



**CITY COMMISSION MEETING AGENDA  
SEPTEMBER 25, 2017  
7:30 PM**



**Municipal Building, 151 Martin, Birmingham, MI 48009**

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**BIRMINGHAM CITY COMMISSION AGENDA**  
**SEPTEMBER 25, 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.**

***Announcements:***

- The first session of the Fall Citizens Academy begins tomorrow evening at 6:00 PM in the City Commission Room. If you are interested in attending, you must register with the City Manager's office at 248.530.1807.
- The Farmers Market continues on Sundays through October 29<sup>th</sup> from 9:00 AM to 2:00 PM in Municipal Parking Lot #6 on N. Old Woodward.
- The Fire Department is hosting its annual Open House on Saturday, October 14<sup>th</sup> from 1:00 PM to 4:00 PM at 572 S. Adams.

***Appointments:***

- A. Interviews for Brownfield Redevelopment Authority
  - 1. Dan Haugen
  - 2. Harry Awdey
- B. To concur in the Mayor's appointment of \_\_\_\_\_ to the City of Birmingham Brownfield Redevelopment Authority as a regular member to serve the remainder of a three-year term to expire May 23, 2019.
- C. Administration of Oath of Office to the appointed board member.

**IV. CONSENT AGENDA**

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

- A. Approval of City Commission minutes of September 11, 2017
- B. Approval of City Commission/Planning Board Joint Workshop minutes of September 18, 2017
- C. Approval of warrant list, including Automated Clearing House payments, of September 13, 2017 in the amount of \$1,063,737.15
- D. Approval of warrant list, including Automated Clearing House payments, of September 20, 2017 in the amount of \$17,647,605.35
- E. Resolution approving a request from the Birmingham Shopping District to hold the Winter Markt, in Shain Park and surrounding streets from December 1 - 3, 2017 and to allow the use of temporary liquor licenses in Shain Park for this event, 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.

- F. Resolution approving a request from the Birmingham Shopping District to place the Santa House in Shain Park from November 22 to December 24, 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.
- G. Resolution setting Monday, October 16, 2017 at 7:30 PM for a Public Hearing to consider the proposed rezoning of 191 N. Chester from TZ1 (Transitional Zoning) to TZ2 (Transitional Zoning).
- H. Resolution approving the purchase of two (2) 2018 GMC Sierra 4x4 pickup trucks from Todd Wenzel Buick GMC through the Oakland County extendable purchasing contract #4850 in the amount of \$55,992.00 from account #641-441.006.971.0100.
- I. Resolution approving Change Order #1 to Florence Cement Co., in the amount of \$50,500 be authorized for the 2017 Asphalt Resurfacing Program, Contract #5-17(P), to provide asphalt conditioning services and prepare the following sections of local streets for cape sealing:

Webster Ave. – Woodward Ave. to Adams Rd.

S. Worth Ave. – 300 Ft. North of Webster Ave. to Woodward Ave.

Further, approving the appropriations and budget amendment as follows:

Local Street Fund

Revenues:

Draw from Fund Balance	#203-000.000-400.0000	\$26,955
Oakland County Local Road		
Improvement Grant	#203-000.000-583.0005	\$30,598
Total Revenue Adjustments		\$57,553

Expenditures:

Public Improvements	#203-449.001-985.7500	\$57,553
Total Expenditure Adjustments		\$57,553

## V. UNFINISHED BUSINESS

- A. Resolution adopting Advisory Opinion 2016-03 as guidance for Commissioners with respect to serving on community based Organizations.
- B. Resolution setting Monday, October 16, 2017 at 7:30 PM for a Public Hearing to consider an amendment to Article 9, Section 9.02, Definitions, to add a definition for personal services to the Zoning Ordinance.

## VI. NEW BUSINESS

- A. Resolution stating that following the taking and subscribing to the oath of office required by Chapter III, Section 31 of the Birmingham City Charter, every officer elected or appointed to any city office shall also take and subscribe to the following oath:  

“I do solemnly swear (or affirm) that I will support the City of Birmingham Charter and Code of Ordinances in the performance of the duties of my office.”  
(complete resolution in agenda packet)
- B. Resolution creating an Ad Hoc Unimproved Street Study Committee to conduct a city-wide study of unimproved roads and provide a recommendation to the City Commission outlining a long term plan for these roads.
- C. 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.)

**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. Birmingham Brand Development, submitted by Assistant to City Manager Haines

**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](tel:2485301880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).*





**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](http://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:

<b>Applicant Name</b>	<b>Criteria/Qualifications</b>
	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 as a regular member 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  <i>gotthelf@butzel.com</i>	5/9/2005	5/23/2020
Runco 1556 Lakeside	Robert	(248) 388-8100  <i>rrunco@runcowaste.com</i>	5/9/2005	5/23/2020
Torcolacci 2849 Buckingham	Daniella	248-217-4805  <i>dtorcolacci@gmail.com</i>	10/27/2014	5/23/2019
Vacant				5/23/2019
Zabriskie 587 Watkins	Wendy	(248) 646-7543 (248) 743-6046  <i>jwzab@comcast.net</i>	5/9/2005	5/23/2018



RECEIVED BY

AUG - 8 2017

OFFICE USE ONLY	
Meets Requirements?	<input checked="" type="radio"/> Yes <input type="radio"/> No
<input checked="" type="radio"/> Will Attend	<input type="radio"/> 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](http://www.bhamgov.org/boardopportunities).

(Please print clearly)

Board/Committee of Interest Brown Field 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



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(By Mail)  
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**OFFICE USE ONLY**  
Meets Requirements? ☒ Yes ☐ No  
☒ Will Attend ☐ Unable to Attend

**APPLICATION FOR CITY BOARD OR COMMITTEE**

CITY CLERK'S OFFICE

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](http://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](mailto:Cbrown@bhamgov.org) or by fax to 248.530.1080.

Updated 05/11/17

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

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

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

**II. ROLL CALL**

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

Administration: City Manager Valentine, City Clerk Brown, Police Chief Clemence, City Attorney Currier, City Planner Ecker, Police Commander Grewe, Building Official Johnson, City Engineer O'Meara, DPS Director Wood

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

***Proclamations, Resolutions, Awards:***

Mayor Nickita recognized 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.

Mayor Nickita announced:

- Public input on the Birmingham Parks and Recreation Master Plan will be sought during Field Day at the Farmers Market on Sunday, September 17<sup>th</sup> from 9:00 a.m. until 2:00 p.m. and at an Open House on Tuesday, October 3<sup>rd</sup> beginning at 5:30 p.m. Visit [bhamgov.org/ParksRecPlan](http://bhamgov.org/ParksRecPlan) for more information.
- Sunday, September 17<sup>th</sup> 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 <http://www.baldwinlib.org/idealab> for additional information.
- A new Birmingham Citizens Academy session begins on September 26<sup>th</sup>. Space is still available for Birmingham residents to take part in this free 8-week program. Applications are due September 22<sup>nd</sup>. Visit [www.bhamgov.org/citizensacademy](http://www.bhamgov.org/citizensacademy) to download the application.
- The Birmingham Street Art Fair is coming up on Saturday, September 16<sup>th</sup> from 10:00 a.m. until 6:00 p.m. and Sunday, September 17<sup>th</sup> from 10:00 a.m. to 5:00 p.m. For more information visit [www.theguild.org](http://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 14<sup>th</sup> 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](http://www.BirminghamNext.org).

#### **09-244-17                      APPOINTMENTS TO THE BOARD OF ZONING APPEALS**

Kevin Hart, Peter Lyon, and A. Randolph Judd were present and were interviewed by the Commission.

**MOTION:**     Motion by Commissioner Bordman:

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

VOTE:            Yeas,     7  
                       Nays,     0  
                       Absent, 0

**MOTION:**     Motion by Commissioner Boutros:

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

VOTE:            Yeas,     7  
                       Nays,     0  
                       Absent, 0

**MOTION:**     Motion by Commissioner Sherman:

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

VOTE:            Yeas,     7  
                       Nays,     0  
                       Absent, 0

#### **09-245-17                      APPOINTMENT TO THE BROWNFIELD REDEVELOPMENT AUTHORITY**

Mayor Nickita reported he spoke with both applicants at length over the phone, discussing their qualifications, and he is ready to make the appointment. Commissioners Hoff and DeWeese requested the applicants appear before the Commission. It was noted one applicant has lived in Birmingham for one month and the other for one year.

The City Commission took no action.

The City Clerk administered the Oath of Office to those appointed.

#### **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.

**08-246-17                      APPROVAL OF CONSENT AGENDA**

The following items were removed from the Consent Agenda:

- Commissioner Sherman: Item H, Set Public Hearing – Definition of Personal Services
- Commissioners Bordman and Boutros said they would abstain from voting on Item A, Approval of City Commission minutes of August 28, 2017, due to their absence from the meeting.

**MOTION:** Motion by Commissioner Harris, seconded by Commissioner DeWeese:  
To approve the Consent Agenda, with Item H removed and abstentions of Commissioners Bordman and Boutros from voting on Item A noted.

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

- 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.

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

**09-247-17                      SCHEDULE PUBLIC HEARING TO CONSIDER ADDING A  
DEFINITION FOR PERSONAL SERVICES TO THE ZONING  
ORDINANCE (Item H)**

Commissioner Sherman said he would like to postpone setting the public hearing until after the joint meeting with the Planning Board next week.

Commissioner Hoff asked whether the definition for personal services being presented is a draft that the Planning Board did not support. City Manager Valentine confirmed and explained that the Commission is waiting on this item to receive more clarification from the Planning Board next week.

Commissioner Sherman specified that postponing Item H is a move to postpone setting a public hearing.

The Commission took no action.

<b>V. UNFINISHED BUSINESS</b>
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None

<b>VI. NEW BUSINESS</b>
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<b>09-248-17</b>	<b>ONE YEAR PARKING REVIEW (GLENHURST, FRANK, HAYNES AND HAZEL)</b>
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From Chief of Police Clemence's staff report to City Manager Valentine dated August 3, 2017:

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 if there have been any negative side effects.

**Glenhurst Dr.**

At their July 11, 2016 meeting the commission approved the implementation of permit parking only restrictions on Glenhurst from Lincoln to Midvale from 7:00 a.m. to 4:00 p.m. school days.

The request was submitted by resident Richard Winderstedt, who 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, ranging 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 regarding vehicles parked in a permitted area.

Staff recently spoke with Mr. Winderstedt, who 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 their July 11, 2016 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 8:00 a.m. to 6:00 p.m. The problem, identified by Henry Velleman, was that employees of the downtown were parking in the area after 4:00 p.m. 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 10:00 p.m.

A review of 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 who stated it has been much better since the signs were installed. She stated the area is no longer cluttered with employee vehicles 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 who visit for longer than two hours and the availability for parking their personal vehicles alongside their house during the daytime hours for more than 2 hours.

#### **Haynes St.**

At their 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 one complaint prior to the signs being installed. After the signs were posted the police department received five complaints, all for vehicles parked without a permit.

Staff recently spoke with Mr. Yaldoo who 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 their September 12, 2016 meeting the commission approved residential permit parking on Hazel St. from S. Eton to Columbia. Previously the area was "No Parking" from 7:00 a.m. to 4:00 p.m. Romain Fontanges stated after 4:00 p.m. 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 there have been 24 complaints, most 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.

Police Commander Grewe noted that the number of complaints increased on all four streets since the signs were installed, but the types of complaints changed. Previously the complaints regarded parking nuisances to the neighborhoods, and now the complaints are largely about vehicle adherence to the restrictions. The latter category of complaints has been decreasing as individuals get used to the restrictions.

Mayor Nickita noted the Commission may include discussing these types of traffic issues during the master plan process.

Mayor Pro Tem Harris asked whether there was an increase of any other complaints west of Eton in the Rail District.

Commander Grewe said there were not, with the exception of an issue for the residents of the condominium complexes on Villa and Yosemite. Commander Grewe explained that because the complexes have not been controlling their parking lots, non-residents have been parking in the complexes' lots and residents have been forced to park on the street. The Police Chief has told the complex managers to control their lots and expects the issue to resolve itself if they do so.

**MOTION:** Motion by Commissioner DeWeese, seconded by Commissioner Bordman:  
To approve the continuation of the parking restrictions currently in place on Glenhurst, Frank, Haynes and Hazel St. subject to a review within two years.

VOTE:            Yeas,        7  
                     Nays,        0  
                     Absent,      0

#### **09-249-17 NORTH OLD WOODWARD / BATES STREET PARKING AND SITE DEVELOPMENT – REQUEST FOR PROPOSALS**

From City Planner Ecker's staff report to City Manager Valentine dated September 6, 2017:

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 were financially qualified.



On July 26, 2017, the Ad Hoc Parking Development Committee adopted 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.

Commissioner Bordman was concerned that:

- The plan did not include parking accommodations for construction site workers.
- The turn-around time between the release of the RFP and the proposal due date of January 3, 2018 is too short and may lead to rushed proposals.

City Planner Ecker explained that parking arrangements for construction site workers are generally handled during pre-construction meetings with the developer and city staff, and that all four pre-qualified candidates stated before the Ad Hoc Parking Development Committee they would only need 90 days to create and submit their proposals.

Commissioner Hoff provided a brief overview of the Ad Hoc Parking Development Committee:

- It was formed about two years ago to look at the parking situation in Birmingham.
- The Committee includes a financial representative, a developer representative, members of the advisory parking committee, members of the City Commission, and members of the Planning Board.
- Victor Saroki's firm was hired to come up with a concept plan focusing on the N. Old Woodward parking structure and the surrounding area. Based on the firm's proposal, this is a development project, not just a parking project. The proposal includes:
  - Demolishing the N. Old Woodward structure and replacing it with a larger one;
  - Developing the surrounding area with business and residential projects; and
  - Continuing Bates north to emerge on Old Woodward.
- Commissioner Hoff and Mayor Nickita are both on the Committee.
- The four pre-qualified teams have a multitude of disciplines represented.

Mayor Pro Tem Harris asked whether the sale of public land, which under the City Charter requires a public vote, needs to be incorporated in the timeline for the bidders.

City Planner Ecker confirmed that it is included under Item E – Submission Requirements and Guidelines, on page twelve. A written outline of the terms the development team proposes is required, and the terms include purchase and/or lease of land.

Commissioner DeWeese clarified that should there be a lease of public land, and not a sale, that only the Commission's approval is required. City Manager Valentine confirmed. City Planner Ecker specified that such leases have been done previously, albeit with smaller parcels.

Mayor Nickita explained that the land lease or sale would include the retail liner of the parking deck and the development parcels: one residential, one mixed use. The City would retain

ownership of the land beneath the parking deck, the street, the sidewalk, the infrastructure, the right of way, the public park or space that goes down to the river and the connection to Booth Park.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Boutros:  
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.

VOTE:        Yeas,        7  
              Nays,        0  
              Absent,    0

**09-250-17                      MAPLE ROAD RAILROAD BRIDGE IMPROVEMENTS STUDY**

From DPS Director Wood's staff report to City Manager Valentine dated August 31, 2017:

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.

The proposal from Walker Parking Consultants' Restoration Consultants division is to study the feasibility and provide a cost estimate for the concrete preparation, painting and lighting of the railroad bridge. Two options are provided: 1) to review the sidewalk areas; or 2) 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.

As part of the proposal, consideration is also given to aesthetic surface improvements to the outside facades traveling eastbound and westbound. 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. Both options include a condition appraisal of the concrete elements of the railroad bridge, which may impact repairs or preparation work for painting. 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 four to six weeks. 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 from CN Railroad for work on this property.

Mayor Nickita explained

- This is a capacity study before soliciting designs for the bridge.

- The bridge needs beautification, as it is an eastern gateway to the City.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner DeWeese:  
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.

Commissioner Hoff requested clarification about the differences between Option One and Option Two. Director Wood explained that for an additional \$1,600, an analysis of the underpass would be performed in addition to the analysis of the pedestrian walkway, which provides greater benefit in regards to the lighting and the painting needs.

Commissioner Boutros asked if the \$8,775 includes maintenance costs.

City Manager Valentine explained that this is only a feasibility study of the structure to determine:

- The best way to maintain the bridge;
- If there are any structural issues that need to be addressed;
- What type of paint will be applied and where; and
- An electrical plan for illuminating the area.

VOTE:           Yeas,       7  
                  Nays,       0  
                  Absent,   0

#### **09-251-17                   BOARD OF ETHICS ADVISORY OPINION**

From City Attorney Currier's letter to City Manager Valentine dated August 31, 2017:

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, a 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 that 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. The City Commission can consider adopting a resolution 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 proposed 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.

City Manager Valentine explained that:

- The Commission discussed this item about a month prior, as the Ethics Board completed their opinion on the question.
- As a follow-up, the Commission requested specific guidance regarding how Commissioners may serve other non-profit organizations that request Commissioners' involvement.
- This item addresses the City Attorney's suggested resolution based on the Ethics Board opinion, and whether the language provides sufficient guidance for Commissioner participation in outside agencies.

Commissioner Bordman noted:

- Points One and Two, inclusive, in the City Attorney's resolution imply that any appointment to an organization disqualifies a Commissioner from considering financial requests from an organization.
- A liaison position under the Ethics Board's advisory opinion, however, does not disqualify a Commissioner.
- It is necessary to clarify the difference in obligations between a Commissioner serving as a non-voting liaison to a Board and a Commissioner serving as a voting member of a Board when a financial request from the relevant non-profit comes before the Commission.

Commissioner Hoff explained that her understanding was that a Commissioner acting as a non-voting member or liaison cannot participate:

- In a discussion by the organization regarding any of its own financial aspects; or
- In a financial discussion by the Commission regarding a financial request from the organization.

Attorney Currier explained that if a Commissioner is a non-voting liaison to an organization's Board, the Commissioner is not precluded from voting on these issues when they come before the Commission. If a Commissioner is a voting member of a Board, however, there is a conflict.

Mayor Pro Tem Harris agreed with Commissioner Bordman's request for more specific language and requested a revision of the first clause of the sentence reading "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."

Commissioner DeWeese would like to see the above adjustments made and returned to the Commission.

Commissioner Hoff asked whether the Commission could simplify the issue by specifying that a Commissioner appointed to a board will only serve as a non-voting liaison.

Attorney Currier replied that the goal of the resolution is to re-state the Ethics Board's opinion, not to re-write it.

Mayor Nickita asked whether this should go back to the City Attorney, and the Commission agreed. Commissioner Sherman suggested that the ultimate outcome might follow Commissioner Hoff's suggestion that it just be the non-liaison position.

Attorney Currier said that another way of doing it is for the Commission to adopt the advisory opinion by reference in its entirety.

Commissioner DeWeese requested that it be clear that a Commissioner can be a non-voting liaison, and that a Commissioner cannot participate in any decisions regarding a non-profit Board's financial decisions if said Commissioner is serving on the Board as a voting member.

Mayor Pro Tem Harris added that if the Ethics Board's opinion is endorsed by the Commission then it is enforceable in the relevant circumstances.

The Commission took no action.

**09-252-17                      STORM WATER UTILITY FEE ORDINANCE AMENDMENT SECTION 114**

From City Engineer O'Meara's staff report to City Manager Valentine dated August 29, 2017:

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 to provide a means for the public to appeal storm water utility fees should they feel aggrieved. One appeal has been received by the City and was heard by the Board on May 16, 2017 with a follow-up meeting on May 23.

Through the discussion, staff and the Board realized an inherent problem in the wording of the ordinance with respect to single family residential properties. 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. 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 City.

The Board summarized this conclusion by unanimously 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.*

Per this direction, the City Attorney's office has drafted a modified ordinance to address this issue.

**MOTION:**      Motion by Commissioner Boutros, seconded by Commissioner DeWeese:



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. *Ordinance appended to these minutes as Attachment A.*

VOTE:        Yeas,        7  
              Nays,        0  
              Absent,    0

**09-253-17            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.**

Mayor Nickita stated there would be no action following 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**

**09-254-17            COMMISSIONER COMMENTS**

Commissioner Bordman noted the Oath of Office does not include adherence to city ordinances and asked that a way be found to include in the oath process a requirement to adhere to city ordinances.

City Clerk Mynsberge explained that the City Charter specifies the language for the Oath, and changing the language itself would require a Charter amendment.

City Manager Valentine said he would return to the Commission with recommendations for how to include a requirement for observance of city ordinances with the oath.

Commissioner Hoff wanted to make note that:

1. Former Birmingham Mayor and City Commissioner Gary Kain passed away recently, and she wanted to bring his passing to the Commission’s attention.
2. She believes the Commission should spend some more time looking at residential ordinances due to some concerns expressed to her by residents.

Mayor Nickita replied that codes and zoning follow City intent which will be reviewed in the master plan process. Once the Commission has reviewed that from a planning perspective, zoning, code, and ordinance issues can be updated to reflect the intention of the master plan. The Mayor added that if there are specific concerns regarding code issues, it is a monitoring and implementation issue, not a master plan issue, which should also be considered.

City Manager Valentine agreed with Mayor Nickita and added that if there are existing code enforcement issues, they should be reported to Code Enforcement in the Building Department.

Commissioner DeWeese addressed residents and:

- Directed them to take the master plan process seriously.
- Strongly suggested that they get involved, make their views known, and add their vision to the community.
- Added that Birmingham has historically pursued its plan committedly, and that resident involvement is necessary because the plan will determine the City's actions for the next twenty to thirty years.

#### **09-255-17                      CITY STAFF REPORTS**

The Commission received the Parking Utilization Report, submitted by City Engineer O'Meara. City Manager Valentine commented that valet usage is up with the Park Street structure undergoing painting, but noted even with some spaces out of service the structure only experienced two occurrences in the month of August of being full.

<b>XII      ADJOURN</b>
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Mayor Nickita adjourned the meeting into closed session at 8:50 p.m. and reconvened the regular meeting at 10:50 p.m.

The regular meeting was adjourned at 10:52 p.m.

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J. Cherilynn Mynsberge, City Clerk

**CITY OF BIRMINGHAM**  
**ORDINANCE NO. 2248**

**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 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 11<sup>th</sup> day of September 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 September 11, 2017 and that a summary was published September 24, 2017.

Cherilynn Brown, City Clerk

**BIRMINGHAM CITY COMMISSION /  
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES  
SEPTEMBER 18, 2017  
DPS FACILITY, 851 SOUTH ETON  
7:30 P.M.**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

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

**II. ROLL CALL**

PRESENT: Mayor Nickita  
Mayor Pro Tem Harris  
Commissioner Bordman  
Commissioner Boutros  
Commissioner DeWeese  
Commissioner Hoff (arrived at 7:35 PM)  
Commissioner Sherman

Scott Clein, Planning Board Chairman  
Stuart Jeffares, Member  
Janelle Whipple-Boyce, Member  
J. Bryan Williams, Member  
Robin Boyle, Member

ABSENT: Bert Koseck, Member  
Gillian Lazar, Member  
Lisa Prasad, Member  
Daniel Share, Member

ADMINISTRATION: City Manager Valentine, City Attorney Currier, Deputy Clerk Arft,  
Planning Director Ecker

Mayor Nickita explained that this meeting will be a workshop session. No formal decisions will be made. The purpose of the workshop is to focus on problem definition and desired outcomes.

**III. ITEMS FOR DISCUSSION**

**A. REVIEW OF CITY-WIDE MASTER PLAN CONSULTANT REQUEST FOR PROPOSALS**

City Planner Ecker explained the request for proposal (RFP) incorporates all comments from joint meetings, topic requests, and miscellaneous comments over the past year. All changes asked for thus far have been incorporated.

Mayor Nickita asked for Commission comments.

Commissioner Sherman commented that the plan has been seen a number of times, and gone through a number of revisions. He continued that he wanted to incorporate the 2016 review of the 2014 plan by Andres Duany. City Planner Ecker said she would add it to the list, and Commissioner Sherman concluded that he saw nothing else missing from the RFP.

Mayor Nickita added that:



- The document Commissioner Sherman referenced was a review document.
- DPZ submitted a document after that review, and it was an all-encompassing review of the plan. It included department issues and pretty extensive public interaction. There were meetings, presentations, and it was a multi-faceted city initiative.
- The document gave recommendations to move forward and a sense of where the City was on the plan.
- Even though it was not an official plan, the Mayor believes it is an important supplemental document that should be included in the plan.

Commissioner DeWeese expressed concern about the point on page six which reads: "Update of Residential Housing section to include neighborhood vision in residential areas, analysis of changes in residential patterns and residential areas from 1980 to now, typology and character of neighborhoods, development trends, future projections and future direction." He believed that point did not sufficiently address either the issues and visions people have in the neighborhoods, or the relationship between residential and commercial needs.

Commissioner DeWeese continued that:

- He did not understand the reference to one-way streets in the fourth bullet point on page six. The City does not have one-way streets, and he added that for walkable communities one-way streets are not usually desirable.
- He still did not see a sufficient expression of a vision for the desired future direction and character of the City.
- The 2016 plan included such a vision for the downtown, and added that there was something of a vision included in the Master Plan, but he felt that such a vision was lacking in this document.
- He wants to see the community come together and make a decision of what they think Birmingham is, and should be.
- Implementing a walkable community and new urbanism has been successful, but is not sure that "contemporary technologies" are as cutting edge as what the City of Birmingham already does. He wanted to make sure that the RFP emphasizes the goal of taking what the City is already doing well and bringing it to the next level.

Mayor Nickita built off Commissioner DeWeese's comments to say that an expanded overview with introductory goals in the overall framework plan could be useful. City Planner Ecker suggested that the first bullet point on page six would be the place to expand on the City's goals and intentions. The Mayor agreed the RFP could get more specific there regarding what the City is looking for and what it would like the document to become. He added that the bullet could even include more specifics like "collective utilization of [the City's] different districts coming together".

Commissioner Bordman wanted the first bullet point on page seven, "Comprehensive Community Engagement Plan", to include a parenthetical that will change the paragraph to read "to stimulate public discourse to gather input from residents and business owners (property owners and retailers)" in order to more broadly include all of the potential stakeholders.

City Planner Ecker confirmed for Mayor Pro Tem Harris that a North Bates potential development is covered in the 2016 plan and in the review document.

Commissioner Hoff, in replying to Commissioner DeWeese, noted that page six reads "extensive public input will also be encouraged throughout the entire master planning process including

specific discussions on residential areas, the downtown and commercial areas, and the transitional areas that connect these zones,” and that she thought this was sufficiently inviting the public to participate.

Commissioner DeWeese clarified that his concern is not the process, but the kind of outcome. The goal is to take those conversations and make recommendations for the City from them. His concern was that many of the bullet points focused on updating what the City already does, but not providing a new, overarching direction.

City Planner Ecker explained for Commissioner Hoff that point eight on page eight calls for public parking to be priced according to its demand.

Mayor Nickita asked if there is a way to include Birmingham’s intent in its interactions with adjacent communities. City Planner Ecker stated that this would be challenging because adjacent communities do not always share Birmingham’s goals.

Mayor Nickita concurred, but wanted a stated goal that Birmingham will do the best it can to make borders as seamless as possible for both communities.

Mayor Nickita then called for comments from the Planning Board.

Mr. Williams wanted the City’s consultants to be made aware that changes in Birmingham have not always happened under the purview of the Master Plan. Major historical zoning changes, like transitional zoning, garages, and dormers, occurred outside of the master planning process from 1980, and will now need to be brought in.

City Manager Valentine clarified for Mr. Boyle that the Master Plan and the Recreation Plan are on a similar track. The Master Plan for the Parks and Recreation programs will be completed ahead of the citywide Master Plan, but when the citywide Master Plan RFP is issued, City Manager Valentine does not anticipate the Parks and Recreation Master Plan will be completed. Some language should be added to the Master Plan RFP that when the Parks and Recreation Master Plan is completed, it will be incorporated and shared at the appropriate time.

City Manager Valentine explained to Commissioner Hoff that:

- The RFP would likely be issued after the first of the year.
- He intends on having the resources and people to carry it through after that date.
- The City is in the process of adding a new planner.

Commissioner Hoff expressed her belief that the City must not delay action on all issues until completion of the Master Plan, since the planning process will likely take longer than a year.

Mayor Nickita and Commissioner DeWeese concurred with Commissioner Hoff. Commissioner DeWeese added:

- That a Master Plan is an overview plan with the overall goals and objectives of the City.
- The City needs to continue making decisions at lower levels while the planning process progresses.
- The City should continue using the guides it has used to make those decisions until new guides are released with the new Master Plan.

Mayor Nickita addressed the language regarding neighborhood conditions in the plan, wanting to be sure that:

- The language provided enough information for the consultant team since the Master Plan is the most focused neighborhood planning the City performs, and since Birmingham does not have a sub-area plan for the neighborhoods.
- There is a way to address issues that were not included in the 1980 Master Plan such as tear-downs and combined lots.

Commissioner DeWeese explained that:

- The Mayor's point is the same one the Commissioner was trying to make earlier.
- Birmingham has very distinctive neighborhoods, such as the walkable downtown, the near-town, and the very suburban areas, and without a sub-area plan, the City has been going on what was written in the 1980 Master Plan.
- There is a need to update the language of the Master Plan to create guidelines for the changes the City is experiencing and whatever future changes can be foreseen.

Mr. Jeffares added that he wants to make sure that children and seniors are well-represented in the master planning process.

Ms. Whipple-Boyce suggested the City may want to study whether it is desirable to establish some consistency between residential neighborhoods as part of the master planning process. She mentioned sidewalks, curbs, treatment of streets, signage, and lighting as a few of the aspects to be potentially considered.

Mayor Nickita suggested:

- The master planning process should clarify identifiable neighborhoods within Birmingham by making reference to specific
  - historic attributes;
  - the physical conditions of the landscape;
  - the housing type;
  - the period in which the buildings were built; or
  - any other number of ways to characterize a given neighborhood.
- This clarity would allow the City to plan for how they would like these neighborhoods to be preserved or updated.
- The Master Plan should also identify primary, secondary, and tertiary linkages between the neighborhoods with the intent of focusing on these routes over time for scheduling future infrastructure improvements.

## **B. REVIEW OF CURRENT DRAFT OF PERSONAL SERVICES DEFINITION**

Mayor Nickita explained the goal of this review was to focus on the current draft and the details of the draft which has been in front of both the Planning Board and the Commission.

City Planner Ecker provided an update as to what has happened since the last joint meeting of the Planning Board and the City Commission in June:

- The Planning Board received a direction memo from the City Manager to focus their efforts on defining personal services and bringing the definition through the public hearing process.
- A public hearing was held to discuss a draft definition of personal services on July 12, the hearing was continued to August 9, and then the Planning Board had a study session discussion on the definition based on the comments from the joint meeting.

- The Planning Board then decided to pass along the Board's draft definition from August 9, and recommended that the City Commission not accept it.
- The Planning Board's latest recommendation has not gone into a public hearing.

City Planner Ecker clarified for Mayor Nickita that the definition on 3A2 came from the Planning Board's study and combination of the best aspects of eight other communities' definitions of personal service, but that the Planning Board felt a definition was a piecemeal approach. The Board thought this topic should be addressed from an overview level, through the master planning process, first.

Mayor Nickita reiterated that the focus of this joint meeting is the current draft definition, and invited Chairman Clein to clarify and fill in any gaps in the Commission's understanding.

Chairman Clein:

- Apologized to the Commission for any miscommunication that arose out of his motion.
- Continued that the intention of the motion was to send along the Board's best completed definition.
- Stated the Board was not saying the definition was bad or unsupported by them; rather, they were saying they had not been able to vet the definition to their standards, and so as an advisory board of the Commission, the Board was recommending the definition not be implemented until there has been further study.

Mayor Nickita affirmed that:

- The Board's definition was an attempt to fix the ambiguity in the ordinance. If there is a recommendation that the ordinance change, that requires a higher level of study.
- There are primary and secondary issues: the gap in the ordinance definition regarding personal services, and then whether the ordinance needs to be changed.
- This definition is in line with other cities' definitions of personal services, and that it was crafted with specific attention to Birmingham's particular circumstances.
- The Planning Board should explain why they chose to include a list of types of businesses which fall under the definition of personal services.

