation. Ultimately it will be up to the City Commission to make the final decision.

Ms. Whipple-Boyce thought the City Commission wants absolute clarity about what office is by today's standards. She feels it is important to get additional data on national trends along with information that will shed some light on this matter. For example, is retail dead? Or do online sales only make up 8%? For now it is clear to her that the City Commission has instructed this board to set a public hearing and she believes that should be done tonight.

Motion by Ms. Whipple-Boyce
Seconded by Ms. Prasad to set a public hearing date of July 12, 2017 at the Planning Board to consider the following ordinance amendments to Chapter 126, Zoning:

1) Article 3, Section 3.04, Specific Standards, to amend the Downtown Birmingham Overlay Standards to exclude community and personal service uses as permitted uses in the Redline Retail District; and
2) Article 9, Section 9.02, Definitions, to add a definition for personal services, to amend the definition of commercial use to exclude personal services and to amend the definition of retail use to include retail bank branches and personal services.

Public comments on the motion were heard at 9:20 p.m.

Mr. Brian Najor came forward again. He questioned if there is any mechanism to hold a town hall meeting. He noted this matter is being pushed down the road to the City Commission where, if the Commission decides, it could potentially pass very quickly and that is a big change. There needs to be some discussion and the City Commission needs to convince the board that this is the right thing to do and this is what needs to be passed. Ms. Ecker responded that the joint meeting next week is the best time for them to come together and have a discussion. Mr. Koseck added the public is welcome to come to that meeting next Monday.

Mr. James Esshaki said he thinks the public has spoken. Everybody was against the proposed amendment except for one person who was not 100% against or for. He doesn't know why so many additional meetings are needed.

Mr. Ken Kajoian said just as the 2016 Plan was crafted over a period of years, it is necessary to figure out how to craft this plan by implementing positive changes in certain areas. This is happening way too fast. On Monday night perhaps board members could talk about the key elements that need to be put together in terms of what other downtowns similar to Birmingham are doing; what is their makeup. Then, do these studies.

Mr. Richard Sherer added three retailers to the list of upcoming vacancies in town.

Mr. Bedros Avedian received clarification that if the changes are approved by the City Commission they would take effect seven days after publication in the newspaper and would restrict first-floor retail space to retailers, retail bank branches, beauty salons and other personal services, along with restaurant and bistro uses, artisan uses, and entertainment uses. These uses would not include business services, medical, dental, or mental health services. Mr. Avedian asked if he could lease to a live/work tenant in his building at Maple Rd. and Old Woodward Ave. if the ordinance amendment has not gone through yet. Ms. Ecker answered the tenant would have to sell either products or services to the public within the first 20 ft.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Prasad, Clein, Jeffares, Koseck
Nays: None
Recused: Lazar, Share
Absent: Boyle, Williams

Chairman Clein thanked the public for its time and input.

City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Fwd: Planning Commission Meeting June 14, 2017

1 message

Matthew Baka <mbaka@bhamgov.org> Wed, Jun 14, 2017 at 5:02 PM
To: "Ecker, Jana" <Jecker@bhamgov.org>

Did you get this one?

Matthew Baka
Senior Planner
The City of Birmingham
mbaka@bhamgov.org
1(248) 530-1848

---------- Forwarded message ----------
From: **Rick Huddleston** <rhuddleston@valstonepartners.com>
Date: Wed, Jun 14, 2017 at 4:58 PM
Subject: Planning Commission Meeting June 14, 2017
To: "mbaka@bhamgov.org" <mbaka@bhamgov.org>

I will be attending the Planning Commission meeting this evening on behalf of VS Birmingham Holdings, LLC

VS Birmingham Holdings, LLC owns approximately 108,000 square feet of office and retail space in the building generally known as Birmingham Place located at 401 South Old Woodward

VS Birmingham is OPPOSED to the proposed amendment to the definition of “retail” which is an agenda item for the

Please distribute the attached statement of opposition

I would request the opportunity to speak at tonight’s meeting

Richard Huddleston

ValStone Asset Management

260 East Brown, Suite 250

Birmingham, Michigan 48009

(248) 646-9200 x25

Statement of VS Birmingham re Redline Retail District.pdf
13K

Statement of VS Birmingham Holdings, LLC
In Opposition to Proposed Definition of Retail in the Redline Retail District

VS Birmingham Holdings, LLC owns approximately 108,000 square feet of office and retail space in the building generally known as Birmingham Place located at 401 South Old Woodward. Our principal executive offices are located in downtown Birmingham at 260 East Brown Street. Furthermore, members of our management team reside in the City of Birmingham.

We have reviewed the proposed Definition of Retail in the Redline Retail District as described in the memorandum dated May 2, 2017 ("Memorandum") from Planning Director Jana L. Ecker to City Manager Joseph A. Valentine which is an agenda item for consideration by the Planning Commission at its meeting on June 14, 2017. The suggested action advocated by the Planning Director is 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 by June 26, 2017."

We call your intention to the top of the third page of the Memorandum which states "both the Planning Board and the Birmingham Shopping District Board have expressed concern with the existing retail definition, and have considered alternative definition to tighten the definition of retail to include only shops which sell products, not financial, real estate or other such personal services."

If this alternative definition were implemented, then by our count 31 out of the 103 current businesses in the District would not comply with the alternative definition. Furthermore, by our count just over 10% of the storefronts in the District are vacant or soon to be vacant (businesses with "going out of business" displayed in the window). These statistics are shown by street and in the aggregate in the table below

Street	Compliant	Non-Compliant	Non-Compliant %	Vacant
Maple	46	9	20%	6
Old Woodward	36	13	36%	4
Pierce	8	5	63%	0
Martin	2	1	50%	0
Merrill	11	3	27%	1
Total	103	31	30%	11

We note that Birmingham Place is outside of the Redline Retail District and the proposed restriction of uses within the Redline Retail District may have a collateral benefit to Birmingham Place if tenants were to be displaced by the proposed tightening of the definition of retail, creating demand for properties immediately outside the Redline Retail District. Nonetheless, VS Birmingham is OPPOSED to the proposed amendment of Article 3, section 3.04(C)(6).

We believe that the proposed amendment infringes on the property rights of landlords. Furthermore, we could find no feasibility study or impact analysis in the public record that was considered by the Planning Department in formulating its recommendation.

While having the first floor storefronts within Downtown Birmingham populated exclusively with retail shops may be a laudable goal, it simply does not comport with current retailing realities. Owners of commercial real estate need more flexibility not less in order to cope with the increasing uncertainties in the retail sector brought on by the Amazon effect.

As Downtown Birmingham has evolved over the years, so has the configuration and layout of the first floor space within the District. Many of the spaces occupied by beauty salons, banks and real estate firms are not readily adaptable to small space specialty retail typically found in the District. Displacement of these tenants would, in our judgment, increases the overall amount and duration of vacancies within the District.

Beauty salons, banks and real estate firms have been a part of the Downtown Birmingham community for many years and, drawing on our experience as a landlord in Birmingham, draw shoppers to Downtown Birmingham. We view the elimination of these businesses from the District to be ill advised. Eliminating banks from the District would impose an unnecessary inconvenience for all businesses in Downtown Birmingham.

What the Planning Director is proposing in our view is likely to increase the number of vacant storefronts in Downtown Birmingham and prolong the vacancy periods to the detriment of the Downtown Birmingham experience and the City of Birmingham lifestyle. With 10% of the storefronts currently vacant or to-become vacant, the Planning Commission needs to enact policies to encourage more businesses to come to Downtown Birmingham and avoid policies which turns away prospective businesses.

VS Birmingham reiterates it OPPOSITION to the proposed amendment.

City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Fwd: retail resolution

1 message

Joe Valentine <jvalentine@bhamgov.org> Thu, Jun 15, 2017 at 8:07 AM
To: "Andrew M. Harris" <aharris@bhamgov.org>, Carroll DeWeese <cdeweese@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Patty Bordman <pbordman@bhamgov.org>, Pierre Boutros <pboutros@bhamgov.org>, Racky Hoff <rackyhoff@hotmail.com>, Stuart Sherman <ssherman@bhamgov.org>, Tim Currier <tcurrier@bhlaw.us.com>
Cc: Jana Ecker <Jecker@bhamgov.org>

fyi
---------- Forwarded message ----------
From: **Mark Nickita** <mnickita@bhamgov.org>
Date: Wed, Jun 14, 2017 at 4:14 PM
Subject: Fwd: retail resolution
To: Joe Valentine <jvalentine@bhamgov.org>

Mark Nickita, FAIA, CNU, APA
Mayor
City of Birmingham, MI

Like me on Facebook
Mark Nickita

Twitter
@MarkNickita

Begin forwarded message:

From: Richard Grinstein <richard@grinsteinjewelry.com>
Date: June 14, 2017 at 4:04:20 PM EDT
To: mnickita@bhamGov.org
Subject: retail resolution

Hi Mark, I won't be able to attend the meeting tonight, but would like to express my support for the idea of limiting storefront space on the ground floor in the central business district to retail, including restaurants as retail. The main goal, as I understand it, is to prevent an increase in the use of storefront properties for office space.
Thanks!
Richard Grinstein

Grinstein Jewelry & Design
162 S. Old Woodward
Birmingham MI
48009

248-647-4414

--

Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

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City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Required Storefronts Code

1 message

rgibbs@gibbsplanning.com <rgibbs@gibbsplanning.com> Fri, Jun 16, 2017 at 2:40 PM
To: "Jana Ecker (jecker@bhamgov.org)" <jecker@bhamgov.org>

Jana: I understand the city is considering requiring retail storefronts along many of the downtown streets. Although the 2016 Master plan recommended some required retail storefronts 20 years ago, this has proven impractical and is no longer included in our downtown master plans.

Instead, we require the first level buildings be constructed to allow for retail: high ceilings, large glass areas, sign bands, operating doors, etc. But we allow all commercial, office and even residential on the first level. Eventually retail will likely occupy the first floor if the buildings are designed properly.

I will be out of town and cannot participate in Monday's public workshop on the issue but would be happy to meet to discuss further.

Best Regards,

Bob

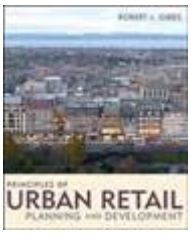
Robert J. Gibbs, AICP, ASLA, CNU-A

President

Gibbs Planning Group

Celebrating 29 Years!

240 Martin Street Suite 200 Birmingham, Michigan 48009 248.642.4800



Now available at Amazon: https://www.amazon.com/Principles-Urban-Retail-Planning-Development/dp/0470488220

City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Fwd: Principal shopping district

1 message

Joe Valentine <jvalentine@bhamgov.org> Mon, Jun 19, 2017 at 9:07 AM
To: Jana Ecker <Jecker@bhamgov.org>

fyi
---------- Forwarded message ----------
From: **Joe Valentine** <jvalentine@bhamgov.org>
Date: Mon, Jun 19, 2017 at 9:07 AM
Subject: Fwd: Principal shopping district
To: "Andrew M. Harris" <aharris@bhamgov.org>, Carroll DeWeese <cdeweese@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Patty Bordman <pbordman@bhamgov.org>, Pierre Boutros <pboutros@bhamgov.org>, Racky Hoff <rackyhoff@hotmail.com>, Stuart Sherman <ssherman@bhamgov.org>, Tim Currier <tcurrier@bhlaw.us.com>

fyi -
---------- Forwarded message ----------
From: **Mark Nickita** <mnickita@bhamgov.org>
Date: Mon, Jun 19, 2017 at 8:01 AM
Subject: Principal shopping district
To: Joe Valentine <jvalentine@bhamgov.org>

Joe

Has this been shared with all of the commission?

Thx
M

Mark Nickita, FAIA, CNU, APA
Mayor
City of Birmingham, MI

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Mark Nickita

Twitter
@MarkNickita

Begin forwarded message:

> **From:** Barbara Ritsema <barbritsema@gmail.com>
> **Date:** June 19, 2017 at 7:47:49 AM EDT
> **To:** mnickita@bhamgov.org
> **Subject: Principal shopping district**
>
> To whom it may concern:
>
> I would like this to be shared with all who make decisions about our downtown shopping district. As a lifelong resident of Birmingham, what has kept me here are three things: our schools, our safe neighborhoods, and our beautiful downtown shopping area. I am a true believer in supporting local businesses, and I shop here as much as I can. When I have visitors from out of state, they are amazed that a city like this exists, with shops and restaurants and has been voted numerous times as a most walkable

city.
It has come to my attention, that there are those who are trying to promote more office space on the first floor of buildings, rather than continuing to attract new businesses like Gazelle sports, back country north, West Elm and Sundance Shoes; as well as encouraging business owners to adapt to changing interests and opening stores like stem and stone.
You only have to visit major cities, like Chicago to see what happens to areas that are primarily business office space in the evening and on weekends: even major retailers don't open, in those parts of the city, and they lose the safety of a vibrant downtown area.
The people who have been invested in Birmingham forever, while agreeing that change is necessary, do not want to lose our downtown shopping area. What is attracting businesses to open offices, are the shops, retail, and the restaurants. They need to be delegated to the second floor of buildings, or the perimeter the central shopping district

Thank you,
Barb Ritsema
165 Puritan Ave., Birmingham, MI

Sent from my iPhone

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

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Jana Ecker <jecker@bhamgov.org>

Fwd: Please Share Attachment at Tonight's Meeting

1 message

Joe Valentine <jvalentine@bhamgov.org> Mon, Jun 19, 2017 at 5:55 PM
To: "Andrew M. Harris" <aharris@bhamgov.org>, Carroll DeWeese <cdeweese@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Patty Bordman <pbordman@bhamgov.org>, Pierre Boutros <pboutros@bhamgov.org>, Racky Hoff <rackyhoff@hotmail.com>, Stuart Sherman <ssherman@bhamgov.org>, Tim Currier <tcurrier@bhlaw.us.com>
Cc: Jana Ecker <Jecker@bhamgov.org>, Ingrid Tighe <itighe@bhamgov.org>

fyi
---------- Forwarded message ----------
From: **Sharon Woods LandUseUSA** <sharonwoods@landuseusa.com>
Date: Mon, Jun 19, 2017 at 2:28 PM
Subject: Please Share Attachment at Tonight's Meeting
To: jvalentine@bhamgov.org

Attn: City manager, city council, planning commission, planning staff, DDA, and other stakeholders

Please allow LandUseUSA to contribute the attachment and this email for this evening's study group session.

In LandUseUSA's professional opinion, brick-and-mortar retail is NOT dead. In fact, this is the perfect opportunity for your downtown merchants to "*Take it Back*" from Big-Box America. National chains are contracting and downsizing because they are redundant and have failed to deliver an enjoyable shopping experience for demanding and savvy shoppers. Those same shoppers are now seeking a more complete experience and they want to be entertained while they shop and dine.

Please see the attachment and kindly share it with your city and planning officials at tonight's meeting. This attachment is an updated excerpt from a study that we originally prepared for the City of Birmingham in 2013 (as part of the Woodward Avenue Corridor plan). Although big-box America is contracting, the enclosed line charts show that same-store-sales are growing (albeit modestly), and sales per square foot is actually gaining - not declining. Some fluctuations should also be expected year-to-year, and decade-to-decade.

Dear Merchants, please don't let the media hype dissuade you from this new opportunity to benefit from shifting consumer preferences. They are shifting in your favor! By focusing on convenience, unique merchandise, high-service, and Placemaking amenities, and you can collectively succeed in "Taking it Back".

The attached packet also identified some growth opportunities and retail niches that we identified for Birmingham in 2013.

Thank you for this opportunity to contribute.

Sharon

. . .

Sharon Woods, CRE
Counselor of Real Estate
(517) 290-5531
www.LandUseUSA.com

Target Market Analysis | Downtown Strategies | Land Use Economics

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
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Twitter: @JoeValentine151

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Birmingham Retail Market Study Update June 2017.pdf
711K

City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Fwd: Regarding ground floor office versus preserving the space for retail...

1 message

Joe Valentine <jvalentine@bhamgov.org> Mon, Jun 19, 2017 at 4:40 PM
To: Jana Ecker <Jecker@bhamgov.org>

fyi
---------- Forwarded message ----------
From: **Joe Valentine** <jvalentine@bhamgov.org>
Date: Mon, Jun 19, 2017 at 4:39 PM
Subject: Fwd: Regarding ground floor office versus preserving the space for retail...
To: "Andrew M. Harris" <aharris@bhamgov.org>, Carroll DeWeese <cdeweese@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Patty Bordman <pbordman@bhamgov.org>, Pierre Boutros <pboutros@bhamgov.org>, Racky Hoff <rackyhoff@hotmail.com>, Stuart Sherman <ssherman@bhamgov.org>, Tim Currier <tcurrier@bhlaw.us.com>

fyi

---------- Forwarded message ----------
From: **Reed Benet** <reedmbenet@gmail.com>
Date: Mon, Jun 19, 2017 at 4:05 PM
Subject: Regarding ground floor office versus preserving the space for retail...
To: Joe Valentine <Jvalentine@bhamgov.org>
Cc: cheryl@tenderbirmingham.com, Jacqueline Benet <jacquelinebenet@gmail.com>

Hello Mr. Valentine:

It is my understanding that there will be a (Planning Commission or City Council?) discussion tonight at City Hall regarding the high demand for ground floor office that might conflict with the upsides of preserving the space for retail.

I fully understand that the property owners want to get the most income from their ground floor property, and that they might be able to do so today with office uses. And I'm also cognizant of ground floor being preferred for office workers who might have trouble negotiating the stairs, or who might be endangered in an emergency if they aren't on the ground floor. Yet other than these latter and I would assume rarer circumstances, I am the strongest supporter of preserving ground floor for retail businesses since retail businesses make for walkable main streets.

It is my belief that ground floor retail, cafes (thank you for facilitating theses), and other such amenities are what make ground floor office space in Birmingham so attractive. I strongly doubt that the other way works as well, let alone at all.

I trust that you will look into all relevant issues, but I would like to strongly support preserving ground floor space for retail.

Thank you for your consideration!

--
Reed M. Benet
Founder/CEO
zeroto6t, inc. DBA herohomes.com
reedmbenet@gmail.com
Cell: 415-342-3634

Goethe (1892): "Von hier und heute geht eine neue Epoche der Weltgeschichte aus und ihr koennt sagen, ihr seid dabei gewesen."

BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES
JUNE 19, 2017

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 is 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 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.

City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Fwd: Birmingham 1st floor office space

1 message

Joe Valentine <jvalentine@bhamgov.org> Wed, Jun 28, 2017 at 3:24 PM
To: Jana Ecker <Jecker@bhamgov.org>

fyi
---------- Forwarded message ----------
From: **Luis Flores** <floresluis071@gmail.com>
Date: Thu, Jun 22, 2017 at 3:15 PM
Subject: Birmingham 1st floor office space
To: jvalentine@bhamgov.org

To whom it may concern:

As a resident of Birmingham and an employee of a retail store in Downtown Birmingham, I oppose the use of office space on the first floor of buildings. They need to be delegated to the second floor or above of buildings, or the perimeter of the central shopping district.

Thank you,
Luis Flores
1734 Henrietta St, Birmingham MI 48009

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

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City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Fwd: BPSD

1 message

Joe Valentine <jvalentine@bhamgov.org> Thu, Jun 29, 2017 at 12:53 PM
To: Jana Ecker <Jecker@bhamgov.org>

---------- Forwarded message ----------
From: **Nikki Keller** <kellerfox@gmail.com>
Date: Thu, Jun 29, 2017 at 10:55 AM
Subject: BPSD
To: jvalentine@bhamgov.org

Dear Mr. Joseph Valenitne and fellow, City Commissioners,

Recently, I was approached by a concerned Birmingham resident who explained to me that the city was considering changes that would greatly impact the feel of beautiful downtown Birmingham. Although, I am a Beverly Hills resident, I consider Birmingham my community as well. Professionally, I avidly advocate for families in the area and compose articles for a local magazine that highlight the uniqueness of the city. Personally, I've spent countless hours with my children at the parks, food establishments and walking along the store fronts. The energy Downtown Birmingham perforates is par none. It affords locals an opportunity to escape from the daily grind for a few hours during the week while walking of the stress and into a few shops. As for the out-of-towner's, it's a true destination location in the Detroit Metropolitan area; accessible retail has a great deal to do with that.

Over the last 20 years of calling Birmingham my home, my biggest regret for the city was losing Jacobson's Department Store. It kept people in the Birmingham Principal Shopping District and out of the malls. It complimented the small boutiques and specialty stores that the city was known for. It'll be a shame if we continue down the path of becoming more general and non-descript, like many other local communities. As Detroit slowly starts to flourish, it's even more important that Birmingham keeps its edge not only with more store fronts, less entry level offices but also with an interesting and eclectic display of retail. It will keep our community vibrant, safe and draw on the population to support it.

Thank you for considering my thoughts, and know that they're said with concern and good intention.

Sincerely,

Nikki Keller

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

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City of Birmingham
A Walkable Community

MEMORANDUM

Office of the City Manager

DATE: June 30, 2017

TO: Planning Board

FROM: Joseph A. Valentine, City Manager

CC: City Commission

SUBJECT: Defining Personal Services

There is a desire by the City Commission to provide clarification on the definition of Retail Use under the zoning ordinance. As you know, the current definition of Retail Use includes Commercial Use as a permitted use. Commercial Use, as defined, includes the category of personal services. Personal services, however, is not defined and left to the interpretation of city staff. Over the past 10 years, roughly 46 businesses have occupied first floor spaces in the Redline Retail area under the undefined category of personal services. To assist city staff in the administration of the zoning ordinance and to clarify the intent of the personal services category, a policy directive was given to the Planning Board to promptly address this issue. This directive was intended to establish a temporary relief measure while the Planning Board continues to study the definition of retail as part of its action list that was adopted in July of 2016.

While there may have been some initial confusion with regard to temporary relief measure that was directed, the general intent is to provide an immediate definition for personal services as further study continues on this issue. The collective discussion at the joint workshop between the City Commission and Planning Board on June 19, 2017 offered the following course of action.

1. Postpone the public hearing set for July 12, 2017 to a date certain in the immediate future.
2. Hold a study session on July 12, 2017 to review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown, then review the current draft definition of personal services as reviewed by the Planning Board on June 14th for appropriate application.
3. Conduct a public hearing on the proposed definition for personal services following this study session and provide a recommendation to the City Commission on a proposed definition at the earliest opportunity.

The latest draft definition for personal services reviewed at the Planning Board's June 14th meeting does provide a definition for further discussion. However, as it is stated below, this

draft language should be modified to only include the services that are permitted and not identify excluded services. This will help further clarify the application of the proposed definition by city staff.

Personal Services: An establishment that is engaged primarily in providing services involving the care of a person or apparel, including but not limited to: beauty and barber shops, nail care or skin salon services, other personal grooming services, laundry services, dry cleaning, shoe or clothing repair; but does not include business services, medical, dental and/or mental health services.

Because Community Use is already defined and does not pose this same immediate issue, this can be further reviewed in the second stage of discussion on the definition of retail.

Following the completion of the clarification of the personal service definition, the Planning Board should continue to review the definition of retail in accordance with the previous direction to the Planning Board as follows:

a. To evaluate the success of the red line retail district in Downtown Birmingham to determine if the intended objectives are being met;
b. To study the existing definition of retail in the Zoning Ordinance and recommend any needed amendments to the definition; and
c. To review all retail-related requirements contained in the Zoning Ordinance and recommend any needed amendments.

City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Fwd: First Floor Retail

1 message

Joe Valentine <jvalentine@bhamgov.org> Wed, Jul 5, 2017 at 12:19 PM
To: Jana Ecker <Jecker@bhamgov.org>, Matthew Baka <MBaka@bhamgov.org>

fyi
---------- Forwarded message ----------
From: **Andrea Rehm** <andirehm@yahoo.com>
Date: Wed, Jul 5, 2017 at 11:26 AM
Subject: First Floor Retail
To: jvalentine@bhamgov.org

It has recently come to my attention that the City of Birmingham is considering that offices be able to occupy the first floor in the town?
I honestly didn't believe it since it would ruin our walkable community. Making such a radical decision would seriously impact the vitality of our darling Downtown Shopping District.
I implore you do everything possible to keep such a move from happening. As someone who lives and works in Birmingham I am very concerned.
Thank you for your time.
Best,

Andrea Rehm
738 Graefield Court
Birmingham, Mi 48009

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

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Jana Ecker <jecker@bhamgov.org>

Fwd: Keep retail on the first floor in town

1 message

Joe Valentine <jvalentine@bhamgov.org> Mon, Jul 10, 2017 at 10:54 AM
To: "Andrew M. Harris" <aharris@bhamgov.org>, Carroll DeWeese <cdeweese@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Patty Bordman <pbordman@bhamgov.org>, Pierre Boutros <pboutros@bhamgov.org>, Racky Hoff <rackyhoff@hotmail.com>, Stuart Sherman <ssherman@bhamgov.org>, Tim Currier <tcurrier@bhlaw.us.com>
Cc: Jana Ecker <Jecker@bhamgov.org>

fyi
---------- Forwarded message ----------
From: **Joe Valentine** <jvalentine@bhamgov.org>
Date: Mon, Jul 10, 2017 at 10:53 AM
Subject: Re: Keep retail on the first floor in town
To: Elizabeth Belkin <elizabeth.belkin@gmail.com>

Ms. Belkin,

Thank you for your email sharing your concerns for ensuring a strong retail presence on first floor properties in the downtown. I will share you comments with the Planning Board as they plan to review this matter during their meeting on July 12th. This meeting is intended to review our downtown master plan as it relates to first floor retail and develop a definition for personal services that coincides with retail uses. This meeting will begin at 7:30pm at Birmingham City Hall.

