

# **BIRMINGHAM CITY COMMISSION AGENDA**

**DECEMBER 7, 2020**

**7:30 P.M.**

**VIRTUAL MEETING**

**MEETING ID: 655 079 760**

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

Pierre Boutros, Mayor

## **II. ROLL CALL**

Alexandria Bingham, City Clerk Designee

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

### **Announcements**

- The City has reinstated the hotline to provide residents with information about City and County COVID-19 resources. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential functions, and obtaining necessary supplies Call 248-530-1805, Monday through Friday from 8 a.m. – 5 p.m, excluding holidays.
- The City Commission would like to thank JC Cataldo for 12 years of service on the Triangle District Corridor Improvement Authority.
- The City Commission would like to thank Lauran Keener for 4 years of service on the Stormwater Appeals Board.
- The City Commission plans to recognize departing City Manager Joe Valentine for his exceptional work and service to the City of Birmingham at the beginning of the regularly scheduled City Commission Meeting on December 21, 2020.
- Mayor Boutros Birthday.

### **Appointments:**

- A. Birmingham Triangle District Improvement Authority
1. Samuel Oh
  2. G.A. "Kip" Cantrick

To appoint \_\_\_\_\_ who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve the remainder of a term to expire December 15, 2023.

To appoint \_\_\_\_\_ who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve the remainder of a term to expire December 15, 2021.

To appoint \_\_\_\_\_ who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve the remainder of a term to expire December 15, 2023.

To appoint \_\_\_\_\_ who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve a four-year term to expire December 15, 2024.

To appoint \_\_\_\_\_ who has an ownership or business interest in property located in the development area, to the Triangle District Corridor Improvement Authority for a four-year term to expire December 15, 2024.

B. Board of Review

1. Guy DiPlacido
2. Lester Richey

To appoint \_\_\_\_\_ to the Board of Review as a regular member to serve a three-year term to expire December 31, 2023.

To appoint \_\_\_\_\_ to the Board of Review as a regular member to serve a three-year term to expire December 31, 2023.

To appoint \_\_\_\_\_ to the Board of Review as an alternate member to serve a three-year term to expire December 31, 2023.

C. Board of Zoning Appeals

1. Jerry Attia
2. Erin Rodenhouse

To appoint \_\_\_\_\_ as an alternate member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire 2/17/2023.

D. Historic District Commission

1. Steven Lemberg

To appoint \_\_\_\_\_, to the Historic District Commission as an alternate member to serve the remainder of a three-year term to expire September 25, 2022.

E. Advisory Parking Committee

1. Aaron Black

To appoint \_\_\_\_\_ to the Advisory Parking Committee as a regular member who is a resident shopper to serve the remainder of a three-year term to expire September 4, 2022.

To appoint \_\_\_\_\_ to the Advisory Parking Committee as a regular member who is a restaurant owner to serve the remainder of a three-year term to expire September 4, 2023.

To appoint \_\_\_\_\_ to the Advisory Parking Committee as an alternate to serve the remainder of a three-year term to expire September 4, 2023.



#### **IV. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

#### **V. 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. Resolution approving the City Commission meeting minutes of November 23, 2020.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated November 25, 2020, in the amount of \$658,291.66.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated December 2, 2020, in the amount of \$876,749.94.
- D. Resolution approving the contract with Wolverine Power Systems in an amount not to exceed \$39,500.00 to perform City of Birmingham Adams Fire Station Upgrade Emergency Generator from account #101-336-000-971-0100; and to direct the Mayor and City Clerk to sign the agreement on behalf of the City.
- E. Resolution to appoint City Manager Thomas M. Markus as Representative and DPS Director Lauren Wood as Alternate Representative of the City of Birmingham on the SOCRRA Board of Trustees for the remainder of the fiscal year starting January 1, 2021.
- F. Resolution to appoint Consulting City Engineer Jim Surhigh as Representative and City Manager Thomas M. Markus as Alternate Representative of the City of Birmingham on the SOCWA Board of Trustees for the remainder of the fiscal year starting January 1, 2021.
- G. Resolution to appoint Thomas M. Markus to serve as the alternate member to SEMCOG on behalf of the City of Birmingham.
- H. Resolution to authorize the IT department to renew the Laserfiche support contract with MCCi for a total cost of \$12,775.00. Funds are available in the IT Computer Maintenance Fund Account: 636-228.000-933.0600
- I. Resolution to approve the removal of four on-street parking meters on S. Old Woodward, north of Brown Street (in front of 298 S. Old Woodward) to allow for the operation of a shared valet service by the property owner (Daxton Hotel) consistent with the terms contained in Attachment "A" of the property owner's valet license application dated May 21, 2020.
- J. Resolution to adopt the Performance Resolution for Governmental Agencies with the Michigan Department of Transportation (MDOT), and furthermore, to authorize James J. Surhigh, Consulting City Engineer, Lauren Wood, Director of DPS, and Scott Zielinski, City Construction Engineer to apply to MDOT for the necessary Annual Permit, and other Individual Permits for work within the State Highway Right-of-Way on behalf of the City of Birmingham.
- K. Resolution to approve the interlocal agreement with Oakland County and authorize Mayor Boutros to sign the agreement on behalf of the City Commission.

- L. Resolution to adopt the Resolution for Designation of Street Administrator, with James J. Surhigh, Consulting City Engineer, as the authorized designee.

## **VI. UNFINISHED BUSINESS**

- A. Public Hearing – 34350 Woodward & 907-911 Haynes – Lot Combo
  - 1. Resolution to deny the proposed lot combination of 34350 Woodward and 907-911 Haynes, parcel # 19-36- 281-022 and parcel #19-36-281-030, as the resulting parcel would not be consistent with the requirements for the MU-5 and MU-7 Zones, nor consistent with the recommendations in the Triangle District Plan.
- B. Resolution to approve the cost sharing agreement with the Road Commission for Oakland County, agreeing to pay the City of Birmingham's share of the cost to replace the traffic signal at the intersection of Coolidge Highway and Maple Road, at a cost not to exceed \$75,000, to be charged to account number 202-303.001-971.0100. Also, to authorize the Mayor to sign the agreement on behalf of the City.
- C. Resolution to direct the proposed ordinance amendments Chapter 126, Zoning, Article 4, Section 4.44 to the Planning Board for their review and recommendation.
- D. Resolution to approve the continuation of free parking in all structures through March 31, 2021.

## **VII. NEW BUSINESS**

- A. Public Hearing – 470 N. Old Woodward - EM Bistro
  - 1. Resolution to approve the Final Site Plan and Design and Special Land Use Permit at 470 N. Old Woodward to allow for the operation of a new bistro, EM, at 470 N. Old Woodward.
- B. Resolution to accept the proposed Birmingham Museum Collection Policy.
- C. Resolution to accept the proposed final design for the Birmingham Museum Heritage Zone and plan for implementation of its first phase elements of primary signage, fencing modifications and gates, and installation of three Pioneer elm trees.
- D. Resolution to approve the release of an additional 50 graves in Sections B and C in Greenwood Cemetery for sale to the public.
- E. Resolution to go into closed session to review pending litigation in the matter of Lyons v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275,

**(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.)**

- F. Commission Discussion on items from prior meeting.
- G. Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

#### **VIII. REMOVED FROM CONSENT AGENDA**

#### **IX. COMMUNICATIONS**

#### **X. REPORTS**

- A. Commissioner Reports – Notice of intent to appoint to the Public Arts Board & the Storm Water Utility Appeals Board
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
  - 1. Ethics Majority Opinion for case # 2020-01
  - 2. Ethics Minority Opinion for case # 2020-01
  - 3. Greenwood Cemetery Annual Report
  - 4. City Commission Sub Committee to Recognize City Manager Joe Valentine
- D. Legislation
- E. City Staff
  - 1. Outdoor Dining Enclosure Status Report

INFORMATION ONLY

#### **XI. ADJOURN**

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

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



cheryl arft &lt;carft@bhamgov.org&gt;

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**Re: Triangle District Corridor Improvement Authority**1 message

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**JC Cataldo** <jccataldo4@gmail.com>

Wed, Nov 4, 2020 at 12:36 PM

To: cheryl arft &lt;carft@bhamgov.org&gt;

Due to travel commitments, I am not able to reapply for the board position. I thank you for the opportunity to serve in the past as I feel Birmingham is one of the most outstanding small towns in the Nation.  
Thanks. JC

JC Cataldo

On Nov 4, 2020, at 10:45 AM, cheryl arft <[carft@bhamgov.org](mailto:carft@bhamgov.org)> wrote:

Hello, J.C.

If you don't mind, just email me something I can submit to Joe Valentine and the Commission about not wishing to re-apply at this time. It will allow us to move forward to complete the board.

Thank you very much!

Cheryl Arft  
Acting City Clerk  
[City of Birmingham](#)  
[151 Martin Street](#)  
Birmingham, MI 48009

248-530-1880  
248-530-1080 (fax)

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

**"Important Note to Residents"**

**Let's connect! Join the Citywide Email System to receive important City updates and critical information specific to your neighborhood at [www.bhamgov.org/citywideemail](http://www.bhamgov.org/citywideemail).**

## ANNOUNCEMENT



cheryl arft &lt;carft@bhamgov.org&gt;

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**RE: Inspector survey link**

1 message

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**Laura Keener** <Laurakeener@outlook.com>  
To: cheryl arft <carft@bhamgov.org>

Tue, Dec 1, 2020 at 5:19 PM

Thank you for the information. I do not plan to serve another term on the Stormwater Appeals Board. However I am interested in other volunteer opportunities.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: cheryl arft <carft@bhamgov.org>

Date: 12/1/20 4:31 PM (GMT-05:00)

To: Laura Keener <Laurakeener@outlook.com>, Abrial Hauff <ahauff@bhamgov.org>, Alex Bingham <abingham@bhamgov.org>

Subject: Re: Inspector survey link

Hi Laura,

Your current term on the Storm Water Utility Appeals Board expired earlier this year. The commission is scheduled to appoint to the board at its January 11, 2021 meeting. If you wish to continue serving, please complete the attached forms and return to [ahauff@bhamgov.org](mailto:ahauff@bhamgov.org).

If you do not wish to re-apply, please respond to the same email address with that information. That will enable the city to move forward to appoint another person to that vacancy on the board.

Thanks very much!

On Mon, Oct 5, 2020 at 9:19 PM Laura Keener <Laurakeener@outlook.com> wrote:

I completed the survey

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: cheryl arft <carft@bhamgov.org>

Date: 10/5/20 12:50 PM (GMT-05:00)

To: Laura Keener <LAURAKEENER@outlook.com>

## ANNOUNCEMENT

Subject: Inspector survey link

Laura,

The link to the survey is below. I believe you will have to go through the entire survey since everything is a required field, but I'm mainly interested in which of the trainings you plan to attend.

Let me know if you are unable to open the link.

Thank you, Laura!

<https://forms.gle/bVbgw7zb7kPDgTuq5>

Cheryl Arft  
Acting City Clerk  
[City of Birmingham](#)  
[151 Martin Street](#)  
Birmingham, MI 48009

248-530-1880  
248-530-1080 (fax)

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

**"Important Note to Residents\***

**Let's connect! Join the Citywide Email System to receive important City updates and critical information specific to your neighborhood at [www.bhamgov.org/citywideemail](http://www.bhamgov.org/citywideemail).**



**NOTICE OF INTENTION TO APPOINT TO  
BIRMINGHAM TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY**

At the regular meeting of Monday, December 7, 2020 the Birmingham City Commission intends to appoint members to the Birmingham Triangle District Corridor Improvement Authority who have an ownership or business interest in property located in the District to the Birmingham Triangle District Corridor Improvement Authority:

One (1) member to serve a four-year term expiring December 15, 2024;

Two (2) members to serve the remainder of four-year terms expiring December 15, 2023;

One (1) member to serve the remainder of a four-year term expiring December 15, 2021; and,

One (1) member to serve a four-year term expiring December 15, 2024.

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

Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area. Not less than 1 of the members shall be a resident of the Development Area, or of an area within 1/2 mile of any part of the Development Area.

The authority shall operate to correct and prevent deterioration in business districts, to redevelop the City's commercial corridors and promote economic growth, pursuant to Act 280 of the Public Acts of Michigan, 2005, as amended.

Interested parties may recommend others or themselves for these positions by submitting a form available from the city clerk's office. Applications must be submitted to the city clerk's office on or before noon on Wednesday, November 28, 2018. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

<b>Criteria/Qualifications of Open Positions</b>	<b>Date Applications Due (by noon)</b>	<b>Date of Interview</b>
Not less than a majority of the members shall have an ownership or business interest in property located in the Development Area. Not less than one (1) member shall be a resident of the development area, or of an area within ½ mile of any part of Development Area.	12/2/2020	12/7/2020

*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.*

***Note: The Authority has not met since 2017.***

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
Samuel Oh 820 Hazel St.	A resident of the Development Area , or of an area within ½ mile of any part of the Development Area
G.A. "Kip" Cantrick 774 Lakeside	Has ownership or business interest in property located in the Development Area

SUGGESTED ACTION:

To appoint ----- who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve the remainder of a term to expire December 15, 2023.

To appoint ----- who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve the remainder of a term to expire December 15, 2021.

To appoint ----- who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve the remainder of a term to expire December 15, 2023.

To appoint ----- who is a resident of the Development Area, or of an area within ½ mile of any part of the Development Area to serve a four-year term to expire December 15, 2024.

To appoint \_\_\_\_\_ who has an ownership or business interest in property located in the development area, to the Triangle District Corridor Improvement Authority for a four-year term to expire December 15, 2024.



# BIRMINGHAM TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY

Resolution # 11-363-08

The authority shall operate to correct and prevent deterioration in business districts, to redevelop the City's commercial corridors and promote economic growth, pursuant to Act 280 of the Public Acts of Michigan, 2005, as amended.

The Authority shall be under the supervision and control of the Board. The Board shall consist of the Mayor, or his or her assignee, and six additional members. Members shall be appointed by the Mayor, subject to approval by the City Commission. Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area. Not less than 1 of the members shall be a resident of the Development Area, or of an area within 1/2 mile of any part of the Development Area.

Members shall be appointed to serve for a term of four years.

Upon completion of its purposes, the Authority may be dissolved by the City Commission. The property and assets of the Authority, after dissolution and satisfaction of its obligations, shall revert to the City.

Last Name Home Address	First Name	Home Business Fax E-Mail	Appointed	Term Expires
<b>Cantrick Jr.</b> 774 Lakeside Birmingham	<b>Kip</b>  48009	248-540-3741 (248) 644-7622  <i>gcantrick@kipcantrickcompany.com</i>	1/28/2013 has an ownership or business interest in property located in the development area	12/15/2020
<b>Hays</b> 954 Chestnut Birmingham	<b>Curtis</b>  48009	(248) 639-8709  <i>chays77@gmail.com</i>	12/15/2008 DISTRICT RESIDENT (a resident of the development area or of an area within 1/2 mile of any part of the development area)	12/15/2022
<b>Sherman</b> 1252 Stanley Birmingham	<b>Stuart</b>  48009	(248) 645-1142  <i>stuart.sherman@sbcglobal.net</i>	11/1/2021 City Commission member (appointed by Mayor)	

Last Name	First Name	Home Business Fax E-Mail	Appointed	Term Expires
VACANT				12/15/2023
VACANT				12/15/2021
VACANT				12/15/2023
VACANT				12/15/2024



<b>OFFICE USE ONLY</b>	
Meets Requirements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Will Attend / <input type="checkbox"/> 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 TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY

Specific Category/Vacancy on Board RESIDENT OWNER (see back of this form for information)

RECOMMENDER

Name SAMUEL OH

Phone 312-339-8308

Residential Address 820 HAZEL ST.

Email SAMUEL.E.OH@GMAIL.COM

Residential City, Zip BIRMINGHAM, MI, 48009

Length of Residence 8 YRS

Business Address "

Occupation FAMILY OFFICE MANAGER

Business City, Zip "

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

TRIANGLE DISTRICT RESIDENT. I WANT TO END LAND BANKING IN THE DISTRICT. WE NEED TO BUILD OUT THESE SPACES FOR USE AND PURPOSE

List your related employment experience 2.4 BILLION SQM OF PE DEVELOPMENT AND MANAGEMENT FOR FORTUNE 100 COMPANY

List your related community activities RECENTLY RAN FOR BOE IN BIRMINGHAM

List your related educational experience MASTERS ARCH / PE DEVELOPMENT (U.F.M)

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

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

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

[Signature]  
Signature of Applicant

11/10/20  
Date

**OFFICE USE ONLY**

Meets Requirements? Yes No

Will Attend / Unable to Attend

**APPLICATION FOR CITY BOARD OR COMMITTEE**

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

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

(Please print clearly)

Board/Committee of Interest Triangle District Corridor Improvement AuthoritySpecific Category/Vacancy on Board Resident (sold building in Oct) (see back of this form for information)Name Kip CantrickPhone 248 644 7622Residential Address 774 Lakeside DrEmail \* gcantrick@kipcantrickcompany.comResidential City, Zip Birmingham, 48009Length of Residence 35 yearsBusiness Address SameOccupation Sales/Mktg

Business City, Zip \_\_\_\_\_

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

I have lived in the neighborhood in the past (Forest Ave) as a resident, and havehad offices in two buildings. Formerly owned one of the buildings on Adams. I have a good feel for the unique view of the district both as a resident, and as a business owner.List your related employment experience Small business owner, past corridor building ownerList your related community activities Current member of the Corridor Improvement board.List your related educational experience BS, CMU

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? NoAre you an elector (registered voter) in the City of Birmingham? YesSignature of Applicant Kip CantrickDigitally signed by Kip Cantrick  
Date: 2020.12.01 15:58:57 -05'00'Date 12-1-2020

Signature of Applicant

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 [carft@bhamgov.org](mailto:carft@bhamgov.org) or by fax to 248.530.1080.

Updated 12/02/19

*\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.*

**Attendance**

The Birmingham Triangle District Corridor Improvement Authority meets less than once a year. Returning applicant Kip Cantrick was present at the last two meetings held on October 19, 2016 and on January 20, 2017.



## NOTICE OF INTENTION TO APPOINT TO BOARD OF REVIEW

The City Commission intends to appoint two (2) regular members to serve three-year terms to expire December 31, 2023 and an alternate member to serve a three-year term to expire December 31, 2023. Applicants must be property owners and electors of the City of Birmingham.

The Board of Review, consisting of two panels of three local citizens who must be property owners and electors, is appointed by the City Commission for three-year terms. Although a general knowledge of the City is very helpful, more important are good judgment and the ability to listen carefully to all sides of an issue before making a decision. Approximately three weeks in March are scheduled for taxpayers to protest their assessments and one day each in July and December for correcting clerical errors and mutual mistakes of fact. Two training sessions in February are also required.

Interested citizens may submit an application available at the 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, December 4, 2019. These documents will appear in the public agenda for the regular meeting at which time the City Commission will interview applicants and may make nominations and vote on appointments.

Board members are paid \$110 per diem.

### Applicant(s) Presented For City Commission Consideration:

<b>Applicant Name</b>	<b>Criteria/Qualifications</b>
	Applicants must be property owners and electors (registered voters) of the City of Birmingham.
Guy DiPlacido	Property owner and Elector
Lester Richey	Property owner and Elector

*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 RESOLUTION:

To appoint\_\_\_\_\_ to the Board of Review as a regular member to serve a three-year term to expire December 31, 2023.

To appoint\_\_\_\_\_ to the Board of Review as a regular member to serve a three-year term to expire December 31, 2023.

To appoint\_\_\_\_\_ to the Board of Review as an alternate member to serve a three-year term to expire December 31, 2023.



## BOARD OF REVIEW

City Charter – Chapter III, Section 14

Terms: Three Years

Members: Members must be property owners and electors of the City of Birmingham

Appointed by the City Commission

The Board of Review hear appeals from property owners regarding their assessments. Approximately three weeks in March are scheduled for taxpayers to protest their assessments and one day each in July and December for correcting clerical errors and mutual mistakes of fact. Two training sessions in February are also required.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Devereaux</b> 1019 Rivenoak	<b>Kathleen</b>	(248) 840-5310 <i>kddevereaux@wowway.com</i>	2/22/2016	12/31/2022
<b>Di Placido</b> 726 Lakeside Dr.	<b>Guy</b>	(248) 644-1708	1/10/1994	12/31/2020
<b>Feiste</b> 1474 Maryland	<b>Leland</b>	(248) 644-3948 <i>lwfeiste@yahoo.com</i>	1/22/2001	12/31/2022
<b>Katrib</b> 1832 East Lincoln	<b>Elicia</b>	(248) 379-3577 <i>e.katrib@gmail.com</i>	2/22/2016	12/31/2021
<b>Richey</b> 1690 Stanley	<b>Lester</b>	(248) 644-7143 <i>lesrichey@yahoo.com</i>	2/9/2015	12/31/2020

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Rose</b> 1011 Clark	<b>Cynthia</b>	(248) 752-2667 <i>crose@cbwm.com</i>	3/2/2009	12/31/2021
<b>Rosenberg</b> 1590 E. Maple	<b>Harvey</b>	(313) 510-0190 <i>harvey48301@yahoo.com</i>	2/13/2017 alternate	12/31/2022
<b>Stress</b> 784 Westchester Way	<b>Jill</b>	(586) 246-6700 <i>jill.stress@yahoo.com</i>	2/13/2017 alternate	12/31/2020



## *CITY BOARD/COMMITTEE ATTENDANCE RECORD*

Board/Committee: **Board of Review**

Year: **2020**

MEMBER NAME	2/11	3/3	3/9	3/10	3/12	3/13	7/21	12/15					Total Mtgs. Att.	Total Absent	Percent Attend
<b>REGULAR MEMBERS</b>															
DEVEREAUX, KATHLEEN	P	P	P	NM	P	P	NM						5	0	100%
DIPLACIDO, GUY	P	P	P	P	P	P	P						7	0	100%
FEISTE, LELAND	P	P	P	P	P	P	NM						6	0	100%
KATRIB, ELICIA	P	P	P	P	P	P	NM						6	0	100%
RICHEY, LESTER	P	P	P	NM	P	P	NM						5	0	100%
ROSE, CYNTHIA	P	P	P	NM	P	P	P						6	0	100%
Reserved															
Reserved															
<b>ALTERNATES</b>															
ROSENBERG, HARVEY	P	P	P	NM	P	P	P						6		
STRESS, JILL	P	P	P	NM	P	NM	NM						4	0	100%
Reserved															
Reserved															
Members in attendance	8	8	8	3	8	7	3	0							

**KEY: A = Absent**

**P = Present**

**NM = No Meeting**

**na = not appointed at that time**

\_\_\_\_\_  
**Department Head Signature**

## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Board/Committee: **Board of Review**

Year: **2019**

MEMBER NAME	2/13	3/5	3/11	3/12	3/14	3/15	7/16	12/10					Total Mtgs. Att.	Total Absent	Percent Attend
<b>REGULAR MEMBERS</b>															
DEVEREAUX, KATHLEEN	P	P	P	P	P	P	NM						6	0	100%
DIPLACIDO, GUY	P	P	P	P	P	P	P						7	0	100%
FEISTE, LELAND	P	P	P	P	P	P	NM						6	0	100%
KATRIB, ELICIA	P	P	A	A	P	P	P						5	2	71%
RICHEY, LESTER	P	P	P	P	P	P	NM						6	0	100%
ROSE, CYNTHIA	P	P	P	P	P	P	NM						6	0	100%
Reserved															
Reserved															
<b>ALTERNATES</b>															
MONAHAN, JASON	NM	NM	NM	NM	NM	NM	NM	NM				*	0		
STRESS, JILL	P	P	P	P	NM	P							5	0	100%
Reserved															
Reserved															
Members in attendance	7	7	6	6	6	7	2	0							

**KEY: A = Absent**  
**P = Present**  
**NM = No Meeting**  
**na = not appointed at that time**

  
**Department Head Signature**

\*Unable to attend training. Unable to participate on Board for 2019

## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Board/Committee: **Board of Review**

Year: **2018**

MEMBER NAME	2/13	2/27	3/6	3/12	3/13	3/15	3/16	3/19	3/20	7/18	12/10		Total Mtgs. Att.	Total Absent	Percent Attend
<b>REGULAR MEMBERS</b>															
DEVEREAUX, KATHLEEN	P	NM	P	P	P	P	P	NM	P	NM			7	0	100%
DIPLACIDO, GUY	P	NM	P	P	P	A	NM	A	NM	NM			4	2	67%
FEISTE, LELAND	P	NM	P	P	P	P	NM	P	NM	P			7	0	100%
KATRIB, ELICIA	P	NM	A	P	P	P	NM	P	NM	NM			5	1	83%
RICHEY, LESTER	P	NM	P	P	P	P	P	NM	P	P			8	0	100%
ROSE, CYNTHIA	P	NM	P	P	P	P	P	NM	P	P			8	0	100%
Reserved															
Reserved															
<b>ALTERNATES</b>															
MONAHAN, JASON	NM	A	NM	NM	NM	NM	NM	NM	NM	NM		*	0	1	0%
STRESS, JILL	NM	P	P	P	P	P	NM	P	NM	NM			6	0	100%
Reserved															
Reserved															
Members in attendance	6	1	6	7	7	6	3	3	3	3					

**KEY: A = Absent**  
**P = Present**  
**NM = No Meeting**  
**na = not appointed at that time**

  
**Department Head Signature**

\*Family emergency unable to attend training. Unable to participate on Board for 2018.

**OFFICE USE ONLY**Meets Requirements? ☒ Yes ☐ No☒ Will Attend / ☐ Unable to Attend**APPLICATION FOR CITY BOARD OR COMMITTEE**

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

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

(Please print clearly)

Board/Committee of Interest BOARD OF REVIEW REVENUE

Specific Category/Vacancy on Board \_\_\_\_\_ (see back of this form for information)

Name GUY DIPLACIDO Phone 248-644-1708Residential Address 726 LAKESIDE DRIVE Email \* \_\_\_\_\_Residential City, Zip BIRMINGHAM 48009 Length of Residence 55 YEARSBusiness Address \_\_\_\_\_ Occupation RETIRED CIVIL ENGINEER

Business City, Zip \_\_\_\_\_

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

I HAVE ALWAYS HAD AN INTEREST IN THE TAX STRUCTURE & BIRMINGHAM. VITALLY  
REAL ESTATE AND CONSTRUCTION EXPERIENCE. I HOLD THE OPINION I'LL DO A HONEST  
AND JUST SERVICE TO KEEP A STRONG TAX BASE IN BIRMINGHAM.

List your related employment experience SUBOIL - DISTRICT ENGINEER - REAL ESTATE ACQUISITION  
DEVELOPMENTList your related community activities BOARD OF REVIEW 26 YEARSList your related educational experience YOUNGSTOWN UNIVERSITY DEGREE CIVIL ENGINEER  
RE - REAL ESTATE UNIVERSITY OF MICHIGAN - COMPLETED HIGH MUNICIPAL  
LEAGUE CLASSES FOR LEVEL ONE ASSESSOR.

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

Signature of Applicant

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 [carft@bhamgov.org](mailto:carft@bhamgov.org) or by fax to 248.530.1080.

Updated 12/02/19

\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.



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

## APPLICATION FOR CITY BOARD OR COMMITTEE

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

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

(Please print clearly)

Board/Committee of Interest BOARD OF REVIEW

Specific Category/Vacancy on Board Regular member (see back of this form for information)

Name LESTER RICHLEY Phone 248 644 7213

Residential Address 1090 STANLEY Email \* LES.RICHLEY@BHAMGOV.ORG

Residential City, Zip BIRMINGHAM 35209 Length of Residence 41 YRS

Business Address \_\_\_\_\_ Occupation RETIRED

Business City, Zip \_\_\_\_\_

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

BEFORE 12 YRS ON THE BOARD

List your related employment experience ENGINEER

List your related community activities 18 YRS AS ELEVATOR INSPECTOR

List your related educational experience MEDICAL ENGINEER

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: THERE IS NONE

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

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

Signature of Applicant Lester Richley

Date 12/2/2020

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [clerk@bhamgov.org](mailto:clerk@bhamgov.org) or fax to 248.530.1080. Updated 11/18/2020

\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.



## NOTICE OF INTENTION TO APPOINT TO BOARD OF ZONING APPEALS

At the regular meeting of Monday, December 7, 2020 the Birmingham City Commission intends to appoint one alternate member to serve the remainder of a three-year term to expire 2/17/2023.

Interested parties may recommend others or themselves for these positions by submitting a form available from the City Clerk's office. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, December 2, 2020. Applications will appear in the public agenda at which time the City Commission will discuss recommendations, and may make nominations and vote on appointments.

### Duties of Board

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

<b>Applicant Name</b>	<b>Criteria/Qualifications</b>
	Applicants shall be property owners of record and registered voters.
Jerry Attia	Architect
Erin Rodenhouse	Attorney

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*

### SUGGESTED ACTION:

To appoint \_\_\_\_\_ as an alternate member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire 2/17/2023.



## BOARD OF ZONING APPEALS

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

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

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Attia</b> 1859 Henrietta	<b>Jerry</b>	(202) 744-2569  <i>jerry.attia@gmail.com</i>	9/16/2019  Architect Alternate	2/17/2020
<b>Canvasser</b> 369 Kimberly	<b>Jason</b>	(248) 231-9972  <i>jcanvasser@clarkhill.com</i>	7/9/2018  Attorney	10/10/2023
<b>Hart</b> 2051 Villa	<b>Kevin</b>	(248) 4967363  <i>khartassociates@aol.com</i>	2/27/2012  Architect	10/10/2023
<b>Lilley</b> 648 Cherry Ct.	<b>Richard</b>	248-594-6737  <i>dicklilley@icloud.com</i>	9/6/2018  Business owner	10/10/2023
<b>Lillie</b> 496 S. Glenhurst	<b>Charles</b>	(248) 642-6881  <i>lilliecc@sbcglobal.net</i>	1/9/1984  Attorney	10/10/2022
<b>Miller</b> 544 Brookside	<b>John</b>	(248) 703-9384  <i>feymiller@comcast.net</i>	1/23/2012  Architect	10/10/2021

<b>Last Name</b> <b>Home Address</b>	<b>First Name</b>	<b>Home Business</b> <b>E-Mail</b>	<b>Appointed</b>	<b>Term Expires</b>
<b>Morganroth</b> 631 Ann	<b>Erik</b>	(248) 762-9822 <i>emorganroth@comcast.net</i>	10/12/2015 Real Estate/Builder	10/10/2021
<b>Reddy</b> 763 Wallace	<b>Ron</b>	313-820-7491 <i>ron.reddy01@gmail.com</i>	2/11/2019 Alternate	2/17/2023
<b>Rodriguez</b> 333 Pilgrim	<b>Francis</b>	248-631-7933 <i>francis@korolaw.com</i>	12/10/2018 Attorney	10/10/2022



## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Board of Zoning Appeals

Year: 2020

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>																	
Lillie, Charles	A	A	P	P	P	P	A	P	P	P	A				7	4	64%
Miller, John	P	P	P	A	A	P	P	P	P	P	P				9	2	82%
Hart, Kevin	A	P	P	P	A	A	A	P	A	P	P				6	5	55%
Morganroth, Erik	P	P	P	P	P	P	P	P	P	P	P				11	0	100%
Canvasser, Jason	P	P	P	P	P	P	P	P	A	P	P				10	1	91%
Rodriguez, Francis	P	P	A	P	P	A	P	A	P	P	A				7	4	64%
Lilley, Richard	P	A	A	P	P	P	P	P	P	P	A				8	3	73%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
<b>ALTERNATES</b>																	
Reddy, Ron	P	P	P	P	P	P	P	P	P	P	P				11	0	100%
Attia, Jerry	P	A	A	A	A	A	A	A	A	P	P				3	8	27%
Reserved															0	0	#DIV/0!
Reserved															0	0	#DIV/0!
Present or Available	7	6	6	7	6	6	6	7	6	9	6	0	0	0			

**KEY:**

- A = Member absent
- P = Member present or available
- CP = Member available, but meeting canceled for lack of quorum
- CA = Member not available and meeting was canceled for lack of quorum
- NA = Member not appointed at that time
- NM = No meeting scheduled that month
- CM = Meeting canceled for lack of business items

  
 Department Head Signature

## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Board of Zoning Appeals

Year: 2019

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>																	
Lillie, Charles	A	A	P	A	P	P	P	P	P	A	P	P	NM	NM	8	4	67%
Judd, Randy	P	P	P	P	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	4	0	100%
Miller, John	P	A	P	P	P	P	P	A	P	P	P	A	NM	NM	9	3	75%
Hart, Kevin	P	P	P	P	P	A	P	P	P	P	P	P	NM	NM	11	1	92%
Morganroth, Eric	P	P	P	P	P	P	P	P	P	P	P	A	NM	NM	11	1	92%
Canvasser, Jason	P	A	P	P	P	P	P	P	A	P	P	P	NM	NM	10	2	83%
Rodriguez, Francis	P	P	P	P	A	P	P	P	P	P	P	P	NM	NA	11	1	92%
Lilley, Richard	NA	NA	NA	NA	NA	P	P	P	P	P	P	P	NM	NM	7	0	100%
Reserved															0	0	#DIV/0!
<b>ALTERNATES</b>																	
Lilley, Richard	P	A	A	P	P	NA	NA	NA	NA	NA	NA	NA	NA	NA	3	2	60%
Reddy, Ron	NA	P	A	A	P	P	P	P	P	P	P	A	NM	NM	8	3	73%
Attia, Jerry	NA	NA	NA	NA	NA	NA	NA	NA	NA	P	P	P	NA	NA	3	0	100%
Reserved															0	0	#DIV/0!
Present or Available	7	5	7	7	7	7	8	7	7	8	9	6	0	0			

KEY:    A = Member absent  
           P = Member present or available  
           CP = Member available, but meeting canceled for lack of quorum  
           CA = Member not available and meeting was canceled for lack of quorum  
           NA = Member not appointed at that time  
           NM = No meeting scheduled that month  
           CM = Meeting canceled for lack of business items

  
 \_\_\_\_\_  
 Department Head Signature

## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: **BOARD OF ZONING APPEALS**

Year: **2018**

Members Required for Quorum: **4**

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>MEMBERS</b>																	
Lilie, Charles	A	A	P	A	P	A	A	P	P	A	P	P	NM	NM	6	6	50%
Judd, Randy	P	P	P	P	P	A	P	P	P	P	P	P	NM	NM	11	1	92%
Lyon, Peter	P	P	P	P	P	NA	NA	NA	NA	NA	NA	NA	NM	NM	5	0	100%
Jones, Jefferey	P	P	P	P	P	P	P	P	A	NA	NA	NA	NM	NM	8	1	89%
Miller, John	P	P	A	A	P	P	A	P	P	P	P	A	NM	NM	8	4	67%
Hart, Kevin	P	P	P	P	P	P	P	P	A	P	P	P	NM	NM	11	1	92%
Morganroth, Erik	P	P	P	P	P	P	P	A	P	P	P	P	NM	NM	11	1	92%
Canvasser, Jason	NA	NA	NA	NA	NA	NA	P	P	P	P	P	P	NM	NM	6	0	100%
Francis N. Rodriguez	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	P			1	0	100%
<b>ALTERNATES</b>																	
Canvasser, Jason	P	P	P	P	P	P	NA	NA	NA	NA	NA	NA	NM	NM	6	0	100%
Francis N. Rodriguez	NA	P	P	P	A	P	A	P	P	A	P	NA	NM	NM	7	3	70%
Lilley, Richard	NA	NA	NA	NA	NA	NA	NA	NA	P	P	P	P	NM	NM	4	0	100%
Reserved															0	0	#DIV/0!
Present or Available	7	8	8	7	8	6	5	7	7	6	8	7	0	0			

**KEY:**

- A** = Member absent
- P** = Member present or available
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- CM** = Meeting canceled for lack of business items

  
 \_\_\_\_\_  
**Department Head Signature**



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

## APPLICATION FOR CITY BOARD OR COMMITTEE

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

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(Please print clearly)

Board/Committee of Interest BZA

Specific Category/Vacancy on Board \_\_\_\_\_ (see back of this form for information)

Name G Jerry Attia

Phone 2027442569

Residential Address 1859 Henrietta

Email \* jerry.attia@gmail.com

Residential City, Zip Birmingham, MI 48009

Length of Residence 4 years in current residence (20 years in Bham)

Business Address 27777 Franklin Rd., Ste 2150

Occupation Architect

Business City, Zip Southfield, MI 48034

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

I am an architect and have been a resident of Birmingham since 2001 am interested in giving back and serve the community in which I reside.

List your related employment experience I serve as the Managing Principal for AECOM in Michigan a public global infrastructure and business consulting firm.

List your related community activities currently serve as an Alternate Member of the BZA.

List your related educational experience Bachelor of Architecture, NCARB, NOMA, AIA, ULI Member

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

Attia, Jerry

Digitally signed by Attia, Jerry  
DN: cn=Attia, Jerry, ou=USLA1, ou=US, ou=AMER,  
ou=AECOM/USLA1, DC=us, DC=aecomnet, DC=com  
Reason: I am approving this document  
Date: 2020.10.06 10:51:19-04'00'

Signature of Applicant

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 [carlt@bhamgov.org](mailto:carlt@bhamgov.org) or by fax to 248.530.1080. Updated 12/02/19

*\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.*



<b>OFFICE USE ONLY</b>	
Meets Requirements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Will Attend /	<input type="checkbox"/> 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 Board of Zoning Appeals

Specific Category/Vacancy on Board 1 alternate opening (see back of this form for information)

Name Erin J. Rodenhouse

Phone 248-952-4817

Residential Address 1117 Stanley Blvd

Email erinrodenhouse@gmail.com

Residential City, Zip Birmingham, MI 48009

Length of Residence 11 yrs.

Business Address 9000 Town Center, Floor 9

Occupation Appellate Attorney

Business City, Zip Southfield, MI

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied As an appellate attorney who practices in both state and federal courts on a wide variety of corporate issues, I understand complex legal issues and the importance of thoughtful and fair appellate review.

List your related employment experience Appellate Attorney at Collins Einhorn Farrell PC

List your related community activities I have two children at Seaholm High School and am involved with their activities.

List your related educational experience BA in French and English, Hope College; JD, University of Detroit Mercy School of Law.

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.

/s/ Erin J. Rodenhouse  
Signature of Applicant

11/11/2020  
Date



## NOTICE OF INTENTION TO APPOINT TO HISTORIC DISTRICT COMMISSION

At the regular meeting of Monday, November 23, 2020, the Birmingham City Commission intends to appoint one regular member to the Historic District Commission to serve three-year terms to expire September 25, 2023 and two alternate members to serve the remainder of a three year term expiring September 25, 2022.

Interested parties may submit an application available from the City Clerk's Office on or before noon on Wednesday, November 18, 2020. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

The function and duty of the Historic District Commission is to advise the City Commission with respect to the proper development of the City with primary emphasis upon the City's established historic districts, sites, properties and historic resources. The Commission is also authorized to recommend for the guidance of the City Commission amendments to the City Code relating to the control and development of lands within historic districts.

### Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications <ul style="list-style-type: none"><li>A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation.</li><li>Must be a resident</li></ul>
Steven Lemberg	Resident

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*

### SUGGESTED ACTION:

To appoint \_\_\_\_\_, to the Historic District Commission as an alternate member to serve the remainder of a three-year term to expire September 25, 2022.



# HISTORIC DISTRICT COMMISSION

Ordinance #1880

Terms: 3 years

Members: A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation. Two members shall be appointed from a list submitted by duly organized local historic preservation organizations. If available, one member shall be an architect who has two years of architectural experience or who is duly registered in the State of Michigan.

Duties: The function and duty of the Historic District Commission is to advise the City Commission with respect to the proper development of the city with primary emphasis upon the city's established historic districts, sites, properties and historic resources. The Commission is also authorized to recommend for the guidance of the City Commission amendments to the City Code relating to the control and development of lands within historic districts.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Debbrecht</b>	<b>Gigi</b>	(248) 882-9906  <i>gigidebbrecht@yahoo.com</i>	12/3/2018  realtor	9/25/2021
564 Frank St				
<b>Deyer</b>	<b>Keith</b>	(248) 642-6390  <i>kwdeyer@comcast.net</i>	9/25/2006	9/25/2023
1283 Buckingham				
<b>Dukas</b>	<b>Natalia</b>	(248) 885-8535  <i>nataliadukas@yahoo.com</i>	9/9/2013	9/25/2022
1352 Suffield				
<b>Henke</b>	<b>John</b>	(248) 789-1640  <i>jwhenke@aol.com</i>	9/25/2006  historical preservation organization member	9/25/2021
724 South Bates				
<b>Kolo</b>	<b>Dustin</b>	(248) 935-3651  <i>dustinkolo@gmail.com</i>	11/23/2020	9/25/2023
851 Ann St				

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Lang</b> 1023 Floyd St.	<b>Patricia</b>	(248) 540-0991 <i>pal.family.friends@gmail.com</i>	12/3/2018	9/25/2021
<b>McCarthy</b> 1025 N. Glenhurst	<b>Cassandra</b>	(213) 725-3934 <i>mscassan@aol.com</i>	11/23/2020 Alternate	9/25/2022
<b>VACANT</b>			Alternate	9/25/2022
<b>Willoughby</b> 667 Greenwood	<b>Michael</b>	(248) 760-8903 <i>mwilloughby@mwa-architects.com</i>	3/22/2010 architect	9/25/2022



**OFFICE USE ONLY**

Meets Requirements? Yes No

Will Attend / Unable to Attend

**APPLICATION FOR CITY BOARD OR COMMITTEE**

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

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

(Please print clearly)

Board/Committee of Interest Historic District CommissionSpecific Category/Vacancy on Board Alternate Member (see back of this form for information)Name Steven Lemberg Phone (248) 971-9494Residential Address 648 S. Bates St. Email \* slemberg@comcast.netResidential City, Zip Birmingham, MI 48009 Length of Residence 5 yearsBusiness Address 950 E. Maple Road, Suite 208 Occupation Lawyer, CPA, ExecutiveBusiness City, Zip Birmingham, MI 48009

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

I have board experience with both for-profit and non-profit organizations. I also have considerable business experience that will allow me to effectively contribute. My background in law will be very helpful in applying and interpreting rules and regulations. My work as a CPA as a partner at PwC involved considerable work with Historic Tax Credits. I am also interested because I live on S. Bates St. surrounded by historic homes.

List your related employment experience Tax Partner at PricewaterhouseCoopers where I did significant work on historic tax credit deals. Work for private clients as a lawyer, CPA, and family office advisor.

(1) I am a member of the Michigan Historic Preservation Network.

List your related community activities (2) Because of when I live, at 648 S. Bates, the homes on either side of me (612 and 668 S. Bates) and across the street (607 and 651 S. Bates) are all historic homes.

When there were Historic District Commission hearings for 607 S. Bates, I voluntarily spoke at the hearings because of my community interest. I care very much about maintaining Birmingham's historic integrity.

List your related educational experience \_\_\_\_\_

University of Michigan Law School; University of Michigan Ross School of Business.

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

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

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

Signature of Applicant

Date

November 23, 2020

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

Updated 11/18/2020

\*By providing your email to the City, you agree to receive news & notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.



## NOTICE OF INTENTION TO APPOINT TO THE ADVISORY PARKING COMMITTEE

At the regular meeting of Monday, December 7, 2020, the Birmingham City Commission intends to appoint two regular members to the Advisory Parking Committee to serve the remainder of a three-year terms expiring September 4, 2022 (Resident shopper) and September 4, 2023 (restaurant owner), and one alternate member to serve the remainder of a three year term expiring September 4, 2023.

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, December 2, 2020. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and voter on appointments.

### Committee Duties

The Advisory Parking Committee shall provide guidance to the City Commission in the management of Birmingham's Auto Parking System. The Committee shall recognize parking requirements of the CBD and fairly assess the costs to users. It will provide for attractive, maintained and safe facilities.

### Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Downtown commercial large retail business.
Aaron Black	Resident

*NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.*

### SUGGESTED ACTION:

To appoint \_\_\_\_\_ to the Advisory Parking Committee as a regular member who is a resident shopper to serve the remainder of a three-year term to expire September 4, 2022.

To appoint \_\_\_\_\_ to the Advisory Parking Committee as a regular member who is a restaurant owner to serve the remainder of a three-year term to expire September 4, 2023.

To appoint \_\_\_\_\_ to the Advisory Parking Committee as an alternate to serve the remainder of a three-year term to expire September 4, 2023.



## ADVISORY PARKING COMMITTEE

Resolution No. 8-882-84 - August 6, 1984. Amended by Resolution No. 9-989-84  
September 4, 1984. Amended by Resolution No. 05-152-00 May 22, 2000.  
Amended by Resolution No. 05-139-17 May 22, 2017.  
Amended by Resolution No. #-###-19, October 28, 2019.

Terms: Three years

Appointment requirements for regular members: The majority of the members shall be residents and membership shall be as follows:

Downtown commercial representatives - large retail - 1 member; small retail - 1 member;  
professional firm - 1 member; Birmingham Shopping District - 1 member; restaurant owner - 1  
member; downtown employee representative - 1 member; residential - two members who do not  
qualify under any of the previous categories, and one resident shopper.

2 alternate members may be appointed who own property, own a business or work in the parking  
assessment district.

The Advisory Parking Committee shall provide guidance to the City Commission in the management of  
Birmingham's Auto Parking System. The committee shall recognize parking requirements of the CBD and

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Astrein</b> 13125 Ludlow Huntington Woods	<b>Richard</b> 48070	(248) 399-4228  <i>richard@astreins.com</i>	12/9/2019  BSD member	9/4/2021
<b>Honhart</b> 197 E. Frank Birmingham	<b>Anne</b> 48009	(248) 644-3678  <i>ahonhart@atlaswelding.com</i>	9/4/1984  Resident	9/4/2021
<b>Kalczynski</b> 100 Townsend Birmingham	<b>Steven</b> 48009	(248) 642-7900  <i>skalczynski@yahoo.com</i>	11/26/2012  Large Retail	9/4/2023
<b>Krueger</b> 348 Ferndale Ave Birmingham	<b>Lisa</b> 48009	(248) 921-0099  <i>lisakrug21@gmail.com</i>	3/30/2015  Downtown Employee Member	9/4/2023

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Paskiewicz</b> 560 Woodland Birmingham	<b>Judith</b> 48009	248-642-3337 <i>judithpaskiewicz@hotmail.com</i>	Professional Firm	9/4/2022
<b>Silverman</b> 1200 Latham Birmingham	<b>Lisa</b> 48009	248-642-3337 <i>lisas229@aol.com</i>	10/7/2019 Resident	9/4/2022
<b>VACANT</b>			Alternate	9/4/2023
<b>VACANT</b>			Resident Shopper	9/4/2022
<b>VACANT</b>			Restaurant Owner	9/4/2023
<b>Vaitas</b> 2633 Endsleigh Drive Bloomfield Village	<b>Algirdas</b> 48301	(248) 593-3177 <i>alvortho@aol.com</i>	11/13/2006 Small Retail	9/4/2021
<b>Yert</b> 490 Park St. Birmingham	<b>Jennifer</b> 48009	617-308-0080 <i>sulesq@yahoo.com</i>	8/13/2018 Alternate (Downtown Employee)	9/4/2023

## 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).

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(Please print clearly)

Board/Committee of Interest advisory parking committee

Specific Category/Vacancy on Board resident shopper (see back of this form for information)

Name Aaron Black

Phone (248) 283-4200

Residential Address 2243 Dorchester Rd

Email \* ablack@daxtonhotel.com

Residential City, Zip 48009

Length of Residence 15 months

Business Address 298 S Old Woodward Ave

Occupation General Manager

Business City, Zip 48009

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

Have operated hotels in several challenging markets with heavy reliance on public and private parking options. Possess a strong empathy for own parking challenges and those of neighboring businesses.

List your related employment experience Have managed valet parking operations in 4 & 5 star service environments for over twenty years, in both large and small markets, resort & urban

List your related community activities None to this point. Active community engagement opportunities severely limited by COVID. In the past, I've sat on the board of the Business District and non-profit Land Trust.

List your related educational experience BA in Economics, but over 25yrs in hotel management is by far more relevant to the work performed by this committee.

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: n/a

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

Are you an elector (registered voter) in the City of Birmingham? no

aaron black

11/23/20

Signature of Applicant

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 [clerk@bhamgov.org](mailto:clerk@bhamgov.org) or fax to 248.530.1080.

Updated 11/18/2020

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# **BIRMINGHAM CITY COMMISSION MINUTES**

**NOVEMBER 23, 2020**

**7:30 P.M.**

**VIRTUAL MEETING**

**MEETING ID: 655 079 760**

**Video Link: <https://vimeo.com/event/3470/videos/477443440/>**

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

Pierre Boutros, Mayor, opened the meeting with the Pledge of Allegiance.

## **II. ROLL CALL**

Alexandra Bingham, City Clerk Designee, called the roll.

Present: Mayor Boutros (location: Birmingham, MI)  
Mayor Pro Tem Longe (location: Birmingham, MI)  
Commissioner Baller (location: Birmingham, MI)  
Commissioner Hoff (location: Birmingham, MI)  
Commissioner Host (location: Birmingham, MI)  
Commissioner Nickita (location: Birmingham, MI)  
Commissioner Sherman (location: Birmingham, MI)

Absent: None.

Administration: City Manager Valentine, City Clerk Designee Bingham, Planning Director Ecker, Finance Director Mark Gerber, City Attorney Kucharek, DPS Director Lauren Wood

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

### **Announcements**

- The City has reinstated the hotline to provide residents with information about City and County COVID-19 resources. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential functions, and obtaining necessary supplies Call 248-530-1805, Monday through Friday from 8 a.m. – 5 p.m, excluding holidays.
- The City would like to thank Daniel Haugen for his service to the community on the Museum Board.

### **Appointments**

**11-233-20**

**Appointment of Dustin Kolo to the Design Review Board**

The Commission interviewed Dustin Kolo for the appointment.

**MOTION:** Nomination by Commissioner Hoff:

To appoint Dustin Kolo as a Design Review Board regular member to serve the remainder of a three-year term to expire September 25, 2023.

ROLL CALL VOTE: Ayes, Commissioner Hoff  
Commissioner Nickita  
Mayor Boutros  
Commissioner Sherman  
Commissioner Baller  
Commissioner Host  
Mayor Pro-Tem Longe

Nays, None

**11-234-20 Appointment of Samantha Cappello to the Design Review Board**

The Commission interviewed Samantha Cappello for the appointment.

**MOTION:** Nomination by Commissioner Nickita:

To appoint Samantha Cappello as a Design Review Board alternate member to serve the remainder of a three-year term to expire September 25, 2022.

ROLL CALL VOTE: Ayes, Commissioner Nickita  
Commissioner Hoff  
Mayor Boutros  
Commissioner Sherman  
Commissioner Baller  
Commissioner Host  
Mayor Pro-Tem Longe

Nays, None

**11-235-20 Appointment of Kathleen Kriel to the Design Review Board**

The Commission interviewed Kathleen Kriel for the appointment.

**MOTION:** Nomination by Mayor Pro-Tem Longe:

To appoint Kathleen Kriel as a Design Review Board alternate member to serve the remainder of a three-year term to expire September 25, 2022.

ROLL CALL VOTE: Ayes, Mayor Pro-Tem Longe  
Commissioner Nickita  
Commissioner Hoff  
Mayor Boutros  
Commissioner Sherman  
Commissioner Baller  
Commissioner Host

Nays,                      None

**11-236-20                      Appointment of Jason Emerine to the Planning Board**

The Commission interviewed Jason Emerine for the appointment.

**MOTION:**      Nomination by Commissioner Host:  
To appoint Jason Emerine to the Planning Board as an alternate member to serve a three-year term to expire November 2, 2023.

ROLL CALL VOTE:      Ayes,                      Commissioner Host  
   Mayor Pro-Tem Longe  
   Commissioner Nickita  
   Commissioner Hoff  
   Mayor Boutros  
   Commissioner Sherman  
   Commissioner Baller

Nays,                      None

**11-237-20                      Appointment of Nasseem Ramin to the Planning Board**

The Commission interviewed Nasseem Ramin for the appointment.

**MOTION:**      Nomination by Commissioner Hoff:  
To appoint Nasseem Ramin to the Planning Board as an alternate member to serve a three-year term to expire November 2, 2023.

ROLL CALL VOTE:      Ayes,                      Commissioner Hoff  
   Commissioner Host  
   Mayor Pro-Tem Longe  
   Commissioner Nickita  
   Mayor Boutros  
   Commissioner Sherman  
   Commissioner Baller

Nays,                      None

**11-238-20                      Appointment of Michael McKenzie to the Birmingham Shopping District Board**

The Commission interviewed Michael McKenzie for the appointment.

**MOTION:**      Nomination by Mayor Pro-Tem Longe, seconded by Commissioner Nickita:  
To concur with the City Manager's appointment of Michael McKenzie to the Birmingham Shopping District Board, as a member who is a resident from an adjacent neighborhood, for a four-year term to expire November 16, 2024.



ROLL CALL VOTE:   Ayes,           Mayor Pro-Tem Longe  
   Commissioner Nickita  
   Commissioner Hoff  
   Commissioner Host  
   Mayor Boutros  
   Commissioner Sherman  
   Commissioner Baller

Nays,               None

**11-239-20               Appointment of Anne Lipp to the Parks & Recreation**

The Commission interviewed Anne Lipp for the appointment.

**MOTION:**     Nomination by Mayor Pro-Tem Longe:  
To appoint Anne Lipp to the Parks and Recreation Board as an alternate member to serve the remainder of a three-year term to expire March 13, 2022.

ROLL CALL VOTE:   Ayes,           Mayor Pro-Tem Longe  
   Commissioner Nickita  
   Commissioner Hoff  
   Commissioner Host  
   Mayor Boutros  
   Commissioner Sherman  
   Commissioner Baller

Nays,               None

**11-240-20               Appointment of Dustin Kolo to the Historic District Commission**

The Commission interviewed Dustin Kolo for the appointment.

**MOTION:**     Nomination by Commissioner Hoff:  
To appoint Dustin Kolo as a Historic District Commission regular member to serve the remainder of a three-year term to expire September 25, 2023.

ROLL CALL VOTE:   Ayes,           Commissioner Hoff  
   Commissioner Nickita  
   Mayor Boutros  
   Commissioner Sherman  
   Commissioner Baller  
   Commissioner Host  
   Mayor Pro-Tem Longe

Nays,               None

**11-241-20               Appointment of Cassandra McCarthy to the Historic District Commission**

The Commission interviewed Cassandra McCarthy for the appointment.

**MOTION:** Nomination by Commissioner Sherman:

To appoint Cassandra McCarthy to the Historic District Commission as an alternate member to serve the remainder of a three-year term to expire September 25, 2022.

ROLL CALL VOTE:   Ayes,                   Commissioner Sherman  
  Commissioner Hoff  
  Commissioner Nickita  
  Mayor Boutros  
  Commissioner Baller  
  Commissioner Host  
  Mayor Pro-Tem Longe

Nays,                   None

**11-242-20                   Appointment of MD Rabbi Alam to the Cablecasting Board**

The Commission interviewed MD Rabbi Alam for the appointment.

**MOTION:** Nomination by Commissioner Host:

To appoint MD Rabbi Alam Cablecasting Board as an alternate member to serve a three-year term expiring March 30, 2022.

ROLL CALL VOTE:   Ayes,                   Commissioner Host  
  Commissioner Sherman  
  Commissioner Hoff  
  Commissioner Nickita  
  Mayor Boutros  
  Commissioner Baller  
  Mayor Pro-Tem Longe

Nays,                   None

**11-243-20                   Appointment of David Lurie to the Multi Modal Transportation Board**

The Commission interviewed David Lurie for the appointment.

**MOTION:** Nomination by Commissioner Hoff:

To appoint David Lurie as a Member at large from different geographical areas of the city to the Multi-Modal Transportation Board to serve the remainder of a three-year term to expire March 24, 2023.

ROLL CALL VOTE:   Ayes,                   Commissioner Hoff  
  Commissioner Sherman  
  Commissioner Nickita  
  Mayor Boutros  
  Commissioner Baller  
  Commissioner Host  
  Mayor Pro-Tem Longe

Nays,                      None

**11-244-20                      Appointment of David Hocker to the Multi Modal Transportation Board**

The Commission interviewed David Hocker for the appointment.

**MOTION:**      Nomination by Commissioner Host:

To appoint David Hocker as a regular member to the Multi-Modal Transportation Board to serve the remainder of a three-year term to expire March 24, 2022.

ROLL CALL VOTE:      Ayes,                      Commissioner Host  
   Commissioner Sherman  
   Commissioner Hoff  
   Commissioner Nickita  
   Mayor Boutros  
   Commissioner Baller  
   Mayor Pro-Tem Longe

Nays,                      None

**11-245-20                      Appointment of Peggy Diatch to the Public Arts Board**

The Commission interviewed Peggy Diatch for the appointment.

**MOTION:**      Nomination by Commissioner Hoff:

To appoint Peggy Diatch to the Public Arts Board as an alternate member to serve the remainder of a three-year term to expire January 28, 2023.

ROLL CALL VOTE:      Ayes,                      Commissioner Hoff  
   Commissioner Host  
   Commissioner Sherman  
   Commissioner Nickita  
   Mayor Boutros  
   Commissioner Baller  
   Mayor Pro-Tem Longe

Nays,                      None

<b>IV.      OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA</b>
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<b>V.      CONSENT AGENDA</b>
-------------------------------

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.
--

**11-246-20                      CONSENT AGENDA**

City Manager Valentine confirmed that all event applications approved as part of the consent agenda would be receiving conditional approval in light of the current pandemic. He noted there was language included in the special event applications to that effect.

In reply to Commissioner Hoff, CM Valentine confirmed that special event applications must be submitted 90 days in advance. He explained that the Chabad Center of Bloomfield Hills had undergone a change in leadership and they had been unaware of the 90 day advance requirement. CM Valentine also noted that this is a yearly Birmingham event, and that there had been no change to the application. Since there was no change in the event request, he made a one-time exception to the 90 day requirement for this event. Now that they are aware of the 90 day requirement, he said he expects they will adhere to that in the future.

The following items were pulled from the Consent Agenda:

Commissioner Baller: Item F – Shain Park Menorah Display

Item H – Cost Sharing Agreement with Oakland County Road  
Commission

Commissioner Nickita: Item D – Barnum Park Electrical  
Additions Project

Public Comment

David Bloom: Item A – City Commission meeting  
minutes of November 9, 2020

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Baller:  
To approve the Consent Agenda with the exception of Items A, D, F, and H.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Baller  
Commissioner Hoff  
Commissioner Host  
Commissioner Nickita  
Mayor Boutros  
Mayor Pro-Tem Longe

Nays, None

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated November 11, 2020, in the amount of \$1,404,934.85.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated November 18, 2020, in the amount of \$270,913.86.
- E. Resolution approving a request from the Birmingham Bloomfield Art Center to hold Art Birmingham in Shain Park and on surrounding streets on May 8-9, 2021 contingent upon compliance with all permit and insurance requirements, as well as payment of all fees and, further pursuant to any minor modifications or event cancellation that may be deemed necessary by administrative staff leading up to or at the time of the event due to public health and safety measures.
- G. Resolution approving a request from the Birmingham Memorial Day Committee to hold the Memorial Day Service in Shain Park on May 31, 2021 from 10:00 – 11:00 am, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications or event cancellation that may be deemed necessary by

administrative staff leading up to or at the time of the event due to public health and safety measures.

- I. Resolution authorizing the IT department to purchase the email backup solution and online backup storage from US Signal for a monthly cost of \$2525.60. Using funds from the IT account # 636-228.000-933.0600
- J. Resolution approving the intergovernmental agreement with Bloomfield Township for construction of the proposed fire hydrant connected to Birmingham's water supply system, and also to direct the Mayor to sign the agreement on behalf of the City.
- K. Resolution to accept the resignation of Dan Haugen from the Museum Board, thank him for his service, and direct the Clerk to fill the vacancy on the Museum Board.

### **11-247-20 (Item A) City Commission Meeting Minutes Of November 9, 2020**

Mr. Bloom noted he had expressed disappointment with some of the Commissioners' comments regarding Mayor Boutros' reappointment at the November 9, 2020 meeting.

**MOTION:** Motion by Commissioner Baller, seconded by Commissioner Host:  
To approve the City Commission meeting minutes of November 9, 2020.

ROLL CALL VOTE: Ayes, Commissioner Baller  
Commissioner Host  
Commissioner Sherman  
Commissioner Hoff  
Commissioner Nickita  
Mayor Boutros  
Mayor Pro-Tem Longe

Nays, None

### **11-248-20 (Item D) Barnum Park Electrical Additions Project**

In reply to Commissioner Nickita, DPS Director Wood explained that the majority of the impetus for this project comes from the 2008 Barnum Park Master Plan, which has been incrementally implemented since it was adopted. She said this was one of the final parts of that Plan's implementation. She also stated that DPS chooses which updates to implement across City parks according to which parks have master plans, what the relative interest in particular updates is from residents, and what the recommendations of the Parks and Recreation Board are.

Commissioner Nickita thanked DPS Director Wood.

**MOTION:** Motion by Commissioner Host, seconded by Commissioner Nickita:  
To award the Barnum Park Electrical Additions project to MHM Construction, in the amount not to exceed \$75,286.96, to be funded from account 401-751.001-981.0100 and further; to approve the appropriation and amendment to the fiscal year 2020-2021 General Fund and Capital Project Fund budgets as follows:

General Fund Revenues:

101-000.000-400.0000	Draw from Fund Balance	<u>\$45,290</u>
Total Revenue		<u>\$45,290</u>
Expenditures:		
101-999.000-999.4010	Transfer to Capital Projects Fund	<u>\$45,290</u>
Total Expenditures		<u>\$45,290</u>
<u>Capital Projects Fund Revenues:</u>		
401-000.000-400.0000	Draw from Fund Balance	\$30,000
401-751.001-699.0101	Transfer from General Fund	<u>45,290</u>
Total Revenue		<u>\$75,290</u>
Expenditures:		
101-751.001-981.0100	Public Improvements – Parks	<u>\$75,290</u>
Total Expenditures		<u>\$75,290</u>

In addition, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City of Birmingham upon receipt of the required insurances.

#### Public Comment

Cindy Rose stated that the residents who use Barnum Park have been dedicated to its improvement. She said that DPS staff have been exceptionally helpful in this process, and thanked them for their work.

ROLL CALL VOTE:   Ayes,   Commissioner Host  
   Commissioner Nickita  
   Commissioner Baller  
   Mayor Boutros  
   Mayor Pro-Tem Longe  
   Commissioner Sherman  
   Commissioner Hoff

Nays,                   None

### **11-249-20   (Item F) Shain Park Menorah Display**

Commissioner Baller recommended that the Commission require that future special event applications include a picture or rendering of proposed installations in City parks. He asked if this particular event had a picture or rendering of the menorah available.

Rabbi Levi Dubov, representative for the special event, stated it would be the same menorah that has been displayed previously.

**MOTION:**               Motion by Commissioner Baller, seconded by Commissioner Host:  
 To approve a request from the Chabad Jewish Center of Bloomfield Hills to display the Shain Park Menorah on December 10-19, 2020, with a special gathering to be held on December 13, 2020 beginning at 4:30 pm in Shain Park, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications or event

cancellation that may be deemed necessary by administrative staff leading up to or at the time of the event due to public health and safety measures.

ROLL CALL VOTE:     Ayes,   Commissioner Baller  
   Commissioner Host  
   Mayor Boutros  
   Commissioner Sherman  
   Commissioner Hoff  
   Mayor Pro-Tem Longe  
   Commissioner Nickita

Nays,                      None

## **VI.     UNFINISHED BUSINESS**

### **11-250-20                      City Manager Employment Agreement with Thomas M. Markus**

Gouri Sashital, attorney from the City's labor council Keller Thoma, reviewed the item.

There was Commission discussion regarding the fact that the employment contract would allow severance to be paid in the case of a termination that occurs with cause. Ms. Sashital said it is not uncommon for employment contracts to allow for severance to be paid in for cause' cases. She said there are also employment contracts that only permit severance to be paid when an individual is separated from employment without cause. She said selecting one course or the other would be a matter of what Mr. Markus and the Commission agree to.

In reply to an inquiry from Commissioner Baller, City Attorney Kucharek said she concurred entirely with Ms. Sashital's explanation.

In reply to an inquiry from Mayor Boutros, Mr. Markus said he preferred the contract to specify that severance would be paid even for termination for cause because:

- Birmingham's list of 'for cause' justifications is lengthy, and it would not take much work to "create cause" should there be the inclination to do so.
- He is moving to Birmingham for an employment period of two-and-a-half years. Since that is a relatively short amount of time, allowing for severance payments even in the case of a termination for cause would help protect his interests and ensure that he would not be summarily dismissed by the City without significant cost.

City Attorney Kucharek confirmed that allowing severance payments for a 'for cause' termination is not uncommon. She said that in light of the short length of the employment period it would be reasonable to permit severance payments even in the event of a 'for cause' termination.

In reply to an inquiry from Commissioner Hoff, Mr. Markus noted that laws regarding pensions have been somewhat liberalized in order to allow individuals of more advanced age to return to work. He stated that being paid his pension from his previous Birmingham employment while working in other cities was allowed. He said the appropriateness of being paid his previous Birmingham pension while working does not change even though he is returning to work in Birmingham.

Commissioner Baller and Mayor Pro Tem Longe asked that the language regarding the life insurance policy be clarified. They agreed it was unclear whether there was one life insurance policy being referred to or two.

After some discussion regarding how to clarify that the employment contract references only one life insurance policy, Commissioner Sherman recommended the following language for the contract: "The city agrees to pay the required premiums on a term insurance policy including double indemnity or accidental death or dismemberment in an amount equal to three times the employee's annual salary with a beneficiary named by an employee to receive any benefits paid. The employee agrees to contribute 20% of the annual premiums which will be paid proportionally through biweekly payroll deduction."

Ms. Sashital and City Attorney Kucharek endorsed Commissioner Sherman's language. Ms. Sashital said she would update the contract with Commissioner Sherman's language.

In response to Commissioner Baller, City Attorney Kucharek said that with the inclusion of Commissioner Sherman's language the contract appropriately protects the City's interests and represents a meeting of the minds.

Commissioner Baller asked City Attorney Kucharek whether this employment contract was lacking anything she customarily sees in such contracts.

City Attorney Kucharek said there was not.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner Nickita:  
To approve the employment agreement as amended with regards to life insurance policy with Thomas M. Markus to serve as City Manager effective January 1, 2021.

Commissioner Host said he was thrilled Mr. Markus would be joining the City, but still felt a two-and-a-half year position was too lengthy. Commissioner Host reiterated his sentiment from previous meetings that the 2016 Plan had yielded too much benefit for the downtown and too little benefit for the neighborhoods, and stated a concern that if Mr. Markus is involved with the 2040 master plan through to the end a similar outcome could result. He said for this reason a two year maximum term would be more appropriate, and that he would not be able support this resolution as a result.

#### Public Comment

Mr. Bloom welcomed Mr. Markus, applauded Commissioner Host for standing alone to represent his concerns, and said he hoped Mr. Markus would work with the neighborhoods and the downtown to bring people together.

Mr. Markus said he heard Commissioner Host's concerns, and that he would endeavor to create greater collaboration and division of benefits between the downtown and the neighborhoods. He said he was excited to return to Birmingham, and that he plans to be in the City starting in the last two weeks of December 2020.

ROLL CALL VOTE:     Ayes, Commissioner Hoff  
                                 Commissioner Nickita  
                                 Commissioner Baller  
                                 Commissioner Sherman  
                                 Mayor Boutros  
                                 Mayor Pro-Tem Longe

Nays, Commissioner Host

## **VII. NEW BUSINESS**



## **11-251-20                      FY 2019-20 Audit Presentation**

Finance Director Gerber introduced the Plante Moran audit team comprised of Douglas Bohrer, Tim St. Andrew, and Andrew Sarver.

Mr. Bohrer began by thanking the City staff involved in facilitating the audit's completion. Mr. Bohrer, Mr. St. Andrew, and Mr. Sarver presented the audit's findings.

The audit team stated:

- If the ice arena were able to become largely financially self-sufficient, it could possibly qualify as an enterprise fund. It is unusual for ice arenas to generate enough revenue for that to happen, but not impossible. More often they are included in the general fund.
- In order to create a breakdown of which City expenditures are commercial and which are residential, the City would need to generate and agree upon a number of different starting assumptions. One example would be how the City would want to categorize expenditures like public safety, which serve both residential and commercial interests. It is unlikely at this time that the City has sufficient data or tracking to undertake such a project. Such a breakdown would have to be generated from the City's internal data and not from the general ledger.

Finance Director Gerber concurred with the audit team's statement regarding a breakdown of commercial versus residential expenditures. He said even if such a report were generated he could not say to what degree the information would be reliable since it would be based on a variety of assumptions.

The audit team continued:

- 'Sensitive' as used in the cover letter in regards to notes 14 and 15 meant that the information contained in notes 14 and 15 would be more important than other information to the readers of the audit.
- The current investment returns for the pension and OPEB funds have in the past few years been short of the estimated rate of return, but looking at the rates of return over a bit longer of a term shows a rate of returns closer to the 6.75% assumption.
- The general fund policy says that the unassigned fund balance compared to budgeted expenditures should fall in the 17% to 40% range. The current unassigned fund balance compared to the budgeted expenditures is 37%.

## **11-252-20                      1<sup>st</sup> Quarter Finances**

Finance Director Gerber presented the item.

In reply to Commissioner Hoff, he stated that the City is currently a recipient of seven or eight grants all related to the current pandemic. The total amount the City will be reimbursed from those grants will be about a million dollars. Those reimbursements will come from FEMA, State, and County agencies.

## **11-253-20                      2021 Proposed Budget for 48th District Court**

FD Gerber, CM Valentine, and Louise Patton, Court Administrator, presented the item.

CM Valentine confirmed Birmingham would have a discount of approximately \$500,000 on its payments to the court as a result of reduced court business stemming from the current pandemic. He explained that while the 2021 proposed budget is based on a normal year's budget for the court, the court will reassess quarterly during 2021 to see if the charges to the contributing municipalities could be reduced.

**MOTION:** Motion by Commissioner Nickita, seconded by Commissioner Hoff:  
To receive the 2021 proposed budget from the 48th District Court; and further, to approve the budget as submitted.

ROLL CALL VOTE: Ayes, Commissioner Nickita  
Commissioner Hoff  
Mayor Pro-Tem Longe  
Commissioner Baller  
Mayor Boutros  
Commissioner Host  
Commissioner Sherman

Nays, None

### **11-254-20 Free Parking in Structures**

CM Valentine confirmed for Commissioner Baller that Commission members could submit any questions arising from this item via email for a response from City staff at the December 7, 2020 meeting.

**MOTION:** Motion by Commissioner Nickita, seconded by Mayor Pro Tem Longe:  
To postpone consideration of the resolution to approve the continuation of free parking in all structures through March 31, 2021 to the December 7, 2020 Commission meeting.

ROLL CALL VOTE: Ayes, Commissioner Nickita  
Mayor Pro-Tem Longe  
Commissioner Baller  
Mayor Boutros  
Commissioner Hoff  
Commissioner Host  
Commissioner Sherman

Nays, None

### **11-255-20 Request for Planning Board Review of Proposed Ordinance Amendments**

**MOTION:** Motion by Commissioner Nickita, seconded by Mayor Pro Tem Longe:  
To postpone consideration of the resolution to direct the proposed ordinance amendments Chapter 126, Zoning, Article 4, Section 4.44 to the Planning Board for their review and recommendation to the December 7, 2020 Commission meeting.

ROLL CALL VOTE: Ayes, Commissioner Nickita  
Mayor Pro-Tem Longe  
Commissioner Baller  
Mayor Boutros  
Commissioner Host  
Commissioner Sherman

Commissioner Hoff

Nays,            None

### **Commission Discussion on items from Prior Meeting**

**Commission Items for Future Discussion** A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

The Commissioners expressed concern about the current implementation of outdoor dining in the City.

After Commission discussion, CM Valentine summarized appropriate next steps for addressing the issues the Commissioners raised. He said a review of the resolutions the Commission passed regarding outdoor dining would be added to the December 7, 2020 Commission agenda. Establishments that remain non-compliant will be identified at that meeting. Staff will provide an update to the report on outdoor dining that was submitted to the Commission for the present meeting. After Commission review of the resolutions, the Commission could consider amending the resolutions or beginning SLUP revocation hearings for the non-compliant establishments.

Commissioner Baller asked that the staff report regarding outdoor dining be added to the Commission's agendas on the City's website.

### **VIII. REMOVED FROM CONSENT AGENDA**

#### **11-256-20                    (Item H) Cost Sharing Agreement with Oakland County Road Commission**

**MOTION:**                    Motion by Commissioner Baller, seconded by Commissioner Host:  
To postpone consideration of the resolution approving the cost sharing agreement with the Road Commission for Oakland County, agreeing to pay the City of Birmingham's share of the cost to replace the traffic signal at the intersection of Coolidge Highway and Maple Road, at a cost not to exceed \$75,000, to be charged to account number 202-303.001-971.0100, also, authorizing the Mayor to sign the agreement on behalf of the City to the December 7, 2020 Commission meeting.

ROLL CALL VOTE:    Ayes,    Commissioner Baller  
                                 Commissioner Host  
                                 Commissioner Sherman  
                                 Commissioner Hoff  
                                 Mayor Pro-Tem Longe  
                                 Commissioner Nickita  
                                 Mayor Boutros

Nays,            None

### **IX. COMMUNICATIONS**

<b>X.     REPORTS</b>
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- A.     Commissioner Reports
- B.     Commissioner Comments
- C.     Advisory Boards, Committees, Commissions' Reports and Agendas
- D.     Legislation
- E.     City Staff
  - 1.     1<sup>st</sup> Quarter 2020-21 Budget Report
  - 2.     1<sup>st</sup> Quarter 2020-21 Investment Report
  - 3.     Parking System Update

INFORMATION ONLY

<b>XI.    ADJOURN</b>
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Mayor Boutros adjourned the meeting at 11:55 p.m.