Commissioner Sherman:

- Added that while looking at the entire ordinance may be appropriate in the future, the Commission is now just looking for how the ordinance should currently be interpreted.
- Asked the Planning Board if their definition of personal service addresses the current goal of ordinance clarification.

Chairman Clein answered Commissioner Sherman in the affirmative, specifying that the Board defined personal service as well as they were able. Chairman Clein answered Mayor Nickita that the Board preferred to keep the list of businesses for clarity, with the understanding that the list could be removed at the Commission's behest without damaging the fundamental definition.

Commissioner Hoff said:

- She sees the Planning Board as not having supported this definition, and thus it is left up to the Commission to decide whether to implement this definition.
- It seems that an increase in the number of offices opening using the definition of personal services created the necessity for the Commission and the Board to visit the definition.
- The ultimate goal is to encourage interesting storefronts, pedestrian traffic, and vibrancy and vitality in downtown Birmingham.

- Going off this goal, perhaps something like a percentage requirement (for example: requiring that 60% of customers are walk-ins as opposed to business-to-business) might also accomplish the City's goal.
- It is also important to have parking for customers as opposed to employees, given downtown's limited parking.
- This is a multi-faceted issue and every aspect should be examined because a simple definition may not solve the problem.
- She believes that the Planning Board did put forth ample, sincere effort, and that this is just essentially a hard task.

In reply to Mayor Pro Tem Harris, Chairman Clein explained that the Planning Board provided as best a definition as they could given the City's current needs and circumstances, while he personally agreed with Commissioner Hoff's stated concerns.

Commissioner DeWeese voiced partial agreement with Commissioner Hoff in that the storefronts should interest potential consumers, and that it would be inappropriate to have an office desk at a window or an office that keeps blinds or curtains closed to the street. Commissioner DeWeese continued that:

- He does not believe the Planning Board's definition sufficiently resolves the Commission's need for clarity within the ordinance.
- He is dissatisfied with the fact that the Commission asked for a recommendation, and that sending a negative recommendation back to the Commission taxes both the Commission's time and limited expertise relative to the Planning Board's expertise.
- Maybe the definition is not ready for prime-time, but a definition is needed. He does not know what the solution is.

Mayor Nickita said the ambiguity in the ordinance must be resolved. He continued that the issues Commissioner Hoff and the Planning Board raise may be solved incrementally, and that a definition may be the first step towards a more fully researched and developed solution down the line.

Mayor Pro Tem Harris agreed with Mayor Nickita, added that he believes the Planning Board completed the task asked of them by the Commission, and that it is now the Commission's responsibility to complete the definition for the short-term.

Ms. Whipple-Boyce agreed with Mayor Pro Tem Harris, and added that the Planning Board provided a unanimously-defined, uncontroversial explanation of personal services. She hoped the Commission would consider both the definition and the negative recommendation on implementing it, because she believes the Planning Board is unlikely to have further forward movement on the matter.

Commissioner Hoff introduced information regarding the Birmingham shopping district's current study in reviewing strategies for securing retail tenants and doing a market analysis, and that the research will be completed in time for the Planning Board's review of retail later this year. She believed there will be tie-in with this research, and stated that the shopping district had not been involved in these discussions.

Chairman Clein clarified that representatives from the shopping district had been invited to participate in the discussion on multiple occasions, and that they were unable to attend.

Commissioner Hoff said that she does not then know if what the shopping district is studying would be helpful or not, but that it might be another piece of information to consider.

Mr. Jeffares added that the Planning Board wished to be sure of the effect of changing the ordinance by changing a definition, and that it was not possible to do so. He reiterated that the Board put a lot of effort into considering all of the relevant factors, including looking into the Master Plan.

Commissioner Boutros stated he believes there is a unique circumstance behind the Planning Board's non-recommendation, but the Commission needs to:

- Resolve the grey area in the ordinance, and
- Communicate more with the Birmingham shopping district about issues retailers expect to be facing.

Mayor Nickita confirmed for Commissioner Boutros that the Planning Board recommends addressing the definition of personal services through the master planning process.

Ms. Whipple-Boyce conjectured that representatives from the Birmingham shopping district did not accept the Board's invitations because they would be split in opinion. The retailers would want a definition like the one on 3A2, but the property owners would not. As a result, she believes waiting for their report will not yield any further relevant information.

Mr. Williams noted some residents and the Association of Birmingham Place were against a more limited definition of personal services. The Association specifically mentioned developments already in process that might be curtailed by the definition.

Chairperson Clein added that there were plenty of letters from other residents in support of a more limited definition of personal services, and that there is support on both sides of the issue.

Commissioner Bordman said she believes:

- The Planning Board misunderstood the task set before them by the Commission.
- The Commission merely wanted a simple definition of personal services as a phrase already in the ordinance, and not any visioning of the City at this time.

Mayor Nickita offered that he sees this dialogue with the Planning Board as helpful, that the Commission received some new information, and that he appreciated the Planning Board's comments.

#### **IV. PUBLIC COMMENT**

Mayor Nickita opened public comment. He requested that the comments remain under two minutes and stay relevant either to the RFP process or to the current draft of the personal services definition.

Marlin Wroubel of 1812 Yosemite, represents the owners of the 325 N. Old Woodward Bldg. Mr. Wroubel believes the City has been all right without a definition of personal services up until now, and that this seemingly minor change may actually have a significant impact, especially for building owners. Since there would be increased cost for building owners, Mr. Wroubel believes the Commission owes it to those owners to study the impact of the change first.

Paul Magy, 708 Shirley and an attorney at Clark Hill. He represents business owners, residents, and retailers. Mr. Magy stated that he believes:

- The Planning Board was correct in not supplying a definition that had not been sufficiently vetted.
- The Commission should send the definition back to the Planning Board and give them the time required to study all of the options and outcomes.
- That the Birmingham shopping district study findings should be considered, and that the shopping district should at least be called upon to reply to the Board's invitations, even if they do not attend.
- A lot of harm could result from implementing this definition without enough time to study it.

City Manager Valentine confirmed for Commissioner Hoff that once proposals are back from the RFP, committees will be established to review the proposals.

Mayor Nickita said he saw the meeting as a productive and pleasant enough discussion, and thanked everyone in attendance.

<b>V. ADJOURN</b>
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The meeting adjourned at 8:51 PM.

Cheryl Arft, Deputy Clerk

**City of Birmingham**  
**Warrant List Dated 09/13/2017**

Meeting of 09/25/2017

Check Number	Early Release	Vendor #	Vendor	Amount
252738	*	000820	46TH DISTRICT COURT	250.00
252739	*	000855	48TH DISTRICT COURT	100.00
252740	*	000855	48TH DISTRICT COURT	100.00
252741	*	000855	48TH DISTRICT COURT	100.00
252742	*	000855	48TH DISTRICT COURT	100.00
252743	*	000855	48TH DISTRICT COURT	100.00
252744	*	000855	48TH DISTRICT COURT	100.00
252745	*	000855	48TH DISTRICT COURT	100.00
252746	*	000855	48TH DISTRICT COURT	100.00
252747	*	000855	48TH DISTRICT COURT	1,000.00
252748	*	000855	48TH DISTRICT COURT	100.00
252749		004877	AASLH	118.00
252750		002284	ABEL ELECTRONICS INC	522.50
252751		MISC	ACTION FENCE CO OF MICHIGAN	37.50
252752		008561	ACTION FENCE OF MICHIGAN INC	225.00
252753		007266	AETNA BEHAVIORAL HEALTH LLC	529.23
252754		007787	ALLIED PLUMBING & SEWER	567.88
252755		MISC	ANDERSON, RYAN	100.00
252756		MISC	ANET BANGENA	90.00
252757		MISC	ARMSTEAD & JOHNSON CONSTR. INC	100.00
252759	*	006759	AT&T	120.31
252760		004027	AUTOMATED BENEFIT SVCS INC	7,922.76
252761		MISC	BALBES CUSTOM BUILDERS INC	200.00
252762		MISC	BARBARA B MURPHY	900.00
252763		001122	BOB BARKER CO INC	426.72
252764		003012	BATTERIES PLUS	97.47
252765	*	000517	BEIER HOWLETT P.C.	35,726.00
252767		MISC	BERGSMAN WIAND BOUCHARD & CO	400.00
252768	*	008036	BERMUDA SANDS	60.31
252769		007345	BEVERLY HILLS ACE	17.99
252770		MISC	BILL JOHNSON	64.37
252771	*	008546	CITY OF BIRMINGHAM #226	40,869.80
252773		000542	BLUE WATER INDUSTRIAL	73.50
252775		MISC	BUDMAN DENTON	300.00
252777		006380	C & S ICE RESURFACING SERVICES, INC	331.72
252778		003907	CADILLAC ASPHALT, LLC	7,730.69
252780		MISC	caruso - caruso	100.00
252781		MISC	CERTIFIED HOME IMPROVEMENT LLC	100.00
252782	*	MISC	CHETHANA GOTTAM	3,417.69
252783		008003	CINIUM RISK MANAGEMENT, LLC	46,100.00
252784		004188	COFFEE BREAK SERVICE, INC.	318.00
252785		004026	COFINITY	1,341.00
252786		MISC	COISMO PROPERTIES LLC	500.00



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Check Number	Early Release	Vendor #	Vendor	Amount
252787		MISC	COLE STREET HOLDINGS I LLC	300.00
252788		MISC	COLENZO BUILDING & REMODELING	200.00
252789	*	007625	COMCAST	186.37
252791		002668	CONTRACTORS CLOTHING CO	148.50
252792		008512	COOL THREADS EMBROIDERY	20.00
252793		004386	CYNERGY PRODUCTS	344.95
252794		MISC	D & S CONTRACTORS INC	5,000.00
252795		MISC	D & S CONTRACTORS INC	500.00
252796	*	003825	DEERE ELECTRIC INC	331.45
252797		006907	DENTEMAX, LLC	136.80
252798		MISC	DETROIT BUILD INC	200.00
252799		008191	DETROIT JEWISH NEWS	162.74
252800		005115	DETROIT NEWSPAPER PARTNERSHIP	4,155.98
252801		005693	DISPATCH PRODUCTS CO.	4,508.00
252802	*	006700	DRV CONTRACTORS, LLC	367,832.70
252803	*	000179	DTE ENERGY	1,876.69
252804	*	000180	DTE ENERGY	46,312.35
252805		001077	DUNCAN PARKING TECH INC	7,763.65
252806	*	007538	EGANIX, INC.	720.00
252807		000196	EJ USA, INC.	1,879.65
252808		001124	EMPCO INCORPORATED	1,912.10
252809		008308	ERADICO PEST SERVICES	38.00
252811		000207	EZELL SUPPLY CORPORATION	12.86
252813		MISC	FLATROCK CONCRETE CONSTRUCTION	100.00
252814		MISC	FOREST ELM LLC	20,000.00
252815		MISC	FOUNDATION SYSTEMS OF MICHIGAN INC.	200.00
252816		MISC	GEORGE QUARTERS LLC	100.00
252817		004604	GORDON FOOD	205.81
252818	*	005103	GORNO FORD, INC.	23,836.00
252819		000243	GRAINGER	39.87
252820		MISC	GREAT LAKES CUSTOM BUILDER LLC	1,000.00
252821	*	007473	DONALD GRIER	241.82
252822		001531	GUNNERS METER & PARTS INC	1,335.00
252823		007342	H2A ARCHITECTS, INC.	610.00
252824		MISC	HM HOMES LLC	2,400.00
252826		000331	HUBBELL ROTH & CLARK INC	979.94
252827		000948	HYDROCORP	1,315.00
252828		MISC	IDEAL BUILDERS	400.00
252829		MISC	IDEAL BUILDERS AND REMODELING INC	3,000.00
252831		000342	INTERSTATE BATTERIES OF SE MICHIGAN	114.95
252832		MISC	JAMES FLOYD GODSEY, II	100.00
252833	*	002576	JAX KAR WASH	286.25
252834		003823	JAY'S SEPTIC TANK SERVICE	165.00

# City of Birmingham

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Check Number	Early Release	Vendor #	Vendor	Amount
252835	*	MISC	JEFFREY WILSON	1,261.58
252836		MISC	JOHN FARLEY	100.00
252837	*	MISC	KATHLEEN ANDERSON	258.72
252838		MISC	KILGORE, LOUIS D	100.00
252839		005876	KROPF MECHANICAL SERVICE COMPANY	395.00
252840		005550	LEE & ASSOCIATES CO., INC.	875.00
252841		MISC	LEVINE & SONS INC	1,000.00
252843		001915	MARINE CITY NURSERY CO	4,011.00
252844		MISC	MARTIN CAMAJ	900.00
252846		000369	MCFI	1,050.00
252847	*	001505	MEADOWBROOK INSURANCE GROUP	6,524.13
252848	*	006315	MERLO CONSTRUCTION CO. INC.	18,970.45
252849	*	005252	MIAM	300.00
252850	*	007163	MOBILE HEALTH RESOURCES	1,397.05
252852		008211	MULTI-PLAN	9.00
252853		MISC	MURPHY, BARBARA B	5,000.00
252854		007755	NETWORK SERVICES COMPANY	298.71
252855		006359	NYE UNIFORM COMPANY	533.80
252856	*	003461	OBSERVER & ECCENTRIC	619.02
252857		004370	OCCUPATIONAL HEALTH CENTERS	299.00
252858	*	000481	OFFICE DEPOT INC	322.93
252860		006625	PACIFIC TELEMAGEMENT SERVICES	78.00
252861		008197	PARKMOBILE LLC	417.00
252862		MISC	PAUL AND DEBORAH DE LONG	200.00
252863		MISC	PCI INDUSTRIES, INC.	1,000.00
252864		MISC	PELLA WINDOWS & DOORS, INC.	100.00
252865		006027	PENCHURA, LLC	35,418.60
252866		000486	PLANTE & MORAN PLLC	13,599.55
252867		007146	PLAYWORLD MIDSTATES	251.70
252868		008269	PREMIER SAFETY	1,472.72
252869		002852	QUALITY METAL IMAGES INC	156.55
252870		MISC	R GRAHAM CONSTUCTION LLC	200.00
252871	*	008404	PETE REALY	197.92
252872		MISC	RELIABLE PROPERTY MANAGEMENT	100.00
252874		MISC	RENEWAL BY ANDERSEN	500.00
252876		MISC	RICO CONSTRUCTION LLC	500.00
252877	*	003554	RKA PETROLEUM	11,020.61
252878		MISC	RUSSELL H SMITH	1,000.00
252879		MISC	SCOTT FILE	500.00
252880		MISC	SCOTT TERRANCE FILE TTEE	500.00
252881		MISC	SCRIPPS, INC. WXYZ-TV	100.00
252882	*	001551	SESAC	397.00
252883	*	007142	SHERWIN-WILLIAMS COMPANY	19.59

**City of Birmingham**  
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Check Number	Early Release	Vendor #	Vendor	Amount
252884		003785	SIGNS-N-DESIGNS INC	235.00
252885	*	001097	SOCWA	249,442.53
252887		008549	STATEWIDE DOOR & SECURITY	800.00
252888		MISC	STERLING DEVELOPMENT CORP	2,400.00
252889		MISC	STEUER & ASSOCIATES INC.	21,161.00
252890		MISC	SUSZAN, MARK	10,000.00
252891		MISC	T G HOMES LLC	2,500.00
252892		001849	TEAL ELECTRIC COMPANY	210.12
252893		MISC	TECHHOME BUILDING CO LLC	2,500.00
252894		MISC	THOMAS SEBOLD & ASSOCIATES, IN	300.00
252895		MISC	TOBIAS CONSTRUCTION INC	300.00
252896		MISC	TRADEMARK BUILDING COMPANY INC	2,350.00
252897		MISC	TRADEMARK CONSTRUCTION SERVICES	400.00
252899		MISC	TUTTLE, DARREL S	200.00
252900		MISC	UNILAND CORPORATION	200.00
252901		008411	VARIPRO	777.50
252902	*	000158	VERIZON WIRELESS	1,430.89
252903	*	000158	VERIZON WIRELESS	151.78
252904	*	000158	VERIZON WIRELESS	76.02
252905	*	000158	VERIZON WIRELESS	194.56
252906		000969	VIGILANTE SECURITY INC	55.00
252907		MISC	WALLSIDE INC	1,000.00
252908		004497	WATERFORD REGIONAL FIRE DEPT.	115.88
252910		MISC	WELCH CLEANERS	100.00
252911	*	000301	PAUL WELLS	81.99
252912		MISC	WERTHMAN, THOMAS P	200.00
252915		MISC	WINSTON AND SONS HOME IMPROVEMENT L	100.00
252916		000306	WOLVERINE CONTRACTORS INC	821.50
252918		007083	XEROX CORPORATION	1,147.88
Sub Total Checks:				\$1,063,737.15
Sub Total ACH:				\$0.00
Grand Total:				\$1,063,737.15

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.

**City of Birmingham**  
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Check Number	Early Release	Vendor #	Vendor	Amount
252919	*	008556	JOHN JOHNSON	468.67
252920	*	000900	37TH DISTRICT COURT	250.00
252921	*	000819	44TH DISTRICT COURT	395.00
252922	*	000855	48TH DISTRICT COURT	100.00
252923	*	000855	48TH DISTRICT COURT	100.00
252924	*	000855	48TH DISTRICT COURT	100.00
252925	*	000855	48TH DISTRICT COURT	100.00
252926	*	006965	7UP DETROIT	171.60
252927		002284	ABEL ELECTRONICS INC	857.44
252929	*	008106	ACUSHNET COMPANY	385.62
252930		MISC	AIR CONDITIONING ENG INC	138.75
252931		007745	ALL COVERED	1,192.00
252932		003784	APT US&C	100.00
252934		007479	ASB DISTRIBUTORS	75.80
252935	*	006759	AT&T	1,087.84
252936	*	006759	AT&T	42.88
252937	*	006759	AT&T	36.90
252938	*	006759	AT&T	134.96
252939	*	006759	AT&T	91.94
252940		MISC	BAIN AB LLC	400.00
252944		003012	BATTERIES PLUS	192.90
252945		001282	BEAR PACKAGING & SUPPLY INC	367.40
252946	*	001086	CITY OF BIRMINGHAM	259.03
252948	*	000157	BOB ADAMS TOWING INC.	555.00
252949		MISC	BRANDYWINE CONSTRUCTION LLC	1,613.00
252950		MISC	BRIXNSTONE LLC	100.00
252951		006520	BS&A SOFTWARE, INC	2,317.00
252952		008179	BUCCILLI GROUP, LLC	1,276.00
252953		003907	CADILLAC ASPHALT, LLC	4,047.52
252955		007933	CARDNO, INC.	5,724.73
252956	*	000444	CDW GOVERNMENT INC	465.84
252959	*	002067	CENTRAL PARKING SYSTEM	112.00
252960	*	007744	MOHAMED F. CHAMMAA	43.87
252961		007710	CINTAS CORP	217.25
252962		000605	CINTAS CORPORATION	240.80
252963	*	004188	COFFEE BREAK SERVICE, INC.	39.00
252964	*	007625	COMCAST	254.85
252966	*	000626	J. M. CONNAUGHTON	29.99
252967		001367	CONTRACTORS CONNECTION INC	459.90
252968		008512	COOL THREADS EMBROIDERY	367.95
252969		MISC	CRABILL, KAREN M	800.00
252970		004386	CYNERGY PRODUCTS	408.00
252972		008005	DE LAGE LANDEN FINANCIAL SVCS INC	173.75

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Check Number	Early Release	Vendor #	Vendor	Amount
252974		000956	DELTA TEMP INC	5,360.23
252975		000177	DELWOOD SUPPLY	243.84
252977		008559	DETROIT BATTERY COMPANY	134.95
252978	*	003409	DISENOS INC	700.00
252979		000190	DOWNRIVER REFRIGERATION	17.79
252980		006700	DRV CONTRACTORS, LLC	785.00
252981		001077	DUNCAN PARKING TECH INC	3,281.00
252982		006876	ENFORCEMENT PRODUCTS INC	2,693.00
252983		008308	ERADICO PEST SERVICES	66.00
252984		MISC	EVANS PLUMBING INC	75.00
252985		MISC	EXTREME BUILDING & DESIGN INC	300.00
252986		007212	FOSTER BLUE WATER OIL	237.24
252987		MISC	G & S RESTAURANTS INC	300.00
252988		001023	GABRIEL, ROEDER, SMITH & CO.	3,100.00
252991		000223	GASOW VETERINARY	610.55
252992		008560	GENERAL EQUIPMENT CO.	2,158.10
252993	*	004604	GORDON FOOD	2,490.90
252994		000243	GRAINGER	349.56
252995		004983	GREAT AMERICAN BUSINESS PRODUCTS	295.68
252996		000249	GUARDIAN ALARM	224.03
252997	*	001531	GUNNERS METER & PARTS INC	320.00
252998		MISC	HANSON'S ADMINISTRATIVE GROUP, LLC	100.00
252999		MISC	HANSONS ADMINISTRATIVE GROUP LLC	100.00
253000		MISC	HANSONS ADMINISTRATIVE GROUP LLC	100.00
253001		008481	HART INTERCIVIC DEPT 0453	264.20
253002		MISC	HASENAU COMPANY	500.00
253003		007339	HIGHEST HONOR, INC	184.00
253005		000331	HUBBELL ROTH & CLARK INC	101.84
253006		002407	J & B MEDICAL SUPPLY	909.86
253007		000261	J.H. HART URBAN FORESTRY	12,897.43
253008		000344	J.T. EXPRESS, LTD.	2,945.49
253009		000186	JACK DOHENY COMPANIES INC	2,710.34
253010		004391	JANSSEN REFRIGERATION CO., INC	899.76
253011		003823	JAY'S SEPTIC TANK SERVICE	655.00
253012		008564	JERRY'S TIRE	1,593.62
253013		003458	JOE'S AUTO PARTS, INC.	204.11
253014	*	007827	HAILEY R KASPER	117.00
253015	*	006370	KLM SCAPE & SNOW LLC	320.00
253016		004085	KONE INC	1,586.25
253017	*	000362	KROGER COMPANY	43.41
253018		005550	LEE & ASSOCIATES CO., INC.	431.67
253019		008158	LOGICALIS INC	9,700.00
253021		MISC	MAC CONSTRUCTION, INC.	100.00

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Check Number	Early Release	Vendor #	Vendor	Amount
253022	*	008570	BRENT MACUMBER	68.90
253023		003934	MADISON GENERATOR SERVICE INC	356.24
253024		008000	MARXMODA	600.00
253025		000888	MCKENNA ASSOCIATES INC	38,130.00
253026		000369	MCMI	1,102.50
253027	*	004738	MGFOA	120.00
253028		000377	MICHIGAN MUNICIPAL LEAGUE	80.10
253029		006459	MICHIGAN SHOOTING CENTERS, LLC	990.00
253030		006461	MID AMERICA RINK SERVICES	674.00
253031	*	008420	MIDWEST POLICE MOTORCYCLE TRAINING	1,495.00
253034	*	007402	MIDWESTERN AUDIT SERVICES, INC.	342.38
253035		000230	MIKE SAVOIE CHEVROLET INC	331.02
253036		007163	MOBILE HEALTH RESOURCES	1,702.69
253037		000972	MOORE MEDICAL LLC	1,972.66
253038	*	007856	NEXT	1,485.80
253039		006359	NYE UNIFORM COMPANY	1,037.50
253040	*	000477	OAKLAND COUNTY	412,781.33
253041		008250	OAKLAND COUNTY TACTICAL	250.00
253042		008214	OAKLAND COUNTY WATER DEPARTMENT	8,894.88
253043		004370	OCCUPATIONAL HEALTH CENTERS	92.00
253046		002767	OSCAR W. LARSON CO.	1,860.75
253048		MISC	PATRICK MCCARTHY	119.99
253050	*	001753	PEPSI COLA	417.78
253051		006182	PERFORMANCE LINE TOOLS CENTER	374.97
253054		008269	PREMIER SAFETY	50.97
253055		000897	PRINTING SYSTEMS INC	646.34
253056		006697	PROGRESSIVE IRRIGATION, INC	17,400.00
253057		001062	QUALITY COACH COLLISION LLC	1,200.00
253058		004137	R & R FIRE TRUCK REPAIR INC	860.00
253061	*	MISC	REGINA BAUMBACH	50.00
253062	*	005344	RESERVE ACCOUNT	8,000.00
253064		000495	ROCHESTER LAWN EQUIPMENT CENTER INC	33.40
253065		001181	ROSE PEST SOLUTIONS	143.00
253067		MISC	RUSK, JODY M	700.00
253068		MISC	RYAN AND JOLIE GOODMAN	100.00
253069	*	002806	SAM'S CLUB/SYNCHRONY BANK	1,011.94
253073		003785	SIGNS-N-DESIGNS INC	230.00
253074		005787	SOUTHEASTERN EQUIPMENT CO. INC	667.48
253077		000260	SPARTAN DISTRIBUTORS INC	1,864.21
253078		006783	STATE OF MICHIGAN	60.00
253079		004355	SYMETRA LIFE INSURANCE COMPANY	29,194.15
253080		001076	TAYLOR FREEZER OF MICH INC	325.00
253081		MISC	THREE C'S LANDSCAPING	300.00

**City of Birmingham**  
**Warrant List Dated 09/20/2017**

Meeting of 09/25/2017

Check Number	Early Release	Vendor #	Vendor	Amount
253083		008572	TORO NSN	3,356.00
253084		000278	TROY AUTO GLASS CO INC	259.25
253085		004379	TURNER SANITATION, INC	95.00
253086		000155	TYCO INTEGRATED SECURITY LLC	225.00
253089		MISC	UNITED BUILDING SERVICE	100.00
253090		007226	VALLEY CITY LINEN	116.20
253091	*	000158	VERIZON WIRELESS	180.12
253092	*	000158	VERIZON WIRELESS	403.65
253093		000298	VESCO OIL CORPORATION	83.25
253094		005231	WALKER RESTORATION CONSULTANTS	12,630.27
253095	*	008568	ALYSON WELLMAN	30.00
253096		002088	WM. CROOK FIRE PROTECTION CO.	1,560.00
253097	*	003890	LAUREN WOOD	525.00
253098		MISC	WRUBEL, ALLEN C	800.00
253099		007083	XEROX CORPORATION	46.03
253102		000309	ZEP SALES AND SERVICE	375.37
Sub Total Checks:				\$645,404.15
Sub Total ACH:				\$17,002,201.20
Grand Total:				\$17,647,605.35

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.

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9/25/2017

**City of Birmingham**  
**ACH Warrant List Dated 9/20/2017**

Vendor Name	Transfer Date	Transfer Amount
Birmingham Schools	9/18/2017	6,691,550.70
Oakland County Treasurer	9/18/2017	10,226,249.46
Automated Benefit Services, Inc.	9/12/2017	84,401.04
<b>TOTAL</b>		17,002,201.20





## MEMORANDUM

City Clerk's Office

**DATE:** September 20, 2017

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

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

**SUBJECT:** Special Event Request  
Winter Markt

Attached is a special event application submitted by the Birmingham Shopping District requesting permission to hold the Winter Markt, in Shain Park and surrounding streets from December 1 - 3, 2017. The application has been circulated to the affected departments and approvals and comments have been noted.

As in past years, German beer and wine will be available in a fenced area in Shain Park. The Birmingham Shopping District is working to confirm the charity that will partner with Plum Market to provide the wine. The charity must obtain a temporary liquor license through the State of Michigan. In addition, this year the Community House will also sell beer and wine in a fenced area in Shain Park and must also obtain a temporary liquor license through the State of Michigan.

The tree lighting will take place during the opening of the Winter Markt on December 1<sup>st</sup>.

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

Event Name	Date	Location
Nativity Display	Nov 22 – Dec 24	Shain Park
Menorah Display	Dec 13 – Dec 20	Shain Park

### SUGGESTED RESOLUTION:

To approve a request from the Birmingham Shopping District to hold the Winter Markt, in Shain Park and surrounding streets from December 1 - 3, 2017 and to allow the use of temporary liquor licenses in Shain Park for this event, 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.

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

***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 August 28, 2017

Name of Event Birmingham Winter Market

Detailed Description of Event (attach additional sheet if necessary) \_\_\_\_\_

A charming German style holiday market for everyone

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Location Merrill Street, Bates Street, Martin Street and Shain Park

Date(s) of Event 12/1, 12/2 and 12/3 Hours of Event 4pm-10pm, 10am-9pm and 10am-4pm

Date(s) of Set-up 11/28, 11/29, 11/30 and 12/1 Hours of Set-up 12pm-8pm, 9am-8pm(in Shain park only-no street closures), 12pm-8pm, 8am-2pm

Date(s) of Tear-down 12/3 Hours of Tear-down 4pm to 9pm

Organization Sponsoring Event Birmingham Shopping District

Organization Address 151 Martin Street

Organization Phone 248-530-1200

Contact Person Jaimi Brook

Contact Phone 248-530-1254

Contact Email jbrook@bhamgov.org

## ***II. EVENT INFORMATION***

1. Organization Type City  
(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. ) \_\_\_\_\_  
Additional financial sponsors - TBD  
\_\_\_\_\_  
\_\_\_\_\_
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 \_\_\_\_\_  
\_\_\_\_\_
5. Total number of people expected to attend per day 4,000
6. The event will be held on the following City property: (Please list)  
☒ Street(s) Merrill between Bates and Chester and Bates between Merrill and Martin  
\_\_\_\_\_  
☐ Sidewalk(s) \_\_\_\_\_  
\_\_\_\_\_  
☒ Park(s) Shain Park  
\_\_\_\_\_
7. Will street closures be required? ☒ YES ☐ NO
8. What parking arrangements will be necessary to accommodate attendance? \_\_\_\_\_

9. Will staff be provided to assist with safety, security and maintenance? ☒ YES NO  
Describe BSD staff will be on site during event

10. Will the event require safety personnel (police, fire, paramedics)? ☒ YES NO  
Describe On call status

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 throughout the event

Time music will end 9 pm on Friday & Saturday, 4 pm on Sunday

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 2 - 4

Size of signs/banners A-frame signs

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)

<b>VENDOR NAME</b>	<b>GOODS TO BE SOLD</b>	<b>WATER HOOK- UP REQUIRED?</b>	<b>ELECTRIC REQUIRED?</b>
TBD			

### ***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)

<b>EQUIPMENT</b>	<b>QUANTITY</b>	<b>COST</b>	<b>NOTES</b>
Picnic Tables		6 for \$200.00	A request for more than six tables will be evaluated based on availability.
Trash Receptacles	20	\$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	BSD will provide	\$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)	TBD # 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.

<b>TYPE</b>	<b>QUANTITY</b>	<b>SIZE</b>
Tents/Canopies/Awnings (A permit is required for tents over 120 sq ft)	Approximately 50	various sizes
Portable Toilets	4 - 6	
Rides		
Displays		
Vendors	TBD	TBD
Temporary Structure (must attach a photo)		
Other (describe)		


**SIGNATURE OF APPLICANT REQUIRED**

EVENT NAME Birmingham Winter Markt

EVENT DATE December 1 - 3, 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.

      8/31/17  
Signature      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.



## NOTIFICATION

August 28, 2017

TO: Property/Business Owner

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

NAME OF EVENT(S): 1) Winter Markt and 2) Santa House  
LOCATION: 1) Shain Park  
2) Shain Park  
DATES & TIMES: 1) Winter Markt - December 1 - 3, various hours  
2) Santa House - various weekends throughout holidays.  
DATE/TIME OF CITY COMMISSION MEETING: Monday, September 25, 2017 at 7:30 pm

The City Commission meets in room 205 of the Municipal Building at 151 Martin Street. A complete copy of the application to hold this special event(s) are available for your review at the City Clerk's Office (248-530-1880). To receive updates on special events held in the city, log on to [www.bhamgov.org/enotify](http://www.bhamgov.org/enotify).