Thank you again for sharing your concern.

Best Regards,
Joe Valentine

On Sat, Jul 8, 2017 at 12:01 PM, Elizabeth Belkin <elizabeth.belkin@gmail.com> wrote:

> Hello,
> I am a resident of Birmingham and I am very upset to hear that offices are looking to take over first floor retail.
>
> I am opposed to this and as a former retailer, I know the value in having a downtown filled with amazing shops and restaurants on the street level.
>
> Thank you,
> Elizabeth Belkin
> 411 South Old Woodward Avenue
> unit 805
> Birmingham, Michigan 48009

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

Jana Ecker <jecker@bhamgov.org>

Fwd: Commercial Office Space on First Floors/ Birmingham

1 message

Joe Valentine <jvalentine@bhamgov.org> Mon, Jul 10, 2017 at 10:35 AM
To: Jana Ecker <Jecker@bhamgov.org>

Please include with the PB materials for their July 12th meeting.

---------- Forwarded message ----------
From: **Karen Mucha** <karen.mucha@icloud.com>
Date: Mon, Jul 10, 2017 at 10:04 AM
Subject: Commercial Office Space on First Floors/ Birmingham
To: jvalentine@bhamgov.org

Mr. Valentine,

We have lived in Birmingham for the past 20 years. We enjoy having a vibrant retail downtown with stores and restaurants. We want this to remain as is. We do not want first floor commercial businesses in the downtown retail spaces. It will adversely effect the success and vibrancy of the downtown retail district. It will be a disincentive to new shops and restaurants to open in birmingham.

I am happy to discuss my thoughts at your convenience.

Karen Mucha

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

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City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Re: Retail Space

1 message

Joe Valentine <jvalentine@bhamgov.org> Tue, Jul 11, 2017 at 8:28 AM
To: Tom Booth <tlbooth999@gmail.com>
Cc: Jana Ecker <Jecker@bhamgov.org>

Mr. Booth,

Thank you for email sharing your concerns regarding first floor retail. I will share your concerns with the Planning Board as they consider this issue.

Best Regards,
Joe Valentine

On Mon, Jul 10, 2017 at 7:41 PM, Tom Booth <tlbooth999@gmail.com> wrote:

> Dear Mr. Valentine,
>
> I have read about the current issue facing the Birmingham Planning board regarding the definition of retail space.
>
> In my opinion, I think it is important to maintain the retail space at ground level for shoppers.
>
> The retail space attracts walkers and shoppers. Without them, Birmingham character will change.
>
> Retail stores will wither and die without shoppers.
>
> Please keep that in mind when discussing this issue.
>
> Best regards,
>
> Tom Booth
>
> 430 Aspen
>
> Birmingham
>
> P.S. I will not be able to attend the planning board meeting on July 12 due to a previous commitment.

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct

City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

really?

1 message

Christopher Longe <cjlonge@cjlongeaia.com> Tue, Jul 11, 2017 at 8:45 PM
To: "jlwboyce@gmail.com" <jlwboyce@gmail.com>, Robin Boyle <r.boyle@wayne.edu>, "stuartjeffares@gmail.com" <stuartjeffares@gmail.com>, Dan Share <dshare@bsdd.com>, Gill Lazar <glazar@hallandhunter.com>, "jwilliams@dickinsonwright.com" <jwilliams@dickinsonwright.com>, Scott Clein <sclein@giffelswebster.com>, "bkoseck@neumannsmith.com" <bkoseck@neumannsmith.com>
Cc: Jana Ecker <jecker@bhamgov.org>

Dear Board Members;

I know you folks are looking forward to tomorrow's Planning Board public hearing - basically trying to define retail/personal services/commercial use/etc. at the request of the City Commission.

The articles I've referenced below (light reading as it is) do nothing more than reinforce what you may already be thinking, believe to be accurate - or alternatively you may take issue with.
You can certainly find, with ease, a credible source to reinforce your thinking.

The reason I chose to engage in the conversation is five fold –
1. I am a proponent - as are most building owners/architects/planners - in 1st floor retail being the highest and best use for a pedestrian friendly city.
2. Retail is not, at the moment (or for the past 20 years) a relevant or driving force filling for Birmingham commercial space.
3. Merchants pay a PSD consultant to recruit and convince retailers to locate in Birmingham. If there were a line to get in, Birmingham wouldn't need a 'salesman'.
4. Forcing a solution on an already successful 'mix' is misguided and unnecessary.
5. Birmingham, to a very large degree, has become the Banking, Creative and Restaurant capital of Michigan - AND – It could or should be embraced and marketed as such. Retail will follow and displace 'personal service/commercial' as foot traffic increases. Factually building owners prefer retail – it is something desired, creates an active environment and reinforces the 'city' vitality and viability. Traditionally retail commands a higher rent rate forcing office use to the upper floors. It is not now nor has it been the case for a very long time.

As the Architect for 'Shift Digital' and 'McCann World Wide', I am compelled to respond to what has, for no real or factual reason, become an issue.
The contention that somehow that these are not viable and contributing to the city fabric is upsetting and not accurate.

Shift replaced a large Real Estate office. McCann replaced a large failed retailer.

'Shift' (2 locations on Maple Road), as you might expect, are concerned by the suggestion that they are 'retail killers'. They along with McCann worldwide – both national industry flagships – have filled spaces that, in McCann's case (we designed for retail that we could not attract – anchors nor smaller merchants) , were vacant for long periods of time.

Shift's employees/owner (as I witness everyday/I'm a neighbor) use the services of local retailers and restaurants (Starbucks, Via, Toast, Streetside, 220 Merrill, etc.), local caterers, have 250 Powerhouse Gym memberships, activate previously dead West Maple and East Maple/Woodward Ave sidewalks & crossings. It's AMAZING to see people on the streets all times of the day as a result.

McCann and Shift along with other 'personal service' outlets support and give rise to retail uses! Ferndale and Royal Oak are working to get more office uses to support their retail/restaurants during the day, when their streets are largely vacant. Birmingham actually has daytime PEDESTRIAN TRAFFIC ! Retail will follow as the market that has been created … additional retail will result. The balance between retail 'personal service' will change over time as the pendulum swings.

I would hope that the Commission and the Planning Board would focus on the; BOTH-AND; not the EITHER-OR and on solving the cyclical parking problem, which is a greater barrier to retail than any other factor.

Encourage what you want. Carrot–not the stick sorta thing.

Success is hard to overcome.

Sincerely,
Chris Longe

"...do not be carried away by success into demanding more than is right or prudent." - Winston Churchill

http://www.theridgefieldpress.com/83487/first-floor-retail-rule-finding-the-carrot-not-the-stick/

https://www.theatlantic.com/business/archive/2017/04/retail-meltdown-of-2017/522384/

http://www.zerohedge.com/news/2017-06-14/2017-will-be-worst-retail-apocalypse-us-history-over-300-retailers-have-already-file

http://www.spur.org/publications/urbanist-article/2014-06-03/designing-ground-level

Christopher J. Longe AIA, Architecture & Interiors

124 Peabody, Birmingham, MI 48009
P 248.258.6940 **C** 248.330.9595
cjlonge@cjlongeaia.com

Planning Board Minutes
July 12, 2017

PUBLIC HEARINGS

1. An ordinance to amend Chapter 126, Zoning as follows:

ARTICLE 3, SECTION 3.04, SPECIFIC STANDARDS, TO AMEND THE DOWNTOWN BIRMINGHAM OVERLAY STANDARDS TO EXCLUDE COMMUNITY AND PERSONAL SERVICE USES AS PERMITTED USES IN THE REDLINE RETAIL DISTRICT; AND

ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD A DEFINITION FOR PERSONAL SERVICES, TO AMEND THE DEFINITION OF COMMERCIAL USE TO EXCLUDE PERSONAL SERVICES AND TO AMEND THE DEFINITION OF RETAIL USE TO INCLUDE RETAIL BANK BRANCHES AND PERSONAL SERVICES.

Ms. Lazar recused herself due to a familial relationship with the applicant.

The Chairman opened the public hearing at 7:40 p.m.

Mr. Clein stated that based on the discussion between the City Commission and Planning Board at the June 19, 2017 joint meeting regarding the definition of retail, the City Manager has provided a memo outlining the course of action considered at that time. This discussion suggested postponing the public hearing to a date certain and holding a study session in lieu of the public hearing to consider the definition of personal services and to review the Redline Retail District as prescribed in the Downtown Birmingham 2016 plan for background and intent in regards to personal services.

Motion by Mr. Williams
Seconded by Mr. Boyle to continue the public hearing to Wednesday evening, August 9, 2017.

There was no discussion from the public on that motion.

Motion carried, 6-0.

VOICE VOTE
Yeas: Williams, Boyle, Clein, Jeffares, Prasad, Whipple-Boyce
Nays: None
Recused: Lazar
Absent: Koseck

Chairman Clein closed the public hearing for tonight at 7:41 p.m.

07-131-17

STUDY SESSIONS

1. Definition of Personal Services

Ms. Lazar continued to be recused for this study session.

Motion by Mr. Williams
Seconded by Ms. Whipple-Boyce to accept and file the following communications as part of the official record:

- **E-Mails from various individuals -**
  - **Elizabeth Elkin on July 10;**
  - **Tom Booth on July 10;**
  - **Karen Mucha on July 10;**
  - **Andrea Rehm on July 5.**

- **E-Mail to Planning Board members from Christopher Longe on July 11.**

Motion carried, 6-0.

VOICE VOTE
Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Prasad
Nays: None
Recused: Lazar
Absent: Koseck

Ms. Ecker advised there is a desire by the City Commission to provide clarification on the definition of personal services in the Zoning Ordinance. The current definition of retail use includes commercial use as a permitted use. Commercial use, as defined, includes the category of personal services. However, the term personal services is not defined and left to the interpretation of City Staff.

Ms. Ecker advised the City Manager has provided a letter that makes clear the direction from the City Commission to the Planning Board at the joint Planning Board/City Commission meeting held on June 19, 2017, which is as follows:

1. Postpone the public hearing set for July 12, 2017 to a date certain in the immediate future.

2. Hold a study session on July 12, 2017 to review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown, then review the current draft definition of personal services as reviewed by the Planning Board on June 14th for appropriate application.

3. Conduct a future public hearing on the proposed definition for personal services following this study session and provide a recommendation to the City Commission on a proposed definition at the earliest opportunity.

The latest draft definition for personal services reviewed at the Planning Board's June 14, 2017 meeting does provide a definition for further discussion, however, the City Manager's comment was that the draft language should be modified to only include the services that are permitted and not identify excluded services. This will help further clarify the application of the proposed definition by City Staff.

> Personal Services: An establishment that is engaged primarily in providing services involving the care of a person or apparel, including but not limited to: beauty and barber shops, nail care or skin salon services, other personal grooming services, laundry services, dry cleaning, shoe or clothing repair; but does not include business services, medical, dental and/or mental health services.

Further direction from the City Manager states that because Community Use is already defined and does not pose this same immediate issue, this can be further reviewed in the second stage of discussion on the definition of retail.

Consensus was that at this time, the board's direction is to focus only on the definition of Personal Services.

Mr. Williams wanted to know by the time of the public hearing how many vacancies there are in the Redline Retail District and what the current mix is, by percentage of square footage and number of units. Also, if information is available what new vacancies will come up in the immediate future.

Mr. Jeffares summarized his view that the core of personal services is from a business (B) to an individual consumer (C), rather than from a business (B) to a business (B) which deals with large corporate clients and doesn't cater to individuals.

Mr. Williams thought the current definition is way too restrictive. He doesn't like making lists. Since the Building Official is the one who must deal with the practical application issues, it would be nice to have him present to provide input. Also, he wanted to hear from the representative of the Birmingham Shopping District ("BSD"). Ms. Whipple-Boyce agreed it is

very difficult to provide a list of permitted uses and keep it current. In her opinion it would be more logical to list businesses that they don't want to see Downtown. She worries what may be left out in the present list of permitted services.

Mr. Boyle suggested they want the Downtown to operate as accessible, vibrant, colorful, safe, walkable. They have achieved that. Now he is worried that attempts to define all of the individual uses might backfire. So he thought the board might pay more attention to what they want the City to be and not try to tell people what uses they can or cannot have. Mr. Williams agreed. He feels the City needs a new Master Plan and thinks interim solutions are a mistake. He would rather have a definition that is more expansive and focused on individual services as opposed to corporate or institutional services. He also does not like lists, as they are soon outdated. He supports a broader statement of intended uses by persons in activating the street.

Several board members agreed that they don't want lists. It would be better to offer guidance. Regardless of what uses they come up with, there will always be a body of uses that will not be defined.

The board then discussed whether they concur with the definition of personal services if the list of services it taken out. Ms. Whipple-Boyce observed that the ordinance contains pages and pages of lists. That is part of what makes it work for the Building Official and for people who are looking to do certain things in certain areas. They know exactly what is permitted there. Ms. Prasad agreed it is important for the board to provide examples and direction for the types of uses they want to see.

Mr. Williams did not understand why the board cannot list excluded categories.

Chairman Clein synthesized what he has heard: An establishment that is open to the general public and is primarily engaged in providing services directly to the consumer; including but not limited to personal care, care for apparel and other personal items, and any other service directly sold to the consumer; but does not include business to business services, medical, dental, or mental health services.

At 8:58 p.m. he invited members of the public to come forward to talk about Personal Service.

Mr. Richard Huddleston appeared on behalf of Unit 1 at Birmingham Place, 401 S. Old Woodward Ave., which is approximately 110,000 sq. ft. of commercial and retail space. After walking the Redline Retail District Mr. Huddleston found 10 vacancies out of 110 total storefronts, of which about forty were not retail type uses. He offered his opinion that what is good for retail is foot traffic, and the biggest source of foot traffic in a retail area is high density office.

Ms. Jeanette Smith, VP of Marketing for Core Partners, urged that before a public hearing is held an advisory group be formed that includes people from different walks of life who can weigh in. An interim solution seems a little premature.

Mr. Richard Sherer said his family owns property on Pierce and W. Maple Rd. He stated that any attempt to legislate what can be in buildings is very nebulous. It will be extremely damaging to landlords.

Ms. Cheryl Daskas who is a resident, a retailer, and a property owner, said she does not want to see first-floor offices in her town. As Tom Markus once said, It takes three things: it's your downtown, your neighborhoods, and your school system. If one falters, then the whole thing crumbles. She noted first-floor offices stop the foot traffic.

Ms. Ecker said what she heard from the majority of members is that Personal Services is an establishment that is open to the general public and engaged primarily in providing services directly to an individual consumer; including but not limited to personal care services, care of apparel and other personal items; and not including business to business services, medical, dental, and/or mental health services.

Mr. Boyle stated the board needs to have a serious conversation about the Downtown. Everyone knows there is a lot of change happening. His thought was that it behooves the City Commission to take the leadership and create some form of opportunity for people to weigh in on this issue of the nature of our Downtown. So he strongly recommended to the City Commission to give that serious consideration and get it moving in advance of yet more delays on the Master Plan.

City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Fwd: Retail space

1 message

Joe Valentine <jvalentine@bhamgov.org> Thu, Jul 13, 2017 at 8:08 AM
To: "Andrew M. Harris" <aharris@bhamgov.org>, Carroll DeWeese <cdeweese@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Patty Bordman <pbordman@bhamgov.org>, Pierre Boutros <pboutros@bhamgov.org>, Racky Hoff <rackyhoff@hotmail.com>, Stuart Sherman <ssherman@bhamgov.org>, Tim Currier <tcurrier@bhlaw.us.com>
Cc: Jana Ecker <Jecker@bhamgov.org>

---------- Forwarded message ----------
From: **Joe Valentine** <jvalentine@bhamgov.org>
Date: Thu, Jul 13, 2017 at 8:08 AM
Subject: Re: Retail space
To: frank@carusocaruso.com

Mr. Caruso,

Thank you for your email and sharing your concerns for a strong retail mix in the downtown. I will share your comments as this issue is discussed and ordinance language is developed to address this concern. Your concerns are shared by the City Commission and I expect clarification on this issue shortly.

Best Regards,
Joe Valentine

On Wed, Jul 12, 2017 at 7:17 PM, <frank@carusocaruso.com> wrote:

> I have had my business on Maple st. For 39 years,between the parking issues and landlords increasing rents it's been a challenge. Please don't allow office space on the first floor, we need more retail to succeed. Thank You.
> Frank Caruso Caruso Caruso
> Sent from my iPhone

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

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City Manager
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Birmingham, MI 48009
(248) 530-1809 Office Direct

Jana Ecker <jecker@bhamgov.org>

Fwd: Downtown Birmingham Tenant Mix

1 message

Joe Valentine <jvalentine@bhamgov.org> Thu, Jul 13, 2017 at 8:05 AM
To: "Andrew M. Harris" <aharris@bhamgov.org>, Carroll DeWeese <cdeweese@bhamgov.org>, Mark Nickita <mnickita@bhamgov.org>, Patty Bordman <pbordman@bhamgov.org>, Pierre Boutros <pboutros@bhamgov.org>, Racky Hoff <rackyhoff@hotmail.com>, Stuart Sherman <ssherman@bhamgov.org>, Tim Currier <tcurrier@bhlaw.us.com>
Cc: Jana Ecker <Jecker@bhamgov.org>

fyi
---------- Forwarded message ----------
From: **Joe Valentine** <jvalentine@bhamgov.org>
Date: Thu, Jul 13, 2017 at 8:05 AM
Subject: Re: Downtown Birmingham Tenant Mix
To: Gillian Levy <Gannelevy@comcast.net>

Ms. Levy,

Thank you for your email and sharing your concerns for the downtown retail mix. To the contrary, the current discussions are intended to further clarify the retail uses permitted in the downtown and encourage more retail establishments as you suggest. The City Commission has directed the Planning Board to provide a definition for personal services that is inline with the City's downtown master plan and encourages a strong retail core in the center of the downtown. Without a definition for personal services, several office type uses have utilized this undefined category to occupy prime retail spaces, which is not inline with our downtown master plan. This is what is currently being corrected. Please know your concerns are shared by the City Commission and on their way to being addressed.

I will pass along your comments and thank you again for your time in sharing your concerns.

Best Regards,
Joe Valentine

On Wed, Jul 12, 2017 at 6:21 PM, Gillian Levy <Gannelevy@comcast.net> wrote:

> Mr.Valentine
>
> Please share this email with those members of the board of commissioners who are considering permitting commercial office space in store fronts. I am a transplant from New York , and many reasons have kept me here instead of returning to New York. I have been a Birmingham resident since 1987, first in a house for almost 30 years and now in an apartment in downtown. Birmingham reminds of the neighborhood where I grew up in Brooklyn. There was a main shopping thoroughfare, similar to our downtown area. I knew most of the merchants, as I do now. I enjoy walking through the downtown area, as I did in the shopping area in Brooklyn, looking in store fronts and seeing the merchandise and art work. No fun in looking at desks with people nose to nose with their computers.
>
> It is my understanding that some of our city officials are trying to promote more office space on the first floor of buildings, rather than continuing to attract new businesses like Gazelle Sports, Back Country North, West Elm, Sundance Shoes; the Art Galleries, and other boutiques. Our downtown suffered when Somerset expanded but rebounded with fines shops that do well on city streets rather than in malls. The downtown again rebounded after the financial crisis and we have a thriving city.
> Office use of storefronts will serve to drive out retailers and reduce the homey feel and vibrancy of our downtown. We cannot permit this to happen for the sake of a few landlords who seek out the quick dollar in place of being a resident within our city and bringing in tenants that will harmonize with our downtown and keep it growing. We certainly do not need another storefront realtor or a computer consultant.
>
> Change is a part of growth but that change can be tempered to serve the needs of the residents. We must preserve a viable and vibrant downtown and not become an office space community only

> Gillian A. Levy
>
> 555 S Old Woodward Avenue
>
> Birmingham MI 48009

--
Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
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Jana Ecker <jecker@bhamgov.org>

Fwd: Caruso Caruso, Birmingham MI

1 message

Joe Valentine <jvalentine@bhamgov.org> Mon, Jul 17, 2017 at 10:08 AM
To: Jana Ecker <Jecker@bhamgov.org>

---------- Forwarded message ----------
From: **Lennon Caruso** <lennon@carusocaruso.com>
Date: Sat, Jul 15, 2017 at 11:55 PM
Subject: Caruso Caruso, Birmingham MI
To: jvalentine@bhamgov.org

Joe-
At the request of other retailers I am sending you this email to please push for the ground floor square footage of downtown Birmingham to remain retail, services, dining and / or entertainment only. Retail defined as goods sold such as jewelry, clothing or housewares and services such as salons, makeup application, tailoring or even pedestrian computer repair. We need to pass or redefine any city ordinance in the downtown area that allows business' such as marketing firms, advertising companies or startups to occupy "fish bowl" ground floor square footage. I strongly believe the residents of our community want to window shop on their nightly strolls, not read "to do" lists written across white boards or be able to view the new list of company leads coordinated by color on sticky notes.
I have ran the daily operations at Caruso Caruso (166 W. Maple) for the past 10 years and was born and raised in this community. Every time I walk by Shift Digital I can still smell Marty's Cookies (I know it's technically Cafe Viá but you get what I'm saying.)

Thank you for your time. I'd be happy to give you more feedback personally or lay things out for business owners, landlords and / or Bham residents in a public setting.

Thanks. Peace. Lennon Lalonde

--
Joseph A. Valentine
City Manager
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City of Birmingham
A Walkable Community

Jana Ecker <jecker@bhamgov.org>

Fwd: First floor retail

1 message

Joe Valentine <jvalentine@bhamgov.org> Thu, Jul 20, 2017 at 6:14 PM
To: Jana Ecker <Jecker@bhamgov.org>

---------- Forwarded message ----------
From: **Deborah Vail** <deborahdvail@yahoo.com>
Date: Wed, Jul 19, 2017 at 9:44 AM
Subject: First floor retail
To: jvalentine@bhamgov.org

Dear Joe,
I am writing to you to express my concerns on allowing business offices to take up first floor space in our town. Birmingham is a walking community and if spaces are taken up with offices then it will kill this town. I was raised here and Birmingham certainly has changed. Not sure if it is for the better. I realize nothing stays the same but let's not ruin the town with just office space and food and drink. We need more retail to keep this a viable town where families like to come and enjoy walking around.
Thank you,
Debbie Vail
Co owner of Adventure in Toys
Sent from my iPhone

--
Joseph A. Valentine
City Manager
City of Birmingham
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(248) 530-1809 Office Direct
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INTERCONTINENTAL

INTERCONTINENTAL MANAGEMENT CORP.
1270 SOLDIERS FIELD ROAD
BOSTON, MASSACHUSETTS 02135-1003
TELEPHONE 617-782-2600
FACSIMILE 617-782-9442

July 27, 2017

City of Birmingham
Planning Board
151 S. Martin Street
Birmingham MI 48009

Attention: Jana Ecker, Planning Director
Scott Klein, Planning Board Member

Dear Ms. Ecker and Mr. Klein:

As owners of 325 N. Old Woodward, one of the signature properties in Birmingham, we are very disappointed and concerned to hear that there is an initiative to make changes to the definition of retail in the City. In our opinion, this would have a negative impact on all landlords and the overall vitality of Birmingham's retail climate.

We have been pleased to be part of the redevelopment of the downtown district. Our property would not have enjoyed the success it has had, and the community would not have benefitted from the sales and tax revenue it has enjoyed, without the flexibility that the current definition provides. One major tenant that would not be here now and may not continue to be here due to this proposed change is Google. The space it currently occupies was shunned by many retail prospects because of its location and configuration. However, in conjunction with the City and the flexibility of the current definition, it suited Google perfectly. This significant tenant, sought by the City and landlords alike, will be forced to go elsewhere should this initiative progress forward creating unnecessary financial and employment shortfalls for the City.