**City of Birmingham**  
**Warrant List Dated 11/25/2020**

Meeting of 12/07/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
276505	*	000855	48TH DISTRICT COURT	100.00
276506		MISC	911 MECH PLBG INC	453.75
276507		MISC	911 MECHANICAL	1,300.00
276508		005358	AARON'S EXCAVATING INC	1,950.00
276509	*	008226	KATHERINE ABELA	708.75
276510		MISC	ABOVE BOARD CONSTRUCTION INC	100.00
276511		003708	AIRGAS USA, LLC	236.82
276512		MISC	AKAY, GAMZE S	100.00
276514		MISC	AMERICAN METAL ROOFING	100.00
276515	*	MISC	ANN D EILANDER	944.47
276516		MISC	ANTO GLASS BLOCK INC	100.00
276517		007033	APPLIED IMAGING	9,600.00
276518		000500	ARTECH PRINTING INC	714.00
276519		007479	ASB DISTRIBUTORS	36.00
276520	*	006759	AT&T	332.24
276521	*	003703	AT&T MOBILITY	142.83
276522		MISC	B-DRY SYSTEM OF MICHIGAN INC	100.00
276524		MISC	BALBES CUSTOM BUILDERS INC	500.00
276525	*	003839	MATTHEW J. BARTALINO	80.00
276526	*	007540	BIO SYSTEMS, INC.	817.25
276527		MISC	BIRMINGHAM SEALCOAT INC	100.00
276528		MISC	BLOOMFIELD CONSTRUCTION CO	100.00
276529		003526	BOUND TREE MEDICAL, LLC	4,620.41
276530		MISC	BRICKWORKS PROPERTY RESTORATION	200.00
276531	*	006953	JACQUELYN BRITO	105.12
276532	*	006177	BULLSEYE TELECOM INC	128.92
276533		MISC	BUTCHER & BUTCHER CONSTRUCTION COMP	100.00
276534		005238	CBTS	5,843.89
276535	*	000444	CDW GOVERNMENT INC	28.82
276536	*	006840	CHAPP & BUSHEY OIL CO. INC.	709.66
276537		007710	CINTAS CORP	371.50
276538		000605	CINTAS CORPORATION	236.40
276539	*	008006	CLEAR RATE COMMUNICATIONS, INC	1,392.31
276540		000979	COMERICA BANK	12,031.57
276541		MISC	CREATIVE BRICK PAVING & LANDSCAPING	1,000.00
276542		MISC	D & W WINDOWS & SUNROOMS	100.00
276543		008005	DE LAGE LANDEN FINANCIAL SVCS INC	182.44
276544		000177	DELWOOD SUPPLY	60.70
276545		MISC	DOMENICO BRICK PAVING	200.00
276546	*	006700	DRV CONTRACTORS, LLC	57,172.50
276547	*	000180	DTE ENERGY	10,076.74
276549	*	004574	FAIR-WAY TILE & CARPET, INC.	2,884.00

# City of Birmingham

## Warrant List Dated 11/25/2020

Meeting of 12/07/2020

Check Number	Early Release	Vendor #	Vendor	Amount
276550		001223	FAST SIGNS	78.69
276551		MISC	FOREST ELM LLC	36,400.00
276552		007212	FOSTER BLUE WATER OIL	781.29
276553		MISC	FOUNDATION SYSTEMS OF MICHIGAN INC.	200.00
276554		MISC	FOUR SEASONS GARDEN CENTER	100.00
276555		006384	GEOGRAPHIC INFORMATION SERVICES, IN	269.83
276556	*	004604	GORDON FOOD	704.01
276557		004878	GOVERNMENT FINANCE OFFICERS	150.00
276558		MISC	GRAHAM CARPENTRY INC	50.00
276559		008293	GRAINGER	2,322.18
276560		000249	GUARDIAN ALARM	246.80
276560	*	000249	GUARDIAN ALARM	2,686.92
276561		006346	HARRELL'S LLC	3,171.20
276562		003132	HASTINGS AIR-ENERGY CONTROL INC	391.71
276563		MISC	HENNESSY INDUSTRIES	249.95
276564		MISC	HUGHES BUILDING LLC	100.00
276565		005990	ICC INC	145.00
276566		004837	IDEACORE, LLC	75.00
276567		MISC	JOHN MCCARTER CONSTRUCTION LLC	100.00
276568	*	009245	KARA MCGLASHAN	50.00
276569	*	009238	KATHERINE ROSE COLLINS	165.00
276570		MISC	KEARNS BROTHERS INC	700.00
276571		MISC	Kevin & Patty Cleary	500.00
276572		000353	KNAPHEIDE TRUCK EQUIPMENT	2,852.39
276573		008553	L.G.K. BUILDING, INC	450.00
276574	*	009244	LABELSTOP INC	255.00
276575		MISC	LICHWALLA, WILLIAM	100.00
276576	*	007977	KAREN LINGENFELTER	54.00
276577		MISC	LIVE WELL CUSTOM HOMES LLC	5,950.00
276578	*	001171	JIM LOTRIDGE	73.14
276579	*	007521	LUIGI FERDINANDI & SON INC	73,286.82
276580		MISC	MARTINO ENTERPRISES INC	500.00
276581		MISC	MAS TEC NETWORK SOLUTIONS	300.00
276582		MISC	MASSIMO D AGOSTINO	100.00
276583		000972	MCKESSON MEDICAL-SURGICAL	352.39
276585		MISC	MERRILLWOOD COLLECTION	200.00
276586		MISC	METRO DETROIT SIGNS INC	100.00
276588		MISC	MILLCREEK CONSTRUCTION MGMT CO	2,000.00
276589		MISC	MISKO PLBG LLC	906.79
276590		002671	MMA	100.00
276591		007163	MOBILE HEALTH RESOURCES	1,625.37
276592	*	007755	NETWORK SERVICES COMPANY	1,587.20
276593	*	005431	NILFISK, INC.	22.76

# City of Birmingham

## Warrant List Dated 11/25/2020

Meeting of 12/07/2020

Check Number	Early Release	Vendor #	Vendor	Amount
276594	*	000477	OAKLAND COUNTY	1,234.75
276595	*	008548	OAKWAY MUTUAL AID ASSOCIATION	942.12
276596	*	003461	OBSERVER & ECCENTRIC	879.66
276598		001366	OSBURN INDUSTRIES INC	1,044.75
276600		002518	PITNEY BOWES INC	234.17
276601		008974	PREMIER PET SUPPLY	190.97
276602		007252	RAY WIEGAND'S NURSERY INC.	597.75
276603	*	000492	REGISTER OF DEEDS	1,380.00
276604		MISC	RENEWAL BY ANDERSEN	500.00
276605	*	005344	RESERVE ACCOUNT	8,000.00
276606		MISC	ROBERTSON DEVLEOPMENT	1,000.00
276607		008815	SHI INTERNATIONAL CORP.	783.00
276608		000260	SPARTAN DISTRIBUTORS INC	290.09
276609		001005	STATE OF MICHIGAN	138.12
276609	*	001005	STATE OF MICHIGAN	138.12
276610		MISC	STEWART BUILDING	2,000.00
276611		MISC	SUE ELLEN SIMON	200.00
276612	*	009237	TESSA BANKS	232.68
276613		MISC	THE ALBERT M. HIGLEY COMPANY	1,000.00
276614	*	002433	THELMA GOLDEN	121.75
276615		000275	TIRE WHOLESALERS CO INC	141.42
276616		MISC	UNITED BUILDING SERVICE	200.00
276617	*	000293	VAN DYKE GAS CO.	126.54
276618	*	000158	VERIZON WIRELESS	49.25
276619	*	000158	VERIZON WIRELESS	493.84
276620		MISC	WEATHERGARD WINDOWS CO INC	500.00
276621		MISC	WEHBI, MOHAMAD	300.00
276623	*	005794	WINDSTREAM	965.16
276624		009128	WITMER PUBLIC SAFETY GROUP INC	1,150.36
SUBTOTAL PAPER CHECK				\$281,349.03

### ACH TRANSACTION

3113	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	30,380.60
3115		008655	ANGELO IAFRATE CONSTRUCTION	79,100.00
3116	*	000517	BEIER HOWLETT P.C.	43,770.50
3117	*	007345	BEVERLY HILLS ACE	51.26
3118	*	007624	BIRMINGHAM OIL CHANGE CENTER, LLC	40.99
3119	*	008840	BIRMINGHAM PUBLIC SCHOOLS-TAXES	46,019.83
3120	*	003282	LISA MARIE BRADLEY	162.00
3121	*	006380	C & S ICE RESURFACING SERVICES, INC	410.26
3122	*	008044	CLUB PROPHET	540.00
3123		009195	CROWN CASTLE FIBER LLC	643.00
3125	*	007359	DETROIT CHEMICAL & PAPER SUPPLY	220.09
3126	*	000565	DORNBOS SIGN & SAFETY INC	2,001.77

**City of Birmingham**  
**Warrant List Dated 11/25/2020**

Meeting of 12/07/2020

Check Number	Early Release	Vendor #	Vendor	Amount
3127		001077	DUNCAN PARKING TECH INC	5,576.16
3128		000243	GRAINGER	3,990.36
3129	*	003938	HART PAVEMENT STRIPING CORP	1,500.00
3131		007035	INNOVATIVE OFFICE TECHNOLOGY GROUP	94.11
3132	*	007870	J.C. EHRLICH CO. INC.	74.00
3133		000261	J.H. HART URBAN FORESTRY	12,567.88
3134	*	003458	JOE'S AUTO PARTS, INC.	1,030.22
3136	*	005550	LEE & ASSOCIATES CO., INC.	2,391.78
3138	*	006359	NYE UNIFORM COMPANY	3,060.36
3139	*	008843	OAKLAND COUNTY TREASURER- TAX PYMNT	57,757.64
3140	*	002767	OSCAR W. LARSON CO.	84.36
3141	*	005688	PEGASUS ENTERTAINMENT INC	850.00
3142	*	006027	PENCHURA, LLC	228.20
3143	*	003554	RKA PETROLEUM	1,168.05
3145		000254	SOCRRA	68,287.00
3146		005787	SOUTHEASTERN EQUIPMENT CO. INC	323.41
3147	*	004887	TRUCK & TRAILER SPECIALTIES INC	43.80
3148		009223	VARI SALES CORPORATION	14,575.00
SUBTOTAL ACH TRANSACTION				\$376,942.63
GRAND TOTAL				\$658,291.66

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**  
**Warrant List Dated 12/02/2020**

Meeting of 12/07/2020

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
276578	*	001171	JIM LOTRIDGE	73.14
276625		005430	21ST CENTURY MEDIA- MICHIGAN	1,294.80
276626		MISC	90TH DISCTICT COURT - CHARLEVOIX	200.00
276627		005358	AARON'S EXCAVATING INC	1,950.00
276628		000167	ANDERSON ECKSTEIN WESTRICK INC	22,709.05
276629	*	008977	JOBMATCH LLC DBA APPLICANTPRO	2,781.00
276630	*	006759	AT&T	959.03
276631	*	006759	AT&T	2,104.89
276632	*	006759	AT&T	186.18
276633		000843	BAKER & TAYLOR BOOKS	1,744.48
276634	*	003839	MATTHEW J. BARTALINO	80.00
276635		MISC	BCM HOME IMPROVEMENT	100.00
276636		MISC	BELFOR USA GROUP INC	300.00
276637		MISC	BERNS LANDSCAPING SERV.INC	100.00
276638		002231	BILLINGS LAWN EQUIPMENT INC.	35.64
276639		003526	BOUND TREE MEDICAL, LLC	15.84
276640	*	MISC	CHRISTOPHER CARROLL	557.55
276641		000605	CINTAS CORPORATION	37.75
276642		001318	CLOVERDALE EQUIPMENT CO	1,495.00
276643		004188	COFFEE BREAK SERVICE, INC.	78.25
276644	*	008955	COMCAST	113.35
276645		000979	COMERICA BANK	4,875.79
276646	*	000627	CONSUMERS ENERGY	4,258.24
276647		002167	CONTR. WELDING & FABRICATING INC	4,685.00
276648		MISC	CREATIVE BRICK PAVING & LANDSCAPING	350.00
276649	*	000177	DELWOOD SUPPLY	182.20
276650	*	MISC	DORIS E OMAND REV TRUST	667.00
276651	*	000179	DTE ENERGY	5,334.17
276652	*	000179	DTE ENERGY	15.70
276653	*	000179	DTE ENERGY	18.45
276654	*	000179	DTE ENERGY	559.05
276655	*	000179	DTE ENERGY	616.78
276656	*	000179	DTE ENERGY	16.95
276657	*	000179	DTE ENERGY	15.58
276658	*	000179	DTE ENERGY	20.45
276659	*	000179	DTE ENERGY	48.72
276660	*	000179	DTE ENERGY	1,691.58
276661	*	000179	DTE ENERGY	15.45
276662	*	000179	DTE ENERGY	3,111.57
276663	*	000179	DTE ENERGY	5,036.52
276664	*	000179	DTE ENERGY	1,326.79
276665	*	000179	DTE ENERGY	5,664.35

**City of Birmingham**  
**Warrant List Dated 12/02/2020**

Meeting of 12/07/2020

Check Number	Early Release	Vendor #	Vendor	Amount
276666	*	000179	DTE ENERGY	326.68
276667	*	000179	DTE ENERGY	41.21
276668	*	000179	DTE ENERGY	2,082.56
276669	*	000179	DTE ENERGY	80.49
276670	*	MISC	EDGE HOMES	200.00
276671		004615	ENGLISH GARDENS	2,996.26
276672		006689	F.D.M. CONTRACTING INC.	1,000.00
276673		000585	FARMINGTON COMM. LIBRARY	7,881.78
276674	*	007366	FIRST ADVANTAGE OCCUPATIONAL	171.52
276675		007016	FRIENDS OF BIRMINGHAM MUSEUM	8,338.84
276676	*	008007	GREAT LAKES WATER AUTHORITY	9,232.47
276677	*	006666	GRID 4 COMMUNICATIONS INC.	284.77
276678		MISC	HADDAD, JOHN	100.00
276679		006346	HARRELL'S LLC	5,648.70
276680		005820	HENKE MFG	2,048.16
276681	*	007211	HOME DEPOT CREDIT SERVICES	61.38
276682		MISC	HOME DIMENSIONS	300.00
276683	*	006801	HOWLEY AGENCY SALES	821.71
276684		000342	IBS OF SE MICHIGAN	139.95
276685		MISC	JOSH BOUCHARD	116.57
276686		MISC	KETAI, JOSHUA	200.00
276687		008831	KIESLER POLICE SUPPLY, INC	503.20
276688		005968	KOALA-T CONSTRUCTION CO	14,954.99
276690		MISC	LYNCH CUSTOM HOMES	1,900.00
276691		000369	MCMI	1,262.50
276692		009200	MICHAEL MORRISON	700.00
276693	*	007394	MICHIGAN URBAN SEARCH & RESCUE	1,590.00
276694		002013	MIDWEST TAPE	462.35
276695		008319	MKSK INC	3,096.10
276696		001194	NELSON BROTHERS SEWER	130.00
276697	*	004370	OCCUPATIONAL HEALTH CENTERS	75.00
276698		008669	OHM ADVISORS INC	184,064.50
276699	*	007633	CASEY PEDERSEN	90.04
276700	*	000801	POSTMASTER	2,000.00
276701		002852	QMI GROUP INC	542.52
276702	*	008342	RAIN MASTER CONTROL SYSTEMS	29.85
276703		MISC	RPQUALITY LLC PROPERTY MANAGEMENT	100.00
276704		MISC	RYLN HOMES & REMODELING	200.00
276705	*	MISC	SARAH KEIDEL GAGNON	1,173.11
276706	*	004882	ELEANOR SIEWERT	250.00
276707		008073	SITEONE LANDSCAPE SUPPLY, INC	5,610.40
276707	*	008073	SITEONE LANDSCAPE SUPPLY, INC	587.06
276708	*	001097	SOCWA	115,266.50

**City of Birmingham**  
**Warrant List Dated 12/02/2020**

Meeting of 12/07/2020

Check Number	Early Release	Vendor #	Vendor	Amount
276709		001005	STATE OF MICHIGAN	5,687.18
276710	*	004355	SYMETRA LIFE INSURANCE COMPANY	33,871.42
276711		000286	TARGET SPECIALTY PRODUCTS	5,523.88
276712		MISC	TEMPLETON BUILDING COMPANY	100.00
276713		MISC	TRESNAK CONSTRUCTION INC	100.00
276714		005806	ULINE	423.15
276715	*	009177	VANDYKE HORN PUBLIC RELATIONS LLC	11,500.00
276716		MISC	WALLSIDE INC	500.00
276717		MISC	WINDOW PRO HOLDINGS LLC	100.00
276718		005657	WINTER EQUIP CO, INC	1,819.46
276719		007620	WJE-WISS, JANNEY, ELSTNER ASSOC.INC	307.50
276720	*	004512	WOLVERINE POWER SYSTEMS	248.40
SUBTOTAL PAPER CHECK				\$512,268.45
<u>ACH TRANSACTION</u>				
3149	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	49,265.46
3152	*	002284	ABEL ELECTRONICS INC	1,064.95
3153		009126	AMAZON CAPITAL SERVICES INC	5,814.72
3154	*	000518	BELL EQUIPMENT COMPANY	564.74
3155		006683	BIRMINGHAM LAWN MAINTENANCE	21,191.00
3156	*	007624	BIRMINGHAM OIL CHANGE CENTER, LLC	123.40
3157		006077	DI PONIO CONTRACTING INC	251,441.27
3158	*	001077	DUNCAN PARKING TECH INC	1,580.67
3159		000217	FOUR SEASON RADIATOR SERVICE INC	463.15
3160	*	008851	INSIGHT INVESTMENT	5,725.09
3161		000261	J.H. HART URBAN FORESTRY	15,616.13
3162	*	005550	LEE & ASSOCIATES CO., INC.	617.04
3163		000795	LIBRARY DESIGN ASSOCIATES, INC.	1,112.00
3164	*	002456	SALES MARKETING GROUP INC	1,354.33
3165		005787	SOUTHEASTERN EQUIPMENT CO. INC	420.11
3166	*	002037	TOTAL ARMORED CAR SERVICE, INC.	758.36
3167	*	004692	TRANSPARENT WINDOW CLEANING	5,720.00
3168	*	007278	WHITLOCK BUSINESS SYSTEMS, INC.	1,649.07
SUBTOTAL ACH TRANSACTION				\$364,481.49

**City of Birmingham**  
**Warrant List Dated 12/02/2020**

Meeting of 12/07/2020

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$876,749.94

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.

**DATE:** December 2<sup>nd</sup>, 2020

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

**FROM:** John Galik, Superintendent Designee  
Carlos Jorge, Facilities Superintendent

**SUBJECT:** Adams Fire Station Upgrade Emergency Generator

---

**INTRODUCTION:**

- The emergency backup generator at the Adams Fire Station has reached the end of its useful life. In order to avoid costly repairs or failure to provide power to emergency first response systems in the event of an outage, funds were budgeted in this fiscal year for its replacement.

**BACKGROUND:**

- A Request for Proposals was posted to MITN. Interested firms were required to register for and attend a mandatory pre-bid meeting. The pre-bid meeting was scheduled to review, tour the facility, and answer any questions regarding the request for proposals. Five interested firms attended the pre-bid meeting, and four firms submitted bids for the City of Birmingham Adams Fire Station Upgrade Emergency Generator contract. The firms and bid amounts submitted are as follows:

<b>Firm</b>		<b>Total Amount</b>
P.M. Technologies		\$46,425.00
Innovated Energy Controls (Alt. Equipment)		\$42,727.00
Innovated Energy Controls		\$41,965.00
Allied Building Services		\$40,465.00
Wolverine Power Systems		\$39,500.00

- After reviewing all bids and directing staff to verify references and the ability for each firm to perform the requested service as outlined in the Request for Proposals, we requested additional information and clarification from the firm submitting the lowest cost proposal.
- The lowest bidder Wolverine Power Systems, based on their response, presented the best and most qualified proposal and met all of the City requirements for the contract.
- It is recommended to award the City of Birmingham Adams Fire Station Upgrade Emergency Generator contract to Wolverine Power Systems, in an amount not to exceed \$39,500.00.

**LEGAL REVIEW:**

- City Attorney Mary Kucharek has provided a legal review of the contract agreement for City of Birmingham Adams Station Upgrade Emergency Generator with Wolverine Power Systems.

**FISCAL IMPACT:**

This item was included in the approved 2020-2021 budget in account #101-336-000-971-0100.

**SUMMARY**

- In light of the project specifications and review of the proposals received in response to the Request for Proposals for City of Birmingham Adams Fire Station Upgrade Emergency Generator, Wolverine Power Systems has met the requirements and has presented the best and most qualified proposal. It is therefore recommended that the contract award for City of Birmingham Adams Fire Station Upgrade Emergency Generator go to Wolverine Power Systems for an amount not to exceed \$39,500.00.

**ATTACHMENTS:**

- RFP including completed attachments B, C, and D
- Agreement

**SUGGESTED RESOLUTION:**

- To approve the contract with Wolverine Power Systems in an amount not to exceed \$39,500.00 to perform City of Birmingham Adams Fire Station Upgrade Emergency Generator from account #101-336-000-971-0100; and to direct the Mayor and City Clerk to sign the agreement on behalf of the City.



**REQUEST FOR PROPOSALS**  
**For Adams Fire Station Upgrade Emergency Generator**

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Sealed proposals endorsed **“Adams Fire Station New Emergency Generator”**, will be received at the Office of the City Clerk, 151 Martin Street, PO Box 3001, Birmingham, Michigan, 48012; until **10:00AM on November 24<sup>th</sup>, 2020** after which time bids will be publicly opened and read.

**Bidders will be required to attend a mandatory pre-bid meeting on November 10<sup>th</sup>, 2020 at 9:00AM, at the Adams Fire Station located at 572 S. Adams, Birmingham, MI 48009. Bidders must register for the pre-bid meeting by November 9<sup>th</sup>, 2020 by contacting Carlos Jorge at 248-530-1882.**

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional firms to furnish and to install a new emergency generator to provide electricity to the Adams Fire Station for the City of Birmingham. This work must be performed as specified accordance with the specifications contained in the Request For Proposals (RFP).

The RFP, including the Specifications, may be obtained online from the Michigan Inter-governmental Trade Network at <http://www.mitn.info> or at the City of Birmingham, 151 Martin St., Birmingham, Michigan, and ATTENTION: Carlos Jorge.

The acceptance of any proposal made pursuant to this invitation shall not be binding upon the City until an agreement has been executed.

<b>Submitted to MITN:</b>	October 28 <sup>th</sup> , 2020 <b>Mandatory</b>
<b>Pre-Bid Meeting:</b>	November 10 <sup>th</sup> , 2020 at 9:00AM Adams Fire Station, Training Room 572 S. Adams, Birmingham, MI 48009
<b>Deadline for Submissions:</b>	November 24 <sup>th</sup> , 2020 at 10:00AM
<b>Contact Person:</b>	Carlos Jorge P.O. Box 3001, 151 Martin Street Birmingham, MI 48012-3001 Phone: 248-530-1882 Email: Cjorge@Bhamgov.org



**REQUEST FOR PROPOSALS**  
**For Adams Fire Station Upgrade Emergency Generator**

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**Contents**

<a href="#"><u>INTRODUCTION</u></a> .....	3
<a href="#"><u>REQUEST FOR PROPOSALS (RFP)</u></a> .....	3
<a href="#"><u>MANDATORY PRE-BID MEETING</u></a> .....	3
<a href="#"><u>INVITATION TO SUBMIT A PROPOSAL</u></a> .....	3
<a href="#"><u>INSTRUCTIONS TO BIDDERS</u></a> .....	4
<a href="#"><u>EVALUATION PROCEDURE AND CRITERIA</u></a> .....	5
<a href="#"><u>TERMS AND CONDITIONS</u></a> .....	5
<a href="#"><u>CONTRACTOR’S RESPONSIBILITIES</u></a> .....	6
<a href="#"><u>CITY RESPONSIBILITY</u></a> .....	7
<a href="#"><u>SETTLEMENT OF DISPUTES</u></a> .....	7
<a href="#"><u>INSURANCE</u></a> .....	7
<a href="#"><u>CONTINUATION OF COVERAGE</u></a> .....	7
<a href="#"><u>EXECUTION OF CONTRACT</u></a> .....	8
<a href="#"><u>INDEMNIFICATION</u></a> .....	8
<a href="#"><u>CONFLICT OF INTEREST</u></a> .....	8
<a href="#"><u>EXAMINATION OF PROPOSAL MATERIALS</u></a> .....	8
<a href="#"><u>PROJECT TIMELINE</u></a> .....	8
<a href="#"><u>SCOPE OF WORK</u></a> .....	8
<a href="#"><u>ATTACHMENT A - AGREEMENT</u></a> .....	12
<a href="#"><u>ATTACHMENT B - BIDDER’S AGREEMENT</u></a> .....	18
<a href="#"><u>ATTACHMENT C - COST PROPOSAL</u></a> .....	19
<a href="#"><u>ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM</u></a> ....	20



## INTRODUCTION

For purposes of this request for proposals the City of Birmingham will hereby be referred to as “City” and the private firm will hereby be referred to as “Contractor.”

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional firms to furnish and to install a new emergency generator to provide electricity to the Adams Fire Station Facility located at 572 S. Adams, Birmingham, Michigan 48009. This work must be performed as specified accordance with the specifications outlined by the Scope of Work contained in this Request For Proposals (RFP).

During the evaluation process, the City reserves the right where it may serve the City’s best interest to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation.

It is anticipated the selection of a firm will be completed by December 7<sup>th</sup>, 2020. An Agreement for services will be required with the selected Contractor. A copy of the Agreement is contained herein for reference. Contract services will commence upon execution of the service agreement by the City.

## REQUEST FOR PROPOSALS (RFP)

The purpose of this RFP is to request sealed bid proposals from qualified parties presenting their qualifications, capabilities and costs to furnish and to install of a new emergency generator to provide electricity to the Adams Fire Station Facility located at 572 S. Adams, Birmingham, Michigan 48009.

## MANDATORY PRE-BID MEETING

Prior to submitting a bid, interested firms are required to attend a pre-bid meeting to conduct an on-site visit of the location and access to the project location to make inquiries about the RFP. **November 10<sup>th</sup>, 2020 at 9:00AM**, 572 S. Adams, Birmingham, MI 48009. **Please RSVP by November 9<sup>th</sup>.**

## INVITATION TO SUBMIT A PROPOSAL

Proposals shall be submitted no later than 10:00AM on November 24<sup>th</sup>, 2020 to:

City of Birmingham  
Attn: City Clerk  
151 Martin Street  
Birmingham, Michigan 48009

**PLEASE NOTE: Due to Covid-19 the Municipal Building at 151 Martin is closed to the public with the exception of the Police Station vestibule on the East side (Pierce St.) of the building. Inside the vestibule, there is a drop box. Proposal must be clearly labeled: Attention City Clerk - Adams Fire Station New Emergency Generator.**

One (1) original and one (1) copy of the proposal shall be submitted. The proposal should be firmly sealed in an envelope, which shall be clearly marked on the outside, **“Adams Fire Station New Emergency Generator”**. Any proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the proposer. Proposer may submit more than one proposal provided each proposal meets the functional requirements.

## **INSTRUCTIONS TO BIDDERS**

1. Any and all forms requesting information from the bidder must be completed on the attached forms contained herein (see Contractor's Responsibilities). If more than one bid is submitted, a separate bid proposal form must be used for each.
2. Any request for clarification of this RFP shall be made in writing and delivered to: Carlos Jorge, Maintenance Supervisor, City of Birmingham, 151 Martin Street, Birmingham, MI 48009 or [cjorge@bhamgov.org](mailto:cjorge@bhamgov.org). Such request for clarification shall be delivered, in writing, no later than 5 days prior to the deadline for submissions.
3. All proposals must be submitted following the RFP format as stated in this document and shall be subject to all requirements of this document including the instruction to respondents and general information sections. All proposals must be regular in every respect and no interlineations, excisions, or special conditions shall be made or included in the RFP format by the respondent.
4. The contract will be awarded by the City of Birmingham to the most responsive and responsible bidder with the lowest price and the contract will require the completion of the work pursuant to these documents.
5. Each respondent shall include in his or her proposal, in the format requested, the cost of performing the work. Municipalities are exempt from Michigan State Sales and Federal Excise taxes. Do not include such taxes in the proposal figure. The City will furnish the successful company with tax exemption information when requested.
6. Each respondent shall include in their proposal the following information: Firm name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail

address of an individual in their organization to whom notices and inquiries by the City should be directed as part of their proposal.

## **EVALUATION PROCEDURE AND CRITERIA**

The evaluation panel will consist of City staff and any other person(s) designated by the City who will evaluate the proposals based on, but not limited to, the following criteria:

1. Ability to provide services as outlined.
2. Related experience with similar projects, Contractor background, and personnel qualifications.
3. Quality of materials proposed.
4. Overall Costs.
5. References.

## **TERMS AND CONDITIONS**

1. The City reserves the right to reject any or all proposals received, waive informalities, or accept any proposal, in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Contractor if the successful Contractor does not execute a contract within ten (10) days after the award of the proposal.
2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.
3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.
4. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.
5. The cost of preparing and submitting a proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.
6. The successful bidder will be required to furnish a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned upon the faithful performance of the contract, and completion on or before the date specified.

7. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.
8. The Contractor will not exceed the timelines established for the completion of this project.
9. The successful bidder shall enter into and will execute the contract as set forth and attached as Attachment A.

## **CONTRACTOR'S RESPONSIBILITIES**

Each bidder shall provide the following as part of their proposal:

1. Complete and sign all forms requested for completion within this RFP.
  - a. Bidder's Agreement (Attachment B - p. 16)
  - b. Cost Proposal (Attachment C - p. 17)
  - c. Iran Sanctions Act Vendor Certification Form (Attachment D - p. 18)
  - d. Agreement (p. 10 – **only if selected by the City**).
2. Provide a description of completed projects that demonstrate the firm's ability to complete projects of similar scope, size, and purpose, and in a timely manner, and within budget.
3. Provide a written plan detailing the anticipated timeline for completion of the tasks set forth in the Scope of Work (p. 9).
4. The Contractor will be responsible for any changes necessary for the plans to be approved by the City of Birmingham.
5. Provide a description of the firm, including resumes and professional qualifications of the principals involved in administering the project.
6. Provide a list of sub-contractors and their qualifications, if applicable.
7. Provide three (3) client references from past projects, include current phone numbers. At least two (2) of the client references should be for projects utilizing the same materials included in the Contractor's proposal.
8. The Contractor will be responsible for the disposal of all material and any damages which occur as a result of any of employees or subcontractors of the Contractor during this project.

9. The contractor will be responsible for getting the Electrical permits at no cost to the contractor.
10. The successful bidder shall provide a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned upon the faithful performance of the contract, and completion on or before the date specified.
11. Provide a project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline.

### **CITY RESPONSIBILITY**

1. The City will provide a designated representative to work with the Contractor to coordinate both the City's and Contractor's efforts and to inspect and verify any work performed by the Contractor.
2. The City will provide access to the City of Birmingham during regular business hours or during nights and weekends as approved by the City's designated representative.

### **SETTLEMENT OF DISPUTES**

The successful bidder agrees to certain dispute resolution avenues/limitations. Please refer to paragraph 17 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

### **INSURANCE**

The successful bidder is required to procure and maintain certain types of insurances. Please refer to paragraph 12 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

### **CONTINUATION OF COVERAGE**

The Contractor also agrees to provide all insurance coverages as specified. Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the agreement, the City may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the contract amount. In obtaining such coverage, Birmingham shall have no obligation to procure the most cost effective coverage but may contract with any insurer for such coverage.

## **EXECUTION OF CONTRACT**

The bidder whose proposal is accepted shall be required to execute the contract and to furnish all insurance coverages as specified within ten (10) days after receiving notice of such acceptance. Any contract awarded pursuant to any bid shall not be binding upon the City until a written contract has been executed by both parties. Failure or refusal to execute the contract shall be considered an abandoned all rights and interest in the award and the contract may be awarded to another. The successful bidder agrees to enter into and will execute the contract as set forth and attached as Attachment A.

## **INDEMNIFICATION**

The successful bidder agrees to indemnify the City and various associated persons. Please refer to paragraph 13 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

## **CONFLICT OF INTEREST**

The successful bidder is subject to certain conflict of interest requirements/restrictions. Please refer to paragraph 14 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

## **EXAMINATION OF PROPOSAL MATERIALS**

The submission of a proposal shall be deemed a representation and warranty by the Contractor that it has investigated all aspects of the RFP, that it is aware of the applicable facts pertaining to the RFP process and its procedures and requirements, and that it has read and understands the RFP. Statistical information which may be contained in the RFP or any addendum thereto is for informational purposes only.

## **PROJECT TIMELINE**

It is expected that the work for this project will begin no later than late December 2020 and be completed within Ten (10) weeks weather permitted.

The Contractor will not exceed the timelines established for the completion of this project.

## **SCOPE OF WORK**

The Contractor shall perform the following services in accordance with the requirements as defined and noted herein:

## Equipment

### **Quantity 1:**

The new generator system will be based: on a Generac Industrial, gaseous engine-driven generator or City approved equal, naturally aspirated 4.5L in-line 4-cylinder engine consisting of the following features and accessories:

- Stationary Emergency-Standby rated
- 35 kW rating, wired for 120/208 VAC three phase, 60 Hz
- Permanent Magnet Excitation
- MLCB, 80% rated thermal-magnetic 150 Amp
- Secondary MLCB, 80% rated thermal-magnetic 150 Amp
- Natural Gas fuel system
- Standard Weather Protective Enclosure, Steel Industrial Grey Baked-On Powder Coat Finish • EPA Certified
- Power Zone Pro Digital Control Panel meets NFPA 99 and 110 requirements of 4.3" Resistive Color Touchscreen
  - ☐ Built-in Wi-Fi, Bluetooth, and Webserver (via Power Zone Connectivity Server) ☐ IP65 (front)
  - ☐ Auto/Manual/Off key switch, Alarm Indication, Not in Auto Indication, audible alarm, emergency stop switch
  - ☐ Programmable I/O
  - ☐ Built-in PLC for special applications
    - o Engine function monitoring and control:
    - o I2T function for full generator protection
    - o Selectable low-speed exercise
    - o 2-wire start controls for transfer switch
- 21 Light Remote Annunciator, surface or flush mount
- Remote Emergency Stop Switch, Break-Glass
- 110 AH, 925 CCA Group 31 Battery, with cables, tray and rack, installed • Block Heater, 1500 watt: • 120VAC Receptacle
- AC Load Center, unit mounted
- Std Heavy Duty Air Cleaner
- Battery Charger, 10 Amp
- Flex Fuel Hose, shipped loose
- Critical Grade Silencer
- 1 Hour factory load testing at reactive (0.8) power factor
- Std set of 3 Manuals
- Standard 2-Year Warranty
- SG0035GG264.5S18PPYYA

**Quantity 2** - PSTS Series Automatic Transfer Switch or City approve equal consisting of the following features and accessories:

- Standard Open Transition
- 32D - In phase Transfer, default to Time Delay Neutral
- Contactor-Based Design
- 200 Amp, 3 Pole, 120/208 VAC three phase

- UL1008 Listed
- NEMA 1 Enclosure
- ATC-300+ Microprocessor-Based Controller o 2-Line, 32-Character Alphanumeric LCD Display or Front Panel Mimic Diagram with colored LEDs for Source/Load Indication □ Digital Programmable Plant Exerciser:
- Selectable for Load or No Load
- 9C - Monitor Mode Selector Switch
- 2-Year Basic Warranty
- ATC3C5X30200BSU or City approved equal. It will be capable of providing 5 Ton of cooling and at least 120,000 BTU input 95% heating.

The contractor shall be responsible for obtaining the electrical and mechanical permits and inspections at no cost to the contractor.

### **Installation/Work:**

The Contractor shall perform the following services in accordance with the requirements as defined and noted herein:

1. This work will consist of disconnecting the existing gas line, and electrical, and securing it in a safe manner to be re-used for the installation of the new unit.
2. Remove and Save the air supply duct and the air return duct, the intake and The exhaust combustion lines to be re-used for the installation of the new unit.
3. The Contractor shall be responsible for the removal of the existing Generator System and the disposal of all the material in a safe and legal manner.
4. The New Generator 35 KW System will be installed and reconnect to existing gas line, the lines electrical. Assuming that the electrical disconnect and thermostat are operational and in good condition.
5. Replace existing ATS feeding panel LP-EM
6. Install new/2nd ATS to include panel LP-B
7. Move AHU-1 and AHU-2 to panel LP-EM-A to be powered by emergency backup generator.
8. Install emergency annunciation on 1st floor, Dispatch area.
9. 4 hour resistive load banking.



10. Start-up / testing of equipment and training by a Factory Trained & Certified Technician during normal business hours.
11. The Contractor will be responsible for the Installation of the generator and ATS according to the manufacture specifications for all equipment.
12. The Contractor will be responsible for providing a training session upon day of the startup by the Technician.
13. The Contractor will be responsible for the proper operation of the new Generator system.
14. The Contractor shall operate in a safe manner and will observe all MIOSHA guidelines.
15. The Contractor shall provide all manuals and/or guarantee information related to this project to the City upon completion of the project.
16. This section and referenced documents shall constitute the Scope of Work for this project and as such all requirements must be met.

## ATTACHMENT A - AGREEMENT

### For Adams Fire Station Upgrade Emergency Generator

---

This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and \_\_\_\_\_, Inc., having its principal office at \_\_\_\_\_ (hereinafter called "Contractor"), provides as follows:

#### WITNESSETH:

**WHEREAS**, the City of Birmingham, through its Maintenance Department, is desirous of having to remove and to install of a new emergency generator to provide electricity to the Adams Fire Station Facility for the City of Birmingham.

**WHEREAS**, the City has heretofore advertised for bids for the procurement and performance of services required to remove and to install of a new emergency generator to provide electricity Adams Fire Station Facility for the City of Birmingham, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

**WHEREAS**, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to remove and to install of a new emergency generator system to provide electricity Adams Fire Station Facility for the City of Birmingham.

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

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform Adams Fire Station Upgrade Emergency Generator for the City of Birmingham, and the Contractor's cost proposal dated \_\_\_\_\_, 2020 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.
2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed \_\_\_\_\_, as set forth in the Contractor's \_\_\_\_\_, 2020 cost proposal.
3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.

4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.
5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor 's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.
6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.
7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.
8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.
9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.
11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.
12. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:
  - A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
  - B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
  - C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
  - D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the

additional insured, whether any other available coverage by primary, contributing or excess.

- E. Professional Liability: Professional liability insurance with limits of not less than \$1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.
- F. Pollution Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than \$1,000,000, per occurrence preferred, but claims made accepted.
- G. Owners Contractors Protective Liability: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than \$3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be "Name Insured" on said coverage. Thirty (30) days Notice of Cancellation shall apply to this policy.
- H. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.
- I. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.
  - 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
  - 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
  - 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
  - 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;
  - 5) If so requested, Certified Copies of all policies mentioned above will be furnished.
- J. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.
- K. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of

Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.
14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.
15. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.
16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham  
Attn: Carlos Jorge  
151 Martin Street  
Birmingham, MI 48009  
248-530-1882

CONTRACTOR  
(Insert Contractor Information)

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the

Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

**IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.**

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Approved:

\_\_\_\_\_  
Carlos Jorge, Facilities Supervisor  
(Approved as to substance)

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

**CONTRACTOR**

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

Its:

**CITY OF BIRMINGHAM**

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

Therese Longe

Its: Mayor

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

Alexandria Bingham

Its: City Clerk

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

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

**ATTACHMENT B - BIDDER'S AGREEMENT**  
**For Adams Fire Station Upgrade Emergency Generator**

---

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

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.
2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

---

**PREPARED BY**  
**(Print Name)**

---

**DATE**

---

**TITLE**

---

**DATE**

---

**AUTHORIZED SIGNATURE**

---

**E-MAIL ADDRESS**

---

**COMPANY**

---

**ADDRESS**

---

**PHONE**

---

**NAME OF PARENT COMPANY**

---

**PHONE**

---

**ADDRESS**



**ATTACHMENT C - COST PROPOSAL**  
**For Adams Fire Station Upgrade Emergency Generator**

---

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

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

COST PROPOSAL	
ITEM	BID AMOUNT
Generac generator or City approved equal	\$
PSTS Series Automatic Transfer Switch or City approve equal	\$
Materials & Equipment	\$
Labor	\$
Miscellaneous (Attach Detailed Description)	\$
<b>TOTAL BID AMOUNT</b>	\$
ADDITIONAL BID ITEMS	
	\$
<b>GRANDTOTAL AMOUNT</b>	\$

---

Firm Name\_\_\_\_\_

Authorized signature\_\_\_\_\_ Date\_\_\_\_\_

**ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM**  
**For Adams Fire Station Upgrade Emergency Generator**

---

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

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

---

**PREPARED BY**  
**(Print Name)**

---

**DATE**

---

**TITLE**

---

**DATE**

---

**AUTHORIZED SIGNATURE**

---

**E-MAIL ADDRESS**

---

**COMPANY**

---

**ADDRESS**

---

**PHONE**

---

**NAME OF PARENT COMPANY**

---

**PHONE**

---

**ADDRESS**

---

**TAXPAYER I.D.#**

## **ATTACHMENT A - AGREEMENT**

### **For Adams Fire Station Upgrade Emergency Generator**

---

This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and Wolverine Power Systems, having its principal office at 3229 80<sup>th</sup> Ave. Zeeland, MI 49464 (hereinafter called "Contractor"), provides as follows:

#### **WITNESSETH:**

**WHEREAS**, the City of Birmingham, through its Maintenance Department, is desirous of having to remove and to install of a new emergency generator to provide electricity to the Adams Fire Station Facility for the City of Birmingham.

**WHEREAS**, the City has heretofore advertised for bids for the procurement and performance of services required to remove and to install of a new emergency generator to provide electricity Adams Fire Station Facility for the City of Birmingham, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

**WHEREAS**, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to remove and to install of a new emergency generator system to provide electricity Adams Fire Station Facility for the City of Birmingham.

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

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform Adams Fire Station Upgrade Emergency Generator for the City of Birmingham, and the Contractor's cost proposal dated November 23, 2020 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.
2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed \$ 39,500.00, as set forth in the Contractor's November 23, 2020 cost proposal.
3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.
4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor 's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.
6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.
7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.
8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.
9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.
11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.
12. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:
  - A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
  - B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
  - C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
  - D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

- E. Professional Liability: Professional liability insurance with limits of not less than \$1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.
- F. Pollution Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than \$1,000,000, per occurrence preferred, but claims made accepted.
- G. Owners Contractors Protective Liability: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than \$3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be "Name Insured" on said coverage. Thirty (30) days Notice of Cancellation shall apply to this policy.
- H. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.
- I. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.
- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
  - 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
  - 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
  - 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;
  - 5) If so requested, Certified Copies of all policies mentioned above will be furnished.
- J. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.
- K. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.
14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.
15. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.
16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:
- |                      |                            |
|----------------------|----------------------------|
| City of Birmingham   | Wolverine Power Systems    |
| Attn: Carlos Jorge   | Attn: David Cronce         |
| 151 Martin Street    | 3229 80 <sup>th</sup> Ave. |
| Birmingham, MI 48009 | Zeeland, MI 49464          |
| 248-530-1882         | 248-508-0581               |
17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the

event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

**IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.**

WITNESSES:

\_\_\_\_\_

**Wolverine Power Systems**

By: David Cronce

David Cronce

Its: Account Manager

**CITY OF BIRMINGHAM**

\_\_\_\_\_

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

Pierre Boutros

Its: Mayor

\_\_\_\_\_

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

Alexandria Bingham

Its: City Clerk

Approved:

\_\_\_\_\_  
Carlos Jorge, Facilities Supervisor  
(Approved as to substance)

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

\_\_\_\_\_  
Mary Kucharek, City Attorney  
(Approved as to form)

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




**ATTACHMENT B - BIDDER'S AGREEMENT**  
**For Adams Fire Station Upgrade Emergency Generator**

---

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

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.
2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

<b>David Cronic</b>	<b>11/23/2020</b>
PREPARED BY	DATE
(Print Name)	
<b>Account Manager</b>	<b>11/23/2020</b>
TITLE	DATE
	<b>David.Cronic@wolverinepower.com</b>
AUTHORIZED SIGNATURE	E-MAIL ADDRESS

**Wolverine Power Systems**

COMPANY

<b>3229 80th Ave., Zeeland, MI 49464</b>	<b>248-508-0581</b>
--	---------------------

ADDRESS	PHONE
---------	-------

N/A

NAME OF PARENT COMPANY	PHONE
------------------------	-------

N/A

ADDRESS

**ATTACHMENT C - COST PROPOSAL**  
**For Adams Fire Station Upgrade Emergency Generator**

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

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

COST PROPOSAL	
ITEM	BID AMOUNT
Generac generator or City approved equal	\$ <b>18,200.00</b>
PSTS Series Automatic Transfer Switch or City approve equal	\$ <b>6,450.00</b>
Materials & Equipment	\$
Labor	\$ <b>14,850.00</b>
Miscellaneous (Attach Detailed Description)	\$
<b>TOTAL BID AMOUNT</b>	<b>\$ 39,500.00</b>
ADDITIONAL BID ITEMS	
	\$
<b>GRANDTOTAL AMOUNT</b>	<b>\$ 39,500.00</b>

Firm Name **Wolverine Power Systems**

Authorized signature  Date **11/23/2020**

**ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM**  
**For Adams Fire Station Upgrade Emergency Generator**

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

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

David Cronce	11/23/2020
<b>PREPARED BY</b> (Print Name) Account Manager	<b>DATE</b>  11/23/2020
<b>TITLE</b> 	<b>DATE</b>
<b>AUTHORIZED SIGNATURE</b> Wolverine Power Systems	<b>E-MAIL ADDRESS</b> david.cronce@wolverinepower.com
<b>COMPANY</b>	
3229 80th. Ave. Zeeland, MI 49464	248-508-0581
<b>ADDRESS</b>	<b>PHONE</b>
<b>NAME OF PARENT COMPANY</b>	
<b>PHONE</b>	
<b>ADDRESS</b>	
61-1424808	
<b>TAXPAYER I.D.#</b>	



## MEMORANDUM

City Clerk's Office

**DATE:** December 2, 2020

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

**FROM:** Alexandria Bingham, Clerk Designee

**SOCRRA Board of Trustees Representatives**

**SUBJECT:**

---

### INTRODUCTION:

Article VII of the Articles of Incorporation of SOCRRA provides that each member municipality shall annually appoint a representative and an alternate to the Board of Trustees.

### BACKGROUND:

Since 2015 the City Commission has appointed the City Manager as the Representative and the DPS Director as the Alternate.

### LEGAL REVIEW:

n/a

### FISCAL IMPACT:

n/a

### SUMMARY

The City Commission is being asked to appoint returning City Manager Markus and DPS Director Wood to the SOCRRA Board of Trustees as Representative and Alternate respectively for Fiscal Year 2020/2021.

### ATTACHMENTS:

May 1, 2020 Letter from SOCRRA

### SUGGESTED RESOLUTION:

To appoint City Manager Thomas M. Markus as Representative and DPS Director Lauren Wood as Alternate Representative of the City of Birmingham on the SOCRRA Board of Trustees for the remainder of the fiscal year starting January 1, 2021.



Berkley • Beverly Hills • Birmingham • Clawson • Ferndale • Hazel Park • Huntington Woods • Lathrup Village • Oak Park • Pleasant Ridge • Royal Oak • Troy

---

May 1, 2020

Cheryl Arft  
Acting City Clerk  
City of Birmingham  
P.O. Box 3001  
Birmingham, MI 48012

Subject: Appointment of Representative & Alternate

Dear Ms. Arft:

Article VII of the Articles of Incorporation of SOCRRA provides that each municipality shall annually appoint a representative and an alternate to the Board of Trustees. This representative shall serve during the next fiscal year following his appointment and/or until his successor is appointed.

The present representative and alternate representative for the City of Birmingham are as follows:

Representative

J. Valentine

Alternate

L. Wood

It is requested that the City Commission, by resolution, appoint a representative and alternate representative to represent the City of Birmingham on the Board of Trustees of SOCRRA for the fiscal year beginning July 1, 2020.

Please forward a certified copy of this resolution to SOCRRA, 3910 W. Webster Road, Royal Oak, MI 48073-6764.

Very truly yours,

Jeffrey A. McKeen, P.E.  
General Manager

JAM/cf

---

SOCRRA • 3910 W. Webster Road • Royal Oak • Michigan • 48073 • Phone 248.288.5150 • Fax 248.435.0310 • Email

[socrra@socrra.org](mailto:socrra@socrra.org)

[www.socrra.org](http://www.socrra.org)

Printed on Post Consumer Recycled Content Paper



## **MEMORANDUM**

Engineering Department

**DATE:** December 2, 2020

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

**FROM:** Alexandria Bingham, Clerk Designee

**SUBJECT:** SOCWA Board of Trustees Membership

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### INTRODUCTION:

Article VII of the Articles of Incorporation of Southeastern Oakland County Water Authority (SOCWA) provides that each member municipality shall annually appoint a representative and an alternate to the Board of Trustees.

### BACKGROUND:

Historically, the City Commission has appointed the City Engineer as the Representative and Assistant City Engineer as the Alternate.

### LEGAL REVIEW:

n/a

### FISCAL IMPACT:

n/a

### SUMMARY:

The City Commission is being asked to appoint Consulting City Engineer Jim Surhigh to the SOCWA Board of Trustees as the Primary Representative and City Manager Thomas M. Markus Alternate Representative for the Fiscal year 2020/2021.

### ATTACHMENTS:

May 1, 2020 Letter from SOCWA

### SUGGESTED RESOLUTION:

To appoint Consulting City Engineer Jim Surhigh as Representative and City Manager Thomas M. Markus as Alternate Representative of the City of Birmingham on the SOCWA Board of Trustees for the remainder of the fiscal year starting January 1, 2021.



\* Berkley \* Beverly Hills \* Bingham Farms \* Birmingham  
\* Clawson \* Huntington Woods \* Lathrup Village \* Pleasant Ridge  
\* Royal Oak \* Southfield \* Southfield Township

May 1, 2020

Cheryl Arft  
Acting City Clerk  
City of Birmingham  
P.O. Box 3001  
Birmingham, MI 48012

Subject: Appointment of Representative & Alternate

Dear Ms. Arft:

Article VII of the Articles of Incorporation of the Southeastern Oakland County Water Authority provides that each municipality shall annually appoint a representative and an alternate to the Board of Trustees. This representative shall serve during the next fiscal year following his appointment and/or until his successor is appointed.

The present representative and alternate representative for the City of Birmingham are as follows:

Representative

A. Fletcher

Alternate

T. Bridges

It is requested that the City Commission, by resolution, appoint a representative and alternate representative to represent the City of Birmingham on the Board of Trustees of the Southeastern Oakland County Water Authority for the fiscal year beginning July 1, 2020.

Please forward a certified copy of this resolution to the Southeastern Oakland County Water Authority, 3910 W. Webster Road, Royal Oak, MI 48073-6764.

Very truly yours,

Jeffrey A. McKeen, P.E.  
General Manager

JAM/cf



## MEMORANDUM

Office of the City Manager

**DATE:** December 2, 2020  
**TO:** City Commission  
**FROM:** Joseph A. Valentine, City Manager  
**SUBJECT:** SEMCOG Appointments

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The Southeast Michigan Council of Governments (SEMCOG) serves as a regional organization for promoting regional initiatives and supporting local governments to improve and maintain Southeast Michigan's transportation systems, environmental quality, economic interests and infrastructure. Each member organization is permitted to have a delegate and an alternate member to participate in the general assembly meetings.

The City Manager has served as the alternate member and with the transition of City Managers, it is recommended to appoint Thomas M. Markus a alternate member to SEMCOG for the City of Birmingham. Mr. Markus has acknowledged his interest in serving in this capacity.

Suggested Resolution:

To appoint Thomas M. Markus to serve as the alternate member to SEMCOG on behalf of the City of Birmingham.





## MEMORANDUM

IT Department

**DATE:** 12/07/2020

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

**FROM:** Eric Brunk, IT Manager

**SUBJECT:** Laserfiche Support renewal

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**Introduction:**

Laserfiche is the document repository system used by the City. MCCi is the vendor that services and supplies technical support and training for our installation of the software package.

**Background:**

Our support contract with MCCi runs from December to December and is renewed annually. Our annual support contract is coming up for renewal on December 11<sup>th</sup>. The cost of the annual renewal is \$12,775.00 and is a budgeted item under computer maintenance. The maintenance contract covers server and user support, software maintenance and update, and access to MCCi on demand user training.

**Legal Review:**

This is a standard support renewal purchase. No legal review needed.

**Fiscal impact:**

This is a budgeted expense. Money was budgeted for this contact renewal in the IT Computer Maintenance Fund account #636-228.000-933.0600

**Summary:**

The IT department would like to renew our support contract for Laserfiche with MCCi.

**SUGGESTED RESOLUTION:**

Authorize the IT department to renew the Laserfiche support contract with MCCi for a total cost of \$12,775.00. Funds are available in the IT Computer Maintenance Fund Account: 636-228.000-933.0600



FEIN: 33-1069550  
Questions: [billing@mccinnovations.com](mailto:billing@mccinnovations.com)

# INVOICE

Page 1

**Bill To:**

Birmingham  
ACCCOUNTS PAYABLE  
PO Box 3001  
Birmingham, MI 48012

Invoice Number	RNW001166
Invoice Date	9/16/2020
PO Number	
Customer Id	BIRMINMI01
Payment Terms	Net 30

Shipped	Description	Unit Price	Extended Price
1	Annual Support Renewal		\$12,775.00
Annual Support Renewal- Coverage: 12/11/2020- 12/10/2021			

Subtotal	\$12,775.00
Discount	\$0.00
Freight	\$0.00
Tax	\$0.00
Total	\$12,775.00

**Payment by ACH (preferred):**

Enterprise Bank  
ABA: 081006162  
Account: 1293909

**Payment by check:**

MCCI, LLC  
PO Box 790379  
St. Louis, MO 63179-0379

**DATE:** December 1, 2020

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

**FROM:** Mark H. Clemence, Chief of Police

**SUBJECT:** Removal of Four On-Street Parking Spaces to Accommodate a Shared Valet Service at 298 S. Old Woodward, the Daxton Hotel

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**INTRODUCTION:**

As part of the Daxton Hotel project at 298 S. Old Woodward (Woodward Brown Ventures, LLC), the applicant has requested valet services since the project's inception. Formal application for a valet license was submitted to the City on May 21, 2020 (documents attached).

**BACKGROUND:**

The Daxton Hotel has applied for a valet license to be operated in conjunction with their hotel operation. In their application, the Daxton Hotel requested six on-street parking meter spaces on S. Old Woodward (in front of the hotel) and the addition of the last two remain parking meter spaces on Old Woodward on an as needed basis in order to operate the valet service. The Advisory Parking Committee (APC) examined the request on two different meetings, July 12, 2017 and August 2, 2017. At the August 17, 2017 meeting, the APC approved a recommendation to the City Commission to allow the Daxton Hotel to operate a valet service in front of 298 S. Old Woodward by removing six on-street parking meters (minutes attached). This matter was previously before the City Commission on October 16, 2017 and on April 9, 2018 (minutes attached). At the April 9, 2018 meeting, the City Commission was concerned with the loss of six on-street metered parking spaces. The City Commission took no action on the request, but wanted the issue of the number on on-street parking meters examined further (for reduction) and an expectation that the entire request be looked at again to achieve a plan that is both mutually beneficial to the public and still meets the needs of the applicant.

Former Assistant City Manager Tiffany Gunter worked with legal counsel from the Daxton Hotel to work out some type of agreement between the City and the hotel for a shared services valet operation. The police department was requested to participate in the process. After the Ms. Gunter resigned her position, the police department and the Daxton Hotel agreed to a shared scope of valet services (see Attachment "A") in early November of 2020. Some key points of this agreement include the following:

1. The Daxton agrees to operate their valet service for use by the public (subject to hour restrictions).
2. Only four on-street meters will be removed instead of the six requested. Four on-street parking meter spaces will remain for public use in front of the hotel.

3. The Daxton agrees to pay \$22,464.00 per year in fees to the City where the four on-street parking meters would have been installed. This area will become a yellow curb zone for pick-up and drop-off for valet services.
4. The price for public valet service charged by the Daxton Hotel will be consistent with the price charged by other private valet contractors hired by the City to operate City sponsored valet stands.

#### LEGAL REVIEW:

The City Attorney reviewed the scope of shared valet services found in Attachment "A" of the applicant's application for a valet parking license and found no legal issue. The police department reviews all valet license applications.

#### FISCAL IMPACT:

In this agreement, the City agrees to remove four parking meter spaces on S. Old Woodward in front of 298 S. Old Woodward. However, the City will be paid \$22,464.00 per year by the applicant which represents the exact amount the City would have received from meter revenue had the meters been installed. Additionally, as a result of this agreement, the City would be able to eliminate the current City sponsored valet stand on S. Old Woodward and Merrill, saving the City \$750.00 per week in valet fees.

#### SUMMARY:

The Daxton Hotel at 298 S. Old Woodward has applied to the City for a valet license. The police department reviews all valet license applications. The Daxton Hotel has agreed to operate their valet stand on S. Old Woodward as a public valet stand in a yellow curb zone in what would have been four metered parking spaces subject to the terms contained in the scope of the shared valet services found in Attachment "A."

#### SUGGESTED RESOLUTION:

To approve the removal of four on-street parking meters on S. Old Woodward, north of Brown Street (in front of 298 S. Old Woodward) to allow for the operation of a shared valet service by the property owner (Daxton Hotel) consistent with the terms contained in Attachment "A" of the property owner's valet license application dated May 21, 2020.

## **ATTACHMENT "A"**

### **SCOPE OF SHARED VALET SERVICES**

- A. The Daxton Hotel will provide valet service from the hours of 7:00 am to 11:00 pm on Sunday through Wednesday, and from 7:00 am to 12:00 am, on Thursday, Friday and Saturday, on a seven (7) days a week basis to the CITY for public use.
- B. The City will waive the meter fees of \$22,464.00 per year. The area where the four (4) parking meters were to be installed on South Old Woodward directly in front of the hotel will become a yellow curb zone for pick-up and drop-off of valet vehicles. All other valet parking license fees including application fee, renewal fee, valet parking structure fee and employee background checks still apply.
- C. Two additional metered parking spaces adjacent to the yellow curb zone will be made available to the hotel on an "as needed" basis as requested by the Daxton Hotel, and otherwise to assist with large events with permission from a police department command staff member.
- D. The cost for valet services charged by the Daxton to the public (those persons who are not guests at the Hotel) would be \$5.00 for the first two hours and \$5.00 for each additional hour (or the price consistent with fee determined by the City in place with all private valet contractors hired by City to operate City sponsored valet stands in the City, whichever is greater).
- E. If the City offers free valet parking for a designated period time, such as the usual Friday after Thanksgiving to Christmas Eve, the City will pay a flat rate fee of \$1,000.00 per week to the Daxton Hotel for valet services (price determined by the Birmingham Shopping District and consistent with other valet services in the City offering free valet services for such designated time period).
- F. For any single day free valet service offer by the City to the public (those persons who are not guests at the Hotel), the City will pay a daily fee of a minimum of \$150.00 per day to the Daxton Hotel or such amount as is paid to other valet services for said valet fee, whichever is greater.



Williams Williams Rattner & Plunkett, P.C.  
Attorneys and Counselors

380 North Old Woodward Avenue  
Suite 300  
Birmingham, Michigan 48009

Tel: (248) 642-0333  
Fax: (248) 642-0856

[www.wwrplaw.com](http://www.wwrplaw.com)

May 20, 2020

By Email

Mark Clemence  
Chief of Police  
City of Birmingham  
151 Martin Street  
Birmingham, MI 48009

RE: The Daxton Hotel Application for Valet Parking License ("Application")

Dear Chief Clemence:

This letter is in follow up to our submission of the Application for Valet Parking License submitted to your office on March 2, 2020. We have submitted the Application, a check for the license fee in the amount of \$2,000, and a schematic of the valet area (76 feet at the curb on S. Old Woodward) and flow. In addition, the City has requested we submit a brief explanation of how the shared valet with the City will work.

We understand that the Daxton shared valet will work in a similar fashion to the way the City engages with its other valet vendors in the City. The cost for valet services charged to those using the City's valet service is \$5.00 for the first two hours and \$5.00 for each additional hour. During holidays, road construction and any other time when the City advertises free valet parking, The Daxton valet operator will be reimbursed by the City for the cost of those services on a per car basis at the standard rate in effect at the time.

Please let us know if there is anything else you need to process the Application and submit it to the City Commission for approval. It is important for you to be aware that the streetscape is scheduled for construction in July and it is now necessary to conclude this matter in the month of June so that construction of the sidewalks is not delayed.

Thank you for your attention to the Application.

Very truly yours,  
WILLIAMS WILLIAMS RATTNER & PLUNKETT, PC

*Gayle S. McGregor*  
Gayle S. McGregor

Cc: Tim Currier, City Attorney

298 S. OLD WOODWARD AVE.  
VALET PARKING REQUEST

Mr. O'Meara advised that the owner of the above property, located at the northwest corner of Brown St., has submitted plans requesting a permit to construct a five-story hotel with two underground levels of private parking. The plans have received Preliminary Site Plan approval from the Planning Board. As a condition of such approval, the Planning Board asked the applicant to appear before the Advisory Parking Committee ("APC") to receive a recommendation relative to the removal of on-street parking, as proposed on their plan.

The applicant is requesting approval to remove five parking spaces to create a permanent valet service at the front door of the new building on S. Old Woodward Ave. The applicant plans to have valet service available for all visitors to the building, whether they are overnight guests, long term residents, patrons at the restaurant, meeting attendees, etc. Vehicles will be taken to the building's proposed Brown St. garage entrance when space permits, and they will be returned to the valet area using the S. Old Woodward garage exit. When space does not permit, the valet drivers will seek other options, such as the Pierce St. Parking Structure. There is precedent for removing parking spaces for valet. The Townsend Hotel pays a fee for the meters and uses eight parking spaces along Merrill St.

With the recent change in the metered parking rate to \$1.50 per hour, the City will now charge \$3,000/year per meter per space.

The applicant is requesting approval for the removal of five spaces, based on the existing parallel parking configuration. The City already committed to changing to angled parking with the reconstruction of Old Woodward Ave. in 2018 as an effort to create twelve on-street parking spaces, up from the existing nine. If the committee is inclined to approve this recommendation, they will need to discuss and consider what the appropriate loss of parking spaces truly is for this site. The Planning Board generally expressed praise for this design, and appears to be in support of the idea to operate a valet station within the public right-of-way. However, they would like the perspective of the APC, before this issue is finalized by the City Commission.

It was discussed that with the Old Woodward Ave. reconstruction the bus stop will be moved north of Merrill St. The existing bumpout will be enlarged to accommodate the bus stop.

Mr. Kalczynski was curious as to how the flow of traffic in front of the hotel would work with 20 or 25 valets and the timing of the lights. The letter from Richard D. Rattner, Attorney, states the valet will benefit the health, safety, and welfare of the community in general. Mr. Kalczynski was not sure how this would be a benefit to the safety of citizens. It was noted that the parking overflow goes to the Pierce St. Structure for both of the hotels.

Mr. O'Meara said when the garage fills the valets will have to figure out other alternatives.

Comments were heard from the public at 7:55 a.m.

Mr. David Berman with the ownership group, Lorient Capital, said they are only required to provide 22 on-site spaces for the residential component, as they are located in the Parking Assessment District. However, they have chosen to build an extra underground level of parking to provide an additional 34 spaces which are not required. That should make up for the seven or eight spaces they are taking out in front of the hotel. In terms of traffic management for the valet operations, they have consulted with the City's Traffic Engineer and have worked out a plan that he is comfortable with. With regard to overflow in the garage, they plan to use multiple structures, as they are centrally located within the City. In addition, they have submitted a plan to the City for when there are large events. They will work with the Police Dept. in order to coordinate how to best manage the additional traffic. Most of their events will occur in the evening or on week-ends so they are using spaces when others are not.

In response to the Chairman, Mr. Berman stated that 40 spaces in the private lot on their property will be going away. No on-site parking will be provided for employees of the hotel. Mr. Michael Kitchen, VP of Development and Acquisitions for Aperia Hotels, operator of the hotel, noted their employees will usually arrive by car pool or public transit. If the project was an office use, it would require a lot more parking.

Ms. Gail McGregor, Attorney with Williams, Williams, Rattner & Plunkett, P.C., 380 N. Old Woodward Ave., stated this will be a smooth operation. The garage will be utilized as part of the staging for the valet. Curbside valet will help to reduce congestion on S. Old Woodward at the intersection. Further, valet is a very safe way to accommodate arrivals and departures.

Mr. Kitchen walked the committee through how the traffic will work in terms of flow. There is an entrance on one side of the garage and departure from the other side. Short stays can be staged along the ramp and overspill will go into the City parking structures.



Ms. Champagne observed the valet overcomes any loss of parking spaces because vehicles are moved off the street and down below.

Ms. Kalczynski indicated he struggles with the fact there is a very high demand for spaces, and there are not enough spaces right now to fit that demand. Ms. McGregor commented they have submitted a major event plan to the City that outlines workable ways to prevent significant traffic problems on the street. Mr. Kitchen added if they have a large event they will notify the City and the Police Dept. They have a unique ambassador program where every one of the front house staff is cross-trained to park cars in case there is a huge influx of guests arriving at one time.

Mr. Berman noted they have developed a traffic and parking plan with the City and Police Dept. that has been approved and accepted by them. As they get closer to construction additional options will be explored for parking in lots that are not filled in evenings or on weekends.

Ms. Paskewicz observed the impact on parking is not only about spaces for valet; it is about other needs for this kind of facility such as making room for busses.

The chairman commented this has been an under-utilized piece of real estate in Birmingham and to him this seems to be a viable usage. In the future, parking shortages will be reduced with the onset of self-driving cars and increased use of Uber.

Mr. Berman reiterated they are creating more spaces for the City with this project, rather than removing them. However, the chairman pointed out they are also creating a lot more dense usage.

Mr. Kalczynski expressed his desire to see the traffic and parking management plan that was submitted to the City before the committee votes on this matter. He is looking for information about how the traffic flow will happen.

Ms. Champagne motioned to recommend the removal of eight on-street parking spaces at 298 S. Old Woodward Ave. to allow for the operation of a valet service by the adjacent property owner, in exchange for an annual payment of \$24,000 (at \$3,000 per meter) to be charged annually once the adjacent hotel is open for business. However, the motion died for lack of a second.

After lengthy discussion, the committee concluded they need more information with regard to the traffic flow. After studying the traffic and parking management plan they will do their best to move the applicant's request forward at the next meeting.

**Motion carried, 6-0.**

**VOICE VOTE:**

Yeas: Champagne, Vaitas, Honhart, Kalczynski, Krueger, Kuhne

Nays: None

Absent: Paskiewicz

**298 S. OLD WOODWARD AVE.**  
**VALET PARKING REQUEST**

Mr. O'Meara advised that the owner of the above property, located at the northwest corner of Brown St., has submitted plans requesting a permit to construct a five-story hotel with two underground levels of private parking. The plans have received Community Impact Study ("CIS") and Preliminary Site Plan approval from the Planning Board. As a condition of such approval, the Planning Board asked the applicant to appear before the Advisory Parking Committee ("APC") to receive a recommendation relative to the removal of on-street parking, as proposed on their plan.

The applicant is requesting approval to remove all existing parking spaces to create a permanent valet service at the front door of the new building on S. Old Woodward Ave. The applicant plans to have valet service available for all visitors to the building, whether they are overnight guests, long term residents, patrons at the restaurant, meeting attendees, etc. Vehicles will be taken to the building's proposed Brown St. garage entrance when space permits, and they will be returned to the valet area using the S. Old Woodward garage exit. When space does not permit, the valet drivers will seek other options, such as the Pierce St. Parking Structure. There is precedent in town for removing parking spaces for valet. The Townsend Hotel pays a fee for the meters and uses seven parking spaces along Merrill St.

With the recent change in the metered parking rate to \$1.50 per hour, the City will now charge \$3,000/year per meter per space.

At the July 12, 2017 meeting of the Advisory Parking Committee ("APC"), the above topic was reviewed. The APC asked to have the opportunity to review the traffic impact analysis prepared for the project as a part of the Planning Board's review. That information is now provided.

It was mentioned that there is no space on Brown St. for delivery trucks to line up to unload, as there is only the one traffic lane. Mr. Kalczynski observed that traffic flow and parking are intertwined. The APC is being asked to remove eight

spaces at a time when the City is in a crisis mode with parking. When additional people are added, where do they go?

Addressing a question, Mr. O'Meara advised the bus stop will be moved north of Merrill St., and the space will be turned back to parking. The redesign will represent a net gain of two parking spaces.

Mr. John Gaber, Attorney with Williams Williams Rattner & Plunkett, PC, spoke to represent the property owner, Lorient Capital, LLC. Mr. Gaber wanted to ensure there is no conflict of interest with respect to Mr. Kalczynski being the manager of the Townsend Hotel. The Chairman indicated the nature of this board is that it is comprised of stakeholders. Mr. Kalczynski provides insight into situations that the committee would not have otherwise.

Mr. Kalczynski noted he does not have a conflict of interest. His role on the APC is only to approve or disapprove recommendations for parking. Therefore he will not recuse himself from the consideration of this matter.

Mr. Gaber went on to note that under the current parking nine spaces will be removed. After the street is reconstructed, the area is proposed for 12 spaces. However, accommodating three spaces for the driveway and one space for the sidewalk bumpout at the corner gets it down to eight. The project is a five-story luxury boutique hotel comprised of 126 guest rooms with 17 rental apartments on the fifth floor. There will be a banquet hall, meeting rooms, restaurants, and bars. One component of the building is the two floors of underground parking which provide 56 parking spaces. Only 22 of those spaces are required for the apartment units on the top floor. So the other 34 are available for the general use of the facility. Another feature of this project is enhancement of the streetscape which will help to facilitate some of the City's goals and objectives relative to pedestrian and bicycle traffic.

Their Traffic Management Plan has been reviewed by the City's Traffic Engineer and he has signed off, as has the Planning Board. That plan provides for valet at the front. From there the valets will circulate around the Brown St. side of the building and enter the parking garage there. If there is not room below to park the cars they will be stacked and the valets will relocate them off site. One feature of the Plan they think is important is there will be cross training of hotel employees in valet service. Then they can assist when needed.

With regard to the loading situation on Brown St., trucks will back up into a driveway, be off of the road, and be able to use that area for loading and unloading.

There was discussion by the APC members that \$3,000/year per space seems low. Mr. O'Meara explained that figure is based on 60% occupancy. Mr. Richard Astrein received confirmation that the City Commission is the final arbiter of the cost structure.

**Motion by Ms. Champagne**

**Seconded by Ms. Krueger to recommend to the City Commission the removal of eight on-street parking spaces at 298 S. Old Woodward Ave. to allow for the operation of a valet service by the adjacent property owner, in exchange for an annual payment of \$24,000 (at \$3,000 per meter) to be charged annually once the adjacent hotel is open for business.**

Ms. Champagne added she thinks one of the things that makes the Townsend Hotel really special and part of the ambiance of the City is the valet in front.

Mr. Gaber stated they think that a hotel is the highest and best use for this property. The City could be looking at a dense office building there. That would put more daytime peak demand on the system than the hotel will. Secondly, in addition to the 56 spaces underneath, there is stacking for 20 more cars. Also, if public spaces are not available they are obligated to work out an arrangement for other parking. Lastly, progress is being made because the City has recognized the parking problem and is expanding the N. Old Woodward Structure.

**Motion carried, 5-1.**

**VOICE VOTE:**

Yeas: Champagne, Krueger, Honhart, Kuhne, Vaitas

Nays: Kalczynski

Absent: Paskiewicz

Mr. Astrein brought up the point that the rate to pay into the Parking Assessment District is low, as is the rate being charged to the hotels for taking meters off the street. Someone coming into the Parking Assessment District now should be paying market rates to buy in to the structures.

**AD HOC PARKING DEVELOPMENT COMMITTEE UPDATE**

Mr. O'Meara reported there were four different development teams that submitted a response to the Request for Qualifications of how they thought the N. Old Woodward Ave. property could be redeveloped. All four were brought to the Ad Hoc Parking Development Committee. It was decided that all four are viable options and the teams will have another 90 days to submit their final proposal.

**BIRMINGHAM CITY COMMISSION MINUTES**  
**OCTOBER 16, 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, Senior City Planner Baka, IT Director Brunk, Communications Director Byrne, Police Chief Clemence, Fire Chief Connaughton, City Attorney Currier, City Planner Ecker, City Clerk Mynsberge, City Engineer O'Meara, Building Official Johnson, BSD Director Tighe, DPS Director Wood

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

Mayor Nickita announced:

- The last of the 2017 Farmers Market events will be on Sunday, October 22<sup>nd</sup> and October 29<sup>th</sup> from 9:00 AM to 2:00 PM in Municipal Parking Lot #6. On October 29<sup>th</sup>, special activities will include hayrides, Trick-or-Treating, corn shelling, live music, children's pumpkin crafts, and pumpkin carving demonstrations. For more information, visit [www.enjoybirmingham.com](http://www.enjoybirmingham.com) or call 248.530.1200.
- The annual Halloween Parade and Pumpkin Patch happens on Sunday, October 29<sup>th</sup>. The Pumpkin Patch opens at 1:00 PM in Shain Park, followed by the Parade at 4:00 PM. For more information visit [www.bbccc.com](http://www.bbccc.com), or call 248.430.7668 or 248.644.3163.
- Tuesday, November 7<sup>th</sup> is Election Day in Birmingham. Polls will be open from 7:00 AM to 8:00 PM. Complete election information is available at [www.Michigan.gov/VOTE](http://www.Michigan.gov/VOTE). The City Clerk's Office will be open on Saturday, November 4<sup>th</sup> from 9:00 AM to 2:00 PM for issuing Absent Voter ballots.
- Celebrate the 90<sup>th</sup> anniversary of the Baldwin Public Library at a speakeasy-themed fundraiser on Friday, November 10<sup>th</sup> from 6:00 until 9:00 PM. Proceeds will be used for an expansion and renovation of the Youth Room. Tickets can be purchased at [www.baldwinlib.org](http://www.baldwinlib.org), or by calling 248.554.4683.
- The Veterans Day wreath laying ceremony is at 11:00 AM on Saturday, November 11<sup>th</sup> in Shain Park. The ceremony is sponsored by the Piety Hill Chapter of the D.A.R.

Mayor Nickita introduced the City's new Communications Director, Kevin Byrnes.

- The Surnow Company offered to take on additional conditional zoning in order to maintain the intended use category long-term.

VOTE:        Yeas,        7  
                  Nays,        0  
                  Absent,    0

**10-268-17    298 S. OLD WOODWARD AVE. PERMANENT REMOVAL OF ON-STREET PARKING**

From City Engineer O'Meara's staff report to City Manager Valentine dated October 5, 2017:

In June, the Planning Board issued preliminary site plan approval to the owner of the above property (owned by Lorient Capital, LLC), located at the NW corner of Brown St. The applicant has proposed the construction of a five-story hotel, containing 126 rooms, 17 long-term stay apartments, as well as banquet, restaurant, and lounge facilities on the first floor. Due to the nature of the business, Lorient has designed the plan to include 24-hour a day valet service at the front door, located on the S. Old Woodward Ave. frontage. The valet loading zone will occupy space that is currently used for on-street metered parking. Therefore, the valet operation will require the permanent removal of metered public parking.

On August 2, 2017 the Advisory Parking Committee voted to recommend to the City Commission the removal of eight on-street parking spaces at 298 S. Old Woodward Ave. to allow for the operation of a valet service by the adjacent property owner, in exchange for an annual payment of \$24,000 (at \$3,000 per meter) to be charged annually once the adjacent hotel is open for business.

City Engineer O'Meara added that:

- While the removal of metered parking is usually inappropriate within a systems viewpoint, Lorient took the proposal very seriously and considered the interests of adjacent businesses regarding the proposal.
- The Townsend Hotel's similar arrangement with the City serves as a precedent.
- The proposal includes an exit from the planned two-level basement garage.
- The applicant proposes building 56 parking spaces, and if additional spaces are required cars may need to be parked off-site.
- As this corner and the corner of Maple Road may be reconstructed in the near future following the City's three-phase reconstruction plan for downtown, if these eight spaces are removed the City will have a total loss of fifteen spaces.

City Engineer O'Meara confirmed:

- For Commissioner Boutros that the applicant believes they will need all eight meter-spaces across the frontage in order to run the valet;
- For Mayor Nickita that the amount of frontage being discussed is a little over 100 feet;
- For Commissioner Hoff that the driveway is a critical part of the plan; and,
- For Commissioner Bordman that the Townsend Hotel took seven spaces off Merrill Street for their valet, and an estimated three spaces for the front door of the original hotel.

City Planner Ecker explained:

- To Commissioner Hoff that 1¼ spaces of parking per unit are required if there are three or more room units available, and that as long as the applicant provides parking for residential units, they are not required to provide any additional spaces since they are in

the parking assessment district. The applicant is offering to provide 33 additional spaces that are not required.

- To Commissioner Bordman that the Parking Committee looked into finding parking alternatives to Old Woodward, but it was determined that using Old Woodward is the best option in order to maintain the speed and efficiency of the valet during high-traffic times.
- To Commissioner DeWeese that Brown Street was discussed extensively and did not receive favorable reviews from the Parking Committee as an alternative.

Commissioner Hoff stated that the eight metered spaces being discussed seem to hold a lot of value, and that the proposed building does not have a lot of parking.

Commissioner DeWeese explained that for every space of on-street parking removed the City will need to provide garage parking, and that the City is not getting a sufficient amount back for the use of public space. He continued that:

- The number of spaces removed should be considered carefully.
- While the applicant may want this much street space, they may not need this much space.
- The compensation estimates are based on an assumption that the meters would not be utilized full-time, which Commissioner DeWeese questions.

Commissioner Sherman offered that the amounts being considered are consistent with the application for parking while utilizing meters on the street, and requested that Chief Clemence come forward and explain the methodology for calculating the costs.

Chief Clemence clarified that the amounts represent the amount of revenue the City would make per year if there were metered parking there, and that these numbers represent the number of spaces that would have been available on Old Woodward after the re-design.

Mayor Nickita stated that the issue is whether the current standard of compensation is appropriate going forward, and that the Commission can direct the Advisory Parking Committee to take a look at that. He continued that a move to revise standards at this time, however, is not pertinent to the current proposal before the Commission.

Richard Rattner, developer, explained that:

- The biggest focus over many months of study was the maintenance of efficient traffic flow outside of the hotel.
- Both Birmingham's traffic consultants and Lorient put immense effort into making sure that the hotel would not stop traffic on Old Woodward. Adding a second level of underground parking to keep the valet process expedient and to keep the flow moving by having enough spaces on the street that lead to the underground garage are two of the ways the issue will be addressed.
- He believes Lorient's architects included a separate entrance and egress to promote internal traffic flow within the garage.
- The development will have as many valets as needed.

City Engineer O'Meara explained to Mayor Pro Tem Harris that the only spaces being removed are the ones needed to keep the driveway operating safely.



Commissioner Bordman stated concern that there would not be sufficient parking for the number of people the 4,823 sq. ft banquet room could contain.

Mr. Rattner explained that if there were a large event, the cars would be brought underground by a valet and then moved from the underground parking to a different parking facility off-site as necessary. This allows Old Woodward to be unobstructed.

Commissioner Sherman said Lorient should not need eight metered spots – or 110 ft. – cleared, when hotels in other cities are able provide valet service with fewer. He continued that requesting eight spots for valet, instead of one or two, is unnecessary and an attempt to plan for the occasional large event instead of the hotel's day-to-day operations.

Commissioner Bordman explained that while the goal of maintaining traffic flow on Old Woodward is commendable, the Commission is also tasked with looking out for the interests of pedestrians and retailers, both of whom may be negatively impacted by the loss of eight metered spots.

Mr. Rattner expressed understanding and stated he would not want to make a change to the number of spaces in his request until he can re-consult with the City's traffic engineers.

Commissioner Hoff suggested to Mr. Rattner that he revisit the project with an eye towards addressing the Commission's concerns, specifically:

- Increasing walkability, which is challenged with cars coming in and out on Old Woodward, and;
- The location of the valet entrance and exit from the garage.

Mayor Nickita added that the Commission can only grant what is necessary in the way of a request like this, and not what is desired. He suggested that the option of Brown Street be reconsidered. He finished that while the Commission seeks to prevent traffic congestion, they need to protect other City interests as well.

The Commission took no action.

#### **10-269-17                      ORDINANCE AMENDMENT FOR HISTORIC DESIGNATION OF 927 PURDY**

From Senior Planner Baka's staff report to City Manager Valentine dated October 10, 2017:

In March of 2016 the owner of the house located at 927 Purdy, Luis Barrio, requested that the City Commission consider designating his home as a historic structure within the City of Birmingham. In accordance with this request, the City Commission passed a resolution directing the Historic District Study Committee to prepare a study committee report evaluating the home for historic designation as outlined in section 127-4 of the City Code, Establishing additional, modifying, or eliminating historic districts.

The committee has prepared a final report with its recommendations which is now ready for consideration by the City Commission for the establishment of a new historic district.

Senior Planner Baka provided history of the house and the owners. He then confirmed for Commissioner Hoff that while the house had aluminum siding at one time, wood siding has been restored on the home.



# **BIRMINGHAM CITY COMMISSION MINUTES**

**APRIL 9, 2018**

**MUNICIPAL BUILDING, 151 MARTIN**

**7:30 P.M.**

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

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

## **II. ROLL CALL**

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

Administration: City Manager Valentine, City Attorney Currier, Golf Manager Brito, IT Director Brunk, Chief of Police Clemence, Planning Director Ecker, DPS Manager Filipski, Finance Director Gerber, Assistant City Manager Gunter, Building Official Johnson, Assistant Building Official Morad, City Clerk Mynsberge, City Engineer O'Meara, BSD Director Tighe, Director of Public Services Wood

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

### **04-090-18 ANNOUNCEMENTS**

Representative Mike McCready reported on the legislature's 2018-2019 budget process, emphasizing funding for road improvements.

Mayor Harris announced:

- The 2018 Bicentennial Lecture Series co-presented by The Birmingham Museum and The Baldwin Public Library continues on April 19<sup>th</sup> from 7:00 until 8:00 p.m. at the Baldwin Public Library. Please register online at [www.baldwinlib.org](http://www.baldwinlib.org) on the Event Calendar, or call 248-647-1700 for more information.
- The Birmingham Citizens Academy starts on Tuesday, April 24<sup>th</sup>. Applications are being accepted through April 20<sup>th</sup>. For more information contact the City Manager's office at 248-530-1807 or visit [www.bhamgov.org](http://www.bhamgov.org).

### **04-091-18 APPOINTMENTS TO THE PLANNING BOARD**

City Manager Valentine reported:

- On March 12, 2018 the City Commission considered Stuart Jeffares, J. Bryan Williams, Nasseem Ramin, and Daniel Share for appointment to three positions on the Planning Board.

- to add "timeline of completion" to the list of criteria by which the proposals will be evaluated on pg. 13 under the "Evaluation Procedure and Criteria" heading.

**VOTE ON AMENDMENT:**

Yeas, 7  
Nays, 0  
Absent, 0

**VOTE ON MAIN MOTION AS AMENDED:**

Yeas, 7  
Nays, 0  
Absent, 0

**04-102-18 TRIANGLE DISTRICT STREETScape-BIKE RACKS**

Planning Director Ecker reported:

- The "Pi" style bike racks in the Triangle District are no longer being manufactured.
- As a result, the Multi-Modal Transportation Board (MMTB) was tasked with reviewing a number of other bike rack options.
- Since the Commission previously selected lighting, trash receptacles and benches from the 35 Collection by Landscape Forms for the Triangle District, the MMTB chose to recommend the "Loop" bicycle racks from the 35 Collection as well. The "Loop" bike racks cost approximately \$360 each.
- The MMTB recommends that the eleven extant "Pi" bike racks remain installed, since they are in good condition and nine are on private property. Removing the two "Pi" bike racks the City owns would cost about \$50 each.

Commissioner Hoff noted that the "Classic U" bike racks are installed downtown, are more cost-effective relative to the "Loop" bike rack, and may be suitable for the Triangle District since it is similar enough to other items from the 35 Collection.

Planning Director Ecker replied that:

- The MMTB thought the "Loop" bike rack kept the Triangle District's aesthetic both internally consistent and distinct from the downtown aesthetic.
- The "Classic U" bike rack was solely available in a black finish.

**MOTION:** Motion by Commissioner Nickita, seconded by Commissioner Bordman:  
To approve keeping the installed "Pi" bike racks.

**AND**

To accept the recommendation of the Multi-Modal Transportation Board, and adopt the Loop model bike rack, embedded and with a metallic silver finish, produced by Landscape Forms to be the new standard bike rack for the Triangle District.

**VOTE:** Yeas, 7  
Nays, 0  
Absent, 0

**04-103-18 VALET PARKING PROPOSAL – 298 S. OLD WOODWARD**

City Engineer O'Meara reported:

- The Daxton Hotel (The Daxton) project at 298 S. Old Woodward Avenue requested the right to operate a full time valet station in front of the proposed hotel building before the Commission on October 16, 2017.
- After review, The Daxton concluded that during normal daily operations, the hotel can suitably function if six parking spaces are removed from the Old Woodward Ave. frontage of the building, leaving two angled parking spaces. They requested the two angled spaces be installed just south of the parking garage exit area near the north end of the site. During times of peak occupancy, the applicant would pay for and obtain two meter bags to close the two parking spaces, thereby allowing the valet area to operate at peak capacity.
  - The Advisory Parking Committee reviewed this option, and voted 6-1 to concur with the request.

Mike Darga, traffic engineer with Giffels Webster, explained that providing valet service for The Daxton on Brown Street would drop service to unacceptable levels due to various constraints, and would result in navigability issues in the area that would negatively impact the surrounding business community. Mr. Darga then clarified aspects of the study for the Commission.

City Manager Valentine told Commissioner Hoff that the Final License Agreement:

- Recognized the party of the agreement as Woodward-Brown Ventures LLC;
- Provided a 90-day expiration in paragraph five and seven; and,
- Updated the mayoral signatory to Mayor Harris.

City Attorney Currier added that the correct annual license fee is \$32,400.

Mayor Pro Tem Bordman reiterated concerns that the loss of six parking spaces may negatively impact surrounding businesses. Commissioner Nickita and Commissioner Sherman echoed those concerns.

Rick Rattner, representing the owner/applicant of The Daxton, said:

- One of the main objectives The Daxton had was to avoid interrupting the flow of traffic on S. Old Woodward.
- The Daxton is supplying thirty more parking spaces underground than are required by the City. Those spaces are available to the public, and with valet services The Daxton can park nearly eighty vehicles.
- The City will have a net gain of parking spaces with the implementation of the The Daxton's valet services, even after removal of the six on-street parking spaces.
- Valet frontage with space for only two vehicles at a time is insufficient.
- The Daxton took the Commission's direction to explore fewer spaces and the option of valet on Brown Street extremely seriously, and conducted involved studies over a number of months. The models reflected double the traffic on Brown Street at peak times of the morning, and 60% more time spent by vehicles on Brown Street at peak times in the afternoon.
- During events, The Daxton will run valet services through the parking structures at Pierce Street and Peabody Street. Other City businesses also utilize valet parking in the structures during events.
- Most visitors staying at The Daxton will not have their own vehicles.

Matt Schwan, principal and partner at Giffels Webster, stated that The Daxton employees will be encouraged to be dropped off at work or to take alternate transportation such as buses. Mr. Schwan said this initiative has proven successful at the Detroit hotels Giffels Webster advises.

Commissioner Nickita said:

- Brown Street could potentially accommodate three lanes and space for drop-offs during overflow or special events in order to diminish the number of spaces lost from S. Old Woodward.
- He would like to see fewer spaces permanently removed, with the possibility of temporarily clearing all eight spaces for valet use during overflow of special events.
- The Wurlitzer Hotel in downtown Detroit has 106 rooms and only two parallel spaces cut out for valet.
- The Daxton is proposing three other parking spaces be removed to provide egress from the underground parking lot in addition to the proposed removal of the six angled spots for the valet frontage.
- When the curb is re-done at the north side of Brown, a re-striping of Brown could be done.

Commissioners Nickita and Sherman said The Daxton has insufficiently explored all the potential options for conserving more of the spaces on S. Old Woodward.

Mr. Darga said that pushing a lane closer to The Daxton on the north side of Brown creates serious geometric problems in terms of the horizontal and vertical grades. All the grades would have to be changed on that sidewalk.

Commissioner Nickita said:

- This possibility should be sufficiently studied before the Commission decides on it.
- Surface parking spaces are more valuable than underground parking spaces.

Commissioner DeWeese said that:

- The Daxton is being built in the overlay district, and is providing more parking than is required.
- The Daxton should construct a clear agreement providing them access to Birmingham Place.
- In hotels he has seen, having fewer spaces in front for valet is generally only possible on wider roads. Since S. Old Woodward has been narrowed with the angled parking, providing fewer valet spaces will be more difficult.
- The alternatives should be reviewed by The Daxton, but the Commission should look at this as a gain in parking spaces for the City.
- He is glad to see the City receiving more money from The Daxton for this licensing agreement.

Mayor Harris concurred with Commissioner Boutros and Commissioner DeWeese, but said he is not convinced that all effort has been exhausted towards conserving the parking spaces on S. Old Woodward.

Richard Astrein, downtown business owner, said he walks the area in question frequently, and that putting the valet on S. Old Woodward makes more sense due to the already-slowed traffic relative to Brown Street.

Mr. Rattner said further study would be performed, and will be returned to the Commission at a later date.

**04-104-18                      PARKING CAPACITY INCREASE – 34952 WOODWARD AVENUE**

Assistant City Manager Gunter reported:

- 138 additional parking spaces can be made available at 34952 Woodward Avenue located on the corner of Woodward Avenue and Maple. The Advisory Parking Committee (APC) made a recommendation on April 4, 2018 for consideration by the City Commission.
- Additionally, the rendering illustrates a concrete section that runs along Woodward. Cars are currently parking for free in this location. The APC recommends the sale of 20 hangtag permits to further serve waitlisted customers. This recommendation will result in the sale of 170 total passes located near the existing Peabody garage.
- Staff negotiated a minimum term of eighteen (18) months to ensure the cost to implement the parking expansion program would not exceed the benefits. The capital outlay is estimated at \$87,400.
- Assuming a 10% contingency, the total cost for implementation would be \$96,100. The cost per space for opening this lot would be approximately \$700 per space. On average, the cost per space for surface lots in core downtown areas is upwards of \$27,000.
- Staff will instruct SP+ to offer the passes to the members of the Peabody waitlist first, and then open to other users if passes remain available.

Assistant City Manager Gunter added that the resolution should be updated to reflect the authorized expenditure, account number, and the lot number designation of 12.

City Engineer O'Meara told:

- Commissioner Hoff that the lot on the northwest corner of Brown and Peabody had just finished construction when the City became able to use it. That lot had 38 spaces and passes were \$70 each.
- Mayor Harris that the City will have no problem selling the 150 parking passes that will be coming available.

Commissioner Nickita stated that Lot 12 should be developed into something more attractive after the 18-month agreement concludes because it is in such a prominent location.

City Manager Valentine concurred with Commissioner Nickita's concern while acknowledging that the City should maintain options for parking until a new parking structure can be built in Birmingham.

City Engineer O'Meara confirmed for Commissioner Nickita that the spaces would be redrawn in the lot in order to enable vehicles sufficient parking access to all the designated spaces.