EVENT ORGANIZER: Birmingham Shopping District  
ADDRESS: 151 Martin Street  
PHONE: 248-530-1200

## NOTIFICATION

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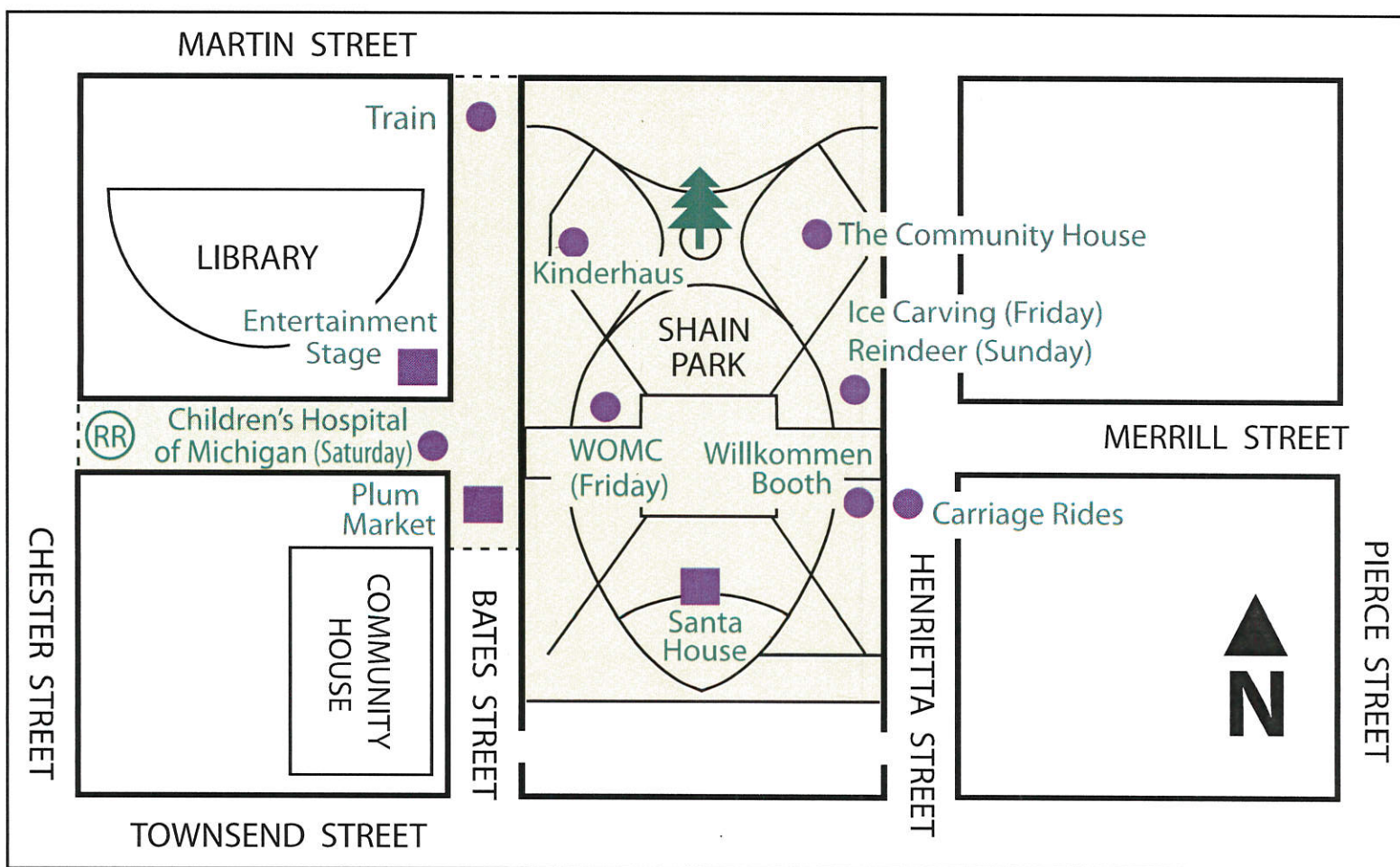
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EVENT ORGANIZER: Birmingham Shopping District  
ADDRESS: 151 Martin Street  
PHONE: 248-530-1200





## 2016 EVENT MAP



RR = Rest Rooms

Plum Market = German Food & Drinks

The Community House = Drinks & Snacks



# BIRMINGHAM

## Winter Markt

Friday, December 2 - 3 p.m. to 9 p.m.

Saturday, December 3 - 10 a.m. to 9 p.m.

Sunday, December 4 - 11 a.m. to 4 p.m.

LOCATED IN SHAIN PARK

Enjoy a charming old-world style market featuring local artisans, holiday decorations, home accessories, children's activities, live entertainment, plus traditional German food and drink! For more details, go to [www.BirminghamWinterMarkt.org](http://www.BirminghamWinterMarkt.org)



Birmingham Shopping District



@BhamShopping

Join Us  
for Our  
Season!

PARKING HAS NEVER  
BEEN EASIER IN  
BIRMINGHAM

FREE Valet Parking  
Nov. 25 through Dec. 24  
(first 2 hours)

First 2 Hours ALWAYS FREE  
in the parking decks.

PARKMOBILE TECHNOLOGY  
at ALL downtown  
parking meters! Pay by  
cell phone or mobile app.  
For more info and  
to register go to  
[www.parkmobile.com](http://www.parkmobile.com)



Mercedes-Benz  
*of Bloomfield Hills*

THE  
COMMUNITY HOUSE  
BIRMINGHAM



Children's Hospital  
of Michigan

DMC DETROIT MEDICAL CENTER

Leading. *Pediatric.* Care.

Mercedes-Benz

Research & Development North America, Inc.

Mercedes-Benz Financial Services

plum market®



## LIABILITY DECLARATIONS

IN RETURN FOR THE PAYMENT TO THE POOL AND SUBJECT TO ALL THE TERMS OF THIS COVERAGE DOCUMENT, THE POOL AGREES WITH YOU TO PROVIDE COVERAGE AS STATED IN THIS CONTRACT. THESE COVERAGES ARE ALSO PROVIDED IN ACCORDANCE WITH THE INTERGOVERNMENTAL CONTRACT WHICH FORMS THE LEGAL BASIS FOR THE OPERATION OF THE POOL.

Contract Number: MML001444016 Renewal of Number: MML001444015

Pool Member: City of Birmingham

Coverage Period From: 7/1/2017 To: 7/1/2018  
12:01 A.M. Standard Time

*(This policy applies to only those Coverage Parts marked with an "X")*

### LIMITS OF INSURANCE

☒ MUNICIPAL GENERAL LIABILITY COVERAGE PART

EACH OCCURRENCE LIMIT \$10,000,000

FIRE DAMAGE LIMIT \$100,000 Any One Fire

MEDICAL EXPENSE LIMIT \$10,000 Any One Person

DEDUCTIBLE: \$125,000 Each Occurrence

☒ LAW ENFORCEMENT LIABILITY COVERAGE PART

EACH WRONGFUL ACT LIMIT \$10,000,000

DEDUCTIBLE: \$125,000 Each Wrongful Act

☒ PUBLIC OFFICIALS LIABILITY COVERAGE PART

EACH WRONGFUL ACT LIMIT \$10,000,000

DEDUCTIBLE: \$125,000 Each Wrongful Act

(This policy applies to only those Coverage Parts marked with an "X")

### LIMITS OF INSURANCE

☒ **EMPLOYEE BENEFIT LIABILITY COVERAGE PART**

EACH CLAIM LIMIT \$1,000,000

DEDUCTIBLE: \$125,000 Each Claim

☒ **AUTOMOBILE LIABILITY COVERAGE PART**

EACH OCCURRENCE LIMIT \$10,000,000

DEDUCTIBLE: \$125,000 Each Occurrence

☒ **THE COMBINED POLICY LIMIT \$10,000,000**

Regardless of the number of **Insureds**, **Claims** made or **Suits** brought, persons or organizations making **Claims** or bringing **Suits** or coverages or coverage parts which may be applicable, the Combined Policy Limit shown above is the most we will pay for the sum of all **Damages** arising out of an **Occurrence**, **Wrongful Act**, act or omission and any series of related **Occurrences**, **Wrongful Acts**, acts or omissions.

The Combined Policy Limit is the most we will pay regardless of the number of Coverage Parts under which coverage may be sought.

FORMS AND ENDORSEMENTS applying to these Coverage Parts and made part of this policy at time of issue: MML200 (01/14), MML202 (11/99), MML233 (07/13), MML203 [11/99], MML208 [11/99], MML215 [02/00]

TOTAL LIABILITY PREMIUM

\$ INCLUDED

BY



Authorized Representative

Date:

6/19/2017

A SERVICE OF THE MICHIGAN MUNICIPAL LEAGUE



## DEPARTMENT APPROVALS

EVENT NAME BSD Winter Markt

LICENSE NUMBER #17-00011063

COMMISSION HEARING DATE: 9/25/2017

NOTE TO STAFF: Please submit approval by **FRIDAY, SEPTEMBER 15, 2017**

DATE OF EVENT: 12/1/2017-12/3/2017

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)
<b>PLANNING</b> 101-000.000-634.0005 248.530.1855	SC	No comments.	N/A	N/A	
<b>BUILDING</b> 101-000.000.634.0005 248.530.1850	BRJ	The application indicates that approximately 50 tents of various sizes will be utilized. Some tents and/or temporary structures will require permits depending on their individual size or aggregate area. A detailed layout of the proposed tents that includes size and location will be required to determine code compliance and necessary permits. The applicant should be instructed to produce a plan and meet with the Assistant Building Official and Fire Marshal to fine tune the layout and discuss the necessary permits.	Tent and/or temporary structure permit will be required per Chapter 31 of both the building and fire codes.	\$221.48, plus permit fees.	
<b>FIRE</b> 101-000.000-634.0004 248.530.1900	JMC	<ol style="list-style-type: none"><li>1. No Smoking in any tents or canopy. Signs to be posted.</li><li>2. All tents and Canopies must be flame resistant with certificate on site.</li><li>3. No open flame or devices emitting flame, fire or heat in any</li></ol>		\$80	

		<p>tents. Cooking devices shall not be permitted within 20 feet of the tents.</p> <ol style="list-style-type: none"> <li>4. Tents and Canopies must be properly anchored for the weather conditions, no stakes allowed.</li> <li>5. Clear Fire Department access of 12 foot aisles must be maintained, no tents, canopies or other obstructions in the access aisle unless approved by the Fire Marshal.</li> <li>6. Pre-event site inspection required.</li> <li>7. A prescheduled inspection is required for food vendors through the Bldg. dept. prior to opening.</li> <li>8. All food vendors are required to have an approved 5lbs. multi-purpose (ABC) fire extinguisher on site and accessible.</li> <li>9. Cords, hoses, etc. shall be matted to prevent trip hazards.</li> <li>10. Exits must be clearly marked in tents/structures with an occupant load over 50 people.</li> <li>11. Paramedics will respond from the fire station as needed. Dial 911 for fire/rescue/medical emergencies.</li> <li>12. A permit is required for Fire hydrant usage.</li> <li>13. Do Not obstruct fire hydrants or fire sprinkler connections on buildings.</li> <li>14. Provide protective barriers between hot surfaces and the public.</li> <li>15. All cooking hood systems that capture grease laden vapors</li> </ol>			
--	--	--	--	--	--

		<p>must have an approved suppression system and a K fire extinguisher in addition to the ABC Extinguisher.</p> <p>16. Suppression systems shall be inspected, tested, and properly tagged prior to the event. All Sprinkler heads shall be of the 155 degree Quick Response type unless serving an area of high heat and approved by the Fire Marshal. The suppression system shall have a continuous water supply as well as a secondary back up supply. Activation of the suppression system will shut down the ride and cause illumination of the exits.</p>			
<p><b>POLICE</b>  <b>101-000.000.634.0003</b>  248.530.1870</p>	SG	<p>Temporary liquor license required from LCC with City Commission and Chief of Police approval. Placement of signs indicating alcoholic beverages must remain within the closed area where beverages are being served. Must have personnel to monitor the entrance/exit area to ensure no alcoholic beverages are removed from the closed area. Barricades/Road closures. On duty personnel to give event extra patrol.</p>		\$100	
<p><b>PUBLIC SERVICES</b>  <b>101-000.000-634.0002</b>  248.530.1642</p>	<p>Carrie Laird  9/5/2017</p>	<p>Costs include: barricade placement and removal, sign/banner placement and removal, set up and clean-up costs. A hydrant permit must be obtained and event will be charged for water usage.</p>		\$9,000	
<p><b>ENGINEERING</b>  <b>101-000.000.634.0002</b>  248.530.1839</p>	A.F.	<p>Maintain 5' clear pedestrian pathways on sidewalks. No damage to pavements allowed for tents, shelters, barricades, etc...</p>	None	\$0	\$0

<b>SP+ PARKING</b>	A.F.	Information Emailed to SP+ 09/07/17	None	\$0	\$0
<b>INSURANCE</b> 248.530.1807	Cherilynn Mynsberge 09/11/2017			\$0	\$0
<b>CLERK</b> 101-000.000-614.0000 248.530.1803	Cherilynn Mynsberge 09/11/2017	Notification letters to be mailed by applicant no later than Sept. 14, 2017. 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 <u>ON FILE</u> .	Applications for vendors license must be submitted no later than <u>N/A</u>	\$165	\$165
				<b>TOTAL DEPOSIT REQUIRED</b>  <b>\$9,566.48</b>	<b>ACTUAL COST</b>

**FOR CLERK'S OFFICE USE**

Deposit paid \_\_\_\_\_

Actual Cost \_\_\_\_\_

Due/Refund\_\_\_\_\_





## MEMORANDUM

City Clerk's Office

**DATE:** September 20, 2017

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

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

**SUBJECT:** Special Event Request  
Santa House

Attached is a special event application submitted by the Birmingham Shopping District requesting permission to place the Santa House in Shain Park from November 22 to December 24, 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 Santa House.

Event Name	Date	Location
Nativity Display	Nov 22 – Dec 29	Shain Park
Winter Markt	Dec 1 – 3	Shain Park
Menorah Display	Dec 13- 20	Shain Park

### SUGGESTED RESOLUTION:

To approve a request from the Birmingham Shopping District to place the Santa House in Shain Park from November 22 to December 24, 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.

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

***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 August 28, 2017

Name of Event Santa House

Detailed Description of Event (attach additional sheet if necessary) \_\_\_\_\_

Santa House is for children to visit Santa. A warming tent will be erected next to Santa House on

Saturdays

Location Shain Park

Date(s) of Event Weekends - Dec 1 - 24 Hours of Event Various

Date(s) of Set-up Week of November 20 Hours of Set-up details to be worked out with DPS

Date(s) of Tear-down Week of December 26 Hours of Tear-down details to be worked out with DPS

Organization Sponsoring Event Birmingham Shopping District

Organization Address 151 Martin Street

Organization Phone 248-530-1200

Contact Person Jaimi Brook

Contact Phone 248-530-1254

Contact Email jbrook@bhamgov.org

## ***II. EVENT INFORMATION***

1. Organization Type City  
(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. ) TBD  
\_\_\_\_\_  
\_\_\_\_\_
3. Is the event a fundraiser? YES NO  
List beneficiary TBD  
List expected income TBD  
Attach information about the beneficiary.
4. First time event in Birmingham? YES NO  
If no, describe Santa house has been located in downtown Birmingham for many years.  
\_\_\_\_\_
5. Total number of people expected to attend per day 40-80
6. The event will be held on the following City property: (Please list)  
☐ Street(s) \_\_\_\_\_  
☐ Sidewalk(s) \_\_\_\_\_  
☒ Park(s) Shain
7. Will street closures be required? YES NO
8. What parking arrangements will be necessary to accommodate attendance? \_\_\_\_\_

9. Will staff be provided to assist with safety, security and maintenance? ☒ YES ☐ NO  
Describe Volunteers from the Lions Club will take photos of kids with Santa.
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 4 x 6  
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.

### **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)	<u>1</u> # 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)	1	10 x 20
Portable Toilets		
Rides		
Displays		
Vendors		
Temporary Structure (must attach a photo)		
Other (describe)		



**SIGNATURE OF APPLICANT REQUIRED**

EVENT NAME Santa House

EVENT DATE December 1 - December 24, 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 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.

## NOTIFICATION

August 28, 2017

TO: Property/Business Owner

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

NAME OF EVENT(S): 1) Winter Markt and 2) Santa House  
LOCATION: 1) Shain Park  
2) Shain Park  
DATES & TIMES: 1) Winter Markt - December 1 - 3, various hours  
2) Santa House - various weekends throughout holidays.  
DATE/TIME OF CITY COMMISSION MEETING: Monday, September 25, 2017 at 7:30 pm

The City Commission meets in room 205 of the Municipal Building at 151 Martin Street. A complete copy of the application to hold this special event(s) are available for your review at the City Clerk's Office (248-530-1880). To receive updates on special events held in the city, log on to [www.bhamgov.org/enotify](http://www.bhamgov.org/enotify).

EVENT ORGANIZER: Birmingham Shopping District  
ADDRESS: 151 Martin Street  
PHONE: 248-530-1200

## NOTIFICATION

August 28, 2017

TO: Property/Business Owner

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## NOTIFICATION

August 28, 2017

TO: Property/Business Owner

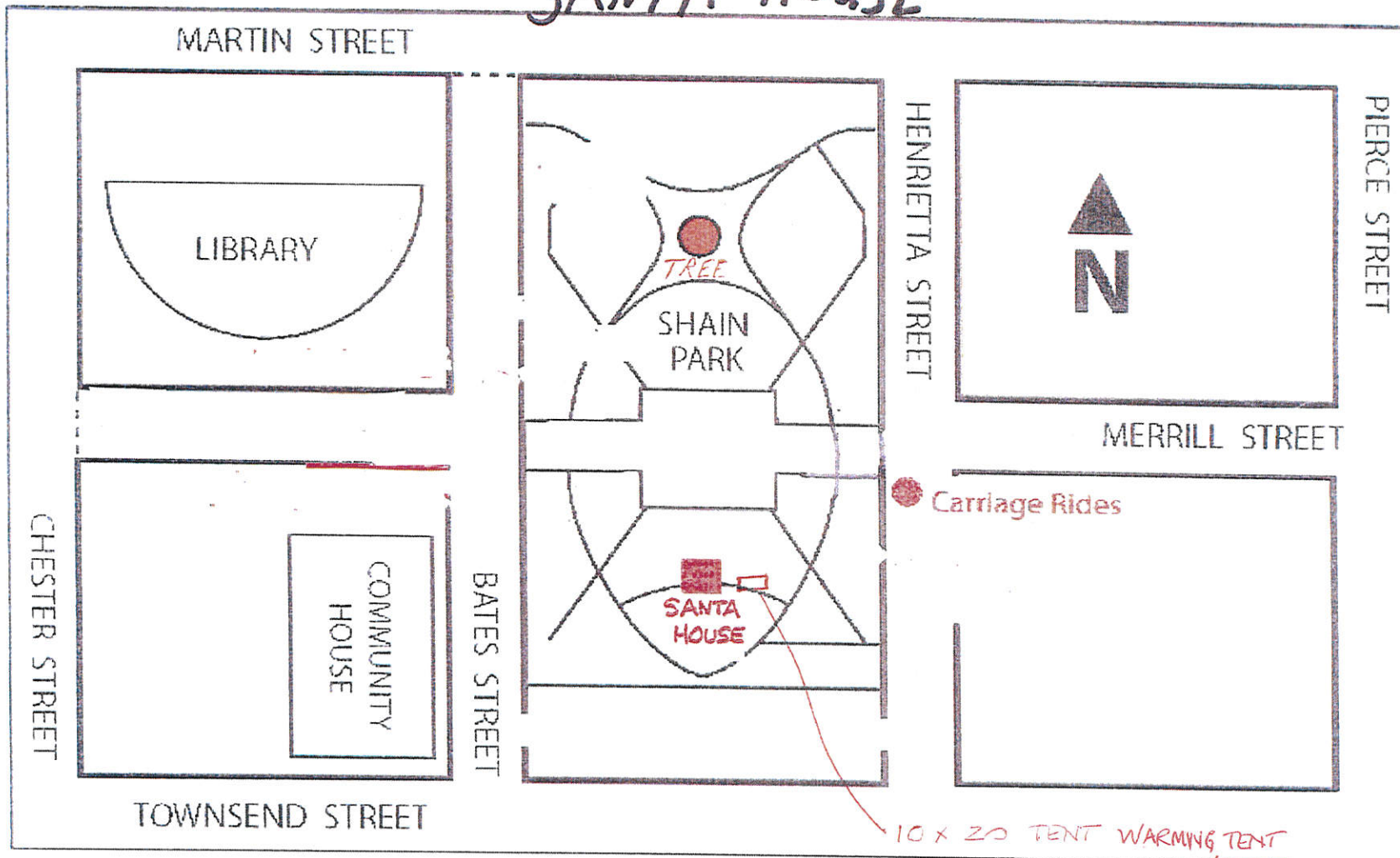
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EVENT ORGANIZER: Birmingham Shopping District  
ADDRESS: 151 Martin Street  
PHONE: 248-530-1200

# SANTA HOUSE





## LIABILITY DECLARATIONS

IN RETURN FOR THE PAYMENT TO THE POOL AND SUBJECT TO ALL THE TERMS OF THIS COVERAGE DOCUMENT, THE POOL AGREES WITH YOU TO PROVIDE COVERAGE AS STATED IN THIS CONTRACT. THESE COVERAGES ARE ALSO PROVIDED IN ACCORDANCE WITH THE INTERGOVERNMENTAL CONTRACT WHICH FORMS THE LEGAL BASIS FOR THE OPERATION OF THE POOL.

Contract Number: MML001444016 Renewal of Number: MML001444015

Pool Member: City of Birmingham

Coverage Period From: 7/1/2017 To: 7/1/2018  
12:01 A.M. Standard Time

*(This policy applies to only those Coverage Parts marked with an "X")*

### LIMITS OF INSURANCE

☒ **MUNICIPAL GENERAL LIABILITY COVERAGE PART**

EACH OCCURRENCE LIMIT \$10,000,000

FIRE DAMAGE LIMIT \$100,000 Any One Fire

MEDICAL EXPENSE LIMIT \$10,000 Any One Person

DEDUCTIBLE: \$125,000 Each Occurrence

☒ **LAW ENFORCEMENT LIABILITY COVERAGE PART**

EACH WRONGFUL ACT LIMIT \$10,000,000

DEDUCTIBLE: \$125,000 Each Wrongful Act

☒ **PUBLIC OFFICIALS LIABILITY COVERAGE PART**

EACH WRONGFUL ACT LIMIT \$10,000,000

DEDUCTIBLE: \$125,000 Each Wrongful Act

(This policy applies to only those Coverage Parts marked with an "X")

### LIMITS OF INSURANCE

☒ **EMPLOYEE BENEFIT LIABILITY COVERAGE PART**

EACH CLAIM LIMIT \$1,000,000

DEDUCTIBLE: \$125,000 Each Claim

☒ **AUTOMOBILE LIABILITY COVERAGE PART**

EACH OCCURRENCE LIMIT \$10,000,000

DEDUCTIBLE: \$125,000 Each Occurrence

☒ **THE COMBINED POLICY LIMIT \$10,000,000**

Regardless of the number of **Insureds**, **Claims** made or **Suits** brought, persons or organizations making **Claims** or bringing **Suits** or coverages or coverage parts which may be applicable, the Combined Policy Limit shown above is the most we will pay for the sum of all **Damages** arising out of an **Occurrence**, **Wrongful Act**, act or omission and any series of related **Occurrences**, **Wrongful Acts**, acts or omissions.

The Combined Policy Limit is the most we will pay regardless of the number of Coverage Parts under which coverage may be sought.

FORMS AND ENDORSEMENTS applying to these Coverage Parts and made part of this policy at time of issue: MML200 (01/14), MML202 (11/99), MML233 (07/13), MML203 [11/99], MML208 [11/99], MML215 [02/00]

TOTAL LIABILITY PREMIUM

\$ INCLUDED

BY



Authorized Representative

Date:

6/19/2017

A SERVICE OF THE MICHIGAN MUNICIPAL LEAGUE

## DEPARTMENT APPROVALS

EVENT NAME BSD Santa House

LICENSE NUMBER #17-00011062

COMMISSION HEARING DATE: 9/25/2017

NOTE TO STAFF: Please submit approval by **FRIDAY, SEPTEMBER 15, 2017**

DATE OF EVENT: 12/1/2017-12/24/2017

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)
<b>PLANNING</b> 101-000.000-634.0005 248.530.1855	SC	No comments.	N/A	N/A	
<b>BUILDING</b> 101-000.000.634.0005 248.530.1850	BRJ	Building can inspect setup during normal working hours.	None	\$0.00	
<b>FIRE</b> 101-000.000-634.0004 248.530.1900	JMC	Special Event Tents or Canopies  1. No Smoking in any tents or canopy. Signs to be posted. 2. All tents and Canopies must be flame resistant with certificate on site. 3. No open flame or devices emitting flame, fire or heat in any tents. Cooking devices shall not be permitted within 20 feet of the tents. 4. Tents and Canopies must be properly anchored for the weather conditions, no stakes allowed. 5. Clear Fire Department access of 12 foot aisles must be maintained, no tents, canopies or other		\$40	

		<p>obstructions in the access aisle unless approved by the Fire Marshal.</p> <ol style="list-style-type: none"> <li>6. Pre-event site inspection required.</li> <li>7. All food vendors are required to have an approved 5lbs. multi-purpose (ABC) fire extinguisher on site and accessible.</li> <li>8. Provide protective barriers between hot surfaces and the public.</li> <li>9. Cords, hoses, etc. shall be matted to prevent trip hazards.</li> <li>10. Paramedics will respond from the fire station as needed. Dial 911 for fire/rescue/medical emergencies.</li> <li>11. Do Not obstruct fire hydrants or fire sprinkler connections on buildings.</li> </ol>			
<b>POLICE</b> 101-000.000.634.0003 248.530.1870	MC/CA	On duty personnel will provide extra patrol.		\$0	
<b>PUBLIC SERVICES</b> 101-000.000-634.0002 248.530.1642	Carrie Laird 9/5/2017	DPS will assist with this event including delivery, set up and removal.		\$6,000	
<b>ENGINEERING</b> 101-000.000.634.0002 248.530.1839	A.F.	Maintain 5' clear pedestrian pathways on sidewalks. No damage to pavements allowed for supports, tents, shelters, barricades, etc...	None	\$0	\$0
<b>SP+ PARKING</b>	A.F.	Information Emailed to SP+ 09/07/17	None	\$0	\$0
<b>INSURANCE</b> 248.530.1807	Cherilynn Mynsberge 9/11/2017			\$0	\$0

<b>CLERK</b> <b>101-000.000-614.0000</b> 248.530.1803	Cherilynn Mynsberge 9/11/2017	Notification letters to be mailed by applicant no later than 9/14/17. 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 ON FILE	Applications for vendors license must be submitted no later than N/A	\$165	\$165
				<b>TOTAL  DEPOSIT  REQUIRED</b>  <b>\$6,205</b>	<b>ACTUAL  COST</b>

**FOR CLERK'S OFFICE USE**

Deposit paid \_\_\_\_\_

Actual Cost \_\_\_\_\_

Due/Refund\_\_\_\_\_



## MEMORANDUM

Planning Division

**DATE:** September 18, 2017

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

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

**SUBJECT:** Request to set a public hearing to consider the rezoning of 191 N. Chester from TZ1 to TZ2

---

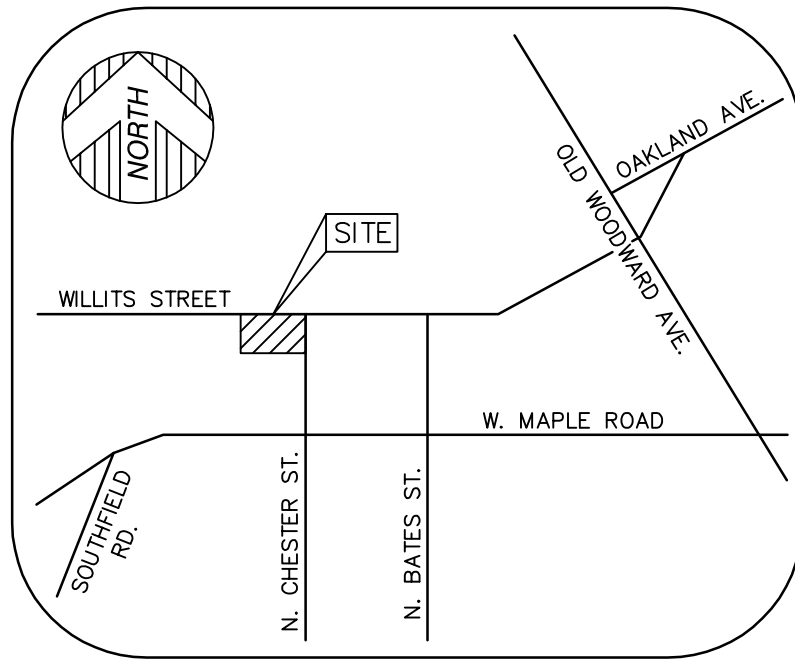
On September 13, 2017, the Planning Board conducted a public hearing to consider the requested rezoning of 191 N. Chester, First Church of Christ Scientist. After much discussion, the Planning Board voted to recommend approval of the proposed rezoning to the City Commission. Please find attached the reports and illustrations presented to the Planning Board, along with all relevant minutes for your review.

The Planning Division requests that the City Commission set a public hearing date for **October 16, 2017** to consider the requested rezoning of 191 N. Chester.

**Suggested Action:**

To set a public hearing date for October 16, 2017 to consider the proposed rezoning of 191 N. Chester from TZ1 (Transitional Zoning) to TZ2 (Transitional Zoning).





VICINITY MAP  
(NOT TO SCALE)

PARKING

NO ON SITE MARKED PARKING.