Diversity and flexibility have always been the hallmarks of any successful business or community. Birmingham's downtown district is such a vibrant community, currently able to adapt to the constantly changing urban landscape. Google, like many other companies, is changing the work environment for everyone, creating a model for the future where work, shopping, and entertainment are mixed into an urban setting. There are many other existing businesses in the City which rely on that diversity as well and it seems logical that the City would understand the benefits of becoming more flexible - not more restrictive. Why Birmingham would seek to change something that is working is puzzling. We don't believe that "any" Landlord would deny retail if there were a demand for it and we would like an explanation regarding what is not working? Are there retailers that are prevented from locating in Birmingham now? Trying to "redefine retail" when it seems well understood by the City employees and business community alike seems improvident.

Furthermore, these changes could have a significant impact on how the investment & lending community view Birmingham. Make no mistake, landlords and their lenders relied on the flexibility the current definition of retail provides in order to make significant capital investments in this community. Lenders and owners alike get nervous when you change the rules...especially when it can affect the value of the assets and underlying collateral. If the rules are changed leading to increased vacancy and value diminution, mortgages may go to into default and precipitate a pullback and stagnation in future investment in Birmingham.

Economists suggest that the market will drive the client base. If retailers want to be in Birmingham, they will pressure the market to be there. We strongly suggest that Birmingham let the market determine what it wants to be. Flexibility is the key to adaptation, and success.

As you are certainly aware, changes are typically made to solve problems, not create them and in this instance we strongly advise the City Commissioners and City Planners to reject this proposed change.

Sincerely

Joseph A. Sweeney
Regional Director – Asset Management

City of Birmingham
A Walkable Community

MEMORANDUM

Planning Division

DATE: **August 1, 2017**

TO: **Planning Board**

FROM: **Jana L. Ecker, Planning Director**

SUBJECT: **Public Hearing to consider changes to Article 03 section 3.04 to exclude community uses in the Redline Retail District and Article 09, Definitions to define Personal Services**

Joint meeting update

Based on the discussion between the City Commission and Planning Board at the June 19th, 2017 meeting regarding the definition of retail, the City Manager previously provided a memo outlining the course of action considered at that time. This discussion suggested postponing the public hearing to a date certain and holding study session in lieu of the public hearing to consider the definition of personal services and to review the Redline Retail District as prescribed in the Downtown Birmingham 2016 plan for background and intent in regards to personal services. The memo from the City Manager is again attached.

Retail discussion and background

Over the past decade, there has been an ongoing desire by some City Boards and Commissions to review the current definition of retail to ensure that we are encouraging true retail downtown, and not allowing office and other service uses to dominate. The issue is specifically relevant in the Downtown Overlay, where retail use is required in the first 20' of depth for all buildings in the Redline Retail District as illustrated below.

At the joint meeting with the City Commission on June 19, 2016, both the City Commission and the Planning Board members agreed that the existing definition of retail and the related definitions in the Zoning Ordinance should be discussed in further detail. This issue was added to the Planning Board's 2016 – 2017 Action List for future discussion. Accordingly, the Planning staff assembled the following information regarding the existing ordinance requirements which affect permitted commercial uses within the Redline Retail District.

Zoning Ordinance regulations:

Article 3, Section 3.04 (C)(6) states:

> Buildings that have frontage along the required retail frontages, as specified on the Regulating Plan, shall consist of retail with a minimum depth of 20 feet from the frontage line within the first story. Lobbies for hotels, offices, and multiple-family dwellings may be considered as part of the required retail frontage, provided that any such lobby occupies no more than 50% of the frontage of said building.

Accordingly, all buildings built under the Downtown Overlay in the areas marked in red on the map inset above, must contain retail uses in the first 20' of depth of the first floor. Article 9, section 9.02 of the Zoning Ordinance provides the following retail related definitions:

> **Retail Use:** Any of the following uses: artisan, community, commercial, entertainment (including all establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development), bistro or restaurant uses.
>
> **Artisan Use:** Any premises used principally for the repair, manufacture, and sale of domestic furniture, arts, and crafts. The work must take place entirely within an enclosed building using only hand-held and/or table-mounted manual and electric tools.
>
> **Community Use:** Premises used principally for education, worship, cultural performances, and gatherings administered by nonprofit cultural, educational, and religious organizations; premises used principally for local, state, and federal government, administration, provision of public services, education, cultural performances, and gatherings.
>
> **Commercial Use:** Premises used generally in connection with the purchase, sale, barter, display, or exchange of goods, wares, merchandise, or personal services.
>
> **Office:** A building or portion of a building wherein services are performed, including professional, financial (including banks), clerical, sales, administrative, or medical services.

As defined in Article 9, retail uses include the direct sale of products from the premises, but also include restaurants, entertainment and the purchase, sale or exchange of personal services (given the inclusion of personal services in the definition of commercial uses, which are included as retail uses). No definition for personal services is provided. Personal financial services, beauty services, banking services, real estate services, advertising services and other similar uses have been permitted within the Redline Retail District under the umbrella of personal services, provided that there is a display area for the sale or exchange of such goods and services in the first 20' of the storefront, and the storefront is open to the public during regular

business hours. Concern has been raised that this small display area 20' in depth is not sufficient to create an activated, pedestrian-friendly retail district.

The current definitions for retail and commercial have thus permitted some uses that are not universally considered "true retail" as there are no physical goods for sale. In the past, both the Planning Board and the Birmingham Shopping District Board have expressed concern with the existing retail definition, and have considered alternative definitions to tighten the definition of retail to include only shops which sell products, not financial, real estate or other such personal services. On the other hand, many property owners in the past have expressed concerns about tightening up the definitions as they desire the flexibility to lease space to a wider range of users to avoid vacancies.

Retail Intent in the 2016 Plan

A detailed review of the Downtown Birmingham 2016 Plan (hereinafter "the 2016 Plan") was conducted to determine the intent of the creation of the Redline Retail District, the City's success or failure in meeting this intent, and the need for any changes to the regulations to comply with the recommendations contained in the 2016 Plan. In addition, the Planning Division has been working with the City Manager and the Birmingham Shopping District to obtain all relevant data as to the current mix of uses on the first floor in the Redline Retail District and the changes to this mix that have occurred since the inception of the 2016 Plan in 1996. Please see Appendix A for minutes and staff reports from the adoption of the 2016 Plan in 1996.

The 2016 Plan was written to create a vision for the future of Downtown Birmingham. Detailed recommendations were included on the type and mixture of desired uses in downtown, as well as recommendations regarding building form, scale and character of the streetscape. Specific recommendations regarding the type and mixture of desired uses downtown can be found in both Retail sections 1 – 12 and Building sections 1 – 2, which are summarized below.

With regards to downtown retail uses, the 2016 Plan identifies the key retail loop (or retail epicenter) as the portion of Old Woodward from Oakland to Brown and portions of Maple from Willits/Chester to Park/Peabody. This area encompasses a five minute or 1,200 foot walking radius centered on the intersection of Maple and Old Woodward. The 2016 Plan recommends that the downtown continue to offer its residents and non-residents alike a chance to enjoy a walkable and diverse shopping experience. The 2016 Plan identified five primary commercial areas in Downtown Birmingham (as of 1996): The Central Business District (5 minute walking radius or CBD), North Woodward, South Woodward, Bowers and East Maple. Each of these areas are defined by their different sizes, the character of the roads and streetscapes, the types of businesses offered, the quality of shops, and the continuity of retail frontages.

Recommendation: Creation of Expanded Downtown District

One of the primary recommendations of the 2016 Plan is to enlarge the CBD by merging or connecting the key retail loop with the N. Old Woodward district north of Oakland, the S. Old Woodward district south of Brown, and the Bowers and E. Maple districts. The 2016 Plan states that this should be accomplished by encouraging first floor retail liners between the five districts to connect discontinuous retail frontages and encourage supportive retail, restaurant and services to be carefully grouped to promote cross-shopping and better reflect the variety and quantity of merchandise and services offered.

The 2016 Plan states that "controlling frontage and regulating first floor use are tools to foster pedestrian life", which is essential for vibrant downtowns. In order to enhance the pedestrian environment, the 2016 Plan recommends the removal of actual or perceived barriers to moving between districts, and the improvement of the quality and maintenance of the streetscape. The Ring Road system is noted as a barrier to cross-shopping between districts, as is the need for improved pedestrian crossings throughout downtown. The need for pedestrian-scaled architecture and controlled building height are also noted.

Recommendation: Maintain Retail Anchors

The 2016 Plan states that the CBD has significant anchors at the periphery (Jacobson's Mens' and Womens' department store and Crowleys were present in 1996) to help provide a connection to the other downtown commercial districts. The Plan states that department stores are primary destinations and important anchors for many businesses in the CBD as they are leading destinations that support apparel, jewelry, shoe, and accessory stores, as well as restaurants and coffee houses throughout downtown. The 2016 Plan recommends ensuring the maintenance of anchors in the CBD to promote visits to other retail uses through shoppers strolling to and from these anchor sites, as well as attracting new shoppers and visitors to the downtown.

Recommendation: Desired Mix of Uses

The Plan states that the five commercial areas in the study area for the 2016 Master Plan house a mixture of 6 primary retail types: Apparel, Department Stores, Restaurants/Specialty foods, Antiques and Art Galleries, Neighborhood Convenience & Services, and Other Retail and Services. The types of retail and the specific nature of services existing in 1996 at the time the Plan was written are not defined.

The 2016 Plan recommends creating a variety of retail options for shoppers through the maintenance and expansion of the existing range of tenants downtown. The mix of uses listed in the 2016 Plan (as existing in 1996) are as follows:

Antiques and Art Galleries	5%
Restaurants/Specialty Foods	10%
Apparel (men's, women's, children's, shoes)	15%

Neighborhood Convenience & Services	15%
Other Retail and Services	17%
Department Stores	38%

However, the 2016 Plan states that space is not unlimited and should not strive to be similar to a retail mall, as there is a point where Birmingham's character could be jeopardized. The 2016 Plan recommends adding 242,500 ft^2 of retail space in the City to connect the commercial areas together and support retail just outside of the Maple-Old Woodward epicenter. The specific recommendation of the 2016 Plan is to include artisan, civic, commercial, cultural, entertainment, or restaurant uses. Commercial uses are defined as those premises used generally in connection with the purchase, sale, barter, display, or exchange of goods, wares, merchandise, or personal services. Personal services are not defined.

The 2016 Plan also states that Birmingham should maintain a balance of office, financial and employment generators in the downtown area. At the edges of the CBD, residential and office uses are encouraged along with retail, restaurant and service anchors to support retail. As many of Birmingham's residents patronize the downtown more often than any other area, the 2016 Plan states that the downtown commercial areas are intended to be convenient for people from the surrounding neighborhoods and employers to patronize.

Finally, the 2016 Plan explicitly states that while the 1996 existing mix of uses should be maintained. The Plan also clearly states that this mix of uses will evolve over the next 20 years, and that if market forces distort the mix of uses, then a future City Commission has the right and obligation to readjust the mix to ensure an active and vibrant Downtown Birmingham.

History of quasi-office uses in the downtown 2007-2017

In an effort to quantify the ambiguity of the definition of retail the Planning staff has compiled a spreadsheet charting the number of first floor quasi-office tenants in the Redline Retail District. As the spreadsheet shows, no less than 46 tenants who would qualify as quasi-office have occupied a first floor retail space, 36 of which are still open. These numbers are based off of available data.

Recent Planning Board activity

In April of 2017, the City Manager directed staff to consider measures to provide temporary relief to halt the addition of non-retail uses into storefronts in Downtown Birmingham located within the Redline Retail District, while the Planning Board continues to study this issue.
Accordingly, on May 8, 2017, the City Commission directed the Planning Board to move forward with ordinance amendments to provide temporary relief to halt the addition of non-retail uses into storefronts in Downtown while the Planning Board continues to study the issue of retail uses Downtown. However, the City Commission appeared to be supportive of allowing beauty

salons and similar uses in the Downtown given the foot traffic that they create, and thus requested a definition of personal services be added.

On May 10, 2017, the Planning Board discussed the direction from the City Commission to consider an ordinance amendment that would temporarily stop some of the uses that fall under the current undefined category of personal services and to stop community uses from being permitted in first-floor retail space Downtown while the board studies the full issue. After extensive discussion, the board directed the matter back to staff to provide ordinance language that would define personal services to include beauty salons, retail bank branches and other similar uses, and to allow personal services as defined within the Redline Retail District, but to exclude office, medical and quasi-office uses, as well as community uses until the Planning Board can complete a comprehensive study regarding retail Downtown.

On May 24, 2017, the Planning Board reviewed draft ordinance language that excluded community uses from the Redline Retail District, added a definition of personal services that includes beauty and clothing services, but excluded office, medical and quasi-office uses, and amended the definition of retail to include personal services as newly defined. All of these changes would prohibit the use of first floor space in the Redline Retail District from being occupied by office or quasi-office uses. After much discussion, board members did not vote to set a public hearing on the proposed ordinance amendments, but requested that staff notify property owners in the Redline Retail District and invite them to attend the next Planning Board meeting to provide their input. The Planning Board also requested additional information from prospective retailers, building owners and the state of retail in the City currently. The board felt they needed more data before they could proceed, and unanimously approved a motion to continue the discussion at the Planning Board meeting on June 14, 2017.

At the June 14 meeting the Planning Board held an additional study session and received input from a large number of commercial property owners on the impact of the proposed ordinance language. At the end of the study session the Planning Board passed a motion to hold a public hearing on July 12, 2017 to consider a recommendation to the City Commission on the draft language.

On June 19th, 2017 the City held a joint workshop session with the Planning Board and City Commission. At that time there it was discussed that the Public Hearing scheduled for July 12, 2017 should be postponed and the Planning Board should have an additional study session to further discuss the proposed definition for personal services.

As stated above, during the joint meeting of the City Commission and the Planning Board it was discussed that the focus of the next Planning Board discussion should be on the definition of personal services. By creating a definition for personal services much of the ambiguity experience by City staff could be eliminated. More clear and concise direction would be readily

available as to what is and is not considered a personal service, and therefore what is permitted in the redline retail district.

On July 12, 2017, the Planning Board opened a public hearing to consider amendments to Article 03 section 3.04 to exclude community uses in the Redline Retail District and Article 09, Definitions to define Personal Services. The public hearing was immediately closed and the Planning Board postponed the public hearing to August 9, 2017 to allow the Planning Board to hold an additional study session on July 12, 2017 specifically with regards to drafting a definition for personal services.

Based on the direction by the City Commission and City Manager to review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown, staff provided a review of the retail intent in the 2016 Plan, including the type of uses and the mix of uses to be included. The 2016 Plan was clear that personal services should be a permitted use in the Redline Retail district, but did not provide a definition for personal services. Board members discussed the definition of personal services that had been drafted for the public hearing. Based on the direction by the City Commission and City Manager to focus solely on the personal services definition at this time, the board discussed the type of services that would be permitted under the draft definition, and discussed providing a further distinction for personal services to exclude business services that are primarily offered to business or corporate clients. Board members did see the value in allowing services in the Redline Retail district that were primarily offered to individuals, such as beauty services, real estate services and clothing repair services. Board members stated their desire to allow uses that enhanced the level of activity on the street by providing services to individual consumers who would then patronize these businesses. The draft definition of personal services was amended accordingly, and is attached for your review.

Further, board members discussed the City Manager's direction to remove any reference to services that were not included in the definition to help clarify the application of the proposed definition by City staff. After much discussion, board members concluded that the exclusions should remain in the draft definition to be recommended to the City Commission. The consensus was that listing these excluded services did clarify the City's intent on the appropriate personal services to be permitted in the Redline Retail district, and thus the Planning Board wished to recommend that these exclusions remain in the definition of personal services to be recommended to the City Commission.

Suggested Action:
To recommend APPROVAL to the City Commission of the proposed amendment to the Zoning Ordinance, Article 9, Section 9.02, Definitions, to create a definition for personal services.

CLARK HILL

Clark Hill PLC
151 S. Old Woodward Avenue
Suite 200
Birmingham, MI 48009
T 248.642.9692
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clarkhill.com

Paul S. Magy
T 248.988.5844
F 248.988.2332
Email: pmagy@clarkhill.com

August 4, 2017

BY HAND DELIVERY

Ms. Jana Ecker, Planning Director
Birmingham City Planning Board
City of Birmingham
151 Martin Street
Birmingham, MI 48009

Re: **Proposed Zoning Ordinance Changes Involving the Definition of Retail in the "Redline Retail District"**

Dear Ms. Ecker:

We represent the Birmingham Roundtable, LLC. The membership consists of building owners, business owners and citizens operating and residing within the "Redline Retail District" who are opposed to the recent efforts to amend the definition of retail use under the City's zoning ordinance. Our client's members like to say that you should not be trying to fix what is not broken.

The Birmingham Roundtable includes individuals who are experienced professionals in developing, leasing and managing commercial properties. It includes retailers in our community as well. Their opinions are based on sound principles, knowledge of the market and trends in the retail and commercial real estate industry and many years of experience. Their companies have the necessary resources, financial and otherwise, to study, verify and confirm that the city's planned action will not lead to your hoped for results. Rather, the opposite is likely to occur.

The membership also includes residents who are legitimately concerned that the planned action will actually erode the City's tax base and require future increases in taxes to make up for the resulting shortfalls. Business owners and our resident members alike believe that your actions will place the City at a competitive disadvantage with other nearby communities and will be more than detrimental to the long term viability of Redline Retail District and the City's economic health.

The proposed amendment, as it presently stands, would significantly restrict the use of first-floor commercial space within the Redline Retail District and prohibit the operation of

existing or future medical, dental and other professional uses. The articulated justification for the proposed amendment is based on planning data that is woefully outdated (*i.e.,* part of the City's 1996 master plan). The proposed changes will have a devastating effect on the City's commercial tax base. Our clients have voiced their opposition at several meetings of the Planning Board.

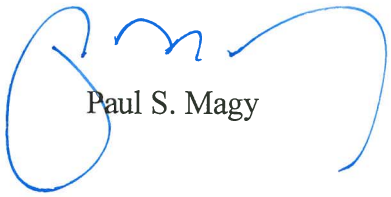
Out of concern that the voice of reason and experience may not ultimately prevail at this level, we have been engaged because legal resources may be necessary. After reviewing this matter, we share our client's concerns. We intend to conduct further investigation and to analyze the legality of the proposed amendment on their behalf. We are prepared to initiate litigation if warranted. As part of our investigation, we will be submitting a Freedom of Information Act request seeking any public records that provide justification for the proposed amendment.

We understand the Planning Board will again consider this matter at a public hearing on August 9, 2017. We request an opportunity at your earliest possible convenience to meet with members of the Planning Board and the City Commission to discuss the proposed amendment, share our clients' concerns in greater detail and to help you avoid the devastating consequences of the planned action.

We respectfully hope it is possible to postpone the adoption of the proposed amendment until sometime after we have had a chance to meet. Certainly no action should be taken unless and until the true economic impact or the proposed action has been empirically studied and examined. We look forward to the opportunity to discuss these matters with each of you.

Sincerely,

CLARK HILL PLC



Paul S. Magy

cc: Mr. Timothy Currier, City Attorney

Beier Howlett
ATTORNEYS AND COUNSELORS

TIMOTHY J. CURRIER
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August 8, 2017

Paul S. Magy, Esquire
Clark Hill PLC
151 S. Old Woodward, Suite #200
Birmingham, MI 48009

Re: Proposed Zoning Ordinance Changes Involving the Definition of Retail In the "Redline Retail District"

Dear Mr. Magy:

Your letter of August 4, 2017 to all of the members of the Birmingham City Commission, the City's Planning Board, and to Ms. Jana Ecker, the City Planner, has been referred to our office for response. Please be advised that we understand the concerns of the residents and business people that you may represent in this matter, and they are certainly free to attend any of the City meetings that are held with respect to this issue including Planning Board meetings and City Commission meetings. In such meetings, they are free to discuss their thoughts and opinions on this issue, which is the right of every citizen.

The City has a process for which it considers the amendment of any of its ordinances. That process is through the official meetings of the Planning Board, in this case, and the City Commission. The City Commission and Planning Board do not meet separately with citizen groups regarding these matters. You are invited to attend any of the official public meetings scheduled by the City at City Hall. This matter is before the Planning Board at the direction of the City Commission and will not be postponed. The Planning Board has been requested to provide a definition for "personal services" as it does not currently exist in the Zoning Ordinance. The purpose of this definition is to clarify the Zoning Ordinance in this regard.

The City has the right pursuant to state statute and local ordinances to enact or amend ordinances as it deems appropriate for the health, safety and welfare of the community at large.

The City will continue to operate in accordance with its policies and procedures as it has in the past.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc
cc: Mr. Joseph A. Valentine, City Manager
Ms. Jana Ecker, City Planner
City Commission
City Planning Board

ESSCO DEVELOPMENT CO.

From: James Esshaki | Essco Development Co. | jesshaki@esscodevelopment.com

Aug. 9, 2017

Dear Planning Board and City Commission Members:

Greetings to the Board.

I will repeat that flexibility is key in how landlords are empowered to back-fill spaces. Specifically, there is a proven inability for some spaces presently occupied by office to be filled with a retail tenant. These spaces are not conducive for any retail tenant.

Example 1: The Google building, because of the building's limited frontage and depth and location on Willits with no substantial foot traffic.
Example 2: The Birmingham Mansion
Example 3: The Bird and the Bread.

These spaces are above-grade level and, again, have steep depth and small frontage. There are several other examples that exist in the Redline District but these are just three of the big ones.

When I try to think of the definition of Personal Services, I don't understand why it should be limited to the retail uses so far suggested by some members of this board. If you can get a shoe repair as a personal service, then why not mortgage, banking, real estate, computer and/or computer-related services, and all medical and dental?

Why don't some people face the fact that retail is both consolidating in the number of brand names and shrinking in overall sales volume for brick-and-mortar stores? Retailers have never been denied due to lack of space in Birmingham...the issues here are simply a microcosm of what's happening in retail everywhere.

Those who are in favor of, in essence, changing the local ordinance, are taking our beautiful downtown Birmingham towards a new identify: Ghost-Town Birmingham.

Sincerely,

James Esshaki

Essco Development Co.

Birmingham property owner

Co-founder, The Birmingham Roundtable

DRAFT Planning Board Minutes
August 9, 2017

PUBLIC HEARINGS

1. An ordinance to amend Chapter 126, Zoning to consider changes to Article 03 section 3.04 to exclude community uses in the Redline Retail District and Article 09, Definitions to define Personal Services

The Chairman opened the public hearing at 8:15 p.m.

Ms. Lazar and Mr. Share recused themselves and Chairman Clein rejoined the board.

Ms. Ecker explained that at the last meeting based on the direction memo from the City Manager, the point was to solely focus on the Personal Services definition. Thus, tonight the board will focus on Article 9, section 9.02 Definitions to add a definition for Personal Services. The proposed definition is as follows:

> Personal Services: An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers, including but not limited to: personal care services, services for the care of apparel and other personal items but not including business to business services, medical, dental and/or mental health services.

There has been a lot of discussion so far and Ms. Ecker briefly went through some of that history. The Planning Board started discussing retail at large in March of this year. In April and again in May there was direction from the City Commission to move forward with ordinance amendments that would provide temporary relief to halt the addition of non-retail uses into storefronts in Downtown while the Planning Board continues to study the issue of retail uses Downtown. The Planning Board talked about this at several subsequent meetings.

On June 19, 2017 the Planning Board and City Commission held a joint workshop session. At that time it was discussed that the public hearing scheduled for July 12, 2017 should be postponed. The Planning Board postponed the public hearing to August 9, 2017 to allow the Planning Board to hold an additional study session on July 12, 2017, specifically with regards to drafting a definition for Personal Services. Based on the direction by the City Commission and City Manager to review the Redline Retail Area, staff provided a review of the retail intent in the 2016 Plan, including the type of uses through the definition of retail and commercial. Within the definition of commercial the 2016 Plan said that personal services should be included and permitted in the Redline Retail District. It did not, however, define personal services. Therefore, the City Commission has directed the Planning Board to zero in on a discussion of personal services and to draft a definition to be added to the Zoning Ordinance.

Thus, tonight the board will talk about a potential definition for personal services and what should be included in the Redline Retail District. In the direction from the City Manager that the Planning Board received, there was a recommendation not to list the businesses that are not included. However, at the last meeting the Planning Board felt they wanted to leave in the list of exclusions for business to business services, medical, dental and/or mental health services. The thought was that this list clarifies which services are allowed and which services are not allowed when reading the ordinance.