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



## APPLICATION FOR VALET PARKING LICENSE

Chapter 26, Article VIII – Fees:

Initial application fee	\$1,000.00
Renewal fee	\$ 500.00

Appendix A – Valet Parking Fee: *(must pay for six months in advance)*

1-100 cars	\$ 500.00 per month
101 – 200 cars	\$ 750.00 per month
201 – above cars	\$1,000.00 per month

Meter Bag Fees: *(must pay for six months in advance)*

\$216 per month, per meter space (5 hours)  
\$50 deposit per meter bag

Background Check:

All applicants and employees must submit a criminal background check valid within 30 days of application. Please visit [www.michigan.gov/ichat](http://www.michigan.gov/ichat) to perform background check to be submitted with the application. Background check fee is \$10 per query.

### APPLICANT INFORMATION

Name of Business/Businesses Woodward Brown Ventures, LLC - Daxton Hotel

Business address/addresses 298 S Old Woodward Ave, Birmingham, MI 48009

(include city and zip)

Business Phone (314) 707-3193

Business Fax

Contact Person Aaron Black, General Manager

Contact Email ablack@daxtonhotel.com

Hours of operation 24 hours/day

(Requests to extend normal hours of operation past 12:00 a.m. are by special permission **only** of the Chief of Police)

Number of meter spaces utilized (approved by Chief of Police) 6 with 2 additional bags 11-19-20

Location of meter spaces S Old Woodward Ave (west side of street) at Brown

Estimated number of vehicles to be parked per month > 200

Location of parking structure where vehicles will be parked Pierce Street



**VALET INFORMATION**Valet Parking Service Provider Aparium Hotel GroupOn-site Manager Aaron BlackPhone (314) 707-3193Has the valet company's previous license been revoked or suspended? No

If yes, explain reason for revocation or suspension \_\_\_\_\_

Will a keybox be used? Yes  
SIGNATURE OF APPLICANT2/21/20  
DATE**THE FOLLOWING MUST BE INCLUDED WITH THE APPLICATION:**

- A 2" X 2" current photograph of each driver
- A copy of the Michigan Motor Vehicle Record for each driver – including: full name, driver's license number, and date of birth.
- A Michigan State Police criminal background check for each driver.
- Applicant's Insurance certificate (see attached requirements)

*INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED AND WILL BE RETURNED,  
WHICH MAY RESULT IN THE ADDITION OF LATE FEES.*

**FOR OFFICE USE ONLY**

	Date Paid	Amount Paid
Application Fee <i>acct #101-000.000-451.0000</i>		
Parking Fee (Jan – June) <i>acct # 585-000.000-612.0013</i>		
Parking Fee (July – Dec) <i>acct # 585-000.000-612.0013</i>		
Meter Bag Fee (Jan – June) <i>acct #585-000.000-612.0015</i>		
Meter Bag Fee (July – Dec) <i>acct #585-000.000-612.0015</i>		

POLICE DEPT APPROVAL: \_\_\_\_\_

INSURANCE APPROVAL: \_\_\_\_\_

12/4/2018

h:\shared\annual licenses\valet licenses\application form.doc

Daxton  
298 S. Old Woodward Ave.  
Birmingham, MI 48009

Flagstar Bank  
Woodward Brown Ventures LLC

000021

99-9999  
9999

**PAY** Two Thousand and 00/100 Dollars

Check No.	DATE	AMOUNT
000021	2/20/2020	\$2,000.00

**TO THE ORDER OF:**  
City of Birmingham  
151 Martin Street  
P.O. Box 3001  
Birmingham, MI 48012

*Regan Corn*  
AUTHORIZED SIGNATURE

"VERIFICATION BOX" (TO RIGHT OF ARROW, HOLD BETWEEN THUMB AND FOREFINGER, OR BREATHE ON IT, COLOR WILL DISAPPEAR, THEN REAPPEAR)

⑈000021⑈ ⑆272471852⑆ 129168383⑈

Daxton

000021

Date	Invoice No.	Invoice Date	Description	Amount
2/20/2020	Valet Parking Lice	2/20/2020	Initial Application Fee \$1,000 Valet Parking Fee 201+ Cars \$1,000	2,000.00
Total				2,000.00



# Daxton Hotel Valet Schematic

BOOTH HANSEN

Route from valet into 2-floor underground garage

To underground parking with 52 spaces for patrons/community valet users

Poll/Hotel Valet Area

76 feet

Uninterrupted traffic on S. Old Woodward

Traffic route exiting valet stand

Uninterrupted traffic on S. Old Woodward

Traffic route into valet stand

Uninterrupted traffic on S. Old Woodward

Valet garage exit

2" = 50' PLAN

1

Daxton Hotel

200 S. Old Woodward Ave  
Orem, UT 84058

2011.12.28

A001



NO.	DATE	DESCRIPTION
1	12/28/2011	ISSUED FOR PERMIT
2	01/10/2012	REVISED TO ADD TRAFFIC SIGNAL
3	01/10/2012	REVISED TO ADD TRAFFIC SIGNAL
4	01/10/2012	REVISED TO ADD TRAFFIC SIGNAL
5	01/10/2012	REVISED TO ADD TRAFFIC SIGNAL
6	01/10/2012	REVISED TO ADD TRAFFIC SIGNAL
7	01/10/2012	REVISED TO ADD TRAFFIC SIGNAL
8	01/10/2012	REVISED TO ADD TRAFFIC SIGNAL
9	01/10/2012	REVISED TO ADD TRAFFIC SIGNAL
10	01/10/2012	REVISED TO ADD TRAFFIC SIGNAL



# MEMORANDUM

(Engineering)

**DATE:** December 3, 2020

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

**FROM:** James J. Surhigh, Consulting City Engineer

**SUBJECT:** Michigan Department of Transportation (MDOT) Annual Permit

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## INTRODUCTION:

MDOT requires that a certified resolution be provided to establish the authorized representatives designated to obtain permits for our community.

## BACKGROUND:

Each year the Michigan Department of Transportation (MDOT) requires the City of Birmingham to provide a certified Performance Resolution for Governmental Agencies for the purposes of issuing to the City an "Annual Application and Permit for Miscellaneous Operations within State Highway Right-of-Way" and for "Individual Permit for Use of State Highway Right-of-Way". Enclosed is a copy of the correspondence received from MDOT.

The Annual Permit is required to allow the City personnel or designated contractors to work in the MDOT right-of-way along Woodward Avenue (M-1) for routine maintenance related to the City's utilities, sidewalks, road intersections, or other features that are located within the right-of-way. For work covered under the annual permit, the City is only required to file an Advanced Notice on MDOT's Permit Gateway for the activity, and full plan reviews are not necessary. The Annual Permit will take effect on January 1, 2021, and continues through the calendar year.

MDOT also requires the City to obtain Individual Permits for specific construction projects that impact the MDOT right-of-way along Woodward Avenue (M-1). This not only includes direct construction activities, but also placement of temporary construction or detour signs for projects that may be located outside the MDOT right-of-way. For Individual Permits, the City is required to submit an application with plans of the proposed work, which is then reviewed by MDOT staff prior to issuing the permit.

The attached Performance Resolution for Governmental Agencies defines the terms of the Annual Permit and Individual Permit, including insurance requirements, and also designates the individuals that will be authorized to apply for Permits on behalf of the City.

## LEGAL REVIEW:

Not required.

FISCAL IMPACT:

None

PUBLIC COMMUNICATIONS:

None

SUMMARY:

Each year, MDOT requires the City to adopt the Performance Resolution for Governmental Agencies for the purposes of applying for the City's annual permit, as well as any individual permits that are needed throughout the year for working in the State Highway right-of-way along Woodward Avenue (M-1). It is recommended that representatives from the Engineering Department and Department of Public Services be authorized to act on behalf of the City for matters related to the MDOT permits.

ATTACHMENTS:

MDOT Letter – dated September 1, 2020  
MDOT Performance Resolution for Governmental Agencies

SUGGESTED RESOLUTION:

To adopt the Performance Resolution for Governmental Agencies with the Michigan Department of Transportation (MDOT), and furthermore, to authorize James J. Surhigh, Consulting City Engineer, Lauren Wood, Director of DPS, and Scott Zielinski, City Construction Engineer to apply to MDOT for the necessary Annual Permit, and other Individual Permits for work within the State Highway Right-of-Way on behalf of the City of Birmingham.

GRETCHEN WHITMER  
GOVERNOR



STATE OF MICHIGAN  
**DEPARTMENT OF TRANSPORTATION**  
OAKLAND TRANSPORTATION SERVICE CENTER



PAUL AJEGBA  
DIRECTOR

September 1, 2020

**2021 ANNUAL PERMIT FOR WORK ON STATE TRUNKLINE RIGHT OF WAY**

The MDOT Oakland TSC is now accepting 2021 Annual Permit applications. All permit applications are to be submitted via the MDOT electronic Construction Permit System (CPS). The 2021 Annual Permit will be effective January 1, 2021. Your current 2020 Annual Permit shall continue to be used for any work occurring between now and December 31, 2020.

The Performance Resolution for Governmental Agencies (Form 2207B) was revised in December 2016, therefore, if you haven't done so already, an updated Resolution will be required for 2021. The form shall include the name or title of the designated person(s) authorized to sign permits and shall be uploaded into CPS with your Annual Permit application. I have attached a copy of the form and it can also be found on the internet at [www.michigan.gov/mdot](http://www.michigan.gov/mdot).

Each time you perform work under your Annual Permit you will need to submit an electronic Advance Notice via the MDOT electronic CPS system. No work shall be performed until the Advance Notice is approved by MDOT.

An Individual Permit is required for all proposed operations in the MDOT right of way not covered under the Annual Permit.

Municipalities, when working within their municipal limits, are exempt from permit fees.

Thank you for your cooperation. If you have any additional questions, feel free to contact me at 248-895-2558.

Sincerely,

Stacey Gough  
Oakland TSC Utility/Permit Engineer  
[goughs@michigan.gov](mailto:goughs@michigan.gov)

cc: File

## PERFORMANCE RESOLUTION FOR GOVERNMENTAL AGENCIES

*This Performance Resolution is required by the Michigan Department of Transportation for purposes of issuing to a municipal utility an "Individual Permit for Use of State Highway Right of Way", or an "Annual Application and Permit for Miscellaneous Operations within State Highway Right of Way".*

RESOLVED WHEREAS, the CITY OF BIRMINGHAM  
(city, village, township, etc.)

hereinafter referred to as the "GOVERNMENTAL AGENCY," periodically applies to the Michigan Department of Transportation, hereinafter referred to as the "DEPARTMENT," for permits, referred to as "PERMIT," to construct, operate, use and/or maintain utilities or other facilities, or to conduct other activities, on, over, and under State Highway Right of Way at various locations within and adjacent to its corporate limits;

NOW THEREFORE, in consideration of the DEPARTMENT granting such PERMIT, the GOVERNMENTAL AGENCY agrees that:

1. Each party to this Agreement shall remain responsible for any claims arising out of their own acts and/or omissions during the performance of this Agreement, as provided by law. This Agreement is not intended to increase either party's liability for, or immunity from, tort claims, nor shall it be interpreted, as giving either party hereto a right of indemnification, either by Agreement or at law, for claims arising out of the performance of this Agreement.
2. If any of the work performed for the GOVERNMENTAL AGENCY is performed by a contractor, the GOVERNMENTAL AGENCY shall require its contractor to hold harmless, indemnify and defend in litigation, the State of Michigan, the DEPARTMENT and their agents and employee's, against any claims for damages to public or private property and for injuries to person arising out of the performance of the work, except for claims that result from the sole negligence or willful acts of the DEPARTMENT, until the contractor achieves final acceptance of the GOVERNMENTAL AGENCY. Failure of the GOVERNMENTAL AGENCY to require its contractor to indemnify the DEPARTMENT, as set forth above, shall be considered a breach of its duties to the DEPARTMENT.
3. Any work performed for the GOVERNMENTAL AGENCY by a contractor or subcontractor will be solely as a contractor for the GOVERNMENTAL AGENCY and not as a contractor or agent of the DEPARTMENT. The DEPARTMENT shall not be subject to any obligations or liabilities by vendors and contractors of the GOVERNMENTAL AGENCY, or their subcontractors or any other person not a party to the PERMIT without the DEPARTMENT'S specific prior written consent and notwithstanding the issuance of the PERMIT. Any claims by any contractor or subcontractor will be the sole responsibility of the GOVERNMENTAL AGENCY.
4. The GOVERNMENTAL AGENCY shall take no unlawful action or conduct, which arises either directly or indirectly out of its obligations, responsibilities, and duties under the PERMIT which results in claims being asserted against or judgment being imposed against the State of Michigan, the Michigan Transportation Commission, the DEPARTMENT, and all officers, agents and employees thereof and those contracting governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract. In the event that the same occurs, for the purposes of the PERMIT, it will be considered as a breach of the PERMIT thereby giving the State of Michigan, the DEPARTMENT, and/or the Michigan Transportation Commission a right to seek and obtain any necessary relief or remedy, including, but not by way of limitation, a judgment for money damages.

5. The GOVERNMENTAL AGENCY will, by its own volition and/or request by the DEPARTMENT, promptly restore and/or correct physical or operating damages to any State Highway Right of Way resulting from the installation construction, operation and/or maintenance of the GOVERNMENTAL AGENCY'S facilities according to a PERMIT issued by the DEPARTMENT.
6. With respect to any activities authorized by a PERMIT, when the GOVERNMENTAL AGENCY requires insurance on its own or its contractor's behalf it shall also require that such policy include as named insured the State of Michigan, the Transportation Commission, the DEPARTMENT, and all officers, agents, and employees thereof and those governmental bodies performing permit activities for the DEPARTMENT and all officers, agents, and employees thereof, pursuant to a maintenance contract.
7. The incorporation by the DEPARTMENT of this resolution as part of a PERMIT does not prevent the DEPARTMENT from requiring additional performance security or insurance before issuance of a PERMIT.
8. This resolution shall continue in force from this date until cancelled by the GOVERNMENTAL AGENCY or the DEPARTMENT with no less than thirty (30) days prior written notice provided to the other party. It will not be cancelled or otherwise terminated by the GOVERNMENTAL AGENCY with regard to any PERMIT which has already been issued or activity which has already been undertaken.

BE IT FURTHER RESOLVED, that the following position(s) are authorized to apply to the DEPARTMENT for the necessary permit to work within State Highway Right of Way on behalf of the GOVERNMENTAL AGENCY.

Title and/or Name: \_\_\_\_\_

JAMES J. SURHIGH, CONSULTING CITY ENGINEER \_\_\_\_\_

LAUREN WOOD, DIRECTOR OF DPS \_\_\_\_\_

SCOTT ZIELINSKI, CONSTRUCTION ENGINEER \_\_\_\_\_

I HEREBY CERTIFY that the foregoing is a true copy of a resolution adopted by

the CITY COMMISSION \_\_\_\_\_

(Name of Board, etc)

of the CITY OF BIRMINGHAM \_\_\_\_\_

(Name of GOVERNMENTAL AGENCY)

of OAKLAND \_\_\_\_\_

(County)

at a REGULAR \_\_\_\_\_ meeting held on the 7 TH day

of DECEMBER \_\_\_\_\_ A.D. 2020 \_\_\_\_\_.

Signed \_\_\_\_\_

Title \_\_\_\_\_



## MEMORANDUM

Finance Department

**DATE:** November 25, 2020

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

**FROM:** Mark Gerber, Director of Finance/Treasurer

**SUBJECT:** Designated Assessor Interlocal Agreement

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### INTRODUCTION:

Public Act 660 of 2018 requires all Michigan counties to name a Designated Assessor for each respective county. Oakland County has designated an assessor for the purposes of this act and needs a majority of the cities and townships to approve the interlocal agreement by December 31, 2020.

### BACKGROUND:

Public Act 660 requires all Michigan counties to name a Designated Assessor for each respective county. The main purpose of the Act and the Designated Assessor is to ensure all cities and townships are in substantial compliance with the General Property Tax Act. The Designated Assessor's purpose is to assist the State Tax Commission in the event a local city or township is not in compliance. This assistance will only take place after several reviews and corrections opportunities are given to the local city or township.

The County has approved David Hieber, Equalization Officer for Oakland County, as the County's Designated Assessor. By approving the interlocal agreement, the City is agreeing to this designation and will work with Designated Assessor to correct any issues that are identified and provide the Designated Assessor with appropriate access to the City's records.

The City currently contracts with the County's Equalization Department for assessing services. This agreement does not change our current contract.

### LEGAL REVIEW:

No issues were found when reviewing this agreement.

### FISCAL IMPACT:

No impact. If an audit of our assessing records indicate that there is substantial non-compliance, Oakland County as our assessor will correct them without charge.

### SUMMARY:

It is recommended to approve the interlocal agreement with Oakland County.

### ATTACHMENTS:

1. Interlocal Agreement
2. Letter from Oakland County
3. STC Bulletin 8 of 2020

4. Oakland County Resolution Approving the Designated Assessor

SUGGESTED RESOLUTION: To approve the interlocal agreement with Oakland County and authorize Mayor Boutros to sign the agreement on behalf of the City Commission.



**INTERLOCAL AGREEMENT FOR OAKLAND COUNTY TO APPROVE  
THE DESIGNATED ASSESSOR FOR THE PERIOD JANUARY 1, 2021  
THROUGH DECEMBER 31, 2025**

Public Act 660 of 2018 requires a county to have a Designated Assessor on file with the State Tax Commission as of December 31, 2020. Accordingly, the following interlocal agreement (hereinafter "Agreement") has been executed by the Board of Commissioners for Oakland County, a majority of the Assessing Districts in Oakland County, and the individual put forth as the proposed Designated Assessor. Oakland County and the Assessing Districts are collectively referred to throughout this Agreement as the "Parties."

**RECITALS**

WHEREAS, The Assessing Districts are Municipal Corporations (cities and townships) located within the County of Oakland, in the State of Michigan;

WHEREAS, The Michigan Constitution of 1963, Article 7, Section 28 permits a political subdivision to exercise jointly with any other political subdivision any power, privilege or authority which such political subdivisions share in common with each other and which each might exercise separately;

WHEREAS, The Urban Cooperation Act of 1967, being MCL 124.505 *et seq*, and the Intergovernmental Transfer of Functions and Responsibilities Act, give effect to the Constitutional provision by providing that public agencies may enter into interlocal agreements to carry out their respective functions, powers and authority;

WHEREAS, P.A. 660 of 2018 requires each County to enter into an Agreement that designates the individual who will serve as the County's Designated Assessor. That interlocal agreement must be approved by the County Board of Commissioners and a majority of the Assessing Districts in the County.

WHEREAS, P.A. 660 of 2018 mandates that the Designated Assessor shall be an advanced assessing officer or a master assessing officer.

NOW, THEREFORE, based on the foregoing Recitals, and in consideration of the terms of this Agreement, the Parties agree as follows:

## BACKGROUND INFORMATION

Oakland County names **DAVID HIEBER** (R-5676), in his official capacity as the Equalization Officer for Oakland County, as the Designated Assessor for all of the Assessing Districts within Oakland County<sup>1</sup>. Included as an addendum to this Agreement are the Oakland County SEV totals by class, including special act values, those properties deemed unique or complex by a local Assessing District, and a listing of the total number of parcels, by classification, including special act rolls, within each Assessing District.

If the State Tax Commission (STC) invokes the Designated Assessor process for any Assessing District in Oakland County, the Parties agree that the Designated Assessor will perform the duties associated with being the Assessor of Record for an Assessing District at the Oakland County Equalization Division offices in the City of Pontiac, County of Oakland, State of Michigan, unless the duties of the Designated Assessor require on-site visits to the Assessing District's location.

## QUALIFICATIONS OF DESIGNATED ASSESSOR

David Hieber has been certified as a Michigan Master Assessing Officer since 1998. In his capacity as the Oakland County Equalization Officer, he is responsible for managing the Oakland County Equalization Division. Along with its statutory duties, the Equalization Division currently acts as the contracted Assessor of Record for thirty of the fifty-two Assessing Districts in Oakland County.

David Hieber has disclosed any conflicts of interest involving the proposed Designated Assessor, the County, or any Assessing District, if applicable: **[NONE]**.

It is understood that David Hieber will, during the length of this agreement, maintain his assessor certification in good standing with the State Tax Commission and if required to serve as the Designated Assessor for an Assessing District in Oakland County shall act as the Assessor of Record for that Assessing District. When acting as the Assessor of Record for an Assessing District, the Designated Assessor shall meet all the requirements as set forth by the State Tax Commission's *Supervising Preparation of the Assessment Roll* approved by the State Tax Commission August 21, 2018.

Any additional requirements that are agreed to by the Designated Assessor, the County and the Assessing Districts may not conflict with the State Tax Commission's *Supervising Preparation of the Rolls*.

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<sup>1</sup> Oakland County contains 52 Assessing Districts (cities and townships), two of which (City of Fenton and City of Northville) are not considered to be "in" Oakland County for purposes of MCL 211.10g as the largest share of their state equalized value is located in another county.

A list of the remaining 50 Assessing Districts can be found here:

<https://www.oakgov.com/mgtbud/equal/Pages/assessing-offices.aspx>

## **1.0 DUTIES AND RESPONSIBILITIES OF DESIGNATED ASSESSOR**

- 1.1 The Designated Assessor, while serving as the Assessor of Record for an Assessing District within Oakland County, shall satisfy all requirements contained State Tax Commission's *Supervising Preparation of the Assessment Roll* approved by the State Tax Commission August 21, 2018.
- 1.2 Within 30 (thirty) days of being appointed as the Assessor of Record for the Assessing District by the STC, the Designated Assessor shall prepare and transmit to the Assessing District's supervisor, manager, or chief executive a detailed proposal, including a schedule for delivery of documents, to correct deficiencies identified by the STC's audit.
- 1.3 The Parties agree that the Designated Assessor, while serving as the Assessor of Record for an Assessing District, shall do the following things, as applicable to bring the Assessing District into compliance with the Audit of Minimum Assessing Requirements:
  - 1.3.1 Make assessments of real and personal property within the Assessing District;
  - 1.3.2 Appraise all property, process all real and personal property description changes, and prepare the assessment roll for real and personal property in the Assessing District;
  - 1.3.3 Attend all March, July, and December Board of Review meetings;
  - 1.3.4 Be available for consultation on all Michigan Tax Tribunal real and personal property and special assessment appeals, and assist the Assessing District in the preparation of both the oral and written defense of appeals;
  - 1.3.5 Prepare all necessary reports for review by the supervisor, manager, chief executive, board, or council of the Assessing District, as applicable;
  - 1.3.6 Performs any other duties required under PA 600 of 2018.
- 1.4 For an Assessing District employing assessing staff other than the Assessor of Record, assessing staff will conduct their duties as under the direction and supervision of the Designated Assessor, subject to any limitations as may be agreed by the applicable Assessing District and the Designated Assessor. However, no members of said assessing staff will become employees or independent contractors of Oakland County.
- 1.5 While not acting in the capacity as the Designated Assessor for an Assessing District, the Designated Assessor will have the following duties and responsibilities for Oakland County and the Assessing Districts within Oakland County: Equalization Officer.
- 1.6 The parties understand and agree that the duties outlined in this Agreement only apply if and when the Designated Assessor is required to take over the assessing duties for an Assessing District pursuant to the terms of PA 600 of 2018. This Agreement will have no effect on any pre-existing agreements that the parties may have, under which Oakland County performs contracted assessing services for the Assessing District.

## **2.0 DUTIES AND RESPONSIBILITIES OF ASSESSING DISTRICTS**

- 2.1 Any Assessing District in Oakland County that is required to utilize the services of the Designated Assessor will, during and throughout the term of this Agreement, do the following:
  - 2.1.1 Provide the Designated Assessor with reasonable access to records, documents, databases and information in order to allow the Designated Assessor to serve as the Assessor of Record for the Assessing District and satisfy all requirements *Supervising Preparation of the Assessment Roll* approved by the State Tax Commission August 21, 2018.
  - 2.1.2 Furnish the Designated Assessor with any applicable policies and procedures that the Designated Assessor may be subject to during the period of time the Designated Assessor serves as the Assessing District's Assessor of Record.
  - 2.1.3 Provide any technology, equipment, and workspace necessary for the Designated Assessor to carry out their requirements under this Agreement.
- 2.2 The Assessing District shall, at all times and under all circumstances, remain solely liable for any and all costs, legal obligations, and/or civil liabilities associated with or in any way related to any Assessing District tax appraisal or assessment functions or any other Assessing District legal obligation under any applicable State Property Tax Laws. The Assessing District shall employ and retain its own legal representation, as necessary, to defend any such claim or challenge before the State Tax Tribunal or any other court or review body.
- 2.3 Except for those express statutory and/or regulatory obligations incumbent only upon licensed Equalization Division Personnel (i.e., State Licensed and Certified Real and/or Personal Property Tax Assessors) to defend property tax appraisals and assessments that they either performed, or were otherwise performed under their supervision, before the Michigan Tax Tribunal, the Parties agree that no other County employees, including any County attorneys shall be authorized, required and/or otherwise obligated under this Agreement or pursuant to any other agreement between the Parties to provide any legal representation to or for the Assessing District and/or otherwise defend, challenge, contest, appeal, or argue on behalf of the Assessing District before the Michigan Tax Tribunal or any other review body or court.
- 2.4 The Assessing District shall, at all times and under all circumstances, remain solely liable for any and all costs, legal obligations, and/or civil liabilities associated with or in any way related to any tax appraisal or assessment functions or any other legal obligation. The Assessing District agrees that under no circumstances shall the County or the Designated Assessor be responsible for any costs, obligations, and/or civil liabilities or any responsibility under any State Property Tax Law.

### **3.0 DESIGNATED ASSESSOR COMPENSATION**

- 3.1 The Designated Assessor may charge an Assessing District that is required to contract with the Designated Assessor and that Assessing District shall pay for the reasonable costs incurred by the Designated Assessor in serving as the Assessing District's Assessor of Record, including, but not limited to, the costs of overseeing and administering the annual assessment, preparing and defending the assessment roll, and operating the assessing office.
- 3.2 If the Designated Assessor is required to serve as the Assessor of Record for an Assessing District within Oakland County, the parties understand and agree that he will be serving in his official capacity as the Oakland County Equalization Officer. Therefore, an Assessing District will not make any direct payments to the Designated Assessor. Instead, the Assessing District will be responsible for paying a fee to Oakland County which fee is intended to compensate Oakland County for the reasonable costs incurred by the Designated Assessor and his staff. Oakland County will charge the Assessing District a fee equal to the average rate per parcel that it charges those districts for whom it already performs contracted assessing services, as of the date the Designated Assessor is required to serve as the Assessor of Record. The parties understand that it may be necessary to modify this standard fee depending on the complexity of the work to be performed by the Designated Assessor and the number of staff needed to assist in completing the work. The Assessing District is not required to pay a retainer fee. In the event that the Designated Assessor is acting on behalf of an Assessing District for which Oakland County Equalization Department is currently contracted with to provide assessing services, the Designated Assessor will provide its Designated Assessor services at no additional cost to said Assessing District.
- 3.3 If the Assessing District fails, for any reason, to pay the County any monies when and as due under this Contract, the Assessing District agrees that unless expressly prohibited by law, the County or the County Treasurer, at their sole option, shall be entitled to a setoff from any other Assessing District funds that are in the County's possession for any reason. Funds include but are not limited to the Delinquent Tax Revolving Fund ("DTRF"). Any setoff or retention of funds by the County shall be deemed a voluntary assignment of the amount by the Assessing District to the County. The Assessing District waives any claims against the County or its Officials for any acts related specifically to the County's offsetting or retaining such amounts. This paragraph shall not limit the Assessing District's legal right to dispute whether the underlying amount retained by the County was actually due and owing under this Agreement.
- 3.4 If the County chooses not to exercise its right to setoff or if any setoff is insufficient to fully pay the County any amounts due and owing the County under this Contract, the County shall have the right to charge up to the then-maximum legal interest on any unpaid amount. Interest charges shall be in addition to any other amounts due to the County under this Agreement. Interest charges shall be calculated using the daily unpaid balance method and accumulate until all outstanding amounts and accumulated interest are fully paid.

- 3.5 Nothing in this Section shall operate to limit the County's right to pursue or exercise any other legal rights or remedies under this Contract against the Assessing District to secure reimbursement of amounts due the County under this Agreement. The remedies in this Section shall be available to the County on an ongoing and successive basis if Assessing District at any time becomes delinquent in its payment. Notwithstanding any other term and condition in this Contract, if the County pursues any legal action in any court to secure its payment under this Contract, the Assessing District agrees to pay all costs and expenses, including attorney's fees and court costs, incurred by the County in the collection of any amount owed by the Assessing District.

#### **4.0 EFFECTIVE DATE AND TERM OF AGREEMENT**

This Agreement shall become effective when it is executed by the Oakland County Board of Commissioners, David Hieber, and the governing bodies of a majority of the Assessing Districts within Oakland County, and shall expire on December 31, 2025. The terms and conditions in Section 3.0 (Compensation) shall survive and continue in full force beyond the termination of this Agreement if the Assessing District owes money to the County under this Agreement.

#### **5.0 DESIGNATED ASSESSOR EMPLOYMENT STATUS**

It is understood by the parties that David Hieber is appointed as the Designated Assessor based on his employment status as Oakland County Equalization Officer and that if his employment status materially changes, the parties will request that the State Tax Commission designate and approve an interim Designated Assessor until the parties are able to amend this Agreement.

#### **6.0 ENTIRE AGREEMENT**

This Agreement sets forth all covenants, promises, agreements, conditions and understandings between the parties and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the Parties other than are set forth in this Agreement.

#### **7.0 AMENDMENTS**

This Agreement cannot be modified unless reduced to writing and signed by both Parties.

#### **8.0 SEVERABILITY**

If a court of competent jurisdiction finds a term or condition of this Agreement to be illegal or invalid, then the term or condition shall be deemed severed from this Agreement. All other terms or conditions shall remain in full force and effect.

#### **9.0 GOVERNING LAW**

This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan.

## 10.0 COUNTERPARTS

This Agreement may be executed in one or more counterparts, including facsimile copies, each of which shall be deemed an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, \_\_\_\_\_ [name and title of assessing district official] hereby acknowledges that he/she has been authorized by a resolution of the \_\_\_\_\_ [name of assessing district], a certified copy of which is attached, to execute this Agreement on behalf of Public Body and hereby accepts and binds Public Body to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name and Title:

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name and Title:

IN WITNESS WHEREOF, David Woodward, Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners to execute this Agreement on behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
David Woodward, Chairperson  
Oakland County Board of Commissioners

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Name and Title:

DAVID HIEBER, in his official capacity as Equalization Officer for Oakland County, hereby accepts the role of Designated Assessor as outlined in this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
David Hieber  
Oakland County Equalization Officer





## ADDENDUM – SEV TOTALS

### OAKLAND COUNTY SEV TOTALS BY CLASS

class	parcel counts	State Equalized values
Agricultural	414	83,078,430
Commercial	21,730	13,049,878,820
Industrial	4,576	2,458,558,940
Residential	457,609	62,000,752,770
Personal Property	52,485	3,603,125,954
Special Acts	384	479,224,100
	<b>537,198</b>	<b>81,674,619,014</b>

November 20, 2020

To: Mr. Joseph Valentine, City Manager, City of Birmingham  
From: Tracy Jones, Chief of Equalization  
Subject: Designated Assessor under Public Act 660 of 2018

Dear Mr. Joseph Valentine,

As you may be aware, Public Act 660 of 2018 requires all Michigan Counties to name a Designated Assessor for each respective county. This process is to be done by resolution in each of Michigan's 83 counties. The main purpose of this Act and the Designated Assessor is to ensure all cities and townships are in substantial compliance with the General Property Tax Act. The Designated Assessor is not Countywide assessing. It is a process to assist the State Tax Commission in the event a local city or township is not in substantial compliance with the General Property Tax Act. You may be aware of the audit process used to determine compliance which is commonly known as an AMAR review (Audit of Minimum Assessing Requirements). This assistance will only take place after several reviews and correction opportunities by the local city or township.

On November 19, 2020 Oakland County named David Hieber, in his capacity as the Equalization Officer for Oakland County, as the Designated Assessor for Oakland County. In order to be compliant with Public Act 660, an Interlocal Agreement is to be executed by the majority of the cities and townships within the county, the County Board of Commissioners, and the Designated Assessor.

By executing the Interlocal Agreement, Oakland County is committed to keeping in compliance with the General Property Tax Act. We will do so without any additional cost to our already contracted assessing units. Should the need arise to become involved in a non-contracted unit, the cost would be comparable to our normal assessing contract fees.

Attached you will find three documents:

- State Tax Commission Bulletin 8 of 2020 explaining Public Act 660 of 2018
- The Interlocal Agreement approved by the Oakland County Board of Commissioners (which requires the majority of cities/townships approval)
- The Resolution adopted by the Oakland County Board of Commissioners

Please review the attached documents and contact me with any questions or concerns you may have. I can be reached at [jonestr@oakgov.com](mailto:jonestr@oakgov.com) or 248-721-5287. I am hopeful that the Interlocal Agreement is acceptable to you and can be approved by your City Council by the December 31, 2020 deadline.

Thank you in advance for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy Jones", written in a cursive style.

Tracy Jones, Chief of Equalization  
Oakland County Equalization

Cc: Mr. Mark Gerber, Finance Director, City of Birmingham  
Mrs. Teresa Boger, Oakland County Equalization



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF TREASURY  
LANSING

RACHAEL EUBANKS  
STATE TREASURER

**Bulletin 8 of 2020**  
**June 9, 2020**  
**Audit Process and Designated Assessor**

**TO:** Assessors and Equalization Directors

**FROM:** State Tax Commission

**SUBJECT:** Overview of Audit Process and Designated Assessor under Public Act 660 of 2018

Public Act 660 of 2018 was approved by Governor Snyder on December 28, 2018 and amended the General Property Tax Act to provide a statutory framework to ensure proper assessing in order to guarantee the highest quality assessments for taxpayers as well as local units. The Act defines the requirements for substantial compliance with the General Property Tax Act, provides timelines for audits and follow-up audits, and details a process for bringing a local unit into compliance if they remain non-compliant after a follow-up review. The Designated Assessor is an integral part of that process.

### **Audit Process Overview**

The Commission will conduct an audit of assessment practices according to a published schedule. If the assessing district (City, Township or Joint Assessing Authority) is determined to be in substantial compliance, the audit process for that five-year cycle is complete and the assessing district is not required to take any additional action.

If the State Tax Commission determines that an assessing district is not in substantial compliance with the General Property Tax Act, the Commission will provide the assessing district with a notice of noncompliance, including the reasons the assessing district is not in substantial compliance.

The assessing district must either appeal the audit determination by filing a written petition to be developed by the State Tax Commission or they must submit a corrective action plan to be approved by the State Tax Commission. “Corrective action plan” is defined in P.A. 660 of 2018 as “a plan developed by an assessing district that specifically indicates *how* the assessing district will achieve substantial compliance . . . and *when* substantial compliance will be achieved.” (Emphasis added). Additional information related to the corrective action plan and petition to challenge the audit results will be provided by the State Tax Commission in separate guidance.

In the event the Commission conducts a follow-up review and the assessing district is not in substantial compliance after the follow-up review, the assessing district has three options:

1. The assessing district may hire a new Michigan Advanced Assessing Officer (MAAO) or Michigan Master Assessor Officer (MMAO),

2. The State Tax Commission assumes jurisdiction over the assessment roll in order to bring the roll into substantial compliance, or,
3. The local unit may move directly to the designated assessor.

Regardless of which option is selected, the Commission will conduct a second follow-up review to determine if the assessment roll is in substantial compliance. If, after the second follow-up review the assessing district continues to be in noncompliance, the local unit will move directly to the Designated Assessor process.

As defined in statute **substantial compliance** “means that any identified deficiencies do not pose a significant risk that the assessing district is unable to perform the assessment function in conformity with the state constitution and state statute.”

As defined in statute **noncompliance** “means that the identified deficiencies, taken together, pose a significant risk that the assessing district is unable to perform the assessing function in conformity with the state constitution and state statute.”

At the December 17, 2019 State Tax Commission meeting, the Commission determined “substantial compliance” to mean that the local unit 1) has properly calculated and appropriately documented Economic Condition Factors; 2) has properly calculated and appropriately documented land value determinations; and 3) less than 1% of the record cards are on override and less than 1% of the record cards reflect flat land values. If any of the requirements associated with those items are not met, the local unit will be considered noncompliant and the notice of noncompliance will be issued.

Once the audit is complete, if an assessing district is notified that it has fallen out of substantial compliance prior to the next audit, the State Tax Commission may require the assessing district to contract with the Designated Assessor to serve as their assessor of record. If the assessing district is notified that it has fallen out of substantial compliance more than four years after the initial finding of substantial compliance, then the regular audit process will be followed.

### **What is the Designated Assessor?**

The Designated Assessor is part of a process to ensure that local units are in compliance with the statutory provisions of the General Property Tax Act, meaning that local units are meeting minimum assessing requirements.

The Designated Assessor is the individual selected and agreed to by the County Board of Commissioners and a majority of the assessing districts within that county, subject to final approval of the State Tax Commission.

The Designated Assessor serves as the assessor of record and assumes all duties and responsibilities as the assessor of record for an assessing district that is determined to be non-compliant with an audit.

The Designated Assessor is not an automatic requirement for Countywide assessing or for the County Equalization Director to take over as the assessor for local units. While the County can be named the Designated Assessor, it is not an automatic designation as the Designated Assessor as this is determined by the approved interlocal agreement.

### **Who may be the Designated Assessor?**

Each Assessing District within each County is required to have an assessor of record with a certification level that meets the valuation requirements set forth by the State Tax Commission. Township and City certification levels are adjusted annually and approved by the STC. The individual who will serve as the county's Designated Assessor must be in good standing and be certified, at least, at the highest level required within the County. If the County contains an Assessing District that requires a Michigan Master Assessing Officer (MMAO), the Designated Assessor must then also be certified at the MMAO level. If the County only contains Assessing Districts that require a Michigan Advanced Assessing Officer (MAAO) certification, or a lower certification, the Designated Assessor may be certified at the level of MAAO. A Michigan Certified Assessing Officer (MCAO) may not serve as the Designated Assessor. As part of the annual certification level process, the Commission will review all MAAO Designated Assessors to ensure compliance with certification level requirements. Additionally, the STC will examine and determine a specific process, on a case by case basis, any specific instance of a MAAO that has been assigned multiple units that may place them beyond the certification requirements of a MAAO.

### **Notification of Selected Designated Assessor**

P.A. 660 of 2018 requires that each county notify the State Tax Commission, no later than December 31, 2020, of the individual that will serve as the county's Designated Assessor. In addition, the county must provide the State Tax Commission with the interlocal agreement executed by the County Board of Commissioners, a majority of the assessing districts within that county, and the proposed Designated Assessor for the county. The interlocal agreement must provide enough detail regarding the assessment responsibilities for the designated assessor. The Commission expects the interlocal agreement will include, but not be limited to, the following:

- Information related to the scope of services being provided by the Designated Assessor, including preparation of assessment rolls, timeline for delivery of documents and execution of forms, attendance at Boards of Review meetings, duties and responsibilities related to property tax appeals, both Small Claims and Entire Tribunal, filed with the Michigan Tax Tribunal, responsibility to meet with local unit officials, and obligations of local unit assessing staff members.
- Duties and responsibilities for each local unit within the County, including providing the Designated Assessor with reasonable access to records, documents and information.
- Details relating to cost and compensation for overseeing and administering the annual assessment and operating the assessing office, including payment terms and cost reimbursement.

Failure to timely notify the State Tax Commission of the county's Designated Assessor will result in the State Tax Commission selecting a Designated Assessor for the county.

If the State Tax Commission determines that an individual named as the Designated Assessor is capable of ensuring that the assessing districts within the county will achieve and maintain substantial

compliance, the Commission shall approve that individual as the County's Designated Assessor. Once approved, the designation will not be revoked for at least five years from the approval date.

If the State Tax Commission is unable to approve the individual identified as the county's Designated Assessor because the Commission determines that the proposed Designated Assessor is not capable of ensuring that the assessing districts will achieve and maintain substantial compliance, the county must submit a new Designated Assessor candidate and accompanying interlocal agreement within sixty days of the Commission's determination. The county will be required to repeat the process until a satisfactory Designated Assessor can be approved. The State Tax Commission will appoint an individual to serve as the county's temporary Designated Assessor during this period.

The State Tax Commission will develop a form to be utilized by the County Equalization Departments to notify the Commission of the proposed Designated Assessor. The Designated Assessor form will be available by August 18, 2020. The form must be submitted to the Commission no later than December 31, 2020.

### **Designated Assessor Term**

Once an assessing district is under contract with a Designated Assessor, the Designated Assessor will remain in place for a minimum of five years. Statute does provide for a local unit to petition the Commission to end the contract after the Designated Assessor has been in place for 3 years.

The Commission shall approve termination of a contract if it is determined that the assessing district can *achieve and maintain* substantial compliance with the General Property Tax Act using a different assessor of record other than the Designated Assessor.

The State Tax Commission may revoke the Designated Assessor and provide for an interim designated assessor if:

1. The Designated Assessor dies or becomes incapacitated
2. The Designated Assessor's employment status materially changes or
3. The Designated Assessor is not capable of ensuring that the assessing district is able to achieve and maintain substantial compliance with MCL 211.10g.

The interim Designated Assessor will remain in place until a new Designated Assessor can be selected following the interlocal agreement process.

If the Designated Assessor is serving as an assessor of record for an assessing district that is found to be in noncompliance, the State Tax Commission will appoint an individual to serve as the county's temporary Designated Assessor. The county will utilize the normal process to select and notify the Commission of the new Designated Assessor.

### **Designated Assessor Costs**

The Designated Assessor is permitted to charge an assessing district for the reasonable costs incurred in serving as the assessing district's assessor of record, including, but not limited to, the costs of overseeing and administering the annual assessment, preparing and defending the assessment roll, and operating the assessing office. The assessing district is required to pay these costs in accordance with

the interlocal agreement. The costs and fees agreed to by the county, assessing districts and the Designated Assessor is a local issue and will vary statewide.

The Commission will develop guidelines as required by statute for any local unit to protest charges by the Designated Assessor.

### **Audit Preparation**

While the audit process outlined in P.A. 660 of 2018 will not commence until 2022, assessing districts can prepare for these audits by meeting the requirements of the current Audit of Minimum Assessing Requirements (AMAR) and the “Supervising Preparation of the Assessment Roll”, as those requirements existed on October 1, 2018. Additionally, assessing districts should employ an assessor certified by the State Tax Commission at the proper certification level based on the valuation requirements, adjusted annually, set forth by the State Tax Commission. Additional information about the AMAR, including the AMAR Review Sheet, and certification levels, are available on the State Tax Commission website ([www.michigan.gov/statetaxcommission](http://www.michigan.gov/statetaxcommission)).



**MISCELLANEOUS RESOLUTION #20XXX**

November 19, 2020

BY: Commissioner Helaine Zack, Chairperson, Finance and Infrastructure Committee

**IN RE: MANAGEMENT AND BUDGET/EQUALIZATION DIVISION – DESIGNATED ASSESSOR INTERLOCAL AGREEMENT**

To the Oakland County Board of Commissioners

Chairperson, Ladies and Gentlemen:

WHEREAS pursuant to Public Act 660 of 2018, each county is required to notify the State Tax Commission, no later than December 31, 2020, of the individual that will serve as the county's Designated Assessor; and WHEREAS the Designated Assessor is part of a process to ensure that local units of government are in compliance with statutory provisions of the Audit of Minimum Assessing Requirements; and

WHEREAS the Designated Assessor is the individual designated by an Interlocal Agreement executed between the County Board of Commissioners and a majority of the assessing districts (cities and townships) within the county, subject to final approval of the State Tax Commission; and

WHEREAS the Designated Assessor serves as the assessor of record and assumes all duties and responsibilities as the assessor of record for an assessing district that is determined to be non-compliant with an audit; and

WHEREAS each county must also provide the State Tax Commission with the interlocal agreement executed by the County Board of Commissioners, a majority of the assessing districts within the county, and the proposed Designated Assessor for the county; and

WHEREAS the interlocal agreement must provide enough detail regarding the assessment responsibilities for the Designated Assessor including, but not limited to, the following:

1. Information related to the scope of services being provided by the Designated Assessor, including preparation of assessment rolls, timeline for delivery of documents and execution of forms, attendance at Boards of Review meetings, duties and responsibilities related to property tax appeals, both Small Claims and Entire Tribunal, filed with the Michigan Tax Tribunal, responsibility to meet with local unit officials, and obligations of local unit assessing staff members,
2. Duties and responsibilities for each local unit within the county, including providing the Designated Assessor with reasonable access to records, documents and information, and
3. Details relating to cost and compensation for overseeing and administering the annual assessment and operating the assessing office, including payment terms and cost reimbursement; and

WHEREAS Oakland County Corporation Counsel is developing the Designated Assessor Interlocal Agreement to be entered into with any and all Assessing Districts within the County that approve the Agreement.

NOW THEREFORE BE IT RESOLVED that the Oakland County Board of Commissioners approves designating Oakland County Equalization Director David Hieber, who is an individual qualified and certified by the State Tax Commission as a Michigan Master Assessing Officer, to be the Designated Assessor for Oakland County.

BE IT FURTHER RESOLVED that the Oakland County Board of Commissioners approves and authorizes the Chairperson of Board to execute the required Interlocal Agreement on behalf of Oakland County upon final review and approval by Corporation Counsel.

Chairperson, on behalf of the Finance and Infrastructure Committee, I move the adoption of the foregoing resolution.

---

Commissioner Helaine Zack, District #18  
Chairperson, Finance and Infrastructure  
Committee

**FINANCE AND INFRASTRUCTURE COMMITTEE VOTE:**

Motion carried unanimously on a roll call vote.

**DATE:** December 3, 2020

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

**FROM:** James J. Surhigh, Consulting City Engineer

**SUBJECT:** Michigan Department of Transportation (MDOT) Resolution for Designation of Street Administrator

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## INTRODUCTION:

MDOT requires that a resolution be adopted by the City to designate a representative to serve as the single Street Administrator in a transactions with the State Transportation Department as provided in Section 13 of Act 51. This resolution is only required when the designated Street Administrator needs to be changed. Due to recent personnel changes in the Engineering Department, designation of a new Street Administrator is required.

## BACKGROUND:

Public Act 51 of 1951, often referred to as "Act 51", governs State appropriations for most Michigan transportation programs. There are two primary sources of State-generated transportation revenue: motor fuel taxes, and vehicle registration taxes. Act 51 creates the Michigan Transportation Fund (MTF) as the main collection and distribution fund for this State-generated transportation revenue. Act 51 directs MTF revenue to other State transportation funds, to special program accounts, and to local units of government.

The City of Birmingham is an eligible local unit of government that receives an allocated portion of MTF revenue each year. Act 51 requires that "the responsibility for street improvements, maintenance, and traffic operations work, and the development, construction, or repair of off-street parking facilities and construction or repair of street lighting shall be coordinated by as single administrator to be designated by the governing body who shall be responsible for and shall be represent the municipality in transactions with the State Transportation Department pursuant to this act."

The Resolution for Designation of Street Administrator is attached for reference.

## LEGAL REVIEW:

Not required.

## FISCAL IMPACT:

None

PUBLIC COMMUNICATIONS:

None

SUMMARY:

MDOT requires that a resolution be adopted by the City to designate a representative to serve as the single Street Administrator in a transactions with the State Transportation Department as provided in Section 13 of Act 51. It is recommended that James J. Surhigh, Consulting City Engineer be designated as the Street Administrator to represent the City.

ATTACHMENTS:

MDOT Resolution for Designation of Street Administrator

SUGGESTED RESOLUTION:

To adopt the Resolution for Designation of Street Administrator, with James J. Surhigh, Consulting City Engineer, as the authorized designee.

## RESOLUTION FOR DESIGNATION OF STREET ADMINISTRATOR

*This information is required by Act 51, P.A. 1951 as amended. Failure  
to supply this information will result in funds being withheld.*

**MAIL TO:** Michigan Department of Transportation, Financial Operations  
Division, P.O. Box 30050, Lansing, MI 48909.  
or Fax to: (517) 335-1828

**NOTE:** Indicate, if possible, where Street Administrator can usually be reached during normal working hours, if different than City or Village Office. List any other office held by the Administrator.

Councilperson or Commissioner \_\_\_\_\_  
offered the following resolution and moved its adoption:

Whereas, Section 13(9) of Act 51, Public Acts of 1951 provided that each incorporated city and village to which funds are returned under the provisions of this section, that, "the responsibility for street improvements, maintenance, and traffic operations work, and the development, construction, or repair of off-street parking facilities and construction or repair of street lighting shall be coordinated by a single administrator to be designated by the governing body who shall be responsible for and shall represent the municipality in transactions with the State Transportation Department pursuant to this act."

Therefore, be it resolved, that this Honorable Body designate \_\_\_\_\_ James J. Surhigh, P.E., Consulting City Engineer  
\_\_\_\_\_ as the single Street Administrator for the City or Village of  
\_\_\_\_\_ City of Birmingham \_\_\_\_\_ in all transactions with the State Transportation Department  
as provided in Section 13 of the Act.

Supported by the Councilperson or Commissioner \_\_\_\_\_

Yeas \_\_\_\_\_

Nays \_\_\_\_\_

I hereby certify that the foregoing is a true and correct copy of a resolution made and adopted at a regular meeting  
of the governing body of this municipality on the 7th \_\_\_\_\_ day of  
December, 2020

CITY OR VILLAGE CLERK (SIGNATURE)	E-MAIL ADDRESS	DATE
STREET ADMINISTRATOR (SIGNATURE)	E-MAIL ADDRESS cityengineer@bhamgov.org	DATE 12/07/20
ADDRESS OF CITY OR VILLAGE OFFICE 151 Martin Street		P.O. BOX
CITY OR VILLAGE Birmingham	ZIP CODE 48012	PHONE NUMBER (248) 530-1850

**DATE:** October 30<sup>th</sup>, 2020

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

**FROM:** Brooks Cowan, City Planner

**APPROVED:** Jana Ecker, Planning Director

**SUBJECT:** Lot Combination of 34350 Woodward Avenue and 907-911 Haynes Street, Parcel # 19-36-281-022 - T2N, R10E, SEC 36 BOWERS ADD LOT 3 EXC THAT PART TAKEN FOR HWY, ALL OF LOTS 4 & 5, ALSO LOT 6 EXC ELY PART BEG AT NE LOT COR, TH W 1.35 FT ALG N LOT LINE, TH SLY 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY ALG LOT LINE TO BEG and Parcel # 19-36-281-030 – T2N, R10E, SEC 36 BOWERS ADD ELY PART OF LOT 6 BEG AT NE LOT COR, TH WLY 1.35 FT ALG N LOT LINE, TH S 01-00-00 W 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY 118.42 FT ALG E LOT LINE TO BEG, ALSO ALL OF LOTS 7, 8 & 9, ALSO WLY PART OF LOT 10 MEAS 10.14 FT ALG N LOT LINE & 10.58 FT ALG S LOT LINE

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#### INTRODUCTION:

The owner of 34350 Woodward Avenue and 907-911 Haynes Street is seeking approval for a lot combination of two parcels into one in order to accommodate additional parking for the Fred Lavery Porsche Dealership.

#### BACKGROUND:

The subject properties are located on the northeast corner of the intersection at Haynes Street, Elm Street, and Woodward Avenue. The Fred Lavery Porsche Dealership is located at 34350 Woodward while a two story commercial building is located at 907-911 Haynes Street. The applicant is proposing to combine the two parcels, demolish the current building at 907-911 Haynes, and expand the surface parking lot to accommodate more parking and display space for the Fred Lavery Porsche dealership. Auto sales agencies and auto show rooms within the MU-5 and MU-7 Zone require a Special Land Use Permit (SLUP), which the applicant obtained November 8<sup>th</sup>, 2010 for the 34350 Woodward parcel only.

In 2016, the applicant received a temporary SLUP amendment to use the 907-911 Haynes property as an office for the Porsche sales and management team for one year while renovations were made to the Porsche dealership at 34350 Woodward. Conditions of approval were that the applicant could not have cars for sale parked on 907-911 Haynes Street and that the applicant provide proof of adequate parking lot landscaping. On January 22<sup>nd</sup>, 2020, the applicant appeared before the Planning Board for a SLUP amendment which included the proposed lot combination for expanding the parking lot for auto sales, but no motion was finalized due to the applicant withdrawing their application during the meeting.

At this time, the applicant has submitted an application for a lot combination and has requested to appear before the City Commission for a decision on the proposed lot combination prior to returning to the Planning Board to continue the SLUP Amendment process.

The Combination of Land Parcels Ordinance (Chapter 102, Section 102-83) requires that the following standards be met for approval of a lot combination.

- (1) *The Combination will result in lots or parcels of land consistent with the character of the area where the property is located, Chapter 126 of this Code for the zone district in which the property is located, and all applicable master land use plans.*

In regards to character of the area, the property is located within the City's Triangle District. The area is surrounded by a variety of uses and buildings ranging from one story to five stories in height which are mostly surrounded by surface parking.

In regards to zoning, 34350 Woodward is zoned MU-7 in the Triangle Overlay District while 907-911 Haynes Street is zoned MU-5. Both parcels are zoned B-2 in the underlying Zoning District. As previously mentioned, auto sales and auto showrooms are permitted with approval of a Special Land Use Permit in the MU-5 and MU-7 Zones. The subject property's SLUP application in 2010 was for one parcel only at 34350 Woodward and expanding the auto sales and auto showroom use requires a SLUP amendment. **The applicant appeared before the Planning Board on January 22<sup>nd</sup>, 2020 for a SLUP amendment to expand the auto showroom use, but withdrew their application during the meeting. Therefore, the applicant has yet to obtain SLUP approval to expand the use of the auto show room and auto sales.**

Article 3, Section 3.06(A)(3) of the Zoning Ordinance states that *"Any expansion to an existing use or building that requires site plan approval from the Planning Board shall be subject to the requirements of the Triangle Overlay District and shall be brought into compliance with the requirements of the Triangle Overlay District."* **No changes to the building footprint for the Fred Lavery Porsche Dealership have been proposed. Therefore, it does not appear that the proposed site plan complies with the requirements of Triangle Overlay District.**

In regards to front yard and building frontage requirements for the Triangle Overlay District, the MU-5 and MU-7 Zones require that the building façade be built within 5 feet of the frontage line for a minimum of 75% of the street frontage length. The proposed lot combination does not indicate a building with a front setback within 5 feet for 75% of the street frontage along Elm and Haynes. **Therefore the proposed site that would be created by the lot combination does not satisfy the front yard and building frontage standards and thus is not compliant with the Triangle Overlay District requirements.**

In regards to building height requirements for the Triangle Overlay District, the MU-5 and MU-7 Zones require a minimum of three stories for building height. **The proposed lot combination indicates a one story building with surface parking only, and therefore does not satisfy the minimum building height standards and thus is not in compliance with the Triangle Overlay District requirements.**

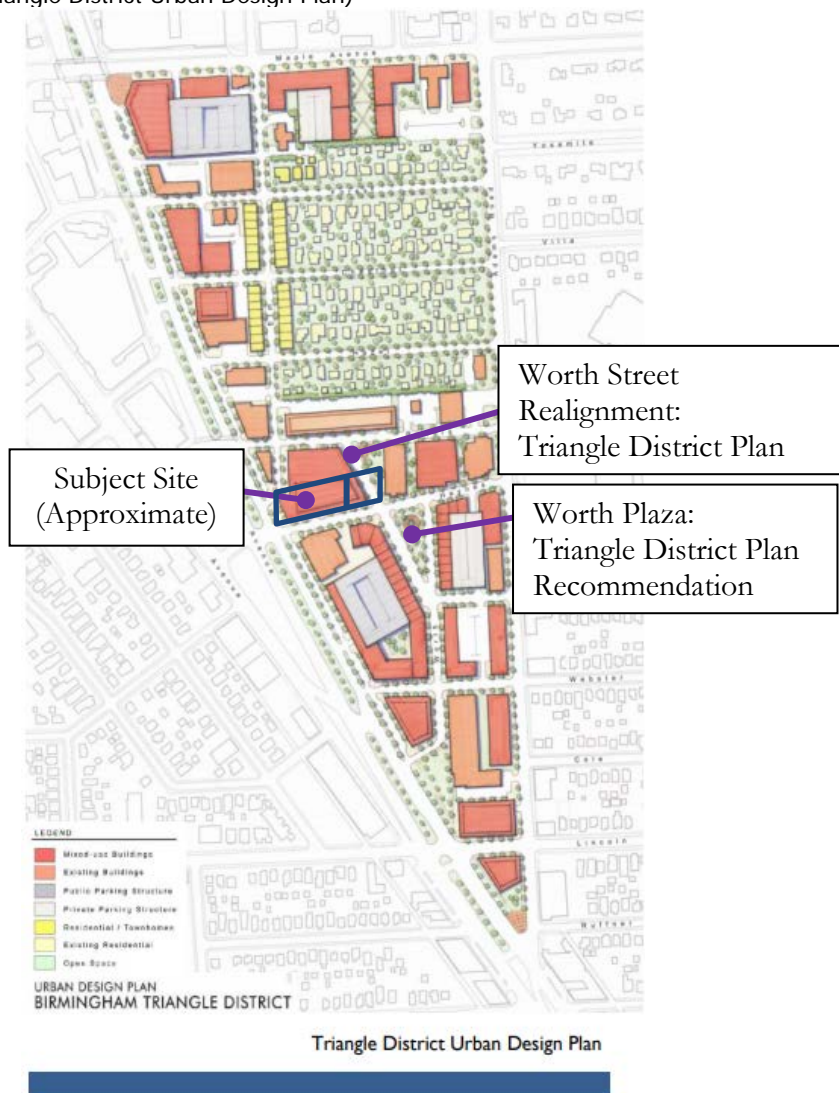
In regards to the placement of the building and parking, Article 3.06(G)(1)(b) requires that corner lots have the building located at the corner of the lot adjacent to the intersection, and

that no more than 60 feet of the frontage be occupied by parking. The proposed lot combination does not indicate a building at the corner of the lot adjacent to the intersection, nor does the proposed lot combination indicate 60 feet or less of parking along the frontage line. **Therefore the proposed site that would be created by the lot combination does not satisfy the parking and building requirements of the Triangle Overlay District.**

In regards to applicable Master Plans, the Triangle District Plan recommends infill development and redevelopment while advocating for an increase in building density to replace the large surface parking areas that currently exist. **The applicant's lot combination is proposed for the purpose of expanding surface parking which does not align with the recommendations of the Triangle District Plan.**

It is also of note that the Triangle District Plan recommends that Worth Street be realigned to connect Bowers Street to the proposed Worth Plaza to improve connectivity within the Triangle District as pictured below in Figure 1. The Triangle District Plan recommends the realignment of Worth Street through the rear of the Walgreens parking lot as well as through the property located between Bowers and Haynes included in the proposed lot combination.

(Figure 1: Triangle District Urban Design Plan)



In regards to the Draft Master Plan which is currently under review, the plan makes no mention of extending Worth Street from Haynes to Bowers, however the renderings related to the proposed Haynes Square and connection to Worth Plaza suggest an infill of commercial space instead of a road extension at the applicant's site.

**Accordingly, the lot combination proposal does not meet the requirements of #1.**

- (2) *All residential lots formed as a result of a combination shall be a maximum width of no more than twice the average lot width of all lots in the same zone district within 300 feet on the same street.*

**The proposed combination is commercial, not residential, therefore this requirement is not applicable.**

- (3) *All residential lots formed as a result of a combination shall be a maximum area of no more than twice the average lot area of all lots in the same zone district within 300 feet on the same street.*

**The proposed combination is commercial, not residential, therefore this requirement is not applicable.**

- (4) *The combination will result in building envelopes on the combined parcels that will allow for the placement of buildings and structures in a manner consistent with the existing rhythm and pattern of development within 500 feet in all directions in the same zone district.*

The Triangle District has a variety of buildings types ranging in height and size, many of which are surrounded by large surface parking lots. **Given the existing conditions of the lower Triangle District, the proposed lot combination and building envelope appear to meet this requirement.**

- (5) *Any due or unpaid taxes or special assessments upon the property have been paid in full.*

There are no outstanding taxes due on this property. **The proposal meets this requirement.**

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

*a.) The location of proposed buildings or structures, the location and nature of vehicular ingress or egress so that the use or appropriate development of adjacent land or buildings will not be hindered, nor the value thereof impaired.*

**Based on the attached survey the proposed lot combination and building envelope appear to meet this requirement.**

*b.) The effect of the proposed combination upon any floodplain areas, wetlands and other*



*natural features and the ability of the applicant to develop a buildable site on the resulting parcel without unreasonable disturbances of such natural features.*

**The property is not located in a floodplain or wetlands, nor adjacent to a floodplain or wetlands.**

*c.) The location, size, density and site layout of any proposed structures or buildings as they may impact an adequate supply of light and air to adjacent properties and the capacity of essential public facilities such as police and fire protection, drainage structures, municipal sanitary sewer and water, and refuse disposal.*

**The proposed lot combination does not appear to impact the supply of light and air to adjacent properties or the ability of the City to provide essential services.**

**LEGAL REVIEW:**

The City Attorney has reviewed the application and has no concerns.

**FISCAL IMPACT:**

Not applicable.

**PUBLIC COMMUNICATIONS:**

Prior to the application being considered by the City Commission, the City Clerk's office will send out notices to all property owners and tenants within 300 feet of both 34350 Woodward Avenue and 907-911 Haynes Street seeking public comment on the proposal.

**SUMMARY:**

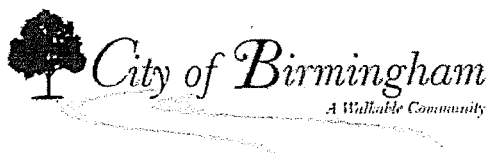
The Planning Division finds that the proposed lot combination is not consistent with the Zoning Ordinance, nor the applicable Master Plan for the Triangle District, therefore the Planning Division recommends that the City Commission deny the applicant's request to combine the two lots for the purpose of accommodating additional surface parking for the Fred Lavery Porsche Dealership.

**ATTACHMENTS:**

- Application
- Letter to the City
- Proof of ownership
- Registered Land Surveys
- Relevant Planning Board and City Commission minutes for prior SLUP hearings from 2010, 2016, and 2020 related to 34350 Woodward (Formerly 835 Haynes Street)

**SUGGESTED ACTION:**

To deny the proposed lot combination of 34350 Woodward and 907-911 Haynes, parcel # 19-36-281-022 and parcel #19-36-281-030, as the resulting parcel would not be consistent with the requirements for the MU-5 and MU-7 Zones, nor consistent with the recommendations in the Triangle District Plan.



## Combination of Platted Lots Application

### Planning Division

*Form will not be processed until it is completely filled out.*

#### 1. Applicant

Name: Lavery Michigan Dealership No. 1, LLC  
Address: \_\_\_\_\_  
440 Lake Park, Birmingham, MI 48009  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email address: \_\_\_\_\_

#### 2. Property Owner

Name: Lavery Michigan Dealership No. 1, LLC  
Address: 440 Lake Park, Birmingham, MI 48009  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email address: \_\_\_\_\_

#### 3. Applicant's Attorney/Contact Person

Name: Stuart Schwartz  
Address: \_\_\_\_\_  
500 Woodward Ave., Suite 3500, Detroit, MI 48226  
Phone Number: 313-965-8335  
Fax Number: 313-309-6935  
Email address: SSchwartz@clarkhill.com

#### 4. Project Designer/Developer

Name: PEA, Inc.  
Address: \_\_\_\_\_  
2430 Rochester Ct., Ste. 100, Troy, MI 48083  
Phone Number: 248-689-9090  
Fax Number: 248-689-1044  
Email address: tshelly@peainc.com

#### 5. Project Information

Address/Location of Property: 34350 Woodward Ave./907-911 Haynes  
Sidwell #: 19-36-281-030 and 19-36-281-022  
Parcel #: \_\_\_\_\_  
Current Zoning: MU5/MU7 Triangle Overlay B-2

Legal Description: See attached survey  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### 6. Required Attachments

- I. Two (2) copies of a *registered* land survey showing:
  - i. All existing and proposed platted lot lines;
  - ii. Legal descriptions of proposed lots;
  - iii. Locations of existing/surrounding structures for at least 500 ft. in all directions;
  - iv. Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked;

- II. One (1) digital copy of plans;
- III. Proof of ownership;
- IV. Written statement of reasons for request;
- V. A letter of authority or power of attorney in the event the application is made by a person other than the property owner;
- VI. Sketches of proposed development (*optional*);
- VII. Other data having a direct bearing on the request.
- VIII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

#### 7. Details of the Proposed Development (attach separate sheet if necessary)

See attached summary.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(I), (We), the undersigned, do hereby request to combine lots of record in the City of Birmingham, Oakland County, Michigan.  
(I), (We), do hereby swear that all of the statements, signatures, and descriptions appearing on and with this request are in all respects true and accurate to the best of (my), (our), knowledge.

*By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.*

Signature of Property Owner:  Date: 8/11/20

Print Name: Fred Lavery member

Signature of Applicant:  Date: 8/11/20

Print Name: Fred Lavery member

*Office Use Only*

Application#: \_\_\_\_\_ Date Received: \_\_\_\_\_ Fee: \_\_\_\_\_

Date of Approval: \_\_\_\_\_ Date of Denial: \_\_\_\_\_ Reviewed By: \_\_\_\_\_

## Combination of Platted Lots

### Overview of the Process:

***Step 1 – Make an appointment with a city planner:*** A conceptual survey plan must be presented to a city planner prior to acceptance of an application for Combination of Platted Lots. This meeting is intended for information sharing and general guidance.

***Step 2 – Combination of Platted Lots Application filed:*** An application is deemed complete upon submission and acceptance of the completed application form and all required documentation. Once an application is deemed complete, a petitioner will be scheduled for a public hearing before the Birmingham City Commission, which will be at least 15 days after submission of the application.

***Step 3 – Departmental Review:*** Submitted survey plans are sent to appropriate departments for review. Comments are returned to the Planning Division prior to final review by Planning Division personnel.

***Step 4 – Notices of Public Hearing:*** Notices are sent by the City Clerk to all property owners within 300' of the subject property at least 15 days prior to the City Commission Public Hearing meeting at which the application will be considered.

***Step 5 – Review Report:*** The Planning Division reviews the application and prepares a report to the City Commission for consideration at the public hearing.

***Step 6 – Public Hearing at the City Commission:*** Birmingham City Commission meets to consider the application for Combination of Platted Lots. Petitioner appears before City Commission to answer any questions.

***Step 7 – Decision:*** The City Commission approves, denies, or postpones the Combination of Platted Lots application.

## Combination of Platted Lots Application Requirements:

1. A complete Combination of Platted Lots application is to be submitted to the Community Development Department.
2. The application must be completed in its entirety and signed by the owners or applicants.
3. The application must be accompanied by the following supporting documentation:
  - a. Proof of ownership
  - b. Written statement of reasons for request
  - c. A letter of authority or power of attorney in the event the application is made by a person other than the property owner
  - d. Two (2) copies of a **registered** land survey showing:
    - i. All existing and proposed platted lot lines
    - ii. Legal descriptions of proposed lots
    - iii. Locations of existing/surrounding structures and setbacks for at least 500 feet in all directions
    - iv. Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked.
    - v. One set of survey plans mounted on display boards
    - vi. Any other data having a direct bearing on the request
4. All taxes and special assessments must be paid at the time of application.
5. All water bills must be paid at the time of application.
6. All building permits must be obtained at the time of application.
7. Signatures from the City of Birmingham Treasurer, Water Department, and Building Department are required.
8. Signatures of the property owner and applicant are required.
9. Fee: \$200.00 per parcel affected in the request, minimum fee: \$400.00



# CLARK HILL

---

Stuart M. Schwartz  
T (313) 965-8335  
F (313) 309-6935  
Email:SSchwartz@ClarkHill.com

Clark Hill PLC  
500 Woodward Ave., Suite 3500  
Detroit, MI 48226  
T (313) 965-8300  
F (313) 309-6935

[clarkhill.com](http://clarkhill.com)

August 27, 2020

## VIA US MAIL AND E-MAIL

City of Birmingham  
Planning Department  
Attn: Ms. Jana Ecker  
151 Martin St.  
Birmingham, MI 48009  
[jecker@bhamgov.org](mailto:jecker@bhamgov.org)

**RE: 34350 Woodward Ave. (the “Woodward Property”) and 907-911 Haynes, Birmingham, MI 48009 (the “Haynes Property”)**

Dear Ms. Ecker:

Clark Hill PLC is legal counsel to Lavery Michigan Dealership Properties No. 1, LLC (“LMDP”), the owner of the Woodward Property and the Haynes Property (collectively, “Lavery Properties”). Enclosed herewith, please find the following documents relative to LMDP’s application to combine the Woodward Property and Haynes Property into one lot:

1. Combination of Platted Lots Application;
2. Two (2) copies of the registered land survey;
3. Proof of ownership;
4. Sketches of the proposed development; and
5. One digital copy of plans.

In addition, this letter shall serve as LMDP’s details of the proposed development.

In 2010, LMDP received a Special Land Use Permit (“2010 SLUP”) for the Woodward Property to operate a Porsche car dealership within the B2 Zone and MU-7 Triangle District Overlay. Auto show rooms and sales agencies are permitted uses in the MU-5 and MU-7 zones of the Triangle Overlay District pursuant to a Special Land Use Permit. It is our understanding that in 2016, the Planning Board and City Commission approved an amendment to the 2010 SLUP to allow for the temporary use of the Haynes Property as an office for the Audi sales and management team, while renovations were being completed at the Lavery Audi dealership located at 34602 Woodward Ave., Birmingham, MI (the “Temporary SLUP Amendment”). Under the Temporary SLUP Amendment, LMDP could use the Haynes Property as offices for the Audi car dealership while Spa Mariana remained on the second floor. LMDP now proposes

to modify the site plan of the Woodward Property in combination with the Haynes Property pursuant to the enclosed site plan in order to accommodate changes in Porsche's dealership requirements. To be clear, at this time, LMDP is not requesting a change to the 2010 SLUP or the Temporary SLUP Amendment. Rather, LMDP is only requesting that the Lavery Properties be combined into one lot. LMDP is also not making any modifications to the Porsche dealership or the existing use associated with the Porsche dealership. Upon approval of that combination, LMDP will then seek an amendment to the 2010 SLUP as described below.

By way of background, newly enacted United States and European Union regulations require that Porsche have an all-electric (full electric and hybrid electric) fleet of vehicles by 2025. This new fleet of vehicles requires dealerships to install a new electric vehicle infrastructure. Four parking spaces at the Woodward Property will be converted for electric vehicle charging stations and will no longer be available for customer and inventory parking. Those spaces will be available to the public's use. In order to accommodate customer and inventory parking, spaces will need to be relocated to the Haynes Property. In furtherance of this plan, LMDP will be adding extensive landscaping and a screening wall along Haynes Street as more particularly depicted on the accompanying site plans and drawings.

It is no secret that parking remains a major concern throughout the City of Birmingham. As set forth in the 2007 Triangle District Urban Design Plan, "[p]arking needs to be provided more efficiently than the current configuration of disjointed surface parking lots. Redevelopment should incorporate multi-level parking structures and maximize the use of on-street parking. More efficient use of shared parking facilities will allow for redevelopment that is more pedestrian oriented and less dominated by parking lots." "A more efficient means of accommodating parking is needed in the Triangle District. In the short term, a shared parking program may reduce parking demand. As the Triangle District redevelops, this plan recommends a managed parking system with a combination of parking on-street, in structures and in limited surface lots to ensure that convenient parking is provided to the uses with the greatest demand and that there is efficient use of land. ***Construction of a parking structure is an imperative element of the plan and should be implemented during the first phase.***" (emphasis added). Unfortunately, to date, the City has not constructed a parking structure. After more than a decade since this plan was created, there is no managed parking system for the Triangle System, no parking garage, and no public plans to implement a managed parking system.

LMPD's proposal is meant as a short-term measure until the City can implement the vision set forth in the Triangle District Urban Design Plan, build a parking garage and implement a managed parking system. The use of the combined lots is an appropriate place-holder that will cause the demolition of a dilapidated building and the beautification of the Haynes Property. It is not possible and would not be prudent to redevelop these lots without adequate parking capacity. By approving this lot combination, the land will remain available for future development in accordance with the Triangle District Plan.



August 27, 2020  
Page 3

Please schedule this request for the earliest available hearing. If you need any additional information or if you would like to discuss, do not hesitate to contact me.

Sincerely,

CLARK HILL PLC

*/s/Stuart M. Schwartz*

Stuart M. Schwartz

SMS:at  
Enclosure

cc: Mr. Brooks Cowan, City Planner (via email to [bcowan@bhamgov.org](mailto:bcowan@bhamgov.org))

OAKLAND COUNTY TREASURER'S CERTIFICATE  
This is to certify that there are no delinquent property  
taxes as of this date owed to our office on this property.  
No representation is made as to the status of any taxes,  
penalties or fines owed to any other entities.

MAY 15 2015

1.00

ANDREW E. MEISNER, County Treasurer  
Sec 135, Act 206, 1993 as amended

LIBER 48188 PAGE 142  
\$22.00 DEED - COMBINED  
\$4.00 REMONUMENTATION  
\$17,200.00 TRANSFER TX COMBINED  
05/18/2015 03:32:24 PM RECEIPT# 56415  
PAID RECORDED - Oakland County, MI  
Lisa Brown, Clerk/Register of Deeds

STATE OF  
MICHIGANREAL ESTATE  
TRANSFER TAX

OAKLAND  
05/18/2015  
56415

\$2,200.00 CO  
\$15,000.00 ST  
001002777

★  
★  
★  
★  
★  
★

## WARRANTY DEED

THEODORE N. MITCHELL AND KATHY MITCHELL, husband and wife,  
GREGORY MITCHELL AND ATHINA MITCHELL, husband and wife, AND MARK  
MITCHELL AND MARTHA MITCHELL, husband and wife (collectively, "Grantor"),  
whose address is 339 N. Center Street, Northville, Michigan 48167 ("Grantor"),  
conveys and warrants to Lavery Michigan Dealership Properties, a Michigan limited  
liability company ("Grantee"), whose address is 33583 Woodward Ave. Birmingham, the  
premises situated in the City of Birmingham, Oakland County, Michigan, more  
specifically described as: \*\*HI 48009

\*No. 1, LLC, a Michigan limited liability company

See Exhibit A hereto

for the sum set forth on the Real Estate Transfer Tax Valuation Affidavit filed herewith,  
subject only to the exceptions set forth on Exhibit B hereto.

If the land being conveyed is unplatted, the following is deemed to be included:

Grantor grants to Grantee the right to make all division(s) under  
Section 108 of the Land Division Act, Act No. 288 of the Public Acts of  
1967, as amended.

This property may be located within the vicinity of farmland or a  
farm operation. Generally accepted agricultural and management  
practices which may generate noise, dust, odors, and other associated  
conditions may be used and are protected by the Michigan Right to Farm  
Act.

Dated: April 30, 2015

OK-LB

SP  
A  
Cert

[SIGNATURES BEGIN ON NEXT PAGE]

Warranty Deed

1508076

26

RECEIVED  
OAKLAND COUNTY  
REGISTER OF DEEDS  
2015 MAY 13 AM 10:59

GRANTOR:

Theodore N. Mitchell

Theodore N. Mitchell

Kathy Mitchell

Kathy Mitchell, his wife

Gregory Mitchell

Gregory Mitchell

Athina Mitchell

Athina Mitchell, his wife

Mark Mitchell

Mark Mitchell

Martha Mitchell

Martha Mitchell, his wife

STATE OF MICHIGAN

COUNTY OF OAKLAND

ss.

The foregoing instrument was acknowledged before me in OAKLAND County, Michigan, this 16 day of June, 2010, by Theodore N. Mitchell and Kathy Mitchell, his wife.

Sandra J. Melki

Print name: Sandra J. Melki

Notary Public

State of Michigan, County of \_\_\_\_\_

My commission expires \_\_\_\_\_

Acting in the County of \_\_\_\_\_

Sandra J Melki
Notary Public of Michigan
Oakland County
Expires 05/13/2013
Acting in the County of <u>OAKLAND</u>

Warranty Deed

STATE OF MICHIGAN )  
COUNTY OF Oakland ) ss.

The foregoing instrument was acknowledged before me in Oakland County, Michigan, this 6<sup>th</sup> day of June, 2010, by Gregory Mitchell and Athina Mitchell, his wife.

Sandra J. Meeki  
Print name: Sandra J. Meeki  
Notary Public

State of Michigan, County of \_\_\_\_\_  
My commission expires \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

Sandra J Meeki Notary Public of Michigan Oakland County Expires 05/13/2013 Acting in the County of <u>OAKland</u>
---

STATE OF MICHIGAN )  
COUNTY OF Oakland ) ss.

The foregoing instrument was acknowledged before me in OAKland County, Michigan, this 10<sup>th</sup> day of June, 2010, by Mark Mitchell and Martha Mitchell, his wife.

Sandra J. Meeki  
Print name: Sandra J. Meeki  
Notary Public

State of Michigan, County of \_\_\_\_\_  
My commission expires \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

Sandra J Meeki Notary Public of Michigan Oakland County Expires 05/13/2013 Acting in the County of <u>OAKland</u>
---

Drafted by and when recorded return to:  
Howard N. Luckoff, Esq.  
Honigman Miller Schwartz and Cohn LLP  
2290 First National Building  
660 Woodward Avenue  
Detroit, MI 48226

Send subsequent tax bills to: Grantee

Recording Fee: \$ \_\_\_\_\_

Transfer Tax: See Real Estate Transfer Tax Valuation Affidavit

Warranty Deed

EXHIBIT A

LEGAL DESCRIPTION

Land situated in the City of Birmingham, Oakland County, Michigan, more particularly described as:

Lot 3 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records, except that part taken for highway; also together with:

All of Lots 4 and 5 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records; also together with

Lot 6 of "Bowers Addition", according to the plat thereof recorded in Liber 8 of Plats, Page 26, Oakland County Records, except the Easterly part, beginning at the Northeast Lot corner; thence West 1.35 feet along the Lot line; thence Southerly 65.50 feet parallel to the East Lot line; thence South 52.89 feet to the Southeast Lot corner; thence Northerly along said Lot line to the beginning.

Sidwell #: 19-36-281-022  
Commonly Known As: 835 and 845 Haynes Street

EXHIBIT B

EXCEPTIONS

1. Taxes and assessments for the year 2010 and thereafter which constitute a lien on the Property but are not yet due and payable.
2. Highway Easement recorded in Liber 53, Page 355 of Miscellaneous Records, Oakland County Records, Michigan.

OAKLAND.1841170.1

OAKLAND COUNTY TREASURERS CERTIFICATE  
I HEREBY CERTIFY that there are no TAX LIENS or TITLES  
held by the state or any individual against the within description  
and all TAXES on same are paid for five years previous to the  
date of this instrument as appears by the records in the office  
except as stated.

JUN 06 2014

ANDREW E. MEISNER, County Treasurer  
Sec. 135, Act 206, 1893 as amended

1.00

00-1862

LIBER 47102 PAGE 586  
\$19.00 DEED - COMBINED  
\$4.00 REMONUMENTATION

06/06/2014 03:17:34 PM RECEIPT# 53438  
PAID RECORDED - Oakland County, MI  
Lisa Brown, Clerk/Register of Deeds

## COVENANT DEED

Agim Bardha and Sheriban Bardha, husband and wife (collectively, "Grantor"), whose address is 550 Bates, Birmingham, Michigan 48009, hereby sells, conveys, grants and bargains to Lavery Michigan Dealership Properties No. 1, LLC, a Michigan limited liability company ("Grantee"), whose address is 440 Lake Park Drive, Birmingham, Michigan 48009, the premises situated in the City of Birmingham, Oakland County, Michigan, more specifically described as:

See Exhibit A hereto

for the sum set forth on the Real Estate Transfer Tax Valuation Affidavit filed herewith.

Grantor, for itself, its successors and assigns, covenants, grants, bargains, and agrees to and with Grantee, its successors and assigns, that, subject to the exceptions set forth on Exhibit B hereto, Grantor has not done, committed or knowingly suffered to be done or committed any act, matter, or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, or shall or may be, charged or encumbered in title, estate or otherwise.

If the land being conveyed is unplatted, the following is deemed to be included:

Grantor grants to Grantee the right to make all division(s) under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

[SIGNATURES ON NEXT PAGE]

OK = LG

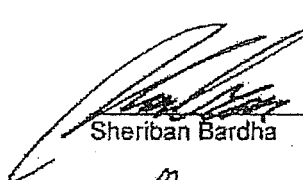
REVENUE TO BE AFFIXED  
AFTER RECORDING


Covenant Deed  
Page 1 of 2

RECEIVED  
OAKLAND COUNTY  
REGISTER OF DEEDS  
2014 JUN -6 PM 3:17

SIGNATURE PAGE TO COVENANT DEED FROM  
SHERIBAN AND AGIM BARDHA TO LAVERY MICHIGAN DEALERSHIP  
PROPERTIES NO. 1, LLC

GRANTOR:

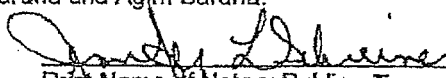
  
\_\_\_\_\_  
Sheriban Bardha

  
\_\_\_\_\_  
Agim Bardha

Dated as of June 2, 2014

STATE OF MICHIGAN     )  
                                  ) SS.  
COUNTY OF OAKLAND    )

This instrument was acknowledged before me in Oakland County, Michigan, on the 2nd of June, 2014, by Sheriban Bardha and Agim Bardha.

  
\_\_\_\_\_  
Print Name of Notary Public: Jennifer L. Schreiner  
Notary Public, State of Michigan, County of Oakland  
My commission expires: 4/14/20  
Acting in the County of Oakland

**~~Drafted by and when recorded return to:~~**

Sarah Baumgartner, Esq.  
Honigman Miller Schwartz and Cohn LLP  
660 Woodward Avenue  
2290 First National Building  
Detroit, MI 48226-3506

**When Recorded Return to:**

Title Source, Inc. -  
Commercial Team  
662 Woodward Avenue  
Detroit, MI 48226  
TSI#: 58767941

Send subsequent tax bills to: Grantee

Recording Fee: \$ \_\_\_\_\_

Transfer Tax: See Real Estate Transfer Tax Valuation Affidavit

Covenant Deed  
Page 2 of 2



EXHIBIT A - LEGAL DESCRIPTION

Tax ID Number(s): 19-36-281-030

Land Situated in the City of Birmingham in the County of Oakland in the State of MI

Town 2 North, Range 10 East, Section 36, BOWERS ADDITION SUBDIVISION, as recorded in Liber 8, Page 26 of Plats, Oakland County Records. Easterly part of Lot 6 beginning at Northeast lot corner, thence Westerly 1.35 feet along North lot line, thence South 01 degrees 00 minutes 00 seconds West 65.50 feet parallel to East lot line, thence Southeasterly 52.89 feet to Southeast lot corner, thence Northerly 118.42 feet along East lot line to beginning, also all of Lots 7, 8 and 9, also Westerly part of Lot 10 measures 10.14 feet along North lot line and 10.58 feet along South lot line.