PARCEL AREA

17,370± SQUARE FEET = 0.40± ACRES

BASIS OF BEARING

NORTH 87°08'28" EAST, BEING THE ASSUMED BEARING  
ALONG THE SOUTHERLY RIGHT OF WAY LINE OF WILLETS  
STREET

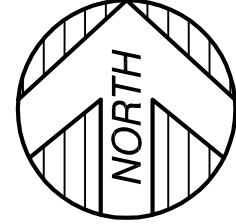
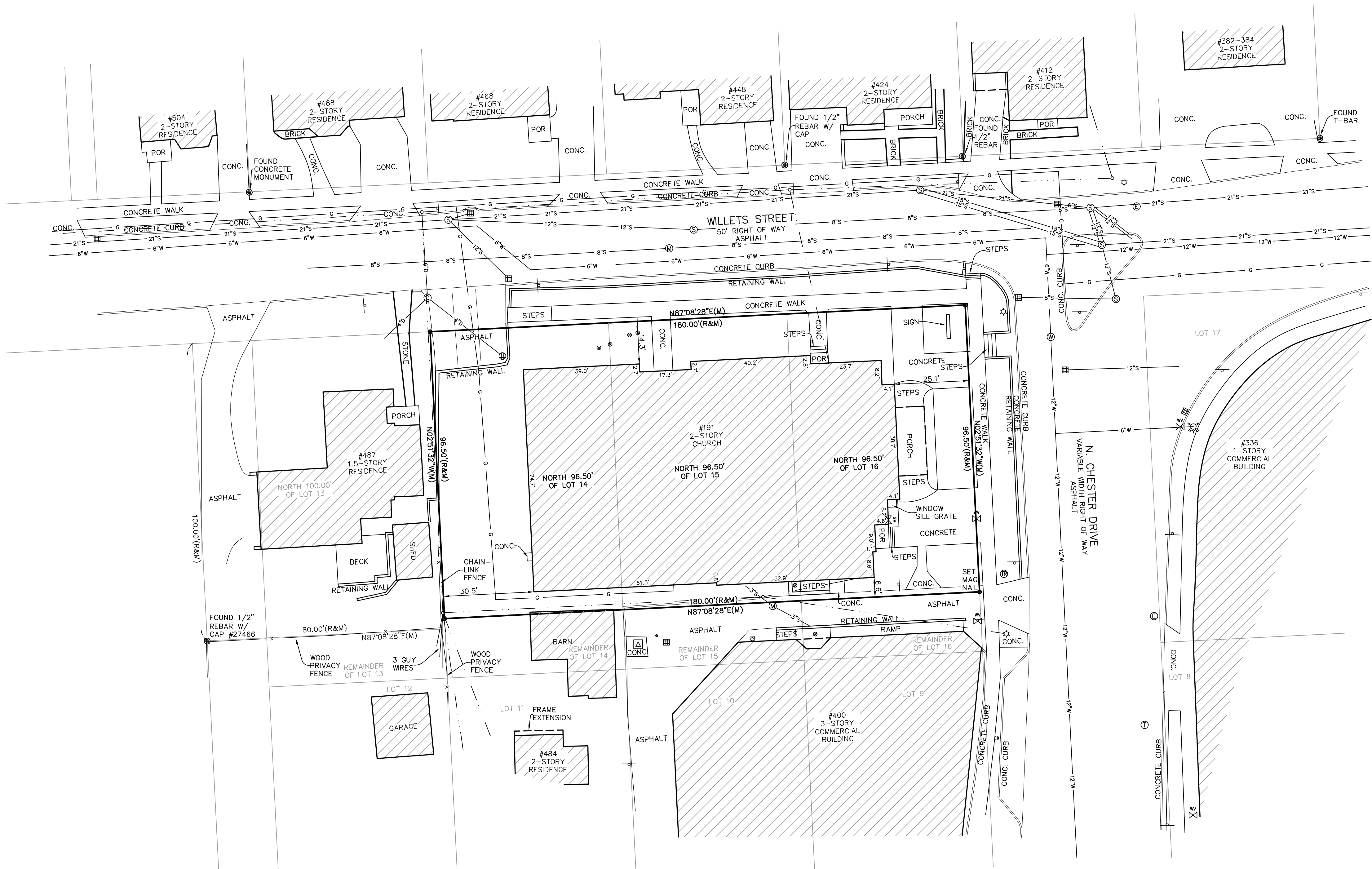
SURVEYOR'S NOTE

THE UNDERGROUND UTILITIES SHOWN HAVE BEEN LOCATED FROM FIELD  
SURVEY INFORMATION AND EXISTING DRAWINGS. THE SURVEYOR MAKES  
NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE  
ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED.  
THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND  
UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED ALTHOUGH HE  
DOES CERTIFY THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE  
FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY  
LOCATED THE UNDERGROUND UTILITIES OTHER THAN THE STRUCTURE  
INVENTORY SHOWN HEREON.

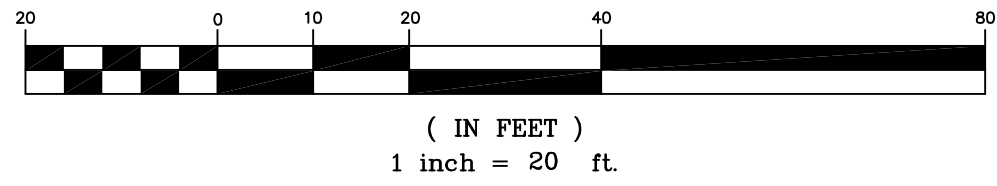
LEGEND

●	SET 1/2" REBAR WITH CAP P.S. 47976
⊙	FOUND MONUMENT (AS NOTED)
(R&W)	RECORD AND MEASURED DIMENSION
(R)	RECORD DIMENSION
(M)	MEASURED DIMENSION
⊕	ELECTRIC MANHOLE
⊡	TRANSFORMER
⊙	UTILITY POLE
⊙	GAS METER
⊙	GAS VALVE
⊙	PUBLIC LIGHTING MANHOLE
⊙	TRAFFIC SIGNAL MANHOLE
⊙	TELEPHONE MANHOLE
⊙	SANITARY MANHOLE
⊙	ROUND CATCH BASIN
⊙	SQUARE CATCH BASIN
⊙	DRAIN
⊙	STORM DRAIN MANHOLE
⊙	CLEANOUT
⊙	FIRE HYDRANT
⊙	WATER GATE MANHOLE
⊙	WATER VALVE
⊙	UNKNOWN MANHOLE
⊙	BOLLARD
⊙	LIGHTPOST/LAMP POST
⊙	PARKING METER
⊙	SINGLE POST SIGN
—	PARCEL BOUNDARY LINE
—	PLATTED LOT LINE
—	BUILDING
—	BUILDING OVERHANG
—	CONCRETE CURB
—	PARKING
—	EDGE OF CONCRETE (CONC.)
—	EDGE OF ASPHALT (ASPH.)
—	EDGE OF BRICK
—	FENCE (AS NOTED)
—	WALL (AS NOTED)
—	OVERHEAD UTILITY LINE
—	GAS LINE
—	SANITARY LINE
—	STORM LINE
—	WATER LINE

ALTA/NSPS LAND TITLE SURVEY



GRAPHIC SCALE



PROPERTY DESCRIPTION

LAND SITUATED IN THE CITY OF BIRMINGHAM, COUNTY OF OAKLAND, STATE  
OF MICHIGAN, DESCRIBED AS FOLLOWS:

THE NORTH 96.50 FEET OF LOTS 14, 15 AND 16 OF WILLETS ADDITION TO  
THE CITY OF BIRMINGHAM ACCORDING TO THE PLAT THEREOF AS RECORDED  
IN LIBER 3 OF PLATS, PAGE 6, OAKLAND COUNTY RECORDS.

TITLE REPORT NOTE

ONLY THOSE EXCEPTIONS CONTAINED WITHIN THE TITLE CONNECT, LLC.  
COMMITMENT No. TC13-57739, DATED FEBRUARY 2, 2015, AND RELISTED  
BELOW WERE CONSIDERED FOR THIS SURVEY. NO OTHER RECORDS RESEARCH  
WAS PERFORMED BY THE CERTIFYING SURVEYOR.

NO SPECIFIC EASEMENTS LISTED

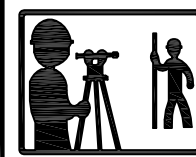
SURVEYOR'S CERTIFICATION

TO CHESTER STREET PARTNERS, LLC, JUM & ASSOCIATES, INC., TITLE  
CONNECT, LLC AND FIRST AMERICAN TITLE INSURANCE COMPANY:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT  
IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD  
DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY  
ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDED ITEMS 2, 4,  
7A, 8, 9, AND 11 OF TABLE A, THEREOF. THE FIELD WORK WAS COMPLETED  
ON NOVEMBER 29, 2016.

DATE OF PLAT OR MAP: 11/29/2016

ANTHONY T. SYKO, JR., P.S.  
PROFESSIONAL SURVEYOR  
MICHIGAN LICENSE NO. 47976



KEM-TEC & ASSOCIATES

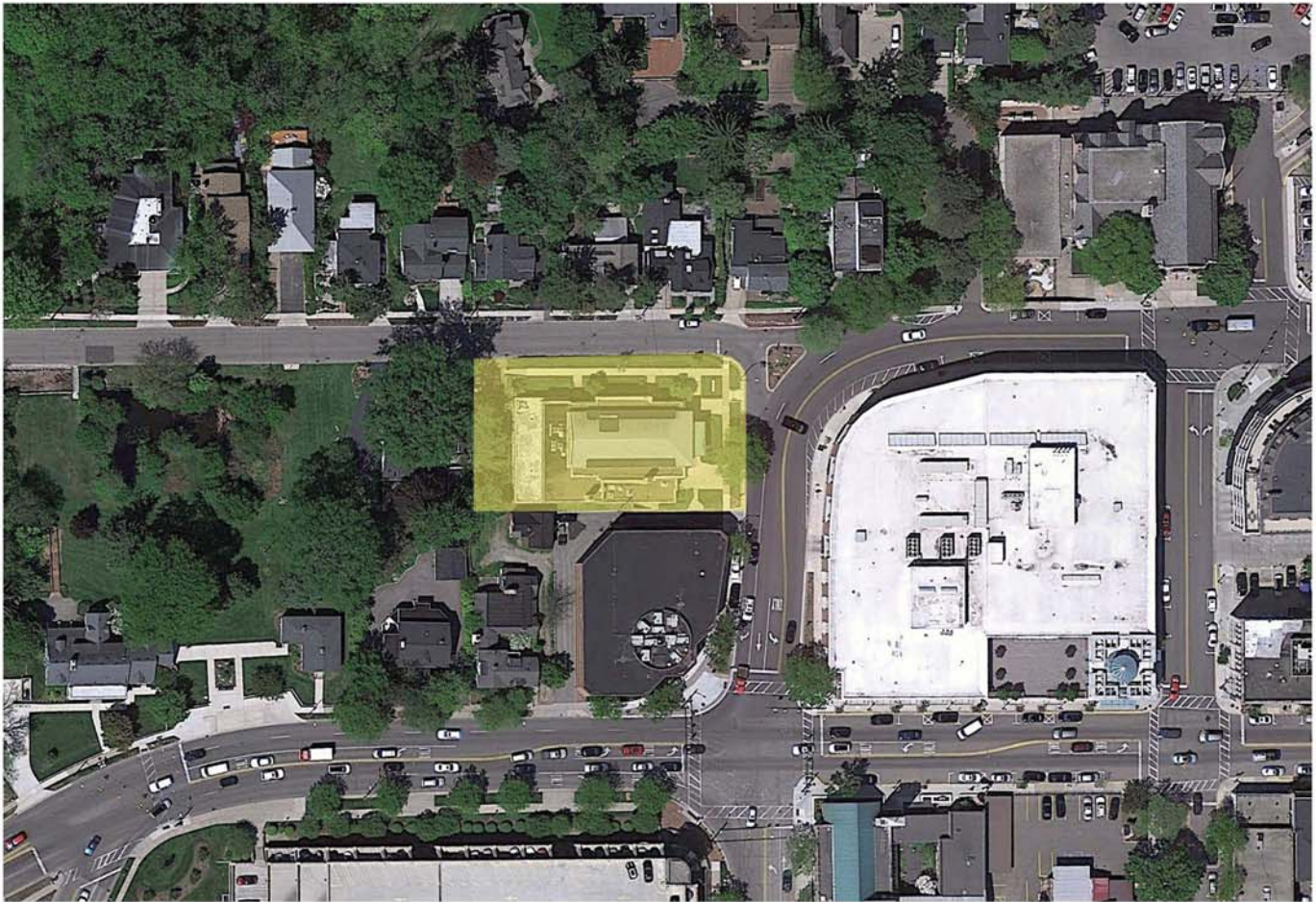
PROFESSIONAL SURVEYORS - PROFESSIONAL ENGINEERS  
22556 GRATIOT AVE. • EASTPOINTE, MICHIGAN 48021  
(586)772-2222 • (800)295-7222 • FAX (586)772-4048

PREPARED FOR: CHESTER STREET PARTNERS, LLC.			
DATE:	NOVEMBER 29, 2016	JOB #:	16-04352
SCALE:	1" = 20'	SHEET:	1 OF 1
DRAWN BY:	JA	REV.:	





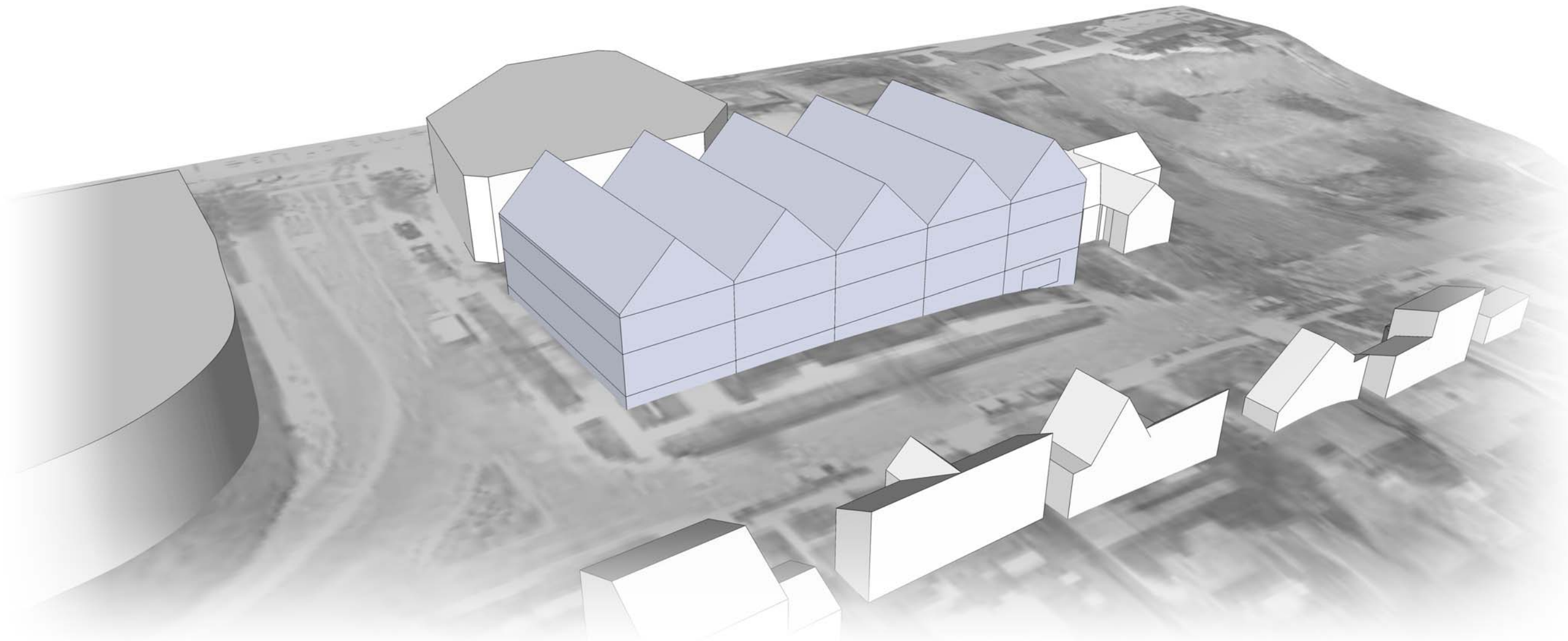












Massing Study  
NE Perspective  
SCALE: NTS



**SAROKI**  
ARCHITECTURE  
430 N. OLD WOODWARD  
BIRMINGHAM, MI 48009  
P. 248.258.5707  
F. 248.258.5515  
SarokiArchitecture.com

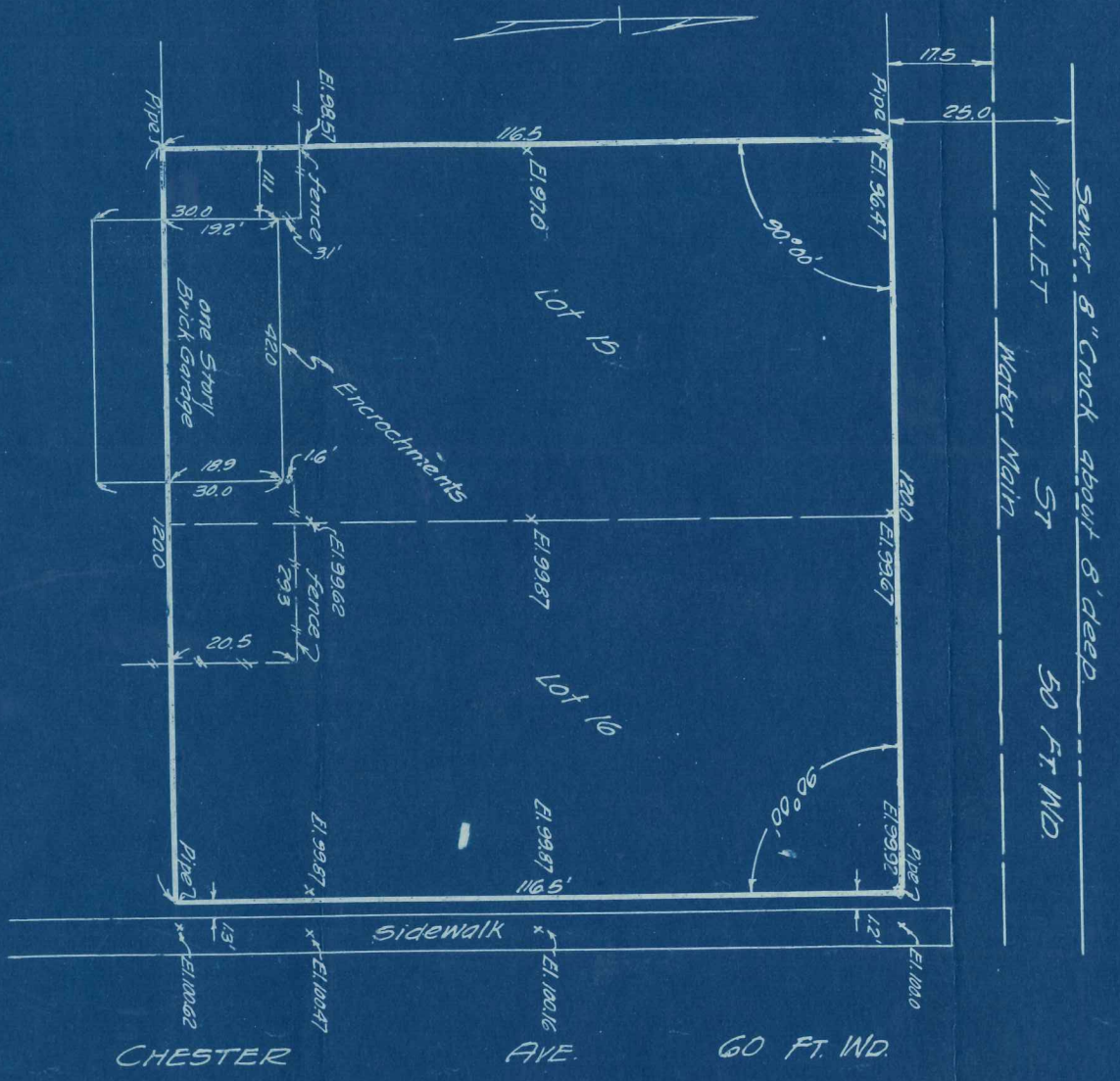
**Project:**  
SURNOW BUILDING  
191 N Chester  
Birmingham, Michigan

**Date:**      **Issued For:**  
2017-03-27      NEIGHBORHOOD MEETING  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Sheet No.:**  
**A500**  
MASSING STUDY



# PLAT OF SURVEY of Lots 15 & 16 of Willett Plat. For Frank E. Carter.



Date Feb 9, 1926

Scale 1" = 30' ---

Survey No. 5788 ---

WE SURVEY  
THE EARTH

Cad. 6013-3508

1015 Lafayette Building

Detroit

A. MALKIN, INC.  
CIVIL ENGINEERS AND SURVEYORS  
Registered

BE SURE OF  
YOUR GROUND

**CITY OF BIRMINGHAM  
PLANNING BOARD ACTION ITEMS  
OF WEDNESDAY, MAY 10, 2017**

Item	Page																				
<p><b>PUBLIC HEARING</b></p> <p><b>1. An ordinance to amend Chapter 126, Zoning, of the Code of the City of Birmingham as follows:</b></p> <p><b>1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM AS FOLLOWS:</b></p> <p>TO AMEND ARTICLE 2, SECTION 2.43, TZ-2 (TRANSITION ZONE 2) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO ADD THE TZ-2 ZONING CLASSIFICATION;</p> <p>TO AMEND ARTICLE 2, SECTION 2.44, TZ2 DEVELOPMENT STANDARDS TO ADD STANDARDS FOR THE TZ-2 DISTRICT;</p> <p>TO MOVE THE EXISTING TZ-3 (TRANSITION ZONE 3) ZONING CLASSIFICATION, DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO ARTICLE 2, SECTION 2.45 WITH NO CHANGES;</p> <p>TO MOVE THE EXISTING TZ-3 (TRANSITION ZONE 3) ZONING CLASSIFICATION, DEVELOPMENT STANDARDS TO ARTICLE 2, SECTION 2.46 WITH NO CHANGES;</p> <p>TO AMEND ARTICLE 5, SECTION 5.15, USE SPECIFIC STANDARDS, TO ADD USE SPECIFIC STANDARDS FOR THE TZ-2 ZONE DISTRICT;</p> <p style="text-align: center;">AND</p> <p>TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM, ARTICLE 4, ALL SECTIONS NOTED BELOW, TO APPLY EACH SECTION TO THE NEWLY CREATED TZ-2 ZONE DISTRICTS AS INDICATED:</p> <table border="1"> <thead> <tr> <th><u>Ordinance Section Name</u></th><th><u>Section Number</u></th></tr> </thead> <tbody> <tr> <td>Accessory Structures</td><td>4.02</td></tr> <tr> <td>Standards (AS)</td><td>4.04</td></tr> <tr> <td>Essential Services</td><td>4.09</td></tr> <tr> <td>Standards (ES)</td><td></td></tr> <tr> <td>Fence Standards (FN)</td><td>4.10</td></tr> <tr> <td>Floodplain Standards (FP)</td><td>4.13</td></tr> <tr> <td>Height Standards (HT)</td><td>4.16</td></tr> <tr> <td></td><td>4.18</td></tr> <tr> <td>Landscaping Standards (LA)</td><td>4.20</td></tr> </tbody> </table>	<u>Ordinance Section Name</u>	<u>Section Number</u>	Accessory Structures	4.02	Standards (AS)	4.04	Essential Services	4.09	Standards (ES)		Fence Standards (FN)	4.10	Floodplain Standards (FP)	4.13	Height Standards (HT)	4.16		4.18	Landscaping Standards (LA)	4.20	2
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Item		Page
	Lighting Standards (LT)	4.21
		4.22
	Loading Standards (LD)	4.24
	Open Space Standards (OS)	4.30
	Outdoor Dining Standards (OD)	4.44
	Parking Standards (PK)	4.45
		4.46
		4.47
		4.53
	Screening Standards (SC)	4.54
		4.59
	Setback Standards (SB)	4.65
	Street Standards (ST)	4.73
	Structure Standards (SS)	4.74
	4.83	
Temporary Use Standards (TU)	4.84	
Utility Standards (UT)	4.88	
Vision Clearance Standards (VC)	4.89	
Window Standards (WN)	4.90	
<p><b>Motion by Mr. Jeffares</b></p> <p><b>Seconded by Mr. Boyle to accept as pointed out in the packet:</b></p> <p><b>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 02 District Intent, Permitted Uses, and Special Uses, Section 2.43 TZ-2 (Transition Zone) District to create the TZ-2 Zoning Classification.</b></p> <p><b>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 02 Development Standards, Section 2.44 TZ-2 (Transition Zone) to adopt the following development standards for the TZ-2 Zone District, as in the packet.</b></p> <p><b>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to renumber the existing TZ-3 (Transition Zone 3) Zoning Classification, District Intent, Permitted Uses, and Special Uses to Article 2, Section 2.45 with no changes.</b></p> <p><b>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to renumber the existing TZ-3 (Transition Zone 3) Zoning Classification, Development Standards to Article 2, Section 2.46 with no changes.</b></p>		4

Item	Page
<p><b>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 5, Section 5.15, Use Specific Standards, to add Use Specific Standard for the TZ-2 District, as in the packet.</b></p> <p>Ms. Ecker added a friendly amendment and it was accepted by the makers of the motion:</p> <p><b>An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to update the following sections in Article to add TZ-2 as a zone district to which they apply: 4.02, 4.04, 4.09, 4.10, 4.13, 4.16, 4.18, 4.20, 4.21, 4.22, 4.24, 4.30, 4.44, 4.45, 4.46, 4.47, 4.53, 4.54, 4.59, 4.65, 4.73, 4.74, 4.83, 4.84, 4.88, 4.89, 4.90.</b></p> <p><b>Motion carried, 7-0.</b></p>	5
<p><b>STUDY SESSION ITEMS</b></p>	5
<p><b>1. Window Tinting</b></p>	
<p><b>Motion by Mr. Williams</b></p> <p><b>Seconded by Mr. Jeffares that the Planning Board set a public hearing for June 14, 2017 to allow the public to comment on these proposed changes and for the Planning Board to make a recommendation to the City Commission on these issues.</b></p>	7
<p><b>Motion carried, 7-0.</b></p>	7

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**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, MAY 10, 2017  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Planning Board held on May 10, 2017. Chairman Scott Clein convened the meeting at 7:30 p.m.

**Present:** Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Vice Chairperson Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Student Representative Isabella Niskar

**Absent:** Student Representative Ariana Afrakhteh

**Alternates:** Lisa Prasad and Dan Share were not asked to attend

**Administration:** Matthew Baka, Sr. Planner  
Jana Ecker, Planning Director  
Carole Salutes, Recording Secretary

**05-86-17**

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING  
OF MARCH 29, 2017**

**Motion by Mr. Williams**

**Seconded by Ms. Whipple-Boyce to approve the Planning Board Minutes of  
March 29, 2017 as presented.**

**Motion carried, 5-0.**

**VOICE VOTE**

Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares

Nays: None

Abstain: Koseck, Lazar

Absent: None

**APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING  
OF APRIL 26, 2017**

Mr. Jeffares noted with respect to 2010 Cole St. that the CIS was accepted by the board and the Preliminary Site Plan Review was postponed, correction on pages 2 and 11.



**Motion by Mr. Koseck**

**Seconded by Mr. Jeffares to approve the Planning Board Minutes of April 26, 2017 as amended.**

**Motion carried, 5-0.**

VOICE VOTE

Yeas: Koseck, Jeffares, Clein, Lazar, Whipple-Boyce

Nays: None

Abstain: Williams, Boyle

Absent: None

**05-87-17**

**CHAIRPERSON'S COMMENTS** (none)

**05-88-17**

**APPROVAL OF THE AGENDA** (no change)

**05-89-17**

**PUBLIC HEARING**

**1. An ordinance to amend Chapter 126, Zoning, of the Code of the City of Birmingham as follows:**

**1. AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM AS FOLLOWS:**

TO AMEND ARTICLE 2, SECTION 2.43, TZ-2 (TRANSITION ZONE 2) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO ADD THE TZ-2 ZONING CLASSIFICATION;

TO AMEND ARTICLE 2, SECTION 2.44, TZ2 DEVELOPMENT STANDARDS TO ADD STANDARDS FOR THE TZ-2 DISTRICT;

TO MOVE THE EXISTING TZ-3 (TRANSITION ZONE 3) ZONING CLASSIFICATION, DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO ARTICLE 2, SECTION 2.45 WITH NO CHANGES;

TO MOVE THE EXISTING TZ-3 (TRANSITION ZONE 3) ZONING CLASSIFICATION, DEVELOPMENT STANDARDS TO ARTICLE 2, SECTION 2.46 WITH NO CHANGES;

TO AMEND ARTICLE 5, SECTION 5.15, USE SPECIFIC STANDARDS, TO ADD USE SPECIFIC STANDARDS FOR THE TZ-2 ZONE DISTRICT;

AND

TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM, ARTICLE 4, ALL SECTIONS NOTED BELOW, TO

APPLY EACH SECTION TO THE NEWLY CREATED TZ-2 ZONE DISTRICTS AS INDICATED:

<u>Ordinance Section Name</u>	<u>Section Number</u>
Accessory Structures Standards (AS)	4.02 4.04
Essential Services Standards (ES)	4.09
Fence Standards (FN)	4.10
Floodplain Standards (FP)	4.13
Height Standards (HT)	4.16 4.18
Landscaping Standards (LA)	4.20
Lighting Standards (LT)	4.21 4.22
Loading Standards (LD)	4.24
Open Space Standards (OS)	4.30
Outdoor Dining Standards (OD)	4.44
Parking Standards (PK)	4.45 4.46 4.47 4.53
Screening Standards (SC)	4.54 4.59
Setback Standards (SB)	4.65
Street Standards (ST)	4.73
Structure Standards (SS)	4.74 4.83
Temporary Use Standards (TU)	4.84
Utility Standards (UT)	4.88
Vision Clearance Standards (VC)	4.89
Window Standards (WN)	4.90

The Chairman opened the public hearing at 7:35 p.m.

Mr. Baka stated that the City Commission and Planning Board have held a number of meetings relating to this issue. On March 29, 2017, the Planning Board held a study session to further discuss the TZ-2 Zone. After much discussion the Planning Board set a public hearing for May 10th, 2017 to consider the adoption of the TZ-2 Zoning District and all of the additional provisions associated with the creation of this new zone. In addition to setting the hearing the board also requested some minor changes to the existing draft ordinance that would make it consistent with the TZ-3 Zone in regards to permitted uses. However, at this time the Planning Board is not considering applying the new zone to any specific properties. Accordingly, the Planning Division has revised

the draft ordinance language in accordance with the comments of the Planning Board. He highlighted the standards as they are currently proposed.

Discussion concluded that "hours of operation" includes when employees are present and not just when business is being conducted. If an extension is needed those affected can apply to have that made a condition of the SLUP.

No comments from the public were heard at 7:48 p.m.

Mr. Williams noted it needs to be explained to the City Commission that the distinction between TZ-2 and TZ-3 has more to do with massing and less to do with types of uses. It was discussed that the cost to obtain a SLUP is \$2,800.

**Motion by Mr. Jeffares**

**Seconded by Mr. Boyle to accept as pointed out in the packets:**

**An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 02 District Intent, Permitted Uses, and Special Uses, Section 2.43 TZ-2 (Transition Zone) District to create the TZ-2 Zoning Classification.**

**An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 02 Development Standards, Section 2.44 TZ-2 (Transition Zone) to adopt the following development standards for the TZ-2 Zone District, as in the packet.**

**An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to renumber the existing TZ-3 (Transition Zone 3) Zoning Classification, District Intent, Permitted Uses, and Special Uses to Article 2, Section 2.45 with no changes.**

**An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to renumber the existing TZ-3 (Transition Zone 3) Zoning Classification, Development Standards to Article 2, Section 2.46 with no changes.**

**An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to add Article 5, Section 5.15, Use Specific Standards, to add Use Specific Standard for the TZ-2 District, as in the packet.**

Ms. Ecker added a friendly amendment and it was accepted by the makers of the motion:

**An Ordinance to amend Chapter 126 Zoning of the Code of the City of Birmingham, to update the following sections in Article to add TZ-2 as a zone district to which they apply: 4.02, 4.04, 4.09, 4.10, 4.13, 4.16, 4.18, 4.20, 4.21, 4.22, 4.24, 4.30, 4.44, 4.45, 4.46, 4.47, 4.53, 4.54, 4.59, 4.65, 4.73, 4.74, 4.83, 4.84, 4.88, 4.89, 4.90.**

**Motion carried, 7-0.**

VOICE VOTE

Yeas: Jeffares, Boyle, Clein, Koseck, Lazar, Whipple-Boyce, Williams

Nays: None

Absent: None

Chairman Clein closed the public hearing at 7:57 p.m.

**05-90-17**

## **OLD BUSINESS**

### **1. 225 E. Maple Rd., Social Kitchen**

**Request for Special Land Use Permit ("SLUP") Amendment and Revised Final Site Plan to allow construction of a glass enclosure system around the existing outdoor dining in the via, and to allow a new canopy on the rooftop**  
(postponed from March 22, 2017)

The applicant was not present.

Ms. Ecker said the applicant met with the Building Official as the Planning Board had asked; however the Building Official requested them to send a letter outlining all of their arguments as to why the glass enclosure system is not a permanent structure and an interior space with over 65 seats. The Building Official has not received anything back from them.

Board members noted it was not part of their original contemplation for bistros that there would be such large facilities all year around.

No one motioned to postpone, so the matter died.