Mr. Williams received information that the Red Line Retail District stops just before Oak on the east side of Woodward and goes all the way down to Lincoln. In response to Mr. Williams, Ms. Ecker noted the City does not have a listing of all vacancies, although the BSD does have a list of some vacancies as reported by brokers and property owners. Also, the City has a list of all of the Downtown businesses, but they are not categorized as retail or non-retail under the definitions in the Zoning Ordinance.

It was concluded that in order to categorize a business the City would need a letter from them indicating what their primary business is.

Mr. Boyle noted this is a very wide spread concern among other communities and not something that is specific to Birmingham. This board is attempting to try and find a way to continue to have activity on our City streets. Mr. Jeffares thought Birmingham has been incredibly successful for being able to still have its retail environment.

Chairman Clein brought out the fact that the 2016 Plan was drafted in 1996 and it is 21 years old now. If there is ever a reason a Master Plan should be updated it is this. It will be important to have a full discussion with all stakeholders about the nature of modern businesses in our community.

Mr. Williams stated it is a mistake to downplay the Master Plan in order to have piecemeal items before it on the Planning Board's Action List. On a priority basis the board will never get to it. The Master Plan should be moved up, but this board does not control that agenda. He feels the board is currently dealing with a problem that doesn't exist.

In response to a question from the board, Ms. Ecker explained that any existing use can continue as long as it is consistent and continuous and isn't stopped for more than six months.

Mr. Jeffares thought it is very remiss that the people in this building who could be of help as part of this process are not present. At this point several board members thought the list of businesses not included as Personal Services causes more trouble than it is worth.

Chairman Clein noted the following correspondence that has been received:

- Letter dated July 27, 2017 from Joseph A. Sweeney, Intercontinental, against the definition;
- Letter dated August 4, 2017 from Paul S. Magy, Clark Hill, concerned that the planned action will erode the City's tax base by restricting the use of first floor commercial in the Redline Retail District;
- Letter dated August 8, 2017 replying to Mr. Magy from Timothy J. Currier, Birmingham City Attorney, indicating that public meetings are the place for discourse;
- Letter dated August 9, 2017 from James Esshaki, Essco Development Co., against the proposed definition and citing several buildings that would be difficult if not impossible to fill with retail.

Motion by Mr. Williams
Seconded by Mr. Koseck to receive and file the four letters.

Motion carried, 6-0.

ROLLCALL VOTE
Yeas: Williams, Koseck, Clein, Boyle, Jeffares, Whipple-Boyce
Recused: Lazar, Share
Nays: None
Absent: None

At 8:43 p.m. Chairman Clein opened up public discussion on the definition before the board.

Mr. James Esshaki, Essco Development Co., questioned how medical services cannot be considered as Personal Services. Chairman Clein responded there is strong consideration to just eliminate that from the definition. Further Mr. Esshaki asked what landlords, after spending millions of dollars for their buildings, should do with their spaces when they cannot lease them. No retailer would come in and pay money for a secondary location where there is no traffic. In his mind this is a take.

Mr. Paul Terrace, 1288 Bird, said he is a host of *Tough Talk with Terrace,* which is a public access TV show. It is his intention to tape a show with a developer and a broker and invited anyone who supports this proposal to come on his show also.

Mr. Ted Alsos, Retired Regional Manager of Ford Motor Credit Co, said he resides at 401 S. Old Woodward, unit 806. He is president of the Condominiums of Birmingham Place Master Association and is appearing on behalf of the members of the association. He read a statement to the effect that their association is opposed to the proposed action to limit the uses in the Redline Retail District. They believe that restructuring the uses in Downtown Birmingham will result in increased numbers of vacant storefronts. As vacant storefronts increase, the appeal of Downtown Birmingham decreases and correspondingly decreases values for property owners in Downtown Birmingham, if not the entire City. They are concerned that reduction of the tax

base will fall on the residents. Lastly, the Association firmly believes that landlords need flexibility to cope with the changing market conditions for tenancy in Downtown Birmingham.

Mr. Michael Surnow, 320 Martin, co-founder of the Surnow Co. said that boards rely on experts and hire them all the time. The experts are right here - the landlord community -and they are all vehemently opposed to this action.

Mr. Richard Huddleston asked if there is a precise definition of the Redline Retail District in words in the Zoning Ordinance. Ms. Ecker answered that the ordinance refers to a map of the District, which can be found on the City's website.

Mr. Derick Hakow, 211 E. Merrill, Apt.504, noted that he appreciates the vibrancy of the Downtown Community. He loves the live, work, play mentality that the City has created and would not want to see that jeopardized by change.

Mr. Richard Sherer said he owns multiple properties in Birmingham. He read a couple of sentences from two magazines. Amazon has online sales six times higher than those of Walmart, Target, Best Buy, Nordstrom, Home Depot, Macy's, Kohl's and Cosco combined. The New York Times states that the retail sector looks quite vulnerable economically with the transition to e-commerce. However, health care has much better numbers. This is the direction things are going.

Ms. Jeanette Smith is VP of Core Partners who has a lot of clients and listings in Birmingham. She has been to all of these meetings and thinks there are a couple of points that are recurring:

- Incomplete data - Other communities should be investigated for either successes or failures when they have enacted a change like this. It just feels premature to make a change at this time;
- She believes it is within the Planning Board's purview to decline to vote this and send it forward as well as to urge the City Commission to work on the Master Plan.

Mr. Paul Magi from Clark Hill, 151 S. Old Woodward Ave., Suite 200, and also a Birmingham resident at 708 Shirley, said he represents many of the people in the room this evening. They not only care about their buildings, but they really deeply care about the City. It seems that it would be appropriate for the board to say they are very interested in doing the right thing. However, before they do that they will make sure they have a full and complete understanding that there is in fact a problem to solve; that they have a study of this District that identifies all of the existing uses and the vacancies; an understanding of how long those vacancies may have occurred; what efforts have been made to re-tenant those spaces, and what the prospects are. Their recommendation should be to first determine if it is broken before it is fixed. If the board has to do something it seems what they could do is request that the important studies be done, including what the long-term impact might be on the City's tax base. This is an absolutely wonderful place and it is likely to continue that way without any kind of change.

Ms. Cheryl Daskas, a resident, property owner and successful retailer spoke. She said the reason people want to come to Birmingham is because of the vibrancy of the Downtown. If it all became offices people would not want to be here. That would affect the property values of the people who do live here. Every other business would shut down at 5 p.m. and at night Downtown will be dark and dreary. It is a shame the building owners don't want to work with someone who is experienced with bringing retailers into town. They would rather lease to office.

Mr. Dan Jacob, 361 E. Maple Rd., said he works with many national retailers every day. He doesn't think the landlords should be restricted. It is not like people are knocking on their doors. He understands the synergy of retail and that some of the retailers want that co-tenancy, but trends are changing and landlords are desperate. Malls pay their tenants for co-tenancies but for individual landlords it is hard to get that synergy.

Mr. Williams noted the BSD expert has not come to these meetings. He thought it would be difficult to take a percentage of how many sales a business has to individuals versus to contractors. What evidence will be required and how will it be policed.

Mr. Koseck wondered how medical/dental crept in as an exclusion and why some are suggesting that it be included. For simplicity purposes he is willing to move this forward and let the Commission do as they please, but he really would like to study it in greater detail.

Mr. Jeffares said that personally he does not like to walk by a storefront and see people hunched over in a cube and working on a PC. It would be horrible to have that everywhere. However, this process doesn't feel right to him for something that has this kind of magnitude - the first floor on the biggest chunk of Downtown. He doesn't feel that he has all of the necessary information to move this forward. He still thinks it is something for a Master Plan and he would prioritize that as number one on the Action List.

Ms. Whipple-Boyce indicated she doesn't like the definition for a couple of different reasons. She doesn't believe that medical/dental and mental health services are an appropriate use for our first-floor retail. Also she does not see how it is possible to not allow a business to business service and be able to understand and keep track of that. She is in favor of a true retail situation in the Redline District and she thinks a lot of the Personal Services that are included in the definition are inappropriate. She hopes to have an opportunity to study the retail situation further through a Master Plan approach.

Mr. Williams indicated he does not like the definition for a variety of reasons. He thinks the board can vote no and send it up to the City Commission and that is what he intends to do.

Mr. Boyle proposed that the board vote tonight on a request to the City Commission that its conclusion is to delay any decision on retail zoning until the City completes its deliberations through a comprehensive Master Plan process.

Chairman Clein took that a step further and made the following motion:

Motion by Chairman Clein
Seconded by Mr. Williams that the Planning Board of the City of Birmingham acknowledges the importance of a vibrant, active Downtown with strong first-floor retail uses. However, tonight he moves that the Planning Board recommend that the City Commission does not adopt the definition of Personal Services as presented in the proposed amendment to Zoning Ordinance Article 9, section 9.02, Definitions, and further recommend that the City of Birmingham expedite an immediate update to our comprehensive City wide Master Plan in order to properly address this issue and those that surround it.

Mr. Koseck summarized that this motion suggests the Master Plan be taken off the back burner and brought to the front so that the Planning Board can bring in people with much more of a global expertise and unbiased opinions. The Chairman explained that his point is to address not only the definition but to address the limits of the Redline Retail as well as residential neighborhoods, the Triangle and Rail Districts, along with the parking implications.

Mr. Williams explained one of the reasons he felt the impetus to move towards a Master Plan was the experience with O-1, O-2, TZ-1, TZ-2, TZ-3 where they tried to grapple with transition areas affecting residents and commercial property owners in transition areas. What the board learned was that they didn't have a Master Plan and it took them seven years from the time they started talking about it until they reached a final conclusion on all of the pieces. They took their time, did it right, and didn't move on an interim solution. What they learned was that piecemeal solutions are a bad idea. That is why he thinks this City needs a Master Plan. He would like to hear from all property owners and would also like the residents to speak up.

No one from the public had comments on the motion at 9:24 p.m.

Motion carried, 6-0.

ROLLCALL VOTE
Yeas: Clein, Williams, Boyle, Jeffares, Koseck Whipple-Boyce
Recused: Lazar, Share
Nays: None
Absent: None

The Chairman closed the public hearing at 9:30 p.m.and board members took a short recess.

City of Birmingham
A Walkable Community

MEMORANDUM

Police Department

DATE: **August 3, 2017**

TO: **Joseph A. Valentine, City Manager**

FROM: **Mark H. Clemence, Chief of Police**

SUBJECT: **1 year parking review (Glenhurst, Frank, Haynes and Hazel)**

In July and September of 2016, the City Commission approved parking restrictions on Glenhurst, Frank, Haynes and Hazel. The commission, as part of the resolution, asked for a one year review of the parking restrictions put in place. This report reviews the listed streets however, the City is in the process of creating a new, city wide, master plan that will further address parking.

The Birmingham Police Department has developed the following criteria to be used when evaluating the effectiveness and need for parking restrictions.

1. Review the number and type of complaints received in a specified area one year before and after implementation of new restrictions.
2. Have the circumstances surrounding the demand for parking changed that directly affect the area in question.
3. Resident follow up to determine if the change has resulted in the desired outcome and have there been any negative side effects.

Glenhurst Dr.

At the July 11, 2016 meeting, the commission approved the implementation of new parking restrictions on Glenhurst from Lincoln to Midvale. The restriction is permit parking only from 7am to 4pm school days. Prior to the installation of these signs, there were no parking restrictions in this area.

The request for this change on Glenhurst was submitted by resident Richard Winderstedt. Mr. Winderstedt stated the area was full of parked vehicles from Seaholm students making the street congested. He cited several issues caused by the parked vehicles in the petition and obtained the required signatures.

In review of parking complaints on Glenhurst, there were 10 complaints the school year before the signs were installed. The complaints ranged from vehicles blocking driveways to parking in a manner making the road impassable. Last school year, since the signs were installed, there were four complaints. All four complaints were regarding vehicles parked in a permitted area.

Staff recently spoke with Mr. Winderstedt regarding the status of parking on Glenhurst. He stated the signs have been completely effective and have made a world of difference for

residents. He was unable to think of any negative impact the signs have had and stated they have solved the problem.

Seaholm has had no changes in their parking situation and/or lot size that would affect the demand for parking in and around Seaholm High School.

Frank St.

Also at the July 11th meeting, the commission approved a change in the current parking restrictions on Frank St. between Bates and Chester. Previously the restriction was two hour parking from 8am to 6pm. The problem, identified by Henry Velleman, was that employees of the downtown were parking in the area after 4pm blocking any parking for residents. He stated vehicles parking in this area appeared to be afternoon shift workers of businesses in the downtown area. Mr. Velleman created a petition and obtained the required signatures.

The commission changed the parking restriction to increase the prohibited time until 10pm to restrict those employees using the area.

A review of the parking complaints in this area showed no complaints prior to the signs being installed and two in the last year, both regarding vehicles parked for more than two hours.

Staff recently spoke with Judy Velleman regarding the status of the change. Mrs. Velleman stated it has been much better since the signs were installed. She stated the area is no longer cluttered with vehicles from employees and now is open for residents and their guests to use. Mrs. Velleman did state that she wished Frank St. was permit parking and expressed concerns regarding guests that visit for longer than two hours and the availability of parking their personal vehicles alongside their house during the daytime hours for more than 2 hours.

Haynes St.

At the September 12, 2016 meeting, the commission approved residential permit parking on Haynes St. from S. Eton to Columbia. Previously, there were no parking restrictions in this area. The complaint presented by Jay Yaldoo was that employees and patrons of the Rail District were using the street for parking. He stated this created several issues for residents including problems accessing their driveways and available parking for guests. Mr. Yaldoo created a petition and obtained the required signatures.

Reviewing the parking complaints on Haynes showed we had one complaint prior to the signs being installed when there were no parking restrictions. After the signs were posted, the police department received five complaints, all for vehicles parked without a permit.

Staff recently spoke with Mr. Yaldoo regarding the current parking situation. Mr. Yaldoo stated it was going great and was very grateful the City took action and installed the signs. He stated family and friends visiting now have a place to park when in the past they did not. Mr. Yaldoo stated the neighbors he has talked with are all happy about the change.

There has been no change in the available parking and/or demand for parking in the Rail District.

Hazel St.

Also at the September 12th meeting, the commission approved residential permit parking on Hazel St. from S. Eton to Columbia. Previously the area was "No Parking" from 7am to 4pm. Romain Fontanges stated after 4pm the area was packed with vehicles from employees and patrons of the Rail District. He cited the same concerns as Haynes St. and created a petition obtaining the required signatures.

There were no parking complaints located for Hazel St. the year before the signs were installed. Over the last year, after installation, there have been 24 complaints. Most of the complaints were for vehicles parked without a permit.

Staff spoke with Mr. Fontanges who stated the situation on the street has drastically changed with the implementation of the new signs. He stated everyone on the street he has talked to is extremely happy with the change.

Again, there has been no change in the available parking and/or the demand for parking in the Rail District.

Other Information:

After the installation of signs on Haynes and Hazel St., staff had numerous conversations with Mr. Yaldoo and Mr. Fontanges regarding the signs. Location, visibility and number of signs were all discussed to help increase compliance with the restrictions. In June of 2017, additional signs were added mid-block on both streets. Since the installation of these mid-block signs the police department has received only one parking complaint. Both Mr. Yaldoo and Mr. Fontanges stated these mid-block signs were extremely helpful as that area of the block was where the most violations were occurring.

Current development in the Rail District (District Lofts and Iron Gate) as well as any future development will bring additional traffic to the area.

Suggested Resolution:

To approve the continuation of the parking restrictions currently in place on Glenhurst, Frank, Haynes and Hazel St.

City of Birmingham
A Walkable Community

MEMORANDUM

Planning Division

DATE: **September 6, 2017**

TO: **Joseph A. Valentine, City Manager**

FROM: **Jana L. Ecker, Planning Director**

SUBJECT: **North Old Woodward / Bates Street Parking and Site Development - Request for Proposals**

On March 16, 2017 the City issued a Request for Qualifications ("RFQ") seeking qualified developers interested in the N. Old Woodward Parking / Bates Street Extension project.

The City received submittals from four development teams. All were reviewed by City staff and all four met the qualifications contained in the RFQ. Accordingly, the City Attorney reviewed the financial documentation to determine if all are also financially qualified.

On July 26, 2017, the Ad Hoc Parking Development Committee passed a motion finding that all four of the development teams that submitted their qualifications were in fact qualified to proceed to the next phase. The Committee directed staff to prepare a draft Request for Proposals ("RFP") for their review at a future meeting.

On September 6, 2017, the Ad Hoc Parking Development Committee reviewed the draft RFP. The Ad Hoc Committee requested some changes to clarify the City's intentions, draw attention to the public plaza requirements, reference the Alleys & Passages Plan and highlight the desire for a public parking structure that can be repurposed for other uses. The Ad Hoc Parking Development Committee voted unanimously to recommend approval of the RFP to the City Commission.

Please find attached a revised draft RFP document with the revisions requested by the Ad Hoc Parking Development Committee. The City Commission may wish to direct staff to issue the RFP at this time.

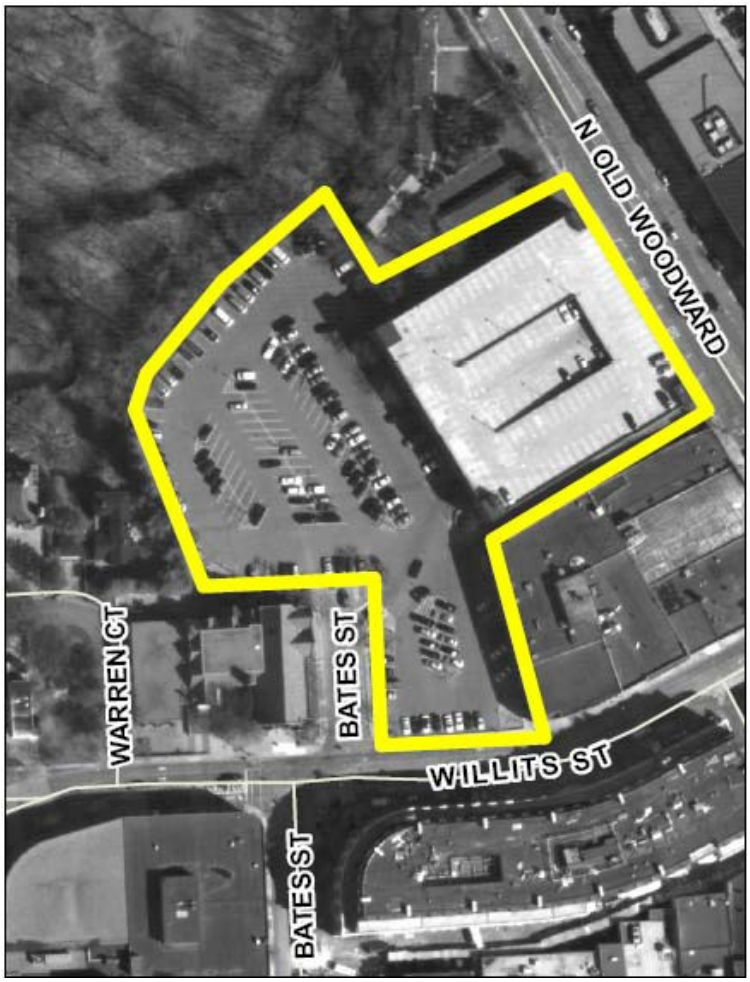
SUGGESTED RESOLUTION:

To direct staff to issue the Request for Proposals for the solicitation of qualified development teams to plan and construct the North Old Woodward / Bates Street Parking and Site Development with the changes noted.

City of Birmingham
A Walkable Community

REQUEST FOR PROPOSALS

North Old Woodward / Bates Street Parking and Site Development



Issued by:
City of Birmingham,
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012
(248) 530-1850
www.bhamgov.org

NORTH OLD WOODWARD / BATES STREET
PARKING AND SITE DEVELOPMENT

REQUEST FOR PROPOSALS

CONTENTS

INTRODUCTION

The City of Birmingham, Michigan (the "City") is seeking a developer or a development team (the "Developer") to undertake the collective redevelopment of a parcel of public property of approximately 4 acres located in the City's Central Business District. Figure 1 shows the location of the subject property being offered for redevelopment. This property currently contains a public parking structure and surface parking lot.

The City is utilizing a two phase process to select a Developer to redevelop the subject site. First, the City conducted a public selection process for qualified Developers to redevelop the N. Old Woodward/Bates Street site, with oversight and review to be provided by the Ad Hoc Parking Development Committee and the City Commission. A Request for Qualifications (RFQ) was issued earlier this year, and respondents were invited to submit their qualifications and experience to compete for pre-qualification to submit a proposal in the second phase of this process. In evaluating Developers' qualifications, the City considered past development success, experience in working or partnering with communities, financial capacity and the design quality of previous development projects.

Through the RFQ process, the City has established a "short list" of four Developers that have been extended an invitation to submit a development proposal under this Request for Proposals (RFP). The details of the City's interests are outlined within this RFP. At this time, the City is soliciting detailed proposals outlining the proposed development plan and proposed terms of an agreement between the development team and the City to construct additional public parking and redevelopment of the N. Old Woodward and Bates Street area.

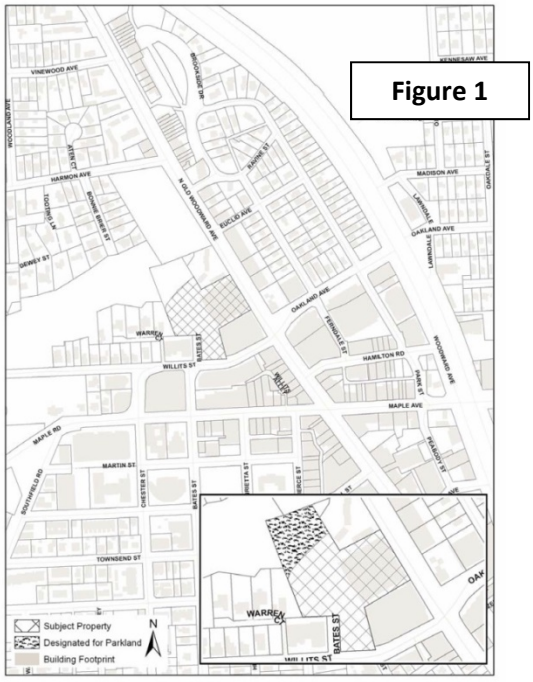


Figure 1

The City's objective is to solicit creative and innovative development plans from qualified Developers that will extend Bates Street from Willits to North Old Woodward and redevelop the remainder of the site by constructing a parking facility that provides a minimum of 380 parking spaces in addition to replacing the 770 parking spaces currently on the N. Old Woodward / Bates Street site, introducing residential, commercial and/or mixed uses to create an activated, pedestrian-oriented urban streetscape and provide public access to the Rouge River and Booth Park to the north. (Note that if additional commercial space is provided by this project, parking spaces in addition to the 380 noted above shall be provided at the rate of 1 space for every 564 sq.ft. of new gross commercial space. Residential parking spaces are assumed to be provided and reserved outside of these numbers, at the rate of 1.5 spaces per unit.) The City owns the entire parcel and its parking structure as illustrated in Figure 1. Parcel dimensions are illustrated in Attachment B. The northern end of this parcel is planned for designation as park property along the Rouge River.

It should be noted that the parcel marked Brookside Townhomes of Birmingham on Attachment B to the northeast of the City's property is currently under construction. A new five story mixed use building with retail and residential on the first level, residential on floors two through five, and two levels of underground parking is being constructed.

A sample plan of what the City envisions can be done with this property, while accomplishing the parking goals listed, is provided in Attachment E. It is important to note that the sample plan shown in Attachment E is conceptual only. For specific details on required plan elements please refer to this RFP and the development objectives outlined herein. Important desirable amenities of the plan as provided by the City include:

- New parking structure(s) with a minimum of 1150 parking spaces.
- New mixed use building adjacent to parking structure facing N. Old Woodward Ave.
- Service drive access to the adjacent buildings both north and south of the parking structure.
- New mixed use building facing Willits St.
- Public park property and connection between a new City street and the existing Rouge River to the north.
- Residential building on the north end of the site taking advantage of the existing views present in this area.

The existing zoning of this parcel is Public Property. An illustration of the existing zoning for this parcel and the immediate area is contained in Attachment C. This parcel is included in the City's Overlay Zoning District as illustrated in Attachment D, which provides for certain development opportunities. Modifications to the zoning of this parcel may occur to conform to the selected development plan, if the creativity of development plan does not meet existing parameters of the Overlay Zoning District. Additional information concerning the zoning regulations can be obtained from the City's Planning Division.