Client Reference: 907 & 911 Haynes St., Birmingham, MI 48009

EXHIBIT B

EXCEPTIONS

1. Lease dated June 3, 2010 between Sheriban and Agim Bardha and Spa Mariana, LLC, successor in interest to Corpo Chair Massage, LLC.

CERTIFICATE OF SURVEY  
ORIGINAL PARCEL CONFIGURATION

LEGAL DESCRIPTION  
(Per Survey Oakland)

19-36-281-030  
T2N, R10E, SEC 36 BOWERS ADD ELY PART OF LOT 6 BEG AT NE LOT COR, TH WLY 1.35 FT ALG N LOT LINE, TH S 01-00-00 W 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY 118.42 FT ALG E LOT LINE TO BEG, ALSO ALL OF LOTS 7, 8 & 9, ALSO WLY PART OF LOT 10 MEAS 10.14 FT ALG N LOT LINE & 10.58 FT ALG S LOT LINE

LEGAL DESCRIPTION  
(Per Survey Oakland)

19-36-281-022  
T2N, R10E, SEC 36 BOWERS ADD LOT 3 EXC THAT PART TAKEN FOR HWY, ALL OF LOTS 4 & 5, ALSO LOT 6 EXC ELY PART BEG AT NE LOT COR, TH W 1.35 FT ALG N LOT LINE, TH SLY 65.50 FT PARA TO E LOT LINE, TH SELY 52.89 FT TO SE LOT COR, TH NLY ALG LOT LINE TO BEG



PEA, Inc.

2430 Rochester Ct, Ste 100  
Troy, MI 48063-1872  
t: 248.689.9090  
f: 248.689.1044  
www.peainc.com

CLIENT:  
Lavery Michigan Dealership Properties No. 1, LLC  
909 HAYNES STREET  
BIRMINGHAM, MICHIGAN 48009

SCALE: —

JOB No: 2019-344

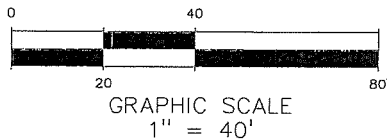
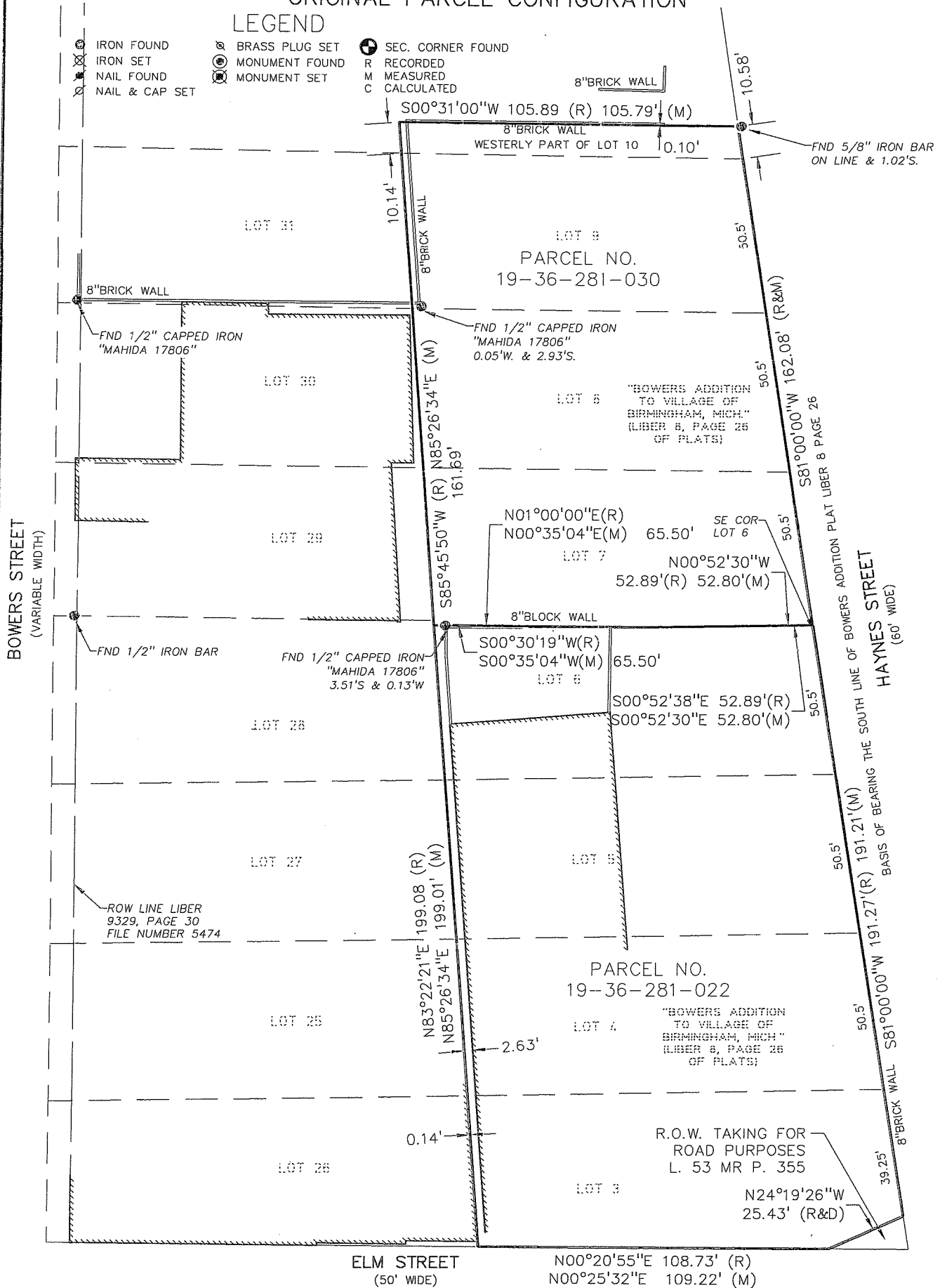
DATE: 9/18/19

DWG. No: 1 of 4

# CERTIFICATE OF SURVEY ORIGINAL PARCEL CONFIGURATION

## LEGEND

- |  |  |   |
|--|--|---|
| <ul style="list-style-type: none"> <li>⊗ IRON FOUND</li> <li>⊗ IRON SET</li> <li>⊗ NAIL FOUND</li> <li>⊗ NAIL &amp; CAP SET</li> </ul> | <ul style="list-style-type: none"> <li>⊗ BRASS PLUG SET</li> <li>⊗ MONUMENT FOUND</li> <li>⊗ MONUMENT SET</li> </ul> | <ul style="list-style-type: none"> <li>⊙ SEC. CORNER FOUND</li> <li>R RECORDED</li> <li>M MEASURED</li> <li>C CALCULATED</li> </ul> |
|--|--|---|



CLIENT:  
Lavery Michigan Dealership Properties No. 1, LLC  
909 HAYNES STREET  
BIRMINGHAM, MICHIGAN 48009

SCALE: 1" = 40'

JOB No: 2019-344

DATE: 9/18/19

DWG. No: 2 of 4

**PEA, Inc.**

2430 Rochester Ct, Ste 100  
Troy, MI 48063-1872  
t: 248.689.9090  
f: 248.689.1044  
www.peainc.com

CERTIFICATE OF SURVEY  
PROPOSED PARCEL CONSOLIDATION

LEGAL DESCRIPTION

(Per PEA Inc.)

Combined Parcel

Land situated in the City of Birmingham, County of Oakland, State of Michigan  
Described as follows:

A parcel of land lying in "Bowers Addition" being a part of Section 36, Town 2 North, Range 10 East, including all of lots 3, 4, 5, 6, 7, 8, 9, and the westerly 10.14 feet along the northerly line of Lot 10 and the westerly 10.58 feet along the southerly line of Lot 10, excluding a portion taken for Right-of-Way purposes, as described in Liber 53 Miscellanies Records, Page 355,, more particularly described as;

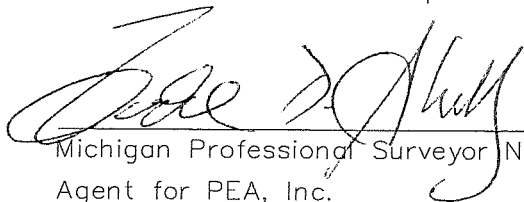
Commencing at the southwest corner of Lot 3, thence N81°00'00"E, 10.79 feet along the south line of said Lot 3 to the Point of Beginning;  
thence N24°19'26"W, 25.43 feet;  
thence N00°25'32"E, 109.22 feet along the West Line of said Lot 3 and the East Line of Elm Street;  
thence N85°26'34"E, 360.70 feet along the North Line of Lots 3-10 of said Bower's Addition;  
thence S00°31'00"W, 105.79 feet;  
thence S81°00'00"W, 353.29 feet along the South Line of said Lots 3-10 and the North Line of Haynes Street to the Point of Beginning.  
Containing 0.99 Acres more or less.

Basis of bearing the south line of Bowers Addition Plat Liber 8 Page 26

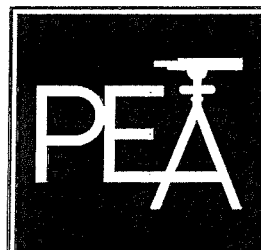
CERTIFICATION

I, Todd D. Shelly, being a Licensed Professional Surveyor, hereby certify, that I have surveyed and mapped the parcel(s) heron described and that the relative positional precision of each corner is within the limits accepted by the practice of professional surveying and that all the requirements of P.A. 132 of 1970, as amended, have been complied with.

DATE

  
Michigan Professional Surveyor No. 41111  
Agent for PEA, Inc.

9-19-19



PEA, Inc.

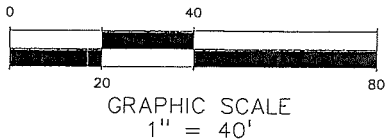
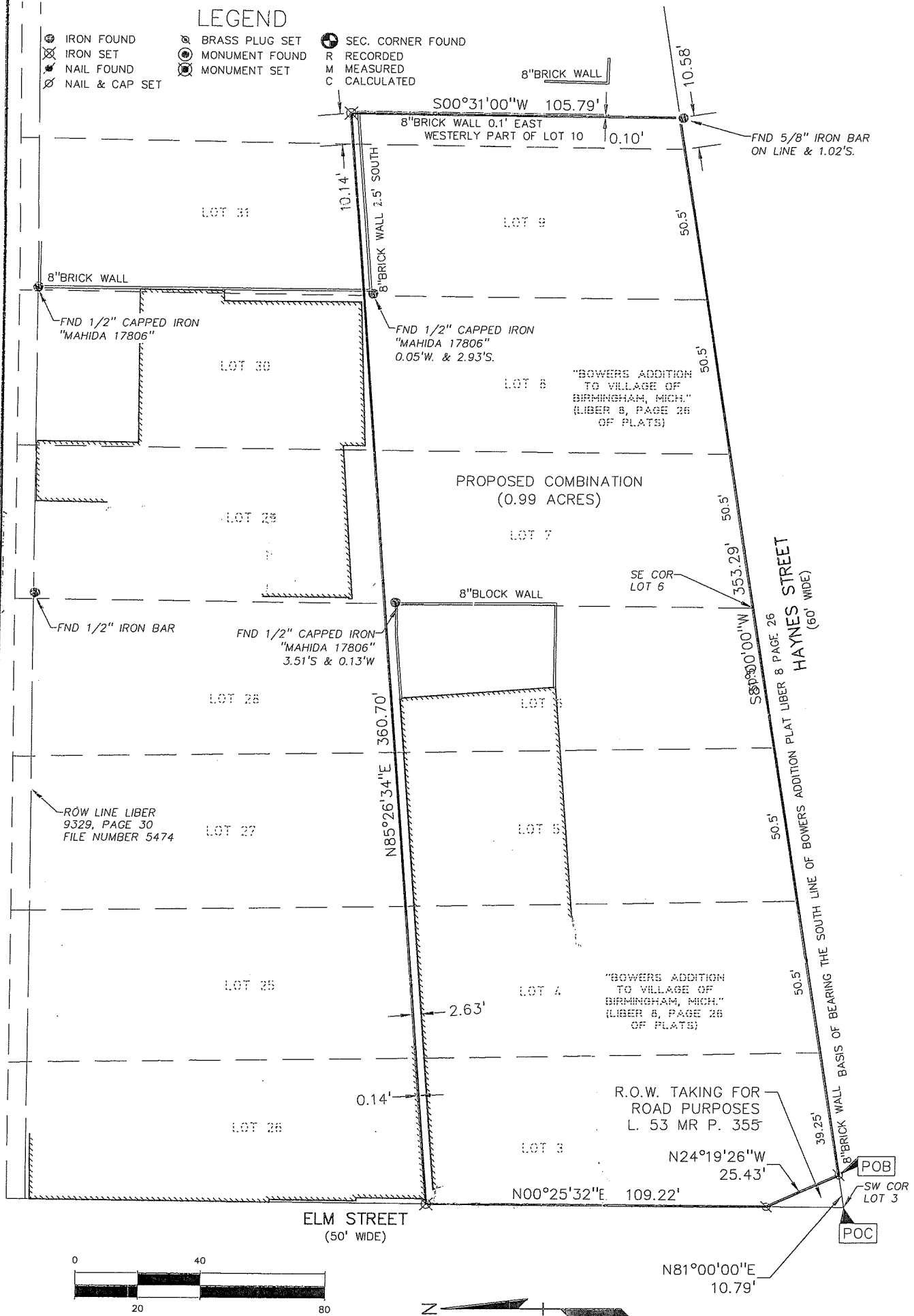
2430 Rochester Ct, Ste 100  
Troy, MI 48063-1872  
t: 248.689.9090  
f: 248.689.1044  
www.peainc.com

CLIENT: Lavery Michigan Dealership Properties No. 1, 909 HAYNES STREET BIRMINGHAM, MICHIGAN 48009	SCALE: LC —	JOB No: 2019-344
	DATE: 9/18/19	DWG. No: 3 of 4

CERTIFICATE OF SURVEY  
PROPOSED PARCEL CONSOLIDATION

LEGEND

- IRON FOUND  
IRON SET  
NAIL FOUND  
NAIL & CAP SET  
BRASS PLUG SET  
MONUMENT FOUND  
MONUMENT SET  
SEC. CORNER FOUND  
R RECORDED  
M MEASURED  
C CALCULATED



CLIENT:  
Lavery Michigan Dealership Properties No. 1, LLC  
909 HAYNES STREET  
BIRMINGHAM, MICHIGAN 48009

SCALE: 1" = 40'

JOB No: 2019-344

DATE: 9/18/19

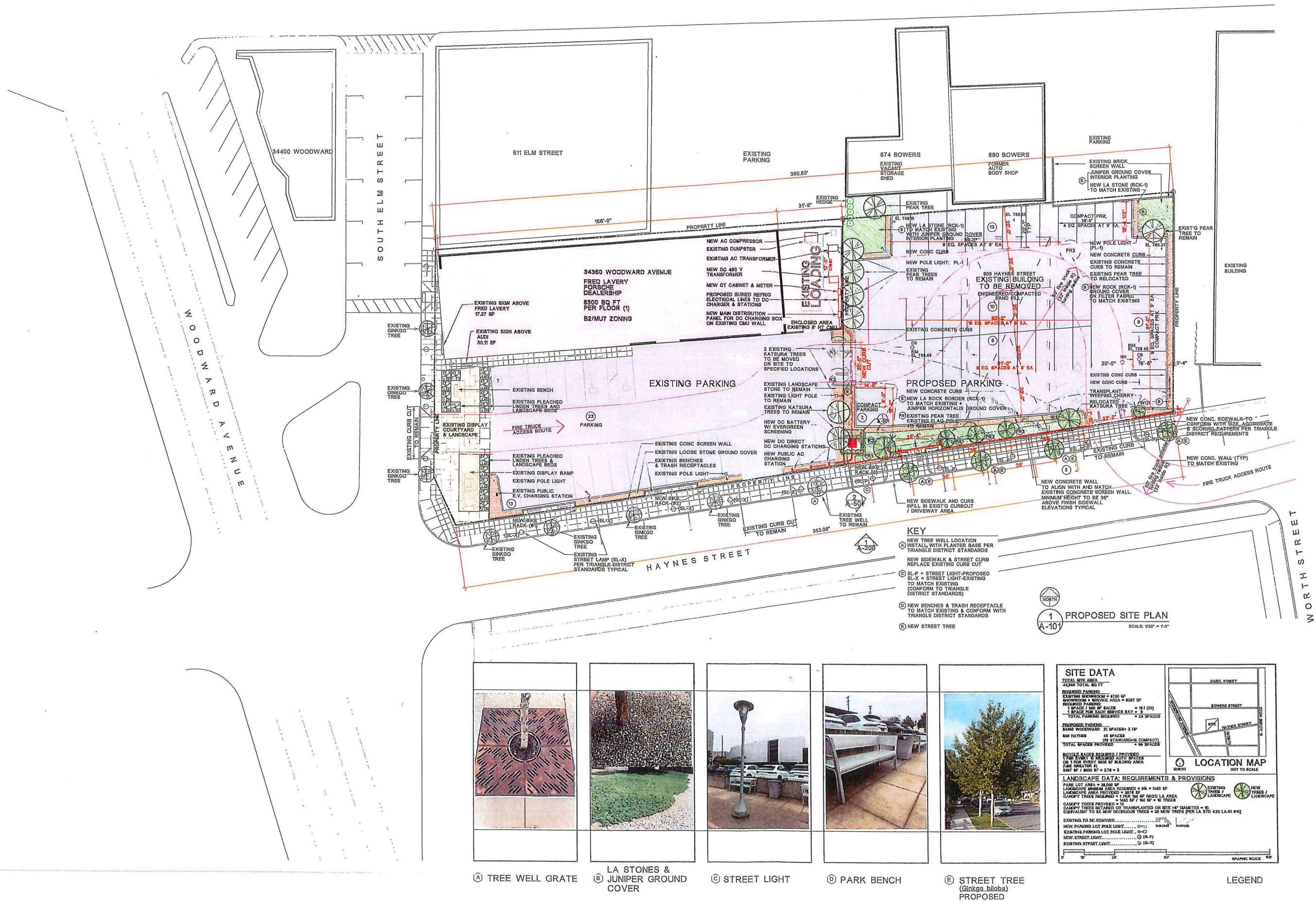
DWG. No: 4 of 4

PEA, Inc.

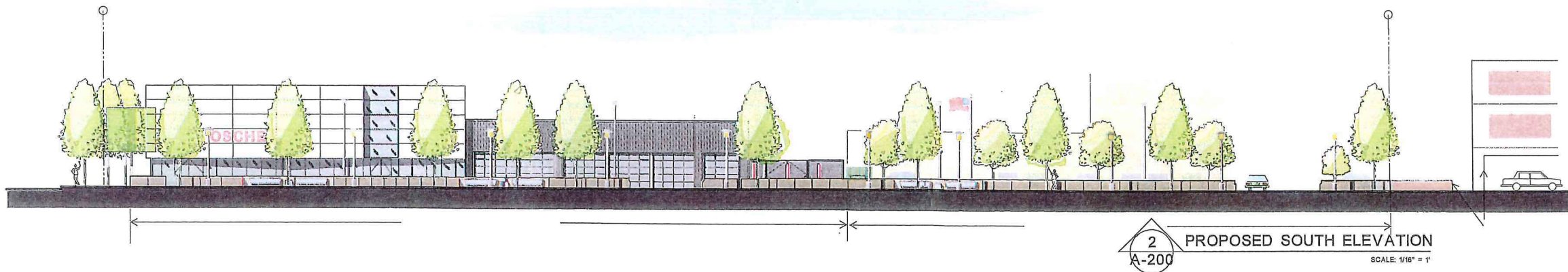
2430 Rochester Ct, Ste 100  
Troy, MI 48063-1872  
t: 248.689.9090  
f: 248.689.1044  
www.peainc.com



A-101

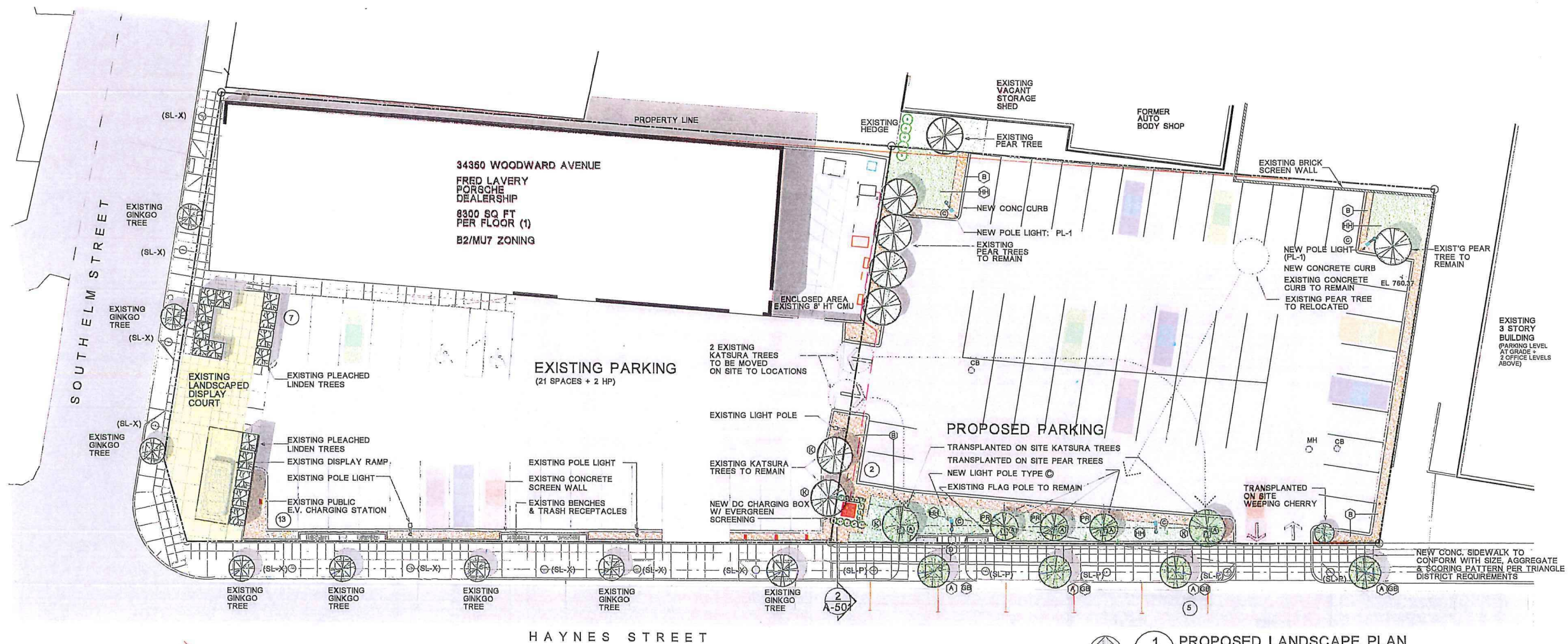






Luckenbach  
Ziegelman  
Gardner  
Architects  
PLLC

555 South Old Woodward Suite 27L  
Birmingham, Michigan 48009  
248.644.0600



project:  
**Fred Lavery**  
**PORSCHE**  
Special Land Use  
Permit Review  
835 Haynes Street  
Birmingham, Michigan

sheet title:  
**PROPOSED**

date issued:

project number:  
LZG 2019.0025

sheet number:

**A-200**

#### LANDSCAPE KEY

- (A) NEW TREE WELL LOCATION  
INSTALL WITH PLANTER BASE PER  
TRIANGLE DISTRICT STANDARDS  
Ginkgo biloba, "Autumn Gold"
- (B) EXISTING STONE (1" DIA) VOLCANIC STONE  
(Washed Decorative Stone: Midnight Granite)
- (D) NEW BENCHES & TRASH RECEPTACLE
- (K) KATURA TREE (Existing - Transplanted on Site)  
(Cercidiphyllum japonicum)
- (P) FLOWERING PEAR TREE  
(Existing - Transplanted on Site - Pyrus sp)

#### LIGHTING KEY

- (A) Auraltight 12V LED Micro well Uplight
- (B) Lumen Street Light Model PT90 - 42W  
TO MATCH EXISTING  
(CONFORM TO TRIANGLE  
DISTRICT STANDARDS)
- (C) PARKING LIGHT POLE  
Cooper Lighting - Lumark  
Model MPTR (match existing)



land situated in the City of Birmingham, County of Oakland, State of Michigan Described as follows:



---

**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, SEPTEMBER 22, 2010**

Commission Chamber, City Hall  
151 Martin Street, Birmingham, Michigan

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Minutes of the regular meeting of the City of Birmingham Planning Board held September 22, 2010. Chairman Robin Boyle convened the meeting at 7:30 p.m.

**Present:** Chairman Robin Boyle; Board Members Scott Clein, Bert Koseck, Gillian Lazar (arrived at 7:53 p.m.), Janelle Whipple-Boyce, Bryan Williams; Student Representative Aaron Walden

**Absent:** Board Member Carroll DeWeese

**Administration:** Matthew Baka, Planning Intern  
Jana Ecker, Planning Director  
Carole Salutes, Recording Secretary

**09-170-10**

**SPECIAL LAND USE PERMIT ("SLUP") REVIEW**

**835 Haynes St., Porsche Showroom and Sales**

**Request approval of a SLUP to allow an automobile sales agency in an existing building**

**FINAL SITE PLAN REVIEW**

**835 Haynes St., Porsche Showroom and Sales**

**Request approval of a SLUP to allow an automobile sales agency in an existing building**

Mr. Baka explained the subject site is located on the east side of Woodward Ave., on the northeast corner of Haynes and Elm. The parcel is zoned B-2 Business-Residential and MU-7 in the Triangle Overlay District. The applicant, Fred Lavery Company, is seeking approval of an auto sales agency and showroom. The Birmingham Zoning Ordinance requires that the applicant obtain a SLUP and approval from the City Commission to operate an auto sales agency and showroom in the MU-7 District.

***Accordingly, the applicant will be required to obtain a recommendation from the Planning Board on the Final Site Plan and SLUP, and then obtain approval from the City Commission for the Final Site Plan and SLUP.***

Mr. Baka explained that the applicant is planning minimal changes to the actual site. They are basically looking at some improvements to the screening, lighting and also landscaping. The parking lot is over 7,500 sq. ft., which would kick in the 5 percent landscaping rule. However, because this area is identified as one of the gateways to the Triangle District, the Planning Division thought it would be more beneficial to pedestrians to locate the landscaping at the west end of the site on the outside of the screenwall.

The materials board was passed around for viewing.

The applicant proposes to install two name letter signs and one two-sided ground sign. The total linear building frontage is 165 ft. This permits 165 sq. ft. of sign area per the requirement of Article 1.0, section 104 (B) of the Birmingham Sign Ordinance, Combined Sign Area. The total area of all signs will be 128.59 sq. ft. which meets this requirement.

The proposed Porsche and Fred Lavery sign letters will be constructed of silver finished fabricated aluminum. The proposed Porsche ground sign will be a fabricated aluminum cabinet with an internal aluminum frame.

The Porsche name letter sign will be internally lit with 15mm red neon lamps. The Fred Lavery name letter sign will be halo backlit with 15mm white neon tubes. The Porsche ground sign is proposed to be internally backlit with fluorescent tubes.

Mr. Robert Ziegelman, Luckenbach Ziegelman Architects, PLLC, was present with Messrs. Lavery and Lavery; Mr. Pat Taylor from his office; along with Mr. Mark Daringowski, representing Porsche Cars North America. Mr. Ziegelman indicated they are not touching the footprint of the building. Mr. Koseck observed that floor plans would help to understand why the entry points are where they are.

Ms. Lazar arrived at this time.

Ms. Whipple-Boyce received clarification that the applicant is proposing roughly 700 sq. ft. of landscaping in the parking lot. 600 sq. ft. is required. Moving the screenwall to the inside of the landscaping would take the requirement down significantly.

Chairman Boyle suggested a Porsche display in the parking lot would be astonishingly attractive.

Mr. Fred Lavery, the owner and operator of the Porsche dealership, said they did not consider a car display because it wouldn't be seen as a result of the screenwall requirement.

Mr. Williams was not in favor of the display because it is not easy to negotiate out onto Woodward Ave. from Haynes and the display might be a distraction.

Mr. Koseck noted the existing aisles in the parking lot are 24 ft. wide and they exceed the required width by 4 ft. He thought the width could be reduced and that would allow additional room for landscaping. Further, he expected the main entrance to the building would be at the southwest corner so a pedestrian would not be forced to walk through the parking lot to enter. Mr. Lavery explained there are two pedestrian entrances. The second pedestrian entrance is also used for vehicles. He noted they adhere to the Porsche standards which they have no control over. The entire inside of the showroom is oriented towards the main entrance. Mr. Koseck then pointed out that the upper left hand section shows a thin wall that extends up, as opposed to wrapping around. The elevation that faces to the north is even thinner yet and they both look as though they were glued onto the building.

Ms. Lazar thought perhaps Porsche could offer the applicant some latitude given the fact that they are rehabbing the building.

Mr. Lavery went on to state that parking is an important part of their operation. His experience has been that the parking standards are minimal for a car dealership. They have always utilized other parking spaces in addition to those that have been required on-site.

Mr. Daringowski explained the Porsche concept of a jewel box with all of the Porsches illuminated inside that box. Their flexibility for change is minimal, but they will work with the comments that have been made tonight.

The chairman took the discussion to members of the public at 8:25 p.m.

Mr. James Ellsman, owner of the building immediately to the north, expressed his concern that this building offers no consistency with the concept of the Triangle District. At the entrance point to the Triangle District only a one-story renovated building is being considered. He asked about the longevity of the project.

Mr. Ted Mitchell, the owner of the building, verified that the term of the lease is five years.

Mr. Williams noted this is an area of at times very high traffic congestion and people driving too fast. So he is not troubled by moving access to the building away from Elm, far away from the intersection, He doesn't think that many people will actually walk to the Porsche car dealership.

Mr. Clein was not in favor of giving up on the pedestrian. Rather, implementing the streetscape improvement standards in conjunction with moving the screenwalls should be considered.

Ms. Whipple-Boyce thought that Mr. Koseck's proposal makes a lot of sense; but that said, the main entrance is further east where the interior of the building is oriented. She thinks Mr. Lavery made it clear that rather than turning the three extra parking spots that

aren't required into landscaping, he needs the parking. However, she agrees that the screenwall should be moved to the interior of the parking lot so that the pedestrian side gets all of the greenery. Landscaping might look better than benches along the sidewalk.

Chairman Boyle said he is glad to see that the applicant is coming in to improve this property. A little trees and grass doesn't really help the attractiveness of this particular piece of property. Benches are to be encouraged. This dealership should be vibrant, colorful, lit at night, and have a red, shiny Porsche on display.

Mr. Williams thought the reality is that a five-story building is not going to be built on that site right now. This proposal is a significant improvement over what exists.

**Motion by Mr. Williams**

**Seconded by Mr. Clein that the Planning Board recommends approval of the applicant's request for Final Site Plan and a SLUP to permit an auto sales agency and showroom at 834 Haynes with the following conditions:**

- 1) The applicant adds a canopy tree to each of the two landscaped areas;**
- 2) The applicant moves the west facing screenwalls to expose the landscaped areas to the street; and**
- 3) The applicant install tree grates around street trees and implement sidewalk standards along Haynes and Elm.**

Mr. Koseck reiterated that the extended fascia doesn't return on itself and he thinks it will look weird from two vantage points. Mr. Lavery indicated they will certainly suggest that to Porsche. He thinks the return on Elm St. is more critical than the return on Haynes because the building to the east screens that side of the façade. Mr. Daringowski is sitting in the audience and will ultimately be involved in that decision. Mr. Williams was not inclined to make the return on the parapets a condition of his motion.

Mr. Koseck said he will not approve the motion because there are subtle things that can be done that would make huge improvements to the plan.

Ms. Whipple-Boyce expressed her feeling that it is important for the parapets to become part of the motion because as proposed they are unlikely to be attractive to the community. She cannot support the motion without that addition.

The chairman opened discussion to the audience at 9 p.m.

Ms. Dorothy Conrad, 2252 Yorkshire, said that as a resident of the City of Birmingham she hopes that the motion will include the suggestions that have been discussed in great detail tonight. Shame on the board if it doesn't.

**Motion failed, 3-3.**

**VOICE VOTE**

Yeas: Williams, Clein, Boyle

Nays: Koseck, Lazar, Whipple-Boyce

Absent: DeWeese

**Motion by Ms. Whipple-Boyce**

**Seconded by Ms. Lazar based on review of the site plan submitted the Planning Board recommends approval of the applicant's request for Final Site Plan and SLUP to permit an auto sales agency at 835 Haynes with the following conditions:**

- 1) The applicant adds a canopy tree to each of the two landscaped areas;**
- 2) The applicant moves the west facing screenwalls to expose the landscaped areas to the street;**
- 3) Install tree grates around street trees and implement sidewalk standards along Haynes and Elm; and**
- 4) Create returns on the parapet wall on both Haynes and Elm to disguise the bracing.**

Mr. Williams indicated he would vote in favor of the motion because he thinks the project needs to move forward. Mr. Koseck did not see the urgency. He was uncomfortable because the board has not been provided with readings or a floor plan.

There were no final comments from members of the public at 9:05 p.m.

Mr. Ziegelman said they would be more than happy to discuss improvements with staff.

**Motion carried, 5-1.**

**VOICE VOTE**

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

Nays: Koseck

Absent: DeWeese

# **BIRMINGHAM CITY COMMISSION MINUTES**

## **NOVEMBER 8, 2010**

### **MUNICIPAL BUILDING, 151 MARTIN**

### **7:30 P.M.**

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

Rackeline J. Hoff, Mayor called the meeting to order at 7:30 PM.

#### **II. ROLL CALL**

ROLL CALL:	Present,	Mayor Hoff Commissioner Dilgard Commissioner McDaniel Commissioner Moore Commissioner Nickita Mayor Pro Tem Rinschler Commissioner Sherman
	Absent,	None

Administration: Manager Markus, Attorney Currier, Clerk Broski, Assistant Manager Valentine, Planning Director Ecker, Planner Baka, City Engineer O'Meara, Assistant City Engineer Cousino, Finance Director Ostin, Building Official Johnson, Fire Chief Metz, Fire Marshall Monti, PSD Director Heiney, Assistant to the Manager Wuerth

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

##### **11-269-10 ORGANIZATION OF THE CITY COMMISSION**

**MOTION:** Motion by Rinschler:

To nominate Rackeline Hoff as Temporary Chair of City Commission for purposes of conducting the Mayor and Mayor Pro Tem election.

**VOTE:** Yeas, 7  
Absent, None

**MOTION:** Motion by McDaniel:

To nominate Commissioner Rinschler as Mayor.

**VOTE:** Yeas, 7  
Absent, None

**MOTION:** Motion by Moore:

To nominate Commissioner Nickita as Mayor Pro Tem.

**VOTE:** Yeas, 7  
Absent, None

- 7) The applicant submit revised plans with all of these changes to the Planning Dept. prior to going to the City Commission so the Commission would see the revisions when they consider this issue; and
- 8) All work must be completed in concurrence with the installation of the TV screens, to be completed by June 1, 2011.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on September 22, 2010;

WHEREAS, The Birmingham City Commission has reviewed the Speedway SuperAmerica LLC Special Land Use Permit Amendment application as well as the standards for such review as set forth in Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below and the Speedway SuperAmerica LLC application for a Special Land Use Permit Amendment is hereby approved, subject to the attached site plan, and subject to the following conditions:

- 1) Repair the cap on the dumpster enclosure walls and repair the dumpster gate;
- 2) Repair the existing screenwalls on the site;
- 3) Improvement of the existing landscape areas on Woodward Ave. to include the installation of several large canopy trees in each bed along with smaller shrubs and perennials;
- 4) Repair damaged portions of the existing sidewalk and approach off of Chestnut;
- 5) Installation of a shield on the wall pack fixture located on the rear of the building and repair of the existing parking lot light fixtures;
- 6) Repair all items on the list that Speedway provided and previously had agreed to repair;
- 7) The applicant submit revised plans with all of these changes to the Planning Dept. prior to going to the City Commission so the Commission would see the revisions when they consider this issue; and
- 8) All work must be completed in concurrence with the installation of the TV screens, to be completed by June 1, 2011.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, the Speedway SuperAmerica LLC Company and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Speedway SuperAmerica LLC Company to comply with all the ordinances of the City, may result in the Commission revoking this Special Land Use Permit.

VOTE:           Yeas, 7  
                  Nays, None  
                  Absent, None

## **11-274-10                   PUBLIC HEARING TO CONSIDER SPECIAL LAND USE PERMIT                                   835 HAYNES**

Mayor Rinschler opened the Public Hearing to consider approval of a Special Land Use Permit application for 835 Haynes to allow the operation of an auto sales agency and showroom 8:34 PM.

In response to a question from Mayor Pro Tem Nickita, Bob Ziegelman, Luckenbach, Ziegelman Architects, explained there are two entry locations - one from the sidewalk and one from the parking lot. He explained that there are two four-foot doors.

Mayor Pro Tem Nickita explained that this is a gateway site. He stated that the planning division recommended the planning board consider additional enhancements to the corner of



the site at Haynes and Elm. He stated that in the submitted rendering the enhancements are minimally addressed.

Mr. Baka explained there was discussion about enhancing the corner. He stated that it is appropriate to fully implement the streetscape standards.

Mr. Ziegelman confirmed that the owner is willing to comply with the streetscape standards.

Brad Lavery, owner, confirmed for Mayor Rinschler that new and used cars will be parked in the parking lot.

James Ellsman, owner of 635 Elm Street, commented that this is an underperforming site.

Mayor Rinschler closed the public hearing at 9:08 PM.

Discussion ensued regarding the streetscape. Mr. Lavery agreed to do the additional streetscape improvements which are a considerable expense.

**MOTION:** Motion by Nickita, seconded by Hoff:

To approve the request for a Special Land Use Permit at 835 Haynes to allow the operation of an auto sales agency and showroom for Porsche with the following conditions:

- The applicant implements the complete streetscape standards, including exposed aggregate and pedestrian scale lighting.
- In addition to consider the redevelopment of the corner at Haynes and Elm by incorporating enhancements in the adjacent parking space and additionally the entrance at the northwest corner of the parking lot, including the incorporation of parking lot there as well for administrative approval.

WHEREAS, Lavery Porsche has applied for a Special Land Use Permit to operate a Porsche automobile sales agency 835 Haynes,

WHEREAS, The land for which the Special Land Use Permit Amendment is sought is located on the northeast corner of Elm and Haynes,

WHEREAS, The land is zoned B-2 General Business, which permits automobile sales agencies with a Special Land Use Permit,

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning, requires a Special Land Use Permit Amendment to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board reviewed the proposed Special Land Use Permit request on September 22, 2010 at which time the Planning Board voted to recommend approval of the Final Site Plan and SLUP to the City Commission with the following conditions:

- 1) The applicant adds a canopy tree to each of the two landscaped areas;
- 2) The applicant moves the west facing screenwalls to expose the landscaped areas to the street;
- 3) Install tree grates around street trees and implement sidewalk standards along Haynes and Elm; and
- 4) Create returns on the parapet wall on both Haynes and Elm to disguise the bracing.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on September 22, 2010;

WHEREAS, The Birmingham City Commission has reviewed the Lavery Porsche Special Land Use Permit Amendment application as well as the standards for such review as set forth in Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below and the Lavery Porsche application for a Special Land Use Permit is hereby approved, subject to the attached site plan, and subject to the following conditions:

- 1) The applicant adds a canopy tree to each of the two landscaped areas;
- 2) The applicant moves the west facing screenwalls to expose the landscaped areas to the street;
- 3) Install tree grates around street trees and implement sidewalk standards along Haynes and Elm; and
- 4) Create returns on the parapet wall on both Haynes and Elm to disguise the bracing.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Lavery Porsche and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Lavery Porsche to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

VOTE:           Yeas, 7  
                  Nays, None  
                  Absent, None

**11-275-10                   REQUEST FOR WAIVER  
                                  LOT 229, FOREST HILLS SUBDIVISION**

Mr. Johnson explained that the property owners of Lot 229 in the Forest Hills Subdivision are seeking a waiver from the provisions of Chapter 102 of the city code to allow a home to be built on a substandard sized lot that has been reduced from its original size.

The Commission received a communication from Daniel Share, Barris, Sott, Denn & Driker, PLLC.

Rick Rattner, representing the petitioner, spoke in favor of the request for waiver to build on the lot.

Daniel Share, representing the adjacent property owner, spoke in opposition to the request for waiver.

Commissioner Sherman questioned whether the attorneys and their clients have spoke with each other to resolve this matter. Mr. Share confirmed that there had been discussion. Mr. Share commented that his clients would be fine with having another discussion. Mr. Rattner commented that further discussion would not be helpful as his client wants to build on the lot.

Commissioner McDaniel moved to waive the requirements of Section 102-51 (1) of the Birmingham City Code for Lot 229 of the Forest Hills Subdivision (19-25-257-001), to allow the construction of a home on said lot in compliance with all zoning regulations of Chapter 126 of the City Code except minimum lot area and minimum lot width. With no second, Commissioner McDaniel withdrew his motion.

The following spoke in opposition to the request:  
Dan Roovers, 205 Wimbleton

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**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, APRIL 27, 2016  
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 April 27, 2016. Chairman Scott Clein convened the meeting at 7:30 p.m.

**Present:** Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Gillian Lazar, Lisa Prasad, Janelle Whipple-Boyce; Student Representative Colin Cusimano

**Absent:** Board Member Bryan Williams; Alternate Board Member Daniel Share

**Administration:** Matthew Baka, Senior Planner  
Brooks Cowan Asst. Planner  
Jana Ecker, Planning Director  
Carole Salutes, Recording Secretary

**04-73-16**

**UNFINISHED BUSINESS**

**Special Land Use Permit ("SLUP") Review**

**Final Site Plan Review**

**835-909 Haynes**

**Fred Lavery Porsche/Audi**

**Request for a SLUP Amendment to allow the temporary expansion of the existing SLUP at 835 Haynes to include 909 Haynes to allow an Audi sales facility for a maximum of one year.** (postponed from March 23, 2016)

Mr. Baka noted the subject site is located on the north side of the street between Woodward Ave. and Elm St. The parcel is zoned B-2 General Business and MU-5 in the Triangle Overlay District. The applicant, Fred Lavery Co., owns the adjacent property to the west, 835 Haynes St., which received a SLUP in 2010 to operate a Porsche car dealership within the B-2 Zone and MU-7 in the Triangle District Overlay.

The applicant is conducting renovations to the existing Audi dealership at 34602 Woodward Ave., and wishes to amend its existing SLUP at 835 Haynes St. to temporarily include 909 Haynes St. while the building on Woodward Ave. is being renovated. The applicant is requesting temporary use of the first floor of 909 Haynes St. for office space and business operations for their Audi car dealership for no more

than 12 months. Along with the dealership, there is an existing beauty spa on the second floor of 909 Haynes St., Spa Mariana.

The Birmingham Zoning Ordinance requires that the applicant obtain a SLUP Amendment and approval from the City Commission to expand the auto sales agency and showroom to temporarily include the property at 909 Haynes St.. Accordingly, the applicant will be required to receive a recommendation from the Planning Board on the Final Site Plan and SLUP Amendment, and then obtain approval from the City Commission for the Final Site Plan and SLUP Amendment.

On March 23, 2016 the Planning Board reviewed the proposal to temporarily expand the SLUP to include 909 Haynes for one year. However, at that time the architect indicated that the property owner would like the expansion to be permanent. The Planning Board and Planning Staff indicated that a permanent expansion would not be considered without the level of details normally provided for a SLUP Amendment. The applicant was postponed until the April 27, 2016 meeting to allow them time to consider how they wished to proceed. The applicant has now indicated that they intend to proceed with the temporary proposal and apply at a later date for a permanent expansion of the SLUP.

The applicant is now proposing to install the five (5) required canopy trees and create three (3) new landscaped areas in the interior of the parking lot. The applicant must provide the dimensions of the landscaped areas to determine if they meet the size requirements mandated by the Zoning Ordinance.

The applicant is not proposing any changes to the existing streetscape. The current streetscape in front of the subject building does not match the Triangle District standard as installed on the Porsche site.

The design for the building on Woodward Ave. has been approved by the Design Review Board and the applicant is getting ready to start the renovations.

#### *Design Review*

No changes to the facade are proposed.

#### *Signage Review*

The 909 Haynes St. building has 40 ft. of street frontage; therefore a total of 40 sq. ft. of signage is allowed, per the City of Birmingham's Sign Ordinance. The applicant has revised their signage proposal to bring the amount of signage down to 40 sq. ft. so that it complies with the regulations of the Sign Ordinance.

Ms. Ecker explained that because there were violations going on with the storage of vehicles, Code Enforcement went out, but enforcement activities have been put on hold until it is determined if the temporary SLUP is feasible.

Mr. Fred Lavery noted they will not display cars in the building; it will only contain offices for the sales staff and sales manager. They will probably park their demonstrators in the spaces that are not required to meet the parking requirement for the building. The Audi building on Woodward Ave. is being renovated to Audi's current corporate image.

Chairman Clein called for public comments at 8:32 p.m.

Mr. James Ellsman business owner at 635 Elm, asked if the approval of an amended SLUP is a guarantee that the Triangle District restrictions against car dealerships is waived. Ms. Ecker clarified the Triangle District doesn't prohibit the use for car sales agencies, but it only allows it with the strict control and regulation of a SLUP because of the potential impact on the neighborhood. In this case the car dealership is only requesting approval for a period of one year.

Mr. Koseck commented that this is not his vision for the Triangle District. By granting this request it takes the property out of contention for other developments over the next 12 months. After the temporary SLUP amendment has expired he will not support this because the property has a higher and better use. Mr. Lavery responded that a seven story building cannot be constructed on this property without public parking. Only when public parking becomes available will there be a higher and better use for this property. Therefore, the proposed use bridges the gap so he doesn't have a \$7 or \$8 million investment that produces no visible revenue stream until public parking gets approved and constructed.

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Boyle that based on a review of the site plans submitted, the Planning Board recommends approval of the applicant's request for Final Site Plan and a SLUP Amendment to the City Commission to allow the temporary expansion of the auto sales agency and showroom for up to one (1) year at 835 Haynes to include 909 Haynes with the following condition:**

- **Applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.**

There were no comments on the motion from members of the audience at 8:40 p.m.

**Motion carried, 7-0.**

**ROLLCALL VOTE**

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

Nays: None

Absent: Williams

**BIRMINGHAM CITY COMMISSION MINUTES**  
**JUNE 27, 2016**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

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

Rackeline J. Hoff, Mayor, called the meeting to order at 7:33 PM.

**II. ROLL CALL**

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

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, City Planner Ecker, City Engineer O'Meara, Finance Director Gerber, Deputy Treasurer Klobucar, DPS Director Wood, Police Chief Clemence

**06-200-16**

**PUBLIC HEARING TO CONSIDER  
TEMPORARY SPECIAL LAND USE PERMIT  
835 & 909 HAYNES, LAVERY PORSCHE**

Mayor Hoff opened the Public Hearing at 10:37 PM to consider the Revised Final Site Plan and Temporary Special Land Use Permit Amendment – 835 & 909 Haynes, Lavery Porsche.

City Planner Ecker explained that renovations are being done to the Audi building. The applicant would like to use 909 Haynes temporarily for the sales office. She noted that the request is to use the building for a period of twelve months. She noted that the Planning Board had a few comments regarding landscape and screening in the parking area. She noted that twenty-four parking spaces are required by ordinance and there are thirty-six dedicated parking spaces for this site. She pointed out that vehicles for sale or lease are not allowed to be stored within the twenty-four spaces required for the building.

Fred Lavery, applicant, explained that the sales staff and managers will have to be relocated due to the renovation to the Audi building. He noted that the twenty-four parking spaces are for the occupants of the building. The difference between the twenty-four required spaces and thirty-six spaces will be used for the storage of cars.

A resident at 635 Elm Street expressed his support of the request, but only for one year.

The Mayor closed the Public Hearing at 10:54 PM.

**MOTION:** Motion by Nickita, seconded by Bordman:

To approve the Revised Final Site Plan and Temporary Special Land Use Permit Amendment of one year for 835 & 909 Haynes – Lavery Porsche with the condition that applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.

WHEREAS, Lavery Porsche has applied for a Temporary Special Land Use Permit Amendment of one year to operate an Audi automobile sales agency on the first floor of the building located at 909 Haynes,

WHEREAS, The land for which the Temporary Special Land Use Permit Amendment is sought is located on the north side Haynes east of Elm,

WHEREAS, The land is zoned MU-5, Mixed Use 5, which permits automobile sales agencies with a Special Land Use Permit,

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning, requires a Special Land Use Permit Amendment to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board reviewed the proposed Temporary Special Land Use Permit Amendment request on April 27, 2016 at which time the Planning Board voted to recommend approval of the Final Site Plan and SLUP to the City Commission with the following condition:

1) Applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on April 27, 2016;

WHEREAS, The Birmingham City Commission has reviewed the Lavery Porsche Temporary Special Land Use Permit Amendment application as well as the standards for such review as set forth in Article 7, section 7.34 of Chapter 126, Zoning of the City Code,

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below and the Lavery Porsche application for a Temporary Special Land Use Permit amendment is hereby approved for one year from the date of approval, subject to the attached site plan, and subject to the following conditions:

1) Applicant provides the dimensions of the parking lot landscaping islands to verify that they comply with the requirements of the Zoning Ordinance.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Lavery Porsche and its heirs, successors and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Lavery Porsche to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7  
Nays, None  
Absent, None



**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, JANUARY 22, 2020**

City Commission Room  
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on January 22, 2020. Chairman Scott Clein convened the meeting at 7:30 p.m.

**A. ROLL CALL**

**Present:** Chairman Scott Clein; Board Members Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin

**Absent:** Board Member Robin Boyle, Stuart Jeffares

**Administration:** Jana Ecker, Planning Director  
Brooks Cowan, City Planner  
Nicholas Dupuis, City Planner  
Laura Eichenhorn, Transcriptionist

**01-13-20**

**F. Special Land Use Permit Reviews**

**1. 34350 Woodward (previously 835 Haynes, Fred Lavery Porsche) & 907 - 911 Haynes (former Barda Salon Building) -** Amendment of Special Land Use Permit at 34350 Woodward to include the property at 907-911 Haynes to allow demolition of the existing Barda Salon Building and construction of a surface parking lot on 907 – 911 Haynes to provide additional parking for the Porsche dealership at 34350 Woodward

City Planner Cowan, Fred Lavery, owner, John Gardner, architect, and Rick Rattner, attorney, reviewed the item for the Board.

Chairman Clein asked Mr. Rattner:

- How the Board could support approval of this proposal when it does not seem to support the purpose of the Triangle District as required by ordinance; and,
- Whether the Board's approval of the proposal would amount to the expansion of a legal non-conforming use, which the Board is not permitted to do.

Mr. Rattner said the proposal supports the Triangle District plans because the surface lot would function as a placeholder for the eventual Worth Street realignment. He said it would not be expanding a legal non-conformity because the lot combination would be allowed under a SLUP as an auxiliary use.

Mr. Share noted that the combined lot could require a variance since the parking lot frontage would be greater than ordinance allows.

After Board discussion, Planning Director Ecker received confirmation from the Board that they were requesting clarification from the Building Official and City Attorney regarding whether the Board has authority to consider granting the requests put forth by the applicant, what impediments exist to granting the requests, and what the remedies to the impediments could be. She said the remedies could include a variance if the City chose to allow more than 25% of the frontage to be parking, an expansion of an existing non-conformity because the lots will be combined, or some other factor in a lot combination that could affect the result.

**Motion by Mr. Share**

**Seconded by Mr. Koseck to postpone consideration of the SLUP amendment for 34350 pending a response from the City Attorney and/or Building Official regarding whether the Board has authority to consider granting these requests, what impediments exist to granting the requests, and what the remedies to the impediments could be.**

Mr. Rattner said it would be useful to know what effect an agreement with the City would have vis-a-vis resolving these problems. Mr. Rattner then stated that Mr. Lavery requested to withdraw his application for the SLUP amendment.

The Board allowed Mr. Lavery to withdraw his request and accordingly took no action on the motion.

**DATE:** November 30, 2020

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

**FROM:** James J. Surhigh, Consulting City Engineer

**SUBJECT:** Coolidge Highway and Maple Road  
Traffic Signal Replacement  
Cost Sharing Agreement

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**INTRODUCTION:**

The Road Commission for Oakland County has proposed the replacement of the traffic signal at Coolidge Highway and Maple Road. Based on the jurisdictions of these two roads, the City is responsible for about 25% of the cost of this improvement. The Road Commission is asking the City to commit to contributing to this cost at this time.

**BACKGROUND:**

The Road Commission for Oakland County operates and maintains all of the traffic signals in the City. The Road Commission has a long history of prioritizing safety improvements, and the usual procedure for starting a traffic signal modernization project is based on their evaluation of the traffic conditions, age and condition of the equipment, and whether the equipment meets currently safety/regulatory standards. The City is notified of upcoming traffic signal modernization projects by the Road Commission, and then the City puts that project in the budget to cover the share of the costs that the City is responsible for, which will vary depending on location and who has legal jurisdiction of the roads at the intersection.

The Road Commission for Oakland County has notified the City of an upcoming traffic signal modification project at the intersection of Maple Road and Coolidge Highway. The existing signal was originally constructed in 1992, and had some equipment updates in 2000. Due to the age of the signal, and in order to bring the pedestrian facilities at this location up to the current ADA standards, RCOC proposes to replace the entire signal, all pushbuttons, and associated sidewalk ramps and landings. All proposed improvements will be designed to meet current ADA guidelines.

The Road Commission for Oakland Co. has legal jurisdiction for Maple Road, east of Coolidge Highway. The cities of Birmingham and Troy share jurisdiction of Maple Road, west of Coolidge Highway, and of Coolidge Highway, north of Maple Road. The City of Troy has legal jurisdiction of Coolidge Highway, south of Maple Road. Birmingham is responsible for 25% of costs for work on this particular signal (RCOC responsible for 25%, Troy responsible for 50%).

The design of this project is in a preliminary stage, and the Road Commission has not decided if a mast-arm or box-span design is appropriate at this location. The preliminary estimated cost provided by the Road Commission should account for either case, and they indicated that the Birmingham would have an opportunity to participate in the field review by RCOC before the design is finalized. They notified both Birmingham and Troy about the cost parameters, and the initial cost estimate is \$300,000. Staff from both cities indicated that they would endorse the project.

A photograph of the current traffic signals is attached to this report.

A copy of the notification letter from the Road Commission for Oakland County is attached for reference.

A plan view of the design is attached for your reference.

#### LEGAL REVIEW:

The City Attorney's office has reviewed the agreement, and they have no concerns with the language as presented.

#### FISCAL IMPACT:

As stated in the agreement, the total cost of the project is estimated at \$300,000. The City of Birmingham is being asked to pay 25% of that cost, or \$75,000. As previously stated, this work is not planned until the Summer of 2021 and the City will not be billed until July 1, 2021 or later. With this in mind, funds for this work will be included in the City's next fiscal year budget (2021/2022).

#### SUMMARY

The Road Commission for Oakland County has proposed to replace the traffic signal at the intersection of Coolidge Highway and Maple Road. The work is being justified as a safety improvement. The design is in progress, and the contract has not been awarded. Birmingham will have the opportunity to review the design prior to finalizing.

#### ATTACHMENTS:

- Cost sharing agreement
- Photo of existing condition, looking west.
- Notification letter from the Road Commission for Oakland County
- Preliminary plan of traffic signal replacement, as prepared by the Road Commission for Oakland County.

#### SUGGESTED RESOLUTION:

To approve the cost sharing agreement with the Road Commission for Oakland County, agreeing to pay the City of Birmingham's share of the cost to replace the traffic signal at the intersection of Coolidge Highway and Maple Road, at a cost not to exceed \$75,000, to be charged to account number 202-303.001-971.0100. Also, to authorize the Mayor to sign the agreement on behalf of the City.

**STATE OF MICHIGAN  
BOARD OF COUNTY ROAD COMMISSIONERS  
OAKLAND COUNTY  
AGREEMENT FOR TRAFFIC CONTROL DEVICE**

**Type of Work: Traffic Signal Modernization and Maintenance**

**Location: Coolidge Highway and Maple Road**

**Signal No: 125**

**Date Effective:**

Under authority of state law and by virtue of resolution formally adopted by their respective governing bodies, the under-signed hereby agree to participate in the cost of installation, removal, maintenance and operation of the above traffic control device on the basis of the following division of costs. (Title to equipment shall remain with the purchasing agency, unless purchased for roads not under the jurisdiction of the Board of County Road Commissioners of the County of Oakland.) Invoices for costs are to be billed monthly by the Road Commission for Oakland County ("RCOC").

**DIVISION OF COSTS**

AGENCY	MODERNIZATION		MAINTENANCE
	Percent	Estimated Cost	Percent
RCOC	25 %	\$ 75,000.00	25 %
City of Birmingham	25 %	\$ 75,000.00	25 %
City of Troy	50 %	\$ 150,000.00	50 %
Total	100 %	\$ 300,000.00	100 %

It is further agreed that the RCOC will be the agency invoiced for energy billings and/or communications billings ("BILLINGS"). The RCOC will pay the invoices for the BILLINGS and subsequently invoice the cities of BIRMINGHAM and TROY seeking reimbursement for payment of the BILLINGS pursuant to the division of costs stated above. The RCOC's payment of the BILLINGS shall be included as maintenance costs on the RCOC invoice to the cities of BIRMINGHAM and TROY.

It is further agreed that the agency responsible for making original and replacement installations and performing maintenance shall be the RCOC. All under-signed are the agencies responsible for the costs related to installation and maintenance pursuant to the division of costs stated above, and the RCOC will invoice the cities of BIRMINGHAM and TROY for the installation and maintenance costs pursuant to the division of costs stated above.

The cities of BIRMINGHAM and TROY shall pay all RCOC invoices within 30 days of the date of the invoice.

Each party to this agreement will remain responsible for any and all claims arising out of its own acts and/or omissions during the performance of the agreement, as provided by this agreement or by law. In addition, this is not intended to increase or decrease either party's liability for or immunity from tort claims. This agreement is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this agreement.

In the event the traffic control device referred to in this agreement is located on a road or street that is under the jurisdiction of the RCOC and by virtue of this agreement will be maintained by an agency other than the RCOC, then and in that event the said agency hereby acknowledges that it is undertaking the RCOC's duty to maintain the said traffic control device, further agrees to provide insurance coverage protecting the RCOC, and further agrees to provide a Certificate of Insurance acceptable to the RCOC upon the agency's execution of this agreement.

This agreement is terminable on thirty days written notice by any party. The cities of BIRMINGHAM and TROY shall pay any outstanding invoices upon written notice of the termination, and the final invoice shall be paid immediately upon receipt.

APPROVED:

**ROAD COMMISSION FOR OAKLAND COUNTY**

Date \_\_\_\_\_

By \_\_\_\_\_

Danielle Deneau, P.E.

DIRECTOR OF TRAFFIC-SAFETY

Title of Authorized Official

APPROVED:

**CITY OF BIRMINGHAM**

Date \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Title of Authorized Official

APPROVED:

**CITY OF TROY**

Date \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Title of Authorized Official

\*Certified copy of resolution must be submitted with this form for new installations.

Google Maps 3037 W Maple Rd

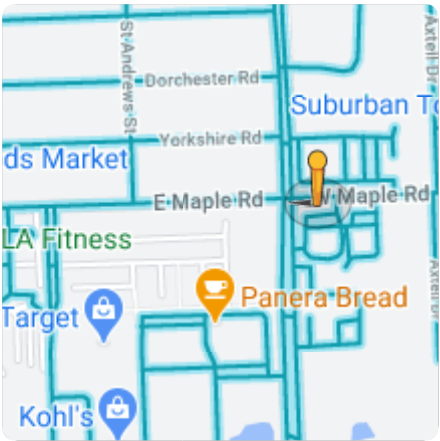


Image capture: Aug 2019 © 2020 Google

Troy, Michigan



Street View





QUALITY LIFE THROUGH GOOD ROADS:  
ROAD COMMISSION FOR OAKLAND COUNTY  
"WE CARE."

**Board of Road Commissioners**

**Ronald J. Fowkes**  
Commissioner

**Gregory C. Jamian**  
Commissioner

**Andrea LaLonde**  
Commissioner

**Dennis G. Kolar, P.E.**  
Managing Director

**Gary Piotrowicz, P.E., P.T.O.E.**  
Deputy Managing Director  
County Highway Engineer

**Traffic-Safety Department**  
**Traffic Operations Center**

1200 N. Telegraph, West 49  
Pontiac, MI 48341

248-858-7250

FAX  
248-858-7251

[www.rcocweb.org](http://www.rcocweb.org)

July 6, 2020

Austin W. Fletcher, P.E.  
Assistant City Engineer  
City of Birmingham  
151 Martin Street, P.O. Box 3001  
Birmingham, MI 48009

**Re: Coolidge Highway & Maple Road  
Traffic Signal Modernization Agreement (Co. #125)**

Dear Mr. Fletcher:

As previously shared with you, RCOC received a request from a citizen to install audible push buttons at the intersection of Coolidge Highway and Maple Road which we are happy to accommodate, however the traffic signal is old and to bring the pedestrian facilities to the new standards including sidewalk ramps will take some work. RCOC recommended that the entire traffic signal be modernized to a new mast arm/box span due to its age. RCOC proposes to rebuild the traffic signal, upgrade all associated sidewalk work and bring all the push buttons to the current ADA standards.

The participation breakdown for this intersection is RCOC 25%, City of Birmingham 25% and City of Troy 50%. RCOC estimates that it will cost approximately \$300,000 to rebuild this signal. This will mean that RCOC and City of Birmingham shares will be \$75,000 each, and the City of Troy \$150,000 for their portion.

Enclosed are four copies of the agreement needing execution, they have already been signed by the City of Troy. Please have them signed by the appropriate official and return them to me via U.S. Mail for further processing, an original copy will be returned for your files. In addition, please include copy of a City Council Resolution in support of the agreement.

If you have any question, please feel free to contact me at (248) 858-4830.

Sincerely,

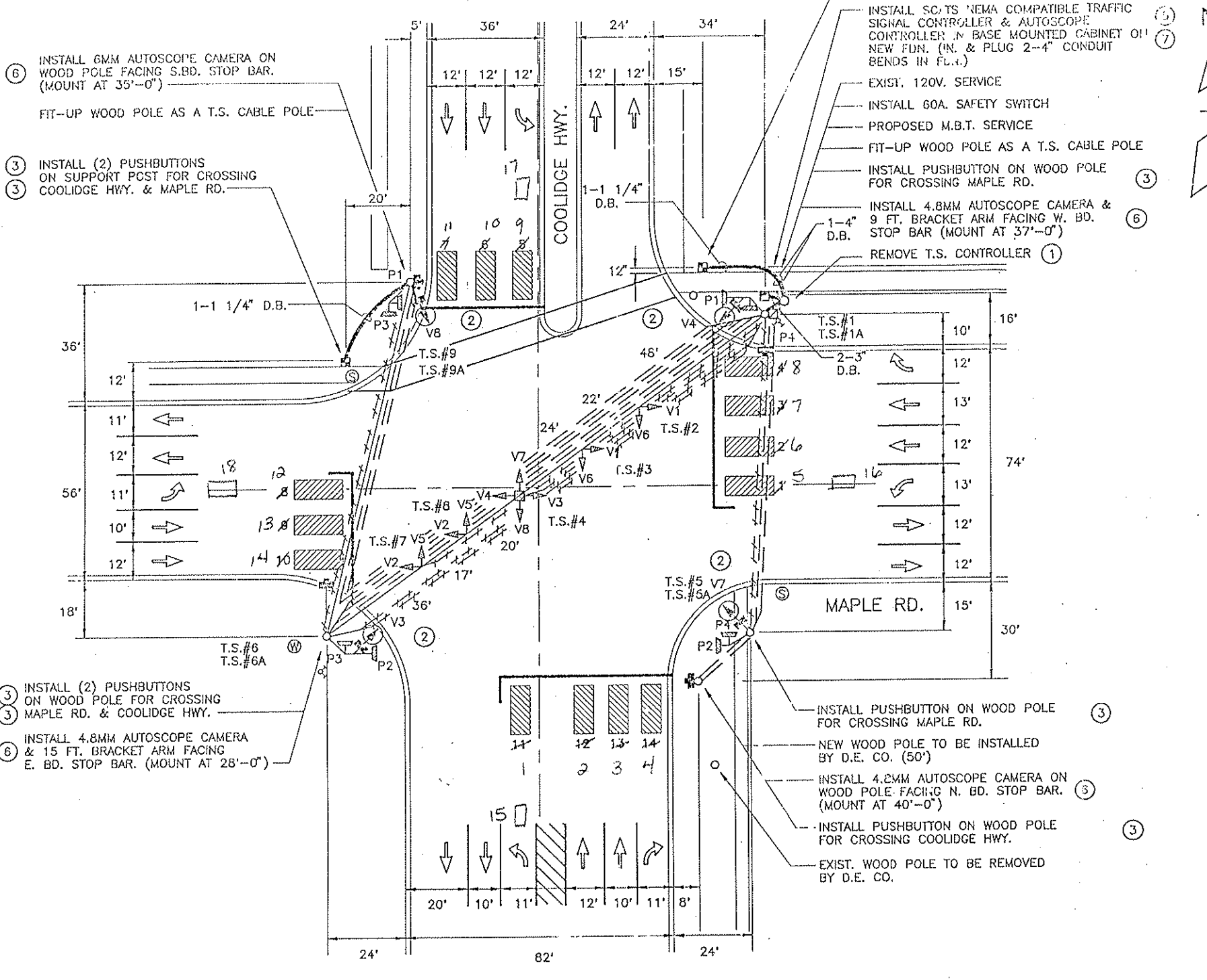
Charles Keller, P.E.  
Traffic Engineer  
Traffic-Safety Department

CK/sg

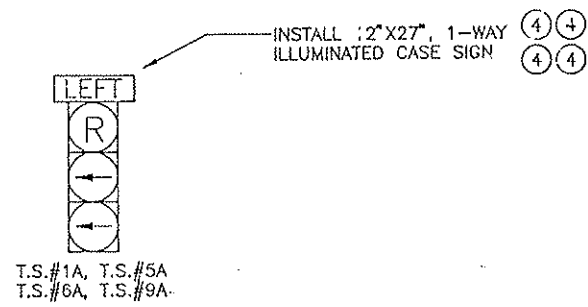
Enclosures (4)





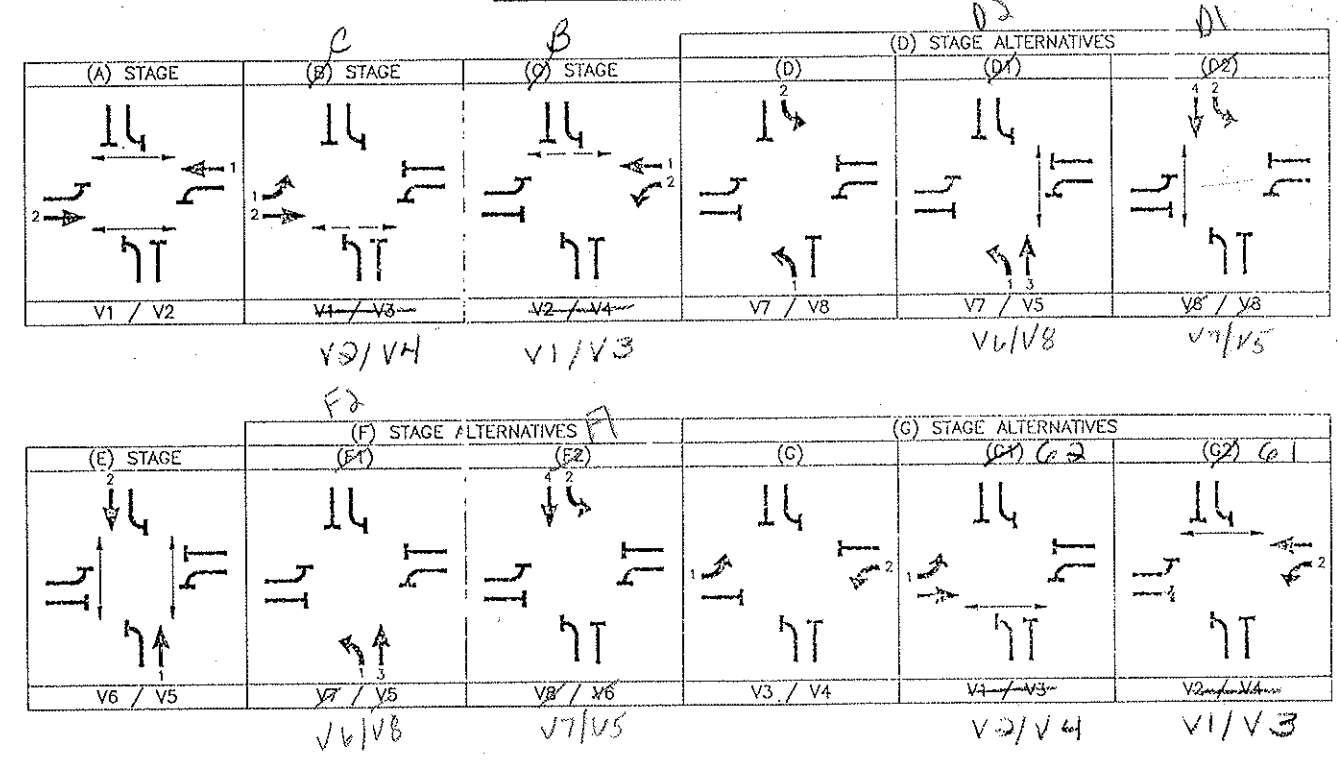


PLAN  
SCALE: 1"=20'



LIST OF MATERIALS			
NO.	ITEM	QUANTITIES	CODE NO.
①	REMOVE CONTROLLER & CABINET	1 EACH	6910162
②	1-WAY BRACKET ARM MOUNTED T.S.	4 EACH	6910251
③	PUSHBUTTON	8 EACH	6910286
④	ONE-WAY CASE SIGN, 12"X27"	4 EACH	6910300
⑤	SOLID STATE ACTUATED CONTROLLER & CABINET	1 EACH	6910337
⑥	AUTOSCOPE CAMERA	4 EACH	6917340
⑦	AUTOSCOPE CONTROLLER	1 EACH	6917341
	DIRECT BURIAL CONDUIT, 1-1 1/4"	65 LIN. FT.	6910351
	DIRECT BURIAL CONDUIT, 2-3"	10 LIN. FT.	6910065
	DIRECT BURIAL CONDUIT, 1-4"	10 LIN. FT.	6907059
	HANDHOLE (ROUND)	1 EACH	6910369
	FIT-UP WOOD POLE AS A T.S. CABLE POLE	2 EACH	6910396
	BASE MOUNT CONTROLLER FOUNDATION	1 EACH	6910427
	600V, 1-2/C#4 SECONDARY CABLE	60 LIN. FT.	6910470
	CLAMP-ON BRACKET ARM, 9FT.	1 EACH	6917410
	PUSHBUTTON SUPPORT	2 EACH	6917285
	SAFETY SWITCH	1 EACH	6910458
	CLAMP-ON BRACKET ARM, 15FT.	1 EACH	6917411

MOVEMENT DIAGRAM



COOLIDGE RD. & MAPLE RD.

CO. 125

ATS 674

LOAD	AMPS	WATTS							
SIGNALS	0	0							
CASE SIGNS	0	0							

TRAFFIC-SAFETY DEPARTMENT

ASSOCIATE CONSULTANT

**MANSALL ASSOCIATES INC.**

ENGINEERING CONSULTANTS

37560 Grand River  
Farmington, MI 48336

(313) 473-7070

PRIME CONSULTANT

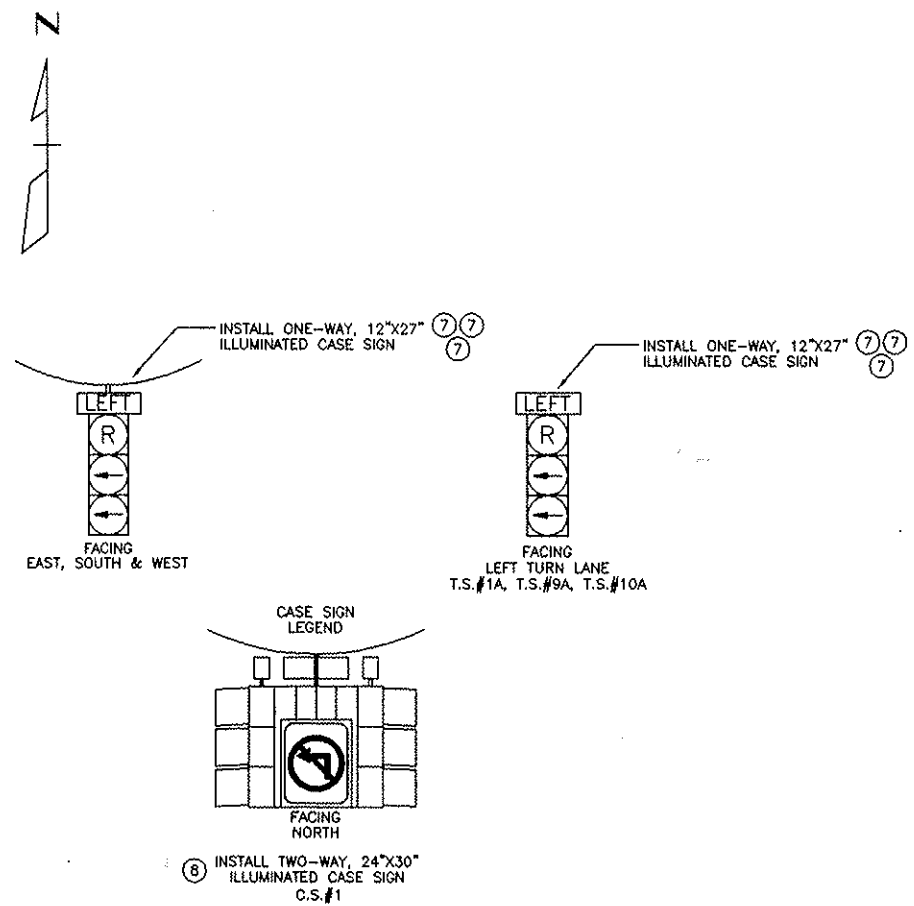
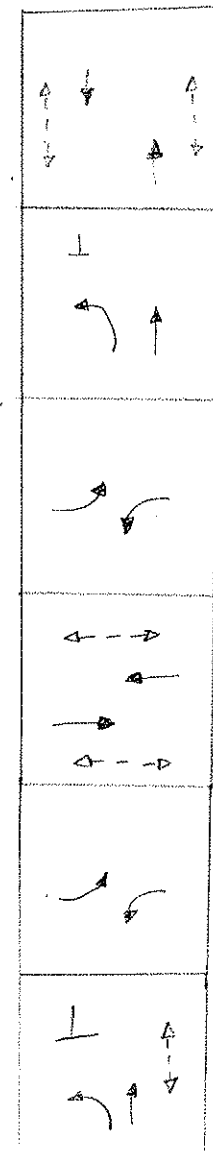
**HAMPTON ENGINEERING ASSOCIATES INC.**

1100 WEST HENRIE, SUITE 200  
ANN ARBOR, MICHIGAN 48102  
(313) 331-4332

DATE	DRAWN BY	APPROVED	JOB NO.	PROJECT NAME	SHEET NO.
12-14-92	MAI	<i>[Signature]</i>	M1192	SCATS INSTALLATION	20 OF 37

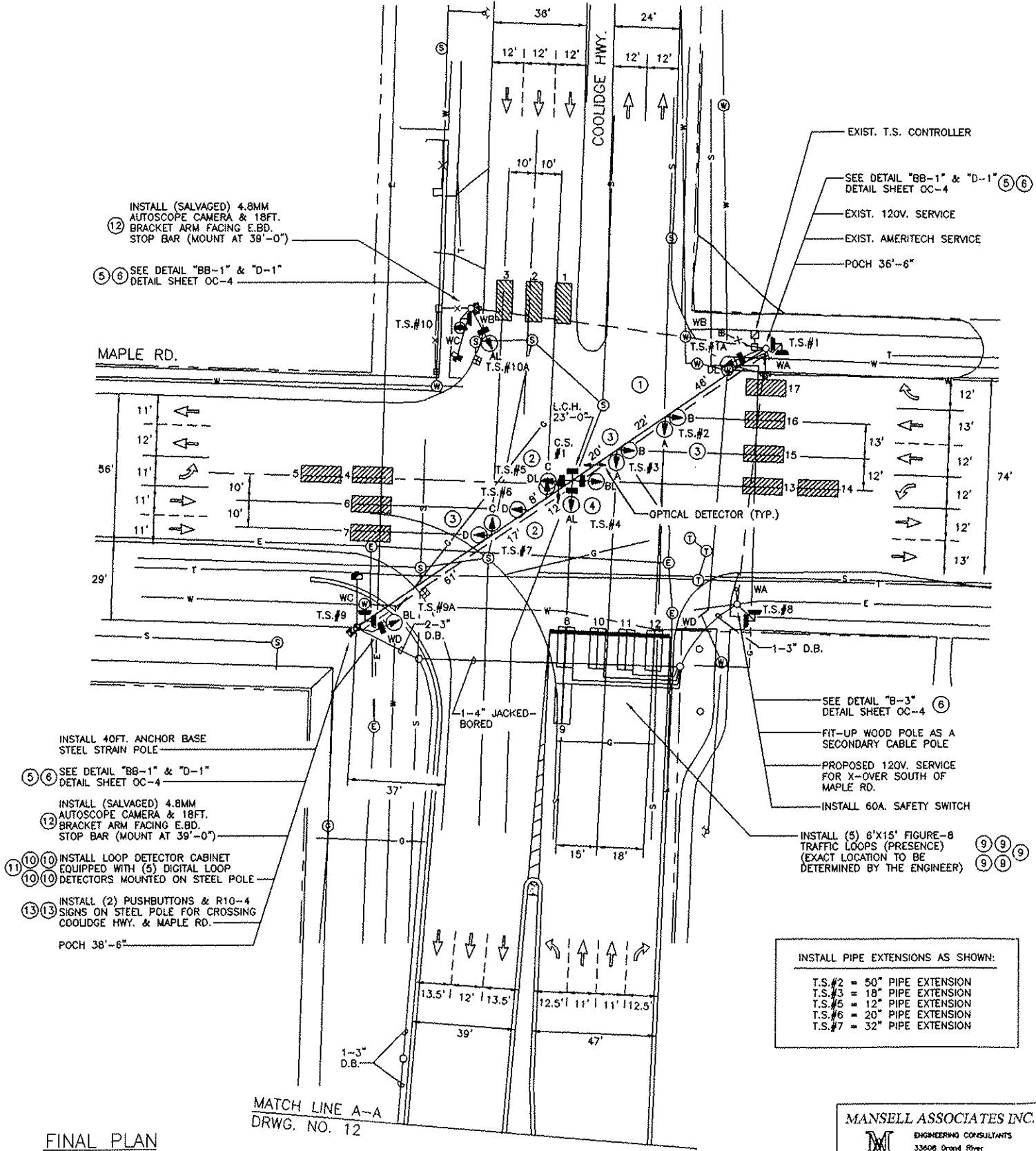


# Movement Diagram



LIST OF MATERIALS			
NO.	ITEM	QUANTITIES	CODE NO.
1	SPAN WIRE	1 EACH	6910234
2	1-WAY SPAN WIRE MOUNTED TRAFFIC SIGNAL (LED)	2 EACH	6917050
3	2-WAY SPAN WIRE MOUNTED TRAFFIC SIGNAL (LED)	3 EACH	6917050
4	3-WAY SPAN WIRE MOUNTED TRAFFIC SIGNAL (LED)	1 EACH	6917050
5	1-WAY BRACKET ARM MOUNTED TRAFFIC SIGNAL (LED)	3 EACH	6917050
6	2-WAY BRACKET ARM MOUNTED PEDESTRIAN T.S. (LED)	4 EACH	6917050
7	ONE-WAY CASE SIGN, 12"x27"	6 EACH	6910300
8	TWO-WAY CASE SIGN, 24"x30"	1 EACH	6910304
9	TRAFFIC LOOP (PRESENCE)	5 EACH	6910371
10	DIGITAL LOOP DETECTOR	4 EACH	6910373
11	DIGITAL LOOP DETECTOR & CABINET	1 EACH	6910375
12	AUTOSCOPE CAMERA (SALVAGED)	2 EACH	6917050
13	PUSHBUTTON & SIGN	2 EACH	6910287
	DIRECT BURIAL CONDUIT, 1-3"	210 LIN. FT.	6917001
	DIRECT BURIAL CONDUIT, 2-3"	30 LIN. FT.	6917001
	JACKED-BORED CONDUIT	100 LIN. FT.	6910368
	HANDHOLE (ROUND)	3 EACH	6910369
	FIT-UP WOOD POLE AS A SECONDARY CABLE POLE	1 EACH	6917050
	ANCHOR BASE STEEL STRAIN POLE, 40FT.	1 EACH	6910395
	ANCHOR BASE STEEL STRAIN POLE FOUNDATION	1 EACH	6910426
	CLAMP-ON BRACKET ARM, 18FT.	1 EACH	6917050
	CLAMP-ON BRACKET ARM, 18FT. (SALVAGED)	1 EACH	6917050
	SAFETY SWITCH	1 EACH	6910458
	OPTICAL PRIORITY CONTROL SYSTEM	1 LS	6917050

INSTALL PIPE EXTENSIONS AS SHOWN:  
 T.S.#2 = 50" PIPE EXTENSION  
 T.S.#3 = 18" PIPE EXTENSION  
 T.S.#5 = 12" PIPE EXTENSION  
 T.S.#6 = 20" PIPE EXTENSION  
 T.S.#7 = 32" PIPE EXTENSION



FINAL PLAN  
 SCALE: 1"=20'

MATCH LINE A-A  
 DRWG. NO. 12

MANSELL ASSOCIATES INC. ENGINEERING CONSULTANTS 33608 Grand River Farmington, MI 48335 (248) 473-7070		Drawn: MAI Checked: Date: 8-21-00 File No: M3286A	TRAFFIC-SAFETY DEPARTMENT		COOLIDGE HWY. & MAPLE RD.		DATE: 8-21-00	SCALE: 1"=20'	CONT. SEC.	JOB NO.	DESIGN UNIT	SHEET NO. JOB NO. CONST.
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## MEMORANDUM

Planning Division

**DATE:** November 13, 2020

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

**FROM:** Jana Ecker, Planning Director

**SUBJECT:** Off-Season Outdoor Dining Standards

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### INTRODUCTION:

As we continue to struggle with the challenges of the COVID-19 pandemic with no end in sight, the City has provided options to assist restaurants throughout the fall and winter seasons by allowing temporary enclosed "outdoor dining" space to allow indoor seats lost to be provided outdoors in temporary enclosures or other structures through April 1, 2021.