**05-91-17**

## **STUDY SESSION ITEMS**

### **1. Window Tinting**

Mr. Baka stated that the City Commission has held a public hearing and the Planning Board has held several study sessions to discuss the issue of window standards and examine potential changes to the Ordinance to address the concerns of the City Commission. As a result of those discussions, a general consensus was reached that prohibiting the tinting of windows would promote the intent of creating a pedestrian friendly interactive condition in the commercial areas of the City.

With regards to the treatment of glazing in passageways and vias, the Planning Board decided not to recommend a required amount of glazing in these spaces as it might impede important "back of house" functions and have a negative impact on businesses. Presently, the Via Activation Overlay Standard does indicate a requirement for windows

but does not set a specific percentage that is required. As currently written, this provision allows the Planning Board to evaluate projects on a case-by-case basis but does not provide a baseline or minimum amount of glazing that is required in these spaces.

Discussions have concluded that clear glass must have a visual transmission level of at least 80%. Further, not less than 70% visual transmission qualifies as lightly tinted. (The lower the percentage, the darker the tint.)

On March 29, 2017, the Planning Board reviewed draft ordinance language and requested that it be revised to include definitions for clear glazing and lightly tinted glazing that have specific percentages of visual transmittance. Accordingly, those definitions have been drafted and are now incorporated. This draft language also includes the original ordinance amendments that were recommended to the City Commission in July of 2016.

Chairman Clein made a change to 4.90 WN-01 (2) to say "Only clear glazing is permitted on storefront facades . . ."

Discussion from the public was taken at 8:15 p.m.

Mr. Steve Kalczynski from the Townsend Hotel said that regarding their second-story bakery it was strongly suggested they take the blinds down, so they put curtains up because of the need to block the sun.

Ms. Ecker suggested inserting the following provision to the Downtown Overlay Standard 3.04 prior to setting a public hearing: " First floor windows shall not be blocked with opaque materials or furniture, products, signs, blank walls, or the back of shelving units. This language could be added for purposes of discussion at the public hearing. It can always be taken out.

Mr. Koseck indicated his view is to have clear glass throughout the first floor of the City with a visual transmission level of 80%. If the sun is blazing in he is okay with a blind because it might go away, the use might change, etc. Further, above the first floor, blinds may be permitted.

**Motion by Mr. Williams**

**Seconded by Mr. Jeffares that the Planning Board set a public hearing for June 14, 2017 to allow the public to comment on these proposed changes and for the Planning Board to make a recommendation to the City Commission on these issues.**

There were no comments from the public at 8:30 p.m.

**Motion carried, 7-0.**

**VOICE VOTE**

Yeas: Williams, Jeffares, Boyle, Clein, Koseck, Lazar, Whipple-Boyce

Nays: None

Absent: None

**05-92-17**

## **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.

**05-93-17**

### **3. Parking Requirements for all uses**

Ms. Ecker noted the Planning Board was asked to study the current parking requirements for all uses within the City.

At the March 29, 2017 Planning Board meeting, the board discussed the complex issue of parking throughout the City. After much discussion, the board requested additional information on options that reduce demand, including a sample Transportation Demand Model ("TDM") report to show how developers were designing to reduce reliance on automobiles.

Mr. Boyle suggested taking the Community Impact Study ("CIS") model and tweaking it to include certain elements that will or will not affect parking. Chairman Clein said it seems to him many of the complaints about the parking problem are between 11 a.m. and 2 p.m. when all of the offices are full and people have come into town for lunch. Now there are offices in the Parking Assessment District that were not anticipated and they are being given "free" parking. Mr. Williams noted that the perceived 11 a.m. to 2 p.m. parking problem results from the growth of the restaurant business combined with daytime office uses.

Ms. Ecker said the Ad Hoc Parking Development Committee did a parking study and they found the single biggest problem is that more people are being housed in smaller amounts of space.

Mr. Jeffares observed that offices in the absence of affordable housing provide the density required to have retail work.

Ms. Whipple-Boyce thought that asking a potential developer for the added information about how they plan to handle parking for their employees is not about being able to tell an applicant whether or not they can build a building because they cannot accommodate the people who will be in the building. But, asking for the added information will help the Planning Board manage the way they help the building evolve.

Ms. Ecker said that looking at what extra information can be added as part of the CIS is an option. Also, mandating that every new development incorporate bike parking, and having designated ride-share spots in the parking decks or in a private development may be options.

Ms. Whipple-Boyce encouraged the board to take a look at the terms of the Parking Assessment District and identify some of the things they see from the work they do that are contributing to the problem.

Ms. Ecker noted the difficulty is that the parking problem is Downtown where everyone has paid into the Parking Assessment District and there is no parking requirement for most of the uses that cause the problem. Mr. Williams added they can't quantify the extent of the problem. It is not known how many people don't come now to shop in Birmingham because they can't park.

Chairman Clein said there is data that suggests two parking decks within Downtown are at least near capacity during key summer hours. So there is a demand problem there. But if the City doesn't change the processes moving forward there will just be more demand problems. In his view the 2016 Plan has not been successful with Downtown residential. So perhaps this board could offer opinions to the Commission that they not only need to attack the current demand, but immediately move toward with reviewing the Parking Assessment District to determine whether or not they need to make some shifts in the current ordinance that says you get an extra floor of office if you add a fifth floor of residential.

Mr. Boyle said he has had thoughts about asking the Planning Dept. if they would consider organizing a parking workshop. They could invite several people to speak about the current situation, and what other cities are doing. Have open discussion about the current parking situation in Birmingham and the likely changes that will occur based upon the pipeline of development.

Chairman Clein asked staff to bring back to the next study session a bulleted list of problems inside or outside of the scope of the Planning Board. Make a recommendation to the City Manager that a workshop be held and present the key issues, many of which are not under the Planning Board's jurisdiction.

**05-94-17**

## **MISCELLANEOUS BUSINESS AND COMMUNICATIONS**

- a. Communications (none)
- b. Administrative Approval Correspondence
  - 2100 E. Maple Rd., Whole Foods – Approval of two raceway mounted and one individually mounted channel letter signs, and one ground sign.
  - 2075 E. Fourteen Mile Rd. - Application to locate two (2) A/C condensers 10 ft. south of N/E corner, screened by 4 ft. tall hedge of Hicks Yews.
  - 2200 Holland, Mercedes Benz Storage Facility - To remove Mercedes Benz emblems on the building.
  - 2400 E. Lincoln, The Sheridan at Birmingham – Temporary Use Permit to allow a temporary sales trailer.
- c. Draft Agenda for the Regular Planning Board Meeting on May 24, 2017
  - 298 S. Old Woodward Ave, CIS and Preliminary Site Plan;
  - 2010 Cole, Preliminary Site Plan;
  - 277 Pierce (Varsity Shop), CIS and Preliminary Site Plan;
  - Definition of Retail, Study Session.



- d. Other Business (none)

**05-95-17**

**PLANNING DIVISION ACTION ITEMS**

- a. Staff report on previous requests (none)  
b. Additional items from tonight's meeting (none)

**05-96-17**

**ADJOURNMENT**

No further business being evident, the Chairman adjourned the meeting at 9:50 p.m.

Jana Ecker  
Planning Director

August 29, 2017

City Commission  
151 Martin Street  
Birmingham, MI 48009

**RE: Rezoning of 191 N. Chester Street (First Church of Christ, Scientist)**

Dear Commissioners:

The First Church of Christ, Scientist was originally owned and built in 1926 by the Christian Science congregation. For over 90 years, the Christian Science group occupied and maintained this building until they vacated in December of 2016 due to lack of funding. It was one of the longest tenancies in the history of Birmingham. The building's Greek revival architecture is almost identical to the Christian Science churches built throughout the country during that time in the early 1900's. While now vacant, the building is in good working order as well as structurally sound. Almost everything is in original condition, although there was an add-on done to the building in the late 60's.

In September of 2015, the property was rezoned from R4 to TZ1. Unfortunately, the only other zoning option at the time of the rezoning was TZ3, which has a wide variety of commercial uses and would have prevented the intended buffer between reasonable commercial uses and single family residential. As TZ2 was subsequently adopted in 2017 as part of the city's zoning ordinance, we believe that this is the appropriate classification for 191 N. Chester, specifically so we can keep the structure by converting it to a Class A office building and have onsite parking. Please refer to the below responses that justify the rationale for this proposed zoning change from TZ1 to TZ2:

**An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership:**

- The subject property was purchased because of the desire to enjoy and preserve the current building, the Christian Science Church, which is currently and has been situated on the same piece of land for over 90 years. The first option we considered was whether or not the building could continue to be used for religious purposes, thus being able to preserve and enjoy it. Over the last 14 months, Surnow has marketed the property with a reputable religious broker in the area, and has proved there is no market for a 16,000 sq ft facility, especially with how large it is and the amount of expense that the building would require to stay operational (CAM, Insurance, Taxes) before even considering rent. Due to a market that is non-existent, it was concluded that the building is no longer suitable

for a religious use.

- With the current residential zoning being TZ1, The Surnow Company has invested significant resources in determining whether or not the Christian Science Church could be converted to a residential building, with the goal of preserving what is currently there. Based on the following reasons, it was found that having a residential use while also preserving the Church was simply not feasible.
- The lack of feasibility in converting the church to a residential structure had to do with multiple issues, including the lack of glass and views. Most residential units demand plenty of windows as well as a surrounding view of the neighborhood for the residents to enjoy. The Church has a very limited amount of glass windows, and approximately two thirds of the glass is currently located in areas that are undesirable for views. The building is mainly surrounded by massive office structures, with the Mcann Worldgroup Building to the east, and the Integra Building to the south. That only leaves one side view of Willits to the north, which would potentially require the landlord to punch out and destroy the brick to allow for large glass openings.
- Converting the Church to a residential structure was also compared to the loft style renovations of old warehouses in Pontiac and Detroit into apartments/condominiums. The loft style conversions lend itself to a residential use because of the wide-open, box-type nature of those structures. The Church building has 5 or 6 different levels, at least two of which a person cannot even stand in, and the building also has very complicated configuration with multiple corridors, etc. Almost all of these hallways and rooms are entirely supported by load bearing walls, and with very tight and awkward configurations. This would require a significant amount of demolition and construction to the point where it doesn't make sense to keep the building for creating a residential environment. With an office development, however, we can utilize those areas for storage, copy machine/office supply areas, janitorial closets, HVAC equipment locations, utility/phone/data demark rooms, small conference rooms, or small executive offices. Because of the demand for open areas and view with residential, economically it would make more sense to completely demolish the current building and build residential from the ground up. Of course having new construction still does not negate the fact that you are surrounded by commercial office as well as the restricted views.
- Therefore, with the lack of a religious market, along with the fact that the Building is not able to be converted to a residential unit, the current residential zoning ordinance essentially forces the landlord to demolish the current building.

This action would then prevent the preservation of the Building and enjoyment of the rights of usage commonly associated with owning this property.

**An explanation of why the existing zoning classification is no longer appropriate:**

- The existing zoning classification of TZ1 is no longer appropriate because demolishing the current building and replacing with new construction will heavily impact and change the feeling of the neighborhood. In March of 2017, a meeting was held between the Surnow Company and the neighborhood surrounding the Church. The feedback received was that this building has been

part of the community for over 90 years. The neighbors like the building, are used to it, and they would prefer to keep it since it is a historically significant structure.

- If the Church was to be torn down with new residential, the development would be maximized to cover as much height and surface area as possible. A new building would require a much greater footprint on the land, as the Church is currently well short of the zero-lot line. With a residential development, the landlord would have to decrease the setbacks in order to maximize what is allowed. Also, as the property is in the D4 overlay, where the landlord can build higher with multiple stories, thus also changing the low-rise nature of the church. See Exhibit A for the current property line and building, the proposed office development, and the massing study shown for what we would build for residential. This would not only greatly impact the neighborhood due to scale and visibility, but a vital piece of Birmingham's history is essentially eliminated by replacing the structure with a new building.
- In addition to having the impact to the neighborhood associated with a new structure, the neighborhood will also be impacted due to the extra traffic trips taken by residential compared to office. With onsite parking for residential, there are extra trips taken on nights, weekends, holidays, etc, as well as multiple trips per day. With office, tenants typically arrive once at 9am, and depart once at 5pm when leaving. Although the building is part of the parking assessment district and is very close to the Chester Street Deck, there will be onsite parking sufficient to accommodate the office tenants, which not only makes the building more attractive to high profile tenants, but will also not impact the parking shortage that the city currently faces. To us that is a win-win situation, and we have already started ideas with the engineering department to control the flow of traffic properly. These conversations are necessary whether we keep the building or go residential.
- Despite the negative effects of changing the look and feel of the neighborhood, it

would be a shame to demolish a structure that lends itself so well to an adaptive re-use. At the neighbor meeting, it was then concluded that there are very few heritage type buildings left in town, and that keeping the current structure has the least amount of impact on the community, including scale, visibility, and the traffic.

**An explanation of why the proposed rezoning will not be detrimental to the surrounding properties:**

- The proposed zoning change from TZ1 to the TZ2 classification will not be detrimental to the surrounding properties, because we are keeping exactly what you see today. One of the other projects that our company completed in 2011 was the renovation of the Birmingham Post Office Building. While the inside of the building was completely updated to a modern, Class A office environment as well as brought to code, the outside of the building was completely preserved to keep the original look and feel of the historic structure. The project ended up being so low impact to the surrounding properties and neighborhood, that even to this day, almost 7 years later,

individuals enter multiple times a week looking to mail an envelope or package, still thinking it's a post office.

- Similarly to the Post Office project, our organization is looking to restore the outside of the current Church building, which will greatly minimize the impact to the surrounding properties. While the inside will be remodeled to the same standards as the other Surnow buildings in town, we will only be fixing or replacing, not changing, the exterior windows, limestone and masonry detail, as well as any other exterior repairs needed to maintain what is original.
- As discussed in our March 2017 meeting with the neighbors on Willits, the only potential impact would be the traffic impact of onsite parking for the office tenants. However, the onsite parking required with the construction of new residential units would have a heavier impact to the neighborhood, as mentioned above. It's also noted that only one side of the building faces the Willits neighborhood, the other sides of the building are surrounded by commercial.
- Put it simply, what you see today, will be what you see tomorrow. For these reasons, we believe that the proposed rezoning will not be detrimental to the surrounding properties.

As with the Post Office, School Administration, and the recently completed Woodward

Building, The Surnow Company has a proven track record of preserving and renovating historically significant structures, and converting them into beautiful, contemporary buildings. While we are open to the idea of demolishing the building and developing the lot into a residential use, we believe it would be a shame to lose one of the city's oldest gems that the neighborhood has enjoyed for over 90 years. Our organization strongly desires to continue the positive impact we've created in the community by moving this project forward, and would greatly appreciate the opportunity for our family company to put the same passion and creativity into the Christian Science Church as we have with our other Birmingham developments. Thank you for your time and consideration.

Sincerely,

Sam Surnow  
President



## **MEMORANDUM**

**Planning Division**

**DATE:** September 6, 2017

**TO:** Planning Board Members

**FROM:** Nicholas Dupuis, Planning Intern

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

**SUBJECT:** Rezoning Request for 191 N. Chester – The First Church of Christ, Scientist

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The property owner (Parcel Number 1925356023) of 191 N. Chester (The First Church of Christ, Scientist), is requesting that the Planning Board to consider the rezoning of the property from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2). The applicant is proposing to keep the building as-is on site while renovating the inside to suit an office use.

The subject site is located on the west side of N. Chester, with single family homes to the north and office/commercial buildings to the south (Integra Building) and east (McCann Worldgroup Building). The area of the site is .40 acres, the building is 16,000 sq. ft. in size. A copy of the Certified Land Survey for the property is attached. The subject property is in the Downtown Overlay District and is zoned C - Community Use, due to its former use as a Church.

The applicant is seeking a rezoning as they would like to convert the former Church building into an office use. In the current TZ1 zoning district, office uses are not permitted. When the property was last rezoned from R4, the TZ2 zone did not exist. The only other option at the time was TZ3, whose wide commercial uses could have damaged the intended buffer between residential and commercial uses. Thus, the property was rezoned TZ1 to keep the sensitive buffer zone intact. The applicant states that with the City's adoption of TZ2 into the Zoning Ordinance, the TZ2 classification would be better suited for the following reasons:

- The building is no longer suitable for a Church or other religious use. The applicant has marketed the property with a reputable religious broker in the area, which proved that there is no market for a 16,000 sq. ft. facility, especially with the amount of expense that the building would require to stay operational, before even considering rent. Therefore, keeping a Church as a legal non-conforming use is off the table.
- While the building is in good condition, it is not suitable to be converted into residential. Unlike the loft style renovations of old warehouses in Pontiac and Detroit into apartments/condominiums, which are easy to do because of the wide-open, box type nature of those structures, this building has 6 different levels, along with a very complicated configuration/load bearing walls with corridors, etc., that does not lend itself to adaptive reuse as a residential development.
- By keeping this property as TZ1, the landlord is in essence forced to tear the building down as it cannot be converted to residential. This building has been in the community

for over 90 years, and has historical significance. There are very few heritage type buildings left in town, and it would be a shame to demolish a structure that lends itself well to an adaptive reuse.

- The neighbors and community are used to the building. During a meeting held with the surrounding neighbors on Willits back in March of 2017, the applicant presented the idea of converting the building to an office, which was widely accepted and well received as everyone is already familiar with the mass and scale of the existing building.
- The applicant is looking to simply preserve and restore the outside of the building, and renovate the inside for office use.
- The building is also well short of the zero lot line. If the applicant were to tear the building down and build residential to fit the current zoning, the development would be maximized to cover as much height and surface area as possible. This along with the extra traffic trips taken by residential (nights, weekends, multiple trips per day) would be more disruptive to the neighborhood as opposed to simply leaving what is already there, which sits well within the property line threshold.
- Although the building is part of the Parking Assessment District and is very close to the Chester Street Deck, there will be onsite parking which will not impact the parking shortage that the city currently faces.
- The building is already surrounded by commercial uses and does not have very good views for a residential apartment/condo complex, without increasing the height of the building.

### **History of Property**

The First Church of Christ, Scientist was originally built in 1926 and has been used as such ever since. In 2015, the property was rezoned from R4 to TZ1. In the Downtown Overlay Zoning District, the property is zoned C, Community Use. In 2016, the church was relocated and the building at 191 N. Chester was sold. The only physical modification done to the building was in 1956, when an addition was added to the existing Church. The Church building is still present today, and in fair condition.

### **Requirements for Rezoning**

The requirements for a request for the rezoning of a property are set forth in Article 07, section 7.02 of the Zoning Ordinance as follows:

Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

- 1. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.**

#### ***Applicant response:***

- The subject property was purchased because of the desire to enjoy and preserve the current building, the Christian Science Church, which is currently, and has been, situated on the same piece of land for over 90 years. The first option considered was whether or not the building could



continue to be used for religious purposes, thus being able to preserve and enjoy it. Over the last 14 months, Surnow has marketed the property with a reputable religious broker in the area, and has proved there is no market for a 16,000 sq. ft. facility, especially with how large it is and the amount of expense that the building would require to stay operational (CAM, Insurance, Taxes, etc.) before even considering rent. Due to a market that is non-existent, it was concluded that the building is no longer suited for a religious use.

- With the current zoning being TZ1, the Surnow Company has invested significant resources in determining whether or not the Christian Science Church could be converted to a residential building, with the goal of preserving what is currently there. Based on the following reasons, it was found that having a residential use while also preserving the Church was simply not feasible.
  - The lack of feasibility in converting the church to a residential structure had to do with multiple issues, including the lack of glass and views. Most residential units demand plenty of windows as well as a surrounding view of the neighborhood for the residents to enjoy. The Church has a very limited amount of glass windows, and approximately two thirds of the glass is currently located in areas that are undesirable for views. The building is mainly surrounded by massive office structures, with the McCann Worldgroup building to the east, and the Integra building to the south. That only leaves one side view of Willits to the north, which would potentially require the landlord to punch out and destroy the brick to allow for large glass openings.
  - Converting the Church to a residential structure was also compared to the loft-style renovations of old warehouses in Pontiac and Detroit into apartments/condominiums. The loft-style conversions lend themselves to a residential use because of the wide open, box-type nature of those structures. The Church building has 5 or 6 different levels, at least two of which a person cannot even stand in, and the building also has a very complicated configuration with multiple corridors, etc. Almost all of these hallways and rooms are entirely supported by load bearing walls, and with very tight and awkward configurations. This would require a significant amount of demolition and construction to the point where it doesn't make sense to keep the building for creating a residential environment. With an office development, however, we can utilize those areas for storage, copy machine/office supply areas, janitorial closets, HVAC equipment, utility/phone/data rooms, small conference rooms, or small executive offices. Because of the demand for open areas and view with residential, economically it would make more sense to completely demolish the current building and build residential from the ground up. Of course having new construction still does not negate the fact that the building would still be surrounded by commercial office as well as the restricted views.

- Therefore, with the lack of a religious market, along with the fact that the building is not able to be converted into a residential use, the current residential zoning ordinance essentially forces the landlord to demolish the current building. This action would then prevent the preservation of the building and enjoyment of the rights of usage commonly associated with owning this property.

## **2. An explanation of why the existing zoning classification is no longer appropriate**

### ***Applicant response:***

- The existing zoning classification of TZ1 is no longer appropriate because demolishing the current building and replacing with new construction will heavily impact and change the feeling of the neighborhood. In March of 2017, a meeting was held between the Surnow Company and the neighborhood surrounding the Church. The feedback received was that this building has been part of the community for over 90 years. The neighbors like the building, are used to the building, and they would prefer to keep it since they feel it is a historically significant structure.
- If the Church was to be torn down for new residential construction, the development would be maximized to cover as much of the height and surface area as possible. A new building would require a much greater footprint on the land, as the church is currently well short of the zero lot line. With a residential development, the landlord would have to decrease the setbacks in order to maximize what is allowed. Also, as the property is in the D4 overlay, the landlord can build higher with multiple stories, thus also changing the low-rise nature of the Church. See Exhibit A for the current property line and building, the proposed office development, and the massing study shown for what could be built for residential. This would not only greatly impact the neighborhood due to scale and visibility, but a vital piece of Birmingham's history would essentially be eliminated by replacing the structure with a new building.
- In addition to having the impact to the neighborhood associated with a new structure, the neighborhood will also be impacted due to the extra traffic trips taken by residential compared to office. With onsite parking for residential, there are extra trips taken on nights, weekends, holidays, etc., as well as multiple trips per day. With office, tenants typically arrive once at 9 AM, and depart once at 5PM when leaving. Although the building is part of the Parking Assessment District and is very close to the Chester Street Deck, there will be onsite parking sufficient to accommodate the office tenants, which not only makes the building more attractive to high profile tenants, but will also not impact the parking shortage that the city currently faces. The Surnow Group believes that this is a win-win situation, and they have already started ideas with the engineering department to control the flow of traffic properly. These conversations are necessary whether we keep the building or go residential.

- Despite the negative effects of changing the look and feel of the neighborhood, it would be a shame to demolish a structure that lends itself so well to an adaptive reuse. At the neighbor meeting, it was concluded that there are very few heritage type buildings left in town, and that keeping the current structure has the least amount of impact on the community, including scale, visibility, and traffic.

**3. An explanation of why the proposed rezoning will not be detrimental to the surrounding properties.**

***Applicant response:***

- The proposed zoning change from TZ1 to the TZ2 classification will not be detrimental to the surrounding properties, because the Surnow Company is keeping exactly what is there today. One of the other projects that the Surnow Company completed in 2011 was the renovation of the Birmingham Post Office building. While the inside of the building was completely updated to a modern, Class A office environment as well as brought to code, the outside of the building was completely preserved to keep the original look and feel of the historic structure. The project ended up being so low impacts to the surrounding properties and the neighborhood that even to this day, almost 7 years later, individuals enter multiple times a week looking to mail an envelope or package, still thinking it is a post office.
- Similar to the Post office project, the Surnow Company is looking to restore the outside of the current Church building, which will greatly minimize the impact to the surrounding properties. While the inside will be remodeled to the same standards as other Surnow buildings in town, the company will only be fixing or replacing, not changing, the exterior windows, limestone and masonry detail, as well as any other exterior repairs needed to maintain what is original.
- As discussed in our March 2017 meeting with neighbors on Willits, the only potential impact would be the traffic impact of offsite parking for the office tenants. However, the onsite parking required with the construction of new residential units would have a heavier impact to the neighborhood, as mentioned above. It is also noted that only one side of the building faces the Willits neighborhood, the other sides of the building are surrounded by commercial.
- To put it simply, what is seen today will be seen tomorrow. For the reasons above, the Surnow Company believes the proposed rezoning will not be detrimental to the surrounding properties.

Article 7, section 7.02 of the Zoning Ordinance further states:

Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. (See attached)

Information required on plot plans shall be as follows:

1. Applicant's name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

A land survey was provided by the applicant and submitted to the Planning Board (see attached) that includes all of the required elements.

Article 7 section 7.02 of the Zoning Ordinance further states:

The Planning Board shall hold at least one public hearing on each application for amendment at such time and place as shall be established by the Planning Board.

The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 plan.
- b. Existing uses of property within in the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

### **Planning Division Analysis**

#### **A. The objectives of the City's then current master plan and the City's 2016 Plan**

The City's current master plan is The Birmingham Future Land Use Plan ("Master Plan") which was the last comprehensive plan done for the entire City in 1980. The residential area to the north and west of 191 N. Chester is not identified in the Master Plan as a

sensitive residential area. It is identified as the edge of the CBD. Commercial Development Policy 4 in the Master Plan states:

Whenever possible, commercial areas in close proximity to residential development should be restricted to office and low-intensity commercial uses.

As the western edge of the CBD is in close proximity to residential development, the proposed office use would comply with Policy 4 in the Master Plan.

The Downtown Birmingham 2016 Plan focuses on retaining and enhancing the character and vitality of Downtown Birmingham. The subject property, existing in a sensitive transitional zone between commercial and residential, aims to accomplish the intent of the Downtown Birmingham 2016 Plan (2016 Plan), retaining the character of the area through adaptive reuse. In accordance with the 2016 Plan vision statement (pg. 181), the proposed development can certainly add to the economic viability of the Downtown business community and ensure good land use transitions and structural compatibility in form and mass to the traditional, residential neighborhoods surrounding Downtown.

The intersections at Chester and Maple Road (nearby intersection), as well as Chester and Willits (subject property at this intersection), were specifically targeted for improvements in the 2016 Plan. The improvements were envisioned to enhance local access and circulation in the downtown and improve the ease of pedestrian crossing at these intersections. Although unrelated to circulation, the subject properties proposed renovation will not change the dynamic of the intersections by demolishing the existing structure and rebuilding residential units. The intersections will remain improved and viable throughout the rehabilitation.

Section 1.04 of the Birmingham Zoning Ordinance states: the purpose of the Zoning Ordinance is to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Future Land Use Plan and the Downtown Birmingham 2016 Plan. A review of both plans reveals that the proposal to rezone the subject property to a TZ2 District meets the spirit and intent of the ordinance. The adaptive reuse of a vacant historic building would not only support growth and development, but also keep the character of the neighborhood intact.

Rezoning the subject property from TZ1 to TZ2 will support the intent of the City's Master Plan, the Downtown Birmingham 2016 Plan and uphold the purpose of the Birmingham Zoning Ordinance.

## **B. Existing uses of property within the general area of the property in question**

North of the subject site across Willits Street there are single family homes. The west side of the property, behind the building, also abuts single family homes. To the east of the property, the McCann Worldgroup office/commercial building resides. Lastly, the Integra Building (office/commercial) is to the south.

The following chart summarizes the land uses and zoning districts adjacent to and in the vicinity of the subject site.

	<b>North</b>	<b>South</b>	<b>East</b>	<b>West</b>
<b>Existing Land Use</b>	Single Family Residential	Office, Commercial	Office, Commercial	Single Family Residential
<b>Existing Zoning</b>	R2, Single Family Residential	TZ3, Transitional Zone 3	B-4, Business-Residential	R-2, Single Family Residential
<b>Overlay Zoning</b>	N/A	D4	D4	N/A

**C. Zoning classification of property within the general area of the property in question**

The general area, aside from the immediate properties in relation to the subject property described above, are zoned R6 – Multi Family Residential and PP – Public Property. Public property includes the nearby Chester Street Parking Deck, Booth Park, and the Birmingham Historical Museum and Park.

**D. The suitability of the property in question to the uses permitted under the existing zoning classification.**

Under the current zoning, the building would be useless unless torn down and the land newly constructed upon. The TZ1 district does not permit a church, but the building is currently a legal non-conforming use. As described above, it is not economically feasible to convert the existing building to residential use, which is the only use permitted in the TZ1 zoning classification. Thus, if the community desires to preserve the existing structure, residential uses are not suitable.

**E. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.**

The subject property is located along the outer edge of the Downtown Overlay District. The majority of adjacent properties are also in the Overlay District, except the residential properties to the north and west. The Integra Building to the south was built to its final form in 2016 having added a lobby to an existing 3-story office building. The McCann Worldgroup building was completed in 2005. Being such an old building, the subject property has watched Downtown Birmingham change and grow from the start to what it is today. Aside from the residential sections on two sides, development has been toward office/commercial uses in that corridor. The proposed rezoning would continue the trend of office/commercial uses.

**Departmental Reports**

1. Engineering Division – No concerns were reported.
2. Department of Public Services – No concerns were reported.
3. Fire Department – The Fire Department has no concerns with this site plan at this time.

One note: the parking area will require fire suppression.

4. Police Department – The Police Department does not have any concerns.
5. Building Department – No comments were received.

### **Planning Department Findings**

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from TZ1 (Transitional Zone 1) to TZ2 (Transitional Zone 2) to permit the adaptive reuse of the building for office/commercial use. Given the recommendations of the Master Plan and the 2016 Plan, the existing mix of uses in the immediate neighborhood and given the age and character of the building, the proposal to adaptively reuse the building is appropriate and compatible with the area. The following sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

### **Sample Motion Language**

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends APPROVAL to the City Commission for the rezoning of 191 N. Chester from TZ1 (Transitional Zone 1) to TZ2 (Transitional Zone 2).

**OR**

Motion to recommend POSTPONEMENT of the applicant's request for the rezoning of the property at 191 N. Chester from TZ1 (Transitional Zone 1) to TZ2 (Transitional Zone 2), pending review and approval of the following:

1. A site plan and elevation drawings detailing the proposed development of the property for office/commercial use.

**OR**

Motion to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 191 N. Chester from TZ1 (Transitional Zone 1) to TZ2 (Transitional Zone 2), for the following reasons:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**DRAFT Planning Board Minutes  
September 13, 2017**

**REZONING REQUEST**

- 1. 191 N. Chester, First Church of Christ, Scientist  
Request for rezoning from TZ-1 to TZ-2 (Transitional Zoning) to allow the  
adaptive reuse of the existing building for office use**

Chairman Clein returned to chair the meeting.

Ms. Ecker reported that the property owner is requesting the rezoning of the property. He is proposing to keep the building as-is on site while renovating the inside to suit an office use.

The subject site is located on the west side of N. Chester, with single-family homes to the north and office/commercial buildings to the south (Integra Building) and east (McCann Worldgroup Building). The area of the site is .40 acres, the building is 16,000 sq. ft. in size. The subject property is in the Downtown Overlay District and was zoned C - Community Use, due to its former use as a church. At the time of the transitional rezoning the City Commission created the TZ-1 Zone District and the TZ-3 Zone District. They did not create the TZ-2 Zone District then and the property was rezoned TZ-1 which allows only a residential use and not an office use.

The applicant lists a number of reasons that with the City's adoption of TZ-2 into the Zoning Ordinance, the TZ-2 classification would be better suited. The applicant would like to re-purpose the existing church building into an office use. While office use is permitted in the TZ-2 Zoning District, any office use over 3,000 sq. ft. in size would require a Special Land Use Permit ("SLUP"). The applicant has affirmed the building is not suitable for adaptive reuse to residential.