The selected Developer will work with the Ad-Hoc Parking Development Committee to present and review their plan at public meetings to receive community input on their development plan. This process may include presenting the plan to one or more of the following boards and commissions:

a. The Ad-Hoc Parking Development Committee;
b. The Birmingham Planning Board;
c. The Historic District Commission;
d. The Parks and Recreation Board;
e. The Advisory Parking Committee;
f. The Multi-Modal Transportation Board; and
g. The City Commission.

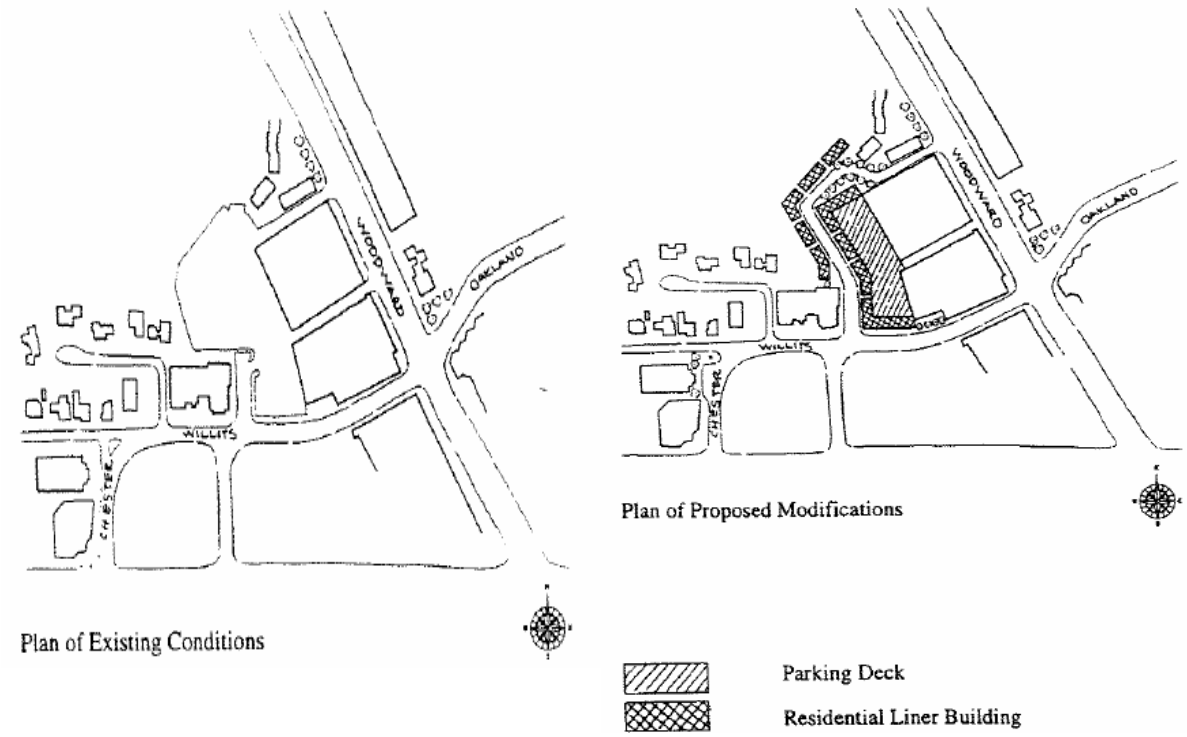
The final approval of the development plans will be concluded by the Birmingham City Commission following the community review process.

Based on the development plan selected, the City may lease or sell a portion or all of the property for development provided the development guidelines are met. The sale of public property would require the City to engage in placing the sale of property on the ballot for a vote in accordance with its City Charter. Once a development plan is accepted by the City, the process for the sale of property to the Developer may take from 4 to 12 months.

DEVELOPMENT OBJECTIVES AND GUIDELINES

The City's master planning document for the downtown, known as the *Downtown Birmingham 2016 Report* (DB2016 Report), identifies the N. Old Woodward / Bates Street site as a proposed location for redevelopment and provides conceptual illustrations of proposed modifications. The concept from the DB2016 Report referencing this area is provided herein for reference as Figure 2. Additional conceptual illustrations based on the DB2016 Report and incorporating various elements are provided as Attachment E.

Figure 2.



The City also adopted a master planning document for alleys and passages entitled *Activating Urban Space: A Strategy for Alleys & Passages* (Alleys & Passages Plan) in 2012. Developers will be expected to present creative concepts for the site that incorporate the objectives and guidelines listed above and outlined in the DB2016 Report and the Alleys & Passages Plan. The objectives and guidelines presented in this RFP will be used in evaluating the submitted proposals.

Development Objectives

The City's overall objectives for redevelopment of the N. Old Woodward / N. Old Woodward / Bates Street site are as follows:

- **To extend Bates Street from Willits and provide access to a location on North Old Woodward as envisioned in the Downtown Birmingham 2016 Plan.**
- **To accommodate current and future public parking needs with consideration for transient, employee permit parking, shoppers and faith-based community uses.**
- **To provide a form of residential, commercial and/or mixed use development along the extension to Bates Street to create an activated urban streetscape.**

A number of primary objectives for the redevelopment of Bates Street as a whole are outlined below:

- **To contribute to the improvement of the downtown as an active, pedestrian- oriented retail, residential and community environment.**
- **Ensure an adequate supply of parking in a conveniently located and attractively designed parking deck that limits negative externalities on surrounding buildings.**
- **To coordinate parking utilization in conjunction with public parking standards modified to accommodate mixed residential and business uses.**
- **To provide accessible parking on-street where possible consistent with existing Downtown Streets.**
- **To incorporate existing streetscape standards into proposed streetscape design and create an attractive streetscape that unifies, enhances and connects the N. Old Woodward / Bates Street site with the rest of the Downtown.**
- **Enhance the N. Old Woodward / Bates Street site as a safe, convenient and hospitable pedestrian environment, while linking Willits to North Old Woodward.**
- **To ensure that new construction is compatible with the existing building fabric and is sensitive to the existing light and air provided to adjacent structures.**
- **The improvement of public gathering space for people, as well as a pedestrian connection to the Rouge River and Booth Park to the north.**
- **Provide an attractive pedestrian via located in between the proposed 5-story building (building 2) and the existing 4-story building at 325 N. Old Woodward.**

- **Provide a minimum 20 foot wide alley between the new parking structure and Building 2 to allow space for loading and services to both Building 2 and 325 N. Old Woodward Ave.**
- **Minimize conflicts between vehicles, pedestrians and cyclists.**
- **To ensure that the needs of the existing Church are met through the provision of nearby accessible parking, and a loading/unloading zone for the frequent drop off and pick up of young children.**
- **Assurance of full uninterrupted access to surrounding buildings during construction and/or demolition.**
- **Ability for creative adaptive re-use of the parking structure in the future, as well as options for multiple uses of the parking structure in the present.**

These objectives should be a fundamental part of any development proposal for the N. Old Woodward / Bates Street site. The guidelines discussed below for the physical framework, mix and location of land uses, and design of buildings and public spaces are drawn directly from the *Downtown Birmingham 2016 Report* and/or have been developed with these objectives in mind.

Development Guidelines

1. **Pedestrian Circulation.** Redevelopment of the N. Old Woodward / Bates Street site should include a pedestrian circulation system that links public parking, public open space and new developments to surrounding uses and activities. All pedestrian access routes must be compliant with Americans with Disabilities Act (ADA) requirements. Pedestrian connection to the existing Rouge River trail and Booth Park located on the north side of the river is encouraged.

2. **Vehicular Connection.** Bates Street will be preserved as a public street to promote efficient access and circulation by vehicles, pedestrians, cyclists and transit riders. Bates Street will connect Willits to North Old Woodward. Accessible parking on street and pedestrian drop off areas must be provided.

3. **Parking.** The existing parking structure should be removed and replaced to accommodate additional parking. It is expected the City will own and operate any parking structure and own the land underneath the structure. Parking lots or garages serving residential developments would be privately owned. During construction phasing, the Developer shall coordinate development with respect to the existing parking operation. Parking elements should be the first phase of construction. Further, developers are encouraged to share ideas on how the City may offer solutions to handle the lack of parking while the parking structure is under construction.

4. **Topography and Redevelopment.** Building designs that take advantage

of the natural topography in the area should be utilized. Site designs that provide public access to or overlooks of the Rouge River and Booth Park to the north are required.

5. **Storm Water Management –** Special consideration for development on the Rouge River must be in accordance with best management practices permitted by the Environmental Protection Agency (EPA) and the Michigan Department of Environmental Quality (MDEQ).

6. **Infrastructure.** This project will require extending sewer and water utilities to any new developments. New water mains must be looped into the existing system. The addition of sewer or water services for this site must conform to the City's standards. Information on these standards can be obtained from the City's Engineering Division.

7. **Utilities.** All utilities within and leading to the site shall be underground. The adequacy of gas, electric, telephone and cable service availability to the site will need to be determined by those making a proposal by contacting the respective utility companies. Note that the existing electrical source planned for 369 N. Old Woodward Ave. is overhead from the north of the Rouge River, through this site. The redevelopment will need to bring power for the new buildings as well as 369 N. Old Woodward Ave. from the south in order to remove all overhead wiring in this area.

8. **Financial.** No City subsidies will be made available. Land will be sold or leased at market rates and all private property or private use of public property will be subject to property taxes.

9. **Required Easements.** All necessary easements must be provided in accordance with the Consolidating Easement and Restriction Agreement dated November 28, 2005 between the City and B/K/G Birmingham LLC, benefiting 325 N. Old Woodward (located at corner of Willits and Old Woodward). A copy of this easement is included as Attachment F.

10. **Booth Park Trail.** Booth Park is located to the immediate north of the N. Old Woodward / Bates Street site. A proposed bridge connection to Booth Park from the site is planned as part of a trail master plan. The bridge will provide access between the downtown and Booth Park. This proposed bridge will be a vital link in the overall trail system. A conceptual illustration is provided as Attachment G.

11. **Phasing.** The developer is required to provide a clear, concise phasing plan to clarify how and when various parts of the development package would be built. Consideration shall be given to keep the amount of time that the parking structure is out of service to the public to a minimum, and that sufficient remaining land be made available to not only stage the

construction of the parking structure, but to accommodate a staging area if needed for daily shuttling of hundreds of parkers to this area to an off-site parking area, if necessary. Further, developers are encouraged to share ideas on how the City may offer solutions to handle the lack of parking while the parking structure is under construction.

Design Issues

1. **Building Height Considerations.** The portion of the site not used for public parking is zoned D-3 under the Downtown Birmingham Overlay Zoning, which allows a maximum of 4 stories, provided the 4th story is used for residential units and is set back 10' from the front building façade. Maximum overall height is 68'. Specific regulations also apply. These regulations are outlined in the City's Zoning Ordinance. However, it should be noted that City owned property may exceed the maximum height limits for private property.

2. **Residential Building Relationships.** Any proposed residential uses should be integrated into an overall mixed use development.

3. **Design of Buildings.** Specific design and architectural requirements are in place in the Downtown Birmingham Overlay Zoning District as outlined in the City's Zoning Ordinance.

4. **Design of Street.** The extension of Bates Street must conform to the City's street standards. A consistent minimum of 50 ft. width is required for the new public right-of-way, unless the existing parking structure is maintained.

5. **Streetscape and Landscaping.**

   - Streetscape designs must incorporate the City's Downtown Streetscape Design Standards.
   - Landscaping designs should include innovative and aesthetically appealing plants and landscape features that enhance the pedestrian experience while enhancing the natural area along the Rouge River.

6. **Public Safety.** Fire and emergency access must be accommodated for all buildings in the development area. Hydrants must be placed where required by the City's Fire Department.

7. **Parking.** Most residential parking should be emphasized underground or within buildings, which would allow land areas to be used for buildings and open spaces. The change in elevation in the area should be used to facilitate underground parking.

REQUEST FOR PROPOSAL PROCESS

Four Developers have been short-listed and pre-qualified in the RFQ phase of the process. Only these four Developers are being offered the opportunity to submit a development proposal in Phase 2 under this RFP.

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from Developers, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting qualifications may be requested to make public presentations as part of the evaluation process.

The City will select a single developer or development team for the redevelopment of the parcel offered in this RFP. The City may offer to sell or lease the property it currently owns within the Bates Street Site, exclusive of land to be used for public parking and public roads, for private use to the selected developer or development team.

Anticipated Timetable of Selection Process

Submittal & Review Process	Target Date
Release of Request for Proposals	Sept. 12, 2017
Proposal Due Date	Jan. 3, 2018
Extend invitation for Interviews	Jan. 30, 2018
Interviews Conducted	Feb. 2018
Recommendation of Developers to City Commission	March 2018
Conduct community and plan review process	April – Dec 2018
City Commission approval of final development plan	January 2019

Developer rights and responsibilities

The following outlines the rights and responsibilities of the developer and the City of Birmingham in the redevelopment of the North Old Woodward / Bates Street Parking and Site Development:

- Exclusive development rights and right to purchase or lease land for private uses (excludes purchase of any City owned land that will be used for public purposes, such as public parking.)
- To serve as developer or development team of the property for a mix of uses; all sub-developers must be identified if other firms will carry out portions of the project.
- Prepare all site plans and elevation drawings for approval by the City in accordance with the specifications and requirements of the City of Birmingham.
- Plan for and construct public parking as indicated in the development

program.

- Work with the City during construction to accommodate temporary parking and minimize disruption to residents, tenants and the faith community in the surrounding area.
- Develop public infrastructure and utilities necessary for the site.
- Attend public meetings as necessary in order to present plans for review. It is expected that plans will need to be presented at up to ten (10) boards and committee meetings for review.

City's Role

- Assist with necessary development review process and approvals.
- Cooperate with any land acquisition pursued by the developer in accordance with this RFP.
- Assist with construction phasing and coordination with respect to temporary parking operation during construction.
- Provide existing information relating to the site such as 1) title search, 2) site survey, 3) baseline environmental analysis, and 4) utility availability analysis.

SUBMISSION REQUIREMENTS AND GUIDELINES

The following outlines the submission requirements and guidelines for the North Old Woodward / Bates Street Parking and Site Development project. All respondents must provide the following documents to be considered:

A. Cover sheet as provided in RFP (Attachment A);
B. Transmittal letter;
C. Detailed site plan for the entire site, illustrating proposed buildings, open spaces, noting proposed uses and connections and relationships with all adjacent properties;
D. Written response indicating how the proposal meets each of the City's development objectives and development guidelines;
E. Written outline of terms the development team proposes to structure a deal with the City, including the following:
    - Recommendations for terms of development plan for the purchase and/or lease of City land;
    - Terms of ownership, operation and/or maintenance of the public parking structure;
    - Terms of ownership, operation and/or maintenance of any proposed private assets integrated into the public parking structure building (retail liners, etc.);
    - Construction proposal for public infrastructure, such as roads, sidewalks, plazas etc.;
    - Financing methods;
    - Proposed contractual terms; and

- Anticipated role/obligations of the City.

F. Estimated overall total budget for the project, with sub-totals for land costs and construction costs; and

G. Proposed timeline with details on each phase from selection of development team to completion of entire project.

Submission Procedure

Ten (10) hard copies and one (1) PDF copy of each proposal shall be submitted no later than 4:00 p.m., on January 3, 2018 to:

City of Birmingham
Attn: City Clerk
151 Martin Street
Birmingham, Michigan 48009

Submittals should be firmly sealed in an envelope, which shall be clearly marked on the outside, **"Request for Proposals – N. Old Woodward / Bates Street Parking and Site Development"**. Any proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the proposer. Proposer may submit more than one submittal provided each proposal meets the functional requirements.

Each respondent shall include in their submittal the following information: Firm name, address, city, state, zip code, telephone number, fax number and website address. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of their proposal.

The City of Birmingham reserves the right, at its sole discretion, to reject any or all submittals when, in its opinion, it is determined to be in the public interest to do so; to waive minor irregularities and informalities of a submittal; or to cancel, revise, or extend this solicitation. The Request for Proposals does not obligate the City of Birmingham to pay any costs incurred by any respondent in the submission of a proposal or in making necessary studies or designs for the preparation of that proposal, or for procuring or contracting for the services to be furnished under this Request for Proposals.

Selection Criteria

Evaluation of proposals will be based upon:

- Detailed description of conceptual development plan and how the proposal meets the City's objectives;
- Design quality of the proposed development project, including both private buildings and public space;

- Offer price and terms and conditions for the sale or lease of City property, with a description of the necessity to purchase or lease;
- Proposed public engagement process; and
- Past performance of firms as verified by references of previous clients/projects in urban areas.

TERMS AND CONDITIONS

1. The City reserves the right to reject any or all proposals received at any time during this process, waive informalities, or accept any qualifications in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Developer if the successful Developer does not execute a development agreement within thirty (30) days after the award of the proposal under the RFP.

2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Developers.

3. The City reserves the right to terminate any contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Developer sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Developer for services rendered to the time of notice, subject to the contract maximum amount.

4. The successful bidder will be required to furnish a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned upon the faithful performance of the contract, and completion on or before the date specified.

5. Any proposal may be withdrawn up until the date and time set above for the opening of the qualifications. Any proposal not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in accordance with the specifications outlined in this RFP.

6. The cost of preparing and submitting a proposal is the responsibility of the Developer and shall not be chargeable in any manner to the City.

7. The Developer will not exceed the timelines established for the completion of this project.

8. The successful Developer shall enter into and execute a development agreement with the City.

ATTACHMENT A

COVER SHEET

In submitting this proposal, as herein described, the Consultant agrees that:

1. They have carefully examined the specifications and terms of the Request for Proposal and all other provisions of this form and understand the meaning, intent, and requirement of it.

2. They will enter into written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

BID PREPARED BY **DATE SUBMITTED**
(Print Name)