At the City Commission meeting on November 9, 2020, staff was directed to prepare draft ordinance language to permit enclosed "outdoor dining" areas in the off season (November 15 – March 31) on a permanent basis in the future.

### BACKGROUND:

On May 11, 2020, the City Commission adopted several resolutions to provide temporary assistance to business owners navigating the COVID-19 Pandemic and social distancing guidelines. The City approved the waiver of many fees, made changes to existing policies to assist businesses during the pandemic, and adopted temporary resolutions to allow for expanded outdoor dining and temporary uses outdoors through September 8, 2020.

On June 8, 2020, the City Commission rescinded the previous resolution on outdoor dining and adopted a new resolution to expand outdoor dining in light of new Executive Orders from the Governor, and temporary licensing changes approved by the Michigan Liquor Licensing Commission ("MLCC") with regards to a new limited term outdoor service area program for establishments serving alcoholic beverages through October 31, 2020. The 2020 Limited Permanent Outdoor Service Permission Application allows restaurants to provide or expand outdoor seating areas temporarily to accommodate social distancing guidelines and assist businesses through the pandemic.

On August 24, 2020, the City Commission also added another option to assist restaurants throughout the fall and winter seasons by allowing temporary enclosed "outdoor dining" space during the off-season to allow indoor restaurant seats lost to be provided outdoors in temporary enclosures or other structures from October 1, 2020 through April 1, 2021. This resolution was intended to provide "outdoor dining" options during the off-season and was proposed in addition to the resolution adopted by the City Commission on June 8, 2020 that provided temporary expanded outdoor dining.

**LEGAL REVIEW:**

The City Attorney has reviewed the attached resolution.

**FISCAL IMPACT:**

Not applicable.

**PUBLIC COMMUNICATIONS:**

City staff has met with restauranteurs to discuss their concerns during the COVID Pandemic, and previously sent out a survey to garner input from restaurants as to their needs during re-opening. The City sent out a second survey this summer to restaurant owners and operators to understand their needs and concerns to continue operations through the fall and winter seasons should the pandemic continue to challenge normal operations. Ongoing communication has continued on a daily basis.

**SUMMARY:**

Should the City Commission wish to amend the Off Season Outdoor Dining Standards to allow enclosed outdoor dining to continue into future years after the 2020/2021 winter season, the proposed amendments may be directed to the Planning Board for their review and recommendation.

**ATTACHMENTS:**

- DRAFT Off-Season Outdoor Dining Standards

**SUGGESTED ACTION:**

To direct the proposed ordinance amendments Chapter 126, Zoning, Article 4, Section 4.44 to the Planning Board for their review and recommendation.

## CITY OF BIRMINGHAM

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 4, SECTION 4.44 OUTDOOR DINING STANDARDS, TO ALLOW FOR ENCLOSED, OFF SEASON OUTDOOR DINING BETWEEN NOVEMBER 15 AND MARCH 31 OF EACH YEAR.

#### Article 4, Section 4.44

This Outdoor Dining Standards section applies to the following districts:



The following outdoor dining standards apply:

- A. Outdoor Dining: Outdoor dining is permitted immediately next to the principal use, subject to Site Plan Review, and the following conditions:
1. Outdoor dining areas shall provide and service refuse containers within the outdoor dining area and maintain the area in good order.
  2. All outdoor activity must cease at the close of business or as noted in subsection 3 below.
  3. When an outdoor dining area is immediately adjacent to any single-family or multiple-family residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.
  4. ~~Outdoor dining may be permitted on the sidewalk throughout the year with a valid Outdoor Dining License, provided that all outdoor dining fixtures and furnishings must be stored indoors each night between November 16 and March 31 to allow for snow removal.~~
  4. **Outdoor dining may be permitted April 1 through November 15 (in season) of each year with a valid Outdoor Dining License. Outdoor dining may be permitted November 15 through March 31 (off season) of each year with a valid Off Season Outdoor Dining License.**
  5. All tables and chairs provided in the outdoor dining area shall be constructed primarily of metal, wood, or material of comparable quality.
  6. Table umbrellas shall be considered under Site Plan Review and shall not impede sight lines into a retail establishment, pedestrian flow in the outdoor dining area, or pedestrian or vehicular traffic flow outside the outdoor dining area.
  7. For outdoor dining located in the public right-of-way:
    - a. All such uses shall be subject to a license from the city, upon forms provided by the Community Development Department, contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.

- b. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 5 feet.
  - c. Outdoor dining is permitted to extend in the right-of-way in front of neighboring properties, with the written permission of the property owner(s) and with Planning Board approval, if such property is vacant or the first floor storefront(s) is/are vacant. Outdoor dining areas may extend up to 50% of the width of the neighboring lot(s) storefront(s), or up to 50% of the lot(s) frontage, if such lot is vacant.
  - d. City Commission approval is also required for outdoor dining extensions onto neighboring property if the establishment making such a request holds a bistro license.
  - e. An elevated, ADA compliant, enclosed platform may be erected on the street in front of an eating establishment to create an outdoor dining area from April 1 through November 15 only if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
  - f. No such facility shall erect or install permanent fixtures in the public right-of-way.
8. Outdoor dining is permitted in a B1 District at a rate of 4 seats for every 12 linear feet of store frontage, with no more than 12 seats total per building; no elevated enclosed platforms on the street are permitted in a B1 District.
- 9. Off season outdoor dining areas not located within a roadway or on street parking area may be enclosed during the off season only, provided the following requirements are met:**
- a. All structures enclosing outdoor dining areas must be constructed and inspected under a valid building permit;
  - b. All materials utilized to enclose an outdoor dining area must be flame resistant, and the certificate for same must be posted onsite;
  - c. Aisle widths within outdoor dining enclosures must be a minimum width of 36" for up to 10 occupants, and 44" for more than 10 occupants;
  - d. No smoking signs must be posted within outdoor dining enclosures;
  - e. No open flame or other devices emitting flame, or fire are permitted in any outdoor dining enclosures;
  - f. Cooking devices shall not be permitted inside or within 20' of outdoor dining enclosures;
  - g. All exit openings shall be egress compliant, and clearly marked and illuminated within outdoor dining enclosures;
  - h. Two means of egress must be provided for outdoor dining enclosures with occupant loads between 10 and 199 people, and be spaced at approximately equal intervals around the perimeter of the structure;
  - i. Heating equipment utilized in outdoor dining enclosures must be listed and approved for indoor use, and comply with the International Fire Code, International Fuel Gas Code, the

- International Mechanical Code, and be approved by the Fire Marshal and Mechanical Inspector;**
- j. Heating equipment for outdoor dining enclosures shall not be located within 10 feet of exits and must be installed per the manufacturer's recommendations including clearance to combustibles;**
  - k. LP-Gas cannot be stored inside the outdoor dining enclosure or adjacent buildings;**
  - l. Portable fire extinguishers with a minimum rating of 2A, 10BC and carbon monoxide detectors shall be installed inside all outdoor dining enclosures;**
  - m. Clear Fire Department access must be maintained around all outdoor dining enclosures, including unobstructed access to fire hydrants and connections on building; and**
  - n. The holder of the Off Season Outdoor Dining License is responsible for salting, snow clearing and removal during all snow events, on and around the outdoor dining enclosure for the entire storefront width;**

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2020 to become effective upon publication.

---

Pierre Boutros, Mayor

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Alexandria Bingham, City Clerk Appointee



## MEMORANDUM

Police Department

**DATE:** November 18, 2020

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

**FROM:** Scott Grewe, Operations Commander

**SUBJECT:** Reduced Rate Parking

---

### INTRODUCTION:

By previous resolution on August 24, 2020, the City Commission, as recommended by the Advisory parking Committee (APC), passed a recommendation that all parking in the City's (5) parking structures would be free through December 31, 2020. The resolution also provided that all monthly permit holders be charged a one-time fee of \$100.00 to retain their status as a monthly permit holder into 2021. As the end of the year approaches, the issue of parking in all (5) City decks needs to be reexamined.

### BACKGROUND:

In response to the COVID-19 pandemic, the City instituted free parking for all (5) parking decks effective April 1, 2020 as a relief effort to support local businesses and restaurants. At the August 5, 2020 Advisory Parking Committee (APC) meeting, the APC recommended that the City continue free parking at all (5) parking decks through December 31, 2020. On August 24, the City Commission agreed with the APC and passed a resolution providing free parking in all (5) parking decks through December 31, 2020.

As the end of the year is approaching, the APC again examined the issue of parking in all (5) parking decks at their November 4, 2020 meeting. The APC discussed several options and passed a recommendation to extend free parking until the end of March. They noted concerns in lost revenue, reduced store hours, holiday shopping and traditionally low sales in the months of January, February and March as reasons to extend free parking. (see attached minutes)

To compare financial reports, the police department reviewed August of 2019 compared to August 2020. In 2019, there was \$514,280 in revenue, operating costs of \$133,290 for a net revenue of \$380,990. This August, there was essentially no revenue. However, there are still operating costs associated with the structures, which have been reduced by SP+ limiting their operations. Operating costs for August was \$66,844.

### LEGAL REVIEW:

No review completed.



#### FISCAL IMPACT:

The City has not charged for monthly or transient parking in the structures since April 1, 2020. The unrestricted net assets of the parking fund totaled \$20,632,305 as of April 1, 2020. During this time, several capital improvements have been completed totaling \$1,457,996. The parking fund balance as of September 30, 2020 was \$19,256,606. A reduction of \$1,375,699.

It is difficult to estimate exactly how much revenue would be lost to continue free parking due to the unknown usage at this time. Most structures are operating at less than 30% daily capacity. There is no way to track who is using the structure (transient or monthly parkers) to calculate fees that may be collected. However, attached is the Parking Structures – Combined Income Statement that shows revenue, expenses and net profit/loss from July of 2019 through September of 2020.

In January, February and March of this year, before free parking began, the average total income per month was \$395,328.00. Assuming current occupancy is 30%, we can estimate \$118,598 per month of total income. From July through September, with reduced staff, the average expenses were \$69,082 per month. Additionally, under normal operations, free parkers make up about 40% of the total occupancy. If this remains true during this time period, we could estimate a net profit of \$59,419 over these three months.

To continue free parking for January, February and March, the City could estimate a cost of \$207,246 to cover expenses based on the average cost of July through September of this year.

#### SUMMARY:

Due to the Covid-19 Pandemic, the City instituted free parking in all structures which began on April 1, 2020. In August, the City Commission passed a resolution to continue free parking through the end of 2020. As 2021 approaches, the APC again reviewed the matter and passed a recommendation that free parking continue through March 31, 2021. See attached minutes from the APC meeting.

#### ATTACHMENTS:

1. Commissioner Questions submitted November 25, 2020
2. August 24, 2020 Memo to Commission – Reduced Rate Parking
3. Minutes from the August 24, 2020 City Commission Meeting
4. October 28, 2020 Memo to APC – Reduced Rate Parking
5. Minutes from the November 4, 2020 APC Meeting
6. Parking Structures – Combined Income Statement

#### SUGGESTED RESOLUTION:

To approve the continuation of free parking in all structures through March 31, 2021.



## MEMORANDUM

Police Department

**DATE:** December 1, 2020

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

**FROM:** Scott Grewe, Operations Commander  
Ingrid Tighe, Executive Director of BSD

**SUBJECT:** Commissioner Questions – Reduced Rate Parking

At the November 23, 2020 Commission meeting, the commission decided to pull the reduced rate parking agenda item and submit questions to staff. On Wednesday, November 25, 2020 Commissioner Baller and Mayor Pro Tem Longe submitted a list of questions. Below are the questions and answers.

### TARGETED RELIEF

1. Short of offering free or reduced-rate parking to everyone, would it be possible to provide relief to those in need? How? Can we identify those in need? Can we estimate the percentage of total businesses and/or employees in CBD who might be considered in need? Can BSD Director Tighe provide meaningful insight into these questions?

Many retailers are reporting 2020 sales are down an average of 30-40%. Michigan Retail and Lodging Association survey data suggests more than 40% of restaurants will close, at least temporarily, with dining rooms being closed. Downtown Birmingham is home to over 50 restaurants; therefore, 15-20 restaurants could be affected by the pandemic. Restaurants are reporting their revenue in 2020 is down 35-40% with some reporting as low as 50% down.

2. Do we have a breakdown of the types of businesses in the downtown by employees or square footage, which might help in estimating need?

Retail, restaurant, and services account for 1.5 Million SF downtown and offices comprise 2 Million SF. The BSD is home to approximately **115 Retailers and 50 Restaurants**. The type of retail breakout is as follows:

- 37% apparel and accessories
- 12% jewelers
- 9% specialty shops
- 7% bridal
- 6 % home furnishings/accessories
- 5% antique/galleries
- 3% grocery/gifts
- 3% sporting goods

## COMPARISON

1. Are Royal Oak, Ferndale, Ann Arbor or other communities similar to Birmingham providing free or reduced rate parking to businesses and employees?

The above listed cities, as well as Rochester, are all charging normal rates for parking.

## PARKING DATA

1. What data do we collect when the parking decks are charging and the gates are operating?

During normal parking operations we collect daily revenue, occupancy data-monthly and transient, duration of parking (two-hour free parking and longer). Individual usage data and method of payment.

2. What data, if any, do we collect when the parking decks are NOT charging?

The only data we can collect are loop reads in the drive lanes. This method is not completely accurate, but can give us an approximate number of vehicles coming in and out of the garage. We complete daily manual occupancy counts to obtain an approximate percentage of how many cars are currently in the garage. The approximate occupancy in the structures during COVID have been 30 to 50 percent.

3. What do we know -- and not know -- about occupancy in the decks and who (permit holders/transient/two-hour-free) is parking there currently?

Daily manual occupancy counts give a percentage of approximately how many vehicles are currently in the garage. We cannot determine any additional information such as monthly and transient parking since customers are not scanning cards or credit cards.

## PERMITS

1. How many total permits have been issued? How many permits are held by companies? Individuals? What is average # per company? What is highest number held by a company?

There are currently 4,336 total permit holders (3,832 monthly-garages/504 hang tags). The ratio of permits is 86% companies and 14% individuals. The number of passes held by companies vary, based on the size of a company. The highest number of passes held by a single company is McCann MRM/Ericson with 533 total permits.

2. How many permit holders have surrendered their permits, and how many of those have been re-sold? What is the process for reselling permits?

The total number of permits surrendered from September 1 to November 28 are 284. The process of reselling permits is to call customers off the waitlist. No new permits have been sold while the commission is to review reduced rate parking options. We need this information to provide accurate expectations to customers that will have to pay a fee to start a new pass.

3. Re: those giving up permits: Do we know, or can we find out, if they are individuals or companies and why they are giving up their permits?

85% of the passes surrendered have been from companies and 15% have been from individuals. 70% of those who have canceled have stated they are canceling because they will be working from home permanently or laid off due to COVID.

4. Pre-COVID, how many passes were being held but not used, ie "hoarded?" By whom?

We cannot determine how many passes have been "hoarded" due to the fact that our system only stores 90 days of card activity. We have not collected any card activity since free parking began.

5. How many companies/individuals are on the waiting list?

We have 3687 people on the waitlist. Approximately 59% are listed as individuals and approximately 41% are listed as companies.

#### PRICING/REVENUE/EXPENSES

1. Explain the process of changing the pricing of permits, transient fees and # of free hours.

To change the price of parking, a system wide review including on street parking must be completed to ensure the systems are working with one another. Rate reviews and/or increases would first be reviewed by the APC and taken to the City Commission once a recommendation is reached. Below is the table for the increases of the monthly permits over the last 6 years with March 2017 being the last increase:

Structure	August 2014 Increase	July 2015 Increase	March 2017 Increase
Chester	\$30 to \$40	\$40 to \$45	\$45 to \$50
N.O.W.	\$45 to \$50	\$50 to \$55	\$55 to \$70
Park	\$45 to \$50	\$50 to \$60	\$60 to \$70
Peabody	\$45 to \$55	\$55 to \$65	\$65 to \$70
Pierce	\$55 to \$60	\$60 to \$65	\$65 to \$70

The last transient increase was July 1, 2016:

2 hours or less free- remained the same  
2 to 3 hours- increase from \$1.00 to \$2.00  
3 to 4 hours increase from \$2.00 to \$4.00  
4 to 5 hours increase from \$3.00 to \$6.00  
5 to 6 hours increase from \$4.00 to \$8.00  
Over 6 hours increase from \$5.00 to \$10.00(max for the day)

2. Can the Finance Department create models that will estimate revenue/expenses under various pricing and occupancy scenarios?

In January, February and March of this year, before free parking began, the average total income per month was \$395,328.00. Assuming current occupancy is 30%, we can estimate \$118,598 per month of total income. From July through September, with reduced staff, the average expenses were \$69,082 per month. Additionally, under normal operations, free parkers make up about 40% of the total occupancy. If this remains true during this time period, we could estimate a net profit of \$59,419 over these three months.

To continue free parking for January, February and March, the City could estimate a cost of \$207,246 to cover expenses based on the average cost of July through September of this year.

#### ADVISORY PARKING COMMITTEE RECOMMENDATION

1. APC minutes refer to "BSD Director Tighe's list of reasons for recommending that parking in the decks remain free until the end of March 2021." This was not in the packet for the committee's meeting. Can we see that list?

Parking structures were initially funded through a parking assessment on downtown property owners and businesses. Additionally, the parking system is a user driven system which is primarily used by downtown businesses and their customers. Given the large loss of revenue that retailers, restaurants, and their employees have experienced, the BSD supports assisting the downtown community with waiving parking fees through the spring.

2. The APC did not follow the staff recommendation. What was staff's logic in making that recommendation, and what was the committee's logic in rejecting it?

The recommendation to the APC followed the same options as previously submitted to the APC and the City Commission in August of 2020 when the commission decided to continue free parking to December 31, 2020. The APC discussion is reflected in the minutes that are attached to the reduced rate parking memo.



## MEMORANDUM

Office of the City Manager

**DATE:** August 24, 2020

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

**FROM:** Tiffany J. Gunter, Assistant City Manager

**SUBJECT:** COVID 19 Economic Relief: Reduced Rate Parking Options – September 1, 2020 through December 31, 2020

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### Introduction:

In March 2020, due to the State of Michigan's shelter in place order, the City of Birmingham extended free parking to both transient and commuter (permit parkers) through September 1, 2020.

The financial of free transient parking in the garages, when compared to last year was, on average \$185,000 per month from April 1 – July 1 (4 Months) for a total impact of \$740,000.

The financial impact for free monthly permits is \$224,000 per month. From April 1 – September 1 (6 Months), total revenue loss was of \$1,344,000. The combined impact of lost revenue for both transient and monthly permit parking has been \$2,084,000 as of August 1.

The parking fund balance, as of June 2020, totaled \$20,383,867. The City has not charged for monthly or transient parking in the garages since April 1, 2020 and has endeavored to do complete several critical infrastructure projects during this period of low occupancy that were totaled approximately \$1.2 million. The current parking fund balance, as of August 2020, is \$18,938,287.

The impact to the parking fund reserve, to date, is a total \$1,445,580.

Revenue operations and occupancy for on-street parking have returned to approximately 70% of their normal levels.

Parking in the garages remain free through September 1, while occupancy in the garages has been hovering between 35%-40%. Chester garage hosts the lowest levels of occupancy at approximately 10%, while Pierce Street garage consistently has the highest level of occupancy of all of the garages at approximately 50% daily occupancy during the week.

The Advisory Parking Committee met on August 19 and recommended further relief be provided through December 31 for parking in downtown Birmingham that would allow free parking to continue in the garages. The committee further recommended that monthly permit holders be required to pay a one-time fee of \$100 by November 30, 2020 in order to retain their status as

a monthly parker into the new year. Non-payment of this one-time fee would result in forfeiture of the parking pass. The one-time payment, if paid by all current monthly pass holders, would generate \$383,700 in revenue.

#### Background:

The APC was presented with options for consideration to address the concern that free parking initiatives were set to expire on September 1. They essentially selected option one with the addition of the one-time payment requirement for monthly pass holders.

Inquiries from monthly parkers have been increasing as to whether the City will offer any additional economic relief initiatives as many will not be returning to their offices before the end of the year. Staff has been discussing potential options for providing support to the permit holders and ensuring that we continue to encourage visitors to the downtown.

The options presented to the committee included:

#### **Option 1: Continue with Free Parking in the Garages through December 31, 2020**

This would have been a simple continuation of the existing relief program without changes. The City would continue to forego \$224,000 per month in monthly pass revenue and \$185,000 in transient parking revenue (\$409,000 per month). Permit holders would continue to hold their permits through the end of the year. Total impact in projected revenue lost over last year would be \$1,636,000. (This section was corrected after the APC meeting to include transient parking revenue loss in the calculation.)

#### **Option 2: Free Parking in the Garages from Friday – Sunday / 1/2 Price Discount for Permit Holders**

This alternative would be an adjustment to the existing relief program. The gates in the garages would be operable from Monday – Thursday where transient parkers would be required to pay for parking (first two hours would remain free). It is unclear what the demand for parking would be and therefore, we can not provide an revenue estimate for transient parking at this time other than that it would be greater than \$0.

Monthly permit parkers would then be charged \$35 to retain their permits from now through the end of the year. Total impact in revenue lost over last year would be \$448,000. It is expected that there will be those that choose to relinquish their permits, even given this severely discounted rate. Staff could potentially recover revenue through calls to individuals on the waitlist.

#### **Option 3: Return to normal revenue operations. No further discounts or relief due to COVID.**

This option is self-explanatory. Staff does not suggest this is the best course of action given the existing circumstances due to the pandemic.



Staff levels have remained at a minimum in the garages to keep operational costs at a minimum while not collecting revenue. We continue to monitor these levels to ensure an appropriate level of customer service and responsiveness to issues as they arise. The attached worksheet provides line item level detail on parking financials. The parking staff operations budget has been reduced by more than half due to the lessened need for administrative staff to support revenue operations and associated maintenance/oversight with technology at the gates. Costs have decreased from approximately \$130,000 per month to \$60,000

**Financial Impact:**

The financial impact of each of these options have been presented with a comparison to last year. It is important to note that occupancy levels in the garages is substantially lower than last year. The highest level of occupancy in any garage is at 50%, where last year, it was rare for occupancy levels to dip below 85% in an garage. As such, the true financial impact, using observations at current occupancy levels system wide is at 30%, on average.

Revenue loss when compared to last year would total \$409,000 per month for a total of 4 months would total \$1,636,000.

Revenue loss when applied to observed occupancy levels in the five garages since the beginning of the shutdown remains steady at roughly 30% system wide, would represent a more accurate loss of revenue at approximately \$490,800.

It is difficult to predict revenue loss is in this environment. Occupancy levels may increase or decrease with news concerning the pandemic. The preceding figures are projections that are subject to change. The purpose of providing comparisons to last year is to provide worst case scenarios with respect to potential losses.

The parking fund balance, as of June 2020, totaled \$20,383,867. The current parking fund balance, as of August 2020, is \$18,938,287. The impact to the parking fund reserve, to date, is a total \$1,445,580.

**Suggested Resolution:**

To authorize continued free parking continue in the five municipal garages from September 1, 2020 through December 31, 2020,

-AND

Require monthly parking permit holders to pay a one-time fee of \$100 by November 30, 2020 in order to retain their status as a monthly parker into the new year.

**BIRMINGHAM CITY COMMISSION VIRTUAL MEETING MINUTES**  
**AUGUST 24, 2020**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

Watch the entire meeting at: [vimeo.com/event/3470/videos/448736187](https://vimeo.com/event/3470/videos/448736187)

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

Pierre Boutros, Mayor called the meeting to order with the Pledge of Allegiance at 7:30 p.m.

**II. ROLL CALL**

Alexandria Bingham, City Clerk Designee, called the roll:

PRESENT: Mayor Boutros  
Mayor Pro-Tem Longe  
Commissioner Baller  
Commissioner Hoff  
Commissioner Host  
Commissioner Nickita  
Commissioner Sherman

ABSENT: None

Administration: City Manager Valentine, Planning Director Ecker, Assistant Planning Engineer Cowan, Commander Grewe, IT Manager Brunk, City Clerk Designee Bingham

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

**ANNOUNCEMENTS:**

- All city offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.
- 2020 Summer property taxes are due Monday, August 31, 2020 and must be received in the Treasurer's Office by that date to avoid a penalty. Due to COVID, mail delivery service is very slow and unpredictable, therefore, the Treasurer's Office recommends that you either drop off your payment in the drop box located behind City Hall or pay on-line using the Pay My Property Taxes quick link located on the City's website homepage. If you pay on-line, you can use a credit card and pay a 3% convenience fee or use the free e-check option. You can also use this link to check on the status of your payment with the City.
- The Baldwin Library is open to the public. Building capacity is limited, and people are asked to limit their stay to 45 minutes. Public computer use is restricted to 30 minutes. Masks and social distancing are required. The Library is open on its regular schedule, seven days a week, and is also offering Curbside Pickup service to patrons during limited hours, which are listed on the Library's website.
- We encourage everyone to sign up for our email distribution system to receive the latest information from the City. You can do this by going to our website and clicking on the box in the lower right corner of your screen to sign up.
- The Clerk's office would like to remind voters to turn in an absentee ballot applications if they wish to vote by mail for the November 3, 2020 General Election. To review your

specific voting information visit [mi.gov/vote](http://mi.gov/vote). Persons 16 or older that are interested in learning more about elections and assisting the community could work on Election Day! Visit the elections inspectors tab on the clerk's website for more details [bhamgov.org/voting](http://bhamgov.org/voting).

**APPOINTMENTS:**

**08-151-20                    APPOINTMENT OF JOY CANTOR TO THE HISTORIC DISTRICT STUDY COMMITTEE**

The Commission interviewed Joy Cantor for the appointment.

**MOTION:**                    Nomination by Commissioner Host:  
To appoint Joy Cantor, as a regular member to the Historic District Study Committee to serve the remainder of a three-year term to expire June 25, 2023.

Commissioner Sherman asked if the position expiring in 2023 was advertised.

City Manager Valentine clarified that it was advertised.

ROLL CALL VOTE:	Ayes,	Commissioner Host Mayor Pro-Tem Longe Commissioner Baller Commissioner Hoff Commissioner Nickita Commissioner Sherman Mayor Boutros
	Nays,	None

**08-152-20                    APPOINTMENT OF LISA KRUEGER TO THE ADVISORY PARKING COMMITTEE**

The Commission interviewed Lisa Krueger.

Commissioner Hoff noted that both candidates work downtown and live in Birmingham. She also pointed out that this committee is very important and is in need of diverse representation. Moving forward she would encourage others from a different neighborhood to seek a seat on this committee.

Commissioner Baller asked if either of the candidates recalled the Downtown Parking Plan of 2018. If so, what stood out as a significant suggested improvement to the parking system?

Ms. Krueger replied yes, and acknowledging that times have changed since then and so has her perspective. She recalled community growth as a critical aspect as well as the condition of the existing parking structures.

**MOTION:**                    Nomination by Commissioner Hoff:  
To appoint Lisa Krueger to the Advisory Parking Committee as a regular member who is a downtown employee within the parking assessment district to serve a three-year term to expire September 4, 2023.

ROLL CALL VOTE: Ayes, Commissioner Hoff  
Commissioner Host  
Commissioner Nickita  
Commissioner Sherman  
Mayor Pro-Tem Longe  
Commissioner Baller  
Mayor Boutros  
Nays, None

**08-153-20 APPOINTMENT OF JENNIFER YERT TO THE ADVISORY PARKING COMMITTEE**

The Commission interviewed Jennifer Yert.

**MOTION:** Nomination by Commissioner Sherman:  
To appoint Jennifer Yert to the Advisory Parking Committee as an alternate member who is a downtown employee within the parking assessment district to serve a three-year term to expire September 4, 2023.

Ms. Yert responded to Commissioner Baller as follows:

- Yes, to recalling the study.
- Exploring Opportunities for expanded parking based on best practices by other cities with the same challenges.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Baller  
Commissioner Hoff  
Commissioner Host  
Commissioner Nickita  
Mayor Pro-Tem Longe  
Mayor Boutros  
Nays, None

**08-154-20 APPOINTMENT PAM DEWEESE TO THE GREENWOOD CEMETERY ADVISORY BOARD**

The Commission interviewed Pam DeWeese.

**MOTION:** Nomination by Commissioner Hoff:  
To appoint Pam DeWeese to the Greenwood Cemetery Advisory Board as a regular member to serve a three-year term to expire July 6, 2023.

Commissioner Nickita pointed out that by supporting Ms. DeWeese in this role, the Commission is recognizing the value of institutional knowledge.

ROLL CALL VOTE: Ayes, Commissioner Hoff  
Commissioner Host  
Commissioner Nickita  
Commissioner Sherman  
Mayor Pro-Tem Longe  
Commissioner Baller  
Mayor Boutros  
Nays, None

Mayor Boutros congratulated the appointees and instructed them to contact the City Clerk Designee to arrange the final step of administration of the oath.

#### **IV. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

- David Bloom commented on the following:
  - Personal attacks during Commission meetings
  - Importance of detailed meeting minutes as discussed in the Special Commission Workshop due to the lack of media coverage by The Downtown and Eccentric.
  - Public space accessibility in inclement weather due to COVID-19.

#### **V. 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.

#### **08-155-20 CONSENT AGENDA**

The following items were removed from the Consent Agenda:

Commissioner Hoff:                      Item G- Ballot and Drop Boxes  
    Item H – Voting Precinct Change

- A. Resolution approving the City Commission meeting of August 10, 2020.
- B. Resolution approving the City Commission work session of August 17, 2020.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated August 12, 2020 in the amount of \$7,213,982.68.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated August 19, 2020 in the amount of \$2,851,112.27.
- E. Resolution approving the purchase of 4 Canon Image Runner Advance C5550i copiers from Canon Solutions America, Inc. at the cost of \$7,800.00 each using extendable National IPA Contract Number: 18-020-LG, the total cost of purchase not to exceed \$31,200.00. Funds are available in the IT Machinery and Equipment fund account #636-228.000-971.0100.
- F. Resolution approving an extension of the 2020 Sidewalk Trip Elimination Program, Contact #6-18 (SW) for the 2020 sidewalk program repair area, at 2018 contract prices, to Precision Concrete, Inc., in the amount of \$109,992.00, contingent upon submittal of the necessary bonds and insurance certificate. All costs shall be charged to account number 101-444.001-981.0100.

**MOTION:**                      Motion by Commissioner Sherman, seconded by Commissioner Hoff:  
To approve the consent agenda excluding Items G and H.

ROLL CALL VOTE:	Ayes,	Commissioner Sherman Commissioner Hoff Commissioner Nickita Mayor Pro-Tem Longe Commissioner Baller Commissioner Host Mayor Boutros
	Nays,	None

**08-156-20 (ITEM G) EMERGENCY PURCHASE OF THREE (3) DROP BOXES**

Commissioner Hoff removed this item from the Consent Agenda to comment on the need for new drop boxes, as witnessed during the last primary while she worked as an election inspector, and asked if photographs were available of the purchases to consider.

City Manager Valentine confirmed that photos are available and gave a description of the boxes.

Commissioner Baller asked:

- Must the drop box for ballots be exclusive to ballots?
- Is there a plan to put additional ballot drop boxes around the city for convenience?

City Clerk Designee responded that it is more efficient for the Clerk and Treasurer to keep things separate. She went on to say that additional drop boxes around the City are not planned for security purposes.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner Sherman:  
To confirm the City Manager's authorization for the emergency expenditure related to the purchase of three (3) drop boxes in the amount not to exceed \$13,319.25 to Kingsley Library Returns and Equipment from accounts 101-253.000-971.0100, 101-262.000-971.0100, and 101-371.000-971.0100.

ROLL CALL VOTE:	Ayes,	Commissioner Hoff Commissioner Sherman Mayor Pro-Tem Longe Commissioner Baller Commissioner Host Commissioner Nickita Mayor Boutros
	Nays,	None

**08-157-20 (ITEM H) VOTER PRECINCT CHANGE**

Commissioner Hoff removed this item from the Consent Agenda to express her sentiment for this change and asked if designated parking would be provided for voters. She further commented on the process of mailing notification of the change to voters of that precinct.

City Clerk Designee Bingham affirmed that parking would be provided and proper notice would be given.

**MOTION:** Motion by Commissioner Hoff, seconded by Mayor Pro-Tem Longe: Resolution approving the suggested precinct change as required by the Election Commission and as recommended by the City Clerk Designee. Precinct 6 located at City Hall will be moved to the Community House for the November 3, 2020 General Election.

ROLL CALL VOTE: Ayes, Commissioner Hoff  
Mayor Pro-Tem Longe  
Commissioner Baller  
Commissioner Host  
Commissioner Nickita  
Commissioner Sherman  
Mayor Boutros  
Nays, None

## **VI. UNFINISHED BUSINESS**

## **VII. NEW BUSINESS**

### **08-158-20 TERMINATING VISTAS AS A GUIDELINE FOR PUBLIC ART**

Planning Engineer Cowan presented this item.

Commissioner Baller commented on the impressiveness of this project.

Commissioner Hoff recognized the work of the Public Arts Board for taking an active role in encouraging public art. She further asked:

- If the City owned the Chris Yaki Sculpture
- When the Michigan Spring Sculpture would be installed at the library.
- Where would the Crayon Box Sculpture be located?

Assistant Planning Engineer Cowan replied:

- The City purchased the Chris Yaki sculpture for approximately \$4,500.00
- Michigan Spring will be installed in the coming weeks.
- The Crayon Box is located on Hamilton Row (Hamilton and N. Old Woodward Ave.)

Commissioner Hoff also commented on the following suggestions by the Public Arts Board:

- Oversight on the plantings by adjacent businesses to insure uniformity.
- Professional Sculpture Installation Specialist.
- Developer requirements to contribute public art to the landscape of Downtown.

Commissioner Nickita expressed the importance of terminating vistas relative to urban design, and appreciation for the work of the Public Arts Board. In the spirit of good planning, he posed the following questions:

- How would the City implement guidelines for installation of public art?
- Were themes considered for the type of artwork and sculptures to display?
- Have the overall esthetic been considered in this initiative.

Assistant Planning Engineer Cowan responded as follows:

- Relative to murals, he suggested an ordinance change.
- Theme discussions would comply with the amended ordinance.
- The board is open to suggestions for the painting of terminated vistas.



Commissioner Sherman clarified that this type of report is accepted as opposed to adopting to allow for future discussion.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Hoff:  
To accept the Public Arts Board report on Terminating Vistas as a guideline for public art in such locations.

Commissioner Hoff pointed out that there had not been a theme in the past, therefore, asking how Commissioner Nickita's comments are relevant to past practices.

Commissioner Nickita concurred with Commissioner Hoff on past practices. He also pointed out that in the past the artwork has been sculpted pieces that are different from graphic art or specific paintings appointed to blank space. He wants to see criteria established for expanding art moving forward.

Assistant Planning Engineer Cowan expressed that the board would like to keep the option of reviewing designs on a case-by-case basis.

Commissioner Baller is interested in discussing implementation, primarily because of the time invested by staff and the Public Arts Board in developing the report. He believes it deserves more than an acceptance by the Commission to keep it alive. While he is impressed with the report, he questions the process.

Mayor Pro-Tem Longe asked if the report had been shared with other boards for comment, and what would the ordinance amendment look like.

Planning Director Ecker commented that the report has not been shared with other boards but is in favor of doing so based on the outcome of this meeting. She added that the Design Review Board has been approached by a local business to add a mural to blank space as a point of interest, staff is preparing to bring that to the Commission after the appropriate boards, and committees review it.

City Manager Valentine made the following clarifications:

- A staff report will come back to the Commission outlining the process.
- Implementation would require review of certain elements,
  - Cost
  - Action and placement
  - Priority

Annie VanGelderen, Public Arts Board, commented that in preparing the report, the board wanted to present an overview with a plan moving forward. She went on to say that they are committed to the level of sophistication in Birmingham and only want to enhance the existing architecture with the proper esthetic.

Commissioner Nickita expressed that he supports this motion.

Commissioner Host also expressed that he supports the motion.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Hoff  
Commisisoner Baller  
Commissioner Host  
Commissioner Nickita  
Mayor Pro-Tem Longe  
Mayor Boutros  
Nays, None

**08-159-20      INSTALLATION OF DISMOUNT ZONE SIGNS**

Commander Grewe presented this item.

Commissioner Hoff complimented the design and conciseness of the signs, but expressed concern about the amount and height of signage in the downtown area.

Planning Director Ecker explained that the boards involved are cognizance of over signage but need to direct the public on what to do when travelling on certain devices.

Commissioner Grewe expressed that there is flexibility on height and the team is looking to mount the signs on existing poles.

Commissioner Nickita expressed gratitude in moving forward with the ordinance to preserve public safety. He noted similar signs in downtown Royal Oak fabricated on the sidewalks at entrance zones. He asked have this type of signage been explored.

Commander Grewe replied that pavement markings were explored but there was concern about cluttering the sidewalks and decided that eye level signage would be more appropriate.

Mayor Boutros echoed Commissioner Hoff's sentiment about signage and asked if the purpose is to support enforcement. He also mentioned that walking the device on the sidewalk is a matter of public safety.

Commander Grewe expressed that the goal of the department is to gain compliance as opposed to enforcing the ordinance with citations.

Commissioner Baller agrees with the ordinance but is concerned about criminalizing family activities.

Commander Grewe reiterated that there are avenues established to getting the word out about the ordinance and using the proposed signage directs action and is a reminder to comply.

City Manager Valentine clarified that this ordinance was implemented because issues come up and the Police must have a remedy to curtail actions that are in conflict with public safety.

Commissioner Hoff affirmed that the ordinance is applicable to everyone on bikes, electronic devices, and pedestrians throughout downtown and supports the motions.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita:  
To approve the installation of Dismount Zone signs at the border of the Central Business District  
and at the City bike station in Shain Park.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Nickita  
Commissioner Hoff  
Commissioner Host  
Mayor Pro-Tem Longe  
Commissioner Baller  
Mayor Boutros  
Nays, None

**08-160-20 TEMPORARY COVID-19 OFF-SEASON OUTDOOR DINING STANDARDS**

City Manager Valentine presented an overview of the existing conditions and Planning Director Ecker presented the details of this item.

Mayor Boutros iterated that this is essentially an extension of what had been approved early in the outdoor dining season to help the establishments in the face of COVID-19.

Commissioner Baller noted that there have been changes since the initial approval, and expressed concern about an unfair advantage granted to Bistros.

Planning Director Ecker confirmed that the extension allows enclosures to support inclement weather, and the establishments are monitored for compliance. She further clarified that the benefit is extended to all establishments not just Bistros and there are no outdoor bars.

Commissioner Hoff asked the following:

- Restrictions on the material used for enclosures.
- Clarification of an Igloo.
- How would enclosures differ from dining inside in terms of exposure risk to the virus?
- How would the City be impacted if COVID-19 restrictions are lifted sooner than anticipated?
- Would there be a benefit to extending the measure until the end of the year and revisit the issue at that time if needed.

Planning Director Ecker replied:

- All enclosures must meet existing building and fire codes.
- Igloos are freestanding structures typically shaped in a dome. The existing building code does not provide for this type of structure.
- Enclosed expansions provide opportunities for establishments to practice appropriate social distancing and retain capacity.
- The City Commission can rescind resolutions for temporary assistance.

City Manager Valentine added that a time limit would be a barrier for the establishments.

Mayor Pro-Tem Longe asked would the approval process be consistent between enclosures and structures.

Planning Director Ecker affirmed that it would and the existing building and fire codes would prevail.

Commissioner Host asked for clarification of how these measures are being monitored.

Planning Director Ecker explained that it is a collaboration between the building department, code enforcement, and the police department to monitor compliance.

Commissioner Sherman noted that the intent is to provide the downtown businesses opportunities to succeed in the current environment. Enclosures are optional for individual business owners.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita: To adopt the Temporary COVID-19 Off-Season Outdoor Dining Standards, to take effect October 1, 2020 as amended.

Public Comment

Mr. Hencke commented on:

- Economic survival of all of the restaurants.
- Capital outlay for the establishments.
- Oversight provided by the Michigan Liquor Control Commission and the State Health Department.

Commission Nickita expressed that due to the moving parts involved that many would not participate in the measure, but the City must present an opportunity for success.

Mayor Pro-Tem Longe asked the Commission to address Mr. Hencke's concern about adjacent establishments.

City Manager Valentine affirmed that discussions are ongoing with respect to the Michigan Liquor Control Commission to comply with their regulations, and suggested an amendment to the resolution to include MLCC compliance.

City Attorney Currier confirmed that the City is controlled by the MLCC rules.

ROLL CALL VOTE:	Ayes,	Commissioner Sherman
		Commissioner Nickita
		Commissioner Host
		Mayor Pro-Tem Longe
		Commissioner Baller
		Commissioner Hoff
		Mayor Boutros
	Nays,	None

**08-161-20 PARKING IN THE FIVE MUNICIPAL GARAGES**

Assistant City Manager Gunter presented this item.

Commissioner Hoff asked for clarification on total lost revenue due to the pandemic, and the change of fee for permit holders.

Assistant City Manager Gunter clarified the amount of lost revenue and the fee for permit holders to retain parking passes.

Commissioner Baller commented that persons using parking should pay in the decks outside of the traditional free parking for two hours or less. He further suggested that the parking system needs work.

Commissioner Sherman pointed out that he does not see an issue under the current circumstances because parking impacts the businesses, transient parkers, and residents that use the deck. He went on to say that this measure would allow the City to assist the local economy.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Host:  
Resolution authorizing continued free parking continue in the five municipal garages from  
September 1, 2020 through December 31, 2020,

AND

Require monthly parking permit holders to pay a one-time fee of \$100 by November 30, 2020  
in order to retain their status as a monthly parker into the New Year.

Commissioner Host is open to the opportunity to reduce the long waiting list for permit parking. He also feels that the City is in the same position it was in in May and the initiative should be continued.

Commissioner Baller noted that the associated cost would affect the City budget. He further expressed that he is not in support of the suggested resolution.

Mayor Pro-Tem Longe concurs that this would support the local economy. She also noted that the net cost is much less than the total loss without this initiative.

ROLL CALL VOTE:	Ayes,	Commissioner Sherman
		Commissioner Host
		Commissioner Nickita
		Mayor Pro-Tem Longe
		Commissioner Hoff
		Mayor Boutros
	Nays,	Commissioner Baller

#### **08-162-20 COMMISSION ITEMS FOR FUTURE DISCUSSION**

City Manager Valentine presented this item.

Commissioner Sherman commented that the Coco Siewert in the Parliamentary Procedures workshop made the recommendation to bring up new items for discussion in a future meeting at the end of new business.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Hoff:  
To add an item under the last item of New Business entitled "Commission Items for Future Discussion" for the Commission to raise topics for future discussion on the next reasonable agenda, if passed by a motion of the Commission.

Commissioner Baller expressed that he supports the suggested resolution.

#### Public Comment

David Bloom, resident, agreed with the suggested resolution, he is okay with postponing discussion but the decision should not be left to the City Manager exclusively.

Mayor Boutros noted that the intention is to have an efficient meeting with the appropriate preparation by the staff. He suggested that Commissioners submit a list of topics to be prioritized by the Commission for discussion later.

Commissioner Sherman expressed that the idea of the annual long-range planning meeting is to do the very thing that Mayor Boutros is suggesting. If the guidelines are followed, long-range planning would be more effective.

Commission Host suggested ~~long-range planning~~ a meeting to prioritize topics for future agendas<sup>1</sup> as the next workshop.

Mayor Pro-Tem Longe would like to see both scenarios, an agenda based on long range planning and the flexibility to bring up additional topics throughout the year.

ROLL CALL VOTE:	Ayes,	Commissioner Sherman Commissioner Hoff Mayor Pro-Tem Longe Commissioner Baller Commissioner Host Commissioner Nickita Mayor Boutros
	Nays,	None

#### **08-163-20            LEGAL SERVICES**

**MOTION:**            Motion by Commissioner Host, seconded by Commissioner Baller:  
To move Item X.E. (City Staff Report – Legal Services Memo) to an agenda item at the next City Commission meeting.

Commissioner Baller explained that the report deserves further discussion.

City Manager Valentine asked for clarification on the expectations in bringing this report back to the Commission, would it be a discussion or an action item.

Commissioner Host clarified that the direction is for staff to follow the process to bring it back for discussion.

Commissioner Sherman expressed that the proper procedure is to ask for a postponement of the report.

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<sup>1</sup> As corrected on September 14, 2020

ROLL CALL VOTE: Ayes,	Commissioner Host Commissioner Baller Mayor Pro-Tem Longe Commissioner Hoff Commissioner Nickita Commissioner Sherman Mayor Boutros
Nays,	None

## VIII. REMOVED FROM CONSENT AGENDA

## IX. COMMUNICATIONS

## X. REPORTS

- A. Commissioner Reports
  - 1. Notice of Intention to appoint to the Design Review Board, Historic District Committee, Parks and Recreation Board and Museum Board.
- B. Commissioner Comments
  - 1. Commissioner Hoff recognized City Manager Valentine for reaching out to MDOT requesting enhanced pedestrian crossing to address public safety in the wake of the recent fatal accident in Birmingham.
  - 2. Commissioner Host concurred with recognition of City Manager Valentine for being proactive in addressing MDOT.
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
  - 1. Legal Services Memo, submitted by City Attorney Kucharek

## INFORMATION ONLY

## XI. ADJOURN

### 08-164-20 ADJOURNMENT

**MOTION:** Motion by Commissioner Nickita, seconded by Commissioner Sherman:  
To adjourn the meeting.

ROLL CALL VOTE: Ayes,	Commissioner Nickita Commissioner Sherman Commissioner Baller Commissioner Hoff Commissioner Host Mayor Pro-Tem Longe
Nays,	None

Meeting adjourned at 11:14 p.m.





## MEMORANDUM

**DATE:** October 28, 2020  
**TO:** Advisory Parking Committee  
**FROM:** Cmdr. Scott Grewe, Police Department  
**SUBJECT:** Reduced Rate Parking

---

During the Covid-19 pandemic the City extended free parking to both transient and permit parkers through September 1, 2020 for on street and structure parking. At the August 19, 2020 APC meeting, it was recommended that the City continue free parking in the structures through the end of the year, with a one-time fee of \$100 charged by November 30, 2020 for those wishing to reserve their permit for 2021.

The City has not charged for monthly or transient parking in the structures since April 1, 2020. The parking fund balance, as of June 2020, totaled \$20,383,867. As of September, the parking fund balance was \$19,245,012. A reduction of \$1,138,855.

Comparing financials year to year, in August of 2019, there was \$514,280 in revenue, operating costs of \$133,290 for a net revenue of \$380,990. This August, there was essentially no revenue. However, there are still operating costs associated with the structures, which have been reduced by SP+ limiting their operations. Their operating costs for August were \$66,844.

As we are approaching the end of the previous extension for free parking, the APC should discuss the following options to be started on January 1, 2021.

**Option 1: Return to normal revenue operations.**

Beginning January 1, 2021 charges for parking in the structures will return to normal.

This would be an increase in the current revenue, however it would be difficult to estimate the increase as the structures are typically seeing less than 30% capacity. In addition, while it is currently free parking, there is no way to know if they are permit holders or transient users of the system.

**Option 2: Free Parking in the structures from Friday – Sunday / ½ price discount for permit holders.**

Beginning January 1, 2021 the gates in the structures will be operational Monday to Thursday where payment would be required (first two hours would remain free). Permit holders will be charged 50% of their normal fees, \$25 a month in Chester Structure and \$30 a month in all other structures. Daily rates for transit parkers would remain the same with Friday to Sunday being free.

This process may also help expedite the process of renewing the permit holder list as some may not wish to relinquish a pass while it is free.

**Option 3: Continue with free parking in the structures through March 31, 2021.**

This would be a continuation of the existing relief program.

SP+ continues to keep staff levels at a minimum to keep operational costs down while not collecting revenue. Customer service is monitored to ensure appropriate staff levels and adjustments will be made if necessary.

**Suggested Recommendation:**

To recommend to the City Commission that beginning January 1, 2021 free parking continue in the structures from Friday through Sunday, while returning to normal revenue operations for transient parkers Monday through Thursday and allowing permit holders to pay 50% of their normal monthly fee and to review this operation after three months.

City of Birmingham  
ADVISORY PARKING COMMITTEE  
REGULAR MEETING

Held Remotely Via Zoom And Telephone Access  
Wednesday, November 4, 2020

**PARTIAL MINUTES**

These are the partial minutes of the Advisory Parking Committee ("APC") regular meeting held on Wednesday, November 4, 2020. The full minutes will be finalized and sent to the APC for approval at their next scheduled meeting.

**Reduced Rate Parking**

Cmdr. Grewe reviewed the item. He stated that BSD Director Ingrid Tighe recommended continuing the reduced rate parking in order to: support businesses during the holiday season, support businesses during the traditionally slow retail months of January, February, and March, and support businesses in light of the Covid-19 pandemic.

Mr. Astrein and Chairman Vaitas recommended free parking in the structures be continued through March 31, 2021. Both noted that small business owners usually pay for their employees' parking passes, and that with revenue down it would be tremendously helpful to not have to pay those fees for a bit longer. They also concurred with BSD Director Tighe's list of reasons for recommending that parking in the decks remain free until the end of March 2021.

There was limited discussion of possibly reducing some charges for parking in the decks while not eliminating all of the charges.

Mr. Astrein stressed what a detrimental impact Covid-19 is having on the retail environment, and said charging no fees through the end of March 2021 was the only prudent decision.

SP+ reported that about 220 parking passes had been recently relinquished, largely by corporate pass holders. He said SP+ was now working through the list of individual pass holders to see if they wanted to retain their passes.

SP+ reported the decks have had an average occupancy of 30%, with Pierce showing a bit more at 50%.

Ms. Champagne said the impact on the City would likely be relatively little if charges for the parking decks remained suspended until March 31, 2021. She said that if that would help support the City's businesses, it would be the right option.

SP+ asked whether people coming off the parking permit waiting list should be charged the \$100 fee to hold the permits.

Advisory Parking Committee Proceedings  
October 7, 2020

There was APC consensus that it would be appropriate to charge the new passholders the one-time \$100 fee in order to ensure their interest in retaining the passes.

Motion by Mr. Astrein

Seconded by Ms. Champagne to recommend to the City Commission that free parking in the structures remain in effect beginning January 1, 2021 and continue through March 31, 2020.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Astrein, Champagne, Paskiewicz, Kalczynski, Yert, Vaitas, Silverman

Nays: None

# City of Birmingham Parking Structures-Combined Income Statement Fiscal Year Comparison

## Fiscal 18-20

### REVENUES

	Month Ended 31-Jul-18	Month Ended 01-Aug-18	Month Ended 30-Sep-18	Month Ended 01-Oct-18	Month Ended 30-Nov-18	Month Ending 31-Dec-18	Month Ended 31-Jan-20	Month Ended 28-Feb-20	Month Ended 31-Mar-20	Month Ending 30-Apr-20	Month Ended 31-May-20	Month Ended 30-Jun-20	Total
Revenues - Monthly parking	\$ 178,788.00	\$ 215,466.00	\$ 210,315.00	\$ 221,242.00	\$ 199,878.00	\$ 278,281.00	\$ 167,439.00	\$ 227,533.50	\$ 221,582.37	\$ 12,504.63	\$ 8,011.27	\$ 11,627.72	\$ 647,544.50
Revenues - Cash Parking	\$ 295,059.00	\$ 258,891.00	\$ 238,142.00	\$ 259,891.26	\$ 244,888.00	\$ 227,662.01	\$ 207,662.01	\$ 198,064.01	\$ 114,447.99	\$ 1,556.00	\$ -	\$ -	\$ 2,033,232.67
Revenues - Card Fees	\$ 45.00	\$ 165.00	\$ 80.00	\$ 75.00	\$ 120.00	\$ 1,125.00	\$ 420.00	\$ 577.50	\$ 165.00	\$ 15.00	\$ -	\$ -	\$ 2,014,426.32
Revenues - Lot #6	\$ 5,110.00	\$ 38,673.00	\$ 45,755.00	\$ 940.00	\$ 18,870.00	\$ 65,535.00	\$ 11,520.00	\$ 56,820.00	\$ -	\$ -	\$ -	\$ -	\$ 2,767.50
Total Income	\$ 469,002.60	\$ 514,290.00	\$ 494,312.05	\$ 482,248.26	\$ 463,666.00	\$ 570,611.00	\$ 378,646.01	\$ 416,175.01	\$ 383,013.36	\$ 66,613.00	\$ 40,616.00	\$ 3,070.00	\$ 4,298,705.29

### EXPENSES

	Month Ended 31-Jul-18	Month Ended 01-Aug-18	Month Ended 30-Sep-18	Month Ended 01-Oct-18	Month Ended 30-Nov-18	Month Ending 31-Dec-18	Month Ended 31-Jan-20	Month Ended 28-Feb-20	Month Ended 31-Mar-20	Month Ending 30-Apr-20	Month Ended 31-May-20	Month Ended 30-Jun-20	Total
Salaries and Wages	\$ 63,580.19	\$ 64,320.33	\$ 63,268.91	\$ 70,756.03	\$ 85,113.49	\$ 59,767.11	\$ 60,236.37	\$ 65,742.69	\$ 82,610.76	\$ 12,504.63	\$ 8,011.27	\$ 11,627.72	\$ 647,544.50
Payroll Taxes	\$ 5,998.46	\$ 6,028.19	\$ 5,908.75	\$ 6,714.26	\$ 7,977.30	\$ 5,564.22	\$ 7,130.01	\$ 7,364.57	\$ 6,114.62	\$ 2,938.69	\$ 1,174.51	\$ 1,053.24	\$ 64,167.04
Workmen's Comp Insurance	\$ 3,023.06	\$ 3,126.03	\$ 3,078.10	\$ 3,126.03	\$ 4,135.10	\$ 2,817.75	\$ 3,185.77	\$ 3,423.55	\$ 3,158.75	\$ 1,570.55	\$ 666.35	\$ 614.50	\$ 32,471.47
Group Insurance	\$ 20,386.87	\$ 20,483.44	\$ 23,379.80	\$ 20,693.32	\$ 18,317.24	\$ 21,579.62	\$ 18,732.04	\$ 21,391.74	\$ 24,171.52	\$ 21,758.14	\$ 18,404.13	\$ 7,754.84	\$ 235,921.65
Uniforms	\$ -	\$ -	\$ 27.84	\$ 2,684.71	\$ 107.11	\$ 9.32	\$ -	\$ -	\$ 33.14	\$ -	\$ -	\$ -	\$ 2,862.12
Insurance	\$ 12,134.02	\$ 9,982.50	\$ 11,897.47	\$ 9,842.50	\$ 9,882.50	\$ 11,972.35	\$ 10,192.72	\$ 10,528.22	\$ 12,482.92	\$ 10,182.72	\$ 10,112.72	\$ 10,112.72	\$ 128,863.36
Utilities	\$ 1,044.22	\$ 1,022.60	\$ 1,282.65	\$ 1,660.87	\$ 1,060.78	\$ 989.67	\$ 985.52	\$ 1,059.36	\$ 1,134.59	\$ 864.14	\$ 870.11	\$ 881.05	\$ 12,275.96
Maintenance	\$ 4,463.10	\$ 4,829.57	\$ 65,430.63	\$ 1,028.42	\$ 1,098.69	\$ 2,512.10	\$ 2,038.55	\$ 1,857.11	\$ 361.63	\$ 378.91	\$ 930.95	\$ 1,748.98	\$ 88,189.02
Parking Tag/Tickets	\$ -	\$ 364.84	\$ 368.67	\$ 181.09	\$ 181.09	\$ 456.00	\$ 421.21	\$ 623.90	\$ 181.09	\$ 181.09	\$ 203.59	\$ 181.09	\$ 3,444.86
Professional Services	\$ 4,531.67	\$ 4,626.72	\$ 4,658.67	\$ 4,600.64	\$ 4,558.87	\$ 4,546.64	\$ 4,573.90	\$ 4,553.87	\$ 4,553.87	\$ 4,828.04	\$ 4,553.87	\$ 4,553.87	\$ 55,043.83
Office Supplies	\$ 264.72	\$ 473.68	\$ 342.81	\$ 771.68	\$ 468.48	\$ 496.10	\$ 640.83	\$ 80.83	\$ 678.12	\$ -	\$ 633.96	\$ 1,782.43	\$ 6,661.74
Operating Cost - Vehicles	\$ 439.69	\$ 469.70	\$ 498.45	\$ 472.93	\$ 467.89	\$ 382.84	\$ 381.87	\$ 404.49	\$ 444.85	\$ 348.25	\$ 333.34	\$ 333.34	\$ 4,878.54
Pass Cards	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Employee Appreciation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 473.32	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 473.32
Credit Card Fees	\$ 14,554.14	\$ 13,286.67	\$ 14,808.61	\$ 12,383.74	\$ 13,452.42	\$ 13,160.62	\$ 13,128.86	\$ 11,713.61	\$ 10,159.65	\$ 7,189.28	\$ 4,077.85	\$ 365.54	\$ 124,571.79
Bank Service Charges	\$ 70.17	\$ 70.40	\$ 72.99	\$ 64.22	\$ 68.00	\$ 65.57	\$ 68.09	\$ 65.79	\$ 65.34	\$ 67.77	\$ 61.25	\$ 61.25	\$ 600.84
Rent/Service Charges	\$ -	\$ -	\$ 3,632.50	\$ 7,265.00	\$ 7,265.00	\$ 7,265.00	\$ 7,265.00	\$ 7,265.00	\$ 7,265.00	\$ 7,265.00	\$ 7,265.00	\$ 7,265.00	\$ 89,017.50
Miscellaneous Expense	\$ 284.72	\$ 387.72	\$ 504.59	\$ 157.72	\$ 399.83	\$ 329.83	\$ 93.55	\$ 177.09	\$ 383.50	\$ 23.36	\$ 105.20	\$ 60.24	\$ 3,274.88
Management Fee Charge	\$ -	\$ -	\$ 5,231.25	\$ -	\$ -	\$ 5,812.50	\$ -	\$ -	\$ 5,812.50	\$ -	\$ -	\$ -	\$ 22,668.75
Fuel Management Fee	\$ 3,875.00	\$ 3,875.00	\$ 1,937.50	\$ 1,937.50	\$ 1,937.50	\$ 1,937.50	\$ 1,937.50	\$ 1,937.50	\$ 1,937.50	\$ 1,937.50	\$ 1,937.50	\$ 1,937.50	\$ 23,250.00
Total Expenses	\$ 134,734.27	\$ 133,280.67	\$ 202,565.48	\$ 143,248.07	\$ 167,378.59	\$ 140,610.84	\$ 132,723.29	\$ 138,189.42	\$ 161,548.85	\$ 71,860.07	\$ 53,778.72	\$ 56,158.69	\$ 1,535,631.57
Net Income	\$ 334,268.33	\$ 380,989.33	\$ 291,746.56	\$ 339,004.19	\$ 306,488.41	\$ 430,000.08	\$ 244,622.62	\$ 277,935.59	\$ 221,465.51	\$ 15,247.07	\$ 7,183.72	\$ 63,086.99	\$ 2,770,873.72

## Fiscal 20-21

### REVENUES

	Month Ended 31-Jul-20	Month Ended 01-Aug-20	Month Ended 30-Sep-20	Month Ended 01-Oct-20	Month Ended 30-Nov-20	Month Ending 31-Dec-20	Month Ended 31-Jan-21	Month Ended 28-Feb-21	Month Ended 31-Mar-21	Month Ending 30-Apr-21	Month Ended 31-May-21	Month Ended 30-Jun-21	Total
Revenues - Monthly parking	\$ 4,035.00	\$ 1,816.37	\$ 32,980.00	\$ 119,615.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 154,731.63
Revenues - Cash Parking	\$ 19,420.00	\$ 106.00	\$ -	\$ 21,278.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,804.00
Revenues - Card Fees	\$ -	\$ -	\$ -	\$ 150.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 150.00
Revenue - Lot #6	\$ -	\$ -	\$ (7.80)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (7.80)
Total Income	\$ 23,455.00	\$ 1,710.37	\$ 32,882.20	\$ 141,041.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 195,677.83

### EXPENSES

	Month Ended 31-Jul-20	Month Ended 01-Aug-20	Month Ended 30-Sep-20	Month Ended 01-Oct-20	Month Ended 30-Nov-20	Month Ending 31-Dec-20	Month Ended 31-Jan-21	Month Ended 28-Feb-21	Month Ended 31-Mar-21	Month Ending 30-Apr-21	Month Ended 31-May-21	Month Ended 30-Jun-21	Total
Salaries and Wages	\$ 21,501.77	\$ 25,016.49	\$ 25,056.88	\$ 31,601.14	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 103,176.28
Payroll Taxes	\$ 2,002.17	\$ 2,228.65	\$ 2,276.33	\$ 2,840.81	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,448.06
Workmen's Comp Insurance	\$ 1,124.69	\$ 1,269.22	\$ 1,308.33	\$ 1,654.80	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,387.24
Group Insurance	\$ 8,673.75	\$ 11,026.89	\$ 12,281.42	\$ 7,819.94	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,802.00
Uniforms	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Insurance	\$ 10,152.72	\$ 10,152.72	\$ 10,152.72	\$ 10,152.72	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,610.88
Utilities	\$ 902.29	\$ 831.86	\$ 818.53	\$ 877.34	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,426.12
Maintenance	\$ 3,498.06	\$ 1,229.58	\$ 4,092.44	\$ 524.41	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,342.51
Parking Tag/Tickets	\$ 181.09	\$ 181.09	\$ 181.09	\$ 181.09	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 724.36
Professional Services	\$ 4,553.87	\$ 4,553.87	\$ 4,553.87	\$ 4,553.87	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 18,215.88
Office Supplies	\$ 61.07	\$ 46.63	\$ 291.65	\$ 53.51	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 453.06
Operating Cost - Vehicles	\$ 462.21	\$ 450.65	\$ 373.78	\$ 438.87	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,726.61
Pass Cards	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Employee Appreciation	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Credit Card Fees	\$ 30.52	\$ 361.53	\$ 382.77	\$ 626.65	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,381.47
Bank Service Charges	\$ 61.53	\$ 61.25	\$ 61.25	\$ 61.25	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 245.28
Rent/Service Charges	\$ 7,265.00	\$ 7,265.00	\$ 7,265.00	\$ 7,265.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 29,060.00
Miscellaneous Expense	\$ 39.33	\$ 143.70	\$ 172.86	\$ 24.64	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 225.65
Management Incentive Fee	\$ -	\$ -	\$ 5,812.50	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,812.50
Fuel Management Fee	\$ 1,995.60	\$ 1,995.60	\$ 1,995.60	\$ 1,995.60	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,982.40
Total Expenses	\$ 63,504.19	\$ 68,844.83	\$ 76,800.34	\$ 70,772.84	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 278,022.20
Net Income	\$ (40,049.19)	\$ (68,555.20)	\$ (44,008.14)	\$ 70,268.16	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (82,344.37)



## MEMORANDUM

Planning Division

**DATE:** November 25, 2020

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

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

**SUBJECT:** Public Hearing for a Special Land Use Permit and Final Site Plan and Design Review at 470 N. Old Woodward – EM Bistro

---

### INTRODUCTION:

On April 1, 2020, the owners of Market North End Bistro submitted an application for a Special Land Use Permit ("SLUP") and Final Site Plan and Design Review ("FSP") for approval to open a new restaurant at 470 N. Old Woodward in the vacant storefront south of Market North End.

### BACKGROUND:

The subject site is located at 470 N. Old Woodward Street, south of Market North End. The parcel is zoned B2 (General Business). The applicant is seeking approval to operate a new bistro named EM under Chapter 10, Alcoholic Liquors, of the City Code to allow the service of alcoholic beverages in the proposed bistro. Chapter 10 requires that the applicant obtain a Special Land Use Permit and approval from the City Commission to operate an establishment with a Bistro License within the City of Birmingham. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan, Special Land Use Permit, and for the operation of a Bistro License.

On October 28, 2020, the applicant appeared before the Planning Board for a review of the SLUP and FSP for EM bistro. After much discussion, the Planning Board voted unanimously to recommend approval to the City Commission of the SLUP and FSP.

### LEGAL REVIEW:

The City Attorney has reviewed this request and has no concerns.

### FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

### SUMMARY:

The City Commission set a public hearing date for December 7, 2020 to consider approval of the Final Site Plan and Design and Special Land Use Permit to allow the operation of a new bistro EM at 470 N. Old Woodward.

### ATTACHMENTS:

Please find attached the following documents for your review:

- Draft Special Land Use Permit Resolution
- Plans and photos of proposed changes
- Staff Report to the Planning Board
- Application and additional documents submitted by applicant
- Partially Executed Bistro Contract signed by applicant
- All relevant meeting minutes
- Letters from residents

SUGGESTED RESOLUTION:

To approve the Final Site Plan and Design and Special Land Use Permit at 470 N. Old Woodward to allow for the operation of a new bistro, EM, at 470 N. Old Woodward.

**EM BISTRO**  
**470 N. OLD WOODWARD**  
**SPECIAL LAND USE PERMIT AMENDMENT 2020**

WHEREAS, EM BISTRO filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a bistro in the Downtown Birmingham Overlay District in accordance Article 3, Section 3.04(C)(10) of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the east side of N. Old Woodward, south of Ravine;

WHEREAS, The land is zoned B-2, and is located in the D-2 zone within the Downtown Birmingham Overlay District, which permits the operation of bistros with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The applicant submitted an application for a Special Land Use Permit and Final Site Plan and Design for EM BISTRO to operate at 470 N. Old Woodward;

WHEREAS, The Planning Board on October 28, 2020 reviewed the application for a Special Land Use Permit and Final Site Plan and Design Review and recommended approval to the City Commission to permit a Bistro License for EM BISTRO at 470 N. Old Woodward with the condition that the following items be provided prior to the hearing at the City Commission:

1. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license;
2. Provide the proposed hours of operation for EM Bistro;
3. Submit a roof plan and specification sheets on the proposed rooftop mechanical equipment and screening;
4. Clarify how they intend to manage trash, and if they intend to share the existing dumpster behind Market North End, and verify receptacles in the outdoor dining areas;
5. Provide full lighting details for any proposed exterior lighting;
6. Provide specification sheets for the proposed outdoor furniture; and
7. The applicant comply with the requests of all City departments.

WHEREAS, The applicant has agreed to provide all requested information and to comply with the requests of all City departments, thus fulfilling the conditions noted by the Planning Board;

WHEREAS, The Birmingham City Commission has reviewed EM BISTRO's Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;



NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that EM BISTRO's application for a Special Land Use Permit and Final Site Plan and Design at 470 N. OLD WOODWARD is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. EM BISTRO will close outdoor dining areas at midnight each day of the week;
2. EM BISTRO shall abide by all provisions of the Birmingham City Code; and
3. The Special Land Use Permit Amendment may be canceled by the City Commission upon finding that the continued use is not in the public interest.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

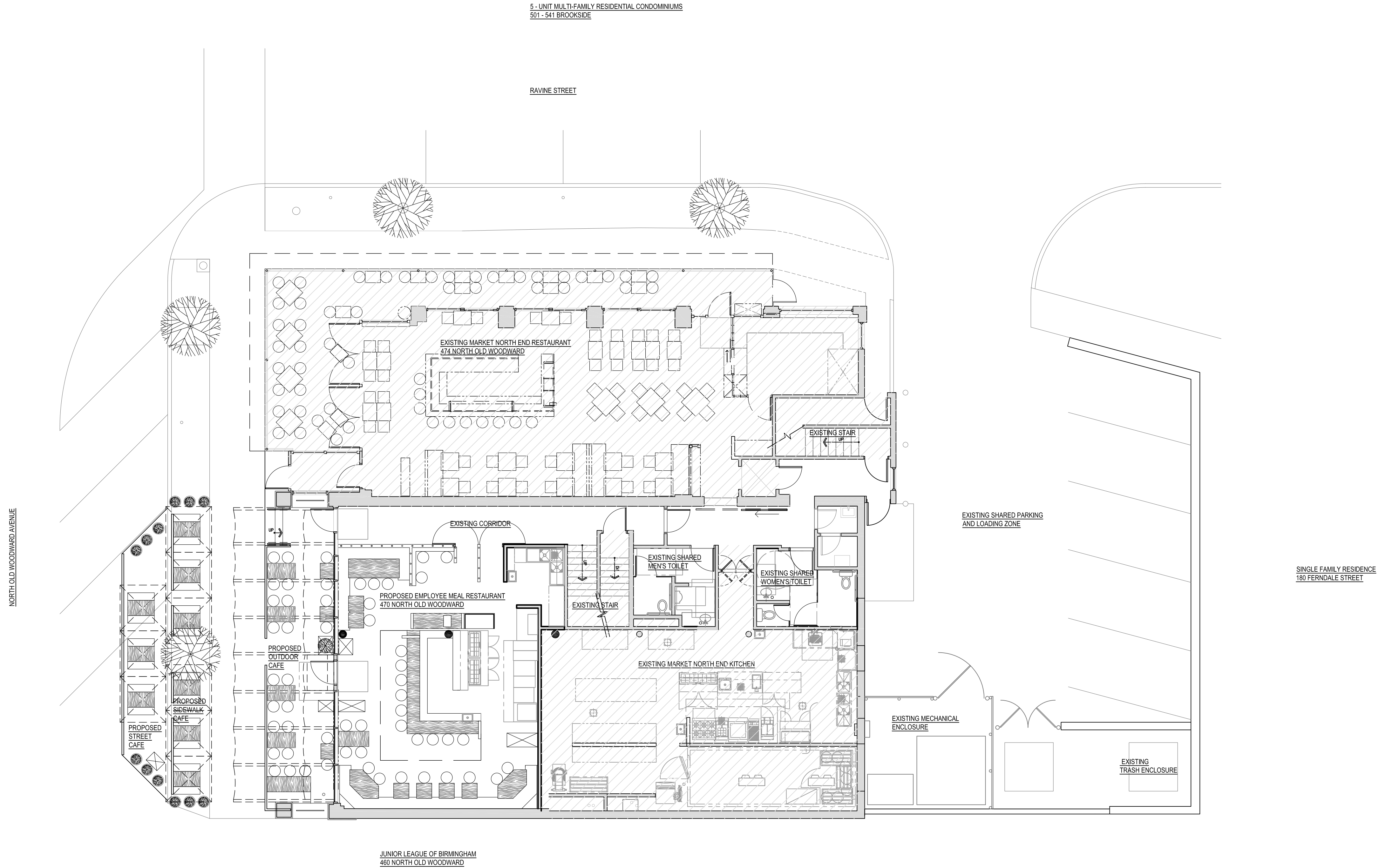
BE IT FURTHER RESOLVED, Except as herein specifically provided, EM BISTRO and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of EM BISTRO to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that EM BISTRO is recommended for the operation of a food and drink establishment serving alcoholic beverages on premises, with a Class C Liquor License, above all others, subject to final inspection.

I, Alexandria Bingham, Acting City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on December 7, 2020.

---

**Alexandria Bingham**  
**City Clerk Designee**



R O N A N D R O M A N  
architects et al.  
275 E. Frank St. Birmingham, MI 48009  
o) 248.723.5790 f) 248.723.5795

Project:  
  
Employee Meal  
470 North Old Woodward, Birmingham, MI 48009

Seal:

Issue Date:

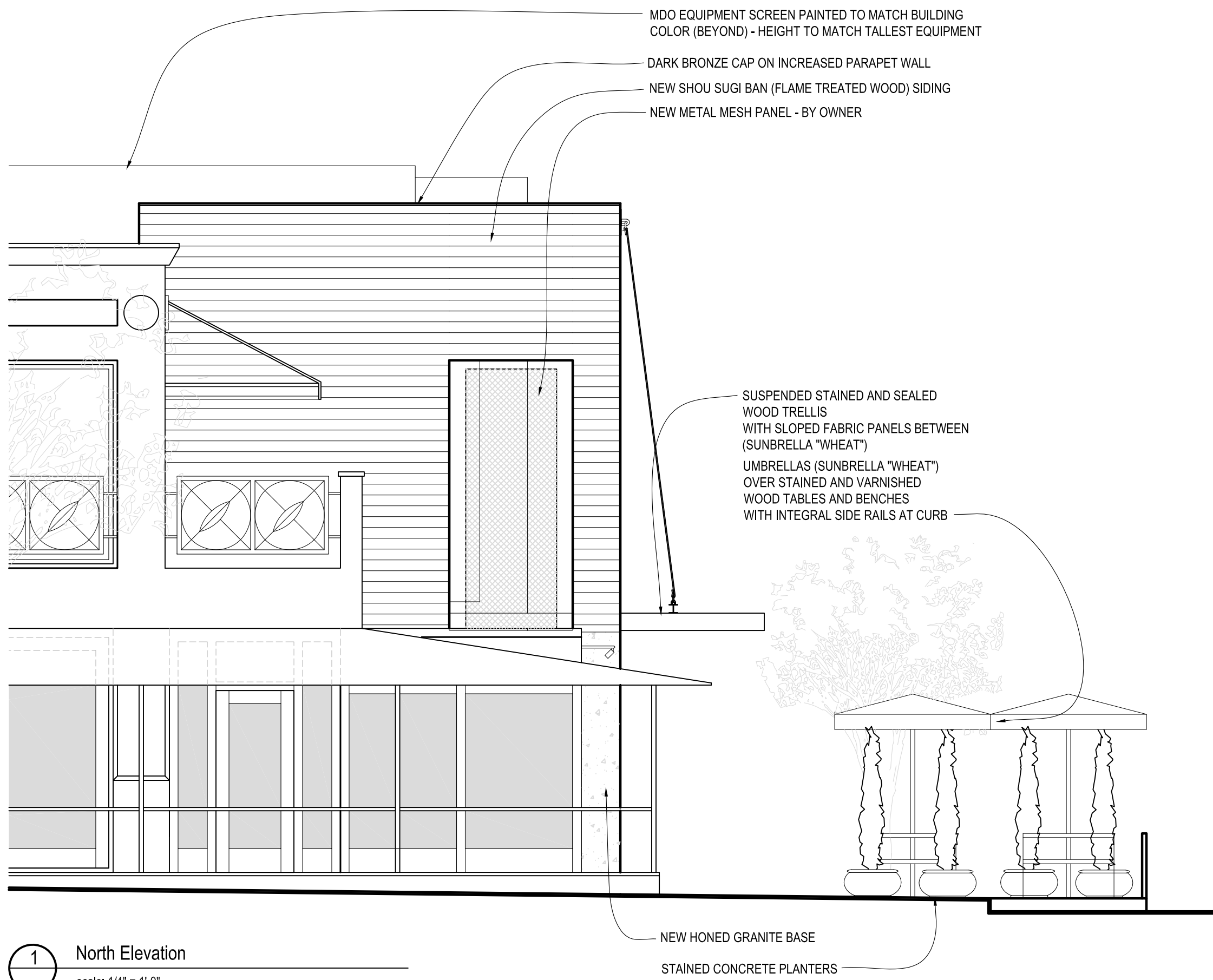
REVIEW	01.08.2020
REVIEW	03.20.2020
BISTRO APP	03.31.2020
REVISION	09.25.2020

Sheet Title:  
  
Proposed Site Plan

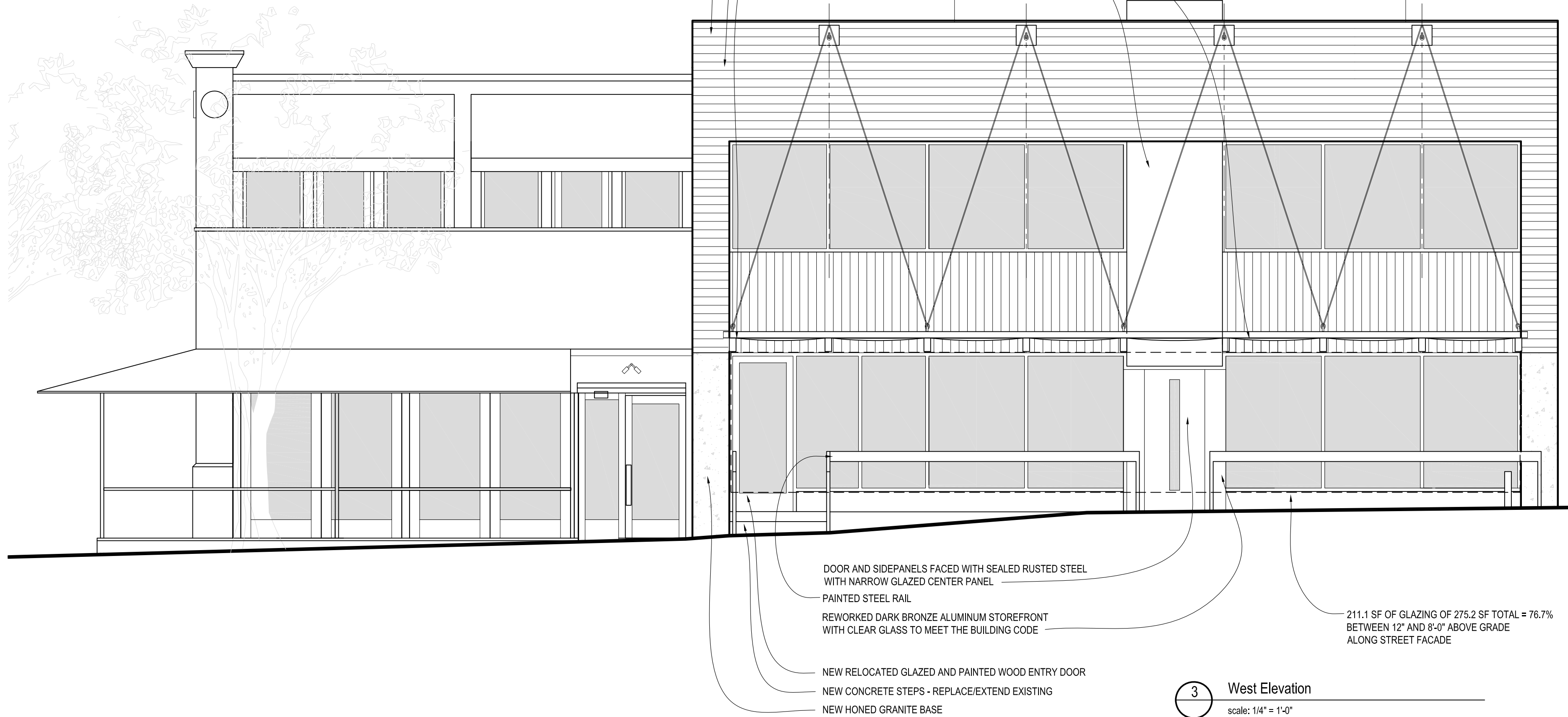
Sheet Number:

A001

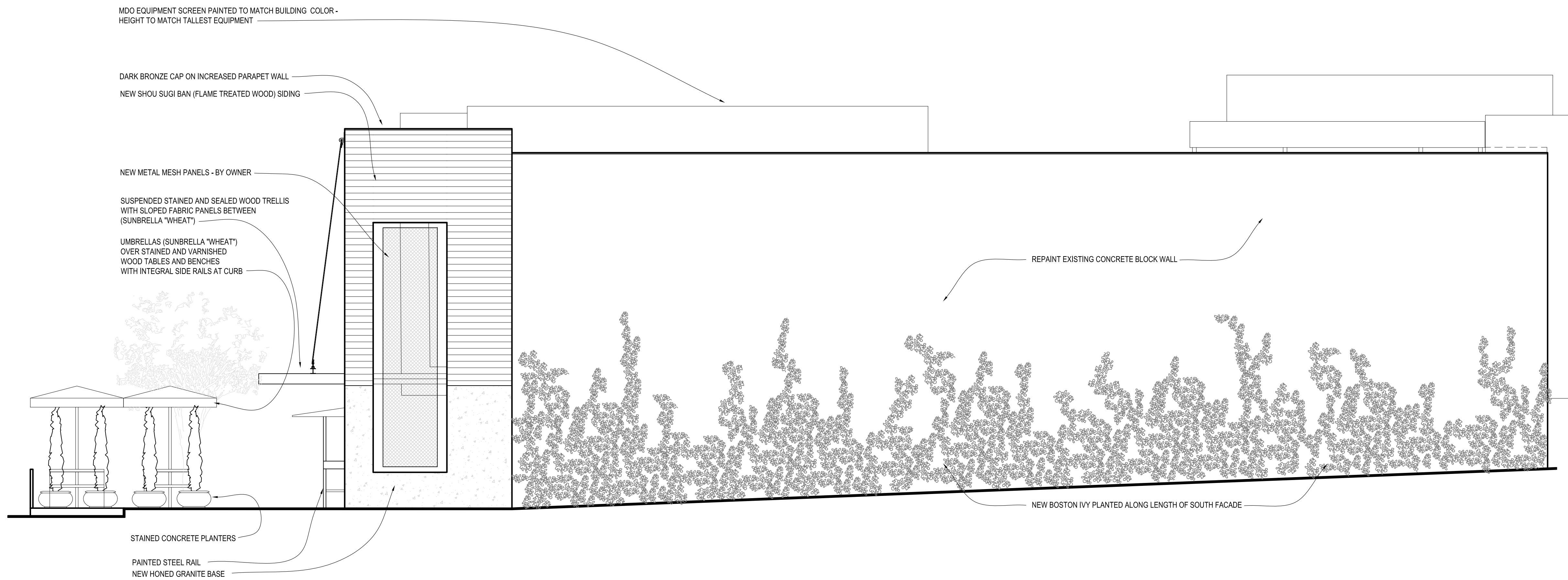




1 North Elevation  
scale: 1/4" = 1'-0"



3 West Elevation  
scale: 1/4" = 1'-0"



2 South Elevation  
scale: 1/4" = 1'-0"

Project:

Employee Meal  
470 North Old Woodward, Birmingham, MI 48009

Seal:

Issue Date:

REVIEW	01.08.2020
BISTRO APP	03.31.2020
REVISION	09.25.2020

Sheet Title:

Exterior Elevations

Sheet Number:

A201





NEW GLAZED AND PAINTED WOOD SHARED ENTRY DOOR

UMBRELLAS (SUNBRELLA "WHEAT")  
OVER STAINED AND VARNISHED  
WOOD TABLES AND BENCHES  
WITH INTEGRAL SIDE RAILS AT CURB

STAINED CONCRETE PLANTERS

- NEW BRONZE CAP ON INCREASED PARAPET WALL
- NEW SHOU SUGI BAN (FLAME TREATED WOOD) SIDING
- (4) EXISTING RECESSED CAN LIGHTS TO REMAIN  
(8) EXISTING RECESSED SPECIALTY CAN LIGHTS REMOVED  
(NOT SHOWN)
- NEW METAL MESH PANELS - BY OWNER
- SEALED RUSTED STEEL WRAPPED SHAFT
- SUSPENDED STAINED AND SEALED WOOD TRELLIS  
WITH SLOPED FABRIC PANELS BETWEEN  
(SUNBRELLA "WHEAT")
- DOOR AND SIDEPANELS FACED WITH SEALED RUSTED STEEL  
WITH NARROW GLAZED CENTER PANEL
- NEW HONED GRANITE BASE
- REWORKED DARK BRONZE ALUMINUM STOREFRONT  
WITH CLEAR GLASS TO MEET THE BUILDING CODE
- PAINTED STEEL RAIL

1 Looking North from Old Woodward  
not to scale



- NEW BRONZE CAP & EXTENDED FASCIA ON INCREASED  
PARAPET WALL
- NEW SHOU SUGI BAN (FLAME TREATED WOOD) SIDING
- (4) EXISTING RECESSED CAN LIGHTS TO REMAIN  
(8) EXISTING RECESSED SPECIALTY CAN LIGHTS REMOVED  
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WITH NARROW GLAZED CENTER PANEL
- UMBRELLAS (SUNBRELLA "WHEAT")  
OVER STAINED AND VARNISHED  
WOOD TABLES AND BENCHES  
WITH INTEGRAL SIDE RAILS AT CURB

- STAINED CONCRETE PLANTERS
- PAINTED STEEL RAIL
- REWORKED DARK BRONZE ALUMINUM STOREFRONT  
WITH CLEAR GLASS TO MEET THE BUILDING CODE
- NEW CONCRETE STEPS - REPLACE/EXTEND EXISTING
- NEW HONED GRANITE BASE

2 Looking South from Old Woodward  
not to scale

Project:

Employee Meal  
470 North Old Woodward, Birmingham, MI 48009

Seal:

Issue Date:

REVIEW	01.08.2020
BISTRO APP	03.31.2020
REVISION	09.25.2020

Sheet Title:

Exterior Renderings

Sheet Number:





1 Aerial View of Adjacent Properties



2 Old Woodward Ave. Street View Looking Northeast



3 Ravine Road Street View Looking Southeast

R O N A N D R O M A N  
architects et al.  
275 E. Frank St. Birmingham, MI 48009  
o) 248.723.5790 f) 248.723.5795

Project:

Employee Meal  
470 North Old Woodward, Birmingham, MI 48009

Seal:

Issue Date:

REVIEW	01.08.2020
BISTRO APP	03.31.2020
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Sheet Title:

Aerial & Street Views

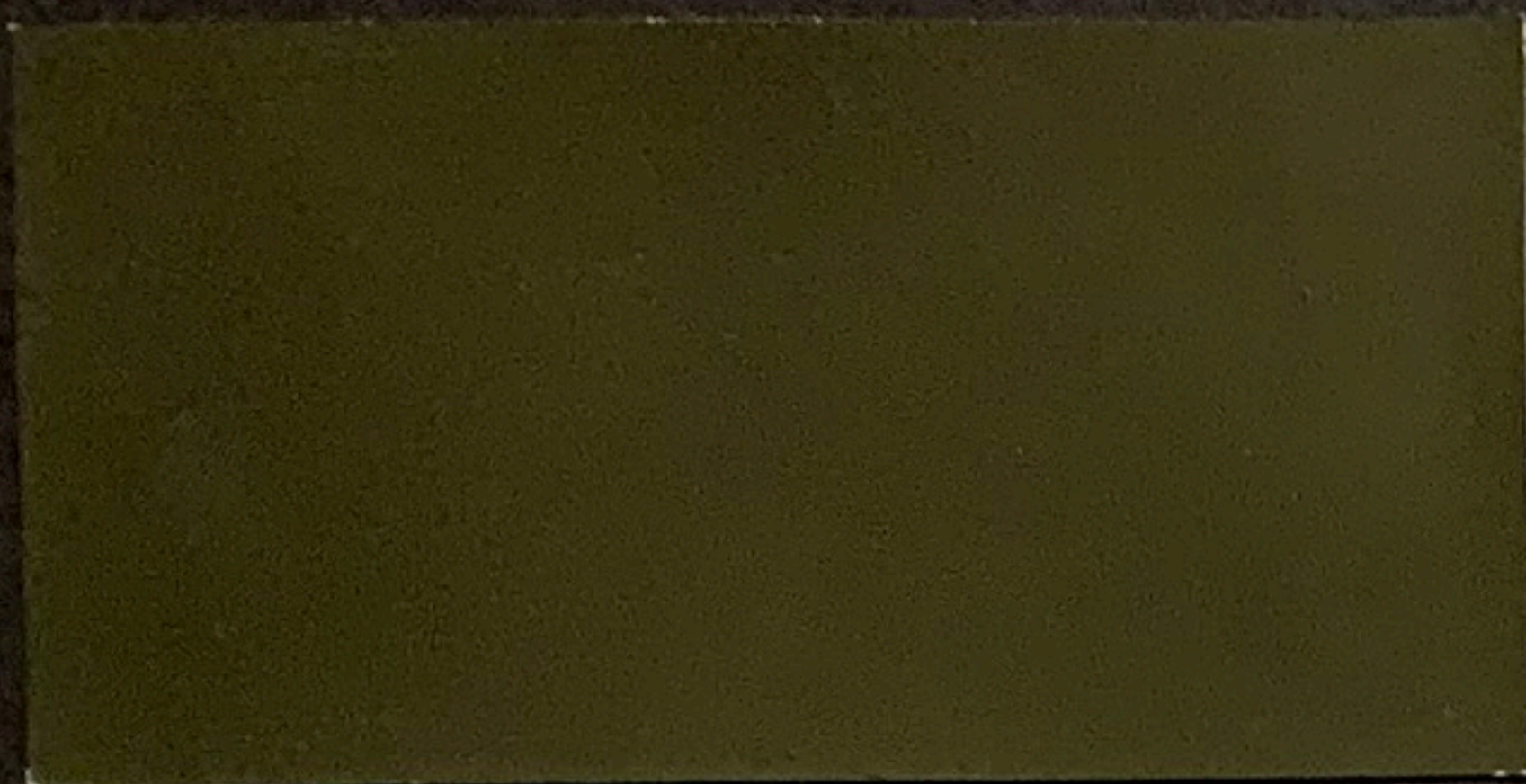
Sheet Number:

A301









BUILDING PAINT BM 2138-10  
+ RAILING PAINT



SEALED RUSTED STEEL  
VERTICAL SHAFT ENCLOSURE



6' SQUARE UMBRELLAS  
DARK BRONZE POSTS  
SUNBRELLA "WHEAT" FABRIC  
(MATCHES TRELLIS FABRIC)

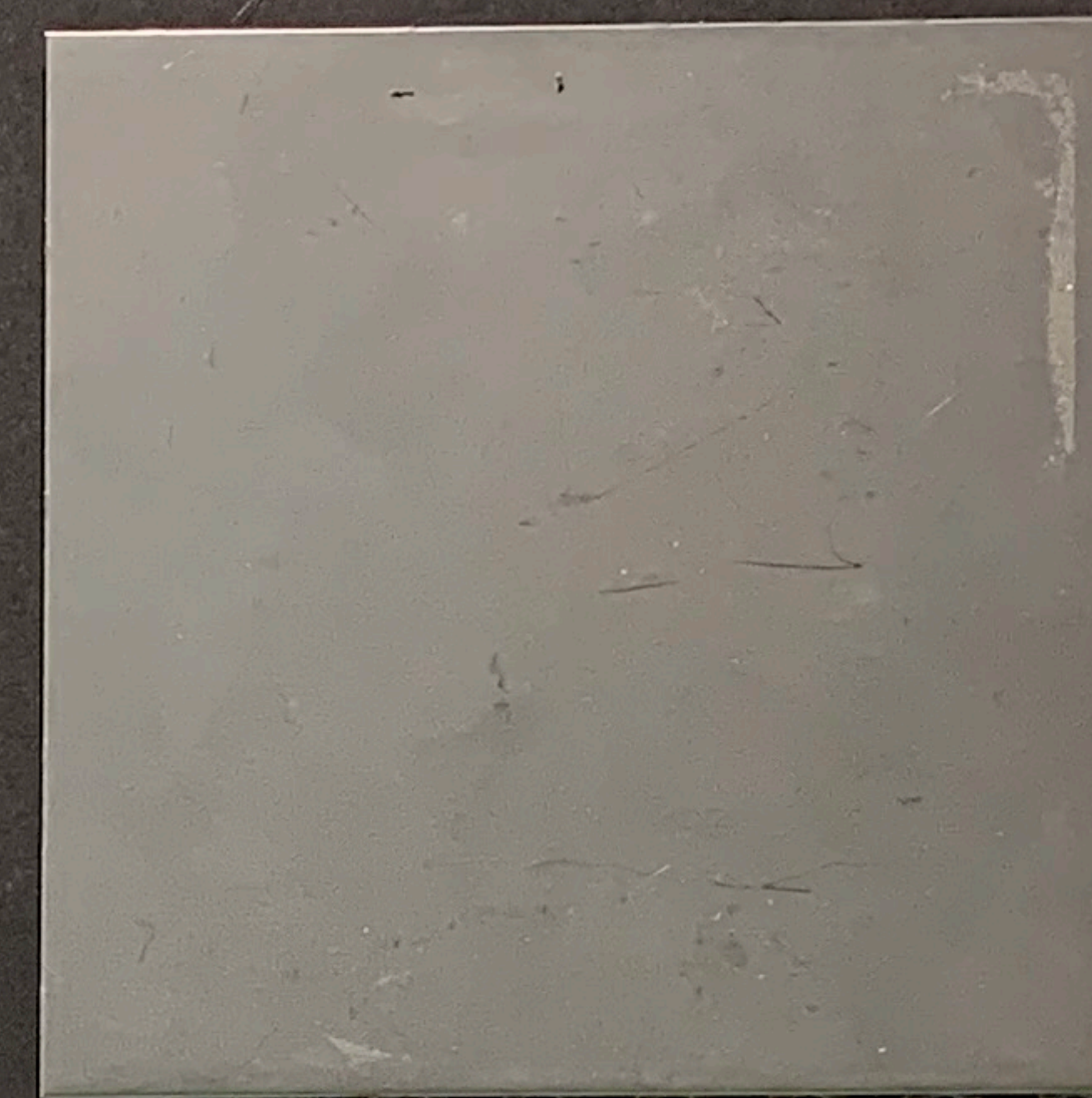


STAINED OAK TABLES  
BENTWOOD CHAIRS

SKY-  
ROCKET  
JUNIPER  
IPE



CUSTOM CONCRETE  
PLANTER



PERFORATED STAINLESS  
STEEL SCREEN FEATURES



HONED GRANITE PIER BASES



WOOD SIDING  
NAKAMOTO  
GENDAI NM1807



"MOCHA" PLATFORM  
DECKING





# MEMORANDUM

Planning Division

**DATE:** October 20, 2020

**TO:** Planning Board

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

**SUBJECT:** 470 N. Old Woodward, EM Bistro – Special Land Use Permit and Final Site Plan Review

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## Executive Summary

The subject site is located at 470 N. Old Woodward Street, south of Market North End. The parcel is zoned B2 (General Business). The applicant is seeking approval to operate a new bistro named EM.