The applicant had meetings with the adjoining property owners who have indicated a desire to keep the existing building as opposed to demolishing it and increasing and changing the height and mass with a new structure. They felt building as it stands would have the least impact on the neighborhood in terms of scale, visibility, and traffic.

The applicant has tried to market the building as a religious institution but has been unsuccessful in finding someone who is interested.

The only physical modification done to the building was in 1956 when an addition was added to the existing church. The church building is still in fair condition today.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2) to permit the adaptive reuse of the building for office/commercial use. Given the recommendations of the Master Plan and the 2016 Plan,



the existing mix of uses in the immediate neighborhood, and given the age and character of the building, the proposal to adaptively reuse the building is appropriate and compatible with the area. The Planning Board will make a recommendation to the City Commission and the City Commission shall make the final determination on whether this potential rezoning should be approved.

Mr. Boyle asked what design oversight there might be with this building if it was rezoned to TZ-2. Ms. Ecker replied that just the design of the building would go to the Design Review Board or come to the Planning Board for review. If they are going to propose over 3,000 sq. ft. of office use, it will come to the Planning Board because it would require a SLUP which would bring in all of the design elements as well as the signage. Then it would go to the City Commission for the final decision.

In response to Mr. Koseck, Ms. Ecker said the applicant has the option to seek a use variance for the building. The Chairman asked about the difference between TZ-1 and TZ-2 with regard to massing and height. Ms. Ecker advised that TZ-1 allows three stories and 35 ft. in height with a minimum of two stories. In TZ-2 only a two-story maximum is allowed.

Ms. Ecker explained for Mr. Boyle that there is no requirement that there must be a mix of uses on a transitional zoned property.

Mr. Williams said a question for the City Attorney would be whether the site can be rezoned to TZ-2 with the condition that the building structure remain the same. Ms. Ecker noted the Planning Board at this level has not made a recommendation to go down the conditional rezoning path.

The applicant, Mr. Sam Surnow, 320 Martin, said they have spent a lot of time over the last three years trying to figure out what to do because they acquired the property before it was rezoned to TZ-1. Based on feedback from all of the neighbors and the different departments, they have been guided in the direction of rezoning the existing building for office use. They feel it is the best choice. It seems that a residential development would have the potential to change the impact on the neighborhood. On-site parking will be needed to be marketable and to attract tenants. Therefore they will have to take away a few thousand feet in the lower level to make room for ten or fifteen parking spaces. Then, after taking away the common areas, the office space left will be much less than 16,000 sq. ft.

Mr. Surnow stated that they decided not to apply for a use variance with the BZA because having a use variance in a TZ-1 Zone that is meant for residential use only would be contradictory. Also if the City could have rezoned to TZ-2 which didn't exist at the time, it probably would have. They don't have an issue with coming up with an agreement stating they will preserve exactly what is there if the City Commission requested that.

Mr. Kevin Biddison, 320 Martin, added they are excited hopefully to be involved in another project with the Surnows. This is really a similar challenge to what they did with the post office and they are looking to do some of the very same things and create multi-uses for smaller businesses which can tuck into the very unusual nature of the building.

No one from the public came forward with comments at 8:38 p.m.

Mr. Boyle observed that office space is changing. He hoped this iconic building will be redesigned and repurposed in such a way that it can accommodate the contemporary office and how it is going to operate. Also, he thought a mixed use in some shape or form might enliven this street.

Mr. Koseck noted this is a unique building on a challenging site. The Chester Parking Structure is least used so the project could help to populate that. These developers have a proven track record and he is in favor of the proposal to rezone.

**Motion by Mr. Koseck**

**Seconded by Mr. Boyle to recommend approval to the City Commission for the rezoning of 191 N. Chester from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2).**

Chairman Clein thought the adaptive reuse that is being proposed is awesome and the rezoning to facilitate that makes perfect sense. However he has concerns about rezoning, and that means ten years from now the building could be razed and a 17,000 sq. ft. site could turn into 30,000 sq. ft. of something. He leans toward approving the request because he feels this is a fantastic project but he thinks the Commission needs to weigh those concerns.

At 8:43 p.m. there were no comments from the members of the public on the motion.

**Motion carried, 6-0.**

**ROLLCALL VOTE**

Yeas: Koseck, Boyle, Clein, Jeffares, Lazar, Williams

Nays: None

Absent: Whipple-Boyce

# PROPOSED RENOVATION OF THE FIRST CHRIST SCIENTIST CHURCH

191 N CHESTER ST, BIRMINGHAM MI



**BIDDISON**  
ARCHITECTURE

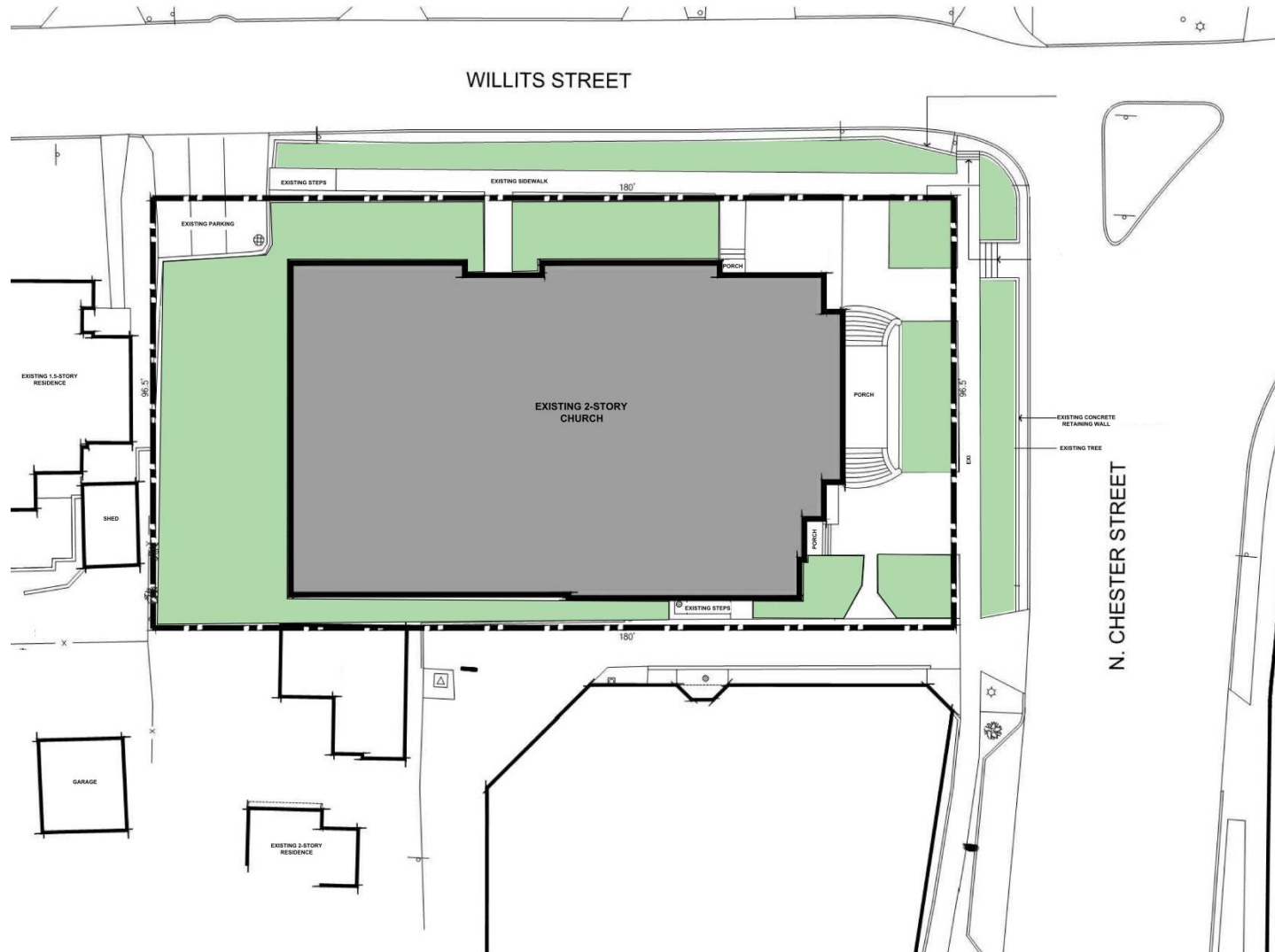


**SITE LOCATION**

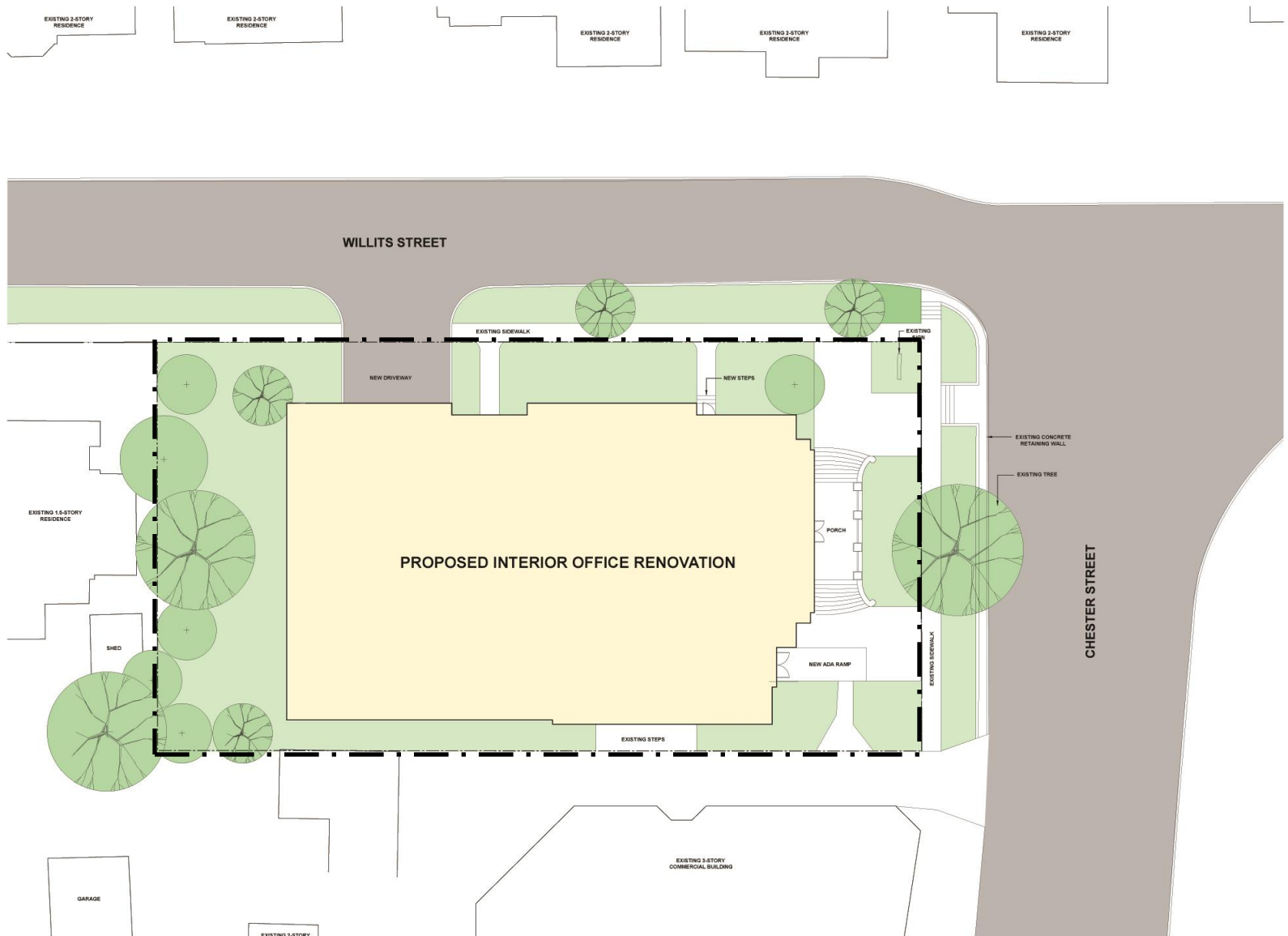




## EXISTING STREET VIEWS

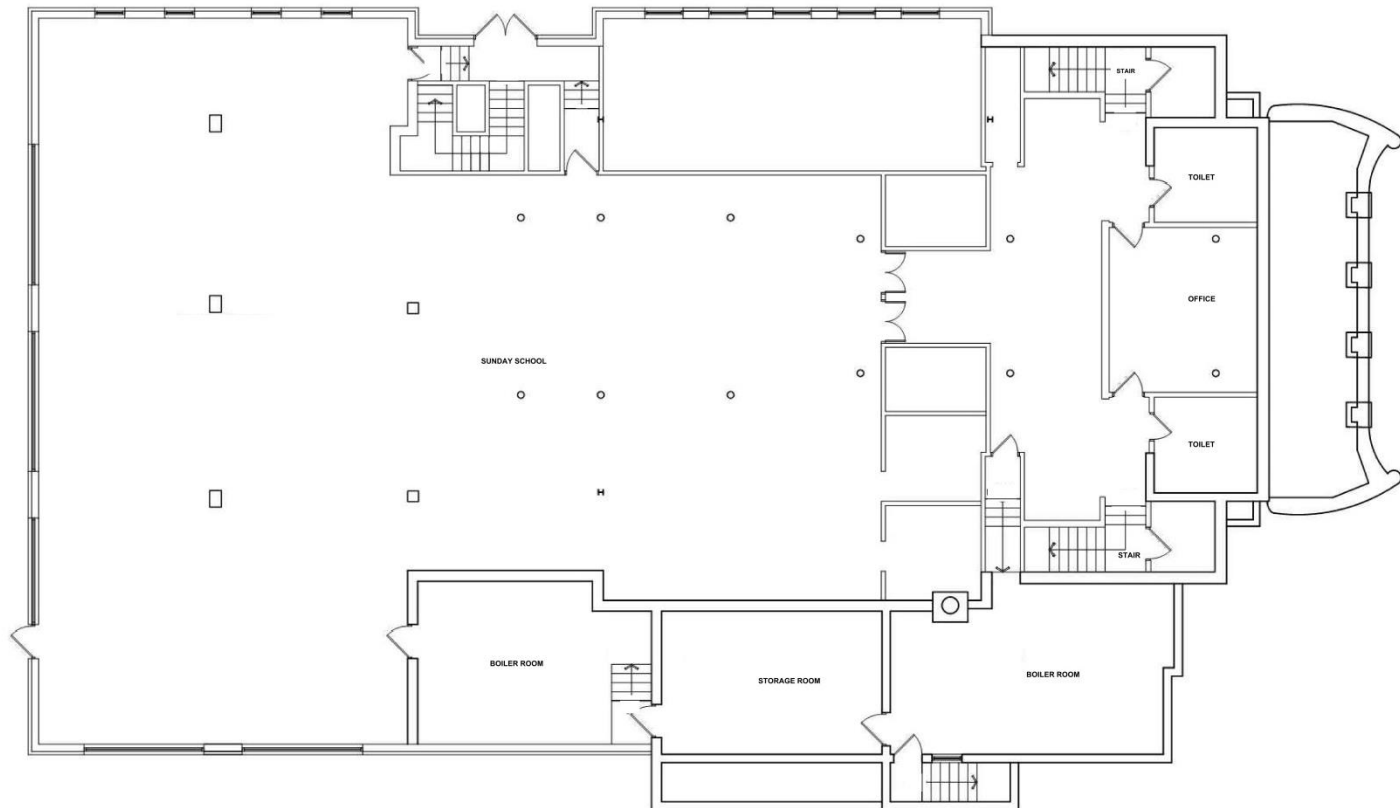


**EXISTING SITE PLAN**



## PROPOSED SITE PLAN

# EXISTING LOWER LEVEL PLAN

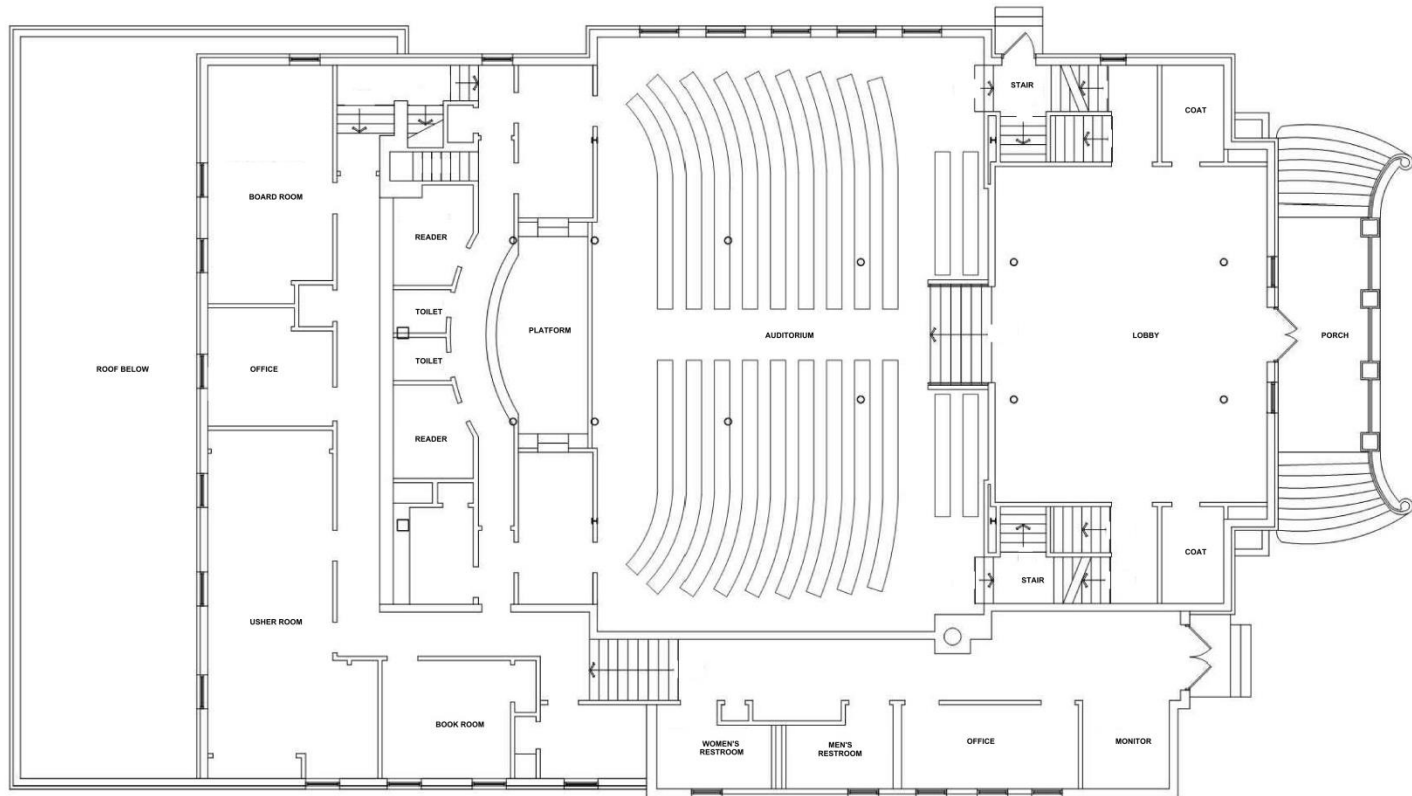




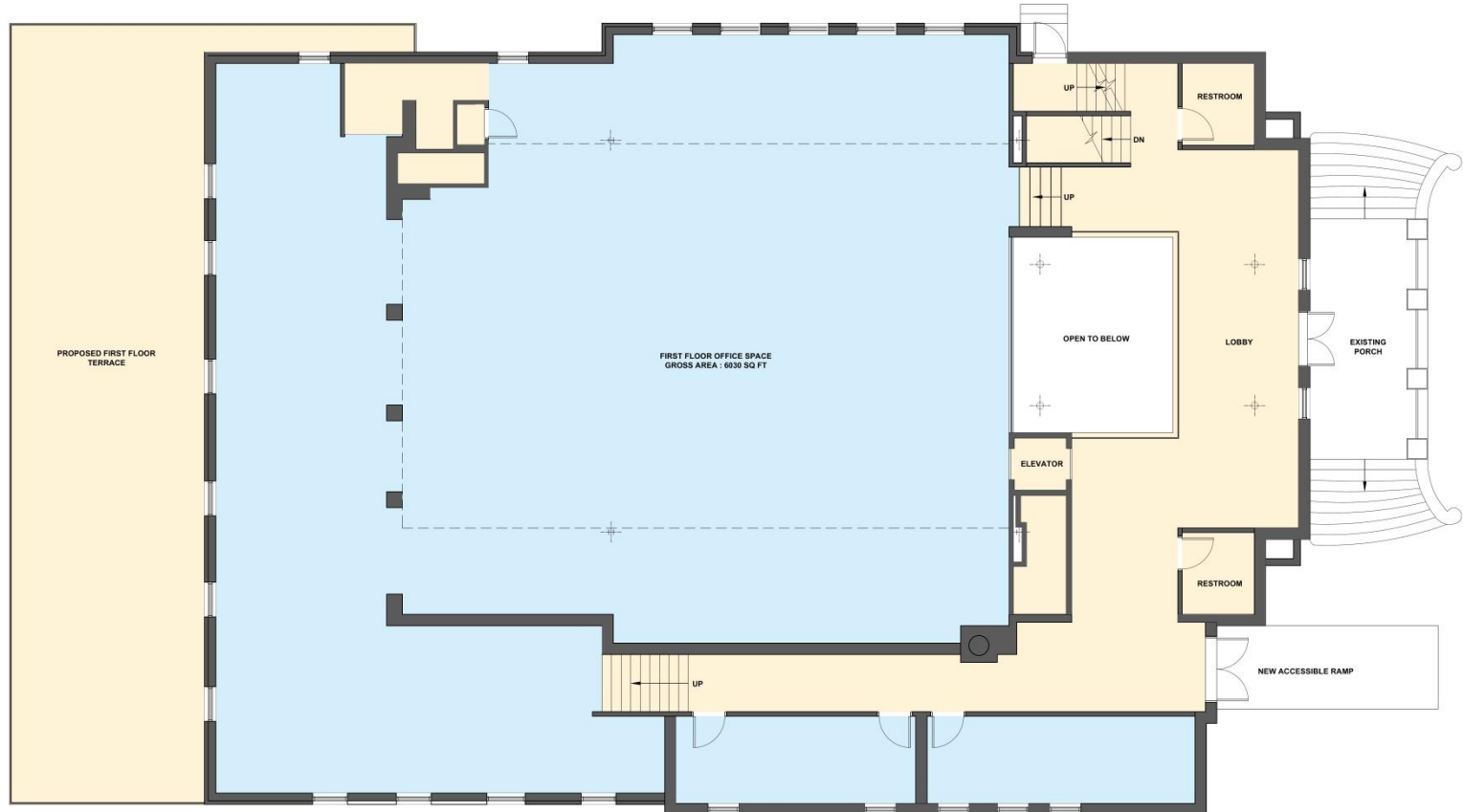
# PROPOSED LOWER LEVEL PLAN



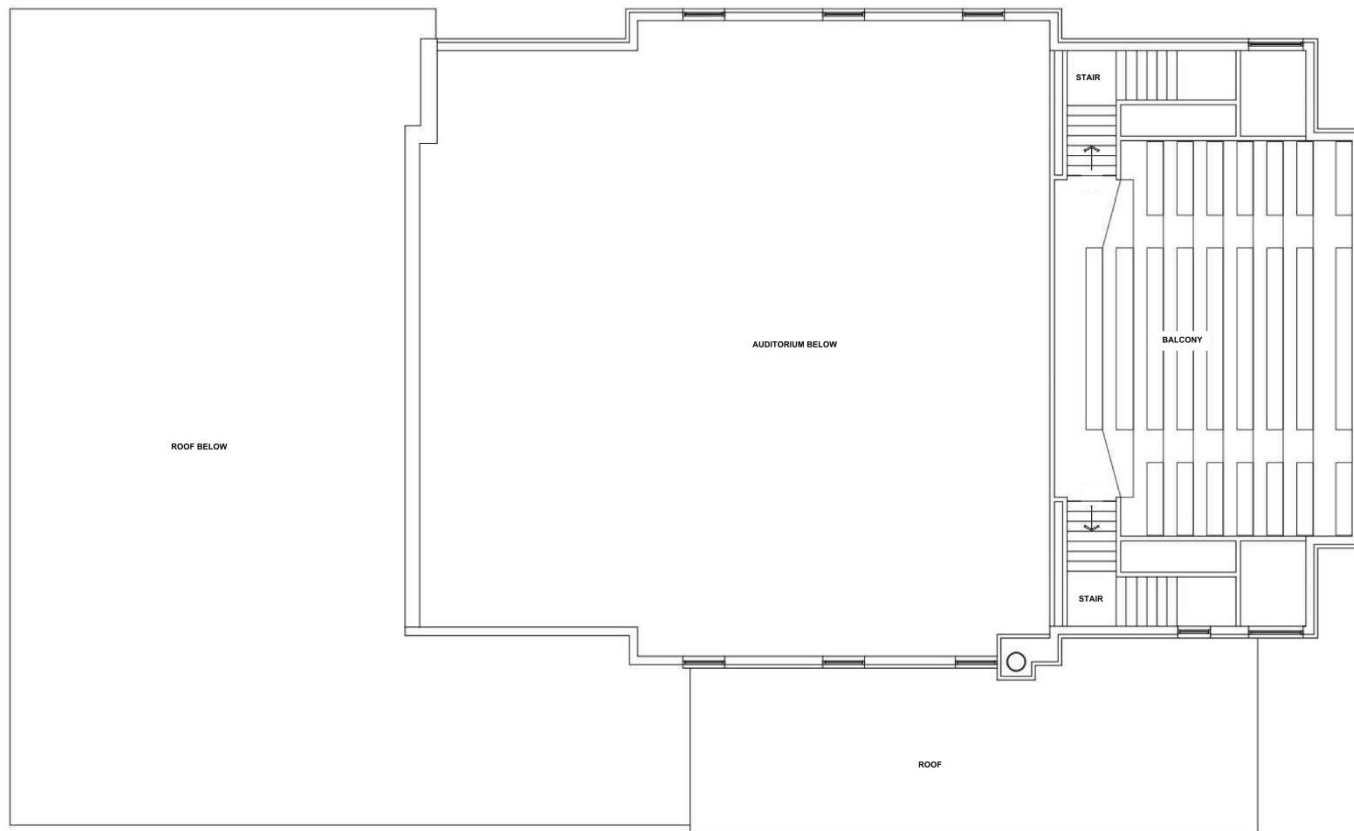
# EXISTING FIRST FLOOR PLAN



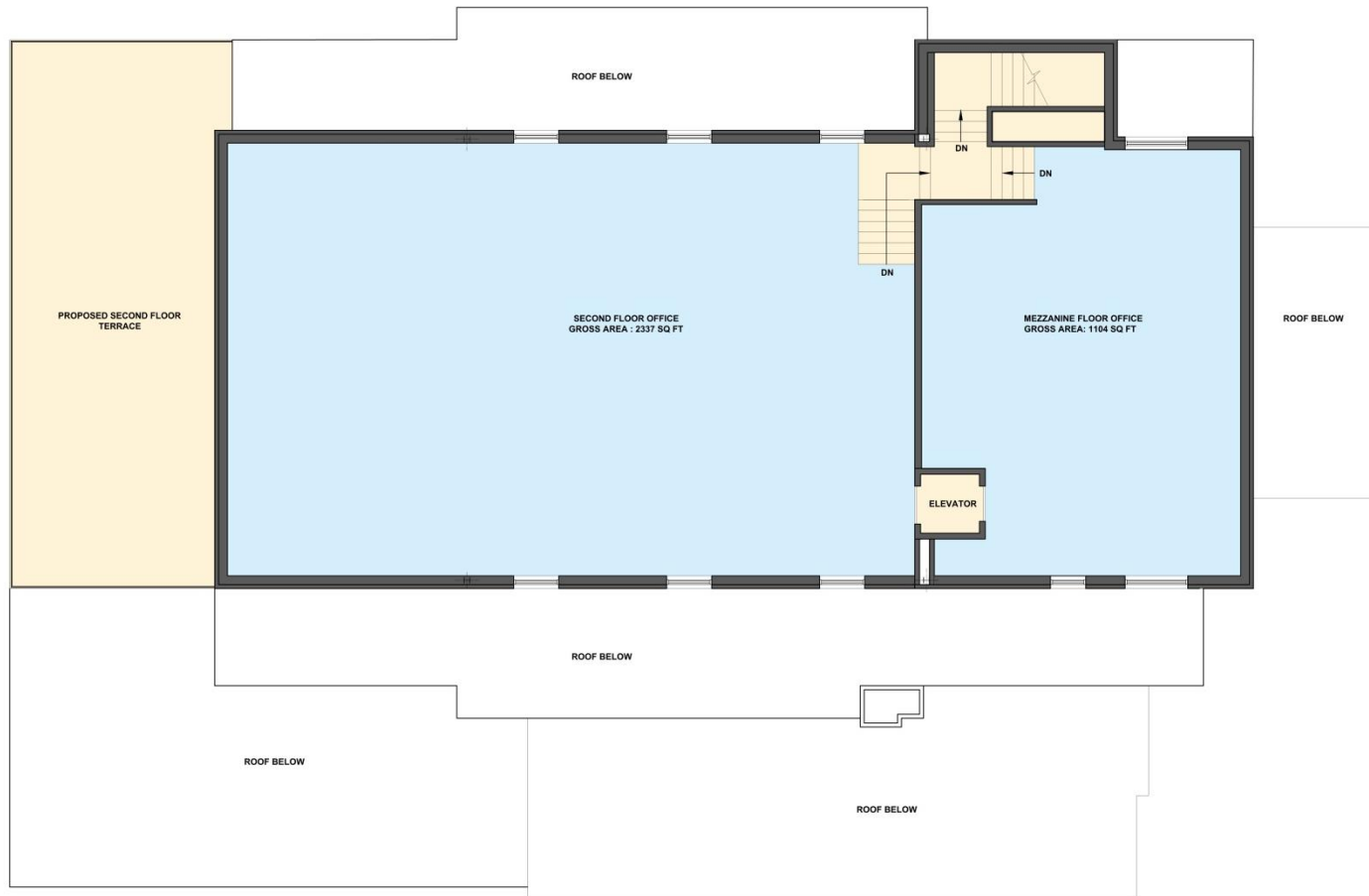
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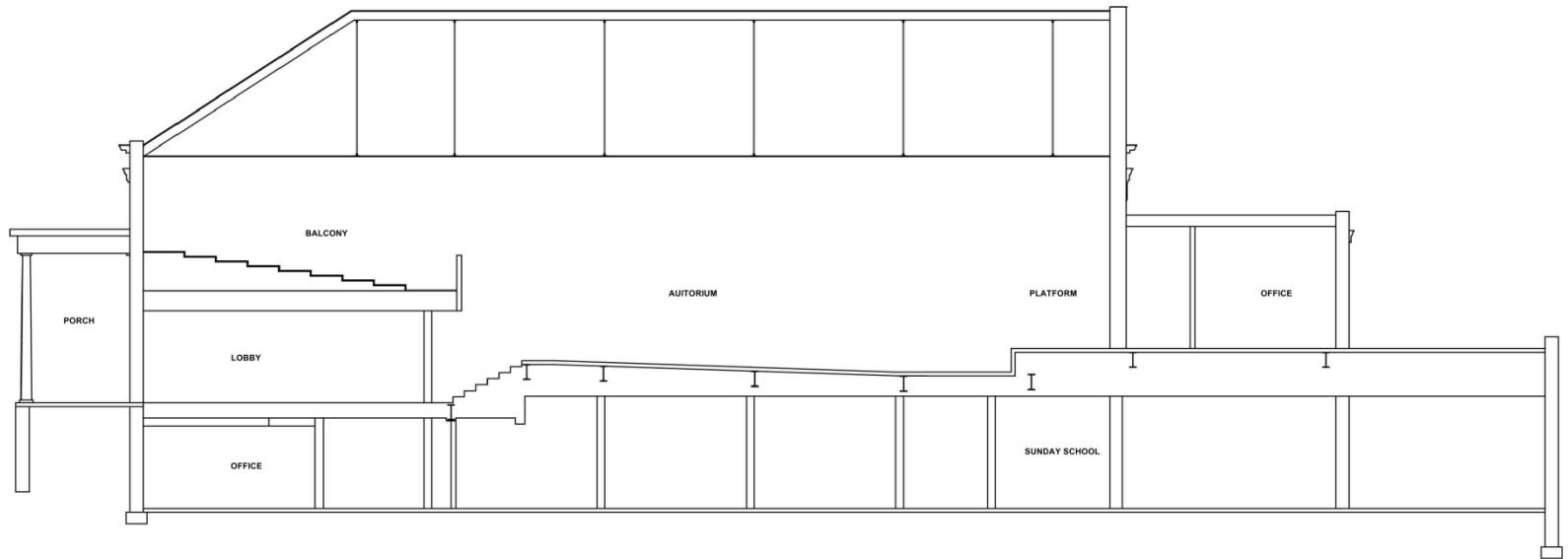