AUTHORIZED SIGNATURE **DATE**

TITLE

COMPANY

ADDRESS **PHONE**

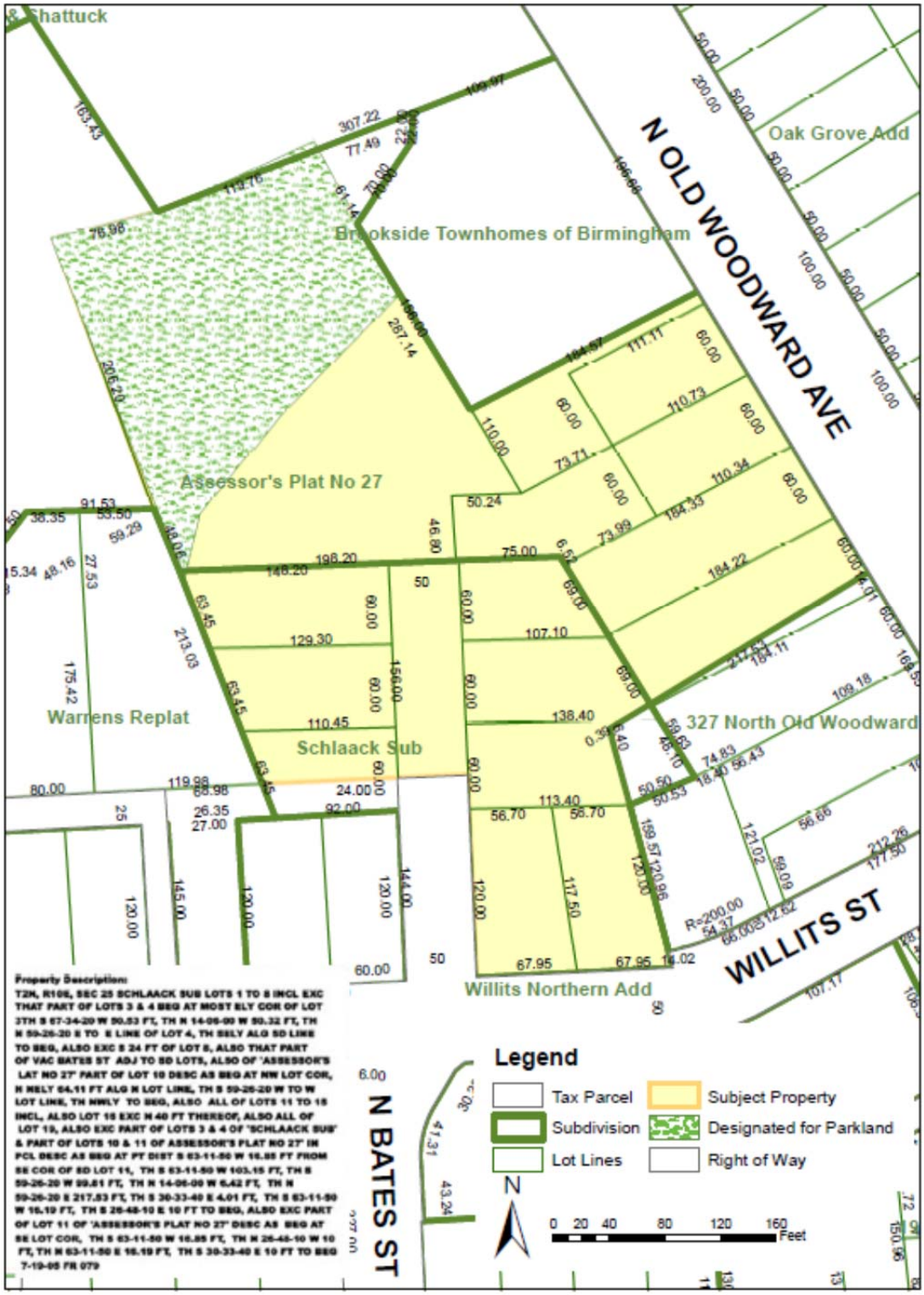
NAME OF PARENT COMPANY

ADDRESS **PHONE**

ATTACHMENT B

N. OLD WOODWARD / BATES PARKING SITE

PARCEL DIMENSIONS



ATTACHMENT C

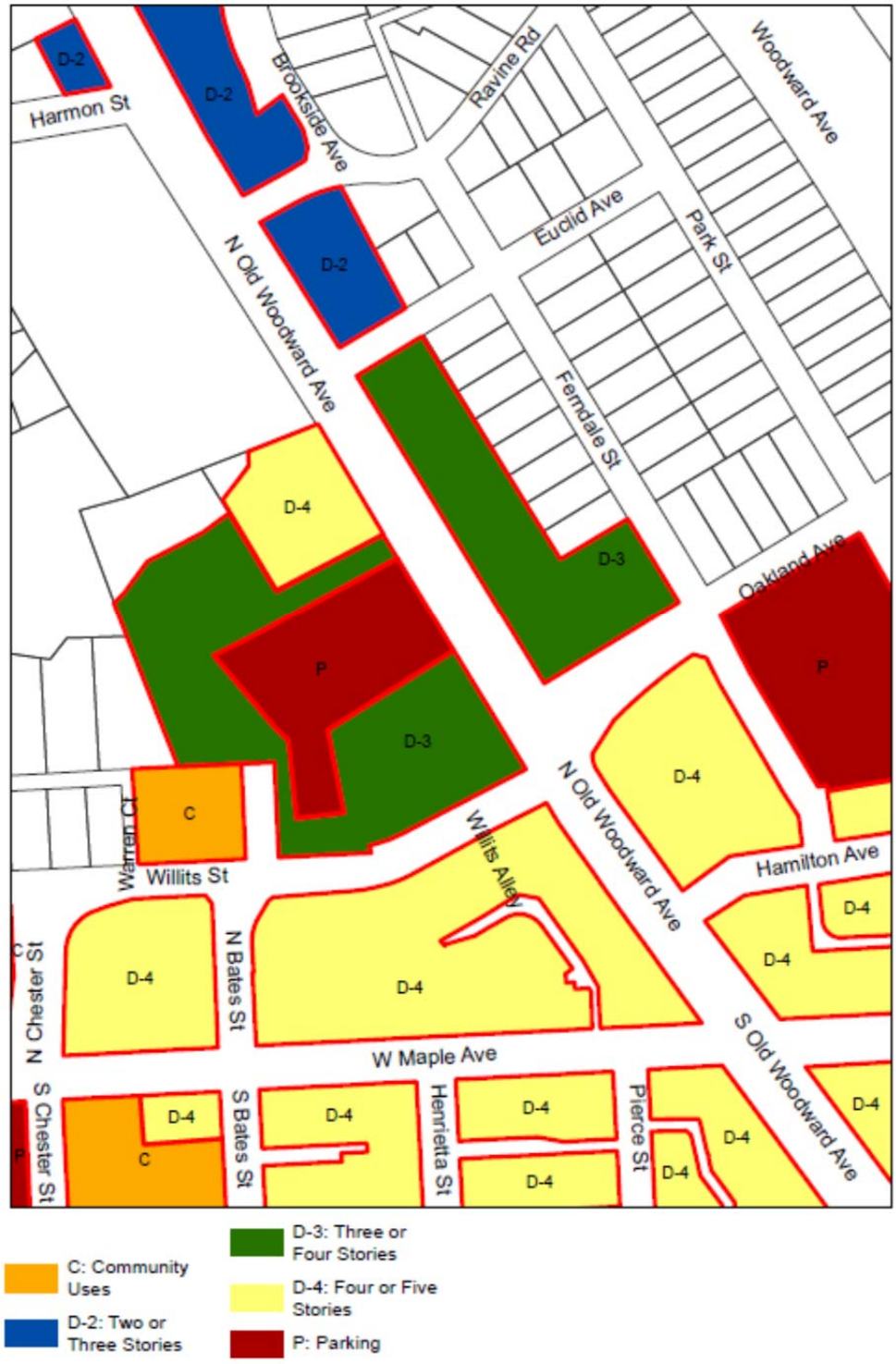
N. Old Woodward / Bates Parking Site

Zoning Districts

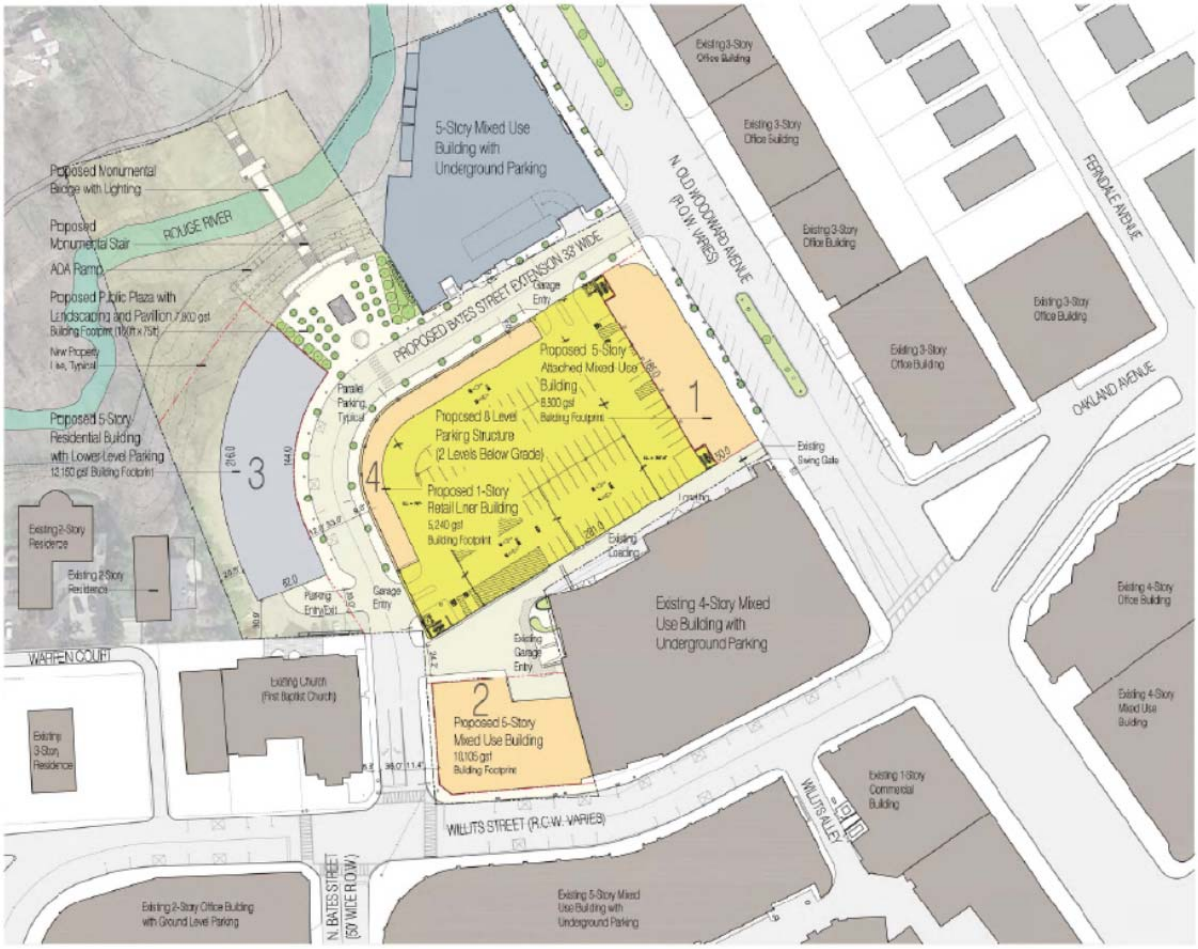
ATTACHMENT D

N. Old Woodward / Bates Parking Site

Overlay Zoning Districts

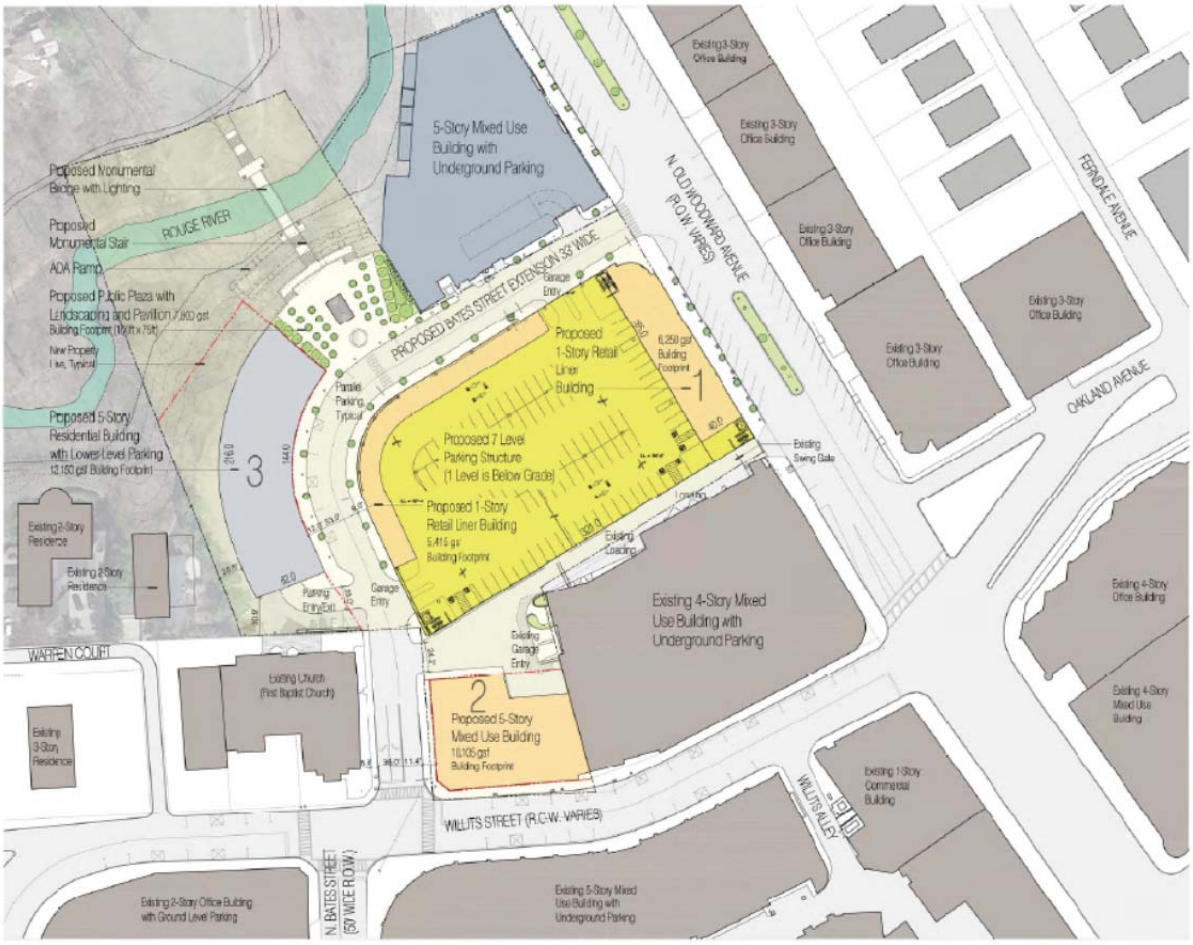


ATTACHMENT E
Conceptual Illustrations of Development Area



SAROKI ARCHITECTURE Carl Walker

333 N. Old Woodward
Proposed New Structure
Scheme 1A



SAROKI ARCHITECTURE Carl Walker

333 N. Old Woodward
Proposed New Structure
Scheme 2A

SAROKI ARCHITECTURE Carl Walker

South Bird's Eye View

Birmingham Parking Expansion
City of Birmingham

ATTACHMENT F
Easement Benefitting 325 N. Old Woodward

Vehicle Access Easement

Land located in the City of Birmingham, County of Oakland, State of Michigan, more particularly described as:

A parcel of land being a part of Lots 10 and 11 of "Assessor's Plat No. 27" in the SW quarter of Section 25, T2N, R10E, City of Birmingham, Oakland County, Michigan, according to the Plat thereof as recorded in Liber 6 of Plats, Page 46, Oakland County Records, and a part of Lots 3 and 4 of "Schlaack Subdivision of Lots 40, 41, 42 and part of Lot 53 of Willets Addition", City of Birmingham, Oakland County, Michigan, according to the Plat thereof as recorded in Liber 8 of Plats, Page 8, Oakland County Records, said parcel of land being described as follows: Commencing at the southeasterly corner of said Lot 11, said point also being on the westerly line of Woodward Avenue (100 feet wide); thence S 63°11'50" W 16.85 feet along the southerly line of said Lot 11 to the point of beginning of this description; thence continuing S 63°11'50" W 103.15 feet along said lot line to a point; thence S 59°26'20" W 99.61 feet to a point; thence N 30°33'40" W 19.16 feet to a point; thence N 59°26'20" E 219.35 feet to a point on the easterly line of said Lot 11; thence S 30°33'40" E 17.01 feet along said easterly line of said Lot 11 to a point; thence S 63°11'50" W 16.19 feet along a line 10.00 feet northerly of and parallel to the southerly line of said Lot 11 to a point; thence S 26°48'10" E 10.00 feet to the point of beginning of this description.

ATTACHMENT G
Booth Park Trail
Connection

Booth Park trail connection to Bates Street site.

City of Birmingham
A Walkable Community

MEMORANDUM

Department of Public Services

DATE: **August 31, 2017**

TO: **Joseph A. Valentine, City Manager**

FROM: **Lauren A. Wood, Director of Public Services**

SUBJECT: **Maple Road Railroad Bridge Improvements Study**

Our office has been asked to explore the feasibility and cost of making improvements to the CN Railroad Bridge crossing at E. Maple Road. Improvements to be considered include:

1. Painting the east and west facades of the bridge that are visible to the public as they travel underneath the bridge.
2. Painting the walls and ceilings of the pedestrian sidewalk areas underneath the bridge, as well as providing lighting for the sidewalk areas.
3. Painting the walls and ceilings of the roadway areas underneath the bridge.

I have requested a proposal from Walker Parking Consultants. The proposal attached from their Restoration Consultants division is to study the feasibility and provide cost estimate for the concrete preparation, painting and lighting of the railroad bridge. They provided us with two options to consider, one is just to review the sidewalk areas and two to review the sidewalk areas and the roadway areas. Both options will include evaluating the outside facade of the bridge.

The City of Birmingham has an ongoing professional services contract with Walker Parking Consultants to assist in City parking structure maintenance and design work including electrical design aspects for all of the parking garages. This specialized task of reviewing the concrete bridge structure for purposes of painting and lighting fits perfectly in their wheelhouse.

Basically, we requested assistance from them in determining what needs to be done with the pedestrian walkway areas for painting and lighting enhancements. As part of the proposal, consideration is also given to aesthetic surface improvements to the outside facades traveling eastbound and westbound. Certainly, a holistic approach is given to this project, hence providing you with Option 1 and Option 2. It is important to note, the bridge is owned and maintained by Canadian National (CN) Railroad. Costs for this initial study will vary, depending on the selected scope of work, as noted in the proposal. Option 1 considers the sidewalk areas only while Option 2 includes the sidewalk and roadway review. The review does include a condition appraisal of the concrete elements of the railroad bridge, which may impact repairs or preparation work before painting occurs. We will know more after the study concludes. This may impact costs of the actual painting project portion of the Maple Road bridge enhancements.

It is anticipated the field survey work and study will take about four to six weeks after given the authorization to proceed. No funds are budgeted for this consultant work or for the painting and lighting improvements. In advance of any work starting, the City will need to apply for a permit for this work on this property with CN Railroad. Funds for this study will be used from Major Roads - Bridge Maintenance – Other Contractual Services account #202-449.002-811.0000.

SUGGESTED RESOLUTION:
To approve Option 1, improvements only at the two sidewalk areas under the bridge, of the proposal dated August 10, 2017 for the Maple Road Railroad Bridge Improvements Study with Walker Restoration Consultants in an amount not to exceed $7,175.00. Funds for this study will be used from Major Roads - Bridge Maintenance – Other Contractual Services account #202-449.002-811.0000.

Or

To approve Option 2, improvements at the two sidewalk areas under the bridge and at the roadway areas under the bridge, of the proposal dated August 10, 2017 for the Maple Road Railroad Bridge Improvements Study with Walker Restoration Consultants in an amount not to exceed $8,775.00. Funds for this study will be used from Major Roads - Bridge Maintenance – Other Contractual Services account #202-449.002-811.0000.

WALKER RESTORATION CONSULTANTS
525 Avis Drive, Suite 1
Ann Arbor, MI 48108

Voice: 734.663.1070
Fax: 888.502.5726
www.walkerrestoration.com

August 10, 2017

Paul O'Meara
City Engineer
City of Birmingham
151 Martin Street
Birmingham, MI 48009
pomeara@bhamgov.org

Carrie Laird
Parks & Recreation Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
claird@bhamgov.org

Re: *Proposal for Maple Road Railroad Bridge Improvements Study - Birmingham, Michigan*

Dear Paul and Carrie:

The City of Birmingham is considering making appearance and lighting improvements to the railroad bridge that crosses over Maple Road at the intersection of Maple Road and Eton Street. Based on our conversations and the on-site meeting of August 8, 2017, we understand you require:

- A condition appraisal of the concrete elements of the railroad bridge that are visible from below on Maple Road, to determine what concrete repair/preparation work is required prior to making appearance improvements such as application of concrete stain/coating and lighting installation.
    - We anticipate our review of the sidewalk areas can be conducted with ladders and will allow for hands-on examination of select areas of concrete.
    - Work at the roadway areas will be visual review as able from adjacent areas; we have not included road closures of lanes on Maple Road to allow hands-on examination of concrete above roadway areas.
    - This work will include review of the exposed steel beam bottom flanges that make up part of the bridge underside. Although steel repairs are not anticipated at this time, cleaning and preparation will be required prior to stain/coating application.
    - This work will also include removal of existing paint chips from concrete and steel substrates to check for lead content that could impact the work scope and costs associated with re-coating work. We plan to take 4 samples, 2 from each substrate.
- A lighting study to determine conceptual work required to install appropriate LED lighting at the underside of the bridge.

  - Based on input from the City, it is anticipated electrical power is available from above ground electrical poles and wires just north of the intersection of Maple and Eton, and can be run through city owned property between the railroad right of way and Eton Street.
- A conceptual scope of work and cost opinion for all anticipated concrete repair, paint/coating application (including preparation of concrete and steel surfaces), and light installation work being considered. We understand you may require TWO conceptual scope of work and cost opinion scenarios:
  - Option 1 - Improvements only at the two sidewalk areas under the bridge
  - Option 2 - Improvements at the two sidewalk areas under the bridge AND at the roadway areas under the bridge

As we have previously discussed, our conceptual planning will not include consideration of intricate architectural elements such as custom fencing or multi-colored architectural painting or artwork on the bridge elements. If the City wants to consider such additional enhancements, we recommend teaming with an artist and/or architect for that portion of the project.

This proposal does not include design of repairs and improvements, bidding assistance, or construction administration assistance. If the City of Birmingham elects to proceed with the conceptual improvements resulting from the work outlined in this proposal, we would be happy to provide a follow up proposal to assist with this work as an additional service.

PROFESSIONAL FEE

We propose to provide professional engineering services as described in this proposal per the terms and conditions of the latest General Services Agreement for Professional Engineering between the City of Birmingham and Walker Parking Consultants/Engineers. We propose to provide the professional engineering services for the lump sum fees and reimbursable expenses shown in the table below. Two options are provided, in the event the City elects to only consider the sidewalk areas (Option 1):

Description	OPTION 1 FEE – Sidewalk Areas Only	OPTION 2 FEE – Sidewalk and Roadway
Concrete and Coating Condition Appraisal, Conceptual Scope and Cost Opinion (lump sum)	$ 3,500	$3,850
Lighting/Electrical Study, Conceptual Scope and Cost Opinion (lump sum)	$ 3,500	$4,750
Expenses (estimated)	$ 175	$175
GRAND TOTAL	**$ 7,175**	**$ 8,775**

SCHEDULE

We can complete field survey work within 3-4 weeks of receiving written authorization to proceed. We anticipate providing our written report and cost opinions within 1-2 weeks of completing field work.

Provided this proposal is acceptable, please issue a City of Birmingham Purchase Order as our authorization to proceed. If you have questions or concerns about this project or proposal, please call to discuss.

Sincerely,
WALKER RESTORATION CONSULTANTS

Matthew C. Hunt, P.E.
Director of Restoration

Beier Howlett
ATTORNEYS AND COUNSELORS

TIMOTHY J. CURRIER
tcurrier@bhlaw.us.com
Telephone (248) 645-9400
Fax (248) 645-9344

August 31, 2017

Mr. Joseph A. Valentine, City Manager
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: City Commission's Referred Question to the Board of Ethics

Dear Mr. Valentine:

The City Commission referred the following question to the Birmingham Board of Ethics:

> "Is it a violation of the City of Birmingham's Code of Ethics for a member of the Birmingham City Commission who serves on the Board of Directors of, or an advisory committee to, community based organization that solicits or receives funding from the City when the particular seat on the board or committee is reserved for a City Commissioner and the City Commission by resolution appoints a particular Commissioner to that seat?"

The City Commission was concerned, due to the number of community boards they are asking commissioners to serve that could potentially be a conflict of interest with respect to the Birmingham Code of Ethics. The Birmingham Ethics Board rendered Advisory Opinion 2016-03 in response to their request. Attached you will find a proposed Resolution which the City Commission can consider adopting which would basically adopt the Ethics Opinion for guidance as to whether they should serve or not serve on community boards depending upon the various competing interests.

The attached Resolution specifically adopts by reference the entire Advisory Opinion, 2016-03, but identifies some of the key principles which the City Commission should follow with respect to appointments to community boards.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc

SUGGESTED ACTION

ADOPT BY RESOLUTION ADVISORY OPINION 2016-03 AS GUIDANCE FOR COMMISSIONERS WITH RESPECT TO SERVING ON COMMUNITY BASED ORGANIZATIONS

RESOLUTION

Moved by:_____ Seconded by:_____

WHEREAS, the Birmingham City Commission has referred the following question to the Birmingham Board of Ethics:

> "Is it a violation of the City of Birmingham's Code of Ethics for a member of the Birmingham City Commission who serves on the Board of Directors of, or an advisory committee to, community based organization that solicits or receives funding from the City when the particular seat on the board or committee is reserved for a City Commissioner and the City Commission by resolution appoints a particular Commissioner to that seat?"

WHEREAS, the Board of Ethics has rendered an advisory opinion on this question in its decision of 2016-03; and,

WHEREAS, the Birmingham City Commission wishes to adopt this advisory opinion for the purpose of guidance to the City Commission and such appointments.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Advisory Opinion 2016-03 shall be and is hereby adopted by the Birmingham City Commission with respect to the appointment of Commissioners to community based organizations, which is attached hereto and incorporated by reference.

2. The City Commission shall be guided by the following principles which include, but are not limited to:

   a. The Commissioner is barred by the Code of Ethics to participate in that organization's consideration of a request to the City for funding, license, or other substantial court proceeding.

   b. The Commissioner is disqualified from participating in the City's consideration of any such requests from that organization.

   c. The Commissioner's participation of fund-raising activity for that organization could result in a conflict of interest if the party from whom the gift is sought has business before the City.

IT IS FURTHER RESOLVED, that in appointing a Commissioner to sit on a board or committee of a community based organization, and whether the Commissioner should be a voting member, a non-voting member or a mere liaison, the City Commission's goals of having a Commissioner serve on that organization's board or committee shall be considered. The City wishes to exert an amount of normal control over the organization, and sitting on the Board of Directors would not be unreasonable, understanding that the Commissioner has a fiduciary responsibility to the corporation. Membership of the corporation's Board of Directors brings legal

duties and responsibilities, and potential liabilities for the Commissioner, and the City might not want the Commissioner to pursue or undertake, and given the holding in Advisory Opinion 2016-03, 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 on that request. In further consideration, if the City merely needs or wants to exchange information with the organization or monitor its activity, the lesser role, such as a non-voting membership or liaison might be more appropriate, but just as beneficial to the City as would a board membership.

Passed, adopted and approved this _____ day of _____, 2017.

AYES: _____

_____

NAYS: _____

_____

PRESENT: _____

_____

ABSENT: _____

_____

CERTIFICATION

I, Cherilynn Brown, being the duly appointed and qualified Clerk of the City of Birmingham, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of Resolution, the original of which is on file in my office, adopted by the City of Birmingham Commission at a regular meeting held on _____, 2017.

_____

Cherilynn Brown, City Clerk

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.

INSTITUTE FOR LOCAL GOVERNMENT
FOUNDED 1955

PUBLIC SERVICE ETHICS

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 extortion[2] 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 occur[17] --- 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 deter mine 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.

This piece originally ran in *Western City* Magazine and is a service of the Institute for Local Government (ILG) Ethics Project, which offers resources on public service ethics for local officials. For more information, visit www.ca-ilg.org/trust.

The following people contributed ideas and legal analysis for this column: Tom Butt, city council member, City of Richmond; Rob Ewing, city attorney, Danville; Roy A. Hanley, city attorney, Solvang and King City, Hanley and Fleishman; David Hirsch, city attorney, Simi Valley: Selma J. Mann, assistant city attorney, Anaheim; Michelle Sheidenberger, deputy city attorney, Roseville; Larissa Seto, assistant city attorney, Pleasanton; and Daniel G. Sodergren, assistant city attorney, Tracy.

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 fro 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=&section=land&zone=ilsg&sub_sec=land_property&tert=land_property_fees.

City of Birmingham
A Walkable Community

MEMORANDUM

Engineering Dept.

DATE: **August 29, 2017**

TO: **Joseph Valentine, City Manager**

FROM: **Paul T. O'Meara, City Engineer**

SUBJECT: **Storm Water Utility Fee Ordinance Amendment Section 114**

In 2016, pursuant to a court settlement, the City Commission authorized the implementation of a storm water utility fee, which reapportioned the charges the City needs to collect to pay for storm water disposal costs. Section 114 Article VI of the City Code was added in order to outline the terms under which the new Storm Water Utility Fee would be charged.

As a part of the ordinance, a Storm Water Utility Appeals Board was created. The Board was created to provide a means for the public to appeal storm water utility fees, should they feel aggrieved.

The Board was created earlier this year, and held its first meeting on May 16. At that meeting, the new board reviewed the details of the program, and then heard the one and only appeal received to date by the City. Some additional information was gathered, and a second meeting was held on May 23.

As you may recall, the Storm Water Utility Fee program was set up in a manner to make it manageable with respect to ongoing maintenance. Since over 90% of the parcels in the City are single family residential, it was decided that such parcels would be split into classes depending only on their size, and not with respect to the extent of impervious surface on the parcel. Fees were established based on the average amount of runoff parcels within each class generate.

At the first meeting of the Board, the one appeal filed was a single family house located on a Class C lot. The homeowner made the point that the lot is 0.27 acres, while the Class C category covers all parcels between 0.26 and 0.50 acres. Secondly, the house and the driveway are smaller than most found in the neighborhood. In his appeal, the appellant referenced Section 114-402(c) which states:

"Any property owner liable for a storm water utility fee may appeal the determination that the property utilizes the storm water system or the amount of a storm water utility fee, including a determination on a reduction in or the elimination of the fee under subsections (a) and (b). An appeal may be based on the quantity of storm water runoff generated, the reductions established, the reductions allocated, or any other matter relating to the determination of the storm water utility fee."

In addition, the appellant referenced Section 114-402(f) which states:

"To prevail in an appeal of a storm water utility fee, the appellant shall demonstrate in accordance with the requirements of the plan that the use of the system by the property is less than the amount used by the local unit of government in the calculation of that property's storm water utility fee, or for all properties the classification of the property type is in error, or there was a mathematical error in the calculation of the fee."