Thus, at this time the applicant is seeking approval of a Bistro License under Chapter 10, Alcoholic Liquors, of the City Code to allow the service of alcoholic beverages in the proposed bistro. Chapter 10 requires that the applicant obtain a Special Land Use Permit and approval from the City Commission to operate an establishment with a Bistro License within the City of Birmingham. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan, Special Land Use Permit, and for the operation of a Bistro License.

## 1.0 Land Use and Zoning

- 1.1 Existing Land Use – There is an existing two story building on the site with Red Salon the most recent tenant on the ground floor where EM is proposed.
- 1.2 Existing Zoning – The property is currently zoned B2 (General Business). The existing use and surrounding uses appear to conform to the permitted uses of the Zoning Ordinance.
- 1.3 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.

	North	South	East	West
<b>Existing Land Use</b>	Retail & Commercial	Commercial	Single Family Residential	Booth Park
<b>Existing Zoning District</b>	B2, General Business	B2, General Business	R2, Single Family Residential	PP
<b>Overlay Zoning District</b>	D2	D2	N/A	P

## 2.0 Use, Setback and Height Requirements

The applicant is not proposing any changes to the footprint of the existing building. All exterior changes to the building facades have already been approved by the Design Review Board, with the exception of signage and outdoor dining areas.

## 3.0 Bistro Requirements

Article 9, section 9.02, Definitions, of the Zoning Ordinance defines a bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining. EM is proposing 44 seats in the main dining room, including 10 seats at the bar. A total of 64 outdoor dining seats are proposed; 28 immediately adjacent to the building, and 36 seats west of the sidewalk extending into the on street parking zone. EM Bistro will be a new restaurant applying for a new bistro license.

The Zoning Ordinance permits bistros in the Downtown Birmingham Overlay District, provided the following conditions are met:

- (a) No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
  - (b) Alcohol is served only to seated patrons, except those standing in a defined bar area;
  - (c) No dance area is provided;
  - (d) Only low key entertainment is permitted;
  - (e) Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
  - (f) A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1' and 8' in height;
-

- (g) All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- (h) Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

As stated, EM is proposing 10 seats at a bar located at the center of the bistro. No direct connect additional bar permit will be permitted from this license if approved. Alcohol may only be served to seated patrons and those standing in the bar area. The applicant has provided a 89.5 sq.ft. designated bar area, which includes 10 seats at the bar and standing room behind the seating.

EM does not propose any dancing or entertainment.

EM is proposing to have 44 seats in the restaurant, including dining tables in the storefront space lining N. Old Woodward. A total of 21 seats line the storefront space along N. Old Woodward. The applicant has proposed a glazing percentage of 76.7% for the street facing building façade, thus meeting the required 70% minimum.

**The applicant will be required to enter into a contract with the City that must be fully executed upon approval of the SLUP and bistro license.**

As required, EM is proposing outdoor dining along S. Old Woodward. A total of 64 outdoor dining seats are proposed, of which 28 are proposed immediately adjacent to the building, and 36 of which are proposed west of the sidewalk extending into the on street parking zone. The outdoor dining areas are proposed to be enclosed with painted steel café rails and 12 stained concrete planters with Skyrocket Junipers inside along the northern and southern edges of the dining area located west of the sidewalk extending into the street.

**The applicant has not yet provided the proposed hours of operation for EM Bistro, and is required to do so.**

#### **4.0 Screening and Landscaping**

- 4.1 Mechanical Screening –The applicant is proposing to construct an MDO screening enclosure painted to match the building (charcoal grey) to screen all of the rooftop mechanical units. However, at this time, the applicant has not provided a roof plan nor specification sheets for the proposed rooftop mechanical units to demonstrate that the screening proposed complies with the screening requirements contained in the Zoning Ordinance. **The applicant will be required to submit a roof plan and specification sheets on the proposed rooftop mechanical equipment and screening prior to consideration of approval by the City Commission.**
-

- 
- 4.2 Dumpster Screening – The application does not include the addition of a new dumpster or enclosure. **The applicant must clarify how they intend to manage trash, and if they intend to share the existing dumpster behind Market North End.**
- 4.3 Parking Lot Screening – The applicant is not required to provide any off street parking as the site is located within the Parking Assessment District.
- 4.4 Landscaping – There is currently 1 street tree existing along the frontage of 470 N. Old Woodward, and this tree is proposed to remain. In accordance with Article 4, section 4.20 LA-01; street trees are required along all streets, at a rate of at least 1 street tree / 40' of street frontage unless it is determined by the staff arborist not to be feasible. This requirement has been met.

The applicant is also proposing the addition of 12 concrete planters of define the northern and southern edges of the outdoor dining proposed in the street. Each planter will contain one Skyrocket Juniper columnar shrub.

## 5.0 Parking, Loading, Access, and Circulation

- 5.1 Parking – As stated above, the applicant is not required to provide any parking spaces for commercial or retail uses as the site is located in the Parking Assessment District.
- 5.2 Loading – No loading spaces are required for the proposed bistro as it is less than 5,000 sq.ft. in size.
- 5.3 Vehicular Access & Circulation – There is a small parking lot to the rear of the building behind Market North End. Most patrons that will arrive at EM will park on the street or in a City parking garage to access the proposed bistro.
- 5.4 Pedestrian Access & Circulation – There is a City sidewalk running along S. Old Woodward that provides access to a proposed front door for EM bistro, as well as to a front door for the building as a whole. From the main building entry, patrons can also access EM bistro off the shared corridor. The applicant is proposing to maintain the required 5' of pedestrian pathway along the public sidewalk.
- 5.5 Streetscape – As stated above, there is an existing sidewalk along N. Old Woodward. The applicant is proposing to maintain a continuous 5' wide pedestrian pathway between the outdoor dining areas. The sidewalk is broom finish concrete, and the furnishing zone between the sidewalk and the curb is currently exposed aggregate concrete as required. There are no City standard benches, trash receptacles or pedestrian scale street lights existing in front of the proposed EM storefront, nor are any proposed. There is one bicycle parking u-rack in front of the storefront currently. This is not shown on the proposed plan, thus it appears that the applicant proposes to remove the bike rack from this location.
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## 6.0 Lighting

The application submitted for EM bistro states that there are 18 recessed 25 watt equivalent LED lights proposed under the planter canopy. **However, no specification sheets have been provided for these fixtures, nor has a photometric plan been submitted at this time. The applicant will be required to verify if new lighting is proposed, and if so, to provide specification sheets and a photometric plan prior to review by the City Commission.**

## 7.0 Departmental Reports

- 7.1 **Engineering Division** – The Engineering Department will provide comments for the October 28, 2020 Planning Board meeting.
- 7.2 **Department of Public Services** – The DPS will provide comments for the October 28, 2020 Planning Board meeting.
- 7.3 **Fire Department** – The Fire Department will provide comments for the October 28, 2020 Planning Board meeting.
- 7.4 **Police Department** - The Police Department will provide comments for the October 28, 2020 Planning Board meeting.
- 7.5 **Building Department** –The Building Department will provide comments for the October 28, 2020 Planning Board meeting.

## 8.0 Design Review

The applicant has provided photos of the existing two story building. The applicant was recently approved by the Design Review Board to make all of the exterior changes shown on the proposed plans with the exception of the signage and the outdoor dining component. Please see attached plans marked approved by the DRB as these changes will not be reviewed below.

### Signage

At this time, the applicant is not proposing any signage. The applicant is permitted to have a total of 36 square feet of signage for the proposed bistro. **Should they wish to add signage, review and approval by Planning Board and/or City Commission will be required.**

### Outdoor Dining Area

Outdoor cafés must comply with the site plan criteria as required by Article 04, Section 4.42 OD-01, Outdoor Dining Standards. Outdoor cafes are permitted immediately adjacent to the principal use and are subject to site plan review and the following conditions:

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1. Outdoor dining areas shall provide and service refuse containers within the outdoor dining area and maintain the area in good order.
2. All outdoor activity must cease at the close of business, or as noted in Subsection 3 below, whichever is earlier.
3. When an outdoor dining area is immediately adjacent to any single-family or multiple-family residential district, all outdoor activity must cease at the close of business or 12:00 a.m., whichever is earlier.
4. All tables and chairs provided in the outdoor dining area shall be constructed primarily of metal, wood, or material of comparable quality.
5. Table umbrellas shall be considered under Site Plan Review and shall not impede sight lines into a retail establishment, pedestrian flow in the outdoor dining area, or pedestrian or vehicular traffic flow outside the outdoor dining area.
6. For outdoor dining located in the public right-of-way:
  - (a) All such uses shall be subject to a license from the city, upon forms provided by the Community Development Department, contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
  - (b) In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 5 feet.
  - (c) An elevated, ADA compliant, enclosed platform may be erected on the street adjacent to an eating establishment to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
  - (d) No such facility shall erect or install permanent fixtures in the public right-of-way.
  - (e) Commercial General Liability Insurance must be procured and maintained on an "occurrence basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, personal injury, bodily injury and property damage. This coverage shall include an endorsement naming the city, including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members, as an additional insured. This coverage must be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance, and shall include an endorsement providing for a thirty (30) day advance written notice of cancellation or non-renewal to be sent to the city's Director of Finance.

The applicant has specifically shown a trash receptacle within each of the proposed outdoor dining areas, however they may be included in the boxes marked as "service". **The applicant must confirm the presence of trash receptacles as required by Article 04, section 4.42 OD-01 of the Zoning Ordinance.**

**The applicant has not provided the proposed hours of operation, and will be required to do so prior to appearing before the City Commission.** The proposed outdoor dining areas are not immediately adjacent to multi-family zoned property.

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**The applicant has not provided specification sheets for the proposed tables and chairs.** However, the materials sheet indicates they are proposing stained oak rectangular tables and Bentwood chairs in dark brown. The applicant is proposing a total of 13 four-top rectangular tables, 3 two-top rectangular tables and 1 six-top rectangular table outdoors. Twenty-five Bentwood round chairs are proposed for the outdoor dining area immediately adjacent to the building. Bench seating is proposed for the entire outdoor dining area extending into the street, and one bench is proposed at the southern end of the outdoor dining area adjacent to the building. A total of 64 seats of outdoor dining are proposed between the two outdoor dining areas. **No specifications have been provided for the bench seating.**

A total of 9 table umbrellas are proposed in the outdoor dining area extending into the street. These umbrellas have dark bronze posts and 6' square Sunbrella "Wheat" fabric to match the awning fabric over the outdoor dining adjacent to the building. The umbrellas do not impede views into a retail establishment, nor impede vehicular or pedestrian access or circulation.

The western outdoor dining area is proposed in the public right-of-way, and extending into the street removing two on-street parking spaces during the outdoor dining season. The portion extending into the street will include the use of an elevated Trex deck dining platform to bring the on-street dining area up to a consistent height with the sidewalk level dining. **The Engineering Department will be required to approve the use of the street, and the applicant will be required to provide details showing how street runoff will continue to drain to existing sewers.**

## 9.0 Selection Criteria for Bistro Licenses

Chapter 10, Alcoholic Liquors, section 10-82 provides a limitation on the number of Bistro Licenses that the City Commission may approve, and provides selection criteria to assist the Planning Board and City Commission in evaluating applications for Bistro Licenses. For existing restaurants in the City of Birmingham, section 10-82 states:

- (a) **Maximum Number of Bistro Licenses.** The city commission may approve a maximum number of license transfers for Bistro licenses per calendar year as follows:

**New establishments.** Two (2) Bistro Licenses may be approved each calendar year to applicants who do not meet the definition of existing establishments as set forth in (a)(1) above. In addition to the usual criteria used by the city commission for liquor license requests, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the new establishment applicants, if any, should be approved:

- The applicant's demonstrated ability to finance the proposed project.
  - The applicant's track record with the city including responding to city and/or citizen concerns.
  - Whether the applicant has an adequate site plan to handle the bistro liquor license activities.
-

- 
- Whether the applicant has adequate health and sanitary facilities.
  - The establishment's location in relation to the determined interest in the establishment of bistros in the Overlay District and the Triangle District.
  - The extent that the cuisine offered by applicant is represented in the city.
  - Whether the applicant has outstanding obligations to the city (ie property taxes, utilities, etc.).

EM's bistro application was the only bistro application pre-selected for review by the City Commission for the 2020 calendar year. EM will be a new establishment. The selection criteria provided above must be considered to provide a recommendation to the City Commission as to whether or not to approve the operation of a Bistro License at EM.

The applicant has not provided specific financial information indicating assets available for the opening of EM. However, the applicant has submitted an overview of their restaurant experience, and has indicated that they will be using personal funds to finance the proposed bistro.

The applicants have successfully operated Market North End and other establishments in Birmingham. The applicants have worked with the City by responding to City and resident concerns in the past.

The applicant has proposed an adequate site plan to demonstrate the capability of handling the bistro liquor license activities. A small, full service kitchen and bar are proposed, along with 44 indoor seats and 64 outdoor dining seats. Each proposed outdoor dining area does provide for safe and efficient pedestrian flow. Adequate health and sanitary facilities are proposed.

EM is proposed to be located within the Downtown Birmingham Overlay District. The City is interested in attracting bistro operations within the Overlay District, the Triangle District and the Rail District; therefore this operation fits into the parameters outlined by the Bistro Ordinance guidelines.

EM is proposing to specialize in Mexican inspired cuisine, with a particular emphasis on including seafood and a creative twist on favorites. This type of cuisine is not currently represented in the City.

## **10.0 Approval Criteria for Final Site Plan**

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

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
  - (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
-



- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property not diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

## 11.0 Approval Criteria for Special Land Use Permits

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

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

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

## 12.0 Suggested Action

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board recommend approval of Final Site Plan and a SLUP to the City Commission to permit a Bistro License for EM at 470 N. Old Woodward with the condition that the following items be provided prior to the hearing at the City Commission:

1. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license;
  2. Provide the proposed hours of operation for EM Bistro;
  3. Submit a roof plan and specification sheets on the proposed rooftop mechanical equipment and screening;
  4. Clarify how they intend to manage trash, and if they intend to share the existing dumpster behind Market North End, and verify receptacles in the outdoor dining areas;
  5. Provide full lighting details for any proposed exterior lighting;
  6. Provide specification sheets for the proposed outdoor furniture; and
-

7. The applicant comply with the requests of all City departments.

### 13.0 Sample Motion Language

The Planning Board recommends approval of the Final Site Plan and a SLUP to the City Commission to permit a bistro license for EM at 470 N. Old Woodward with the condition that the following items be provided prior to the hearing at the City Commission:

1. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license;
2. Provide the proposed hours of operation for EM Bistro;
3. Submit a roof plan and specification sheets on the proposed rooftop mechanical equipment and screening;
4. Clarify how they intend to manage trash, and if they intend to share the existing dumpster behind Market North End, and verify receptacles in the outdoor dining areas;
5. Provide full lighting details for any proposed exterior lighting;
6. Provide specification sheets for the proposed outdoor furniture; and
7. The applicant comply with the requests of all City departments.

OR

Motion to recommend DENIAL of the Final Site Plan and SLUP to the City Commission for 470 N. Old Woodward, EM for the following reasons:

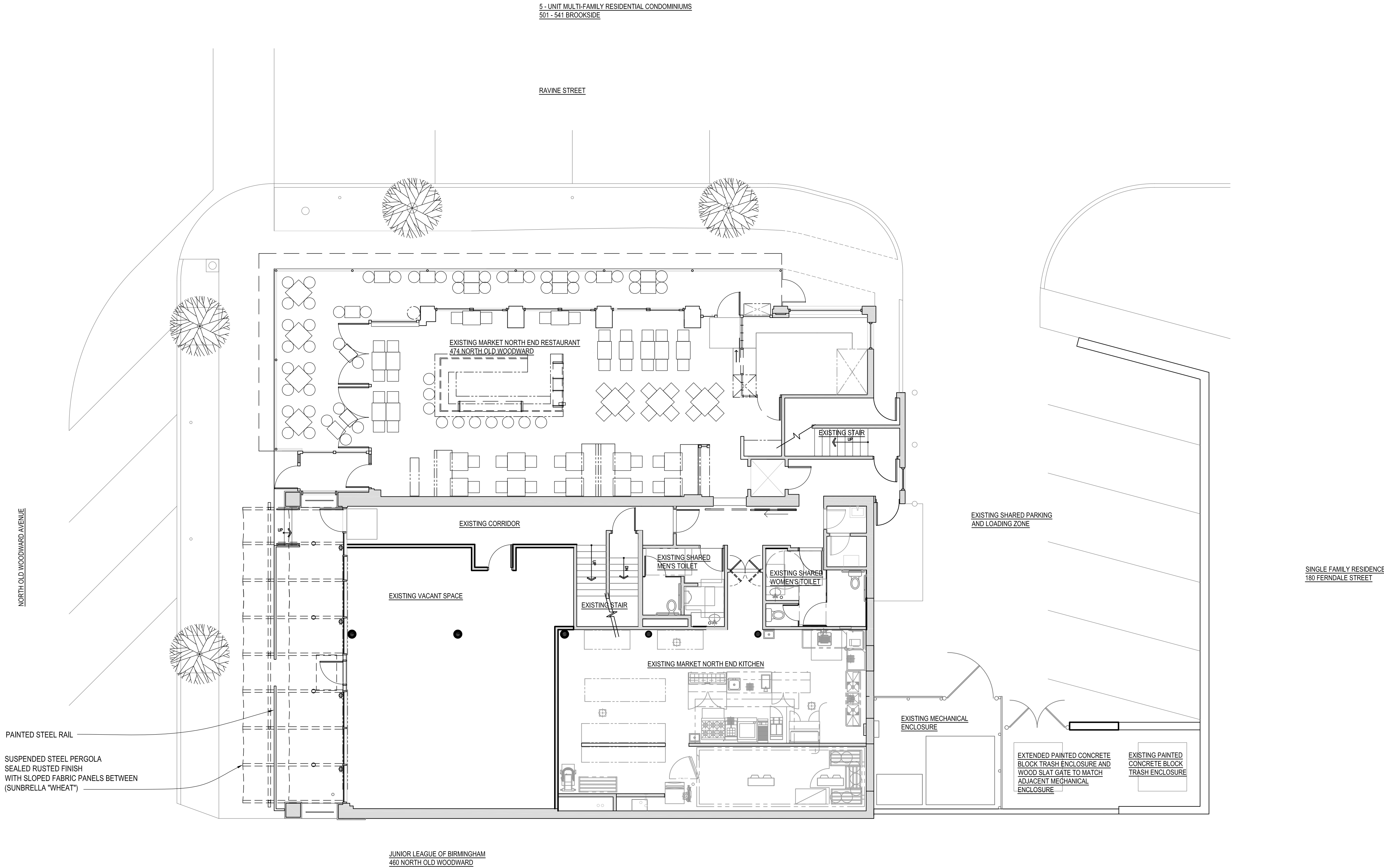
1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

OR

Motion to recommend POSTPONEMENT of the Final Site Plan and SLUP for 470 N. Old Woodward, EM.

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PLANS PREVIOUSLY APPROVED BY THE DESIGN REVIEW BOARD



REVIEW	01.08.2020
REVIEW	03.20.2020
DRB APPLICATION	04.16.2020
REVISION	06.03.2020
REVISION	06.17.2020

Project:

Existing Building Facade Improvements  
470 North Old Woodward, Birmingham, MI 48009

Seal:

Issue Date:

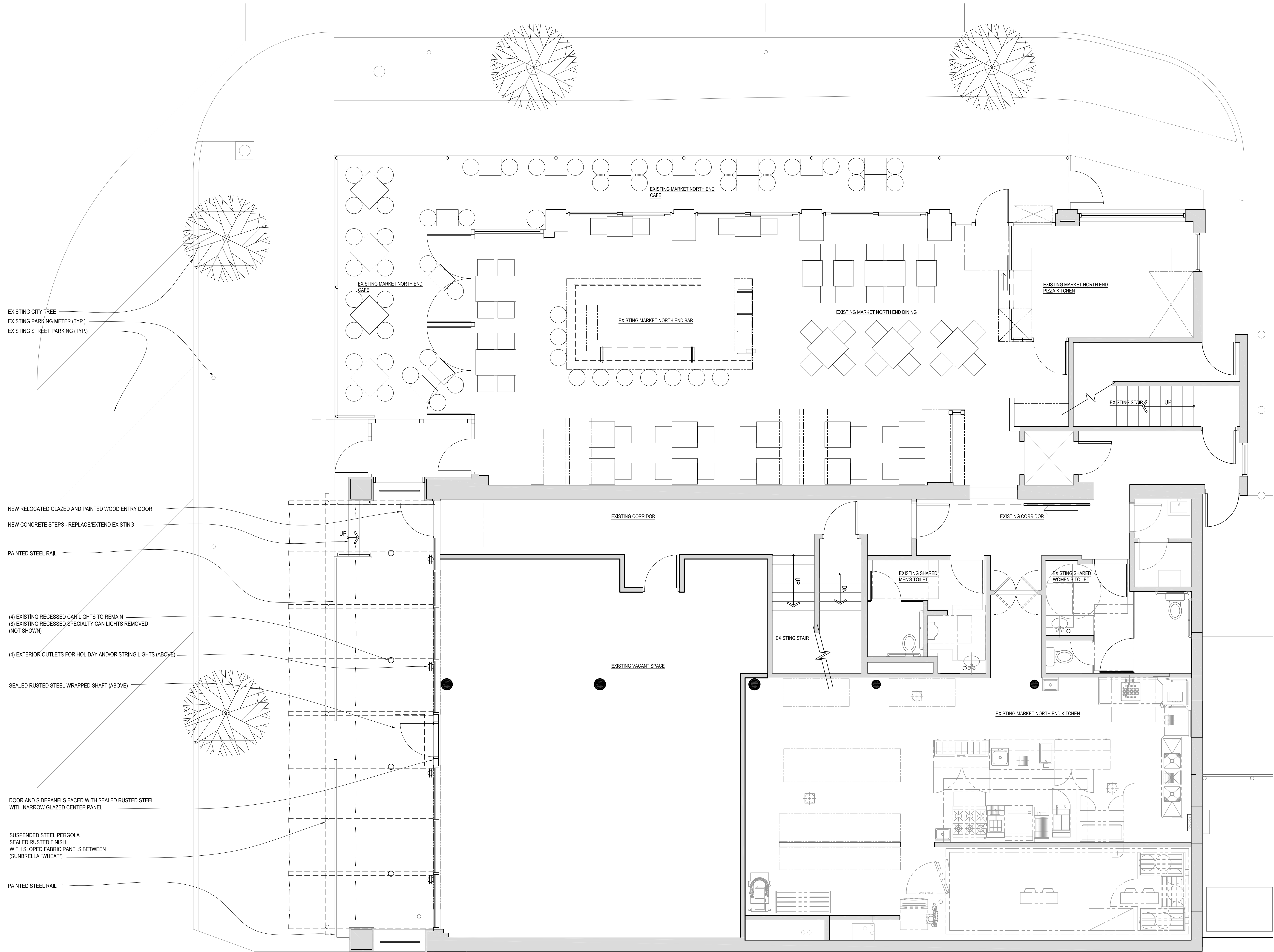
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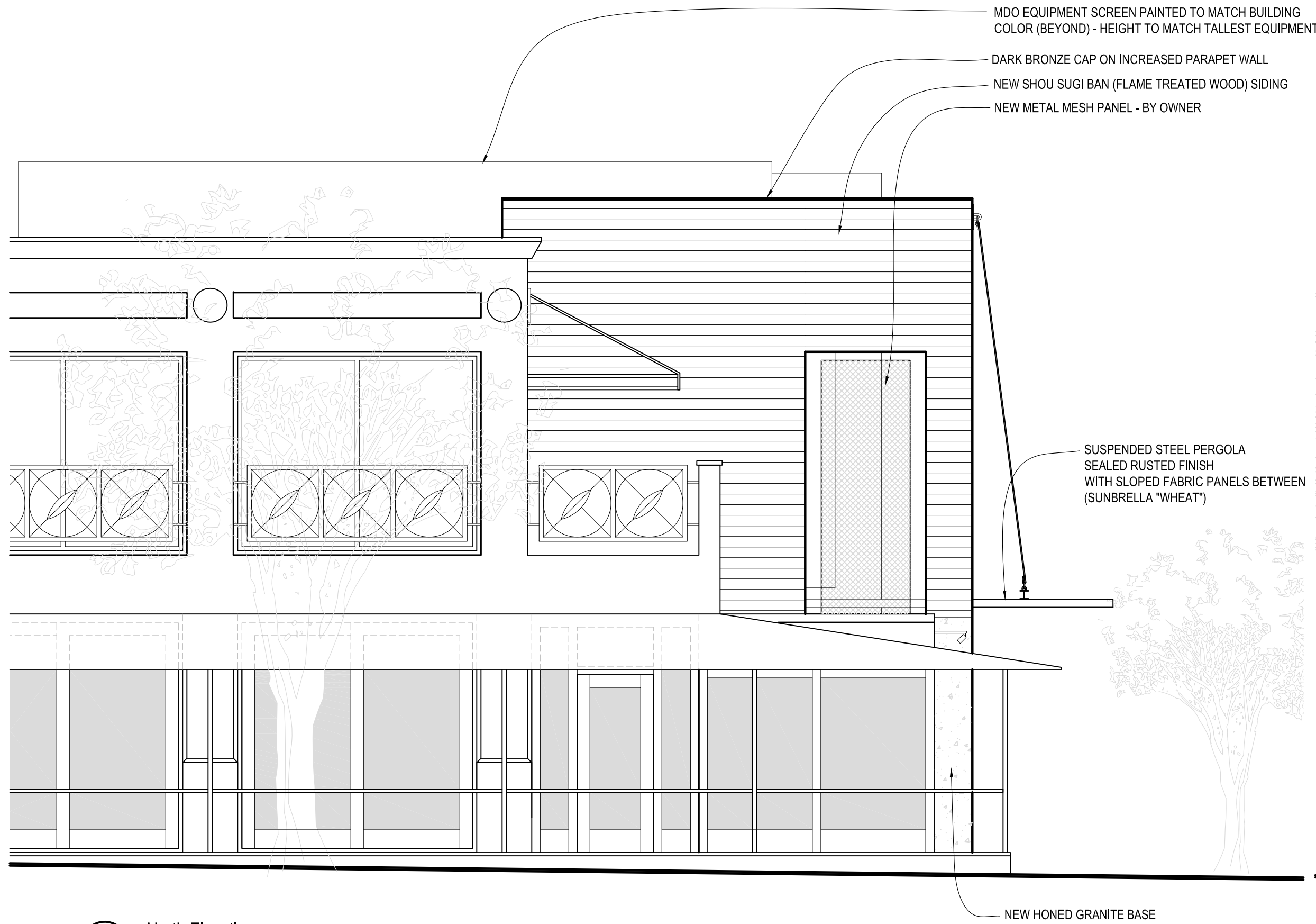
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Proposed Building Plan

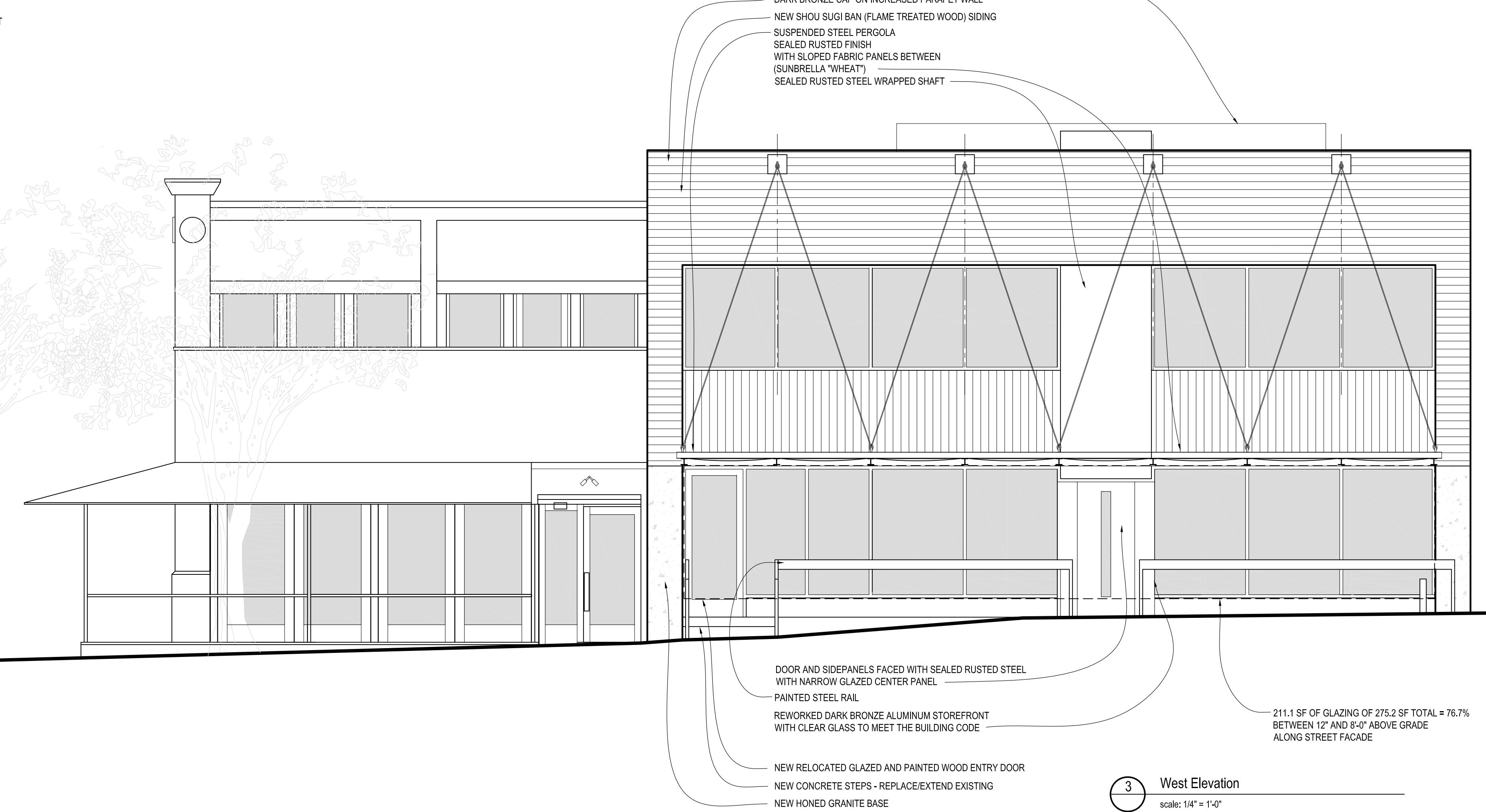
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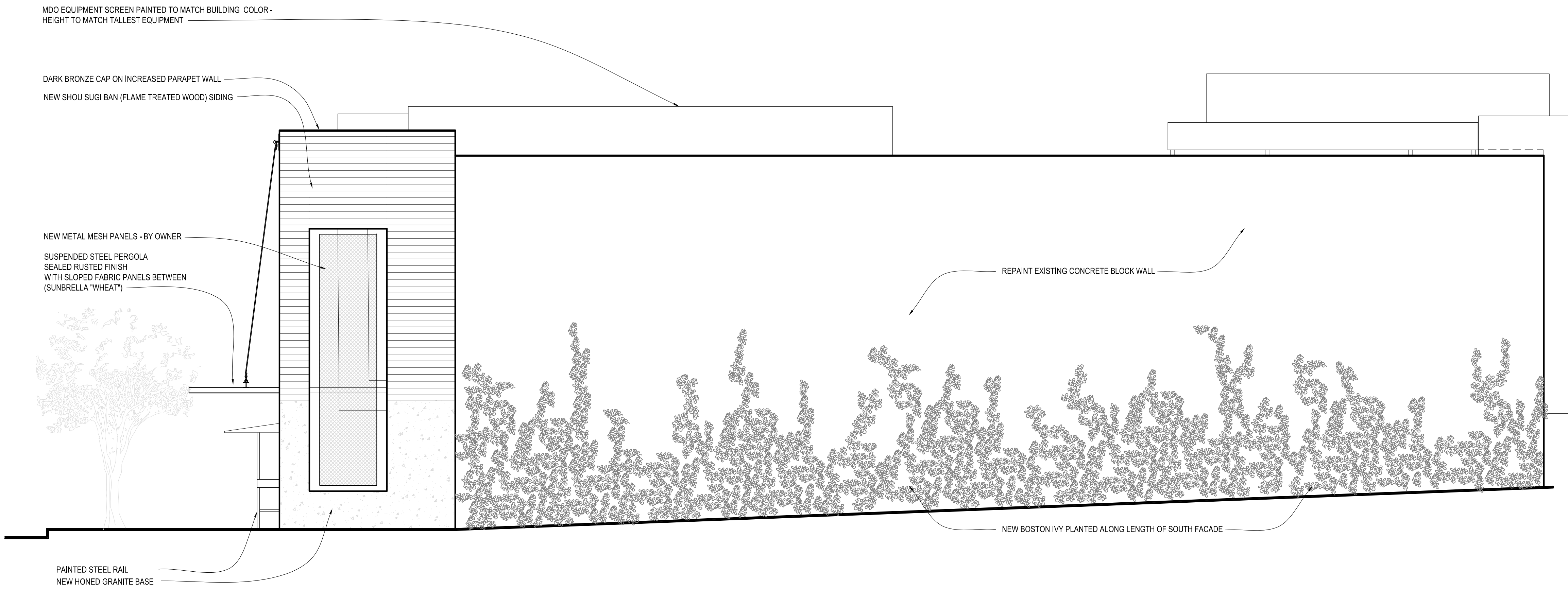




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3 West Elevation  
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Existing Building Facade Improvements  
470 North Old Woodward, Birmingham, MI 48009

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REVISION	06.17.2020

Sheet Title:

Exterior Elevations

Sheet Number:

A201



NEW GLAZED AND PAINTED WOOD SHARED ENTRY DOOR



- NEW BRONZE CAP ON INCREASED PARAPET WALL
- NEW SHOU SUGI BAN (FLAME TREATED WOOD) SIDING
- (4) EXISTING RECESSED CAN LIGHTS TO REMAIN  
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- SEALED RUSTED FINISH WITH SLOPED FABRIC PANELS BETWEEN (SUNBRELLA "WHEAT")
- DOOR AND SIDE PANELS FACED WITH SEALED RUSTED STEEL WITH NARROW GLAZED CENTER PANEL
- NEW HONED GRANITE BASE
- REWORKED DARK BRONZE ALUMINUM STOREFRONT WITH CLEAR GLASS TO MEET THE BUILDING CODE
- PAINTED STEEL RAIL

1 Looking North from Old Woodward  
not to scale



- NEW BRONZE CAP & EXTENDED FASCIA ON INCREASED PARAPET WALL
- NEW SHOU SUGI BAN (FLAME TREATED WOOD) SIDING
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2 Looking South from Old Woodward  
not to scale

R O N A N D R O M A N  
architects et al.  
275 E. Frank St. Birmingham, MI 48009  
o) 248.723.5790 f) 248.723.5795

Project:

Existing Building Facade Improvements  
470 North Old Woodward, Birmingham, MI 48009

Seal:

Issue Date:

REVIEW	01.08.2020
REVIEW	03.20.2020
DRB APPLICATION	04.16.2020
REVISION	06.17.2020

Sheet Title:

Exterior Renderings

Sheet Number:

A202





1 Aerial View of Adjacent Properties



② Old Woodward Ave. Street View Looking Northeast



3 Ravine Road Street View Looking Southeast

architects et al.  
275 E. Frank St. Birmingham MI 48009  
o) 248.723.5790 f) 248.723.5795

Project:

**EXISTING BUILDING FACADE IMPROVEMENTS**  
470 North Old Woodward, Birmingham, MI 48009

Deal:

Issue Date:	
REVIEW	01.08.2020
REVIEW	03.20.2020
ARB APPLICATION	04.16.2020

Sheet Title:

## Aerial & Street Views

Sheet Number:

A301



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**Re: New EM Bistro - 470 N. Old Woodward**

1 message

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**Joel Campbell** <Jcampbell@bhamgov.org>

To: Jana Ecker &lt;Jecker@bhamgov.org&gt;

Mon, Oct 26, 2020 at 9:24 AM

Hi Jana,

I have no major concerns with this proposed project. A couple of notes:

- The fire department connection (FDC) located at the southwest corner on the front of the building must stay completely unobstructed, and must be accessible at all times.
- Floor plans will need to be submitted for review and approval.

Joel

On Thu, Oct 22, 2020 at 11:28 AM Jana Ecker &lt;Jecker@bhamgov.org&gt; wrote:

The above application is scheduled to go before the Planning Board next week for a Final Site Plan and SLUP review. If you could kindly provide any comments back to me by the end of the day on October 28, 2020 that would be much appreciated.

Thank you!

**Jana L. Ecker**

*Planning Director*  
*City of Birmingham*  
**248-530-1841**

**\*Important Note to Residents\***Let's connect! Join the Citywide Email System to receive important City updates and critical information specific to your neighborhood at [www.bhamgov.org/citywideemail](http://www.bhamgov.org/citywideemail).

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**Joel Campbell****Fire Marshal****Birmingham Fire Department****(248)530-1924****\*Important Note to Residents\***Let's connect! Join the Citywide Email System to receive important City updates and critical information specific to your neighborhood at [www.bhamgov.org/citywideemail](http://www.bhamgov.org/citywideemail).





## Special Land Use Permit Application – Bistro Planning Division

*Form will not be processed until it is completely filled out.*

### 1. Applicant

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email address: \_\_\_\_\_

### 2. Property Owner

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email address: \_\_\_\_\_

### 3. Applicant's Attorney/Contact Person

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email address: \_\_\_\_\_

### 4. Project Designer/Developer

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email address: \_\_\_\_\_

### 5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:
  - i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines;
  - ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
  - iii. A Certified Land Survey;
  - iv. Interior floor plans;
  - v. A Landscape Plan;
  - vi. A Photometric Plan;
  - vii. Colored elevation drawings for each building elevation;
- II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;
- III. Samples of all proposed materials;
- IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- V. Current aerial photographs of the site and surrounding properties;
- VI. Warranty Deed, or Consent of Property Owner if the applicant is not the owner;
- VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

### 6. Project Information

Address/Location of the property: \_\_\_\_\_  
\_\_\_\_\_  
Name of development: \_\_\_\_\_  
Sidwell #: \_\_\_\_\_  
Current Use: \_\_\_\_\_  
Proposed Use: \_\_\_\_\_  
Area of Site in Acres: \_\_\_\_\_  
Current zoning: \_\_\_\_\_  
Is the property located in the floodplain? \_\_\_\_\_  
Name of Historic District Site is Located in: \_\_\_\_\_  
Date of Historic District Commission Approval: \_\_\_\_\_

Date of Application for Preliminary Site Plan: \_\_\_\_\_  
Date of Preliminary Site Plan Approval: \_\_\_\_\_  
Date of Application for Final Site Plan: \_\_\_\_\_  
Date of Final Site Plan Approval: \_\_\_\_\_  
Date of Application for Revised Final Site Plan: \_\_\_\_\_  
Date of Revised Final Site Plan Approval: \_\_\_\_\_  
Date of Design Review Board Approval: \_\_\_\_\_  
Is there a current SLUP in effect for this site? \_\_\_\_\_  
Date of Application for SLUP: \_\_\_\_\_  
Date of SLUP Approval: \_\_\_\_\_  
Date of Last SLUP Amendment: \_\_\_\_\_

**7. Details of the Proposed Development (attach separate sheet if necessary)**

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**8. Buildings and Structures**

Number of Buildings on Site: \_\_\_\_\_  
Height of Buildings & # of Stories: \_\_\_\_\_

Use of Buildings: \_\_\_\_\_  
Height of Rooftop Mechanical Equipment: \_\_\_\_\_

**9. Floor Use and Area (in Square Feet)**

**Structures:**

Restaurant Space: \_\_\_\_\_  
Office Space: \_\_\_\_\_  
Retail Space: \_\_\_\_\_

Number of Residential Units: \_\_\_\_\_  
Rental or Condominium? \_\_\_\_\_  
Total Floor Area: \_\_\_\_\_

**10. Proposed Bistro Operation**

Number of Indoor Seats: \_\_\_\_\_  
Number of Outdoor Seats: \_\_\_\_\_  
Entertainment Proposed: \_\_\_\_\_  
Previous LCC Complaints? \_\_\_\_\_  
Number of Tables along Street Façade: \_\_\_\_\_  
Type of Cuisine: \_\_\_\_\_

Bar Area? \_\_\_\_\_  
Number of Seats at Bar: \_\_\_\_\_  
Full Service Kitchen? \_\_\_\_\_  
Percentage of Glazing Proposed: \_\_\_\_\_  
Years of Experience in Birmingham: \_\_\_\_\_  
Years of Experience Outside Birmingham: \_\_\_\_\_

**11. Required and Proposed Setbacks**

Required Front Setback: \_\_\_\_\_  
Required Rear Setback: \_\_\_\_\_  
Required Total Side Setback: \_\_\_\_\_

Proposed Front Setback: \_\_\_\_\_  
Proposed Rear Setback: \_\_\_\_\_  
Proposed Total Side Setback: \_\_\_\_\_

**12. Outdoor Dining Facility**

Location (sidewalk right-of-way or on-street parking space): \_\_\_\_\_  
Hours of Operation: \_\_\_\_\_  
Width of unobstructed sidewalk between door and café? (5 ft. required): \_\_\_\_\_  
Platform Proposed: \_\_\_\_\_  
Trash Receptacles: \_\_\_\_\_

Number of Tables/Chairs: \_\_\_\_\_  
Material of Tables/Chairs: \_\_\_\_\_  
Tables Umbrellas Height & Material: \_\_\_\_\_  
Number and Location of Parking Spaces Utilized: \_\_\_\_\_  
Screenwall Material: \_\_\_\_\_  
Enclosure Material: \_\_\_\_\_

**13. Required and Proposed Parking**

Required number of parking spaces: \_\_\_\_\_  
Location of parking on site: \_\_\_\_\_  
Screenwall material: \_\_\_\_\_

Shared Parking Agreement? \_\_\_\_\_  
Location of parking off site: \_\_\_\_\_  
Height of screenwall: \_\_\_\_\_

**14. Landscaping**

Location of landscape areas: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposed landscape material: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 15. Streetscape

Sidewalk width: \_\_\_\_\_  
Number of benches: \_\_\_\_\_  
Number of planters: \_\_\_\_\_  
Number of existing street trees: \_\_\_\_\_  
Number of proposed street trees: \_\_\_\_\_  
Streetscape plan submitted? \_\_\_\_\_

Description of benches or planters: \_\_\_\_\_

Species of existing trees: \_\_\_\_\_

Species of proposed trees: \_\_\_\_\_

## 16. Loading

Required number of loading spaces: \_\_\_\_\_  
Typical angle of loading spaces: \_\_\_\_\_  
Screenwall material: \_\_\_\_\_  
Location of loading spaces on site: \_\_\_\_\_

Proposed number of loading spaces: \_\_\_\_\_

Typical size of loading spaces: \_\_\_\_\_

Height of screenwall: \_\_\_\_\_

Typical time loading spaces are used: \_\_\_\_\_

## 17. Exterior Waste Receptacles

Required number of waste receptacles: \_\_\_\_\_  
Location of waste receptacles: \_\_\_\_\_  
Screenwall material: \_\_\_\_\_

Proposed number of waste receptacles: \_\_\_\_\_

Size of waste receptacles: \_\_\_\_\_

Height of screenwall: \_\_\_\_\_

## 18. Mechanical Equipment

### Utilities and Transformers:

Number of ground mounted transformers: \_\_\_\_\_  
Size of transformers (L•W•H): \_\_\_\_\_  
Number of utility easements: \_\_\_\_\_  
Screenwall material: \_\_\_\_\_

Location of all utilities & easements: \_\_\_\_\_

Height of screenwall: \_\_\_\_\_

### Ground Mounted Mechanical Equipment:

Number of ground mounted units: \_\_\_\_\_  
Size of ground mounted units (L•W•H): \_\_\_\_\_  
Screenwall material: \_\_\_\_\_

Location of all ground mounted units: \_\_\_\_\_

Height of screenwall: \_\_\_\_\_

### Rooftop Mechanical Equipment:

Number of rooftop units: \_\_\_\_\_  
Type of rooftop units: \_\_\_\_\_  
Screenwall material: \_\_\_\_\_  
Location of screenwall: \_\_\_\_\_

Location of all rooftop units: \_\_\_\_\_

Size of rooftop units (L•W•H): \_\_\_\_\_

Percentage of rooftop covered by mechanical units: \_\_\_\_\_

Height of screenwall: \_\_\_\_\_

Distance from rooftop units to all screenwalls: \_\_\_\_\_

## 19. Accessory Buildings

Number of accessory buildings: \_\_\_\_\_  
Location of accessory buildings: \_\_\_\_\_

Size of accessory buildings: \_\_\_\_\_

Height of accessory buildings: \_\_\_\_\_

## 20. Building Lighting

Number of light standards on building: \_\_\_\_\_  
Size of light fixtures (L•W•H): \_\_\_\_\_  
Maximum wattage per fixture: \_\_\_\_\_  
Light level at each property line: \_\_\_\_\_

Type of light standards on building: \_\_\_\_\_

Height from grade: \_\_\_\_\_

Proposed wattage per fixture: \_\_\_\_\_

## 21. Site Lighting

Number of light fixtures: \_\_\_\_\_  
Size of light fixtures (L•W•H): \_\_\_\_\_  
Maximum wattage per fixture: \_\_\_\_\_  
Light level at each property line: \_\_\_\_\_

Type of light fixtures: \_\_\_\_\_

Height from grade: \_\_\_\_\_

Proposed wattage per fixture: \_\_\_\_\_

Holiday tree lighting receptacles: \_\_\_\_\_

## 22. Adjacent Properties

Number of properties within 200 ft.: \_\_\_\_\_

**Property #1**

Number of buildings on site: \_\_\_\_\_  
Zoning district: \_\_\_\_\_  
Use type: \_\_\_\_\_  
Square footage of principal building: \_\_\_\_\_  
Square footage of accessory buildings: \_\_\_\_\_  
Number of parking spaces: \_\_\_\_\_

Property Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
North, south, east or west of property? \_\_\_\_\_

**Property #2**

Number of buildings on site: \_\_\_\_\_  
Zoning district: \_\_\_\_\_  
Use type: \_\_\_\_\_  
Square footage of principal building: \_\_\_\_\_  
Square footage of accessory buildings: \_\_\_\_\_  
Number of parking spaces: \_\_\_\_\_

Property Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
North, south, east or west of property? \_\_\_\_\_

**Property #3**

Number of buildings on site: \_\_\_\_\_  
Zoning district: \_\_\_\_\_  
Use type: \_\_\_\_\_  
Square footage of principal building: \_\_\_\_\_  
Square footage of accessory buildings: \_\_\_\_\_  
Number of parking spaces: \_\_\_\_\_

Property Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
North, south, east or west of property? \_\_\_\_\_

**Property #4**

Number of buildings on site: \_\_\_\_\_  
Zoning district: \_\_\_\_\_  
Use type: \_\_\_\_\_  
Square footage of principal building: \_\_\_\_\_  
Square footage of accessory buildings: \_\_\_\_\_  
Number of parking spaces: \_\_\_\_\_

Property Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
North, south, east or west of property? \_\_\_\_\_

**Property #5**

Number of buildings on site: \_\_\_\_\_  
Zoning district: \_\_\_\_\_  
Use type: \_\_\_\_\_  
Square footage of principal building: \_\_\_\_\_  
Square footage of accessory buildings: \_\_\_\_\_  
Number of parking spaces: \_\_\_\_\_

Property Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
North, south, east or west of property? \_\_\_\_\_

**Property #6**

Number of buildings on site: \_\_\_\_\_  
Zoning district: \_\_\_\_\_  
Use type: \_\_\_\_\_  
Square footage of principal building: \_\_\_\_\_  
Square footage of accessory buildings: \_\_\_\_\_  
Number of parking spaces: \_\_\_\_\_

Property Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
North, south, east or west of property? \_\_\_\_\_

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

Signature of Owner: Thomas Lasky Date: 4.21.20

Print Name: Thomas Lasky, Authorized Agent

Signature of Applicant: Joseph P. Bonislawski Date: 4/29/20

Print Name: JOSEPH P. BONISLAWSKI

Signature of Architect: \_\_\_\_\_ Date: 04.17.2020

Print Name: Roman Bonislawski

*Office Use Only*

Application #: \_\_\_\_\_ Date Received: \_\_\_\_\_ Fee: \_\_\_\_\_

Date of Approval: \_\_\_\_\_ Date of Denial: \_\_\_\_\_ Accepted by: \_\_\_\_\_

61

## Bistro Application Proposal - EM

Please consider our application for a new Bistro License for 470 N.Old Woodward. With a bit of a story.

For over 6 years our restaurant Market North End has worked to provide quality, value and enjoyable guest experiences. We believe that our approach to the restaurant has succeeded in delivering a positive dining option in our town. We fit a niche, we meld with others in our area. We try to be responsive to our closest guests and meet and exceed their expectations. We love taking care of Birmingham residents.

There is no question that many long standing members of staff are the keys to those positive experiences. We are happy to say that the restaurant has developed many individuals, provided a livelihood for everyone involved. We see Market as a place that when staff commit to it...it rewards that commitment.

Twice daily our kitchen staff prepares an 'Employee Meal'. It is an opportunity for the Front of the House and the Back of House to relax and get ready for our guests that day/night. We allow the kitchen to do what they want. Anything goes. Comfort Food, Spicy Food, Indian Cuisine...we've had it. It has inspired new dishes that our guests have had, it often gets staff notes for hoping that items to be included in the regular rotation.

The real star of our meals is anything Mexican. When the guys (and girls) cook from their heart, when they share the items that are in their background, items their Mom's taught them, things that they enjoy...that's when you reach really great meals. It can really be a comforting result. There is a whole scene to this experience, keep in mind that the kitchen, has a few amenities that others may not have...in particular a very good music system. 11 current Market staff are 5+ years.

As a result of success at Market North End, and the people that have been able to develop, the expanded experience we propose would allow growth opportunity for our employees. We have a chance to create ways for senior staff to stay with our group, grow personally and professionally. It's the single most important part of repeating great guest experiences. We value that greatly. We think our guests do too. They tell us regularly.

We are proposing a complimentary option to the Market North District. Excited that the city has recognized this area as a significant region in our town...we are experiencing significant residential population growth that features remodeled single family homes, new condos, many existing apartments and some new ones to our north. The 'secret' of the North End is out: Really great guests that reward quality and value.

Introducing EM: featuring Mexican cuisine. Fresh, traditional, coastal in nature... think Al Pastor, Ceviche, Fresh Fish, Some twists, (did you know that there is a huge middle eastern influence in Mexico?) Very authentic. Our space is small in relation to most Bistros at 1000 sqft. It would feature an attractive exterior change to an older property in an evolving part of town. Visualize rustic, cozy environment. Mid priced...always a value. Expect a personal approach, to cook with 'Love of Food', cravable items that build repeat visits. Tequilas, Palomas, Margaritas. Lot's of Cervezas, friendly faces, and a quality of experience that has been missing in our area. Inspired by seaside Mexican villages; they all specialize in something. We will too.

Sincerely,

Kristin and Joe Bongiovanni



Kristin & Joe Bongiovanni - Owners and Operators

Market North End

474 N.Old Woodward, Birmingham MI 48009

6.5 years in business

O.W.L.

27302 Woodward Ave Royal Oak Mi 48067

4 years in business

Both of us grew up in the business, over 30 years working in the service industry.

Location is at 470 N.Old Woodward

Hours of Operation 12noon-12a Daily

We would hope to open as soon as safely allowed.

We are using personal funds for this project.



Kristin & Joe Bongiovanni - Owners and Operators

Market North End

474 N.Old Woodward, Birmingham MI 48009

6.5 years in business

O.W.L.

27302 Woodward Ave Royal Oak Mi 48067

4 years in business

Both of us grew up in the business, over 30 years working in the hospitality industry.

Location is at 470 N.Old Woodward

Hours of Operation 11a-1a Daily Outdoor Dining till 12a

We would hope to open as soon as safely allowed.

We are using personal funds for this project.

The Menu:

Raw Bar

Ceviche ( Fresh Fish, Scallops, Shrimp )

Agua Chiles ( Shrimps in Salsa )

Oysters

Grill

Pollo Carbone

Grilled Shrimp Macha

Carne al Pastore ( Pork, Chicken, Beef )

Tacos al Mexicana

Torta Shawarma ( Tacos Arabes )

Specialties

Albondingas (Meatball Stew)

Enchiladas

Whole Fish del Dia

Pozole



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## RE: EM Bistro Application

1 message

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**Darrell Dinges** <[darrell@ronandroman.com](mailto:darrell@ronandroman.com)>  
To: Jana Ecker <[jecker@bhamgov.org](mailto:jecker@bhamgov.org)>

Wed, Oct 28, 2020 at 1:22 PM

Jana,

To respond to the final open question (VLT for new façade glazing), we determined that the relocation of the door is such that we can simply re-use the existing glass. Therefore no new glass will be required.

Thank you,

Darrell J. Dinges, LEED AP

R O N A N D R O M A N, architects et al.

[275 East Frank Street](#)

[Birmingham, MI 48009](#)

248.723.5790

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**From:** Darrell Dinges <mailto:darrell@ronandroman.com>  
**Sent:** Friday, October 23, 2020 6:32 PM  
**To:** Jana Ecker ([jecker@bhamgov.org](mailto:jecker@bhamgov.org))  
**Subject:** RE: EM Bistro Application

Jana,

Please see responses in **red** below.

Any idea if the public meetings issue has been resolved?

Thank you,

Darrell J. Dinges, LEED AP

R O N A N D R O M A N, architects et al.

[275 East Frank Street](#)

[Birmingham, MI 48009](#)

248.723.5790

**From:** Jana Ecker <mailto:Jecker@bhamgov.org>  
**Sent:** Thursday, October 22, 2020 3:20 PM  
**To:** Darrell Dinges  
**Subject:** EM Bistro Application

Darrell,

I have several questions/comments on the EM submittal:

1. Application states 18 new lights under canopy. I do not see those marked on the plans and I do not see any spec sheets for the fixtures nor the required photometric plan;

Sorry for the confusion, we changed the lighting on the Façade Improvement and thought I'd picked up everywhere that we are simply keeping four (4) existing fixtures, and removing a group of eight (8) in the soffit above (as called out on the renderings on revised sheet A202).

2. Please send over the VLT specs on the first floor glazing;

Will send Monday.

3. Please send over the square footage of EM (inside only) and a sample menu of food choices and a description of the proposed ambiance (is it the same as proposed this past spring?);

Square footage of EM inside is 965 sf. Menu and Ambiance – forthcoming from Joe.

4. Please send over a roof plan with mechanical equipment;

Please see attached sheet A102 Roof Plan with New Equipment and Screenwall annotated.

5. Please mark trash receptacles in the outdoor dining areas or note if they are included in the "service" boxes; and

Yes, the boxes marked as Service include trash receptacles.

6. Please have Joe B. sign the bistro contract and send it back to me.

Will do.

Thank you. As always, feel free to contact me if you have any questions.

***Jana L. Ecker***

*Planning Director*

*City of Birmingham*

*248-530-1841*

**\*Important Note to Residents\***

Let's connect! Join the Citywide Email System to receive important City updates and critical information specific to your neighborhood at [www.bhamgov.org/citywideemail](http://www.bhamgov.org/citywideemail).

**CONTRACT FOR A PRINCIPAL SHOPPING DISTRICT LIQUOR LICENSE**  
**(BISTRO)**

This Contract is entered into this 27 day of October 2020 by and between Kristin Bonniwell whose address is 470 N. Old Woodward (Licensee) and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48012 (City).

**RECITALS:**

**WHEREAS**, Licensee wishes to obtain a liquor license pursuant to MCLA 436.1521a(1)(b); and

**WHEREAS**, local legislative approval is required by the **CITY OF BIRMINGHAM** for the issuance of a liquor license pursuant to MCLA §436.152a(1)(b) of the Michigan Liquor Control Code of 1998; and

**WHEREAS**, Licensee desires to enter into this Contract as an inducement to the **CITY OF BIRMINGHAM** to approve the request of the aforementioned issuance of the liquor license; and,

**WHEREAS**, the **CITY OF BIRMINGHAM** is relying upon this Contract in giving its approval to the issuance of the on-premises licenses as described herein.

**NOW, THEREFORE**, the parties agree as follows:

1. Licensee shall be permitted to obtain a liquor license for use solely at the Property. Any transfer of the aforementioned license from the Property to any other location in the **CITY OF BIRMINGHAM** shall require the approval of the Birmingham City Commission in accordance with Section 10-83. In addition, any expansion of the building location at the Property shall also require the approval of the Birmingham City Commission.
2. Licensee does hereby agree that it shall establish a bistro, as defined in Birmingham City Code Chapter 126, Zoning, Article 9, section 9.02, at the Property within 18 months from the date of Special Land Use Permit approval granted by the Birmingham City Commission. Licensee agrees that the bistro must be open and fully operational within this time period, or approval of the Special Land Use Permit will automatically be revoked by the City.
3. Licensee further acknowledges that it must secure a special land use permit for a bistro as required by the Birmingham City Code. It is further agreed that it shall comply with all provisions of the special land use permit, or any amendments thereto, as a condition of this contract. Licensee further acknowledges and agrees that a violation of any provision of the special land use permit or the Michigan Liquor Control Code is a violation of the terms of the contract entitling the City to exercise any or all of the remedies provided herein.
4. Licensee acknowledges that no modifications to the site plan, floor plan, elevations or operation of the bistro may be made unless approved by the City Commission through a Special Land Use Permit Amendment as required in the Zoning Ordinance. Modifications include, but are not limited to, name changes, ownership changes, remodeling, changes in the number of interior or exterior seats, the use of eisenglass and other enclosure materials on any outdoor dining area, relocation or addition of bar, etc.
5. Licensee acknowledges that it shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance, and further agrees to resolve any future parking issues that may arise, including but not limited to parking overflow and encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit may be cancelled by the City Commission.
6. License further acknowledges that outdoor dining is seasonally permitted from April 1st through November 15<sup>th</sup> only, with a valid Outdoor Dining Permit. The use of an enclosure system(s) does not allow the outdoor dining season to be extended.

is further agreed that there shall be no change, modification, or alteration hereof, except in writing, signed by both of the parties hereto. Neither party shall assign any of the rights under this contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

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

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

Date: \_\_\_\_\_

CITY OF BIRMINGHAM

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

Pierre Boutros, Mayor

Date: \_\_\_\_\_

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

Alexandra Bingham, City Clerk Designee

Date: \_\_\_\_\_

**DESIGN REVIEW BOARD  
MINUTES OF JULY 1, 2020**

Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the Design Review Board ("DRB") held Wednesday, July 1, 2020. Chairman John Henke called the meeting to order at 7:36 p.m.

**1) ROLLCALL**

**Present:** Chairman John Henke; Vice-Chairman Keith Deyer; Board Members Gigi Debbrecht, Natalia Dukas, Michael Willoughby

**Absent:** Board Members Patricia Lang, Joseph Mercurio; Alternate Board Member Alexander Jerome

**Administration:** Nicholas Dupuis, City Planner  
Laura Eichenhorn, Transcriptionist

Chairman Henke thanked everyone for joining the virtual meeting and reviewed protocol for virtual meetings.

**07-43-20**

**2) Approval Of Minutes**

**Motion by Mr. Willoughby**

**Seconded by Ms. Dukas to approve the DRB Minutes of June 3, 2020 as submitted.**

**Motion carried, 5-0.**

VOICE VOTE

Yeas: Willoughby, Dukas, Debbrecht, Deyer, Henke

Nays: None

**07-44-20**

**3) Public Hearing**

None.

**07-45-20**

**4) Design Review**

**A. 470 N. Old Woodward – Facade Update**

City Planner Dupuis reviewed the item. Roman Bonislowski and Joseph Bongiovanni were present on behalf of the application.

Mr. Deyer asked why it was being called a pergola rather than an awning. He opined that the suspension wires coming down from the top were essentially a design element. He also voiced concern that the pergola may not be able to withstand inclement weather given the way it would lay.

Mr. Bonislowski said the ties that hold up the canopy structure were intended as a design component. He said that there are scalloped pieces that would go into the pergola that would drain during inclement weather onto the sidewalk. Mr. Bonislowski confirmed that the pergola was designed with to meet the loading requirements. He expressed confidence in both the aesthetics and engineering of the design.

Mr. Willoughby said he liked the design.

Ms. Debbrecht said she also liked the design.

Ms. Dukas said she agreed with Mr. Deyer that the design seemed to be more of an awning than a pergola. She said she had concerns about the longevity of the scallop design in terms of maintenance.

Chairman Henke told the Board that an approval of these designs would require the building owner to maintain the pergola.

Mr. Willoughby noted that two aspects of the design would protect the pergola from rapid deterioration: that the pergola was designed to drain water onto the sidewalk, and that the upper roof area of the building actually would protect the pergola from inclement weather. He said he was fully supportive of the application.

**Motion by Mr. Willoughby**

**Seconded by Ms. Debbrecht to approve the Design Review application for 470 N. Old Woodward with the following conditions:**

**1. The Design Review Board approves the suspended steel pergola to project into the right-of-way.**

**Motion carried, 5-0.**

VOICE VOTE

Yeas: Willoughby, Debbrecht, Dukas, Deyer, Henke

Nays: None

**B. 1740 W. Maple – Holiday Market Select – Façade Renovations**

City Planner Dupuis presented the item. Jason Krieger was present on behalf of the application.

In reply to Mr. Willoughby, Mr. Krieger said the roof could be painted black to draw less attention to it.

**REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, OCTOBER 28, 2020**

**G. Special Land Use Permit (SLUP) and Final Site Plan and Design Review**

**1. 470 N. Old Woodward, EM Bistro (Former Red Salon)** – Request for a Special Land Use Permit to consider approval of a new bistro EM (Employee Meal).

PD Ecker reviewed the item.

Chairman Clein asked why the Planning Board was being asked to perform this review when the exterior changes were already approved by the Design Review Board (DRB).

She explained that since applicant knew they had to change the facade and install ductwork before they had decided on an interior use, they sought approval from the DRB first for those changes. When the applicant subsequently decided to pursue a bistro use for the interior, the need for the present SLUP and final site plan and design review by the Planning Board resulted.

Chairman Clein stated he was not implying that there was anything untoward about the process, only commenting that it was unusual.

In reply to Mr. Williams, PD Ecker said EM Bistro would pay a rental fee for any public property leased from the City, would have to enter into a license agreement with the City, would have to receive an outdoor dining permit, and would pay for the value of the parking space used in front of their building. Those conditions would be part of the signed contract with the City.

Darrell Dinges, architect for the project, said the rails that extend into the parking space would be removed when the Trex deck in the parking space is removed at the end of the outdoor dining season.

Mr. Boyle expressed concern that the four lavatory stalls would not be sufficient for the combined seating capacities of EM Bistro and Market North which could total up to 219 people indoors and out.

Mr. Dinges confirmed that the seating-lavatory ratio meets the requirements of the Building Code.

PD Ecker confirmed for Mr. Share that the Building Department would review the height and solidity of the outdoor dining railings to make sure they meet all requirements. She confirmed that it would be the Planning Board's province to approve or disapprove of the aesthetics of said railings.

In reply to Chairman Clein, PD Ecker confirmed that if the Planning Board recommended the railings for aesthetic approval this evening, and the Building Department then disapproved of the sturdiness or height of the railings, then the applicant would have to submit revisions of their plans for the railings.

Chairman Clein noted the Planning Board could possibly permit those changes to be administratively approved if it came to that.



Mr. Williams shared concern that the rails in the parking space were too close to the adjacent parking space and could cause damage to vehicles. He said it should be set back and that perhaps another juniper could be placed there instead.

Mr. Dinges talked the Board through the style of the proposed bistro chairs and table bases, a sample of the wooden table top, and the design of the bench that would run along the window of the interior of the restaurant. The bench will be custom built from stained wood that will match the stained wood of the tables.

Joe Bongiovanni, co-owner, thanked the Board for reviewing the project. He reviewed the letter he and his wife Kristin submitted as part of the bistro application proposal, which can be found in this meeting's agenda packet. He acknowledged the impact Covid-19 is having on the restaurant business, and stated he was aware that takeout food quality and service would be more important to many customers for the next number of months than ambiance would.

In reply to Board comments, Mr. Bongiovanni said:

- There were some options available to ensure adequate lavatory space including possible upstairs lavatories.
- EM Bistro would be using its own kitchen facilities and not those of Market North End.
- The railing in the parking space could be adjusted so as to minimize potential conflict with adjacent vehicles.

Seeing no further Board discussion, Chairman Clein invited public comment.

Susan Hall said she lives behind Market North End, and listed the following concerns:

- The speed of traffic in the neighborhood, which could be increased by increased traffic to EM Bistro.
- Potential traffic congestion in the neighborhood late at night stemming from the bistro, particularly on weekend evenings.
- Rodent problems in the neighborhood which may be stemming partially from the operation of restaurants nearby.

Ms. Hall stated she enjoys the Bongiovannis' restaurants in general, but wanted to know what could be done either by the City or the owners to address her concerns.

PD Ecker said at this time the City has no plans to change the traffic patterns through the adjoining little San Francisco neighborhood or to introduce traffic calming measures. She encouraged Ms. Hall to contact the Birmingham Police to report her concerns. PD Ecker said the Police Department would then look into possible increased enforcement or other potential safety measures, including possible multi-modal improvements.

Chairman Clein asked Mr. Bongiovanni if there was anything more he could do as the operator to assuage Ms. Hall's concerns.

Mr. Bongiovanni said he has the most influence over the behavior of the restaurant's vendors and suppliers, and that they work to make sure those individuals travel through the neighborhood

safely. He stated that over the past three years Market North End has been working diligently to increase its security in terms of unruly or intoxicated guests. Mr. Bongiovanni said he has also been shocked sometimes at the vehicle speeds through the neighborhood and said he is sympathetic to the concern. Regarding rodent control, he said his businesses are very aggressive about maintaining the area around them to minimize the issue as much as possible. He noted that issues with rodents appear in neighborhoods throughout the City. As part of the efforts towards minimizing rodent issues, he stated that the dumpster outside the restaurant is emptied every day. Mr. Bongiovanni said he believes that the most important guest of any of his restaurants is the guest that lives closest. As a result, he said he prioritizes making the area around his restaurants pleasant for the neighbors, both in order to be a good neighbor and in order to do good business.

Mr. Williams agreed with PD Ecker's recommendation that residents concerned about vehicle speeds reach out to the Police Department for a further discussion.

Mr. Bloom raised concerns about potential lack of parking in the area if this bistro is approved given the other popular bistros and restaurants nearby.

Paul Reagan said he thought the Planning Board should deal with the concerns about traffic speeds, and that tasking Ms. Hall with contacting another City department was an insufficient response to her concerns. He echoed Mr. Bloom's concerns about there being sufficient parking. He also said the Board should be focusing more on the potentially insufficient lavatory space instead of on the stylistic designs of the furniture or interior.

Seeing no further public comment, the discussion was returned to the Board.

PD Ecker notified the Board that since the present meeting's agenda packet went out she has received 16 letters in support of EM Bistro and two letters against. She listed the authors as Brian Najor, Michael Brennan, Melissa Erkelani, Christina Bajaj, Claudia Dekai, Brook Shaw, Amy Gooch, Jeffrey Clarke, Tran Grider, Jeff Delaney-Lehrer, Jeff Sakwa, Craig Karamanian, Kelly Richardson, Mike Richardson, John Locker, Kevin Denha, Jason Scott, Jon Miller, and Natalie Gaeda.

Mr. Williams suggested that if there were only two letters opposed it could be helpful to hear the content of those letters.

PD Ecker read the letters in opposition to EM Bistro, written by Brian Najor and Kevin Denha. In summary, Mr. Najor stated:

- The Bongiovannis already have three bistros in the north end and that another could create a monopoly.
- The City had recently raised concerns about a different owner creating a monopoly situation with their restaurants and an application by that owner was denied as a result.
- If the application for EM Bistro is approved, the City should not cite bistro saturation in the north end as a reason for disallowing other applicants from opening bistros in that area.
- The application for EM Bistro should be denied.

In summary, Kevin Denha stated:

- He was also concerned that the Bongiovannis were creating a monopoly in the area.

- To deal with potential parking difficulties resulting from an increase in traffic to and from EM Bistro, the Bongiovannis should consider providing employee parking by renting parking spaces from businesses with their own dedicated lots.
- If the application for EM Bistro is approved, then more bistros should be allowed in the north end.

PD Ecker stated that 470 N. Old Woodward is located in the Parking Assessment District, which means the applicant is not required to provide parking.

In reply to Mr. Jeffares, PD Ecker confirmed that Mr. Najor has recently has applications for two bistros before the City Commission, one of which was moved forward and one of which was denied. The Commission said they did not want two applications moving forward at the same time from the same investor.

Mr. Jeffares said he also wanted to assure the public that issues with speeding vehicles and rodents are not unique to the little San Francisco neighborhood. He said both were an issue in his neighborhood as well. Mr. Jeffares opined it would be helpful to residents if the City were writing more speeding tickets as a deterrent.

Mr. Williams said the preceding comments indicated why the City must deal with parking as an aspect of its master planning process, and stated that it would be a mistake not to. He said it was also important that the comments about speeding vehicles be minuted, and stated that even in his neighborhood on the west side there were often vehicles traveling at excessively high speeds. He said it was important that the City Commission and Birmingham Police Department be made aware of these issues both through these minutes and through residents showing up to Commission meetings to talk about it. Mr. Williams said that the fact that residents throughout the City have concerns about speeding vehicles shows that the issue is not specific to the area around the Bongiovannis' businesses.

Mr. Bongiovanni asked to make a clarifying comment, which Chairman Clein permitted. Mr. Bongiovanni explained that he and his wife own Market North End, and Salvatore Scallopini and Luxe were owned by his father, who passed about 18 months ago. He said that there was a familial relation, but not an ownership one. Mr. Bongiovanni asked the Planning Board and the Commission to recognize that his family has worked hard to provide this area of the City three distinct restaurants that serve the neighborhood's needs. He said that the family has not marketed their restaurants as being part of one entity, and that it has been important to them to keep the establishments separate. Mr. Bongiovanni concluded by saying it has been a pleasure to serve Birmingham through Market North End thus far, and that he wants to continue to create great food and experiences with EM Bistro. He thanked the City for its support to date of the Bongiovannis' endeavors.

Mr. Boyle said he applauds the work done by the Bongiovanni family and said that the bistros it runs have met the goals Birmingham set out for the north end 14 years ago. He said he concurred with previous comments that the City must also be careful about not packing too much into that area, and should think further about mitigating the parking concerns. Mr. Boyle said the City should find better ways, for instance, to use its technology to publicize the fact that the parking decks are virtually empty in the evenings and should be utilized by restaurant-goers. Mr. Boyle

continued that adding a small, specialized bistro to the area would be appropriate providing that the City provides the area the support it needs.

Mr. Jeffares said there are some restauranteurs that operate reliably good restaurants, and that the Bongiovannis are one such group.

**Motion by Mr. Boyle**

**Seconded by Mr. Jeffares to recommend approval of the Final Site Plan to the City Commission to permit a bistro license for EM at 470 N. Old Woodward with the condition that the following items be provided prior to the hearing at the City Commission:**

- 1. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license;**
- 2. Provide the proposed hours of operation for EM Bistro;**
- 3. Submit a roof plan and specification sheets on the proposed rooftop mechanical equipment and screening;**
- 4. Clarify how they intend to manage trash, and if they intend to share the existing dumpster behind Market North End, and verify receptacles in the outdoor dining areas;**
- 5. Provide specification sheets for the proposed outdoor furniture; and,**
- 6. The applicant comply with the requests of all City departments.**

Ms. Whipple-Boyce noted that the outdoor bench will be custom built, and said that while the City could expect a drawing of the bench they would not likely get a more formal specification sheet for that item. She said she just wanted it noted in regards to condition five of the motion so there was no confusion later on.

Mr. Williams said the contract referenced in condition one should indicate that the benches and rail will be moved further away from the adjacent parking space on the street.