# EXISTING SECOND FLOOR PLAN

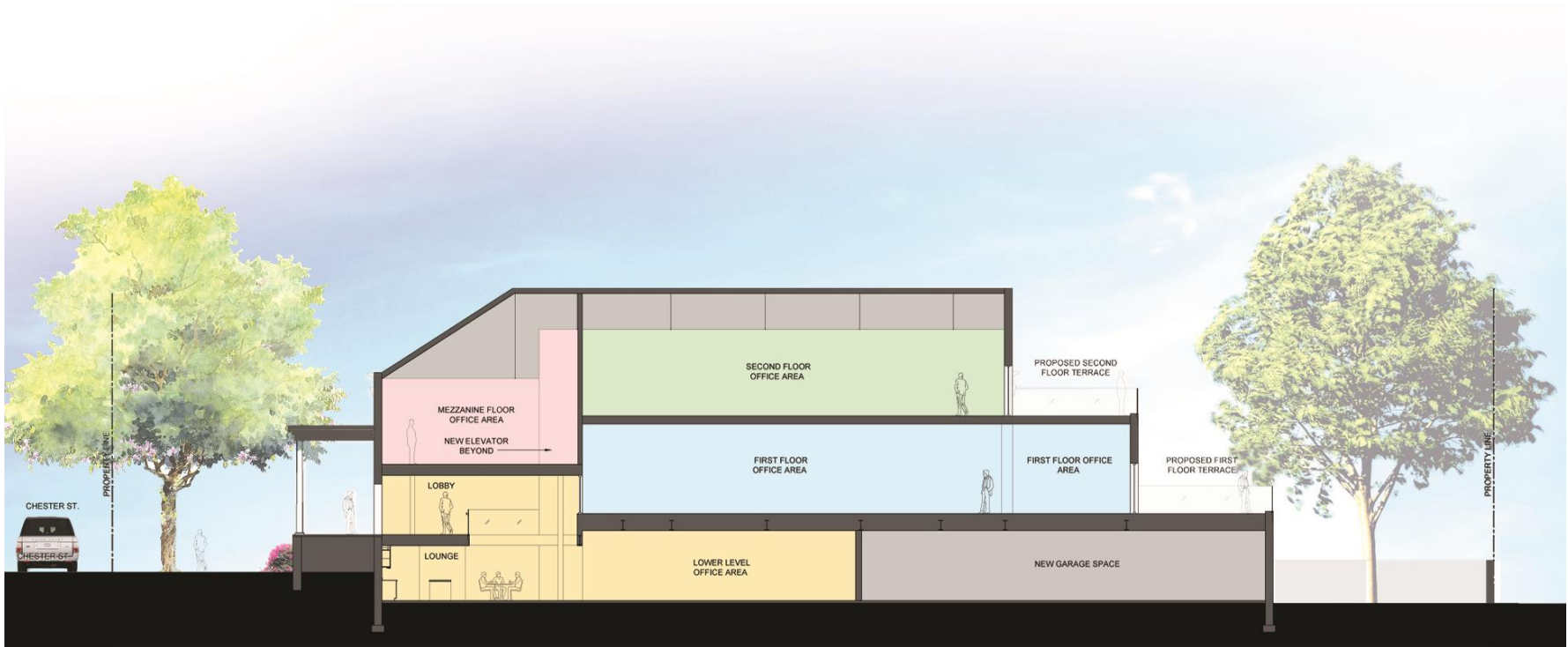


# PROPOSED SECOND FLOOR PLAN



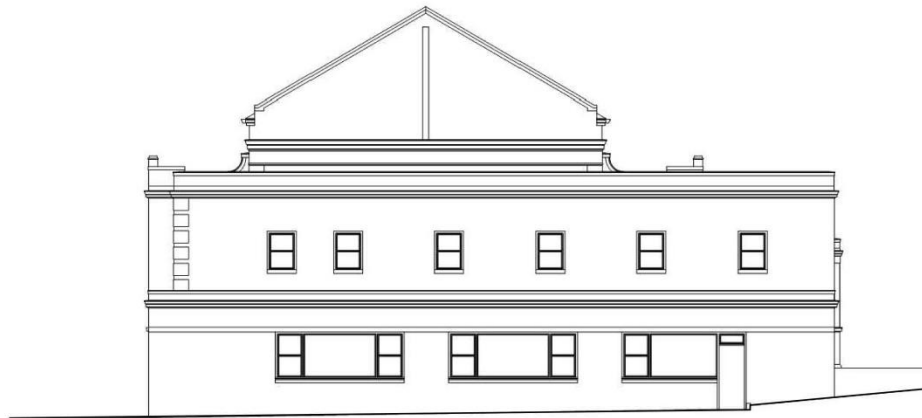


**EXISTING SCHEMATIC BUILDING SECTION**



## PROPOSED SCHEMATIC BUILDING SECTION

# EXISTING ELEVATIONS



201.01  
A.201  
EXISTING WEST ELEVATION  
SCALE: 3/16"=1'-0"



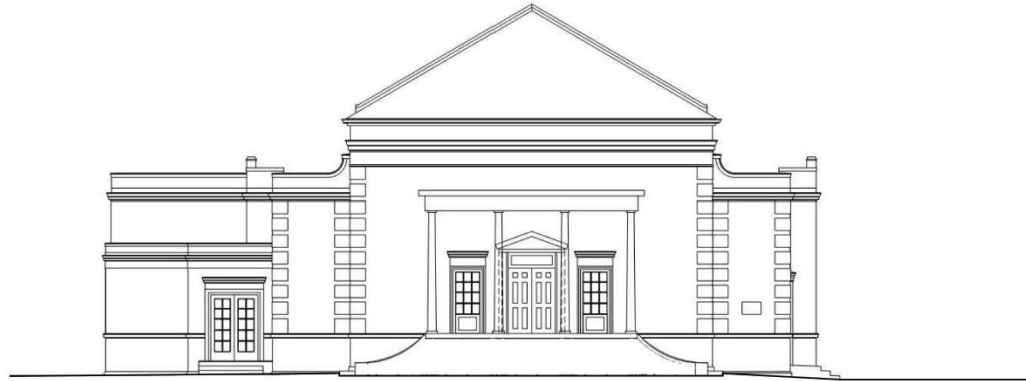
201.02  
A.201  
EXISTING SOUTH ELEVATION  
SCALE: 3/16"=1'-0"



## PROPOSED NORTH ELEVATION

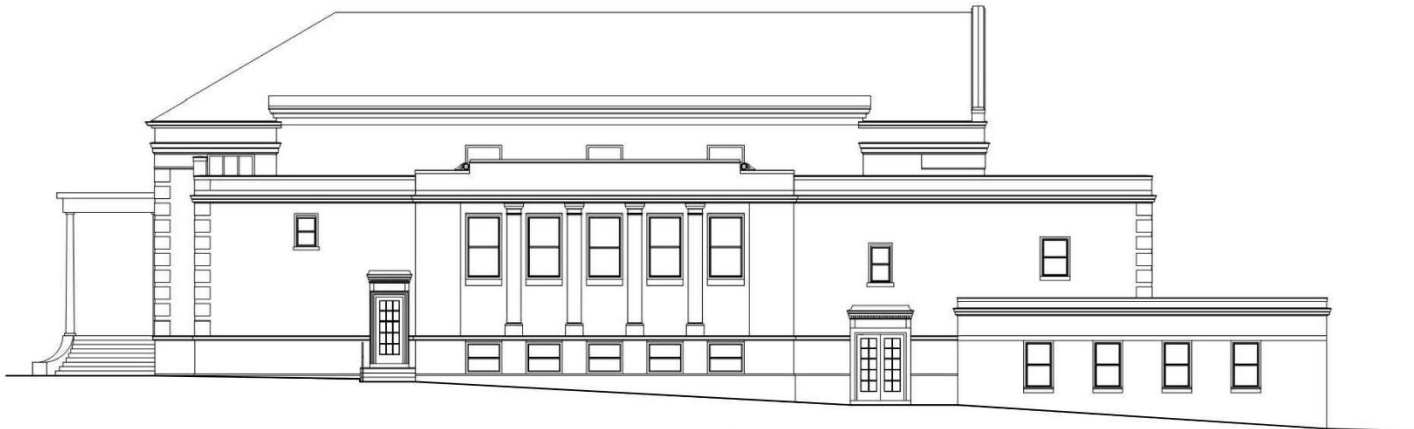


# EXISTING ELEVATIONS



202.01  
A.202

**EXISTING EAST ELEVATION**  
SCALE: 3/16"=1'-0"



202.02  
A.202

**EXISTING NORTH ELEVATION**  
SCALE: 3/16"=1'-0"

## PROPOSED EAST ELEVATION





## OPTIONAL RESIDENTIAL MASSING



## MEMORANDUM

Department of Public Services

**DATE:** September 18, 2017

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

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

**SUBJECT:** Vehicle #133 & #10 Replacements

City vehicle #133 is a 2005 Chevy Tahoe 4x4 and vehicle #10 is 2007 GMC Sierra 1500 – both used by the Engineering Department. Due to their age and condition, the Department of Public Services recommends replacement for both based on the evaluation scores as indicated below:

Vehicle #133 – 2005 Chevy Tahoe

FACTOR	DESCRIPTION	POINTS
Age	1 point each year of age	12
Miles/Hours	1 point each 10,000 miles of usage	12
Type of Service	Type 1 – Standard sedans and light pick-ups	1
Reliability	Level 1 – In shop 1 time within 3 month period; no major breakdowns or road calls	1
M & R Costs	Level 2 - 21-40% of replacement costs	2
Condition	Level 2 – Minor imperfections in body and paint; interior fair; good drive train	2
	TOTAL POINTS 28+, <b>POOR</b> - needs priority replacement	<b>30</b>

Vehicle #10 – 2007 GMC Sierra 1500

FACTOR	DESCRIPTION	POINTS
Age	1 point each year of age	10
Miles/Hours	1 point each 10,000 miles of usage	13
Type of Service	Type 1 – Standard sedans and light pick-ups	1
Reliability	Level 3 – In shop more than twice within time period, no major breakdowns or road calls	3
M & R Costs	Level 2 - 21-40% of replacement costs	2
Condition	Level 3 – Noticeable imperfections in body and paint surface, some rust, minor damage from add-on equipment, worn interior, and a weak or noisy drive train	3
	TOTAL POINTS 28+, <b>POOR</b> - needs priority replacement	<b>32</b>

These vehicles were identified in the vehicle replacement schedule as published in the 2017-18 budget document.

The Department of Public Services recommends replacing these vehicles with two (2) new 2018 GMC Sierra 1500 4x4 pickup trucks through the Oakland County extendable purchasing contract #4850 – awarded to Todd Wenzel Buick GMC of Westland, MI. – for a total expenditure of \$55,992.00. Funds for this purchase are available in the Auto Equipment Fund, account #641-441.006-971.0100.

Upon delivery of the new vehicles – expected within 8 weeks – the old vehicles will be stripped of transferrable equipment and will be listed on the Michigan Governmental Trade Network for public auction.

**SUGGESTED RESOLUTION:**

To approve the purchase of two (2) 2018 GMC Sierra 4x4 pickup trucks from Todd Wenzel Buick GMC through the Oakland County extendable purchasing contract #4850 in the amount of \$55,992.00 from account #641-441.006.971.0100.

**SCHEDULE OF VEHICLE AND EQUIPMENT REPLACEMENT FOR FISCAL YEAR 2017-2018**

NO.	PURCHASE DATE	AGE (YEARS) 7/1/2017	PROJECTED MILEAGE	DESCRIPTION	COST	CLASSIFICATION	REPLACEMENT QUALIFIER	REPLACE OR EVALUATE	PROJECTED COST
1	12/1/2003	13.59		2004 CHEVY MALIBU	\$ 12,400.00	PICKUP/VAN/SEDAN	8-10 YEARS	REPLACE	\$ 23,000.00
10	5/1/2007	10.18		GMC SIERRA K 1500	\$ 20,110.00	PICKUP/VAN/SEDAN	8-10 YEARS	REPLACE	\$ 30,000.00
13	4/1/2006	11.26		2006 CHEVY MALIBU	\$ 12,103.00	PICKUP/VAN/SEDAN	8-10 YEARS	REPLACE	\$ 24,000.00
19	1/18/2002	15.46		2002 VOLVO DUMP	\$ 127,189.00	LARGE DUMP TRUCKS	12-15 YEARS	REPLACE	\$ 230,000.00
48	12/1/2006	10.59		2007 CHEVY 3500/FLATBED	\$ 22,480.00	PICKUP/VAN/SEDAN	8-10 YEARS	REPLACE	\$ 35,000.00
133	5/10/2005	12.15		CHEVY TAHOE	\$ 26,972.00	PICKUP/VAN/SEDAN	8-10 YEARS	REPLACE	\$ 36,000.00
154	9/20/1999	17.79		1999 GMC AERIAL/TOWER	\$ 90,635.00	LARGE DUMP TRUCKS	12-15 YEARS	REPLACE	\$ 250,000.00
91	1/7/2008	9.49		2007 CHEVY - SMALL TRASH COMP.	\$ 61,900.00	RUBBISH TRUCKS	15-20 YEARS	EVALUATE	\$ 70,000.00
50	8/16/2012	4.88		2012 SCAG CHEETAH MOWER	\$ 8,147.00	MOWERS	5-8 SEASONS	EVALUATE	\$ 12,000.00
193	6/7/2007	10.07		BOBCAT MINI-EXCAVATOR	\$ 35,710.00	BACKHOE	8 YEARS	REPLACE	\$ 75,000.00
162	4/12/2007	10.23		TORO SANDPRO 3040	\$ 10,548.00	OFF ROAD UTILITY	5-8 SEASONS	REPLACE	\$ 16,000.00
241	4/25/2007	10.19		TORO SANDPRO 3040	\$ 10,548.00	OFF ROAD UTILITY	5-8 SEASONS	REPLACE	\$ 16,000.00
5508	3/12/2003	14.32		2003 CHEVY TAHOE	\$ 26,678.00	PICKUP/VAN/SEDAN	8-10 YEARS	REPLACE	\$ 36,000.00
5520	10/1/2000	16.76		FORD/HORTON	\$ 107,222.00	AMBULANCE	12-15 YEARS	REPLACE	\$ 220,000.00
507	9/19/2011	5.79	85,100	CHEVY TAHOE	\$ 32,989.00	PICKUP/VAN/SEDAN	75,000-90,000	REPLACE	\$ 36,000.00
511	4/8/2008	9.24		2008 CHEVY IMPALA	\$ 15,220.00	PICKUP/VAN/SEDAN	8-10 YEARS	EVALUATE	\$ 32,000.00
569	11/28/2011	5.59	82,795	CHEVY TAHOE	\$ 26,152.00	PICKUP/VAN/SEDAN	75,000-90,000	EVALUATE	\$ 36,000.00
579	4/12/2010	7.22	81,104	FORD CROWN VICTORIA	\$ 20,818.00	PICKUP/VAN/SEDAN	75,000-90,000	REPLACE	\$ 32,000.00
<b>2017-2018 TOTAL EQUIPMENT COST:</b>									<b>\$ 1,209,000.00</b>





## MEMORANDUM

Engineering Dept.

**DATE:** September 18, 2017

**TO:** Joseph Valentine, City Manager

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

**SUBJECT:** Change Order #1 – Contract #5-17(P)  
2017 Asphalt Paving Program  
Webster Ave. & S. Worth St. Asphalt Patching

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On September 26, 2016, the City Commission approved an agreement with Oakland Co., accepting a grant for \$30,598, to be spent on a local road improvement, provided that the City could demonstrate that the project would help stimulate some form of local economic development. The grant required the City to conduct a road improvement project wherein local funding would match or exceed the County grant.

The project selected by the City, and approved by the County, was to make needed maintenance repairs to two local streets within the Triangle District, namely:

Webster Ave. – Woodward Ave. to Adams Rd.

S. Worth St. – 300 Ft. North of Webster Ave. to Woodward Ave.

Both of these streets are located in the Triangle District. The Master Plan for the Triangle District calls for the relocation of the southerly part of Worth St. to improve the intersection with Woodward Ave. Plus, the rest of both streets should be reconstructed with enhanced trees and sidewalks in the future, once more is known about future land uses in the area. Since both streets are in need of maintenance, but it would be preferable to avoid the higher cost of a complete resurfacing, an asphalt patching and cape sealing plan was put together for purposes of the grant, at a total project cost of \$62,000. Under the terms of the grant, the work is expected to be finished during the 2017 calendar year.

The needed concrete repairs were conducted in August. It was assumed that the asphalt repairs would be completed in time for the cape sealing contractor, who is arriving to complete their work during the week of September 18. Typically, asphalt repairs needed prior to cape sealing are done with the City's asphalt crew. During the first week of September, it was determined that the volume of work required on Webster Ave. and Worth Ave., when combined with the other asphalt repairs still pending on other streets within the cape sealing program, could not be completed in time as planned.

Given the timing, the Engineering Dept. moved quickly to obtain a price from an outside contractor. Florence Cement Co. is currently under contract to conduct the 2017 Asphalt Resurfacing Program, which is also starting this week. Florence was asked if they would be able to immediately provide a price to patch and prepare the asphalt overlay on these streets. The work will involve removing and replacing failed sections of asphalt, as well as cleaning out and filling damaged or failed joints. If approved, they are prepared to complete this work starting on September 26. The City's cape seal

contractor would then move in later that week and the week after, and complete the two-step cape sealing process. Final completion is expected the first week of October.

The cost of this project was estimated last year at \$62,000. Including the suggested Change Order #1, as well as the actual costs now available for the concrete and cape sealing work, the total estimated cost of this project is \$71,965, a total increase of \$9,965 over what was originally projected. The work to be performed by Florence Cement Co. totals \$50,500, and will again complete the project this year. Currently, only \$14,412 is budgeted for this project in the current fiscal year, which represents the concrete repair portion of the project.

The Engineering Dept. recommends that Change Order #1 in the amount of \$50,500 be authorized for the 2017 Asphalt Resurfacing Program, Contract #5-17(P), which will be charged to the account number created specifically for this grant, #203-449.001-985.7500. In addition, a budget amendment will also be needed to appropriate funds for the remaining cost of the project.

**SUGGESTED RESOLUTION:**

To approve Change Order #1 to Florence Cement Co., in the amount of \$50,500 be authorized for the 2017 Asphalt Resurfacing Program, Contract #5-17(P), to provide asphalt conditioning services and prepare the following sections of local streets for cape sealing:

Webster Ave. – Woodward Ave. to Adams Rd.

S. Worth Ave. – 300 Ft. North of Webster Ave. to Woodward Ave.

Further, to approve the appropriations and budget amendment as follows:

Local Street Fund

Revenues:

Draw from Fund Balance #203-000.000-400.0000	<u>\$26,955</u>
Oakland County Local Road Improvement Grant #203-000.000-583.0005	<u>\$30,598</u>
Total Revenue Adjustments	<u>\$57,553</u>

Expenditures:

Public Improvements #203-449.001-985.7500	<u>\$57,553</u>
Total Expenditure Adjustments	<u>\$57,553</u>

## FLORENCE CEMENT COMPANY WEBSTER &amp; WORTH PAVEMENT

09/13/2017 8:35 AM

Biditem	Description	Quantity	Units	Unit Price	Bid Total
31	MOBILIZATION - WEBSTER & WORTH BASE BID	1.000	LS	2,600.00	2,600.00
32	TRAFFIC CONTROL	1.000	LS	5,400.00	5,400.00
33	CONDITIONING PAVEMENT	1.000	LS	42,500.00	42,500.00
34	INSPECTOR CREW DAYS	4.000	DAY	360.00	1,440.00
	<b>SUBTOTAL BASE BID</b>				<b>\$51,940.00</b>
41	MOBILIZATION - WEBSTER & WORTH ALTERNATE BID	1.000	LS	4,600.00	4,600.00
42	TRAFFIC CONTROL	1.000	LS	5,800.00	5,800.00
43	MILL HMA 2"	5,300.000	SYD	3.00	15,900.00
44	CONDITIONING PAVEMENT	1.000	LS	21,200.00	21,200.00
45	2" HMA 13A	585.000	TON	110.00	64,350.00
46	INSPECTOR CREW DAYS	5.000	DAY	360.00	1,800.00
	<b>SUBTOTAL ALTERNATE BID</b>				<b>\$113,650.00</b>



## MEMORANDUM

Engineering Dept.

**DATE:** September 19, 2016

**TO:** Joseph Valentine, City Manager

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

**SUBJECT:** Oakland County  
Local Road Improvement Matching Fund Pilot Program

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Earlier this year, the Oakland Co. Board of Commissioners created the above program to assist municipalities by offering limited matching funds for specific, targeted road maintenance and/or improvement projects on roadways under the jurisdiction of cities and villages. Details relative to the program are attached. Once the program was established, our office was invited to submit an application for funding. Terms of the funding included:

- The City must match at least 50% of the total cost of the project.
- The amount determined for Birmingham, based on the County's formula, is \$30,598.
- The improvement must be focused on a local public road under the jurisdiction of Birmingham.
- The project must demonstrate some improvement to the business community, in order to encourage businesses to locate within Oakland County.
- The project must be completed by the end of the County's fiscal year 2016-17 (September 30, 2017).
- The project must be one that was not already budgeted.

Based on the above limitations, the City submitted a funding request to make maintenance improvements to the following road segments within the City's Triangle District:

**Webster Ave. – Woodward Ave. to Adams Rd.**  
**S. Worth St. – 300 Ft. North of Webster Ave. to Woodward Ave.**

Both of these streets are concrete pavements dating back to the 1950's that have been overlaid with asphalt in the past. Both streets have a narrow right-of-way (50 ft. wide), are in relatively poor condition, and are in need of maintenance or complete reconstruction. The Triangle District Master Plan has recommended changes for portions of these streets, including the creation of a new City park on Worth St., and the relocation of the Woodward Ave. and Worth St. intersection. Implementation of these improvements will require participation from the adjacent private property owners, as a part of their redevelopment. Reconstruction at this time would be premature. Rather, it is recommended that the following maintenance work occur:

1. Remove and patch damaged sections of the overlay with new asphalt.
2. Remove and replace damaged concrete curb sections.
3. Remove and replace sidewalk handicap ramps to meet current federal standards.

4. Install a standard cape seal layer over the entire width of the street.
5. Replace pavement markings.

Installing the improvements suggested above will keep the area safe and maintained while redevelopment plans coalesce.

The County's Local Road Improvement Matching Fund Program provides an excellent opportunity to maintain these streets with a 50% matching grant. The agreement as provided by the County has been reviewed and approved by the City Attorney's office. If approved, it is our intent to first review the Dept. of Public Services' potential plans for a Cape Seal program in 2017, and to include this work in that contract, if one is created. If it is decided to not have a Cape Seal program in 2017, then the Engineering Dept. will prepare and bid out a cape seal project for these streets by itself, to make sure that the work is done during the 2017 construction season.

The Engineering Dept. recommends that the Commission authorize the Mayor to sign attached agreement accepting a matching grant of \$30,598 from Oakland Co. for the purposes of maintenance improvements to sections of Webster Ave. and S. Worth St., to be completed in 2017. Once the project has been bid out and actual costs are known, a budget appropriation will be requested in order to pay for the City's local share of the cost.

#### SUGGESTED RESOLUTION:

To authorize the Mayor to sign the cost sharing agreement with Oakland County pertaining to the Local Road Improvement Matching Fund Pilot Program, and to direct the Engineering Dept. to proceed with the patching and cape sealing of the specified segments of Webster Ave. and S. Worth St. in 2017.



## BOARD OF COMMISSIONERS

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1200 N. Telegraph Road  
Pontiac, MI 48341-0475  
Phone: (248) 858-0100  
Fax: (248) 858-1572

August 19, 2016

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

Dear Mr. Valentine,

I am pleased to inform you that the Board of Commissioners has approved your application for funding under the 2016 Pilot Local Road Improvement Program.

Poor conditions on our roads create an impediment to the economic development of our community and diminish the excellent quality of life our residents expect. Oakland County is proud to be a partner with your local government to provide much needed investment in our local transportation infrastructure.

Enclosed you will find two (2) copies of a Cost Participation Agreement. Following approval by your governing authority and execution of the agreement, please forward the documents to:

Oakland County Board of Commissioners  
Attn: Chris Ward, Administrative Director  
1200 N. Telegraph Road  
Pontiac, Michigan 48341-0475

We will return a fully executed copy to you for your records. After you receive the finalized agreement, you can invoice our Management and Budget office as instructed in the agreement for payment.

If you have any questions regarding the program or agreement, please feel to contact Chris Ward, Administrative Director of the Board of Commissioners at (248)858-1701 or [wardcc@oakgov.com](mailto:wardcc@oakgov.com). In addition, please feel free to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Shelley G. Taub".

Shelley Taub  
Oakland County Commissioner

BIRMINGHAM

AUG 26 2016

CITY MANAGER'S OFFICE



## LOCAL ROAD IMPROVEMENT MATCHING FUND PILOT PROGRAM

### COST PARTICIPATION AGREEMENT

Resurfacing of Webster Ave. and S. Worth St.

City of Birmingham

Board Project No. 2016-02

This Agreement, made and entered into this 26th day of Sept., 2016, by and between the Board of Commissioners of the County of Oakland, Michigan, hereinafter referred to as the BOARD, and the City of Birmingham, hereinafter referred to as the COMMUNITY, provides as follows:

WHEREAS, the BOARD has established the Pilot Local Road Improvement Matching Fund Program, hereinafter the PROGRAM, for the purposes of improving economic development in Oakland County cities and villages. The terms and policies of the PROGRAM are contained in Attachment A. The BOARD intends the PROGRAM to assist its municipalities by offering limited funds, from state statutory revenue sharing funds, for specific, targeted road maintenance and/or improvement projects on roadways under the jurisdiction of cities and villages; and

WHEREAS, the BOARD shall participate in a city or village road project in an amount not exceeding 50% of the cost of the road improvement, hereinafter referred to as the PROJECT, and also not exceeding the Preliminary Distribution Formula as it relates to the COMMUNITY, (Attachment B); and

WHEREAS, the COMMUNITY has identified the PROJECT as the Resurfacing of Webster Ave. and S. Worth St., as more fully described in Attachment C, attached hereto, and made a part hereof, which improvements involve roads under the jurisdiction of and within the COMMUNITY and are not under the jurisdiction of the Road Commission for Oakland County or state trunk lines; and

WHEREAS, the COMMUNITY has acknowledged and agreed to the BOARD's policies regarding the PROGRAM, Attachment A, and further acknowledge and agree that the PROJECT's purpose is to encourage and assist businesses to locate and expand within Oakland County and shall submit a report to the BOARD identifying the effect of the PROJECT on businesses in the COMMUNITY at the completion of the PROJECT. In addition, the COMMUNITY acknowledges that the program is meant to supplement and not replace funding for existing road programs or projects; and

WHEREAS, the COMMUNITY has acknowledged and agreed that the PROGRAM is expressly established as a pilot program and there is no guarantee that the PROGRAM will be continued from year to year. The COMMUNITY further acknowledges and agrees that if the PROJECT is a multi-year road improvement project, the maximum number of years for the PROJECT funding is three (3) years, although the BOARD anticipates that most PROJECT's



funded under the PROGRAM will be completed by the end of calendar-year 2017, and there is no obligation on behalf of the BOARD to fund either the PROJECT or the PROGRAM in the future; and

WHEREAS the COMMUNITY has acknowledged and agreed that the COMMUNITY shall assume any and all responsibilities and liabilities arising out of the administration of the PROJECT and that Oakland County shares no such responsibilities in administering the PROJECT; and

WHEREAS, the estimated total cost of the PROJECT is \$62,000; and

WHEREAS, said PROJECT involves certain designated and approved Local Road Improvement Matching Funds in the amount of \$30,598, which amount shall be paid to the COMMUNITY by the BOARD; and

WHEREAS, the BOARD and the COMMUNITY have reached a mutual understanding regarding the cost sharing of the PROJECT and wish to commit that understanding to writing in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and in conformity with applicable law and BOARD resolution(s), it is hereby agreed between the COMMUNITY and the BOARD that:

1. The BOARD approves of the PROJECT, and in reliance upon the acknowledgements of the COMMUNITY, finds that the PROJECT meets the purpose of the PROGRAM.
2. The BOARD approves of a total funding amount under the PROGRAM for the PROJECT in an amount not to exceed \$30,598, The COMMUNITY shall submit an invoice to the COUNTY in the amount of \$30,598, addressed to Lynn Sonkiss, Manager of Fiscal Services, Executive Office Building, 2100 Pontiac Lake Road, Building 41 West, Waterford, MI 48328, upon execution of this Agreement. Upon receipt of said invoice, the BOARD shall pay the COMMUNITY the sum of \$30,598 from funds available in the PROGRAM.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and date first written above.

OAKLAND COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_

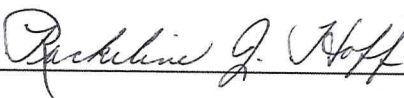
A handwritten signature in blue ink, appearing to read "Michael D. Zell", written over a horizontal line.

Its: \_\_\_\_\_

CHAIRMAN

COMMUNITY

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Racheline G. Hoff", written over a horizontal line.

It's: \_\_\_\_\_

Mayor

September 13, 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 Board of Ethics has answered the following question:

"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:**

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.

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](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. Schirot, Jr.  
Acting Chairperson



James D. Robb  
Member

Board member Sophie Fierro-Share did not participate in the consideration or decision of this case.



## *Everyday Ethics for Local Officials*

### **Commitment to Nonprofit Causes and Public Service: Some Issues to Ponder**

*August, October, December 2008*

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#### **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](http://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."<sup>1</sup> 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 2008 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](http://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<sup>2</sup> and protect the public's right to officials' honest services.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> In fact, any time someone donates to a cause in "cooperation, consultation, coordination or concert with" a public official, the disclosure requirement applies.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> (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.<sup>13</sup> The same is true if the payments are for purely social or recreational activities paid for by the nonprofit.<sup>14</sup> The value of the gestures cannot total more than the annual gift limit (\$420 for 2009-10).<sup>15</sup> 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.<sup>16</sup>

## 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](http://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<sup>17</sup> --- 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.<sup>18</sup> 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.<sup>19</sup> 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,<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup> (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.<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

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.<sup>28</sup> There are other penalties for purposeful failure to disclose one's status, including loss of office.<sup>29</sup> 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.<sup>34</sup> 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.<sup>35</sup> 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.<sup>30</sup>

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.<sup>31</sup> 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.<sup>32</sup>

## Bias Issues

In situations where an official is applying an agency's policies to a specific situation (for example, in a permit or entitlement situation), one must be aware of the potential for bias. Bias is a common-law or judge-made law, concept. The issue to be concerned with is whether one's participation in a decision will subject the decision to invalidation.