Through the discussion, staff and the Board realized an inherent problem in the wording of the ordinance with respect to single family residential properties. As noted above, the charge for each class is based on the average of the runoff rates for all parcels in that class. That means that half of the parcels in any given class are generating less runoff than the average, and are therefore being charged more that the cost they are generating. As such, any single family homeowner with less than average impervious surface could potentially use the ordinance as a starting point, calculate their own runoff, and appeal to the board for a lower fee. Doing so undermines the purpose of the fee structure, which was to simplify the charging mechanism for the thousands of single family parcels.

In the case of non-single family parcels, each parcel receives a charge based specifically on the size of the parcel, and on the amount of impervious surface thereon. In those cases, paragraphs 402(c) and 402(e) are written appropriately, and should remain. With the more specific calculation, there are more opportunities for mistakes, and more ways to interpret how a fee is calculated. On non-single family residential parcels, paragraphs (c) and (e) are appropriate.

The Board summarized this conclusion by passing the following motion at their meeting of May 23, 2017:

To request staff to modify the Ordinance so that it is consistent with the apportionment method that was developed by HRC, Section 114-402 (c), same section (f) to distinguish between SFR versus non-SFR. The ordinance must recognize that the runoff potential varies on every lot but that does not mean that someone on the low end of runoff is eligible for a credit or less of an invoice than someone that is above the average. All SFR parcels within a class must be treated the same.

The motion passed 3-0.

Per this direction, the City Attorney's office has modified the ordinance to address this issue. A redlined version, followed by a clean version that has been modified follows. A suggested resolution is below.

SUGGESTED RESOLUTION:

To amend Chapter 114, utilities, Article VI, Storm Water Utility Fee, Section 114.402 – Calculation of Fees, to clarify the options for appeal on Single-Family Residential properties.

CITY OF BIRMINGHAM
STORM WATER UTILITY
APPEALS BOARD
CITY COMMISSION ROOM
151 MARTIN ST., BIRMINGHAM, MI
(248) 530-1850
REGULAR MEETING AGENDA
TUESDAY, MAY 16, 2017, 7:00 P.M

1. INTRODUCTIONS
2. RECOGNITION OF GUESTS
3. INTRODUCTION TO ORDINANCE
4. REVIEW OF SPECIAL CASES
5. HEARINGS
   A. 1452 BUCKINGHAM RD.
10. NEXT MEETING: NOVEMBER, 2017

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un dia antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

CITY OF BIRMINGHAM
STORM WATER UTILITY APPEALS BOARD
TUESDAY, MAY 16, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham held Tuesday, May 16, 2017.

City Engineer Paul O'Meara convened the meeting at 7 p.m.

ROLL CALL

Present: Board Members Laura Keener, Robert Lavoie (arrived at 7:20 p.m.), A. James Partridge

Absent: None

Administration: Paul O'Meara, City Engineer
Carole Salutes, Recording Secretary

1. INTRODUCTIONS

Board members introduced themselves and highlighted some of their background along with why they are interested in serving on the board.

Mr. O'Meara took nominations for chairperson.

Motion by Mr. Partridge
Seconded by Ms. Keener to nominate Robert Lavoie as chairman.

Motion carried, 2-0.

VOICE VOTE
Yeas: Partridge, Keener
Nays: None
Absent: Lavoie

2. RECOGNITION OF GUESTS

Jim Surhigh and Mike McDonald of Hubbell, Roth & Clark, Inc. ("HRC")

3. INTRODUCTION TO ORDINANCE

Mr. O'Meara advised that pursuant to a court order, the City of Birmingham has developed a new methodology for collecting fees needed to pay for storm water disposal costs. As a part of the court order, the City was asked to form a board of volunteers that would be available to hear appeals to the charges being assessed. The Storm Water Ordinance was developed by local consulting firm Hubbell, Roth, & Clark, Inc.. Since this was a big change that impacted thousands of land owners and residents, the City advertised the information, and scheduled a public hearing in December, 2016.

Going forward, the City was required to implement a new billing methodology beginning January 1, 2017 for storm water utility fees in accordance with a court order. This new method is based on several factors such as storm/rainfall rates, topography of each parcel of land in the City, size of each parcel and how much pervious v. impervious surface exists on each lot. The City has been working with HRC in the development of their Storm Water Utility Fee Apportionment Report which introduces the proposed change in billing methodology.

Mr. Surhigh gave a presentation that explained storm water utility fee apportionment for the City of Birmingham. Storm water enters the sewer through surface runoff to public drainage. It becomes sewage, has to be treated, and that is the cost that is being apportioned. Surface runoff is generated primarily from impervious surfaces such as building roofs and pavements and also from pervious surfaces to a smaller degree. So, a runoff coefficient was developed for each of these different types of surfaces.

The typical process for apportionment is to categorize similar types of properties, define a "standard unit," determine runoff potential for the properties, and equate particular runoff potential to the "standard unit" - Equivalent Storm Water Unit ("ESWU"). Properties are categorized as single-family residential ("SFR") and non single-family residential ("NSFR") which includes all other types of properties. SFR makes up 91% of all properties by number, 72% by area. The SFR category is broken down into six classifications based on lot size:

SFR CLASS	LOT SIZE RANGE
Class A	0.125 acres or less
Class B	0.126 to 0.250 acres
Class C	0.251 to 0.500 acres
Class D	0.501 to 0.750 acres
Class E	0.751 to 1.000 acres
Class F	1.001 acres or larger

The average characteristics for each of the six classifications is the basis for determining the runoff potential ("RP"). The total area ("TA") for each parcel is

based on Oakland County property data. Public road right-of-way area is deducted from TA for metes and bounds parcels Impervious area based on SEMCOG GIS data is confirmed by calculating the RP from actual aerial imagery for larger parcels.

The RP is considered proportional because this method is comparing physical characteristics of each property that impacts how runoff is generated from that property to the district as a whole. It is independent of precipitation, so will vary with precipitation every year. Each property's share of the total RP of the district is reported simply by using the ESWU concept to make it more understandable.

To create the ESWU unit, the "standard unit" has a value of 1.0. So the runoff potential for the standard unit was determined to be 4,317 sq. ft. (average of the Class B parcels). ESWU for other parcels is calculated by dividing their RP by 4,317 sq. ft..

The average impervious area and total area for each SFR classification is used to calculate the RP for that classification. ESWU value is assigned to all properties within each classification. This method simplifies administration, and does not require individual calculations for thousands of SFR properties.

For each NSFR property, the unique impervious area and total area is used to calculate the RP for that property. ESWU is calculated by dividing RP for each property by 4,317 sq. ft.

Apportionment share is determined by adding the ESWUs for each district and dividing the ESWU for each property in the district by the sum of ESWUs.

Certain credits will be offered - measures must reduce amount of storm water that enters the sewer:

- Rain barrels/cisterns (intercept)
- Rain gardens/bio-swales (infiltrate)
- Dry wells/infiltration trenches (infiltrate)
- Porous pavement (infiltrate)
- Disconnect footing drains (infiltrate)

The property owner is responsible for applying for credits and certifying continued use and performance. Mr. O'Meara indicated that so far no one has applied for credit.

In response to a question from the chairman, Mr. Surhigh said the position he has taken is that the storm water generated off of the streets is entering the sewer and is being treated. So the cost from the streets is proportioned to all of

the property owners based on their ESWU. Mr. O'Meara added the assumption is that everybody benefits from the right-of-way.

4. REVIEW OF SPECIAL CASES

Mr. O'Meara explained that the Storm Water Utility Appeals Board Ordinance spells out the need for this board, and the conditions under which it shall operate. It also defines the City Engineer (or his designee) as the “Director” in terms of the staff person making decisions pertaining to the daily administration of the Ordinance.

The board will have criteria in which to consider an appeal. However, it is acknowledged that there are unique situations that do not fit well into the criteria established for apportioning the costs of this fee. In order to simplify the process for the public, as well as the board, the Director shall have the authority to adjust those cases that are clearly unique in that billing them as initially determined would not be just. The following list summarizes the complete list of properties that have been adjusted to date. The Director shall keep a list of these adjustments, and as others are approved, they will be passed on to the board for their information.

295 Abbey
The City limit runs through their small piece of property, which acts as an extension of the remainder of their front yard, located in Bloomfield Twp. The property is small and could not be developed on its own. Based on its size, it has been reduced from Class A to half of a Class A, or 0.35.

1040 Gordon Lane
This is a large parcel that is over an acre and the developed part of the property is quite small. The house is connected to the sewer, so the Class B charge now applies, instead of Class F.

34200 Woodward Ave.
This is Papa Joe's market. The building has five tenants including Papa Joe's. The other tenants have much smaller square footages. The City worked with the owner and verified a way to split the tenant areas based on their roof area, which all have agreed to.

1845 Yorkshire Rd.
The owner bought the property behind which had a different Tax ID. Together, they were being billed for a Class C (for the property containing the house) and a Class B, for the back yard. Since it acts as one parcel, if the total area is added up as one parcel, it totals still as just one Class C. Since the owner could combine the lots, staff agreed to charge it as one Class C.

The Board understood these changes, and took no issue with them.

5. HEARINGS

A. 1452 Buckingham Rd.

Mr. O'Meara advised that while it is acknowledged that Mr. Hall's property may in fact produce less runoff than the average Class C parcel, even a vacant parcel with the same size dimensions would be charged the same. For any SFR property, the level of improvements thereon does not enter into the decision-making process. Further, the conditions presented here could be replicated many times for similar properties that could also then seek a similar reduction. Given the above, the Engineering Dept. did not agree that the storm water runoff fee for this property should be reduced.

Mr. Craig Hall, 1452 Buckingham Rd. came forward to appeal his water fees which he said have doubled since last year; almost between $300 and $400/year additional. He wanted to have his actual property's runoff used as the basis for his storm water fee. His parcel is .01 from being in Class B, but he got lumped into the Class C, which really bumped up the amount that he has to pay. He offered new evidence to replace the evidence he had previously given the City.

Chairman Lavoie thought that the City and HRC did a terrific job in coming up with a fair way of implementing the storm water utility costs that was more appropriate than just adding it onto the water bill, based on water usage. He went on to ask Mr. Hall if there are some areas where he believes the requirements for a credit have been met. Mr. Hall responded that his downspouts have been disconnected and they don't go down into his foundation drain. They percolate into the yard. Also, his garage doesn't even have gutters.

Mr. Hall noted his storm water fee is $95/quarter, but according to his calculations he believes it should be $38/quarter based on the square footage of his property.

Mr. Surhigh explained that six lot size ranges were chosen to allow some differentiation. There are always going to be some parcels that are slightly over or slightly under the threshold. That is where Mr. Hall is finding himself.

Chairman Lavoie observed the concern is that if they look at every lot, and allowed owners to do their own specific calculations, it could make room for lots of changes.

Mr. Hall advised he has a small house on a big lot and that doesn't work very well with this calculation. He should be in Class B just based on the size of his

house, but he was put into Class C based on the size of his lot. His RP is even less than a Class B when it is calculated out.

Ms. Keener didn't know what the board's guidelines are as far as what is a large enough variance to be considered something the board could move Mr. Halls' property from Class C to B. Mr. Surhigh said the RP on the Class C properties is 6,714 sq. ft. Mr. Hall noted that using their calculations he gets 3,800 sq. ft. which is a little less than double.

Mr. Surhigh explained the cost difference between the two classes. Class B is $240/year and it is $380/year for Class C.

Board members agreed to hold another meeting in order to gather more statistical information, and to study this matter further. Consensus was to meet again on Tuesday, May 23 at 1 p.m.

9. NEXT MEETING: Tuesday, May 23, 2016

10. ADJOURNMENT

No further business being evident, the board members adjourned the meeting at 8:25 p.m.

_____
Paul O'Meara, City Engineer

CITY OF BIRMINGHAM
STORM WATER UTILITY
APPEALS BOARD
CITY COMMISSION ROOM
151 MARTIN ST., BIRMINGHAM, MI
(248) 530-1850
REGULAR MEETING AGENDA
TUESDAY, MAY 23, 2017, 1:00 P.M

1. INTRODUCTIONS

2. RECOGNITION OF GUESTS

3. APPROVAL OF MINUTES,
   MEETING OF MAY 16, 2017

4. ORDINANCE DISCUSSION

5. HEARINGS

   A. 1452 BUCKINGHAM RD.

10. NEXT MEETING: NOVEMBER, 2017

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DRAFT

CITY OF BIRMINGHAM
STORM WATER UTILITY APPEALS BOARD
TUESDAY, MAY 23, 2017
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham held Tuesday, May 23, 2017.

Chairman Robert Lavoie convened the meeting at 1:05 p.m.

ROLL CALL

Present: Board Members Laura Keener, Robert Lavoie, A. James Partridge

Absent: None

Administration: Austin Fletcher, Asst. City Engineer
Paul O'Meara, City Engineer
Carole Salutes, Recording Secretary

1. INTRODUCTIONS

Mr. O'Meara introduced Austin Fletcher to the group.

2. RECOGNITION OF GUESTS

Jim Surhigh of Hubbell, Roth & Clark, Inc. ("HRC")

3. APPROVAL OF THE MINUTES OF THE MEETING OF MAY 16, 2017

Motion by Mr. Partridge
Seconded by Ms. Keener to approve the Minutes of May 16, 2017 as presented.

VOICE VOTE
Yeas: Partridge, Keener, Lavoie
Nays: None
Absent: None

Motion carried, 3-0.

4. ORDINANCE DISCUSSION

Chairman Lavoie asked about the basis that HRC used for establishing Class A and B. The difference between them was 0.125 acres; whereas when you looked at Class C, D, and E it was 0.25 acres. He wanted to have a clear idea as to why there was a different delta.

During and subsequent to the last meeting, questions were raised about how the Ordinance was structured, and the statistical spread of properties within the various Single-Family Residential ("SFR") classes. Mr. Surhigh provided tables that contained analysis of SFR parcel data for each class. Their thought process was if they look at all of the parcels, set them all up and take the average, that would eliminate a case-by-case discrepancy. There would be no need to adjust the number whenever a parcel is improved. By using the average number it leaves room for the under developed or less developed parcel to grow into a more developed parcel. The tables were prepared to help the board better understand the statistical spread of the various properties within each class.

The first table helps clarify how the Equivalent Storm Water Unit ("ESWU") was developed for each class, and how many properties helped to influence the final number.

The second table clarifies how the percentage of impervious surface goes down as the parcel size goes up, and how the final numbers determine the fee charged in each class.

The final table pertains to determining how many parcels are near the lower end of their range. For example, for the Class B category, there are 3,959 parcels, and in Class C, there are 1,716 parcels. If the board decided to change the Class B limits to include all properties that are within 0.251 and 0.26, this would result in 225 parcels moving out of Class C to Class B.

Mr. Surhigh passed out paper copies of the earlier draft maps that were prepared before a final decision was made on how to classify the SFR properties. He discussed the maps to help the board understand how the final classifications were arrived at. It was noted that the smaller lots with their houses will be more intensely impervious.

Chairman Lavoie expressed his satisfaction with the work that HRC has done. He felt that reasonable runoff potentials have been determined for the various classes.

Moving forward, Mr. O'Meara noted it is important to consider the direction the board is given relative to how it is directed to operate within the Ordinance. He highlighted several pertinent paragraphs from the Ordinance:

Sec. 114-402

(c) Any property owner liable for a storm water utility fee may appeal the determination that the property utilizes the storm water system or the amount of a storm water utility fee, including a determination on a reduction in or the elimination of the fee under Section 114-402(a) and (b). An appeal may be based on the quantity of storm water runoff generated, the reductions established, the reductions allocated, or any other matter relating to the determination of the storm water utility fee.

Mr. O'Meara observed this implies that it applies to everybody, which can encourage SFR owners to calculate their own runoff. Many owners will be below the average, and could appeal the charge, when in fact the ordinance was structured to avoid this level of calculation with SFR properties. He suggested it would be appropriate for this board to make a recommendation that the Ordinance be fine tuned by the City Attorney to better clarify that that section (c) should only apply to Non Single-Family ("NSF") properties.

(d) An appeal under subdivision (c) shall be heard by a storm water utility appeals board appointed by the local unit of government. The appeals board shall consist of 3 members, 2 of whom shall be licensed professional engineers not employed by the local unit of government.

(e) An appeal of a storm water utility fee shall not be brought more than 1 year after the fee was billed.

(f) To prevail in an appeal of a storm water utility fee, the appellant shall demonstrate in accordance with the requirements of the plan that the use of the system by the property is less than the amount used by the local unit of government in the calculation of that property's storm water utility fee, or the classification of the property type is in error, or there was a mathematical error in the calculation of the fee. Mr. O'Meara noted that this paragraph has the same issues as (c) above.

The Chairman passed around his draft of proposed decision form criteria that must be affirmed in order for an appeal to meet Ordinance requirements, built off the format prepared for the Hearing Officer.

5. HEARINGS

A. 1452 Buckingham Rd.

Ms. Keener recalled that Mr. Hall's first level of defense was that the impervious area fell in line with SFR Class B and further that water drained out onto his lawn and therefore he should have a reduction. Chairman Lavoie noted he has demonstrated that his runoff level is less than the average that was used to establish the fee. The body of the Ordinance needed to indicate that half of the runoff will be above the average and half will be below.

Mr. O'Meara thought in terms of precedent that if the board were to grant Mr. Hall's appeal the conditions presented there could be replicated many times for similar properties that would also then seek a similar reduction. Mr. Partridge noted the Ordinance applies to everyone without deviation, but if the board wants to make an exception it can.

The Chairman stated this will be a precedent setting decision and whatever the board decides will hold true for as long as they are on the board. He wants to make sure whatever the members decide is fair and equitable now so they don't have a loophole. This board is bound by the Ordinance as it is currently written. After it has been tweaked all subsequent appeals are based on that Ordinance.

Board members concluded that Mr. Hall could be put in Class B for this calendar year. Meanwhile the City Attorney would modify the Ordinance and next year after it has been tweaked all subsequent appeals will be based on that.

Motion by Mr. Partridge
Seconded by Ms. Keener to request staff to modify the Ordinance so that it is consistent with the apportionment method that was developed by HRC, Section 114-402 (c), same section (f) to distinguish between SFR versus non-SFR. The ordinance must recognize that the runoff potential varies on every lot but that does not mean that someone on the low end of runoff is eligible for a credit or less of an invoice than someone that is above the average. All SFR parcels must be treated the same.

VOICE VOTE
Yeas: Partridge, Keener, Lavoie
Nays: None
Absent: None

Motion carried, 3-0.

Motion by Ms. Keener
Seconded by Ms. Partridge to approve Mr. Hall's appeal to be moved from Class C to Class B designation through December 31, 2017.

VOICE VOTE
Yeas: Keener, Partridge, Lavoie
Nays: None
Absent: None

Motion carried, 3-0.

Mr. O'Meara indicated that he would copy board members when official language has been developed.

6. NEXT MEETING: Tuesday at 1 p.m. in November 2017

7. ADJOURNMENT

No further business being evident, the board members adjourned the meeting at 2:02 p.m.

_____
Paul O'Meara, City Engineer

CITY OF BIRMINGHAM

ORDINANCE NO. ___

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 114. UTILITIES, ARTICLE VI. STORM WATER UTILITY FEE, SECTION 114.402 – CALCULATION OF FEES

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 114. Utilities, Article VI. Storm Water Utility Fee, Section 114.402 – Calculation of Fees, shall read as follows:

Sec. 114-402. - Calculation of fees and appeals.

(a) Single-family residential ESWU. All single-family residential properties in each of the lot-size categories are assigned the same ESWU for that category. The ESWU values for the single-family residential categories are summarized in the fee schedule.

Property Type	SFR Class
Single-Family Residential, 0.125 acres or less	Class A
Single-Family Residential, 0.126 acres to 0.250 acres	Class B
Single-Family Residential, 0.251 acres to 0.500 acres	Class C
Single-Family Residential, 0.501 acres to 0.750 acres	Class D
Single-Family Residential, 0.751 acres to 1.000 acres	Class E
Single Family Residential, 1.001 acres or larger	Class F

(b) Non-single family ESWU. The storm water utility fee for non-single family lots shall equal the number of ESWU's for a given lot, multiplied by the annual rate established by the city commission per ESWU per year. The formula for determining the number of ESWU's per

non-single family lot shall be calculated from the amount of pervious and impervious lot area as follows:

Number of ESWU's = 0.15 (TA - IA) + 0.90 (IA)

Average runoff potential of the standard unit/ESWU

where,

TA = total area of each lot (reported in square feet);

IA = impervious area of each lot (reported in square feet).

(c) Any non-single family residential property owner liable for a storm water utility fee may appeal the determination that the property utilizes the storm water system or the amount of a storm water utility fee, including a determination on a reduction in or the elimination of the fee under subsections (a) and (b). An appeal may be based on the quantity of storm water runoff generated, the reductions established, the reductions allocated, or any other matter relating to the determination of the storm water utility fee.

(d) A single family residential property owner may appeal the determination that the property utilizes the storm water system, however, such an appeal shall be limited to the following reasons:

1. The size of the lot has been miscalculated; or,
2. All or part of the storm water runoff drains to an open drainage course, such as a river, lake or creek, which affects the quantity of the storm water runoff generated that ~~it~~ gets into the storm water sewer system.

(e) An appeal under subsection (c) shall be heard by a storm water utility appeals board appointed by the local unit of government. The appeals board shall consist of three members, two of whom shall be licensed professional engineers not employed by the local unit of government.

(~~e~~f) An appeal of a storm water utility fee shall not be brought more than one year after the fee was billed.

(~~f~~g) To prevail in an appeal of a storm water utility fee, the appellant shall demonstrate in accordance with the requirements of the plan for a non-single family residential property that the use of the system by the property is less than the amount used by the local unit of government in the calculation of that property's storm water utility fee, or for all properties the classification of the property type is in error, or there was a mathematical error in the calculation of the fee.

(~~g~~h) The sole remedy for a property owner who prevails in an appeal of a storm water utility fee is a prospective correct recalculation of the storm water utility fee.

(~~h~~i) If in an appeal of a storm water utility fee the appeals board finds that the requirements of subsection (~~f~~g) have not been met, that finding is conclusive until the property is modified to either increase or decrease the utilization of the system. The property owner remains eligible for reduction or elimination of fees under the storm water utility ordinance.

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(ji) A property owner making an appeal shall provide the appeals board with information necessary to make a determination.

(jk) A person aggrieved by a decision of the appeals board on an appeal under this section may appeal to the circuit court in which the property is located. An appeal to the circuit court must be filed within 30 days of the appeals board's decision.

All other Sections of Chapter 114 Utilities shall remain unaffected.

Ordained this _____ day of _____, 2017. Effective upon publication.

_____
Mark Nickita, Mayor

_____
Cherilynn Brown, City Clerk

I, Cherilynn Brown, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2017 and that a summary was published _____, 2017.

_____
Cherilynn Brown, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. ___

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 114. UTILITIES, ARTICLE VI. STORM WATER UTILITY FEE, SECTION 114.402 – CALCULATION OF FEES

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 114. Utilities, Article VI. Storm Water Utility Fee, Section 114.402 – Calculation of Fees, shall read as follows:

Sec. 114-402. - Calculation of fees and appeals.

(a) Single-family residential ESWU. All single-family residential properties in each of the lot-size categories are assigned the same ESWU for that category. The ESWU values for the single-family residential categories are summarized in the fee schedule.

Property Type	SFR Class
Single-Family Residential, 0.125 acres or less	Class A
Single-Family Residential, 0.126 acres to 0.250 acres	Class B
Single-Family Residential, 0.251 acres to 0.500 acres	Class C
Single-Family Residential, 0.501 acres to 0.750 acres	Class D
Single-Family Residential, 0.751 acres to 1.000 acres	Class E
Single Family Residential, 1.001 acres or larger	Class F

(b) Non-single family ESWU. The storm water utility fee for non-single family lots shall equal the number of ESWU's for a given lot, multiplied by the annual rate established by the city commission per ESWU per year. The formula for determining the number of ESWU's per

non-single family lot shall be calculated from the amount of pervious and impervious lot area as follows:

Number of ESWU's = $\frac{0.15\ (TA - IA) + 0.90\ (IA)}{\text{Average runoff potential of the standard unit/ESWU}}$

where,

TA = total area of each lot (reported in square feet);

IA = impervious area of each lot (reported in square feet).

(c) Any non-single family residential property owner liable for a storm water utility fee may appeal the determination that the property utilizes the storm water system or the amount of a storm water utility fee, including a determination on a reduction in or the elimination of the fee under subsections (a) and (b). An appeal may be based on the quantity of storm water runoff generated, the reductions established, the reductions allocated, or any other matter relating to the determination of the storm water utility fee.