Mr. Share noted that many of the concerns raised by the residents during public comment are problems that come with success. He concurred that the City needs to work on managing those issues. He encouraged business owners and restauranteurs to cooperate with the City to see what options may exist for further mitigation of those concerns. He said it would have been better if the applicant had more specific ideas regarding how they would endeavor to reduce those issues for the neighbors. Mr. Share said he was ultimately supportive of the project because the City wants to keep that area of town vibrant, because it is a good project, and because its modest size will not add too much to the area.

Replying to previous concerns raised by Mr. Boyle and Mr. Reagan, Mr. Dinges commented that the four lavatory stalls accommodate 300 people according to the Building Code.

**Motion carried, 7-0.**

**ROLL CALL VOTE**

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

Nays: None

**Motion by Mr. Jeffares**

**Seconded by Mr. Share to recommend approval of the SLUP to the City Commission to permit a bistro license for EM at 470 N. Old Woodward with the condition that the following items be provided prior to the hearing at the City Commission:**

- 1. A signed contract with the City that must be fully executed upon approval of the SLUP and bistro license;**
- 2. Provide the proposed hours of operation for EM Bistro;**
- 3. Submit a roof plan and specification sheets on the proposed rooftop mechanical equipment and screening;**
- 4. Clarify how they intend to manage trash, and if they intend to share the existing dumpster behind Market North End, and verify receptacles in the outdoor dining areas;**
- 5. Provide full lighting details for any proposed exterior lighting;**
- 6. Provide specification sheets for the proposed outdoor furniture; and,**
- 7. The applicant comply with the requests of all City departments.**

**Motion carried, 7-0.**

**ROLL CALL VOTE**

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

Nays: None

Chairman Clein told Mr. Bongiovanni to take the comments from the residents to heart.

Mr. Bongiovanni assured the Planning Board that he would. He shared his gratitude for City staff's work on this item and for the Board's and residents' support.

October 23, 2020

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

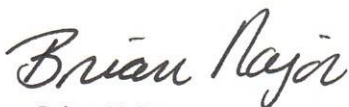
Dear Jana,

I am writing to express my concern regarding the proposed Special Land Use Permit and Final Site Plan & Design Review for a new Bistro at 470 N. Old Woodward, Birmingham. The owners already have Three (3) Bistros in the North End of Birmingham and this seems to be creating a monopoly. In the not too distant past concern has been raised by the Planning Commission about owners creating a monopoly situation, and the applicants were denied. It is my view that the Planning Board should not approve this application, nor should it have been forwarded to the planning commission for consideration.

Furthermore, if the planning commission decides to approve, then additional Bistro's on the North End of town should not be prejudiced against as having "too many" Bistros in this market. In fact, there should be a condition that other Bistros be allowed to open. I respectfully request your and the Planning Board's response to be to decline the plans for this Bistro.

Thank you for your consideration.

Sincerely,



Brian Najor  
Maplewood Office Park - 600 N. Old Woodward  
344 Building - 344 N. Old Woodward

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## Market North End

1 message

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**Michael Brennan** <mbrennanconsulting@gmail.com>

Wed, Oct 28, 2020 at 12:17 PM

To: jecker@bhamgov.org

Hi Jana

My name is Mike Brennan and I reside at 1003 N Old Woodward.

I am writing to express my support for the initiative that the owners of the Market North End Restaurant are proposing in the space next to their restaurant.

Thank you

Mike



Jana Ecker <jecker@bhamgov.org>

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**(no subject)**

1 message

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**Alisa Ercolani** <alisaercolani@gmail.com>

Wed, Oct 28, 2020 at 10:19 AM

To: Jana Ecker <Jecker@bhamgov.org>

Good morning Jana. My name is Alisa Locker. I reside at [570 Aspen Road](#) in Birmingham. The reason for this email is to express my opinion as a Birmingham resident for 20 years. I love Market North End. I feel the owners have done an incredible job with the menu and vibe, promoting business in that area and offering something other than a steakhouse. I 100% fully support a new restaurant opening at 470 North Woodward. I feel the North End of Birmingham needs an additional unique, neighborhood feel restaurant to keep our community connected.

Sincerely,  
Alisa Locker

Cell # 248 765 5622





Jana Ecker <jecker@bhamgov.org>

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## Market North End Restautant

1 message

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**Christina Bajaj** <cbajaj19@aol.com>

To: jecker@bhamgov.org

Wed, Oct 28, 2020 at 1:05 PM

Hello Jana

My name is Christine Bajaj, and I live at 1003 North old Woodward ave, and I am in favor of the proposal by Market North End restaurant owners.

Best Regards

Christine Bajaj

Sent from my iPhone



Jana Ecker <jecker@bhamgov.org>

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**(no subject)**

1 message

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**Claudia Dekhi** <claudiadekhi@gmail.com>

Tue, Oct 27, 2020 at 4:14 PM

To: Jana Ecker <Jecker@bhamgov.org>

Hi Jana,

My name is Claudia Dekhi & I live in Birmingham in close proximity to Market North End. I'm happy to hear about the new restaurant opening nearby at [470 N Old Woodward](#). I think the owners are great people & do an amazing job. Looking forward to seeing their new venture.

Best Regards,

Claudia Dekhi

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Claudia Dekhi

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**470 N Old woodward.**

1 message

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**Brooke Shaw** <brookeeshaw@hotmail.com>  
To: "jecker@bhamgov.org" <jecker@bhamgov.org>

Tue, Oct 27, 2020 at 12:07 PM

Good afternoon,

Hi I wanted to reach out as a resident at 1279 Washington Blvd 48009. We lived at 2316 Windemere prior to building on Washington. Love this city and wanted to be closer to restaurants that we can walk to so we moved closer to town. My son rode his bike to see Santa last year!!  
I would love to see more restaurants towards the north side of town.  
We enjoy the north side of town walking to the restaurants with our 3 kids.  
I'm a small business owner myself and love to see cities have success with pro business efforts.  
If you would like to talk further my cell is below.

Best,

**Brooke Geisz**  
Owner  
Goldfish Swim School - Carrollton

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4240 International Pkwy Suite 130, Carrollton, TX 75007  
O: 972-440-3003 | C: 248-840-9050  
[www.goldfishswimschool.com](http://www.goldfishswimschool.com) | [Like US on Facebook!](#)

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## Bongioanni Restuarant Opening

1 message

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**Amy Gooch** <akgooch@gmail.com>

To: jecker@bhamgov.org

Tue, Oct 27, 2020 at 3:47 PM

Hello Jenna,

I am a Birmingham resident who enjoys frequenting local restaurants and shopping downtown. I would like to express our excitement for the new restaurant Joe and Kristin Bongiovanni are planning to open next to Market. In difficult economic times it is great news to see an owner investing in our community and bringing a Mexican food option to Birmingham.

Thank you,

Amy Gooch  
[911 Brookwood St](#)  
[Birmingham, MI 48009](#)



Jana Ecker <jecker@bhamgov.org>

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## Market North End

1 message

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**Jeffrey M Clarke** <clarkejm@torchlake.com>

Tue, Oct 27, 2020 at 5:03 PM

To: Jecker@bhamgov.org

Ms Ecker, I am writing in support of the proposal by the owners of Market North End for a “new concept” in the adjoining retail space. As nearby residents in the Little San Francisco neighborhood, we are frequent and enthusiastic supporters of our nearby restaurants and will welcome a new addition.

Jeffrey M Clarke  
263 Ravine Road  
Birmingham MI 48009  
248-723-5991



Jana Ecker <jecker@bhamgov.org>

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## New Restaurant at 470 North Old Woodward

1 message

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**Trang Grider** <tmle88@gmail.com>

To: jecker@bhamgov.org

Tue, Oct 27, 2020 at 1:31 PM

Hello Ms. Jana Ecker,

I would like to express my excitement for a new Mexican restaurant coming to Birmingham. I think there should be a greater variety of cuisines in the city so we, as Birmingham residents, do not have to travel far to enjoy. Plus, it's always great to support restaurants and establishments in the city we live in.

Thank you,  
Trang Grider

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## New restaurant in Birmingham near my house

1 message

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**Jeff DeLamielleure** <delajd@sbcglobal.net>  
To: "jecker@bhamgov.org" <jecker@bhamgov.org>  
Cc: Carol Delamielleure <carolsdela@gmail.com>

Tue, Oct 27, 2020 at 4:47 PM

Ms. Ecker:

Hello. My wife and I are writing to express our support for the new restaurant being proposed on Old Woodward next to Market North. We live right at the corner of Brookside and Ravine. We really appreciate having restaurants in walking distance of our house, and we have never had any negative incidents related to the restaurants in our area. Also we recognize and appreciate the jobs and tax revenue that a new business would bring to the city. We are all for another restaurant in the neighborhood. We hope you will approve the request.

Sincerely,

Jeff and Carol DeLamielleure  
532 Brookside  
Birmingham

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## New Restaurant

1 message

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**Jeff Sakwa** <jsakwa@noblerealty.com>  
To: "Jecker@bhamgov.org" <Jecker@bhamgov.org>

Tue, Oct 27, 2020 at 3:47 PM

My name is Jeff Sakwa and I live in the Dakota 280 Harmon #290 and I am full support of the venture next to market. Their food and service at current locations is excellent and having a bigger variety will be a nice addition for all of us who live downtown.

Sent from my iPhone





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## Restaurant - 470 North Old Woodward

1 message

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**Karamanian, Craig** <ckaraman@haartz.com>

Tue, Oct 27, 2020 at 12:50 PM

To: "jecker@bhamgov.org" <jecker@bhamgov.org>

Good afternoon

The purpose of this correspondence is to show support for the planned (new) restaurant at [470 North Old Woodward](#). As a long time Birmingham resident, my family has enjoyed the benefits restaurants bring to our beautiful city – togetherness, a time to talk without distractions, laughter and of course excellent food!

We've enjoyed Market and the North end restaurants for years and hope more opportunities arise for this area. Please consider this note as ABSOLUTE SUPPORT for this restaurant and future establishments in this area.

Best regards,

Craig and Gina Karamanian

[972 Pleasant Street](#)

[Birmingham, MI 48009](#)

(248) 535-3939

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## Support FOR 470 North Old Woodward

1 message

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**Richardson, Kelli** <kelli.richardson@atos.net>

Tue, Oct 27, 2020 at 1:22 PM

To: "jecker@bhamgov.org" <jecker@bhamgov.org>

Hello Joe,

I have been a Birmingham resident for almost 20 years. I currently own two properties—  
2287 Windemere and [181 Westchester Way](#). I am compelled to write and ask for your consideration.

I write in support of the new restaurant being requested for approval tomorrow at the site of 470 North Woodward.  
We love Market, the owners of Market and the commitment they have made to Birmingham, and the gap this new (excellent) restaurant  
would fill on the north side of town!!

I certainly hope that you and the board agree and approve their request tomorrow!

All my best,

Kelli Richardson

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### Kelli Richardson

Birmingham Resident and advocate for growth

M: +1 (248) 385-761-5420

[181 Westchester Way, Birmingham, MI 48009](#)

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**Support for 470 Old Woodward**

1 message

**Mike Richardson** <mtr17is@yahoo.com>

Tue, Oct 27, 2020 at 1:09 PM

To: "jecker@bhamgov.org" &lt;jecker@bhamgov.org&gt;

Good Afternoon,

Everyone loves Market!

I lived on Windemere in Pembroke Park for 17 years before moving to Westchester Way 3 years ago. My wife and I love Birmingham and specifically the restraints in town. I understand the owners of Market North End are trying to open a restraint at [470 Old Woodward](#)? Where do we sign up? My family and friends could not be more excited!!!

Everyone loves Market!

Look no further than Market as THE Birmingham restaraunt experience for both "locals" and "not so locals. This is no exaggeration. People come to Birmingham because of Market. The people of Birmingham need to back this "restaurant group" as they help improve the north side of town, continually elevating Birmingham in terms of restaurants and night life experience, Have a great day!

Thanks,

Mike Richardson  
248-495-2145

[181 Westchester Way](#)  
[Birmingham, MI 48009](#)

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## 470 North Old Woodward Restaurant

1 message

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**John Locker** <john@jlmedicalsolutions.com>

Wed, Oct 28, 2020 at 1:25 PM

To: "jecker@bhamgov.org" <jecker@bhamgov.org>

Jana,

My name is John Locker and I live at 570 Aspen Road in Birmingham. My family and I have lived in Birmingham for over 20 years. We fully support the need for more restaurants at the North End of Birmingham. The group that owns the Market have brought a wonderful dining experience to our city. This is a unique dining place for families to dine as well as adults to gather with friends. This project has our full support.

John Locker  
570 Aspen Road  
Birmingham, MI  
48009  
248 563-3030

Sent from my iPhone



October 22, 2020

CITY OF BIRMINGHAM  
ATTN: JANA ECKER  
151 MARTIN ST  
BIRMINGHAM, MI. 48009

RE: BISTRO PROPOSAL 470/740 N. OLD WOODWARD/FORMER RED SALON

Dear Mrs. Ecker,

I am writing to express that I am strongly opposed to this new Bistro. I am the owner of two properties that are very close to the proposed new Bistro. 574 N. Old Woodward and 700 N. Old Woodward. The Ownership Group for this application already owns 3 Bistros in this area and seems to be creating a monopoly.

Moreover, there are no Parking Passes at all for existing or potential tenants in my buildings as well as other office/commercial property owners. How can I lease space out with no parking passes to offer new potential tenants as well as existing tenants

Has the applicant researched or tried to possibly look at leasing parking spaces for their employees with office building owners in the area that have their own dedicated parking lots? There are many in the immediate area on Woodward Ave.

Furthermore, if this application is approved, then more Bistros should be allowed in the North End of town as well

Thank you for your consideration,

Sincerely,

A handwritten signature in blue ink, appearing to be 'Kevin Denha'. Below the signature, the name 'Kevin Denha' is printed in a black, sans-serif font.

Kevin Denha



Jana Ecker <jecker@bhamgov.org>

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## 470 N.Old Woodward

1 message

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**Jason Scott** <jmaascott@comcast.net>

Tue, Oct 27, 2020 at 8:01 PM

To: jecker@bhamgov.org

Hello Janet Ecker/Birmingham planning board- I would like to voice my support for a new restaurant opening on the north end of Birmingham. I'm a Quarton Lake resident that frequents the restaurants that the petitioners are currently operating and welcome a new addition to our neighborhood.

MARLO SCOTT  
JASON SCOTT  
1030 Lakeside Dr.

**scottqualityhomes**

**248-343-2962**

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## 470 North Old Woodward

1 message

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**Natalie Gaida** <natalie.gaida@gmail.com>

To: jecker@bhamgov.org

Tue, Oct 27, 2020 at 8:55 PM

Dear Ms. Ecker,

I am writing on behalf of the proposed restaurant at 470 North Old Woodward. My husband and I, both long time residents of Birmingham feel that the restaurant is vital to the development and diversity of the north end of Birmingham. Market, owned by the same restaurant group, has introduced a more casual dining vibe that the city has so desperately needed. I understand that the project at 470 will also operate in the same realm. Good food, good service, and good atmosphere! My family, along with our other Birmingham friends and neighbors, are excited about a new restaurant in the north end of town!

Sincerely,

Natalie and Brad Gilling

2107 windemere  
Birmingham, MI 48009

Sent from my iPhone



---

## Support for Bistro at 470 N. Old Woodward

1 message

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**John Miller** <jnmillerstudio@gmail.com>

Mon, Oct 26, 2020 at 11:30 AM

To: jecker@bhamgov.org

Jana Eckker  
Planning Director,

I would like to express my enthusiastic support for the proposed Bistro at [470 Old North Woodward](#). I live within 300ft of the proposed site and feel that this is a perfect location for this type of establishment and will be an exciting addition to our neighborhood!  
Being next to 'Market' and with the extra setback for outdoor dining in front, this building will be perfectly suited for the proposed use.  
Our urban/residential area has a wonderful close-in-town vibe to it, and this will enhance both the value and ambience of the our Ravines neighborhood.  
Being so close to hustle and bustle of city restaurants and commercial activity has always been a strength of our neighborhood.

John N. Miller  
544 Brookside Ave.  
Birmingham



## MEMORANDUM

Clerk's Office

**DATE:** December 7, 2020

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

**FROM:** Leslie Pielack, Museum Director

**SUBJECT:** Birmingham Museum Proposed Collections Policy

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A collection policy is an integral document utilized by museums, libraries, and archival institutions to specify the nature of the organization's collection and the policies needed to provide for its management, care, and intended use. The Birmingham Museum lacks a formal Collections Policy to provide clear guidance on matters relating to its artifact collection for the benefit of the City and the public.

### BACKGROUND:

The care and maintenance of the objects in the Birmingham Museum collection is a significant part of the museum's role. The artifacts in the museum's collection are the property of the City of Birmingham, held by the museum on behalf of the City in the public trust. A clear policy that establishes the objectives for collecting, tracking, storing, exhibiting, loaning, and removing artifacts is needed to ensure that collection activities are being conducted in the best interest of the City and the public and to provide continuity in museum operations. Important elements of a collection policy are detailed below.

- **Accession and de-accession process.** When an object is accepted (accessioned) into a museum's permanent collection, it should meet the objectives of the museum's mission and other requirements to ensure that it is appropriate and can be cared for according to best museum practices and available resources. Records need to be maintained regarding the donation, transfer of ownership, and other related information. After accession, an object's status may change so that it is no longer appropriate for the collection. This can occur because of damage, discovery that it is inauthentic, or a wide range of other circumstances that would make de-accession of the item beneficial or necessary. A formal de-accession policy ensures that removal of an object is carefully considered through multiple levels of review according to ethical and professional standards. In the case of the Birmingham Museum, this would proceed through Museum Subcommittee and Museum Board review, with final authority resting with the City Commission. De-accession should therefore be specified as part of a written collections policy.
- **Clarification of the financial status of collection items as non-capitalized.** The vast majority of items in the Birmingham Museum collection have historical value rather than market value—for example, photos, documents, letters, and related personal items—which are valuable for cultural and mission-related reasons

rather than as capital assets. However, a small group of objects in the Birmingham Museum collection have an estimated market value of \$5,000 or greater, and in accordance with general accounting principles and for insurance purposes, would be treated as capital assets and tracked as provided in the policy.

- **Restriction of proceeds from the sale or disposal of a museum collection.** Museum best practices recommend that any proceeds from sale of a collection object be restricted and used solely for the enhancement or improvement of the collection. This practice protects the collection from degradation and sale in order to pay debt, for instance, in keeping with the interests of the public trust, and is another important part of a written collection policy. This approach also governs instances in which donated items not accessioned into the collection can be sold and the revenues used only for collection purposes as provided for in the policy.
- **Loan conditions.** A museum collection policy typically covers the conditions under which loans of objects can occur, and clarifies the requirements for insurance and care when collection objects are loaned to another institution.

#### **LEGAL REVIEW:**

The document was reviewed by the City Attorney's office on November 5, 2020, in preparation for the Museum Board's review.

On December 1, 2020, the Museum Board voted 6-0 to approve the Collections Policy as presented, and to forward it to the City Commission for final consideration.

#### **FISCAL IMPACT:**

None.

#### **SUMMARY**

Establishing a collections policy is an important step in ensuring that the Birmingham Museum's collection activities are undertaken in the best interest of the City and the community. A formal written document provides needed guidelines that reflect professional museum standards to maintain the collection appropriately and in accordance with the museum's mission. It details the steps and levels of authority necessary to properly manage the collection and maintain its quality and significance for the benefit of the public now and in the future.

#### **ATTACHMENTS:**

1. Excerpt of draft minutes of the Museum Board meeting of December 1, 2020
2. Proposed Birmingham Museum Collections Policy

#### **SUGGESTED RESOLUTION:**

To accept the proposed Birmingham Museum Collection Policy.



**CITY OF BIRMINGHAM  
MUSEUM BOARD  
VIRTUAL MEETING  
December 1, 2020  
5:00 PM**

Members Present: Russ Dixon, Pat Hughes, Judith Keefer, Tina Krizanic, Marty Logue, Caitlin Rosso

Members Absent: None

Administration: Museum Director Leslie Pielack

Guests: None

Ms. Krizanic called the meeting to order at 5:00 PM.

**Approval of the Minutes  
Minutes of November 5, 2020**

**MOTION:** by Dixon, seconded by Logue:

To approve the minutes of November 5, 2020 as amended.

**VOTE:** Yeas, 6  
Nays, 0

**New Business**

A. Members reviewed the draft Birmingham Museum Collections Policy.

**MOTION:** by Keefer, seconded by Dixon:

To approve the proposed Birmingham Museum Collections Policy and to recommend that it be presented to the City Commission for final acceptance.

**VOTE:** Yeas, 6  
Nays, 0

**Communication and Reports**

Director Pielack reviewed the Director Report and clarified the project scope of work for the upcoming Allen House windows RFP.

There were no member comments.

There were no public comments.



# BIRMINGHAM MUSEUM

## COLLECTIONS POLICY

December 2, 2020



### Museum Board

Tina Krizanic, Chair  
Russ Dixon  
Pat Hughes  
Judith Keefer  
Marty Logue  
Caitlin Rosso

### Reviewed

Museum Board: 12/1/2020

City Commission:

## TABLE OF CONTENTS

I.	Purpose and Scope	2
	Mission Statement	
	Description of the Collection	
	Historic Landscape and Buildings	
II.	Collections Ethics & Accepted Museum Standards	4
	The Birmingham Museum Statement of Ethics	
	Capitalization of Collections; Birmingham Museum Statement on Capitalization	
III.	Governance and Responsibility	6
	Museum Board	
	Collections Subcommittee	
	Levels of Authority	
	Collections Policy Review	
IV.	Acquisition and Accession	8
V.	Deaccession	9
VI.	Loans	11
ATTACHMENT 1	Terms and Definitions	
ATTACHMENT 2	Deed of Gift	
ATTACHMENT 3	Deaccession Record	
ATTACHMENT 4	American Association of Museums Code of Ethics	
ATTACHMENT 5	American Association of State and Local History Position on Non-Capitalization of Collections	

## I. PURPOSE AND SCOPE

The purpose of this document is to describe the nature of the collections at the Birmingham Museum and the policies needed to provide for their management, care, and intended use on behalf of the public. As conditions and requirements change, this document may be amended through a review process, as provided for in **Section III: Governance**.

### A. Mission Statement

The Birmingham Museum will explore meaningful connections with our past, in order to enrich our community and enhance its character and sustainability. Our mission is to promote understanding of Birmingham's historical and cultural legacy through preservation and interpretation of its ongoing story.

### B. Description and Scope of the Collection

The majority of the objects in the Birmingham Museum collection were collected by the Birmingham Historical Society and donated to the museum at its establishment by the City of Birmingham in 2001. The museum continues to acquire and accession objects consistent with its mission and scope on an ongoing basis, usually through personal donation. The City of Birmingham owns the collection, which is professionally managed and cared for by the Birmingham Museum according to accepted museum standards.

When formally accessioned into its permanent collection, the Birmingham Museum adheres to museum ethical standards for proper care and management of the object as long as it remains in the permanent collection (see **Section IV: Acquisition and Accession**). (Collection management procedures will be followed by museum staff to document, maintain, and manage the collection according to accepted professional museum standards, and are outlined in a separate document.) The museum collects, preserves, displays, and interprets tangible and intangible material related to the history of Birmingham of the following types:

1) Three-dimensional objects—approximately 8,000 objects consisting of furnishings; household objects; prints, paintings, and sculptural objects; textiles (such as quilts); garments and personal accessories; tools and agricultural objects; books; and Native American stone tools and other ethno-cultural objects.

2) Archives—documents, maps, scrapbooks, letters, news clippings, and other similar material related to Birmingham or its residents. Material in the archives may be digitized.

3) Photographs and Images—several collections of historic photographs of people and sites in and around Birmingham, from the mid-19<sup>th</sup> c. to the present, including prints, negatives, and slides. Photographic material may be digitized.

4) Audio, Video, and Digital Materials—vinyl, microcassette, CD, and DVD recordings of oral histories, personal interviews, and sound recordings; video recordings; and photographs, documents, and data that are in digital format.

The Birmingham Museum also deaccessions objects that are not consistent with its mission and/or objectives. In this case, a formal procedure is followed that includes specified levels of authority before deaccession and disposal can occur (see **Section III: Governance**, and **Section V: Deaccession**).

### C. **Historic Landscape and Buildings**

The Birmingham Museum site also includes two buildings and a historic landscape that are cared for by the museum, described as follows:

Historic Landscape—the museum site is a 4-acre park that previously belonged to Harry and Marion Allen 1926-1969. Prior to that, it was the site of the first brick school in Birmingham, built in the 1856, on land that was part of Elijah Willits' original land grant. The park is adjacent to the Rouge River public trails system. The site is important for its history as well as its natural setting. It features surviving built and planted elements from the Allens' period of residence, including an original stone wall and concrete improvements to the spring fed pool that are historically important. The landscape provides a historic sense of place and is a popular natural beauty park.

Buildings—two buildings of significance exist on the site; the 1822 John West Hunter House, (originally built on Hunter's land grant, and moved to the museum in 1969), and the 1926 Allen House, built for Harry Allen, the first mayor of the City of Birmingham. The Allen House is used for changing displays and storage of objects and archives, and the Hunter House is furnished in period objects as a historic homestead. The Hunter House is listed on the National Register of Historic Places as a locally significant site, and the Allen House and landscape are under review for the same designation. The buildings and the property are also part of the City of Birmingham's Mill Pond Historic District.

The landscape and buildings are under the care of the Birmingham Museum, but are not considered part of its collection nor subject to accession and deaccession activities as provided for by this collections policy.



## II. COLLECTIONS ETHICS & ACCEPTED MUSEUM STANDARDS

The City of Birmingham owns the collection and the Birmingham Museum holds it in the public trust. In addition to the ethical standards and requirements of the City of Birmingham, the Birmingham Museum is guided by the ethical responsibilities and implications of standard practices for museums (see **Attachment 4: American Alliance of Museums Code of Ethics**). These industry standards provide ethical guidance for interaction with the collection by museum staff and the Museum Board in addition to City ethical guidelines. A museum Statement of Ethics incorporates these standards as part of this Collection Policy.

### A. Birmingham Museum Statement of Ethics

The Birmingham Museum ascribes to the Code of Ethics adopted by the American Alliance of Museums, as expressed in the following Birmingham Museum Statement of Ethics:

The Birmingham Museum makes a unique contribution to the public by collecting, preserving, managing, and interpreting historic materials, including its site, buildings, artifacts, documents, photographs, oral histories, digitized materials, and other tangible and intangible objects relating to Birmingham and the surrounding area. As an institution, the distinctive character of the Birmingham Museum derives to a large extent from its collection of historical materials, which it holds on behalf of the City of Birmingham in the public trust. The ethical stewardship of these collections carries with it the presumption of thoughtful and purposeful acquisition, rightful ownership, accurate documentation, appropriate care, reasonable utilization and access, and responsible disposal.

### B. Capitalization of Collections

In accordance with the view that museums hold their collections in the public trust, professional museum organizations have adopted guidelines that recommend against capitalization of museum collections (see **Attachment 5**). This also serves to distinguish historic or cultural value from the market value of a collection. Professional best practices further recommend specific policies relating to any instance of sale or disposal of a museum collection object so that any resulting funds be restricted and used solely for the enhancement or improvement of the collection, not for museum operations or other purposes. This practice protects the collection from degradation and sale in order to pay debt, for instance, in keeping with the interests of the public trust. Therefore, a formal institutional statement for the Birmingham Museum on capitalization incorporates these guidelines as part of this Collection Policy.

### C. Birmingham Museum Statement on Capitalization of Its Collections

The Birmingham Museum's Statement on Capitalization establishes the museum's collection as having historic and cultural value rather than market value, as follows:

The City of Birmingham operates the Birmingham Museum on behalf of the public and owns the collection, which it holds in the public trust, for the purpose of the furtherance of public service through public exhibition, education, and research, and not for capital or financial gain. As such its collection will be protected, cared for, preserved, and kept

unencumbered for its historic and cultural value and will not be considered capitalized assets. Proceeds from sales of donated objects, collection objects, or insurance proceeds in the case of a loss of objects, shall be used only for collection replacement and direct care activities that maintain an equivalent or enhanced historic or interpretive value within its collections. Ongoing status of individual collection and archival objects is maintained digitally by museum staff with special museum collections software.

The majority of items in the Birmingham Museum collection have historical value only. In rare instances, a collection object may exceed \$5,000 in value (as established by informal estimates or formal appraisal); these objects will be recorded and monitored according to Finance Department requirements for purposes of insurance and generally accepted accounting principles.

Proceeds from the sale of deaccessioned objects may not be used for operational expenses. Funds generated, if any, shall be used only to acquire new objects or to provide direct care for those objects remaining in the collection. Any proceeds from the sale of donated objects, collection objects, or insurance proceeds will be restricted and an accounting of those funds will be maintained by the City of Birmingham's Finance Department.

Procedures governing the disposal, deaccession process, sale and revenue of collection or donated objects are described in this Collection Policy under **Section V, Deaccession**. Levels of authority associated with accession and deaccession of items in the collection are detailed in **Section III, Governance and Responsibility**.

### III. GOVERNANCE AND RESPONSIBILITY

#### A. Museum Board

The Museum Board serves in an advisory role that provides recommendations regarding the Birmingham Museum and site and the collecting, cataloguing, preparing, and display of objects and materials relating to the history of the city and the surrounding area. Board members are appointed by the City Commission to carry out this role and to oversee the operation of the museum and care of the collection to benefit the public and the study of area history. The Museum Board develops policies in accordance with its Strategic Plan that guide museum priorities and activities, including oversight of the collection and its management, in coordination with museum staff and professional museum standards. The Museum Board oversees and makes recommendations to the City Commission for deaccession and disposal of items in the Birmingham Museum permanent collection, and establishes a Collections Subcommittee whose duty is to make recommendations to the Museum Board regarding these activities.

#### B. Collections Subcommittee

The Museum Board shall establish a Collections Subcommittee for the museum consisting of up to three (3) members of the Museum Board. The Collections Subcommittee will meet as needed to review proposed deaccession of objects recommended by the Museum Director. The Collections Subcommittee shall recommend objects for deaccession to the Museum Board for consideration. The Collections Subcommittee shall also review and propose revisions to the Collections Policy to the Museum Board as needed.

#### C. Levels of Authority

Level of Authority refers to the approval level required to make decisions about collection accession and deaccession. To protect the collection, the level of approval for deaccessioning is equal to or greater than that for accessioning.

Accession to, and Deaccession from, the Birmingham Museum collection will be considered in accordance with the defined scope of the collection and the museum mission (**see also Section I: Purpose and Scope**). Accession and deaccession carry greater responsibility regarding documentation, care, and planning. Acquisition and de-acquisition are distinct from Accession, as they refer to status of an object outside the formal accession process, either because the object is 1) still being considered for accession, 2) is in the Use or Study Collection, or 3) otherwise has been acquired by the museum but will not become part of the Permanent Collection.

1. Authority: Acquisition and De-acquisition –The Museum Director shall determine acquisition or de-acquisition status of an object in keeping with the museum's mission and scope of the collections. Acquired objects are not brought into the permanent collection through the formal accession process, but are used as exhibit props, hands-on activities, or for educational purposes. They receive basic documentation and storage and tracked internally.

2. Authority: Accession: The Museum Director shall determine the appropriateness of an object offered for accession to the Permanent Collection, taking into consideration the object's historic value, condition, storage and access requirements, display, conservation, use of resources, or other applicable criteria in determining such appropriateness. The Museum Director may consult with the Collections Subcommittee and/or the Museum Board in regard to accessions as necessary. It is the Birmingham Museum's policy that no restrictions are attached by donors to objects offered to the museum. The Museum Director is responsible to oversee and the legal ownership transfer process and documentation from donor/source to the museum collection **(see Attachment 2: Deed of Gift)**.
3. Authority: Deaccession: The Museum Director shall make recommendations to the Collections Subcommittee for the deaccession of an object from the Birmingham Museum collection. Proposed object deaccessions will be subject to specific procedures for object deaccession **(see Section V: Deaccession)**. The Museum Director will provide details on the object's history, condition, and rationale for the deaccession. The Collections Subcommittee will review the Director's proposed deaccessions and recommend object deaccessions to the Museum Board, which will review and make final recommendations to the City Commission. Final approval for deaccession rests with the City Commission. The object may be disposed of through accepted methods, or transferred from the Permanent Collection to the Use or Study Collection **(see Attachment 3: Deaccession Record)**.

#### **D. Collections Policy Approval and Review**

The Birmingham Museum Collections Policy will be reviewed on a regular basis by the Collections Subcommittee, with recommendations to the Museum Board for review and approval, and will be reviewed at least once every three years by the Collections Subcommittee, with a report to the Museum Board and to the City Commission.



## IV. ACQUISITION and ACCESSION

Collection objects may be acquired through gift/donation or through purchase, and may serve the museum mission in informal (display prop, hands-on exhibit in Use Collection) or formal ways (Permanent Collection). Acquisition and accession are distinct in that acquisition refers to an informal custodial function, which may be temporary, while accession formally adds an object into the Permanent Collection with all the associated responsibilities for permanent care.

### A. Acquisition and De-acquisition

Acquisition is the first step in the collections process. Objects considered for acquisition are held in temporary custody by the museum while being evaluated. Acquired objects may be transferred to the Use or Study Collections, or de-acquired if deemed unsuitable, sold to enhance the collection, transferred to a more appropriate institution, or otherwise disposed of. If retained, acquired objects will be subject to the following:

1. Conform to the museum's mission.
2. Have free and clear title.
3. Be able to be reasonably stored and cared for during the period of acquisition.
4. Not be subject to restrictions by the donor as a condition of transfer of ownership.
5. Objects may be acquired and de-acquired at the discretion of the Museum Director.

### B. Accession

Accessioning is the formal process by which objects enter a museum's Permanent Collection **(see Attachment 2: Deed of Gift)**. It represents a commitment by a museum to preserve, display, and permanently care for the object in the public trust. Documentation and legal transfer of ownership records are kept, and the item will be preserved, tracked, stored, displayed, handled, and maintained in accordance with the highest museum standards. To be accessioned, an object must:

1. Conform to the museum's mission.
2. Conform to the scope and/or enhance the collection.
3. Have free and clear title.
4. Be able to be properly stored, protected, accessed, and cared for in accordance with generally accepted museum standards.
5. Not be subject to the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 governing ceremonial objects, artifacts, or human remains.
6. Objects offered to the Birmingham Museum for accession will be unrestricted gifts. Exceptions must be reviewed by the Collections Subcommittee and approved by the Museum Board.
7. Objects may be accessioned at the discretion of the Museum Director.
8. Upon accession, required records and a Deed of Gift will be generated to complete the transfer of ownership.
9. Files containing accession information, transfer of ownership, Deed of Gift, object identification, photographic, and other detail will be maintained permanently by the museum. Digital files will be backed up and maintained in secure off-site storage.

## V. DEACCESSION

Occasional judicious removal of previously accessioned objects from the Permanent Collection is a valuable tool and activity used by museums to maintain and enhance the remaining collection. This can occur if the mission or scope of the collection changes, an object has become damaged, obsolete, a better-preserved example of the object becomes available, etc. Eliminating an object from the Permanent Collection may improve efficiency or increase resources that may be used for other objects or to add new objects to the collection. Deaccessioning is the process of formally removing objects from the collection deemed inappropriate for continued inclusion in the Permanent Collection.

### A. Requirements for Deaccession

In considering deaccession for an object, the Birmingham Museum shall consider the primary goal of furthering the museum's mission. The Birmingham Museum will follow strict deaccession guidelines that reflect the highest level of accepted museum standards and ethics, in accordance with City of Birmingham standards and ethics, and in accordance with fiduciary duties of loyalty and care. Proceeds from the sale of deaccessioned objects may not be used for operational expenses. Funds generated, if any, shall be used only to acquire new objects or to provide direct care for those objects remaining in the collection.

Recommendations for deaccession shall be prepared in writing by museum staff, reviewed by the Collections Subcommittee, and recommended to the Museum Board for its review. Independent professional assessment may be sought if deemed appropriate. The Museum Board will make recommendations to the City Commission for deaccession of collection objects.

To be eligible for consideration for deaccession, one of the following criteria must be met:

1. The material is not relevant to the mission or scope of the collection, or another institution is deemed a more appropriate repository for long term care in the public trust.
2. The material has failed to retain its integrity, or has been lost or stolen and is deemed unrecoverable.
3. The material is a duplicate, or is redundant, and has no value as a set or part of a series.
4. The material cannot be preserved, housed, displayed, or cared for appropriately by the Birmingham Museum in the present or in the anticipated future.
5. The museum's possession of the material is not consistent with applicable law, e.g., it may be subject to the Native American Graves Protection and Repatriation Act (NAGPRA), have been stolen, illegally imported, etc.
6. The material is determined to be a fake, forgery, or reproduction.
7. The removal of the object will refine or improve the remaining collection.

Upon approved deaccession, the following rules will apply:

1. In accordance with the U.S. Tax Reform Act of 1984 and associated Internal Revenue Service regulations, no donated material shall be deaccessioned before a period of two years has passed.
2. Objects deaccessioned shall not be privately sold, given, or otherwise transferred to any employee or official of the city government, including the Museum Board, museum

staff, museum volunteers, or members of the Friends of the Birmingham Museum, or their family members.

3. Objects withdrawn from the Permanent Collection may be assigned to the Use or Study Collection by the Museum Director.
4. A complete record of deaccessioned objects shall be kept, and a copy shall be retained permanently. The deaccession documentation shall include an image of the object. The permanent Object ID# shall not be re-assigned.
5. Before disposal, the Birmingham Museum's object identification numbers shall be removed.
6. Funds derived from the deaccessioning and disposal of objects from the Birmingham Museum collection shall be restricted and used exclusively for the acquisition or purchase of objects for the collection, or for direct care of the collection. In no event shall proceeds be used for operating or capital expenses or for any purpose other than acquisition or direct care of the collection in a manner consistent with the Birmingham Museum's mission and collection scope.

Disposal of deaccessioned objects can occur through:

1. Transfer to the Birmingham Museum's Use or Study Collection.
2. Disposal (The disposal of hazardous materials will follow all applicable laws and regulations).
3. Transfer, sale, or trade to another museum.
4. Sale at public auction.

## VI. LOANS

Museums commonly loan collection items in accordance with mission goals and standard practice. A loan provides for the transfer of temporary custody and legal responsibility for specific object(s) between entities holding a collection for a designated period of time. Incoming loans provide an opportunity for enhanced interpretive display and/or research of mission-related information. Outgoing loans build institutional collaboration and help expose the Birmingham Museum's collection to a wider audience.

The Birmingham Museum may initiate a loan of object(s) in private or institutional collections for the purposes of exhibition or study, and outside organizations may make requests of the Birmingham Museum. Loans are not made by the Birmingham Museum to individuals, or to public or private institutions whose purpose and mission are not aligned with the public interest. Incoming and outgoing loans are administered by museum staff and approved by the Museum Director in accordance with accepted museum standards.

### Outgoing Loans:

1. Loan documents will specify the length of loan and other applicable terms, such as shipping and handling, security, environmental controls, display restrictions, credit lines, etc.
2. The borrowing institution may be required to submit a Standard Facility Report as a part of the loan agreement. The SFR is a widely recognized document that provides detailed description of an individual museum's physical and exhibit space, security, and related characteristics.
3. The borrowing institution is responsible for carrying and demonstrating "wall-to-wall" insurance coverage from the time the object(s) leave the Birmingham Museum until the object(s) is returned.

### Incoming loans:

1. Loans may be requested by the Museum Director from other institutions or from private sources for the purposes of study, temporary display, or long term display.
2. A loan agreement will reflect the object(s)' description, terms of the loan, contact information, insurance value of the object(s), special shipping requirements, if any, and other relevant information. Museum staff will also provide a copy of the Birmingham Museum Standard Facility Report, if requested, and a copy of the City of Birmingham's insurance certificate. The museum will not utilize incoming loans if the object(s)' insurance value exceeds the insurance available.
3. While in the care of the Birmingham Museum, loaned object(s) will be properly secured and protected.



## ATTACHMENT 1-Terms and Definitions

*The following terms and definitions relate to standard museum practice as applied by the Birmingham Museum and referenced in this Collections Policy.*

**Accession** – (1) an object or group of objects formally and legally accepted and recorded by a museum as part of its Permanent Collection; (2) the act of recording and processing an addition to the Permanent Collection. Accessioning objects commits the museum to their permanent care and protection, and therefore is done in accordance with the museum's mission and stated scope. Accession is distinct from the less formal status of Acquisition.

**Acquisition** – the status of an object in which it is in the possession of a museum and is being considered for formal addition (accession) into the Permanent Collection. Acquisition can also refer to objects that are acquired by the museum for the Use or Study Collection, but which are not accessioned. In some instances, donated objects may be acquired by the museum that are not accessioned, but may be disposed of through sale or trade in order to enhance the Permanent Collection..

**Collection, Permanent**—those objects in the Birmingham Museum's collection that are formally accessioned for preservation, care, protection, display, and/or interpretation by the museum in the interest of the public trust, and in keeping with the mission and scope of the museum.

**Collection, Study**—those objects in the Birmingham Museum's collection that are maintained for the purposes of research, education, and study, and which are preserved, stored and maintained with that purpose in mind, and in keeping with the mission and scope of the museum.

**Collection, Use**—those objects in the possession of the Birmingham Museum that are maintained for the purposes of education, interpretation, and display and which are stored and maintained with that purpose in mind, in keeping with the mission and scope of the museum. Use collection objects may be reproductions or redundant objects, and may be recorded and labeled to distinguish them from the Permanent Collection.

**Collection Management**—refers to procedures developed and implemented to ensure proper care of, and minimal risk to, a museum's collection. Such policies typically address a variety of issues such as storage, care, and treatment, as well as standards of recordkeeping for everything that is done to document, care for, and develop museum collections to make them available for use in the public trust. Collection management also refers to the planning and guidance for the collection to prevent unhindered collecting and the resultant administrative, legal, and ethical problems.

**Deaccession**—the formal and legal process of removing an object from a museum's Permanent Collection, undertaken in strict accordance with established procedure and review at multiple levels of authority, in order to improve the museum's collection or enhance its ability to fulfill its mission.

**De-acquisition**—refers to the disposal of an object in the Use or Study Collection, or an object that was received by the Birmingham Museum as a gift but not accessioned into the Permanent Collection.

**Deed of Gift**—document between donor and museum that legally transfers ownership and control of an object or group of objects to a museum. The document includes description, date, and clarification that the objects are offered and accepted as unrestricted gifts.

**Disposal**—action taken after an object is formally deaccessioned. It can include sale, trade, transfer, or in cases of objects of personal value, return of an object to the original donor as deemed appropriate.

**Found in Collection**—status of an object found in the possession of the museum, but which lacks accompanying information as to origin or accession.

**Intervention**—any activity that interacts with the object to effect changes in its condition or status.

**Level of Authority**—the approval level required to make decisions about collection accession and deaccession. Ordinarily, the level of approval for Deaccessioning is equal to or greater than that for accessioning.

**Loan, Incoming**—acceptance by a museum of responsibility for a collection object belonging to another individual or organization, on a temporary basis, for the purpose of study or exhibition, and not construed to be part of the museum collection.

**Loan, Outgoing**—legal transfer of responsibility for materials from a museum collection to an outside institution for a specific period of time, not construed to be transfer of ownership.

**Loan Agreement**—written document that specifies details related to the loan of objects from the Birmingham Museum to other institutions or entities. Term of loan, insurance requirements, credit line, and use are included.

**Object Cataloging**—the process through which information is recorded about an object or set of objects.

**Standard Facility Report**—document that outlines museum facilities and other information used by museums to assess conditions and make determinations regarding loans between institutions.

**“Wall-to-Wall” Insurance Coverage**—an element of fine art insurance that covers museum artifacts and works of art when on loan from the time they leave an institution to the time they are installed at another.

**ATTACHMENT 2     Deed of Gift**



**Donor Information**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Accession Number: \_\_\_\_\_

Description of Object: \_\_\_\_\_

The Birmingham Museum acknowledges with gratitude the gift(s) listed below, subject to the following conditions:

1. All gifts are subject to review by Museum Staff.
2. No gift shall be accepted with the condition that it be permanently exhibited.
3. No collection shall be accepted with the condition that it be kept intact.
4. No gift can be reclaimed by the donor or his / her heirs.
5. All gifts shall become the property of the City of Birmingham without conditions or encumbrances, and shall be utilized at the sole discretion of the Museum and City.

**Donor Agreement**

These donated objects have been given as an unrestricted gift and are now the property of the Birmingham Museum. I give, transfer and assign to the Birmingham Museum all right, title and interests, including all copyright, trademark and related interests, in, to and associated with the objects described above. I affirm that I am the legal owner of the objects donated, or am legally empowered to sign on behalf of the owner, and that said objects were collected or acquired in accordance with applicable laws. I agree that these objects may be displayed or reproduced in any medium, loaned, retained, transferred to another museum or disposed of in any such manner, at the sole discretion of the Birmingham Museum.

Dated: \_\_\_\_\_

Donor / Agent

Date Received: \_\_\_\_\_

Received By / Title

This gift is given in memory of: \_\_\_\_\_

## ATTACHMENT 3

## Object Deaccession Record

### BIRMINGHAM MUSEUM

Object/Title: \_\_\_\_\_ Object ID Number(s): \_\_\_\_\_

Justification for deaccessioning:

- ☐ Out of scope
- ☐ Poor condition/loss of integrity
- ☐ Redundant
- ☐ Storage, display, or conservation needed exceed resources
- ☐ Non-legal possession
- ☐ Fake, forgery, or reproduction
- ☐ Enhancement of remaining collection

Remarks: \_\_\_\_\_

Restrictions: ☐ None Donor or IRS \_\_\_\_\_

Signed: Museum Staff \_\_\_\_\_ Date \_\_\_\_\_

Approved by Museum Director (date) \_\_\_\_\_

Reviewed by Collections Subcommittee (date) \_\_\_\_\_

Approved by Museum Board (date) \_\_\_\_\_

Approved by City Commission (date) \_\_\_\_\_

### **Method of Disposition**

☐ Transferred Recipient: \_\_\_\_\_  
Address: \_\_\_\_\_  
Shipped via: \_\_\_\_\_ Picked up: \_\_\_\_\_ Date: \_\_\_\_\_

☐ Sold Recipient: \_\_\_\_\_  
Address: \_\_\_\_\_  
Date sold: \_\_\_\_\_ Sale price: \_\_\_\_\_  
Shipped via: \_\_\_\_\_ Picked up: \_\_\_\_\_ Date: \_\_\_\_\_

☐ Destroyed Method: \_\_\_\_\_

Removal of object ID# (date) \_\_\_\_\_

PastPerfect, individual object, and deaccession records complete: (date) \_\_\_\_\_

Signed: (museum staff) \_\_\_\_\_ Signed: (Museum Director) \_\_\_\_\_



## ATTACHMENT 4 American Alliance of Museum's Code of Ethics (Excerpts)

<http://www.aam-us.org/resources/ethics-standards-and-best-practices/code-of-ethics-for-museums>. Accessed 2013-09-12.

# Code of Ethics for Museums

Adopted 1991, amended 2000.

Please note that the Code of Ethics for Museums references the American Association of Museums (AAM), now called the American Alliance of Museums.

Ethical codes evolve in response to changing conditions, values and ideas. A professional code of ethics must, therefore, be periodically updated. It must also rest upon widely shared values. Although the operating environment of museums grows more complex each year, the root value for museums, the tie that connects all of us together despite our diversity, is the commitment to serving people, both present and future generations. This value guided the creation of and remains the most fundamental principle in the following Code of Ethics for Museums.

## Code of Ethics for Museums

Museums make their unique contribution to the public by collecting, preserving and interpreting the things of this world. Historically, they have owned and used natural objects, living and nonliving, and all manner of human artifacts to advance knowledge and nourish the human spirit. Today, the range of their special interests reflects the scope of human vision. Their missions include collecting and preserving, as well as exhibiting and educating with materials not only owned but also borrowed and fabricated for these ends. Their numbers include both governmental and private museums of anthropology, art history and natural history, aquariums, arboreta, art centers, botanical gardens, children's museums, historic sites, nature centers, planetariums, science and technology centers, and zoos. The museum universe in the United States includes both collecting and non-collecting institutions. Although diverse in their missions, they have in common their nonprofit form of organization and a commitment of service to the public. Their collections and/or the objects they borrow or fabricate are the basis for research, exhibits, and programs that invite public participation.

Taken as a whole, museum collections and exhibition materials represent the world's natural and cultural common wealth. As stewards of that wealth, museums are compelled to advance an understanding of all natural forms and of the human experience. It is incumbent on museums to be resources for humankind and in all their activities to foster an informed appreciation of the rich and diverse world we have inherited. It is also incumbent upon them to preserve that inheritance for posterity.

Museums in the United States are grounded in the tradition of public service. They are organized as public trusts, holding their collections and information as a benefit for those they were established to serve. Members of their governing authority, employees and volunteers are committed to the interests of these beneficiaries. The law provides the basic framework for museum operations. As nonprofit institutions, museums comply with applicable local, state, and federal laws and international conventions, as well as with the specific legal standards governing trust responsibilities. This Code of Ethics for Museums takes that compliance as given. But legal standards are a minimum. Museums and those responsible for them must do more than avoid legal liability, they must take affirmative steps to maintain their integrity so as to warrant public confidence. They must act not only legally but also ethically. This Code of Ethics for Museums, therefore, outlines ethical standards that frequently exceed legal minimums.

Loyalty to the mission of the museum and to the public it serves is the essence of museum work, whether volunteer or paid. Where conflicts of interest arise—actual, potential or perceived—the duty of loyalty must never be compromised. No individual may use his or her position in a museum for personal gain or to benefit another at the expense of the museum, its mission, its reputation and the society it serves.

For museums, public service is paramount. To affirm that ethic and to elaborate its application to their governance, collections and programs, the American Association of Museums promulgates this Code of Ethics for Museums. In subscribing to this code, museums assume responsibility for the actions of members of their governing authority, employees and volunteers in the performance of museum-related duties. Museums, thereby, affirm their chartered purpose, ensure the prudent application of their resources, enhance their effectiveness and maintain public confidence. This collective endeavor strengthens museum work and the contributions of museums to society—present and future.

## ATTACHMENT 4, CON'T

### Governance

Museum governance in its various forms is a public trust responsible for the institution's service to society. The governing authority protects and enhances the museum's collections and programs and its physical, human and financial resources. It ensures that all these resources support the museum's mission, respond to the pluralism of society and respect the diversity of the natural and cultural common wealth. Thus, the governing authority ensures that:

- all those who work for or on behalf of a museum understand and support its mission and public trust responsibilities
- its members understand and fulfill their trusteeship and act corporately, not as individuals
- the museum's collections and programs and its physical, human and financial resources are protected, maintained and developed in support of the museum's mission
- it is responsive to and represents the interests of society
- it maintains the relationship with staff in which shared roles are recognized and separate responsibilities respected
- working relationships among trustees, employees and volunteers are based on equity and mutual respect
- professional standards and practices inform and guide museum operations
- policies are articulated and prudent oversight is practiced
- governance promotes the public good rather than individual financial gain.

### Collections

The distinctive character of museum ethics derives from the ownership, care and use of objects, specimens, and living collections representing the world's natural and cultural common wealth. This stewardship of collections entails the highest public trust and carries with it the presumption of rightful ownership, permanence, care, documentation, accessibility and responsible disposal. Thus, the museum ensures that:

- collections in its custody support its mission and public trust responsibilities
- collections in its custody are lawfully held, protected, secure, unencumbered, cared for and preserved
- collections in its custody are accounted for and documented
- access to the collections and related information is permitted and regulated
- acquisition, disposal, and loan activities are conducted in a manner that respects the protection and preservation of natural and cultural resources and discourages illicit trade in such materials
- acquisition, disposal, and loan activities conform to its mission and public trust responsibilities
- disposal of collections through sale, trade or research activities is solely for the advancement of the museum's mission. Proceeds from the sale of nonliving collections are to be used consistent with the established standards of the museum's discipline, but in no event shall they be used for anything other than acquisition or direct care of collections.
- the unique and special nature of human remains and funerary and sacred objects is recognized as the basis of all decisions concerning such collections
- collections-related activities promote the public good rather than individual financial gain
- competing claims of ownership that may be asserted in connection with objects in its custody should be handled openly, seriously, responsively and with respect for the dignity of all parties involved.

## **ATTACHMENT 5 American Association for State and Local History Position on Capitalization of Collections (Excerpt)**

Technical Leaflet #224, "Ethics Position Paper: The Capitalization of Collections." In *History News*, Vol. 58, No. 4 (Autumn). American Association of State and Local History, 2003, p. 2-3.

### ***The AASLH Position on Capitalization***

*First stated in the AASLH Statement of Professional Standards and Ethics in 1990 and repeated without revision in 2002, the Association's position on the capitalization of collections is clear: 'Collections shall not be capitalized or treated as financial assets.' Why?*

*First and foremost, 501(c)(3) non-profit corporations and government agencies own, manage, interpret, and share historical resources in fiduciary trust on behalf of the citizens within the states in which they are incorporated. Even though a historical organization may be a private corporation, its collections are considered part of the public domain. Thus, when an institution owns and manages a collection, it acts as a fiduciary agent of a broader community. That is why museums and historical organizations are exempt from certain taxes—because of the public value of what they do, including and especially, care of the public's collections.*

*By capitalization, however, an institution makes a conscious decision to treat its collections just like any of its other financial assets, no different than bank accounts, investments, office equipment, or real estate. It should not be forgotten that the primary purpose of a collection is to fulfill the fiduciary purpose of the institution. The primary purpose of a financial asset is to be managed in such a way as to achieve financial stability and health for the organization.*

*As financial assets, capitalized collections are in danger of being used as security, attached by lien, sold, or otherwise encumbered to meet outstanding financial debts and obligations. If the institution is a unit of government, such as a city or state museum, the governing body might be forced to sell all or portions of the collections, just like the office equipment or a fleet of trucks, to meet payroll or to pay off bonded debt. This is not why the institution acquired its collections, why they have value, or why a donor received a tax deduction for contributing a collection to an institution. Capitalization of collections clearly violates the public's fiduciary interests in the collections.*

*Even if an institution does not capitalize its collections, it must take care not to treat those collections as if they were financial assets. During times of financial crisis, an institution might be tempted to sell collections to cover operating expenses, like utilities and salaries, or as security to obtain a line of credit. Not only is this bad financial practice that puts the institution's (and public's) collections at risk, but also it is unacceptable in meeting the institution's fiduciary obligations. Neither economic conditions nor bad financial management are excuses for treating collections as financial assets.*

### ***Consequences of Non-Capitalization***

*The chief financial consequence of not capitalizing collections is that hundreds of thousands and perhaps millions of dollars of potential assets will not appear on the balance sheet. Some auditors and board members may suggest that this negatively affects the public picture of the institution's financial health. Since collections cannot be used to support the daily operations of an institution, the decision to not capitalize actually represents the most accurate financial position. By consciously choosing to protect its \*(and the public's ) collections, an institution acknowledges the public trust for which it receives substantial benefits, honors its mission, and makes a strong public statement of commitment.*



## MEMORANDUM

Clerk's Office

**DATE:** December 7, 2020

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

**FROM:** Leslie Pielack, Museum Director

**SUBJECT:** Birmingham Museum 2021-2024 Strategic Plan Implementation of Landscape Master Plan Improvements for the Heritage Zone

---

### INTRODUCTION:

The Museum Board has updated the Museum Strategic Plan for 2021-2024. An important objective of the current strategic plan is to begin work on the Heritage Zone enhancements of the 2018 Birmingham Museum Landscape Master Plan. The Maple Road construction project has been completed, and funding is available, paving the way for making key Heritage Zone improvements. These include installation of primary signage and fencing modifications in the area around the Allen and Hunter Houses facing Maple Road, the most visible and most utilized areas of the site. The project will also raise awareness of the museum's planned landscape restoration and help with future fundraising efforts.

### BACKGROUND:

In 2018, the Museum Board worked with a historic landscape architect to develop a conceptual landscape master plan for the museum grounds. The site is in the Mill Pond Historic District and has numerous natural and historic features, requiring that the landscape plan be aligned with guidelines set by the Secretary of the Interior Standards for the treatment of historic properties. The resulting 2018 Birmingham Museum Landscape Master Plan incorporates existing conditions and site history as well as public access needs. It identifies four zones, each of which has unique characteristics: the (Rouge River) Riverine Zone; the Pond Zone; the Transition Zone; and the Heritage Zone. The plan was reviewed and approved by the Museum Board and presented to the Historic District Commission prior to its acceptance by the City Commission on March 12, 2018.

The Museum Board has prioritized the Heritage Zone for initial focus of final detailed design and drawings. The area is heavily used and highly visible, extending along Maple Road and encompassing the Allen and Hunter Houses as well as the plaza with the Hill School bell. The Board worked with historic landscape architect Nagy Devlin Land Designs to develop final design and cost estimates for the zone. The design was approved by the Museum Board on March 14, 2019 and presented to the Historic District Commission on March 20, 2019, which granted a Certificate of Appropriateness for the project.

Since that time, \$15,000 in private donations has been received to begin work on the museum landscape project. In addition, the Museum Board has updated the Birmingham



Museum 2021-2024 Strategic Plan, accepted by the City Commission on September 14, 2020, which prioritizes implementation of the landscape master plan. At its November 6, 2020 meeting, the Museum Board identified the Heritage Zone signage and fencing components to be the most appropriate first phase of the project. Conservative cost estimates to complete these items are approximately \$19,000. Additional funds are available in the museum budget and as additional donations from the Friends of the Birmingham Museum if needed. (The remainder of the Heritage Zone improvements consist of relocation of utilities, garden bed preparation, planting materials, and construction of a vine support at a cost of approximately \$21,500. These project components would be planned as additional funds become available.)

Therefore, at this time, the Museum Board would like to present the final design for the Heritage Zone to the City Commission, with its intention to install the signage and fencing components of the design, in accordance with the phased implementation of the Landscape Master Plan as identified in the Birmingham Museum 2021-2024 Strategic Plan. It is anticipated that a Request for Proposals for project construction will be developed in the near future, and, subject to final Commission approval, the project would begin in the spring of 2021.

**LEGAL REVIEW:**

None at this time.

**FISCAL IMPACT:**

Funds are available for the planned project estimate of **\$18,500** based on two sources:

Donated funds	\$15,000
101-804.002-811.0000, Other Contractual Services	<u>\$6,000</u>
<b>Total available funds:</b>	<b>\$21,000</b>

**SUMMARY**

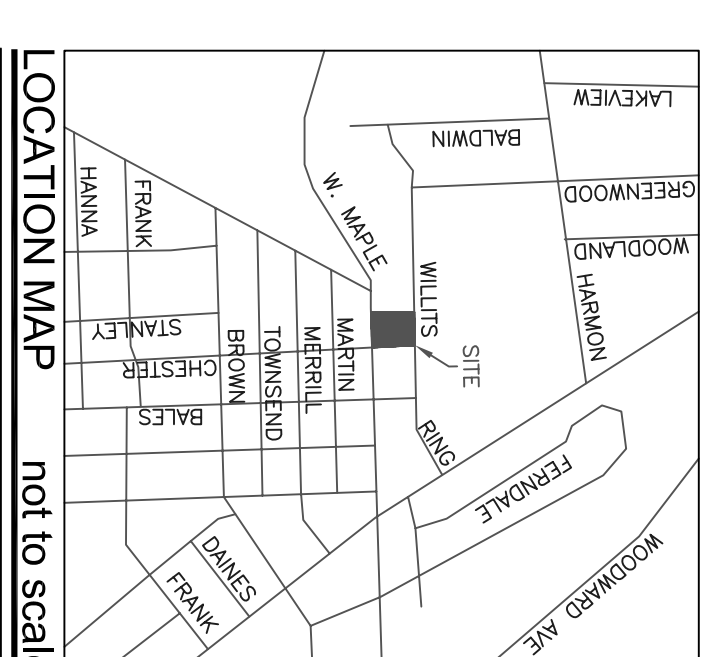
The Birmingham Museum’s 2021-2024 Strategic Plan provides direction and guides the operations of the museum to meet the needs of the public and to care for the historic buildings and grounds around the Allen and Hunter Houses. A phased approach to the historic landscape master plan enables fundraising and community involvement for each of the four zones, while addressing the greatest need and public access benefits. The fencing, primary signage, and installation of elm trees for the Heritage Zone design is an initial phase of work that will provide enhancements for the most visible and most used part of the museum grounds, and facilitate awareness and fundraising for additional landscape restoration and improvements. The initial work as outlined in this report will utilize donated funds to demonstrate a commitment to improved public access and progress in the restoration and improvement of the site.

**ATTACHMENTS:**

1. Final Design, Birmingham Museum Heritage Zone with Cost Estimates
2. Excerpt of minutes of the Museum Board meeting of March 14, 2019
3. Excerpt of minutes of the Historic District Commission meeting of March 20, 2019
4. Excerpt of draft minutes of the Museum Board meeting of November 5, 2020

**SUGGESTED RESOLUTION:**

To accept the proposed final design for the Birmingham Museum Heritage Zone and plan for implementation of its first phase elements of primary signage, fencing modifications and gates, and installation of three Pioneer elm trees.



LOCATION MAP not to scale

LANDSCAPE PLAN INDEX

- \* Sheet LP - 1: LANDSCAPE PLANTING PLAN  
\* Sheet LP - 2: LANDSCAPE NOTES & DETAIL

date: January 3, 2019

revised

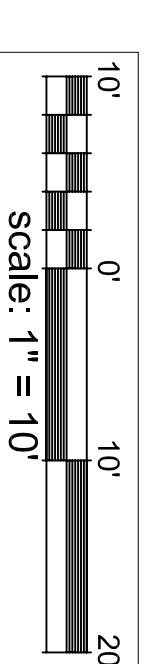
02-07-2019 Refine plan

03-20-2019 Add monument sign location  
& adjust plantings.

05-01-2019 Add monument sign cross section.



**Know what's below.  
Call before you dig.**



LANDSCAPE PLAN FOR

City of Birmingham  
151 Martin Street  
Post Office Box 300  
Birmingham, Michigan  
48012-300  
(248) 530-1800

## PROJECT LOCATION

Birmingham Museum  
John West Hunter Park  
556 West Maple Road  
Birmingham, Michigan

4800;  
Ms. Leslie Pielack, Directo

(248) 530 1928

LANDSCAPE PLAN BY

Nagy Devlin Land Design  
31736 West Chicago Ave  
Livonia, Michigan 48150  
(734) 634 9208



Autocad Signature  
ORIGINAL IN BLUE

LP - 1

LANDSCAPE PLAN -  
HERITAGE ZONE

\* Base data provided by Client from Atwell Hicks





LANDSCAPE DEVELOPMENT NOTES:

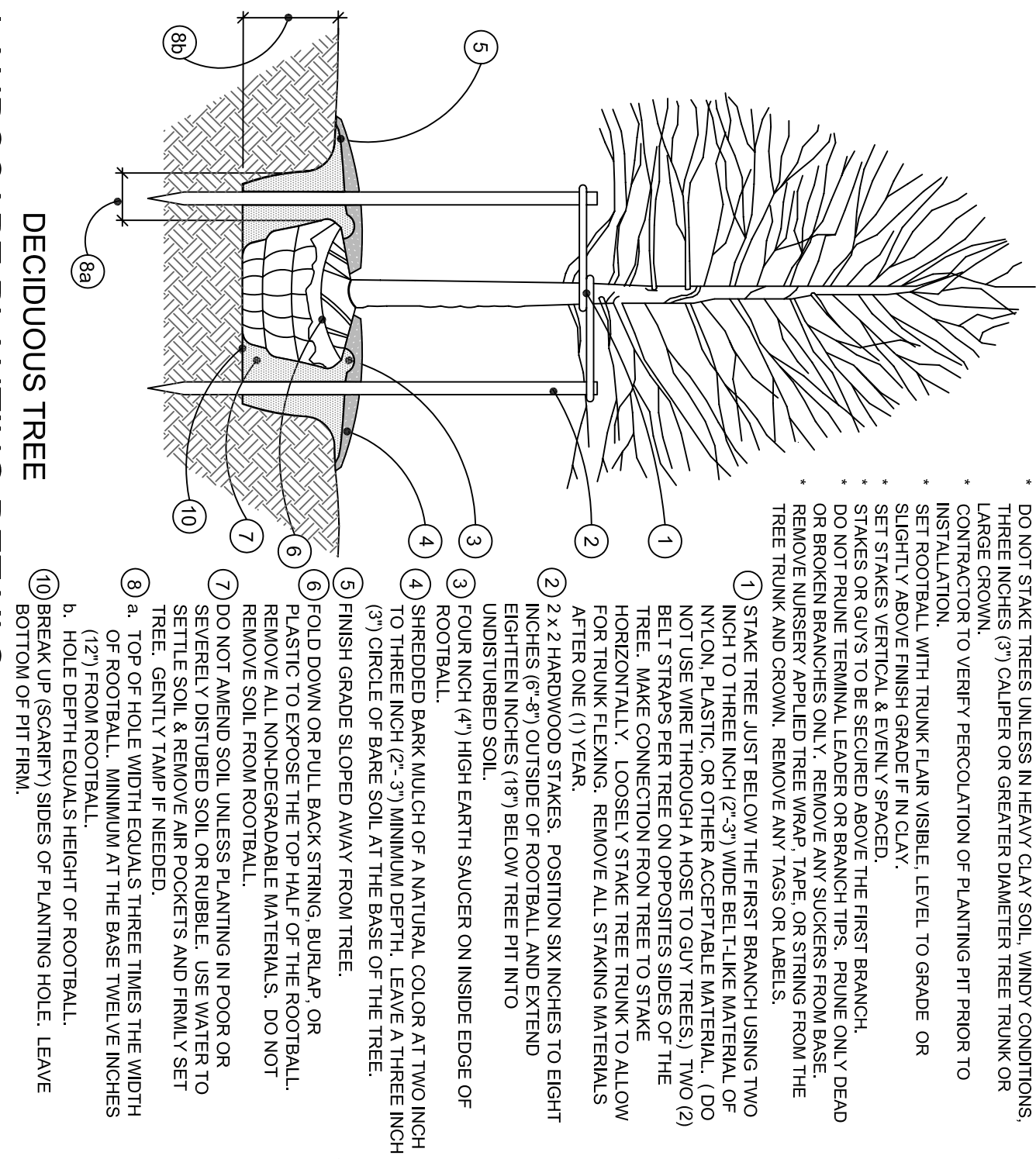
PLANTING

- 1. Installation of all plant material shall be in accordance with the latest edition of the *American Association of Nurserymen Standards for Nursery Stock* and with the specifications set forth by the City of Birmingham, Michigan.
- 2. The plant materials shall conform to the type stated on the plant list. Sizes shall be the minimum stated on the plant list or larger. All measurements shall be in accordance with the latest edition of the *American Association of Nurserymen Standards for Nursery Stock*.
- 3. The plant material shall be nursery grown and inspected by the Owner's representative before planting. The Owner's representative reserves the right to reject any plant material at any time.
- 4. Plants designated "B&E" shall be balled and burlapped with firm balls of earth.
- 5. Dig shrub pits one foot (1') larger than the shrub rootball, tree pits three (3) times the width of the tree rootball and backfill with one (1) part topsoil and one (1) part soil from excavated pit. Plant trees and shrubs at the same grade level at which they were planted at the nursery. If wet, clay soils are evident, plant trees and shrubs slightly higher.
- 6. The Contractor is responsible for planting the materials at the correct grades and spacing. The plants shall be oriented to give the best appearance.
- 7. When the plant has been properly set, the pit shall be backfilled with the topsoil mixture, gradually filling, patting, and settling with water.
- 8. Trees in lawn areas to have a four foot (4') circle of mulch, four inches (4") deep, and three inches (3") away from the trunk. Shrub beds are to be mulched with shredded bark mulch to a minimum depth of three inches (3"). Only natural color shredded hardwood bark mulch will be accepted.
- 9. Remove all twine, wire, and burlap from the top one third (1/3) of tree and shrub root balls and from tree trunks. Remove all non-biodegradable material such as plastic or nylon completely from branches and stems.
- 10. All plant materials shall be pruned and injuries repaired. The amount of pruning shall be limited to the removal of dead or injured limbs and to compensate for the loss of roots from transplanting. Cuts should be flush, leaving no stubs. Cuts over three quarters of an inch (3/4") shall be painted with tree paint. Shrubs along the site perimeter shall be allowed to grow together in a natural form.
- 11. Organic, friable topsoil shall be evenly distributed and fine graded over all areas to receive lawns at uniform depth of four inches (4") after settlement.
- 12. All plantings shall be completed within three (3) months, and no later than November 30, from the date of issuance of a certificate of occupancy if such certificate is issued during the April 1 thru September 30 period; if the certificate is issued during the October 1 thru March 31 period, the planting shall be completed no later than the ensuing May 31; plantings shall thereafter be reasonably maintained, including permanence and health of plant materials to provide a screen to abutting properties and including the absence of weeds and refuse.
- 13. Backfill directly behind all cuts and along sidewalks and compact to the top of cuts or walk to support vehicle and pedestrian weight without settling.
- 14. All landscape areas, especially parking lot islands and landscape beds next to buildings shall be excavated of all building materials and poor soils to a depth of twelve inches to eighteen inches (12" - 18") and backfilled with good, medium-textured planting soil (loam or light yellow clay loam). Add four inches to six inches (4" - 6") of topsoil over the fill material and crown a minimum of six inches (6") above the top of cuts and/or walks after earth settling unless otherwise noted on the landscape plan.
- 15. Conversion of all asphalt and gravel areas to landscape planting beds shall be done in the following manner: a. Remove all asphalt, gravel, and compacted earth to a depth of six inches to eighteen inches (6" - 18") depending on the depth of the sub base and dispose of off site; b. Call the City for an inspection prior to backfilling; c. Replace excavated material with good, medium-textured planting soil (loam or light yellow clay loam) to a minimum of two inches (2") above the top of the curb and sidewalk, add four inches to six inches (4" - 6") of topsoil and crown to a minimum of six inches (6") above the adjacent curb and walk after earth settling, unless otherwise noted on the landscape plan.

If conversion from asphalt to landscape occurs in or between an existing landscape areas(s), replace excavated material from four inches to six inches (4" - 6") below adjacent existing grade with good, medium-textured planting soil (loam or light yellow clay loam) and add four inches to six inches (4" - 6") of topsoil to meet existing grades after earth settling.

16. Egrading, where specified, shall consist of Perma-loc aluminum edging, spaded edge, or approved equivalent.

NOTES:



LANDSCAPE PLANTING DETAILS

MATERIAL

- 1. Plants shall not be located within two feet (2') of the property line.
- 2. Required landscape material shall satisfy the criteria of the American Association of Nurserymen Standards for Nursery Stock and be: a. Nursery grown; b. State Department of Agriculture inspected; c. No. 1 grade material with a straight, unscarred trunk, and well-developed uniform crown (park grade trees will not be accepted); d. Staked, wrapped, watered, and mulched in accordance with the detail on this sheet; and e. Guaranteed for one (1) year.
- 3. Topsoil shall be friable, fertile soil of clay/loam character containing at least five percent (5%) but not more than twenty percent (20%) by weight of organic matter with a pH range between 6.0 and 7.0. The topsoil shall be free from clay lumps, coarse sand, plant roots, sticks, and other foreign materials.
- 4. The seed mixture shall consist of the following types and proportions: Kentucky Blue Grass blend, Baron/Sheel/Adelphi® @ sixty percent (60%), Creeping Red Fescue @ twenty-five percent (25%), Creeping Red Fescue @ ten percent (10%), and Perennial Rye Grass @ five percent (5%). Weed content shall not exceed one percent (1%). The mix shall be applied at a rate of 200 pounds per acre.
- 5. Sod shall be two (2) year old "Baron/Sheel/Adelphi®" Kentucky Blue Grass blend grown in a sod nursery on loam soil.
- 6. Cobblestone mulch shall consist of two inch to four inch (2" - 4") cobbles six inches (6") deep over geotextile fabric.

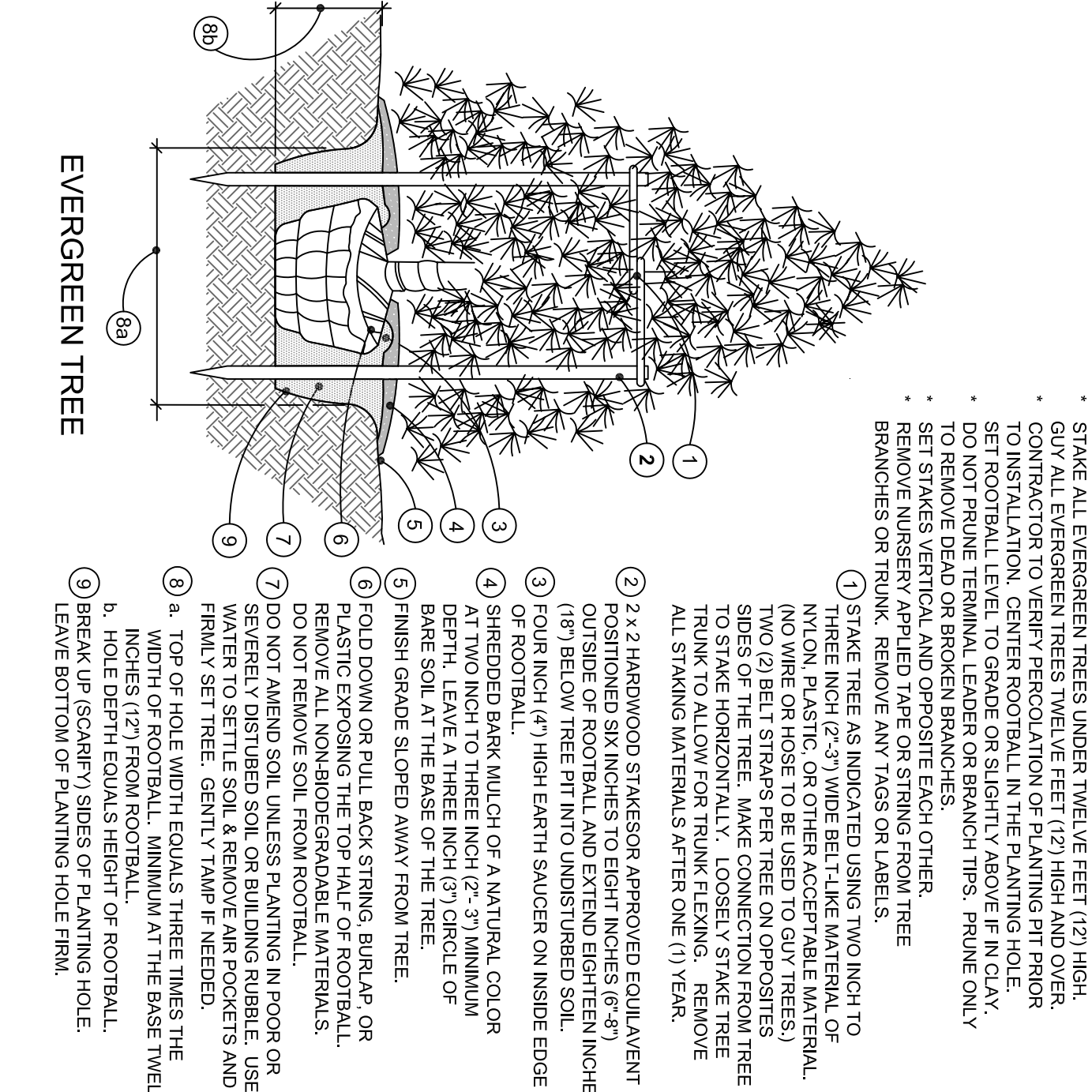
GENERAL

- 1. Do not plant deciduous or evergreen trees directly over utility lines or under overhead wires. Maintain a six foot (6') distance from the centerline of utilities and twenty feet (20') from the centerline of overhead wires for planting holes. Call MSS D/G forty-eight (48) hours prior to landscape construction for field location of utility lines.
- 2. The Contractor agrees to guarantee all plant material for a period of one (1) year. At that time, the Owner's representative reserves the right for a final inspection. Plant material with twenty-five percent (25%) die back, as determined by the Owner's representative shall be replaced. This guarantee includes the furnishing of new plants, labor, and materials. These new plants shall also be guaranteed for a period of one (1) year.
- 3. The work shall consist of providing all necessary materials, labor, equipment, tools, and supervision required for the completion as indicated on the drawings.
- 4. The landscape areas shall be irrigated by an automatic underground irrigation system. Lawns and shrub/landscape areas shall be watered by separate zones to minimize overwatering.
- 5. All written dimensions override scale dimensions on the plans.
- 6. Report all changes, substitutions, or deletions to the Owner's representative.
- 7. All bidders must inspect the site and report any discrepancies to the Owner's representative.
- 8. All specifications are subject to change due to existing conditions.
- 9. The Owner's representative reserves the right to approve all plant material.

MAINTENANCE

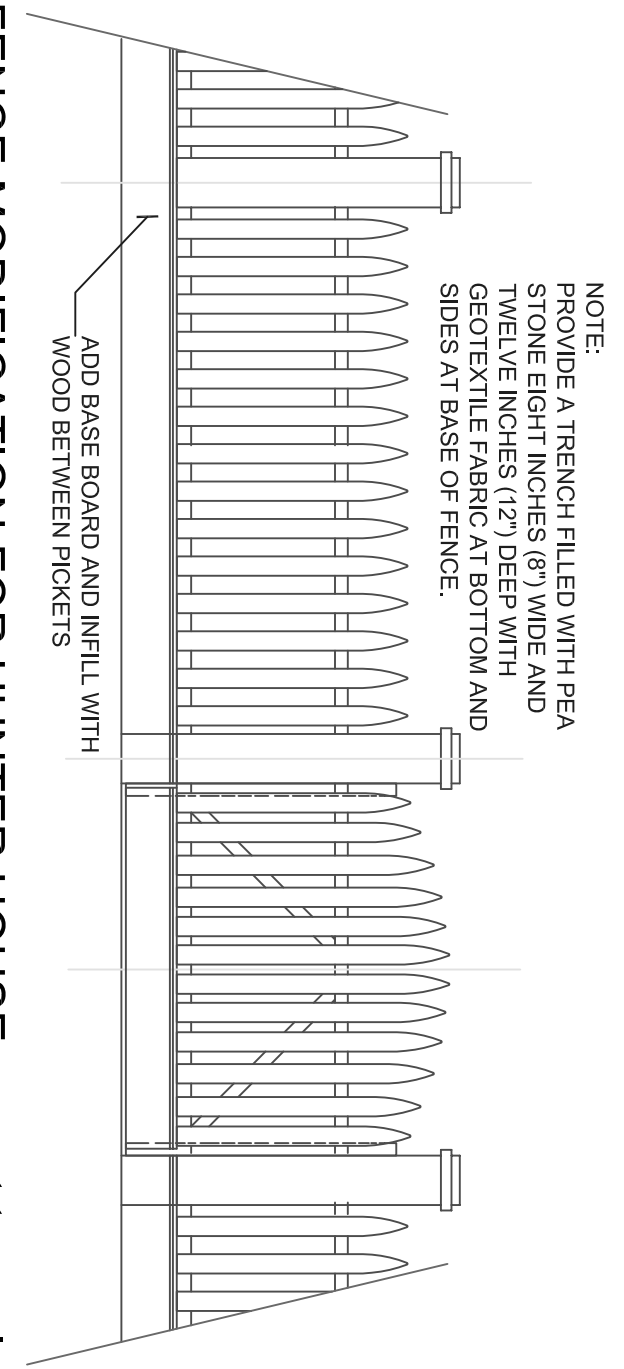
- 1. The Owner of the landscaping shall perpetually maintain such landscaping in good condition so as to present a healthy, neat, and orderly appearance, free from refuse and debris.
- 2. The Owner shall conduct a seasonal landscape maintenance program including regular lawn cutting (at least once per week during the growing season), pruning at appropriate times, watering, and snow removal during winter.
- 3. The Contractor is responsible for watering and maintenance of all seed areas until a minimum of ninety percent (90%) coverage, as determined by the Owner's representative.
- 4. All diseased and/or dead material shall be removed within sixty (60) days following notification and shall be replaced within the next appropriate planting season or within one (1) year, whichever comes first.
- 5. Any debris such as lawn clippings, fallen leaves, fallen limbs, and litter shall be removed from the site on a weekly basis at the appropriate season.
- 6. All planting beds shall be maintained by removing weeds, fertilizing, and replenishing mulch as needed.
- 7. Annual beds shall be kept free of weeds and mulched with sphagnum peat of a neutral pH as needed. Perennial beds shall be kept free of weeds and mulched with fine textured shredded bark as needed. Cut spent flower stalks from perennial plants at regular intervals.