For example, a planning commissioner ghost-wrote an article in a community newsletter that was critical of a project that ultimately came before the planning commission. When the project was turned down, the project proponent challenged the outspoken commissioner's participation in the decision. The theory was that the commissioner had prejudged the merits of the application before the public hearing and couldn't fairly determine whether the project satisfied the city's requirements.<sup>33</sup> 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](http://www.westerncity.com)).

## Conclusion

When considering all the good and worthy things nonprofits contribute to a community, it can be very tempting to just think about those worthy ends and not think about the means used to achieve those ends. Some officials may even believe that the ends justify the means.

It's important to know that ethics laws make it very clear that the means by which a public official pursues worthwhile ends do matter. Using improper means can result in fines, jail time and other penalties, including the loss of one's standing in the community.

And of course, the laws just create the minimum standards for determining proper means. Merely satisfying the minimum requirements of the law may not satisfy either one's own or one's constituents' standards for what is appropriate. Dr. Martin Luther King Jr. encouraged everyone striving to make the world a better place to use means that are as pure as the end one seeks --- in other words, worthy ends never justify questionable means.

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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](http://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.

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## Endnotes:

<sup>1</sup> Nunberg, Geoffrey, "The Language Lobby: The Lost Vocabulary of Disinterested Politics" *New York Times* at *NYTimes.com* (Sept. 14, 2003) (accessed May 12, 2008).

<sup>2</sup> See Cal. Penal Code § 518; 18 U.S.C. § 1951.

<sup>3</sup> *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).

<sup>4</sup> *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).

<sup>5</sup> Cal. Gov't Code § 82015(b)(2)(B)(iii).

<sup>6</sup> 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.")

<sup>7</sup> Sundberg Opinion, FPPC Advice A-05-087 (May 27, 2005).

<sup>8</sup> Cal. Gov't Code § 3205.

<sup>9</sup> 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).

<sup>10</sup> Cal. Gov't Code § 89506(a)(2). See FPPC Limitations 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).

<sup>11</sup> Benninghoven Advice Letter, FPPC No. I-98-177 (November 12, 1998); Benninghoven Advice Letter, FPPC No. I-93-298. (October 15, 1993).

<sup>12</sup> Cal. Gov't Code § 82028(a).

<sup>13</sup> Cal. Gov't Code § 87207(a)(1).

<sup>14</sup> Kidwell Advice Letter, FPPC No. A-00-103 (September 14, 2000).

<sup>15</sup> 2 Cal. Code Regs. § 18940.2; Cal. Gov't Code § 89503.

<sup>16</sup> 2 Cal. Code Regs. § 18942 (a)(6).

<sup>17</sup> Cal. Gov't Code § 1090.

<sup>18</sup> See *Stigall v. City of Taft*, 58 Cal. 2d 565, 569-71, 25 Cal. App. 441, 443-44 (1962).

<sup>19</sup> 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.")

<sup>20</sup> Cal. Gov't Code § 1091(b)(1); see also 89 Cal. Op. Att'y Gen. 258 (2006).

<sup>21</sup> 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).

<sup>22</sup> 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).

<sup>23</sup> 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.")

<sup>24</sup> See *City of Imperial Beach v. Bailey*, 103 Cal. App. 3d 191, 162 Cal. Rptr. 663 (4th Dist. 1980).

<sup>25</sup> 85 Cal. Op. Att'y Gen. 176 (2002).

<sup>26</sup> 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.")

<sup>27</sup> Cal. Gov't Code §§ 1091(d)(specifying that willful failure to comply with the remote interest requirements is punishable under section 1097), 1097 (specifying that violations are "punishable by a fine

of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state").

<sup>28</sup> 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.")

<sup>29</sup> Cal. Gov't Code §§ 1091(d) ("The willful failure of an officer to disclose the fact of his or her interest in 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.").

<sup>30</sup> 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).

<sup>31</sup> See Mattas Opinion, FPPC Advice A-08-035 (April 08, 2008).

<sup>32</sup> See Mattas Opinion, at n. 2.

<sup>33</sup> *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).

<sup>34</sup> See 88 Cal. Op. Att'y Gen. 32 (2005).

<sup>35</sup> 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](http://www.ca-ilg.org/index.jsp?displaytype=&section=land&zone=ilsg&sub_sec=land_property&tert=land_property_fees).



## 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

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On June 19<sup>th</sup>, 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

2010	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
	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
2009	GSTV	Closed	Advertising services	Personal Service	255 S. Old Woodward	Ligne Roset (Furniture Store)	Sold advertising services
	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	Nulmage 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

**City Commission Minutes**  
**June 20, 2016**

**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](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

## DEFINITIONS

**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, laundrettes, 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, chiroprapist, 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.

- (113) "Patio cover" is defined in subsection (24), Canopy.
- (113.1) "Porch" means a roofed open area, attached 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	laundromats (self service laundries)
clothing rental	locksmiths
dry cleaning/laundry pick up	massage (licensed, therapeutic, non-sexual)
stores with limited	pet grooming with no boarding
equipment (no on-site	shoe repair shops
plant)	tailors
home electronics and small	tanning salons
appliance repair	

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.



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 care 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

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  
Telephone: 416-396-4250; Fax: 416-396-4265; e-mail: echapman@city.toronto.on.ca



(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.

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

May 19, 2017

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

335 E Maple, Birmingham, Michigan 48009  
Desk: 313.662.3616 Cell: 248.388.8753  
vsimon@spcrealestate.com  
www.soaringpine.com | www.atlasoil.com



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,

A handwritten signature in blue ink, appearing to read 'Faiz Simon', written over the word 'Sincerely,'.

Faiz Simon  
Managing Partner at Simon Group Holdings



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,

A handwritten signature in black ink, appearing to read "Matthew Shiffman", written over a horizontal line.

Matthew Shiffman



## **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 Eshaki, 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.



Jana Ecker &lt;jecker@bhamgov.org&gt;

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## Retail Uses Downtown

1 message

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**Eric Wolfe** <elwolfe1@comcast.net>  
To: Jana Ecker <jecker@bhamgov.org>  
Cc: Joe Valentine <jvalentine@bhamgov.org>

Tue, Jun 13, 2017 at 12:54 PM

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, the 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



Jana Ecker &lt;jecker@bhamgov.org&gt;

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## Red Line District

1 message

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**James Esshaki** <jesshaki@esscodevelopment.com>  
To: James Esshaki <jesshaki@esscodevelopment.com>

Wed, Jun 14, 2017 at 1:15 PM

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 Eshaki 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.



Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Fwd: Planning Commission Meeting June 14, 2017**

1 message

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**Matthew Baka** <mbaka@bhamgov.org>  
To: "Ecker, Jana" <Jecker@bhamgov.org>

Wed, Jun 14, 2017 at 5:02 PM

Did you get this one?

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

----- Forwarded message -----

From: **Rick Huddleston** <[rhuddleston@valstonepartners.com](mailto:rhuddleston@valstonepartners.com)>  
Date: Wed, Jun 14, 2017 at 4:58 PM  
Subject: Planning Commission Meeting June 14, 2017  
To: "[mbaka@bhamgov.org](mailto:mbaka@bhamgov.org)" <[mbaka@bhamgov.org](mailto: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](tel:(248)646-9200)**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 attention 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

<u>Street</u>	<u>Compliant</u>	<u>Non-Compliant</u>	<u>Non-Compliant %</u>	<u>Vacant</u>
Maple	46	9	20%	6
Old Woodward	36	13	36%	4
Pierce	8	5	63%	0
Martin	2	1	50%	0
Merrill	<u>11</u>	<u>3</u>	<u>27%</u>	<u>1</u>
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, increase 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 its OPPOSITION to the proposed amendment.



Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Fwd: retail resolution**1 message

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**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 &lt;jvalentine@bhamgov.org&gt;

**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](mailto:richard@grinsteinjewelry.com)>**Date:** June 14, 2017 at 4:04:20 PM EDT**To:** [mnickita@bhamGov.org](mailto: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 &amp; Design

162 S. Old Woodward

Birmingham MI

48009

[248-647-4414](tel: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](mailto:jvalentine@bhamgov.org)

Twitter: @JoeValentine151

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Jana Ecker &lt;jecker@bhamgov.org&gt;

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## Required Storefronts Code

1 message

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**rgibbs@gibbsplanning.com** <rgibbs@gibbsplanning.com>  
To: "Jana Ecker (jecker@bhamgov.org)" <jecker@bhamgov.org>

Fri, Jun 16, 2017 at 2:40 PM

*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

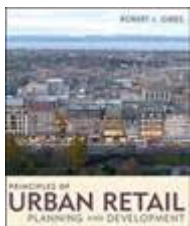
President

### Gibbs Planning Group

*Celebrating 29 Years!*

240 Martin Street Suite 200 Birmingham, Michigan 48009 [248.642.4800](tel:248.642.4800)

**CONFIDENTIALITY NOTE:** This information is intended for the use of the addressee only. If you have received this communication in error, please notify us by Telephone at [\(248\) 642-4800](tel:248.642.4800) and destroy the original message.



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



Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Fwd: Principal shopping district**

1 message

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**Joe Valentine** <jvalentine@bhamgov.org>  
To: Jana Ecker <Jecker@bhamgov.org>

Mon, Jun 19, 2017 at 9:07 AM

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" &lt;aharris@bhamgov.org&gt;, Carroll DeWeese &lt;cdeweese@bhamgov.org&gt;, Mark Nickita &lt;mnickita@bhamgov.org&gt;, Patty Bordman &lt;pbordman@bhamgov.org&gt;, Pierre Boutros &lt;pboutros@bhamgov.org&gt;, Racky Hoff &lt;rackyhoff@hotmail.com&gt;, Stuart Sherman &lt;ssherman@bhamgov.org&gt;, Tim Currier &lt;tcurrier@bhlaw.us.com&gt;

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 &lt;jvalentine@bhamgov.org&gt;

Joe

Has this been shared with all of the commission?

Thx  
M**Mark Nickita, FAIA, CNU, APA**  
Mayor  
City of Birmingham, MILike me on Facebook  
**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](mailto:jvalentine@bhamgov.org)  
Twitter: @JoeValentine151

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--

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Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Fwd: Please Share Attachment at Tonight's Meeting**

1 message

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**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](mailto:sharonwoods@landuseusa.com)>

Date: Mon, Jun 19, 2017 at 2:28 PM

Subject: Please Share Attachment at Tonight's Meeting

To: [jvalentine@bhamgov.org](mailto: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](http://www.LandUseUSA.com)

## Target Market Analysis | Downtown Strategies | Land Use Economics

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**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](mailto:jvalentine@bhamgov.org)  
Twitter: @JoeValentine151

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**Birmingham Retail Market Study Update June 2017.pdf**

711K



Jana Ecker &lt;jecker@bhamgov.org&gt;

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

1 message

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**Joe Valentine** <jvalentine@bhamgov.org>  
To: Jana Ecker <Jecker@bhamgov.org>

Mon, Jun 19, 2017 at 4:40 PM

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" &lt;aharris@bhamgov.org&gt;, Carroll DeWeese &lt;cdeweese@bhamgov.org&gt;, Mark Nickita &lt;mnickita@bhamgov.org&gt;, Patty Bordman &lt;pbordman@bhamgov.org&gt;, Pierre Boutros &lt;pboutros@bhamgov.org&gt;, Racky Hoff &lt;rackyhoff@hotmail.com&gt;, Stuart Sherman &lt;ssherman@bhamgov.org&gt;, Tim Currier &lt;tcurrier@bhlaw.us.com&gt;

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 &lt;jvalentine@bhamgov.org&gt;

Cc: cheryl@tenderbirmingham.com, Jacqueline Benet &lt;jacquelinebenet@gmail.com&gt;

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](http://herohomes.com)[reedmbenet@gmail.com](mailto: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 12<sup>th</sup> 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 12<sup>th</sup>.

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

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



definition, it is difficult to clarify and draw the line as to what constitutes personal services and what doesn't.

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

Mayor Nickita said there are two questions. The bigger question is concerning the state of potential uses that may be available now that were not available years ago. The other question is a question that came from the Building Official which is a matter of logistics on how Mr. Johnson does his job. When he gets a set of plans, he has to determine if it is allowed under our ordinance or not allowed under our ordinance. Ordinances become gray sometimes and projects look for clear identification. We had this issue with the dormer issue being unclear. There were a number of questions whether or not they fit within our ordinance. Mr. Johnson asked for clarity in the ordinance because it was unclear for him to do his work. The Board and Commission quickly took a look at it, and we found a solution to clear up a gray area that was there. The garage house issue was the same. They were done because there was a loophole in the ordinance that created difficulty for the building staff to clarify. Over time, people interpret the ordinances differently or the interpretation gets grayer. The personal use term is too gray to identify for clarity from a legal perspective for approval. It seems like there is a misunderstanding as to what is being asked of the Planning Board. This is a clarification; we are not changing the ordinance.

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

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

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

Commissioner Sherman said it is clear that the Board received direction that was unclear, and that is what we are trying to do now. He said the idea of having a study session of what the intention was of the personal service uses under the 2016 plan is a very good next step, even before the Public Hearing. He suggested moving the July 12<sup>th</sup> 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 24<sup>th</sup>. 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 12<sup>th</sup> 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 12<sup>th</sup> 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 24<sup>th</sup> Public Hearing. Commissioner Sherman noted the Commission does not have a hearing on July 24<sup>th</sup>, 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.



Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Fwd: Birmingham 1st floor office space**

1 message

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**Joe Valentine** <jvalentine@bhamgov.org>  
To: Jana Ecker <Jecker@bhamgov.org>

Wed, Jun 28, 2017 at 3:24 PM

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](mailto: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](mailto:jvalentine@bhamgov.org)  
Twitter: @JoeValentine151

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Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Fwd: BPSD**

1 message

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**Joe Valentine** <jvalentine@bhamgov.org>  
To: Jana Ecker <Jecker@bhamgov.org>

Thu, Jun 29, 2017 at 12:53 PM

----- 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](mailto:jvalentine@bhamgov.org)

Twitter: @JoeValentine151

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## **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

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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 14<sup>th</sup> 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 14<sup>th</sup> 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.



Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Fwd: First Floor Retail**

1 message

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**Joe Valentine** <jvalentine@bhamgov.org>

Wed, Jul 5, 2017 at 12:19 PM

To: Jana Ecker &lt;Jecker@bhamgov.org&gt;, Matthew Baka &lt;MBaka@bhamgov.org&gt;

fyi

----- Forwarded message -----

From: **Andrea Rehm** <[andirehm@yahoo.com](mailto:andirehm@yahoo.com)>

Date: Wed, Jul 5, 2017 at 11:26 AM

Subject: First Floor Retail

To: [jvalentine@bhamgov.org](mailto: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](tel:(248)530-1809) Office Direct[\(248\) 530-1109](tel:(248)530-1109) Fax[jvalentine@bhamgov.org](mailto:jvalentine@bhamgov.org)

Twitter: @JoeValentine151

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Jana Ecker &lt;jecker@bhamgov.org&gt;

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**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 &lt;jecker@bhamgov.org&gt;

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**Fwd: Commercial Office Space on First Floors/ Birmingham**

1 message

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**Joe Valentine** <jvalentine@bhamgov.org>  
To: Jana Ecker <jecker@bhamgov.org>

Mon, Jul 10, 2017 at 10:35 AM

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](mailto: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  
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151 Martin Street  
Birmingham, MI 48009  
(248) 530-1809 Office Direct  
(248) 530-1109 Fax  
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Twitter: @JoeValentine151

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Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Re: Retail Space**

1 message

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**Joe Valentine** <jvalentine@bhamgov.org>  
To: Tom Booth <tlbooth999@gmail.com>  
Cc: Jana Ecker <Jecker@bhamgov.org>

Tue, Jul 11, 2017 at 8:28 AM

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.

Virus-free. [www.avg.com](http://www.avg.com)

--  
**Joseph A. Valentine**  
City Manager  
City of Birmingham  
151 Martin Street  
Birmingham, MI 48009  
(248) 530-1809 Office Direct



Jana Ecker &lt;jecker@bhamgov.org&gt;

## really?

1 message

**Christopher Longe** <cjlonge@cjlongeai.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  
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[cjlonge@cjlongeaia.com](mailto: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 is 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.



Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Fwd: Retail space**

1 message

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**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](mailto: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](mailto: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](mailto:jvalentine@bhamgov.org)

Twitter: @JoeValentine151

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**Joseph A. Valentine**

City Manager

City of Birmingham

151 Martin Street

Birmingham, MI 48009

(248) 530-1809 Office Direct



Jana Ecker &lt;jecker@bhamgov.org&gt;

## Fwd: Downtown Birmingham Tenant Mix

1 message

Joe Valentine &lt;jvalentine@bhamgov.org&gt;

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 &lt;jvalentine@bhamgov.org&gt;

Date: Thu, Jul 13, 2017 at 8:05 AM

Subject: Re: Downtown Birmingham Tenant Mix

To: Gillian Levy &lt;Gannelevy@comcast.net&gt;

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

[jvalentine@bhamgov.org](mailto:jvalentine@bhamgov.org)

Twitter: @JoeValentine151

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Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Fwd: Caruso Caruso, Birmingham MI**

1 message

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**Joe Valentine** <jvalentine@bhamgov.org>  
To: Jana Ecker <Jecker@bhamgov.org>

Mon, Jul 17, 2017 at 10:08 AM

----- 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  
City of Birmingham  
151 Martin Street  
Birmingham, MI 48009  
(248) 530-1809 Office Direct  
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Twitter: @JoeValentine151

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Jana Ecker &lt;jecker@bhamgov.org&gt;

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**Fwd: First floor retail**

1 message

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**Joe Valentine** <jvalentine@bhamgov.org>  
To: Jana Ecker <Jecker@bhamgov.org>

Thu, Jul 20, 2017 at 6:14 PM

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

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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

A handwritten signature in blue ink, reading "Joseph A. Sweeney". The signature is fluid and cursive, with the first name "Joseph" and last name "Sweeney" clearly legible.

Joseph A. Sweeney  
Regional Director – Asset Management



## **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

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### **Joint meeting update**

Based on the discussion between the City Commission and Planning Board at the June 19<sup>th</sup>, 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<sup>2</sup> 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 19<sup>th</sup>, 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 experienced 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

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**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

Ms. Jana Ecker, Planning Director  
Birmingham City Planning Board  
August 4, 2017  
Page 2

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.

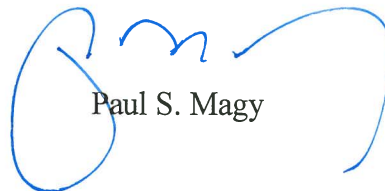
Out of concern that the voice of reason and experience may not ultimately prevail at this level, we have been engaged because legal resources may be necessary. After reviewing this matter, we share our client's concerns. We intend to conduct further investigation and to analyze the legality of the proposed 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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Telephone (248) 645-9400

Fax (248) 645-9344

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.

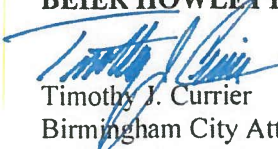
The City has the right pursuant to state statute and local ordinances to enact or amend ordinances as it deems appropriate for the health, safety and welfare of the community at large.

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](mailto: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 identity: 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.



## MEMORANDUM

City Clerk's Office

**DATE:** September 13, 2017

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

**FROM:** J. Cherilynn Mynsberge, City Clerk  
Timothy J. Currier, City Attorney

**SUBJECT:** Oath of Support for City Charter and Code of Ordinances

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At the September 11, 2017 City Commission meeting, Commissioner Bordman noted the Oath of Office does not include adherence to city ordinances and asked that a way be found to include in the oath process a requirement to adhere to city ordinances.

The Birmingham City Charter, Chapter III, Section 31 specifies the language for the Oath, and changing the language itself requires a Charter amendment.

City Attorney Currier and I discussed the issue and agreed it is best addressed with a formal resolution by the City Commission requiring officers elected or appointed to any city office to take an additional oath to observe the City Charter and the Code of Ordinances. This oath, "I do solemnly swear (or affirm) that I will support the City of Birmingham Charter and Code of Ordinances in the performance of the duties of my office," would be administered immediately following the Oath of Office specified by City Charter.

**SUGGESTED RESOLUTION:**

To adopt the resolution stating that following the taking and subscribing to the oath of office required by Chapter III, Section 31 of the Birmingham City Charter, every officer elected or appointed to any city office shall also take and subscribe to the following oath:

"I do solemnly swear (or affirm) that I will support the City of Birmingham Charter and Code of Ordinances in the performance of the duties of my office."

CITY OF BIRMINGHAM

RESOLUTION NO. 09- -17

**A RESOLUTION REQUIRING AFFIRMATION OF SUPPORT  
FOR THE CITY OF BIRMINGHAM CHARTER AND CODE OF ORDINANCES  
BY ELECTED OR APPOINTED CITY OFFICIALS**

THE CITY OF BIRMINGHAM RESOLVES:

**WHEREAS**, every officer elected or appointed to any city office is required by the Birmingham City Charter, Chapter III, Section 31 to take and subscribe to an oath of office affirming support of the Constitution of the United States of America and the constitution of this state; and

**WHEREAS**, it is important that elected and appointed officers of the City also affirm support of the City of Birmingham Charter and Code of Ordinances.

**NOW THEREFORE BE IT RESOLVED** that following the taking and subscribing to the oath of office required by Chapter III, Section 31 of the Birmingham City Charter, every officer elected or appointed to any city office shall also take and subscribe to the following oath:

"I do solemnly swear (or affirm) that I will support the City of Birmingham Charter and Code of Ordinances in the performance of the duties of my office."

Dated this 25<sup>th</sup> day of September, 2017.

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Mark Nickita, Mayor

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J. Cherilynn Mynsberge, City Clerk

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing resolution was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held September 25, 2017.

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J. Cherilynn Mynsberge, City Clerk



## MEMORANDUM

Office of the City Manager

**DATE:** September 18, 2017

**TO:** City Commission

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

**SUBJECT:** Creation of Ad Hoc Unimproved Street Study Committee

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The City has roughly 90 miles of roads within its jurisdiction. These roads are categorized as either "improved" or "unimproved" roads. Improved roads comprise the majority of roads in the City and are constructed by engineered design and include curbs and gutters to drain water runoff and are constructed of either a concrete or asphalt surface. Unimproved roads comprise roughly 26 miles of roads in the City and are constructed with a simple gravel base topped with a chip and slurry seal. The method of providing maintenance for unimproved roads is through a process called cape sealing. In Birmingham, cape seal is used as an inexpensive non-structural driving surface that provides an enhanced look and feel on what is essentially a gravel road. The process for maintaining these unimproved roads has been a growing concern from residents living on these streets given their lack of durability and maintenance cycle of every 7 to 10 years among other issues.

To best address the concerns with unimproved roads it is recommended to create an Ad Hoc committee to conduct a city-wide study of unimproved roads and develop a recommendation outlining a long term plan for addressing these roads. A resolution is attached providing for the creation of this Ad Hoc committee for this purpose. The focus of the Committee will be to review and evaluate unimproved roads while considering road durability, maintenance cycles, drainage, rights-of-way usage, traffic speeds and costs.

Staff is recommending adoption of the proposed resolution.

### Suggested Action:

To adopt the resolution creating an Ad Hoc Unimproved Street Study Committee to conduct a city-wide study of unimproved roads and provide a recommendation to the City Commission outlining a long term plan for these roads.

**RESOLUTION CREATING AN AD HOC UNIMPROVED STREET STUDY COMMITTEE TO CONDUCT A CITY-WIDE STUDY OF UNIMPROVED ROADS AND PROVIDE A RECOMMENDATION TO THE CITY COMMISSION OUTLINING A LONG TERM PLAN FOR THESE ROADS.**

**WHEREAS**, the City of Birmingham has roughly 90 miles of public roads throughout its jurisdiction; and

**WHEREAS**, included in the roughly 90 miles of public roads, the City of Birmingham has roughly 26 miles of unimproved roads, which receive a cape seal treatment; and

**WHEREAS**, unimproved roads require more frequent maintenance than improved roads and have been an increasing concern for residents living on them; and

**WHEREAS**, the City of Birmingham is desirous of conducting a city-wide study of its unimproved roads to develop a long term solution that considers such issues as road durability, maintenance cycles, drainage, Rights-of Way usage, traffic speeds, parking and costs; and

**WHEREAS**, the City Commission wishes to establish an Ad Hoc Unimproved Street Study Committee to review the City's unimproved street maintenance program and provide a long term plan to address these roads.

**NOW THEREFORE BE IT RESOLVED** that an Ad Hoc Unimproved Street Study Committee is hereby established to develop and recommend a long term plan for addressing the City's unimproved roads in accordance with the following:

1. The Committee will be Ad Hoc. The term of the Committee shall continue through December 31, 2018 and the Committee will cease functioning unless otherwise directed by the Commission at that time.
2. The City Commission hereby appoints a seven (7) member Ad Hoc Committee to be comprised of the following members.
  - a) Two members of the City Commission.
  - b) Three members comprised of residents living on an unimproved street.
  - c) One member comprised of a resident living on an improved street.
  - d) One member with a background in road design and maintenance.

The City Commission also hereby appoints the City Manager as an ex officio member of the committee and the City Manager may designate additional staff members and consultants to assist the committee in providing information and assistance as required.

3. The scope of the Committee shall be to develop a long term plan on how to best proceed in addressing unimproved roads in the City in accordance with the following:
  - a. Review the history and evolution of the road system in the City.



- b. Review and evaluate the types of roads in the City while considering road durability, maintenance cycles, drainage, Rights-of-Way usage, traffic speeds and parking.
  - c. Review the policies and procedures attributed to each type of road construction and maintenance method used by the City.
  - d. Review conditions where small sections of unimproved roads exist within a predominately improved block and provide recommendations.
  - e. Review conditions where large areas of unimproved roads exist within a neighborhood and provide recommendations.
  - f. Review and evaluate cost and budget implications of any proposed recommendations and include strategic funding alternatives.
  - g. Compile the Committee's findings and recommendations into a report to be presented at the end of the Committee's term.
4. The Committee may request professional services as may be required in the analysis of road design, maintenance and cost considerations.
5. The Committee is not authorized to expend funds or enter into agreements. All recommendations made by the Committee shall be in the form of a report to the City Commission.

All meetings of the Committee shall be open to the public. Agenda and minutes for all meetings shall be prepared.



## MEMORANDUM

Office of the City Manager

**DATE:** September 21, 2017  
**TO:** City Commission  
**FROM:** Joseph A. Valentine, City Manager  
**SUBJECT:** Request for Closed Session  
Attorney-Client Privilege

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It is requested that the city commission meet in closed session pursuant to Section 8(h) of the Open Meetings Act to discuss an attorney/client privilege communication.

**SUGGESTED 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.)**



## MEMORANDUM

City Manager's Office

**DATE:** September 21, 2017

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

**FROM:** Joellen Haines, Assistant to the City Manager

**SUBJECT:** Birmingham Brand Development – Update on City Logo Design

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At the City Commission meeting of July 24, 2017, McCann presented the top three logos that were recommended by the Ad Hoc Birmingham Brand Development Committee (BBDC). The Commission felt the designs were close but not quite ready for approval, and it was suggested that the City meet with McCann to discuss how to move the project forward. The Commission also wanted to consider designs that included a tree, along with the other top three designs presented.

City staff met with McCann on August 16, 2017 and McCann said they wanted to finalize the branding project, due to the fact that the project had already gone beyond the scope of the RFQ. To this end, McCann has agreed to send over working design files of Logos 1, 2 and 3 with the tree designs in exchange for half of the \$5,000 contract, with the remaining \$2,500 to be paid by the city once a design is approved by the Commission. McCann will then complete the remaining portion of the scope of work by creating a style guide for the new logo.

Once the files have been given to the City, it can be determined if the working files can be modified internally by City staff, or a designer is hired to make modifications. The intent is to present options to the Commission and to collectively work toward a design acceptable to the Commission.

McCann is currently preparing the invoicing for the first half of their design services, and the City expects to have the files by mid-October.

**STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION  
NOTICE OF HEARING  
FOR THE GAS CUSTOMERS OF  
CONSUMERS ENERGY COMPANY  
CASE NO. U-17943-R**

- Consumers Energy Company requests Michigan Public Service Commission approval to reconcile its gas cost recovery (GCR) costs and revenues for the 12 months ending March 31, 2017.
- The information below describes how a person may participate in this case.
- You may call or write Consumers Energy Company, One Energy Plaza, Jackson, Michigan 49201, (800) 477-5050 for a free copy of its application. Any person may review the documents at the offices of Consumers Energy Company.
- A public hearing will be held:

**DATE/TIME:**            **Thursday, September 21, 2017, at 9:00 a.m.**  
This hearing will be a prehearing conference to set future hearing dates and decide other procedural matters.

**BEFORE:**            Administrative Law Judge **Sharon L. Feldman**

**LOCATION:**           Michigan Public Service Commission  
7109 West Saginaw Highway  
Lansing, Michigan

**PARTICIPATION:**           Any interested person may attend and participate. The hearing site is accessible, including handicapped parking. Persons needing any accommodation to participate should contact the Commission's Executive Secretary at (517) 284-8090 in advance to request mobility, visual, hearing or other assistance.

The Michigan Public Service Commission (Commission) will hold a public hearing to consider Consumers Energy Company's (Consumers Energy) June 30, 2017 application requesting approval to reconcile its GCR costs and revenues for the 12 month period from April 1, 2016 through March 31, 2017. Consumers Energy represents that; 1) during the 12-month period ending March 31, 2017, they incurred GCR cost of gas sold expense of approximately \$480.8 million; and 2) that it has calculated a total over-recovery for the 2016 - 2017 GCR period of \$2,350,716, which is subject to the roll-in treatment. The calculated amount reflects an over-recovery for the GCR period of \$1,463,642 plus accrued interest owed to customers for the GCR period of \$887,074.

**INFORMATION ONLY**

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets website at: [michigan.gov/mpscedockets](http://michigan.gov/mpscedockets). Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to: [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov). If you require assistance prior to e-filing, contact Commission staff at (517) 284-8090 or by email at: [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov).

Any person wishing to intervene and become a party to the case shall electronically file a petition to intervene with this Commission by September 14, 2017. (Interested persons may elect to file using the traditional paper format.) The proof of service shall indicate service upon Consumers Energy's Legal Department – Regulatory Group, One Energy Plaza, Jackson, Michigan 49201.

Any person wishing to appear at the hearing to make a statement of position without becoming a party to the case may participate by filing an appearance. To file an appearance, the individual must attend the hearing and advise the presiding administrative law judge of his or her wish to make a statement of position. All information submitted to the Commission in this matter becomes public information, thus available on the Michigan Public Service Commission's website, and subject to disclosure. Please do not include information you wish to remain private.

Requests for adjournment must be made pursuant to the Michigan Administrative Hearing System's Administrative Hearing Rules R 792.10422 and R 792.10432. Requests for further information on adjournment should be directed to (517) 284-8130.

A copy of Consumers Energy's application may be reviewed on the Commission's website at: [michigan.gov/mpscedockets](http://michigan.gov/mpscedockets), and at the office of Consumers Energy Company. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.54 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; 1982 PA 304, as amended, MCL 460.6h et seq.; and the Michigan Administrative Hearing System's Administrative Hearing Rules, 2015 AC, R 792.10401 et seq.

**[THE MICHIGAN PUBLIC SERVICE COMMISSION MAY GRANT OR DENY CONSUMERS ENERGY'S GAS COST RECOVERY RECONCILIATION AND OTHER PROPOSALS IN WHOLE OR IN PART, AND MAY APPROVE LESSER OR GREATER AMOUNTS THAN THOSE REQUESTED.]**