(d) A single family residential property owner may appeal the determination that the property utilizes the storm water system, however, such an appeal shall be limited to the following reasons:

1. The size of the lot has been miscalculated; or,
2. All or part of the storm water runoff drains to an open drainage course, such as a river, lake or creek, which affects the quantity of the storm water runoff generated that gets into the storm water sewer system.

(e) An appeal under subsection (c) shall be heard by a storm water utility appeals board appointed by the local unit of government. The appeals board shall consist of three members, two of whom shall be licensed professional engineers not employed by the local unit of government.

(f) An appeal of a storm water utility fee shall not be brought more than one year after the fee was billed.

(g) To prevail in an appeal of a storm water utility fee, the appellant shall demonstrate in accordance with the requirements of the plan for a non-single family residential property that the use of the system by the property is less than the amount used by the local unit of government in the calculation of that property's storm water utility fee, or for all properties the classification of the property type is in error, or there was a mathematical error in the calculation of the fee.

(h) The sole remedy for a property owner who prevails in an appeal of a storm water utility fee is a prospective correct recalculation of the storm water utility fee.

(i) If in an appeal of a storm water utility fee the appeals board finds that the requirements of subsection (g) have not been met, that finding is conclusive until the property is modified to either increase or decrease the utilization of the system. The property owner remains eligible for reduction or elimination of fees under the storm water utility ordinance.

(j) A property owner making an appeal shall provide the appeals board with information necessary to make a determination.

(k) A person aggrieved by a decision of the appeals board on an appeal under this section may appeal to the circuit court in which the property is located. An appeal to the circuit court must be filed within 30 days of the appeals board's decision.

All other Sections of Chapter 114 Utilities shall remain unaffected.

Ordained this _____ day of _____, 2017. Effective upon publication.

_____
Mark Nickita, Mayor

_____
Cherilynn Brown, City Clerk

I, Cherilynn Brown, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2017 and that a summary was published _____, 2017.

_____
Cherilynn Brown, City Clerk

City of Birmingham
A Walkable Community

MEMORANDUM

Office of the City Manager

DATE: **July 20, 2017**

TO: **City Commission**

FROM: **Joseph A. Valentine, City Manager**

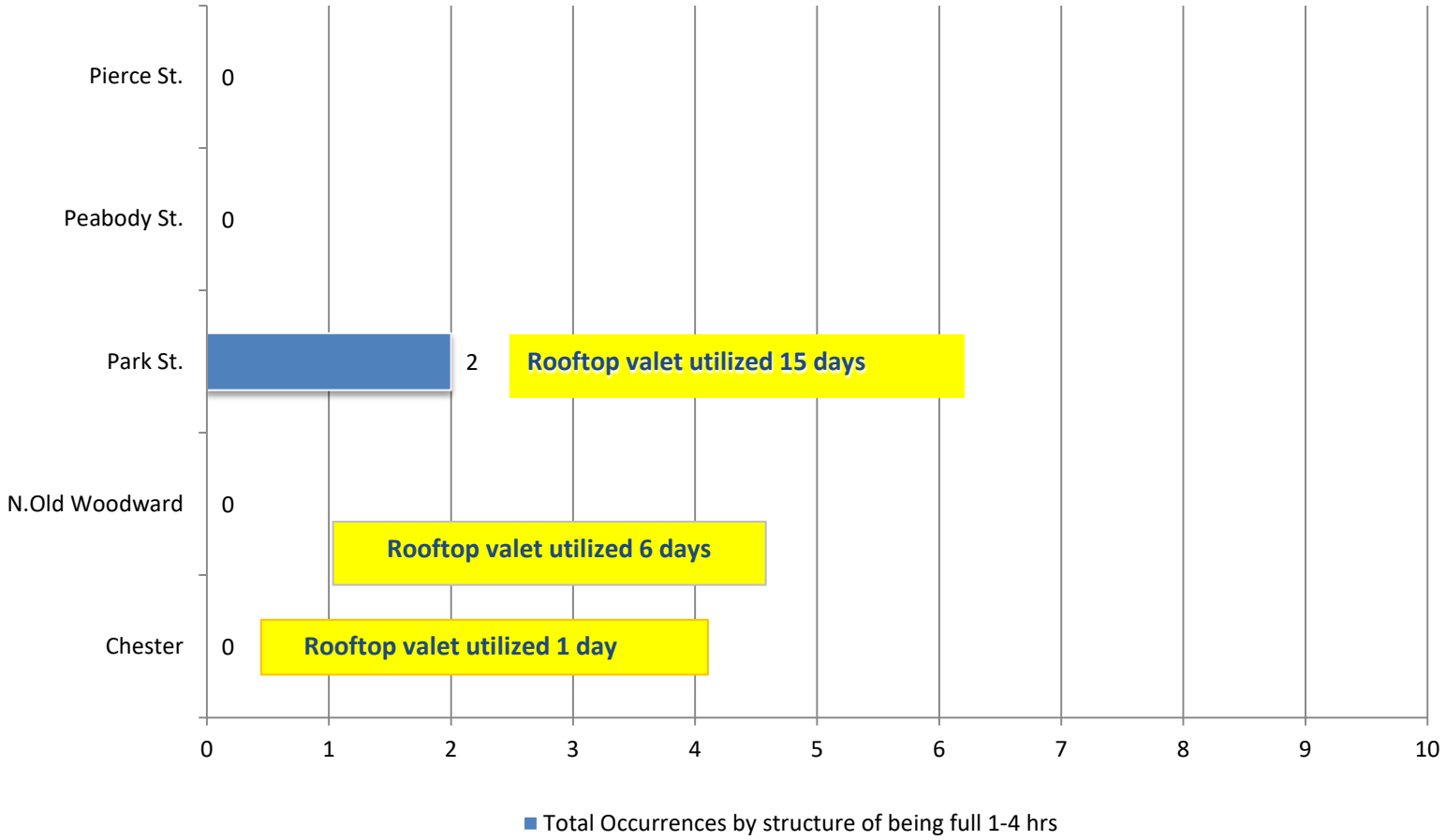
SUBJECT: **Request for Closed Session – Performance Evaluation**

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.

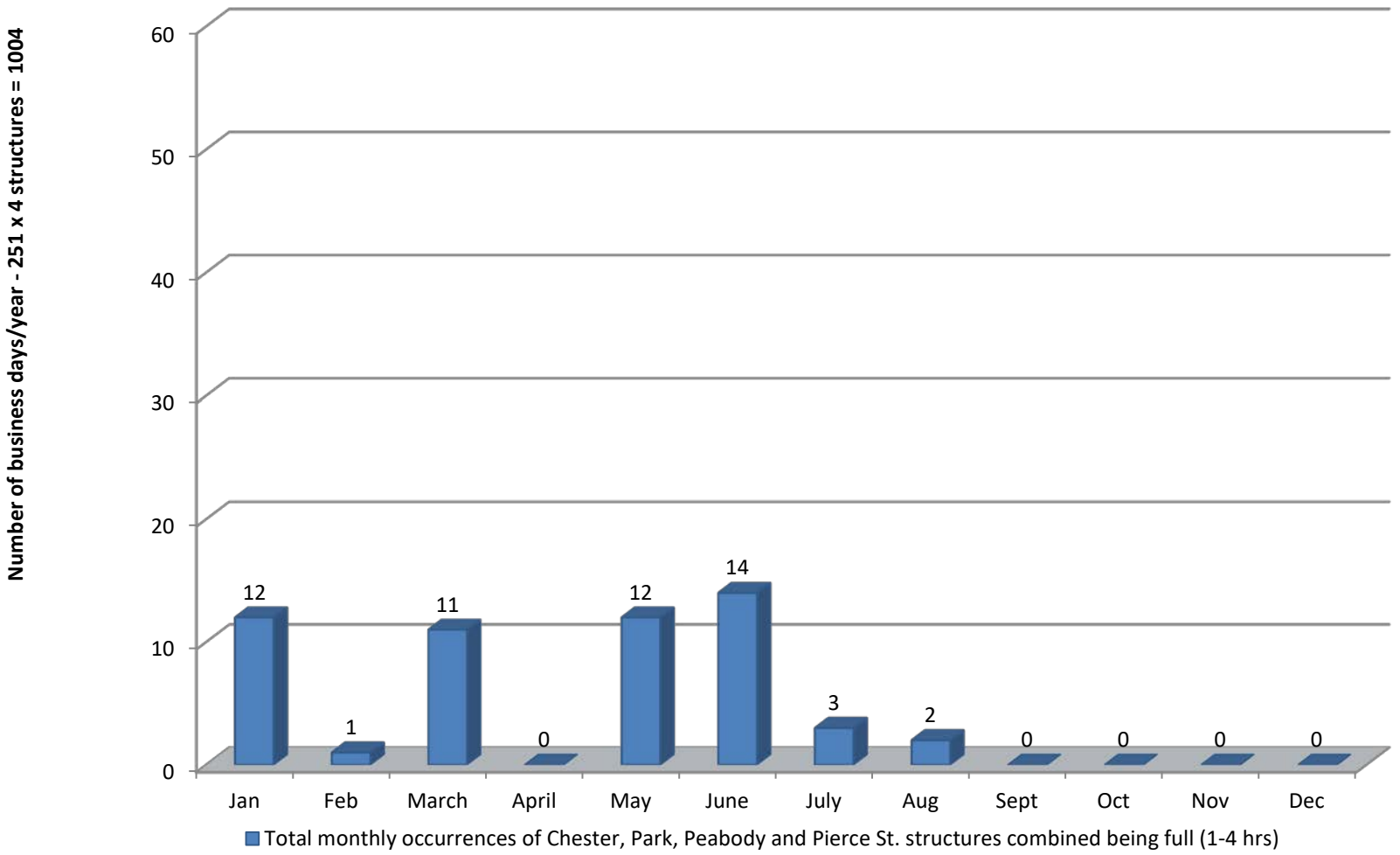
Parking Full Status by Structure

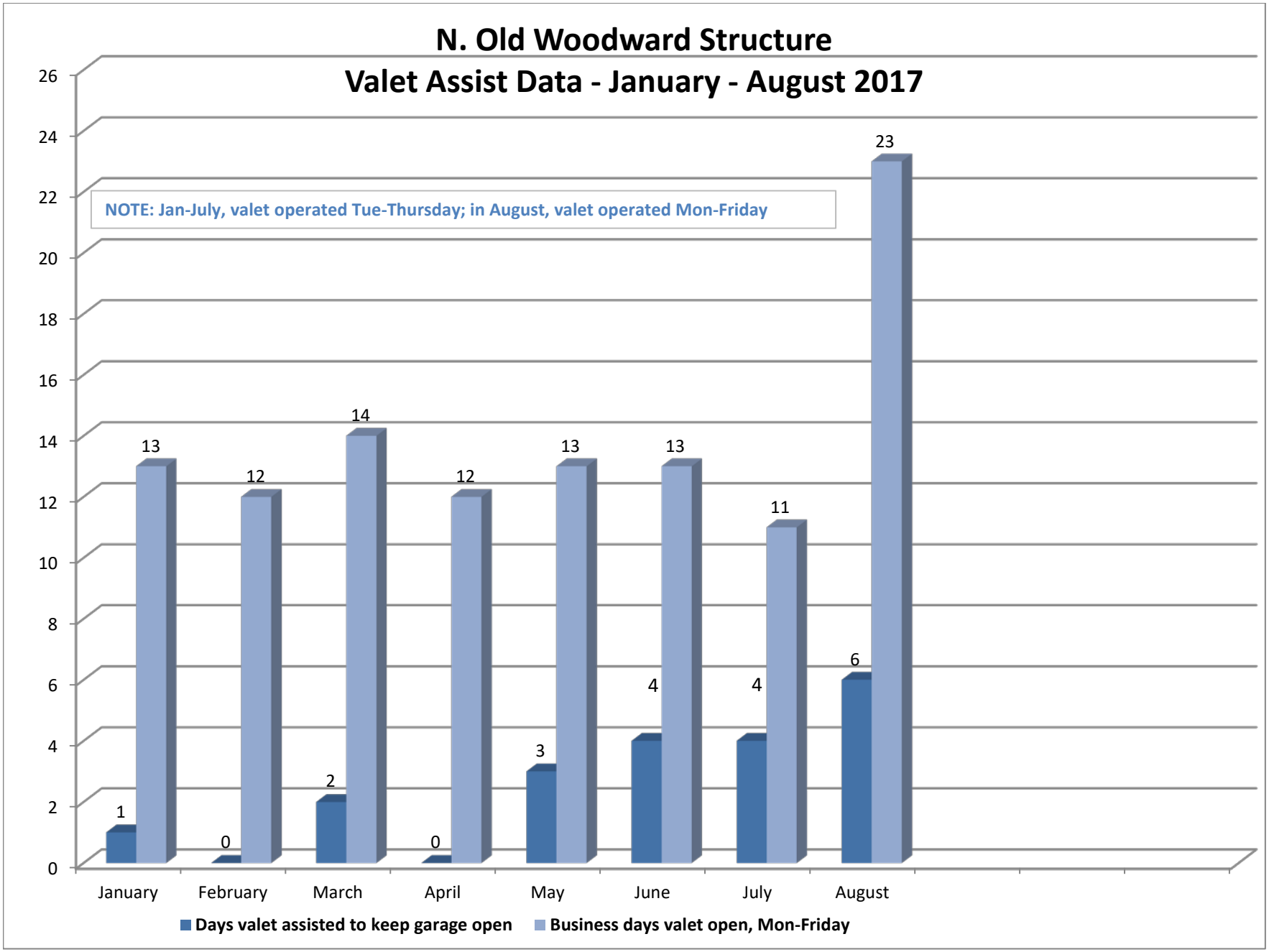
August 2017 Business Days Only (M-Friday)



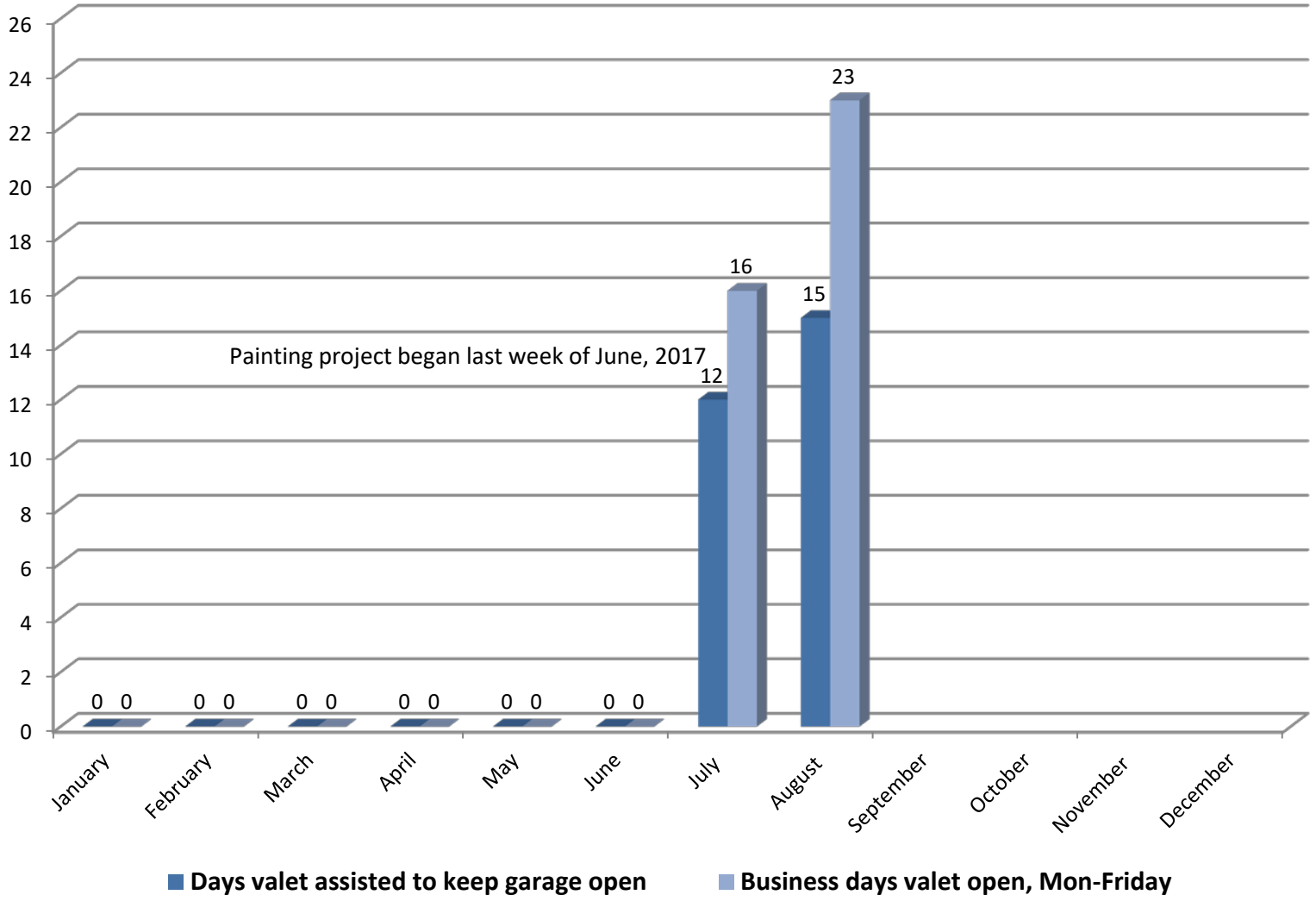
R10E1

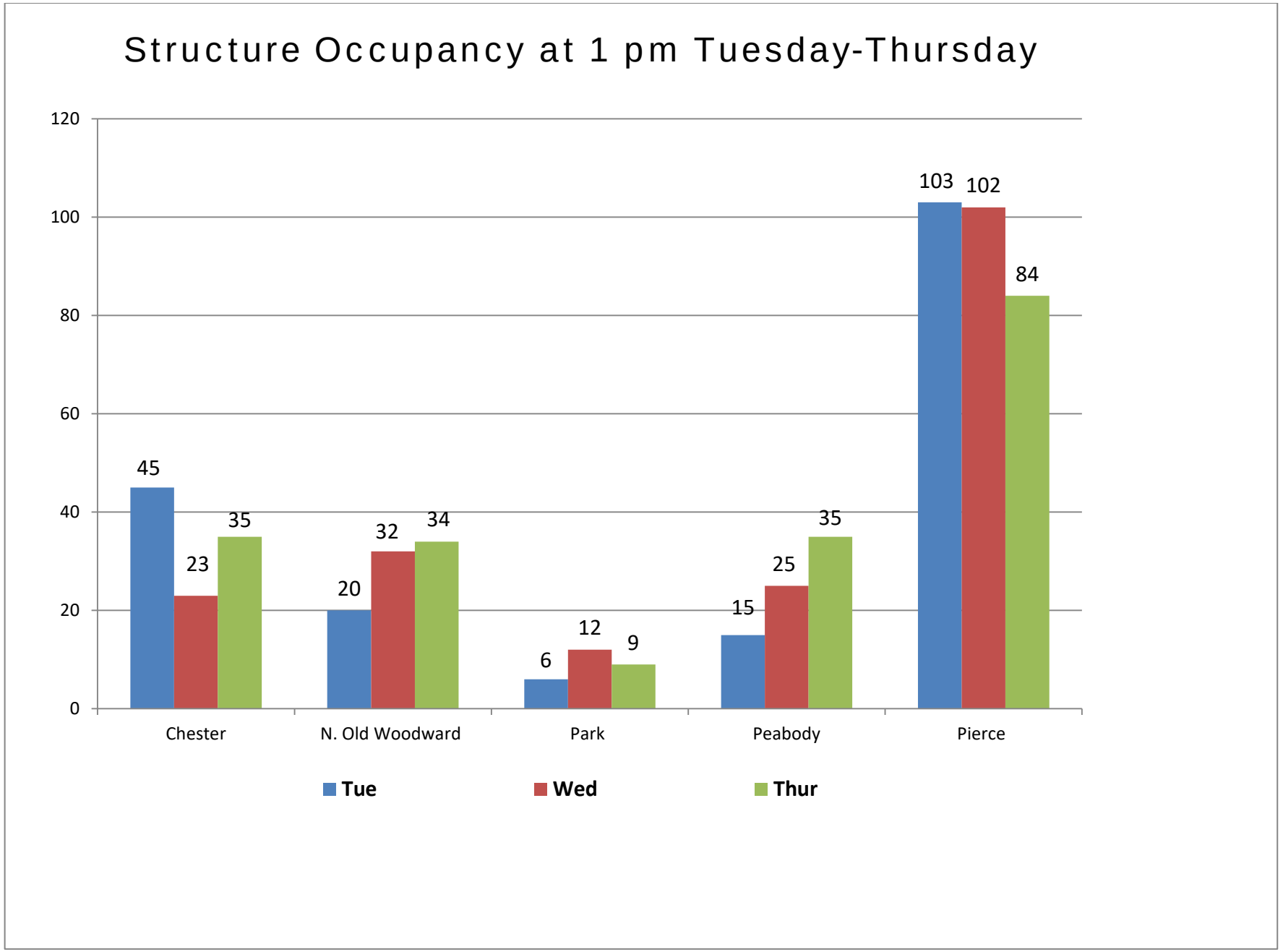
2017 Combined Parking Structure Full Status




N. Old Woodward Structure
Valet Assist Data - January - August 2017
NOTE: Jan-July, valet operated Tue-Thursday; in August, valet operated Mon-Friday
26
24
22
20
18
16
14
12
10
8
6
4
2
0
1
13
0
12
2
14
0
12
3
13
4
13
4
11
6
23
January
February
March
April
May
June
July
August
Days valet assisted to keep garage open
Business days valet open, Mon-Friday

Park Street Structure
Valet Assist Data - January - August 2017




Structure Occupancy at 1 pm Tuesday-Thursday
120
100
80
60
40
20
0
45
23
35
20
32
34
6
12
9
15
25
35
103
102
84
Chester
N. Old Woodward
Park
Peabody
Pierce
Tue
Wed
Thur

Pierce Street Structure

Garage full list

AUGUST 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		
		Notes:	Structure did not fill.			

Peabody Street Structure

Garage full list

AUGUST 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		
		Notes:	Structure did not fill.			

Chester Street Structure

Garage full list

AUGUST 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9 Valet-2 cars	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		
		Notes:				

Park Street Structure

Garage full list

AUGUST 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 Valet-34 cars	2 Valet-47 cars	3 Valet-42 cars	4 Valet-13 cars	5
6	7 Valet-44 cars	8 Valet-28 cars	9 Valet-44 cars	10 Valet-42 cars	11 Valet-23 cars	12
13	14 Valet-22 cars	15 Valet-50 cars **FULL @12:54a** **OPEN @1:37p**	16 Valet-0 cars	17 Valet-0 cars	18 Valet-0 cars	19
20	21 Valet-0 cars	22 Valet-0 cars	23 Valet-0 cars	24 Valet-0 cars	25 Valet-0 cars	26
27	28 Valet-15 cars	29 Valet-33 cars	30 Valet-21 cars	31 Valet-50 cars **FULL @2:00p** **OPEN @2:35p**		
		Notes: Park Street Painting Project-Blocking off between 85-160 spaces at a time.				

N. Old Woodward Garage

Valet Counts

August 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 18 cars	**2** 4 cars	**3** 3 cars	**4** Garage not filled.	**5**
6	**7** Garage not filled.	**8** 22 cars	**9** Garage not filled.	**10** 2 cars	**11** Garage not filled.	**12**
13	**14** Garage not filled.	**15** 2 cars	**16** Garage not filled.	**17** Garage not filled.	**18** Garage not filled.	**19**
20	**21** Garage not filled.	**22** Garage not filled.	**23** Garage not filled.	**24** Garage not filled.	**25** Garage not filled.	**26**
27	**28** Garage not filled.	**29** Garage not filled.	**30** Garage not filled.	**31** Garage not filled.		
		Notes:				

COMCAST

September 1, 2017

Ms. Laura Pierce, Clerk
City of Birmingham
151 Martin St.
Birmingham, MI 48012-3001

Dear Ms. Pierce:

As part of Comcast's commitment to keep you informed about important developments that affect our customers in your community. I am writing to notify some changes to the channel lineup. Customers are being notified of these changes via bill message.

Effective on or about October 10, 2017, WeatherScan will no longer be available as part of the Xfinity Digital Preferred service.

As always, feel free to contact me directly at 734-254-1557 with any questions you may have.

Sincerely,

Kyle V. Mazurek
Manager of External Affairs
Comcast, Heartland Region
41112 Concept Drive
Plymouth, MI 48170

INFORMATION ONLY