NOTES:

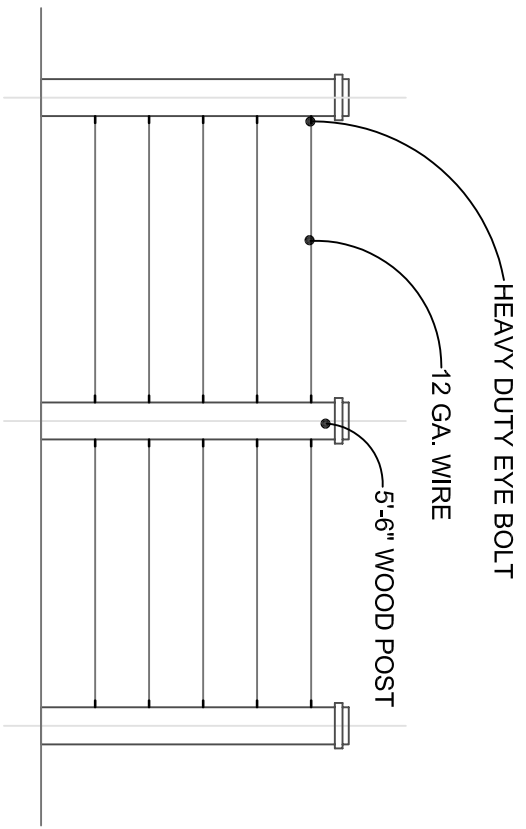


EVERGREEN TREE

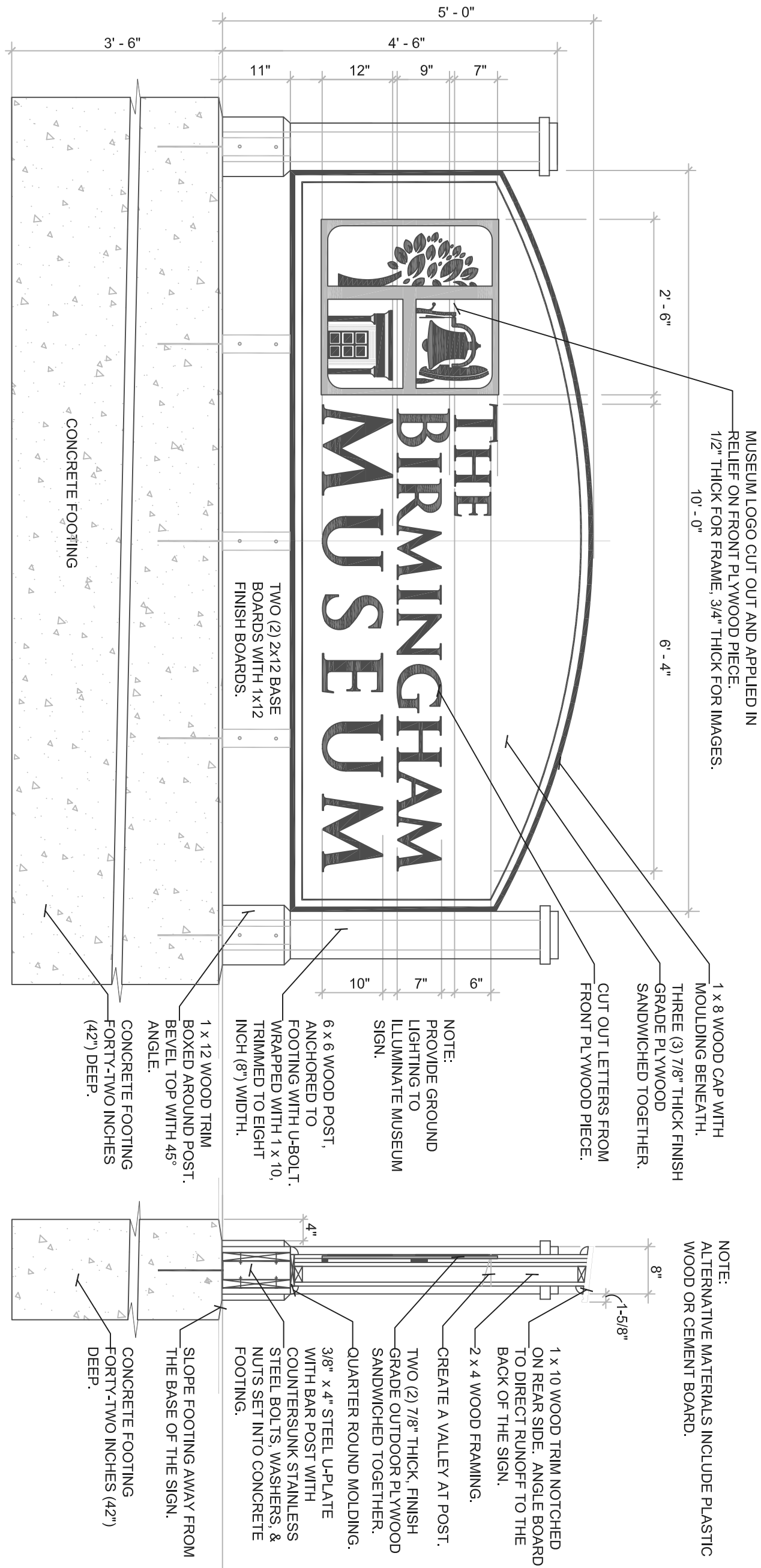
FENCE MODIFICATION FOR HUNTER HOUSE not to scale



TRELLIS FOR VINE SUPPORT n.t.s.



MONUMENT SIGN DETAIL



GENERAL NOTES FOR ALL PLANTINGS:

- DO NOT CUT CENTRAL LEADER.
- REMOVE ALL TAGS, STRINGS, PLASTICS, AND ANY OTHER NON-BIODEGRADABLE MATERIALS EXCEPT LABEL FOR PLANT NAME, FROM PLANT STEMS OR CROWN WHICH ARE UNSIGHTLY OR COULD CAUSE GIRDLING.
- PLANTS SHALL BEAR THE SAME RELATION TO FINISH GRADE AS IT OF THE PLANTING HOLE IN THE MUSEUM. SET THE BASE OF THE PLANTING HOLE TO MEET EXISTING GRADE IF PLANTING IN CLAY SOILS.
- CENTER THE ROOTBALL IN THE PLANTING HOLE. LEAVE THE BOTTOM OF THE PLANTING HOLE FIRM. USE WATER TO SETTLE THE PLANTING MIX AND REMOVE ANY AIR POCKETS AND FIRMLY SET THE TREE OR SHRUB. GENTLY TAMP IF NEEDED.

NOTE:

- CONTRACTOR TO VERIFY PERCOLATION OF PLANTING PIT PRIOR TO INSTALLATION.

NOTE:

- CONTRACTOR TO VERIFY PERCOLATION OF PLANTING PIT PRIOR TO INSTALLATION.
- PERENNIALS TO BE PLANTED UP TO THE EDGE OF THE SAUCER AROUND A TREE OR SHRUB BED.

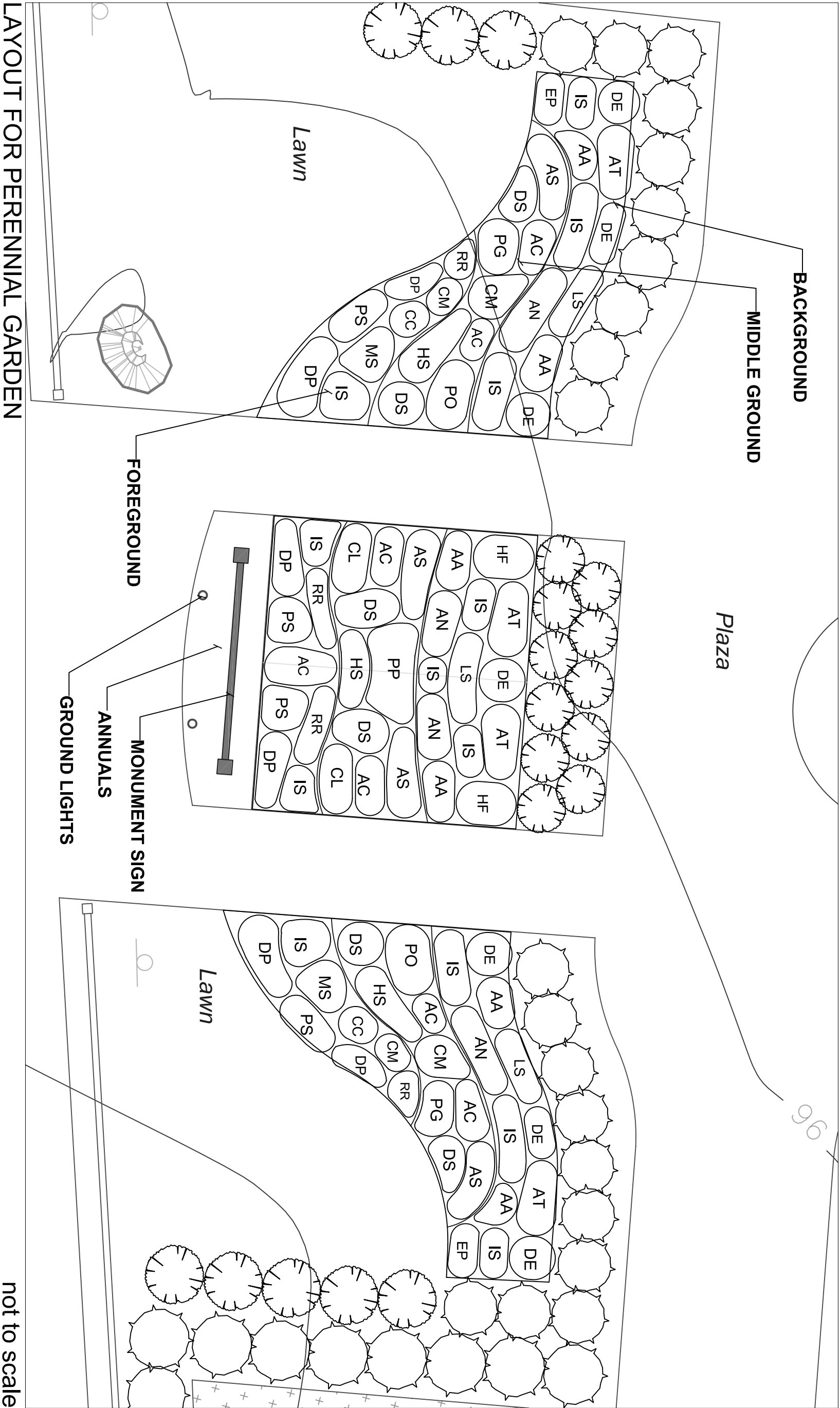
NOTE:

- CONTRACTOR TO VERIFY PERCOLATION OF PLANTING PIT PRIOR TO INSTALLATION.
- PERENNIALS TO BE PLANTED UP TO THE EDGE OF THE SAUCER AROUND A TREE OR SHRUB BED.

SHRUB

ANNUAL / PERENNIAL / GROUNDCOVER

not to scale



not to scale

PERENNIAL PLANT LIST

KEY QTY.	BOTANICAL NAME	COMMON NAME	HEIGHT	FLOWER COLOR	FLOWERING TIME	REFERENCE
Background (36" height to 60" height)						
AA --	Aster anemulifolius	Michaelmas Daisy	36"	Yellow	Sept., October	Home Beautifying
AA --	Aconitum napellus	Monkshood	36"	Deep purple blue	July, August	Home Beautifying
AT --	Arenaria nemorosa	Windflower	36" - 48"	Pink	August, October	Home Beautifying
DE --	Delphinium elatum	Bee Larkspur	60"	Blue	June, July	Home Beautifying
EP --	Echinacea purpurea	Purple Coneflower	24" - 48"	Purple	June - August	Home Beautifying
HF --	Hemerocallis flava	Siberian Iris	36" - 48"	Blue	June, July	Home Beautifying
LS --	Liriodendron tulipifera	Bleeding Heart	36" - 48"	Red, purple	July, August	Home Beautifying
Middle ground (18" height to 36" height)						
AC --	Aquilegia vulgaris	Golden Columbine	24" - 36"	Yellow	May, June	Coyle
AS --	Aster multiflorus	Windflower	24" - 36"	Pink, white	September	Home Beautifying
CM --	Campanula medium	Campanula	24" - 36"	Pink, purple, white	June, July	Coyle
CL --	Coreopsis lanceolata	Lance Coreopsis	30"	Red	July, August	Home Beautifying
DS --	Dianthus barbatus	Common Bleeding Heart	24" - 36"	Pink, white	April, May	Home Beautifying
HS --	Heuchera sanguinea	Heuchera	18" - 30"	Purple & Yellow	April, June	Coyle
IG --	Iris germanica	Bearded Iris	24" - 36"	Pink, purple, white	May	Coyle
PO --	Paeonia officinalis	Queen of the May, Silver King	24" - 36"	Various	May, June	Coyle
PG --	Polygodon grandiflorus	Balloon Flower	24" - 36"	Deep blue	July, August	Home Beautifying
PP --	Phlox paniculata	Garden Phlox	24" - 36"	Pink, purple, white	May, June	Coyle
Foreground (6" height to 18" height)						
AC --	Aster multiflorus	Windflower	12"	White	April, May	Home Beautifying
CC --	Campanula medium	Campanula	12"	Blue	June, August	Home Beautifying
DP --	Dianthus barbatus	Common Bleeding Heart	12" - 18"	Red, pink, white	June, July	Coyle
IS --	Iris germanica	Bearded Iris	12" - 18"	Blue	May, June	Home Beautifying
MS --	Moss Phlox	Creeping Buttercup	12" - 18"	Purple, pink, white	April, May	Home Beautifying
RR --	Ranunculus repens	Ranunculus	12" - 18"	Purple, pink, white	April, May	Home Beautifying

Coyle, The Coyle Nursery, Price List of Shade Trees, Hardy Ornamental Shrubs, Evergreens, Vines, Roses, Perennials, and Fruit trees Fall 1919, Spring 1920

Home Beautiful - Home Beautifying Suggestions, Including Lists and Sizes of Ornamental Plants and Information for Their Use (1921)

LANDSCAPE PLAN INDEX:

- \* Sheet LP - 1: LANDSCAPE PLANTING PLAN
- \* Sheet LP - 2: LANDSCAPE NOTES & DETAILS

date: February 7, 2019

revised: 03-20-2019 Add monument sign detail, 05-01-2019 Add monument sign cross section.



LANDSCAPE PLAN FOR:

City of Birmingham  
151 Martin Street  
Post Office Box 3001  
Birmingham, Michigan  
48012-3001  
(248) 530-1808

PROJECT LOCATION:

Birmingham Museum  
John West Hunter Park  
556 West Maple Road  
Birmingham, Michigan  
48009  
Ms. Leslie Plack, Director  
(248) 530 1928

LANDSCAPE PLAN BY:

Nagy Devin Land Design  
31736 West Chicago Ave.  
Livonia, Michigan 48150  
(734) 634 9208



Autocad Signature  
ORIGINAL, IN BLUE

LP - 2: LANDSCAPE NOTES & DETAILS



PROJECT COMPONENT	PRIOR ITY	COST ESTIMATES	COMMENTS	POTENTIAL FUNDING SOURCES
<b>Heritage Zone</b>	<b>1.0</b>		The visibility and impact or improvements in the Heritage Zone have the highest priority because they lend themselves well to enhanced programming and continued funding for other parts of the plan	
<b>Design</b>	1.1	\$ (3,000.00)	completed	City
<b>Construction</b>	1.2			
Main sign (at Maple)	1.2.1	\$ 9,000.00	First phase of Heritage Zone	City/private
wood fence	1.2.2	\$ 2,400.00		
modify HH fence	1.2.3	\$ 2,700.00		
gates	1.2.4	\$ 1,000.00		
tree removal	1.2.7	\$ 1,600.00	Three trees to be removed and replaced with more historically appropriate elms	City/private
new plant material	1.2.8			
<i>deciduous trees- Pioneer elm</i>	1.2.8.1	\$ 1,800.00		
<b>Subtotal</b>			<b>\$18,500.00</b>	
new plant material	1.2.8			
<i>ornamental tree</i>	1.2.8.2	\$ 400.00		
<i>densiformis yew</i>	1.2.8.3	\$ 3,600.00		
<i>winter gem</i>				
<i>boxwood/inkberry</i>	1.2.8.4	\$ 3,000.00		
<i>summersweet</i>	1.2.8.5	\$ 640.00		
<i>fragrant sumac</i>	1.2.8.6	\$ 1,050.00		
<i>climbing hydrangea</i>	1.2.8.7	\$ 1,320.00		
<i>ornamental rose</i>	1.2.8.8	\$ 680.00		
vine support structure	1.2.5	\$ 1,600.00		
garden bed preparation	1.2.9	\$ 6,000.00	Coordinate work with existing DPS maintenance plan	
metal edging	1.2.10	\$ 480.00		
stone mulch	1.2.6	\$ 225.00		
<b>Subtotal</b>			<b>\$18,995.00</b>	
<b>Total Project</b>			<b>\$37,495.00</b>	

<b>Relocate utilities</b>	1.2-2.0	\$ 3,500.00	DTE estimates represent the majority of the cost, but do not include relocation of other shared line users	Donations, possibly combined with grants
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- Design—Posts to mimic existing post design on picket fence. Sign to have gentle arch in the middle. Utilize proposed arched free-standing wood sign design option provided in the past by Mr. Devlin. Use baseboard instead of stone, similar to that proposed for Hunter House fence area to be used below main sign to anchor it visually, but to leave space below sign for ease of maintenance and possible low plantings. Sign to incorporate (new) 2017 Museum logo: graphic to be colored and composed of layered material in relief, lettering to be recessed
- Size—Sign to be approximately 4' tall by 8' wide (per ordinance), with the tallest point of the arch no higher than 4 ½ feet.
- Lighting--Up-lighting from ground as additional bid item at construction, pending availability of underground electrical service.
- Additional graphics—graphic of logo only to be reproduced and mounted on gate at Hunter House and on fence at driveway.

**MOTION:** by Dixon seconded by Keefer:

To recommend that the City of Birmingham accept the final design by Nagy Devlin Land Design, LLC, of the Heritage Zone component of the 2018 Landscape Master Plan for the Birmingham Museum, to be reviewed by the Historic District Commission and, if approved, to be presented to the Birmingham City Commission for final review and approval.

**VOTE:** Yeas, 7  
Nays, 0

- B. Pending design approval by the Historic District Commission and City Commission, the matter of developing specific fund raising strategies can be explored in more detail at the April meeting. The HDC will review the Heritage Zone design at their March 20, 2019 meeting. A Museum Board position will be opening as of May 1, 2019, as Lori Eaton is moving out of the Birmingham area and will be unable to continue on the board. Members would like Museum Director Pielack to approach Bill Dow to determine if he is interested in applying for the open position, which could help with fund raising planning. Other members of the community are also encouraged to apply if interested.

## **Communication and Reports**

Director Pielack highlighted portions of the Director Report, including noting that the CREEM documentary release may provide opportunities for a local release and fund-raiser perhaps later in the summer, if it is feasible to plan such an event. The CREEM banner outside the former offices was removed for construction and has been replaced now that the weather has improved.

Ms. Logue mentioned that the Friends' Heritage Newsletter included a flyer about upcoming opportunities to raise funds for the Heritage Zone landscape project.

**The next Regular Meeting will be held on April 4, 2019 at 5:00 PM.**

Ms. Krizanic adjourned the meeting at 6:19 PM

**Motion by Ms. Lang**

**Seconded by Ms. Debbrecht to approve the requested six month site plan extension for 277 Pierce.**

**Motion carried, 4-0.**

VOICE VOTE

Yeas: Lang, Debbrecht, Deyer, Henke

Nays: None

**03-14-19**

**4) BIRMINGHAM MUSEUM HERITAGE LANDSCAPE ZONE MASTER PLAN**

City Planner Dupuis reviewed the history of the item noting that the applicant is seeking a Certificate of Appropriateness. The Board then welcomed Brian Devlin from Nagy Devlin Land Design.

Mr. Devlin presented the Heritage Landscape Zone Master Plan for the front of the Birmingham Museum. He explained:

- The Heritage Zone is comprised of the front yards of the Allen and Hunter Houses and the front of the plaza.
- Part of the intention for the Master Plan is to use many of the same species of plants that were originally planted in front of both homes. More compact and modern cultivars will be used for the updates in order to conserve space, but they will give a sense of what the landscaping had been like.
- Some of the Catalpa and Norway Maple trees currently in the Heritage Zone will be removed, to be replaced with three American Elms which are resistant to Dutch Elm Disease.
- The dumpster location will be screened. The arborvitaes planted there are not doing well, so the Plan proposes a wood trellis with English Ivy vines planted at the base instead.
- The plaza will stay the same. The Heritage Garden is in place. It has also been suggested that Nagy Devlin Land Design provide a list and a map of plants which were available at the time the homes were built. People in Birmingham would also be welcome to contribute plants they have been growing, and the mapping of the original plants would provide a guideline for where the citizen-contributed plants should go.
- In front of the Allen House, the Children's Garden remains. Gates have been installed at the openings so that when children are there they can be kept secure.
- A new sign is proposed in front of the central portion of the plaza. Concrete will be removed for the installation of the sign, with the goal of getting the sign as close to the road as possible while still far enough from the road to avoid splashes from cars, salt, and plowed snow.
- The sign will be wood posts with a 12 inch wood base and concrete footing raising it off the ground. It will 38 square feet total, and about ten feet in length, which is the length required to fit all the lettering and the logo on the sign. Two pieces of plywood wood will be sanded together. The back piece of plywood will

be a different color, and the lettering for the sign will be cut out from the front piece of plywood so that the letters are both colored and recessed. The logo on the sign will be a relief. There are groundlights planned for the sign as well.

City Planner Dupuis noted the sign will require the review and approval of the Design Review Board, so the final length of the sign will be discussed and determined at that time.

Ms. Lang asked for confirmation that the sign would be able to withstand weather.

Mr. Nagy confirmed the sign should last for a fair amount of time.

**Motion by Vice-Chairman Deyer**

**Seconded by Ms. Debbrecht to recommend the Commission issue a Certificate of Appropriateness for the Birmingham Museum work as proposed meets Secretary of Interior Standards for Rehabilitation Numbers Six and Nine.**

**Motion carried, 4-0.**

VOICE VOTE

Yeas: Deyer, Debbrecht, Henke, Lang

Nays: None

**03-16-19**

**5) MISCELLANEOUS BUSINESS AND COMMUNICATIONS**

**A. Staff Reports**

1. Administrative Approvals
2. Demolitions

3. Museum Director Pielack told Vice-Chairman Deyer that she digitized the Echo City material about a week ago and sent it to City Planner Dupuis for the Committee's perusal. Museum Director Pielack then provided the Committee with an update on the National Certification on the Allen House:

- The National Register Nomination for the Allen House has been submitted. It is in Lansing, and has yet to be reviewed. Post-review, Birmingham may receive a request from Lansing for revisions or additional materials.
- It is most likely the submittal will be considered during the September 2019 review, though there is a chance it could be reviewed in May 2019. Museum Director Pielack said she would let the Committee know for sure when the review will be moving forward.
- There was enough material to submit the Allen House under Criterion A, for its association with transportation and community planning in the greater context of what was happening along the Woodward corridor, the suburbanization of the Detroit area, and how Birmingham and Henry Allen in particular was responding to that; Criterion B, for the individual contributions of Henry Allen who guided Birmingham's change into a City, wrote the City Charter, helped keep the City sound during the Great Depression, and other significant roles; and Criterion C, for being a unique example of the work of noted Detroit architect Rupert W. Koch who designed several significant revivalist homes and works of architecture





**CITY OF BIRMINGHAM  
MUSEUM BOARD  
VIRTUAL MEETING  
November 5, 2020  
5:00 PM**

Members Present: Russ Dixon, Pat Hughes, Judith Keefer, Tina Krizanic, Marty Logue, Caitlin Rosso

Members Absent: Dan Haugen

Administration: Museum Director Leslie Pielack

Guests: None

Ms. Krizanic called the meeting to order at 5:02 PM.

**Approval of the Minutes  
Minutes of October 1, 2020**

**MOTION:** by Dixon, seconded by Keefer:

To approve the minutes of October 1, 2020.

**VOTE:** Yeas, 6  
Nays, 0

**Unfinished Business**

- A. Members discussed the importance of implementing the 2021-2024 Strategic Plan objective of the final design for the Heritage Zone, which has been issued a Certificate of Appropriateness by the Historic District Commission. Maple Road construction has been completed and there are sufficient funds available to begin work on several priority components of the design, including installation of primary signage, modifications to the wood fencing at the Hunter House, installing gates, and planting three Pioneer elm trees. These elements would enhance the most visible areas of the landscape and demonstrate that progress on planned landscape improvements. The final design has been issued a Certificate of Appropriateness by the Historic District Commission, but has yet to be presented to the City Commission.

**MOTION:** by Dixon, seconded by Logue:

To begin implementation of the 2021-2024 Strategic Plan objective of the Landscape Master Plan through the installation of the primary sign, wood fencing and gates, and three Pioneer elms per the final design of the Heritage Zone as prepared by Nagy Devlin Land Designs, and to present the proposed work and final design to the City Commission.

**VOTE:** Yeas, 6  
Nays, 0

### **New Business**

B. The board reviewed the meeting schedule for calendar year 2021.

**MOTION:** by Dixon, seconded by Keefer:

To approve the 2021 meeting schedule for the Museum Board as presented.

**VOTE:** Yeas, 6  
Nays, 0

C. The board discussed opportunities to assist the Friends with their membership campaign. Ms. Logue, who also serves on the Friends board, said the annual appeal generally goes out in late November or early December. No help is needed for mailing, but members suggested additional resources for recruiting possible new Friends members:

- Mailing and e-mailing the annual appeal to Taylor Project donors
- Mailing the annual appeal to members of the Historic District Commission, Historic District Study Committee, the Public Arts Board and the Greenwood Cemetery Advisory Board
- individual streets or houses could also generate oral history content for the museum's archives

D. Due to a conflict with the normally scheduled Museum Board meeting of December 3, 2020, the Board considered an alternate meeting date of December 1, 2020.

**MOTION:** by Dixon, seconded by Keefer:

To reschedule the December 3, 2020 meeting of for the Museum Board to Tuesday, December 1, 2020 at 5:00 PM.

**VOTE:** Yeas, 6  
Nays, 0

### **Communication and Reports**

Director Pielack reviewed the Director Report with updates on the Taylor Monument Project. Mr. Hughes has contributed to the research by locating a document that may provide evidence of the sale, as a slave, of Eliza Taylor's mother. Other research has



## MEMORANDUM

Clerk's Office

**DATE:** December 7, 2020

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

**FROM:** Leslie Pielack, Museum Director  
Alexandria Bingham, City Clerk Designee

**SUBJECT:** Greenwood Cemetery Advisory Board Release of Graves Request

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### INTRODUCTION:

The sale of graves in Greenwood Cemetery has depleted the available plots. The Greenwood Cemetery Advisory Board believes interest in grave purchases will continue in the near future. Therefore, the GCAB recommends the release of an additional 50 graves for public sale.

### BACKGROUND:

In 2015, 530 potential grave plots were identified in Sections B, C, D, K, L, and O. On August 10 of 2015, the City Commission released 240 of these newly identified plots in Sections B and C for sale and directed the Greenwood Cemetery Advisory Board to provide further recommendations for sale once the sales of these plots exceeded 200.

By December 31, 2018, 199 of the 240 released spaces in Sections B and C had been sold. With grave sales continuing to reduce the available sites during early 2019, the GCAB voted at its June 7, 2019 meeting to recommend that the city release an additional 60 plots for sale in Sections B and C, which would have brought the total of recently released plots to 300. At its July 8, 2019 meeting, the City Commission took no action on the recommendation, and asked for clarification on the market price for cemetery plots and whether additional plots in Sections B and C should be sold.

Subsequently, at its August 16, 2019 meeting, the GCAB determined that the current pricing at Greenwood was appropriate and voted to recommend to the City Commission to keep the price at \$3,000. In addition, the Board voted to recommend that sales in Section B be suspended and that 30 plots in Section C be released for sale. This revised recommendation, however, was not brought to the City Commission for final review and action. Grave sales continued, and by June 30, 2020, an additional 50 graves had been sold; 42 of these were in Sections B and C, bringing the total sold to 241, exceeding by one plot the original 240 released by the Commission in 2015.

The GCAB once again reviewed the situation of available graves for sale on November 6, 2020 as part of its Annual Report and recommendations to the City Commission. The available data suggests that as of June 30, 2020, 229 plots remain available in Section B

and 10 in Section C, for a total of 239 plots in Sections B and C combined (see chart). An additional 6 plots are available in Section D.

Grave Sales Detail, January 2019 - June 2020

	1Q 19	2Q 19	3Q 19	4Q 19	1Q 20	2Q 20	TOTAL	Sec B	Sec C	B + C *	Sec D	Sec K	Sec L	Sec O	Other
# sold by Section								32	10	42			2	4	2
Resident	4	n/a	3	2		3	12 known								
Non-Res	3	n/a	6	11	5		25								
Comp'd PmtPlans	3														
Total	10	10	9	13	5	3	50								
BEGINNING INVENTORY, 1Q 2019								261	20	281	6	0	2	4	n/a
TOTAL REMAINING (not yet authorized), end of 2Q 2020								229	10	239	6	0	0	0	n/a

*\*Plots in Sections B & C sold under a payment plan are included in the number of sales made for the quarter in which the payment plan was instituted. The remittance to the Perpetual Care Fund of payment for the plots is recorded in total in the quarter in which the final payment is made.*

Based on discussion and review of grave sales and availability, as well as anticipated need, the GCAB voted at their November 6, 2020 meeting to recommend that an additional 50 plots in Sections B and C be released for sale. This would leave 195 plots in reserve in Sections B, C, and D combined for potential future sale.

**LEGAL REVIEW:**

None.

**FISCAL IMPACT:**

For each plot sold in Greenwood Cemetery, \$3,000 is deposited in the Greenwood Cemetery Perpetual Care Fund (Fund). The purpose of the Fund is to account for the investment earnings on the sale of City-owned plots, and donations, which will be used for the perpetual care and maintenance of the cemetery. Estimated basic annual maintenance costs (lawn, forestry, snow removal, etc.) for Greenwood Cemetery are \$60,000.

Under the current allocation of the portfolio, which is intended to generate income and growth, an additional 385 graves would need to be sold to reach the portfolio target size of \$2 million in order to generate sufficient income to pay for basic annual maintenance.

The portfolio's ending fund balance on June 30, 2020, was \$844,454.60. The sale of the 50 recommended plots for release would add \$150,000 to the Fund.



**SUMMARY**

Due to the depletion of available grave plots, the Greenwood Cemetery Advisory Board recommends releasing an additional 50 grave plots in Sections B and C for sale, leaving 195 plots in reserve in Sections B, C, and D for the future.

**ATTACHMENTS:**

1. Excerpt, Greenwood Cemetery Advisory Board Minutes, June 7, 2019
2. Excerpt, City Commission Minutes, July 7, 2019
3. Excerpt, Greenwood Cemetery Advisory Board Minutes, August 19, 2019
4. Excerpt, Greenwood Cemetery Advisory Board Draft Minutes, November 6, 2020

**SUGGESTED RESOLUTION:**

To approve the release of an additional 50 graves in Sections B and C in Greenwood Cemetery for sale to the public.

Ms. Peterson asked how many plots are available for sale in Section F North at the cemetery. Mr. Stern replied that there are 169 occupied graves in that section, and about 75 owned but not occupied.

VOTE:                      Yeas,     6  
                                 Nays,     0

Chairperson Gehringer opened discussion on the Robertson monument, and asked if it fulfills the requirements for monuments at Greenwood.

Mr. Stern felt the Board may have been encroaching on legal matters and was hesitant to move forward. He said that he is not sure the Board has the ability to review a monument after it is erected. He suggested that legal counsel look at it.

Chairwoman Gehringer feels that Mr. Robertson's monument proposal was a blatant disregard for the rules in terms of using a flush base. She expressed that it is the Board's job to point it out to the City Commission. Ms. Suter agreed.

Mr. Stern asked what regulation the Robertson and Callaghan families violated.

Ms. Peterson interjected that a deal is a deal and deserves respect.

Chairperson Gehringer said that her point remains that Mr. Robertson proposed a flush base supporting the monument and it is not what was installed.

Ms. Suter suggested if the rules do not require monument bases to be flush, they should.

Mr. Schneider wants to verify that Mr. Robertson conformed to the rules that were in effect at the time that his monument was erected. He also thinks the Board is doing a good job of considering his request, due to the tight spot for both this Board and the Commission. He also asked if there is anything else he could do to convince the City Commission to rescind the rule and get rid of the monuments that are in place. He was advised by Vice Chair Buchanan to attend the City Commission meeting with additional supporters.

**B.     Consideration to release additional gravesites for sale.**

Mr. Stern mentioned he attended a session with Bob Gibbs and his associates at one of the citywide master-planning meetings. Mr. Gibbs said it was important to look at supply and demand. Mr. Stern agreed with Ms. Suter that Mr. Gibbs did not suggest slowing down sales.

Chairperson Gehringer agreed that it is a good idea to reserve a certain number of spots for the future.

Ms. Suter recommended releasing 50 additional plots for sale.

Mr. Stern left the meeting at 10:01 a.m., and said he will not be able to attend the August meeting if it is rescheduled to August 16.

Vice Chair Buchanan noted that it would be simple to come back and meet to consider releasing more plots.

**MOTION:** Motion by Ms. Schreiner, seconded by Ms. Suter:

To recommend the release of 60 additional plots in Sections B & C bringing total allowable sales to 300, and when sales reach 270 the GCAB will review and make a recommendation to the City Commission on releasing additional plots.

VOTE:                      Yeas,     5  
                                 Nays,     0

**C. Consideration to reschedule August 2, 2019 regular meeting to August 16, 2019.**

Chairperson Gehringer stated, as Chairperson, she can change a meeting date without a vote of the Board. Chairperson Gehringer changed the August meeting date to August 16. She stated if there is no quorum, the Board will not meet.

**V. UNFINISHED BUSINESS**

Items under Unfinished Business will be presented as a status update to the Board and may not require action at this time.

**A. Finalization of Master Plan/Historical Collaboration Priority List**

City Clerk Mynsberge presented the item, explaining that the City Commission wants the Cemetery Advisory Board to develop a priority list of Master Plan/Collaborative Preservation Projects.

Vice Chair Buchanan said that Potter's Field (Item 3) could be eliminated fast. After some research, she found that Gilbert Lake Cemetery held many pioneers and underwent some changes in 1918. Their remains were moved to three different cemeteries: Greenwood, Franklin, and Roselawn. Right at that time the Cemetery Association (the City did not own the cemetery) decided that it wanted to sell more spots. In order to do that they wanted to move some of the remains that were at Potters Field. These people were poor, indigent, and without markers. Circa 1900, these remains were moved under the main road north of Section C)<sup>4</sup>. Military remains are on the South edge of Western part of Section C. and documented. Land developers eventually bought Gilbert Lake.

City Clerk Mynsberge led a discussion on the work plan and the Board decided to table until the August 16, 2019 meeting. She will label items A, B, C, etc. for that meeting.

*Ms. Peterson left at 10:24 a.m.*

**B. Ground Penetrating Radar**

**MOTION:** Moved by Ms. Suter, seconded by Vice Chair Buchanan:

To issue a Request for Proposals (RFP) for Ground Penetrating Radar services for the entire cemetery.

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<sup>4</sup> As corrected on August 16, 2019.

with significant opposition, and suggested that the consultant look at the extension as part of the 2040 Plan. He was advised by the City Attorney that political speech was out of order.

**07-180-19                      REVISED 2019-2020 PLANNING BOARD ACTION LIST**

Planning Director Ecker presented the item.

Mayor Bordman asked if the Planning Board decided the order of the list. Director Ecker said no, not since the joint meeting. She expressed that solar panels, balcony and terrace enclosures were added in as a suggestion, in this order, because everything else is addressed by the master plan; therefore, these two items moved up in priority.

Commissioner DeWeese wanted to note that many of the items are priority but recommended that they be considered part of the master plan process. Make sure that staff is working closely with that team so that it is actually part of the process and integrated into the plan.

Commissioner Hoff asked about the solar panel review process; also #14 refers to sustainable urbanism and discussions of solar power; but the panels are a little bit different. Director Ecker said that they are because regulations governing the panels already exist. Commissioner Hoff also asked about the definition of retail. Director Ecker confirmed it is being considered in the master plan.

Commissioner Hoff asked if D-5 zoning would be included in the master plan process. Director Ecker responded that it would not be that site in particular, but zoning in general along Woodward by density and other general questions for that area.

**MOTION:**     Motion by Commissioner Sherman, and seconded by Commissioner Hoff:  
To approve the revised 2019-2020 Planning Board Action List as provided, with the understanding the order is temporary until we have master plan when the priority order may change.

VOTE:            Yeas,                7  
                     Nays,               0

**07-181 -19                      RECOMMENDATION TO RELEASE ADDITIONAL GRAVES FOR SALE  
   AT GREENWOOD CEMETERY**

City Clerk Mynsberge presented the item.

Commissioner Harris asked about the portfolio target that aspires to sell approximately 622 graves but the 2015 study shows that there are only 530 graves available. Clerk Mynsberge explained she asked the finance director to develop a projection for the number of lots needed to be sold to get the portfolio to a place that would earn the annual maintenance costs.

Commissioner Hoff noticed that 480 spots are in Section B and C and only 50 are in Sections D, K, L, and O; why is that? Clerk Mynsberge replied that there were fewer spaces in those sections available for sale to begin with. Commissioner Hoff is not in favor of selling any plots in Section B and C until there are no more plots available in the other sections.



Commissioner Sherman asked if pricing has been evaluated. Clerk Mynsberge answered that it has not been analyzed. She also reminded the commission that a portion of the lot sales goes to the perpetual care fund.

George Stern, member of the Greenwood Cemetery Advisory Board (GCAB), in thinking about long term planning, advised the Commission to consider cremation, which is currently 60% of all burials. Moving into the future, creating attractive columbarium that fits into the historic nature of the cemetery would be the way to go.

Linda Buchanan, member of the GCAB, in response to Mr. Stern, agreed that there is a trend toward cremation more than full burials; but plots can hold up to three cremations. Therefore, if you purchase a plot you do not have to have a full burial. Basically, the Cemetery Board is not shocked at the marked decline in sales because cemeteries are very generational; younger generations/millennials are not in favor of traditional burials. Sales are consistent with the size of the cemetery, and low sales should not alarm anyone. As a historic preservationist, she would like to see no more sales in section B.

Margaret Suter, member of the GCAB, was not in favor of sales in Section B. She suggested, in planning, we should look at pricing to insure that we are competitive. As far as columbaria, they have to be constructed and it would cost money; money better used to find additional plots. Columbaria would distract from the park like setting that exist today. Relative to the historical significance of Section B, headstone damage after new burials is occurring.

Michael Schneider, 251 Strathmoor, Bloomfield, expressed that it is wonderful that there are still some grave sites available and encouraged cemetery management not to be in a hurry to sell them all; you have an opportunity to have multiple generations of families buried in the same cemetery.

Commissioner Harris wanted to take heed of the comments that the pricing should reflect our goal of funding annual maintenance. He also asked would it be appropriate for the board to consider whether additional plots should be sold at all in Section B.

Generally, the Commission was in favor of:

- Releasing no additional plots until the GCAB studies the appropriate market price of plots.
- Considering not selling additional plots in the historic sections B & C.

Mayor Bordman stated the GCAB will be using Ground Penetrating Radar (GPR) to find additional spaces, and was not in favor of selling additional spaces in sections B & C until the GPR work is completed. She noted a decision will need to be made as to when the cemetery is defined as "filled" and suggested it could be considered filled without further disturbing the historic areas.

City Manager Valentine pointed out the philosophy for establishing the Perpetual Care Fund was to generate funding to pay for annual maintenance of the cemetery in order for it not to fall as a burden on taxpayers.

2 August 16, 2019

planning board, and the city commission. She also suggested a “no later than” date be set to allow for the project award and commencement by the spring thaw of 2020.

Linda Buchanan and Chairperson Gehringer thought that previous request for proposals had been out for bid for 30 days. However, Ms. Buchanan felt that the date for contract execution should be expressed as “TBD”, because of the variables involved.

The board agreed with the chairperson by consensus that:

- Contract execution would be 14 days after contractor selection.
- Project commencement would be scheduled for April 2020.
- Project completion would be set for May 2020.

**MOTION:** Motion by Ms. Suter, seconded by Ms. Peterson

To recommend approval of the Request for Proposal for the Ground Penetrating Radar of Greenwood Cemetery as revised.

**VOTE:** Ayes, 5

Nays, 0

Absent, 2

#### **D. Evaluation and Recommendation to City Commission:**

##### **1. Market Pricing for Cemetery Plots**

Assistant to the City Manager Gallagher presented this item.

- a. Laura Schreiner asked if there was feedback from Ms. Arcome as to whether or not potential purchasers chose not to buy at Greenwood when price was a factor.
- b. There was no data available to support any input from Ms. Arcome.
- c. Based on the data presented comparing regional cemetery pricing, the board concluded that the current pricing at Greenwood was fair and reasonable.

**MOTION:** Motion by Ms. Schreiner, seconded by Vice Chairperson Buchanan To recommend, based on the data presented, that the City Commission keep pricing for cemetery plots at \$3,000.00 per plot.

**VOTE:** Ayes, 5

Nays, 0

Absent, 2

##### **2. Future of Sales in Sections B and C**

Linda Buchanan gave a brief overview of what occurred at the City Commission meeting of July 08, 2019. Margaret Suter, Laura Schreiner, and George Stern also attended. • Prior to this meeting, the GCAB recommended selling 60 plots in Sections B and C, stopping at 300, conducting a reanalysis of sales at 270.

- There was hesitation from the Commission with respect to selling in Section B.
- Ms. Buchanan was in favor of revisiting the analysis and maybe only releasing plots in Section C. She also felt that the situation could be re-evaluated at any time and more plots could be released for sale at a later date.
- The GCAB recommended that the City Commission be prudent in making sure there are plots available for future purchases.

3 August 16, 2019

- Ms. Shreiner reminded the board that this decision had to go through the GCAB cycle and the City Commission.
- Ms. Suter expressed that if the cemetery fills up, Section B may be revisited. The focus should be on Section C and the other remaining sections.
- Commissioner Hoff commented there were 57 plots in other sections of the cemetery that should be sold before selling in Section B and C. No one could affirm that number. • Section A was designated pure historical and there are no plots available for sale. • There are many Birmingham pioneers in Section B, suggesting it is historical as well. • Approximately, 206 plots have been sold in Section B.
- It was noted that overall sales have slowed down to a normal pace at this time.

**MOTION:** Motion by Vice Chairman Buchanan, seconded by Ms. Peterson To recommend for the City Commission approval that sales in Section B be suspended and 30 plots in Section C be released for sale.

**VOTE:** Ayes, 5

Nays, 0

Absent, 2

## **V. UNFINISHED BUSINESS**

Items under Unfinished Business will be presented as a status update to the Board and may not require action at this time.

**A. Finalization of Master Plan/Historical Collaboration Priority List** Chairperson Gehringer presented a list of Master Plan/Collaborative Preservation Projects from the City Commission and the Greenwood Cemetery Advisory Board prioritized the list as follows: 1. Ground Penetrating Radar Services (in process)

2. Potter Field (in progress)
3. Digitizing and Mapping Cemetery Records (in process)
4. Match Cemetery Records with Headstones
5. Historic Headstone Inventory
6. Update Greenwood
7. Alternate Sources of Revenue
8. Review Contract with Elmwood
9. Long-term financial status
10. Maintenance and Landscaping

**MOTION:** Motion by Ms. Suter, seconded by Ms. Peterson:

To recommend the removal of Columbaria from the Finalization of Master Plan/Historical Collaboration Priority List.

**VOTE:** Ayes, 5

Nays, 0

Absent, 2

**MOTION:** Motion by Vice Chair Buchanan, seconded Ms. Peterson To recommend the Finalized Master Plan/Historical Collaboration Priority List as revised.

- 
- Members discussed a meeting schedule for calendar year 2021 and agreed by consensus to schedule meetings for the first Friday of the month at 8:30 AM if in person, at 10:00 AM if virtual.

Members reviewed the proposed 2019-2020 Annual Report.

- Burial and inurnment services will be added to the report.
- Priority items will continue from the current action list, and two items will be added;
  - 5) conduct a study and inventory of markers in the historic area of the cemetery to assess condition and need for training, cleaning or restoration;
  - 6) Develop a long-term plan for cemetery care and preservation.
- Members agreed to recommend to the City Commission that an additional 50 graves be released for sale in Sections B & C.

**MOTION:** by Suter, seconded by Peterson:

To make noted changes to the report and submit it to the City Commission.

**VOTE:** Yeas, 5  
Nays, 1

- Members discussed budget items for FY 2021/22, and agreed by consensus to request \$20,000 for Ground Penetrating Radar and \$5,000 for the historic marker study/training/restoration plan.

#### **V. UNFINISHED BUSINESS**

None.

#### **VI. REPORTS**

- A.** Members reviewed reports provided by city's Finance Department for March and June, 2020 for sales and . There was one sale and two burials in July, 2020 and no sales or burials in August, 2020. September and October data is not yet available.
- B.** Museum Director Pielack provided an update on the Taylor monument project, which has received over \$15,000 for the installation of their monument and additional cemetery preservation projects, to be held in a dedicated account by the Friends of the Birmingham Museum.

#### **VII. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

There were no public comments.





## MEMORANDUM

Office of the City Manager

**DATE:** December 2, 2020

**TO:** City Commission

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

**SUBJECT:** Request for Closed Session – Pending Litigation  
Lyons v City of Birmingham

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It is requested that the city commission meet in closed session to review pending litigation in the matter of Lyons v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act.

**SUGGESTED RESOLUTION:**

To review pending litigation in the matter of Lyons v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275,

**(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.)**



## NOTICE OF INTENTION TO APPOINT TO PUBLIC ARTS BOARD

At the regular meeting of Monday, January 11, 2021, the Birmingham City Commission intends to appoint two regular members to the Public Arts Board to serve three-year terms to expire January 28, 2024, and 1 alternate member to serve the remainder of a three-year term to expire January 28, 2022.

In so far as possible, the members shall represent a major cultural institution, a registered architect of the State of Michigan, an artist, an art historian, and an art consultant. Members may also be members of the Historic District Commission, Design Review Board, the Parks and Recreation Board, or the Planning Board. At least four members of the Board shall be residents of the City of Birmingham.

The objectives of the Public Arts Board are to enrich the City's civic and cultural heritage; to promote a rich, diverse, and stimulating cultural environment in order to enrich the lives of the City's residents, business owners, employees, and all visitors; and to establish an environment where differing points of view are fostered, expected, and celebrated by providing the opportunity for such expression through the display of public art.

Interested citizens may apply for this position by submitting an application available from the City Clerk's office. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, January 8, 2020. These applications will appear in the public agenda for the regular meeting at which time the commission will discuss recommendations, and may make nominations and vote on the appointments.

*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.*

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall, in so far as possible, represent a major cultural institution, a registered architect of the State of Michigan, an artist, an art historian, and an art consultant. Members may also be members of the Historic District Commission, Design Review Board, the Parks and Recreation Board, or the Planning Board.  At least four members of the Board shall be residents of the City of Birmingham.	1/6/2021	1/11/2021



## **NOTICE OF INTENTION TO APPOINT STORM WATER UTILITY APPEALS BOARD**

At the regular meeting of Monday, January 11, 2021, the Birmingham City Commission intends to appoint 1 regular member to serve the remainder of a three-year term to expire January 31, 2023, and two alternate board members to serve the remainder of three-year terms to expire January 31, 2022. Members and alternates shall serve at the will of the commission. Members and alternates shall hold office until their successors are appointed. The City Commission shall fill a vacancy by an appointment only.

2 of the 3 regular members appointed shall be licensed professional engineers not employed by the local unit of government. 1 of the 2 alternate members shall also be a licensed professional engineer not employed by the city. The board members shall serve without compensation. Members are not required to be city residents.

The Appeals Board shall be responsible for hearing disputes to a fee or bill that a property owner or resident of the city shall receive pursuant to the Storm Water Utility ordinance (Section 114-402(c)). The board members shall schedule periodic meetings for appeals as needed.

Interested citizens may submit a form available from the City Clerk's office on or before noon on Wednesday, January 8, 2020. These applications will appear in the public agenda for the regular meeting at which time the commission will discuss recommendations, and may make nominations and vote on the appointments.

*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.*

<b>Criteria/Qualifications of Open Position</b>	<b>Date Applications Due (by noon)</b>	<b>Date of Interview</b>
At least one of the alternate members shall be a licensed professional engineer not employed by the local unit of government, and have legal, administrative or other desirable qualifications that will aid him or her in the performance of the duties of the board members.	1/6/2021	1/11/2021

**CITY OF BIRMINGHAM**  
**BOARD OF ETHICS**  
**COMPLAINT 2020-01**  
November 20, 2020

I. Introduction

Donna Klein, a resident of Birmingham, filed a Complaint against Clinton Baller a City Commissioner, alleging he violated the Ethics Ordinance.

This Complaint presents difficult and serious issues. Difficult because the Complaint involves social media usage, the particular rules governing one social media site, free expression, the communal desire for good—sometimes called “ethical”—government and the text of the Birmingham Ethics Ordinance. Serious because the incident which forms the basis of the Complaint has inflamed the passions of the parties to this Complaint and caused emotional distress for both and it may not be the last time a City official’s activities on social media cause controversy.

The Board of Ethics held two meetings on this matter, each lasted approximately 4 hours. At the first, we considered several motions of the parties and listened to testimony and argument from the parties. At the second we discussed the testimony and documents and debated how to rule on the Complaint. This matter is unusual both because of the length of time we have devoted to it and because it is the first time we have had three different opinions on whether there has been a violation of the Ethics Ordinance.

II. Statement of Facts

The Complainant is active in the local administration of NextDoor, a social media site. Clinton Baller, a City Commissioner since November 2019, has been active on NextDoor since before his election. Mr. Baller also maintains a Facebook page. Earlier this year a NextDoor user made a commercial post that attracted considerable attention within the NextDoor community, not all of it positive. As a result of negative comments, the poster took his post down. Mr. Baller thought this was unfortunate and said so in a post on NextDoor. This resulted in his permanent removal from NextDoor.

Mr. Baller wanted to explain his sudden absence from a forum he had been active on. He explained his side of the story on his personal Facebook page and in an email newsletter that he periodically circulates with his personal views about various items of local and national significance. Both the Facebook page and the newsletter expressed the view that his banishment was unjustified and stated that the Complainant had outsize influence in his banishment, serving as a “lead” with both policing and judging powers. This prompted a few others to post comments on Mr. Baller’s Facebook page, some extremely uncomplimentary about the Complainant, as well as Mr. Baller. Mr. Baller’s posts contained screen shots of a conversation among certain Nextdoor leads that is supposed to be confidential. The testimony



does not establish how Mr. Baller obtained the screen shots and whether they were in fact still confidential when he posted them.

Complainant did not establish that any communications were private or confidential once NextDoor released same. Ms. Klein never established that the disclosure of screen shots and/or other information to Mr. Baller was unauthorized. There was no evidence Mr. Baller received any communications because he was a City official. NextDoor is a privately-owned business based in California, operating in our community. Community individuals, including Ms. Klein, volunteered to accept certain responsibilities on behalf of and at the service of this private enterprise. NextDoor has its own internal arrangements with its agents regarding the release of information. Unlike Ms. Klein, Mr. Baller was not an agent or in service to NextDoor. Mr. Baller was not in a position to be bound by NextDoor's rules and/or policies, as to confidentiality or otherwise. Commentary from NextDoor members appears to, in other matters, include negative comments and/or argument as routine. Ms. Klein never testified as to any concerns she had with NextDoor regarding this matter, as she had a right to do if she had a concern with respect to the dissemination of allegedly "confidential" information.

The Complainant learned of Mr. Baller's references to her and was extremely distressed as she believed Mr. Baller's explanation of her role in his banishment was inaccurate in several important respects, singled her out for public shaming for something she did not do, and the resulting commentary caused her private conduct to become a public issue in a way that was most hurtful. During the hearing, Mr. Baller acknowledged at least one of his statements was untrue, though he believed it to be true at the time he made it. He further stated that his purpose was to educate followers and express concern about NextDoor. Mr. Baller's communications listed his name and the fact that he is a Birmingham City Commissioner, along therewith his personal residential address.

Ms. Klein filed this Complaint against Mr. Baller alleging violations of the Birmingham Ethics Ordinance. She believes his conduct was dishonest, disrespectful and has destroyed public confidence in the integrity of City officials.

### III. Question Presented

Do the social media comments of a City Commissioner about events on his personal social media site and personal newsletter involving himself, but not pertinent to City business, and that (i) contain at least one factual inaccuracy, (ii) name a private Birmingham citizen and (iii) result in embarrassment to that citizen, violate the Birmingham Ethics Ordinance?

### IV. Answer and Analysis

People often confuse ethics and law. When people think about “ethics”, they often think of standards of morals or virtue. People understand law to regulate conduct rather than morality. Ethics set out minimum standards for public or professional behavior. Unlike religious systems of belief, ethics for governmental officials don’t judge morality. When we call a law an Ethics Ordinance, it can create confusion. Are we regulating specific conduct or morality? This is not the first time a complainant has come to the Ethics Board seeking a judgment that a public official has behaved unfairly, dishonestly or disrespectfully.

Elements of virtue and law are both present in the Ethics Ordinance. This can cause difficulties in applying the Ordinance. We all hope for a virtuous government run by virtuous public officials. We think this is a worthwhile civic statement. The Ethics Ordinance was not intended to, nor can it, effectively regulate whether a public official’s conduct is in all respects virtuous. Sections 2-320, 2-321, 2-323 and 2-324 challenge public officials to behave with fairness, honesty and respect—a sort of shorthand for virtue. But we as a community haven’t agreed on what exactly virtue consists of. Our numerous religious traditions and secular institutions show this, as does the disagreement of the parties in this case. There is no agency that we all would willingly agree to judge whether we are virtuous or not. Certainly, judging virtue is beyond this Board’s capability.

The Birmingham Ethics Ordinance in its simplest terms aims to assure the citizens of Birmingham that they can have confidence in their government by prohibiting the use of public office for private gain; requiring public officials to disclose conflicts of interest and avoid taking official action where a conflict of interest exists; making decisions only through official channels; and by not making the public believe their personal opinion is City policy unless the City has formally adopted a policy approving that opinion. The Ethics Ordinance resides within the framework of existing state, local and federal law. It is not an overriding mandate that supersedes all other rights.

The Ethics Ordinance generally does not regulate the actions of City officials in purely private disputes. Therefore it is not necessary to analyze Mr. Baller’s conduct under the broad, aspirational standards of Sections 2- 320, 2-321 or 2-323 or to determine what NextDoor’s policies are or whether Mr. Baller’s statements about his banishment from NextDoor are accurate or inaccurate. Nonetheless, this Board will examine the particular sections of the Ethics Ordinance that could be triggered by this Complaint.

The Board of Ethics has identified six specific sections of the Ethics Ordinance that might apply to the allegations of this Complaint. All or a majority of the Board have concluded that Mr. Baller’s conduct does not violate the Ethics Ordinance, thus the Board’s formal judgment is that the Complaint must be dismissed in its entirety, though at least one of us would find a violation of four of the six Ordinance sections. This Opinion sets out the majority opinion, though it also identifies the one instance where Ms. Fierro-Share diverges from the majority.

#### Section 2-320

Section 2-320 is the very first section of the Ethics Ordinance. It announces that public

office is a public trust and states that each public official “must earn and honor the public trust by integrity and conduct.” It notes that the Ethics Ordinance “proscribes actions incompatible with the public interest....” These are lofty sentiments, not easily translated into neat behavioral categories that everybody would agree on. What exactly is the “public trust”? How do we measure it? What level of agreement within the community establishes whether and when any particular elected official has it or loses it? The evidence established that Mr. Baller’s communications were not so clearly outside the bounds of private behavior as to be clearly incompatible with the public interest and/or public trust.

Notably, Section 2-320 obligates the City to “provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants.” As to social media, no evidence was presented that any specific guidelines exist or, if they do, that Mr. Baller violated them. Given the increasing importance of social media, the City Commission may wish to adopt guidelines for public officials’ use of social media.

The Board finds that Mr. Baller’s conduct does not violate Section 2-320.

#### Section 2-321

When originally adopted in 2003, Section 2-321, entitled “Responsibilities of Public Office”, contained language that the official and private conduct of City officials “should be above reproach.” In 2016, on the recommendation of this Board, the City Commission amended Section 2-321 to remove the reference to “morality”. It was this Board’s belief that the requirement that moral conduct be “above reproach” was too vague to apply and inappropriate for an ordinance regulating an official’s conduct. “Ethical Conduct” of a City official is the measure.

The last paragraph of Section 2-321 states that “All city officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, *“by maintaining non-partisanship in all official acts, and by avoiding official conduct which may tend to undermine respect for city officials and employees and for the city as an institution.”*

The Complainant says that while some of the Ethics Ordinance’s broad language is limited to official action, the quoted language is not and Mr. Baller’s statements were neither accurate (because some were untrue) or fair (because they misleadingly suggested that it was her fault that Mr. Baller was banished from NextDoor), nor respectful (because he gratuitously named her for the purpose of shaming or bullying her). We cannot agree that this sentence of the Ordinance applies to the subject private conduct for two reasons. The first is that the quoted language is a single sentence that has a primary and a dependent clause. The primary clause taken alone may not be limited to official action, but the dependent clause (italicized to identify it) is strictly limited to official actions. The Ordinance states that public officials have to be honest, fair and respectful by maintaining non-partisanship in official acts and by avoiding certain official conduct. The conduct we have heard and read about is entirely private. The Ethics Ordinance does not generally seek to regulate city officials in their private dealings.

There is wisdom in this. The Ethics Board is ill-equipped to be a forum to settle private disputes by declaring one of the contestants ethical or unethical. Beyond that, even if the words of the primary clause are not limited to official action, the conduct complained of here--which the Board does not necessarily condone--does not violate that standard. Honesty does not and cannot mean accuracy in all things. By becoming a public official a person does not become subject to being judged unethical if they make a factual mistake. Similarly, respect does not mean that a public official can't disagree with a constituent, even vehemently, or that the public official's opinions can't offend. Respect means the public official must listen, endeavor to understand the point of view of the other person and respond. But the official can disagree and should do so if that is their honest belief. Public officials can't treat citizens as if they don't exist or that their views don't matter or ridicule them for personal characteristics unrelated to the substance of the dispute. Mr. Baller's comments were not disrespectful. There was no evidence he was responsible for the speech of others.

The Board finds that Mr. Baller's conduct does not violate Section 2-321.

#### Section 2-323 (1)

Section 2-323 (1) prohibits the use of public office for private gain. "Private gain" means "any interest or any benefit, in any form, received by a city...official." (2-322). Mr. Baller did not use his public office to gain any benefit in this private dispute. While he listed his City Commissioner title in his communication, that did not gain Mr. Baller any advantage. The evidence before us shows Mr. Baller wanted to justify himself, but he used persuasion and his view of the facts, not his office, to try to achieve that goal.

The Board finds, unanimously, that Mr. Baller's conduct does not violate Section 2-323(1)

#### Section 2-323(5)

Section 2-323(5) states that it is the intention of the Ethics Ordinance that city officials avoid any action, "whether or not specifically prohibited in Section 2-324" which might create the "appearance of .....affecting adversely the confidence of the public or the integrity of city government." For the reasons already mentioned, we do not believe the Ethics Ordinance regulates Mr. Baller's communications about purely private matters.

Board member John Schrot agrees that Mr. Baller has not violated Section 2-323(5), but for a different reason. He believes that Mr. Baller's conduct has not, in fact, affected adversely public confidence. Mr. Schrot noted that the evidence showed Mr. Baller's communications may have been exposed to 13,000 Birmingham residents, yet only a very few people commented on Ms. Klein, and not all of those were negative. Mr. Schrot concluded that there was no reason to believe that the confidence of the public at large in the city government was adversely affected by Mr. Baller's conduct. While I do not think it is necessary to engage with



this issue, I concur in his opinion. I have no doubt that the Complainant has lost confidence in Mr. Baller and perhaps in the government for failing to curb or punish his conduct. But I see no basis for concluding that Mr. Baller's private conduct in this instance affects public confidence in the city as an institution. Commissioners come and go. Not all citizens agree with every Commissioner in all respects. Private disputes of this nature between individuals—even when one is an elected official-- are not the kind of thing that tends to undermine public confidence in the city as an institution or its government unless there is a separate and distinct violation of Section 2-324 of the Ethics Ordinance.

The Board finds that Mr. Baller's conduct does not violate Section 2-323(5)

#### Section 2-324(a)(8)

Section 2-324(a)(8) prohibits any city official from using his or her official position to obtain or seek to obtain any special consideration, advantage or preferential treatment beyond that which is available to every other citizen. No evidence was presented that Mr. Baller tried to get preferential treatment or advantage due to his status as a City official. He acted as did any other citizen in posting on Facebook and sending out a newsletter. Those avenues are available to anybody who chooses to belong to Facebook or has an email account.

The Board finds, unanimously, that Mr. Baller's conduct does not violate Section 2-324(a)(8).

#### Section 2-324(a)(2)

Section 2-324(a)(2) says that "no official or employee of the city shall represent his or her personal opinion as that of the city." Mr. Baller noted he is a City Commissioner on both his personal Facebook page and the email newsletter, and also provided his personal residential address. These were intentional acts. He changed the Facebook page after his election to include this designation and he included it in the newsletter he wrote. That is not a problem. He could have been criticized had he not identified himself as a City Commissioner. The question is whether the designation could create confusion as to whether he represented his personal opinion as that of the city. My two colleagues do not believe Mr. Baller's use in this case of his title in his personal Facebook page or his newsletter violates Section 2- 324 (a)(2). They believe that the communications did not create confusion because they are obviously Mr. Baller's personal thoughts. He nowhere says his views are City policy. He does not represent his personal opinion as that of the City. Ms. Klein did not allege any confusion or that Mr. Baller was attacking her as an official of the City. Ms. Klein's Complaint did not allege it was his "official" opinion or "City opinion/policy." Thus, the Board has determined that there is no

violation here.

Board member Ms. Fierro-Share does not agree. Her judgment is that the use of his City title in a private communication does create a significant risk of confusing personal and official opinion. Our Advisory Opinion 2009-02 is relevant to this discussion, even though it is not exactly like this case. In that Opinion we concluded that an appointed city board member could advocate on certain public issues and use his title “if he states that it is his personal opinion and not that of the [City Board]”. P.2

Mr. Baller is allowed to speak on private matters like this. He is allowed, but not compelled, to use his title as a City Commissioner. If he chooses to identify himself as a City Commissioner he must avoid giving the impression that his personal opinions are those of the City by including a disclaimer to the effect that the opinions expressed are his personal opinions and are not the opinions of the City, the City Commission or any other City official. While not agreeing with Ms. Fierro-Share’s opinion that a violation exists, the entire Ethics Board concurs in the wisdom of City Commissioners using a disclaimer any time they use their City title in private communications that are disseminated publicly.

In board member Fierro-Share’s opinion, this is a technical violation that must be understood in the context that newly elected City Commissioners are probably not required to read all 33 of the Opinions this Board has issued or given a summary of all those that directly affect Commissioners. The Ethics Ordinance recognizes the difficulty a situation like this presents when, in Section 2-320, it mandates giving City officials “adequate guidelines for separating their roles as private citizens from their roles as public servants.” The City Commission or Administration may wish to consider including in any orientation they give newly elected Commissioners guidance concerning when to use a disclaimer.

The Board finds that Mr. Baller did not violate Section 2-324(a)(2).

## V. Conclusion

Mr. Baller complied with the Code of Ethics. The Complaint is dismissed.



Sophie Fierro-Share



John J. Schrot

**CITY OF BIRMINGHAM  
BOARD OF ETHICS  
COMPLAINT 2020-001**

**Donna Klein, Complainant  
City Commissioner Clinton Baller, Respondent**

**DISSENTING OPINION**

November 20, 2020

I respectfully dissent from the majority opinion of the Birmingham Board of Ethics. Commissioner Baller violated multiple sections of the city's ethics ordinance.

**SUMMARY**

The majority opinion focuses on what the respondent in this case, Birmingham City Commissioner Clinton Baller, wrote about the complainant, Ms. Donna Klein. I join in the majority's view that his writings, and the comments from others he published about her, caused her such humiliation and embarrassment that she felt the need to bring a complaint to this Board. Although the majority does not condone what Commissioner Baller wrote, it measures his words against its construction of the ethics ordinance and concludes he did not violate its provisions.

I see the case differently: it is not so much about what Commissioner Baller *wrote* as what he *did* to violate the ethics ordinance. The evidence demonstrates that Commissioner Baller used private information he was not entitled to possess — confidential communications amongst moderators of the social media site Nextdoor obtained in violation of its governing rules and in breach of trust — to embarrass and humiliate Ms. Klein, who is one of those moderators. The evidence shows that he did so in retaliation for her voting to remove one of his posts, following which the Nextdoor company permanently terminated his account.

Ms. Klein and her fellow moderators had confidentially discussed and voted on whether a certain post Commissioner Baller published on Nextdoor should be deleted for violating the company's content policies. This was the latest of multiple posts by Commissioner Baller the moderators had removed for policy violations. Under Nextdoor's rules, of which Commissioner Baller was on notice, the moderators had the authority as a group to remove the offending post, and their discussions and votes on the question were to remain confidential. Yet Commissioner Baller obtained those confidential discussions from someone and used them to harm Ms. Klein in his personal dispute with her. Tellingly, Commissioner Baller obstructed the Board of Ethics' inquiry by refusing to say who gave him those confidential communications and whether he solicited them or received them unsolicited.

Ms. Klein alleged that Commissioner Baller's actions failed to safeguard public confidence and might result in, or create the appearance of, affecting adversely the confidence of the public. Complaint, at 3, 6. Among other things, she alleged:

Commissioners have access to confidential personal and private information from citizens and businesses. Baller showed complete disregard for privacy and [Nextdoor] regulations when he chose to use this information for his petty

purposes. How can anyone trust what he will do with documents presented to him as a commissioner if he has a secret vendetta or private interest?

*Id.* at 3.

For the reasons set forth throughout this opinion, I would hold that, in obtaining and using the confidential information against Ms. Klein, Commissioner Baller violated at least three sections of the city's ethics ordinance:

- Commissioner Baller failed to earn and honor the public trust by integrity and conduct. Code of City Ordinances, § 2-320.
- Commissioner Baller failed to safeguard public confidence by being honest, fair and respectful of all persons and property with whom he has contact. *Id.* § 2-321 ¶ 2.
- Commissioner Baller failed to avoid any action that might result in, or create the appearance of, affecting adversely the confidence of the public or the integrity of the city government. *Id.* § 2-323(5).

The complaint and hearing testimony also raised questions of whether, in seeking or obtaining the confidential information, Commissioner Baller impermissibly used public office for personal gain or benefit, used it to seek special consideration or advantage, or failed to avoid any action which might result in or create the appearance of using it for private gain. *Id.* §§ 2-320(3), 2-323(1), 2-324(a)(8). Commissioner Baller's groundless refusals to answer questions at the hearing about whether he solicited the confidential Nextdoor information and from whom he received it effectively foreclosed the Board's inquiry.

I thus concur in the result, but not the rationale, of those portions of the majority opinion that find that Commissioner Baller's actions did not violate sections 2-323(1) and 2-324(a)(8), which forbid him to use his public office for private benefit or seek an advantage or preferential treatment. But this is so only because, due to Commissioner Baller's unjustified refusals to answer questions put to him, the evidence in the record was insufficient to support such a finding.

### FINDINGS OF FACTS

This case warrants recitation of the relevant facts. I make the following factual findings.

1. The Parties.

Complainant Donna Klein is a long-time resident of Birmingham. Respondent Clinton Baller is a Birmingham city commissioner, elected to office in November 2019. Both have been subscribers to a social media platform called "Nextdoor."



2. Nextdoor and its Policies.

Nextdoor is an on-line social networking service for neighborhood-based groups. Its owner is a private corporation based in California that operates similar social media groups throughout the nation. It bills itself as “the neighborhood hub for trusted connections and the exchange of helpful information, goods, and services.” Attachment to Complaint, at 2. “Nextdoor’s purpose is to cultivate a kinder world where everyone has a neighborhood they can rely on, and our mission is to be the neighborhood hub for trusted connections and the exchange of helpful information, goods, and services.” *Id.*

The Nextdoor platform is used by groupings of residents called, as one might expect, “neighbors” who live within a short radius of defined neighborhoods, sometimes consisting of only a few blocks. Complaint, at 2. Users may post to and read content on all close neighborhood sites within a prescribed radius, which can even be situated outside of Birmingham. *Id.* There are at least 40 Nextdoor neighborhoods in Birmingham. *Id.*

Users subscribe to Nextdoor by registering with their real names. *Id.*; Attachment to Complaint, at 3. They agree to follow Nextdoor’s use regulations and community guidelines. Complaint, at 2. The core community guidelines are:

1. Be helpful in conversations  
Share this space in a constructive way. Be kind, not judgmental, in your conversations.
2. Be respectful of your neighbors  
You’re speaking to your real neighbors. Strong communities build on strong relationships.
3. Do not discriminate  
We do not tolerate racism, hateful language, or discrimination of any kind.
4. Do not engage in harmful activity  
We prohibit any activity that could hurt someone, from physical harm to scams.
5. Promote local commerce the right way  
We have created designated spaces for members and local businesses to sell products and services.
6. Use your true identity  
Nextdoor is built on trust – we want everyone to know they’re communicating with their real neighbor, and therefore require you to use your true identity.

Attachment to Complaint, at 3. Nextdoor’s policy guidelines elaborate on the “Do not engage in harmful activity” prohibition as follows:

We prohibit any activity that could hurt someone, from physical harm to scams.

1. Appropriately report suspicious activity
2. No threats to the safety of others
3. No fraud or spam
4. No illegal or regulated goods or services
5. No violations of privacy[.]

*Id.* at 4. The guidelines further elaborate on the “No violations of privacy” prohibition by providing that “[t]o ensure every member’s privacy, do not post or share private information without permission.” *Id.* Specifically forbidden as a violation of privacy is the act of “[r]eposting information originally posted on Nextdoor without obtaining the author’s permission. This includes reposting or sharing screenshots of content with additional neighborhoods on Nextdoor or outside of Nextdoor.” *Id.*

Nextdoor has two primary kinds of users: “members” and “Leads.” Members are the typical users who may post content and read others’ content. Leads are members with added capabilities and responsibilities as moderators. They are described as “volunteers . . . who take a special interest in cultivating a healthy community in their Nextdoor neighborhood.” *Id.* at 7. Nextdoor’s policy guidelines describe the Leads’ roles:

Leads help to cultivate a neighborly community on Nextdoor by:

- Welcoming new neighbors
- Growing the neighborhood
- Starting conversations
- Supporting local businesses
- Keeping neighborhood information up to date
- Keeping conversations neighborly[.]

*Id.* As moderators of the site:

Leads are granted extra capabilities to help them do the things listed above and make their neighborhood run smoother. Those capabilities include:

- Voting to remove messages that they believe violate Nextdoor Guidelines
- Adjusting neighborhood boundaries
- Verifying unverified members
- Editing the About section on the neighborhood feed
- Promoting other members to Lead status[.]

*Id.*

Significantly, “Leads do not have the ability to remove members, place members in read-only mode, or affect a member’s account in any way. Only Nextdoor Support can take those

actions.” *Id.* Nextdoor retains the power to remove content; suspend, delete, or deactivate a member’s account or limit privileges; or otherwise refuse service to a member who violates its terms of service. *Id.* at 10.

There can be multiple Leads within a neighborhood group; the group at issue in this case has several of them. *Id.* at 7, 13, 17-18. Nextdoor gives its Leads certain tools for keeping conversations neighborly:

One of a Lead’s most important responsibilities is facilitating and moderating neighborly conversations in their neighborhood. Leads are given extra tools to help enforce Nextdoor’s Community Guidelines. Leads have the ability to:

- Review reported content
- Report content
- Remove content
- Close a discussion
- Change the category of the post[.]

*Id.* at 8. The guidelines include a check on the Lead’s own conduct. If a Lead is posting problem messages, members may report him or her to Nextdoor Support. *Id.* at 5.

3. Ms. Klein’s Role in Nextdoor.

Ms. Klein is a Nextdoor Lead. Complaint, at 2. She owns two homes in Birmingham and has two separate Nextdoor accounts: she is a Lead on one account and a member on the other. Holding two accounts is permissible under Nextdoor’s guidelines. As a member, Ms. Klein may (as any member may) initiate a report that a post violates those guidelines. *Id.* As a Lead, she may initiate a report and may also vote with other Leads on whether any given post violates the guidelines and should be deleted. *Id.* If Ms. Klein initiates the report from her Lead account, that report automatically counts as a vote to delete the post. If another member or Lead initiates the report, she may vote for or against deletion. Ms. Klein does not have the ability to remove members, place them in read-only mode (which would allow them to read but not post content), or affect their account in any way. *Id.* at 5. Only Nextdoor can take those actions. *Id.* at 5, 7.

4. Confidential Nature of the Leads’ Discussion and Votes.

It was undisputed in this case that the reporting and deliberation process for an asserted violation of Nextdoor’s community guidelines is strictly confidential. If a member reports content for a guideline violation, the author of the reported content is notified by e-mail, but the reporting member is never identified. Attachment to Complaint, at 6. Nextdoor’s confidentiality is stated clearly and absolutely: “**We never disclose your name to the author.**” *Id.* (emphasis added).

After the report of an offending post is filed, the Leads discuss and vote on whether to remove the post. Those discussions and votes are also kept confidential to protect the identity of the participants and promote free discussion. Leads are advised on what to expect after they vote:

When you vote on a piece of content that someone else has reported, **the member will not be notified of your vote.**

If your vote triggers the removal of content, the member will be notified that their content has been removed. **The author will not be informed about the identity of either the member(s) who made the report or of the Lead(s) who removed their content. Leads should not reveal the identity of a content reporter to the member whose content was reported.**

*Id.* at 9 (emphasis added).

Commissioner Baller had access to Nextdoor's confidentiality policy and was on notice of it. During the hearing, neither he nor his counsel offered evidence or argument that the discussions and votes of the Leads were public or that Nextdoor had either waived confidentiality or approved release of the confidential information to him. It was uncontroverted on the record that the information Commissioner Baller circulated about Ms. Klein was confidential.

5. Nextdoor's Removal of Commissioner Baller's Posts and Termination of his Account for Violating its Policy.

As a Nextdoor member, Commissioner Baller posted content from time to time. Testimony at the hearing showed that the Leads had previously removed some of his posts for violating the community guidelines. At one point, the company suspended his account after it also determined he violated one or more of those guidelines. Later, the company reinstated his account.

On April 26, 2020, Commissioner Baller posted a message on Nextdoor with the title "Neighbor deletes post after being falsely accused of profiteering." He was referring to Mr. Sarmed Faraj, a Nextdoor member who posted that he had acquired and was willing to sell a quantity of protective face masks to help address the COVID-19 situation. Exhibit B to Respondent's Answer to the Complaint, at 3. Shortly afterwards, Mr. Faraj withdrew his own post due to negative commentary received from other members. *Id.* Commissioner Baller's post reposted a screenshot of Mr. Faraj's withdrawn post and submitted it to more than 58 Nextdoor neighborhoods. *Id.* His post supported Mr. Faraj's efforts and was critical of those who had responded negatively about Mr. Faraj. *Id.*

Ms. Klein reported through both of her Nextdoor accounts that Commissioner Baller's post violated Nextdoor's community guidelines. *Id.* Her reasons were threefold: because Mr. Faraj had chosen to delete his own post, Commissioner Baller did not have the right to repost a screenshot of it; Commissioner Baller was inserting himself into an argument that Mr. Faraj tried to remove and seemingly wished to avoid; and Commissioner Baller was neighbor-shaming those who had made negative comments about Mr. Faraj's post. *Id.* The Leads voted to remove Commissioner Baller's post. *Id.*

Shortly after, someone submitted a complaint to Nextdoor about Commissioner Baller. On April 28, 2020, Nextdoor notified him that the company had permanently disabled his account:



We permanently disabled your account after we received a complaint regarding your recent content and found that you had violated our Community Guidelines on disagreements and conflict.

Exhibit A to Respondent's Answer to the Complaint, at 1. Ms. Klein did not submit that complaint to Nextdoor, and she does not know who did.

6. Commissioner Baller's Attacks on Ms. Klein.

On June 18, 2020, seven weeks after Nextdoor permanently disabled his account, Commissioner Baller distributed an e-mail newsletter called "Clinton Baller for City Commission," that he publishes occasionally. Among the newsletter's items was one titled "NEXTDOOR SHOWS ME THE DOOR." Exhibit B to Respondent's Answer to the Complaint, at 2. It begins with: "I've been booted again, this time permanently, from the social media website Nextdoor." *Id.* Below that, he summarized his version of what transpired surrounding Mr. Faraj's deleted post. *Id.* In the next paragraph, Commissioner Baller added the following about Ms. Klein:

Surprising to me was to discover that Donna Klein, a Nextdoor neighbor, seems to hold outsize sway over what goes down on Nextdoor. She has two profiles, one in Midvale and one in Torry, and she is a neighborhood "lead" in both. That gives her the right to vote on reported posts. And on Nextdoor, judges are also apparently permitted to be police, so as you can see in the screenshots below, she not only reported my post twice, but also voted to remove it, which helped lead to my banishment.

*Id.*

Commissioner Baller then appended the referenced screenshots depicting the confidential discussions amongst the Nextdoor moderators. Those screenshots contained the names, neighborhoods, private comments, and confidential votes of the various Leads who voted for or against removing his post. *Id.* at 3.

Commissioner Baller's statement that Ms. Klein was a Lead in both profiles is false. She was a Lead on one, but not both, and she was entitled to vote as a Lead only once. His statements that she "holds outsize [*sic*] sway" and that "judges are also apparently permitted to be police" are misleading given that Ms. Klein is a Lead on only one account, thus making her ownership of a separate member account irrelevant to the Leads' decision to remove his post. Below this passage about Ms. Klein, Commissioner Baller republished his April 28 post about Mr. Faraj's post, both of which had previously been deleted from Nextdoor. *Id.*

Commissioner Baller then twice again published this content about Ms. Klein, including the private comments and confidential votes of the Nextdoor Leads, on a Facebook site he controls, Facebook.com/baller4bham, and on a Facebook feed he manages via Baller4Birmingham.com. Complaint, at 3-4.

Sometime later in June, Ms. Klein learned of Commissioner Baller's publications about her through a friend at a social gathering. Upon finding the content, she saw comments posted to

Commissioner Baller's Facebook site critical of her, including the following remarks:

- "Don't know Donna, but she's got way too much time on her hands...."
- "I do not know Donna either. But I am almost in Clinton's position. I have been booted from ND for silly reasons. . . . I truly believe Donna is behind my removal."
- "Wow. This is just wrong!! Like so many things going on, just wrong!"
- "Control freak...I feel sorry for her family."

*Id.* at 3. One reader posted the following comment critical of Commissioner Baller himself:

Clinton, I don't know the people listed on your post on Nextdoor, but I'm a little disappointed to see an elected public official such as yourself public-shaming, by name, other members of our community.

*Id.* at 4. Commissioner Baller responded to that reader as follows

If you consider my expression of facts about Donna Klein to be shaming, then it is because you see something shameful about her behavior. The only opinion I expressed was that she seems to hold outsized power on Nextdoor.

*Id.* But he was not merely expressing his "opinion." He was republishing and perpetuating on his site the others' negative comments about Ms. Klein. And he did so over a byline bearing his city title:

Clinton Baller  
Birmingham City Commissioner  
822 Shirley Rd.  
Birmingham, MI 48009

*Id.* at 6.

Commissioner Baller conceded at the hearing that his motivation in criticizing Ms. Klein was personal. Although he initially said that he intended only to provide commentary about how Nextdoor was administered, how its content is moderated, and how disputes get handled, he never addressed those concerns to Nextdoor as he had a right to do. Rather, he targeted Ms. Klein directly. And although Ms. Klein was not the only Lead who voted to remove his post, he targeted only her.

7. Effect of Commissioner Baller's Postings About Ms. Klein.

Commissioner Baller republished screenshots of the Nextdoor moderators' confidential communications on whether to delete his post for violating Nextdoor's community guidelines. His publications detailed specifically how Ms. Klein and other Leads discussed and voted on the question. Those communications were internal, private, and intended to be kept confidential amongst the moderators.

Commissioner Baller received the screenshots from someone who possessed rights to view the moderators' confidential comments and votes on the question. He received that information although he was not even a member of Nextdoor, the company having already terminated his account.

The documentary record shows that whoever provided the screenshots to Mr. Baller was not authorized to do so. Mr. Baller offered no testimony that she was. She provided the information to him in breach of trust. Because the community guidelines are available to members and non-members alike, Mr. Baller knew or should have known that the disclosure to him was unauthorized. This conclusion is buttressed by the fact that, when asked to identify who gave him the confidential information, Commissioner Baller refused to answer. He offered no valid grounds for his refusal. When asked whether he received the screenshots unsolicited or whether he solicited them from someone else, Commissioner Baller again refused to answer without offering valid grounds.

Given Commissioner Baller's refusal to answer those questions, the Board of Ethics may legally infer that he solicited the confidential information, that the person who gave it to him was not authorized to do so, and that he knew the disclosure was not authorized. Whether he solicited the information goes to his motivation toward Ms. Klein, but also is relevant on whether, as alleged in the complaint, a conflict existed between his private interests and the public interest and thus whether he was using his public office for private gain.

In republishing the confidential information, Commissioner Baller made comments about Ms. Klein which, as alleged in her complaint and demonstrated at the hearing, embarrassed her and her friends and subjected her to public ridicule and scorn. After reading Commissioner Baller's content and the comments of others he republished about her, Ms. Klein felt embarrassed, humiliated, and demeaned. The incident has been upsetting and stressful to both her and her friends. Commissioner Baller published his comments in three different platforms, which tended to broaden the readership and magnify the harm. And though he could have removed the hurtful comments about her that others posted on his site, he did not.

## CONCLUSIONS AND DISCUSSION

### Violation of Section 2-320.

Section 2-320 of the Ethics Ordinance requires Commissioner Baller to "earn and honor the public trust by integrity and conduct." I find on this record that Commissioner Baller violated section 2-320. For personal purposes, he retaliated against a citizen of the city by using confidential information he knew or should have known he was not entitled to possess to embarrass and humiliate her. He did not show the level of integrity and conduct required of a city official.

### Violation of Section 2-321 ¶ 2.

Section 2-321 ¶ 2 of the Ethics Ordinance requires Commissioner Baller to "safeguard public confidence by being honest, fair and respectful of all persons and property with whom [he

has] contact.” I find on this record that Commissioner Baller failed to safeguard public confidence and violated this section by acting dishonestly, unfairly, and disrespectfully.

Commissioner Baller acted dishonestly by obtaining confidential information from a third party who, based on the uncontroverted record in the case, had no right to give it to him. He then used that information against Ms. Klein to his advantage. His quarrel with Ms. Klein was a private matter, not a public issue over which he might have a responsibility as a public official. The information was property Nextdoor entrusted to its agents. One of those agents misappropriated that property and gave it to him. Commissioner Baller used the misappropriated property to harm Ms. Klein. That is dishonest conduct. His refusal at the hearing to identify the person who gave him the information further supports this finding. A fair conclusion is that he was trying to protect that person’s identity because he knew she violated Nextdoor policy in giving it to him.

Commissioner Baller acted unfairly toward Ms. Klein by disregarding Nextdoor’s rules and policies about confidentiality. Those rules are designed to promote frank discussions between Nextdoor’s moderators on questions of deleting posts and other site management matters. He was on notice that the information was not his to use, yet he used it. The fact that someone improperly gave it to him is no defense. It was unfair for him to use it.

Commissioner Baller acted disrespectfully toward Ms. Klein by subjecting her to public ridicule, through a posting on which he described himself as “Birmingham City Commissioner,” about what he later conceded was a private dispute he had with her and not a public issue. At the hearing, he first denied even having a dispute with Ms. Klein, explaining that his concerns were about the concentration of decision-making authority Nextdoor places in its Leads as moderators of the site. But that explanation failed when he admitted he never presented his concerns to Nextdoor itself and when he later conceded that the matter was personal with her. Commissioner Baller’s disrespect for Ms. Klein is further shown by the fact that Ms. Klein was not the sole moderator who voted to remove his offending post. Yet he targeted only her.

Ms. Klein was embarrassed and humiliated by Commissioner Baller’s multiple postings about her, the negative comments from others he republished about her, and communications she received from people she knew. Commissioner Baller tried to minimize the extent of the harm by arguing that only a few people commented about her. But the affront was neither trivial nor minimal. It was very real to Ms. Klein. On this record, I am unwilling to apply a *de minimis* exception to the ordinance’s requirement that city officials be respectful of others.

The majority opinion advances the proposition that Commissioner Baller is not responsible for the speech of others. That proposition is inapplicable in this case because Commissioner Baller republished the offensive comments of others about Ms. Klein. By law, a person who repeats or republishes harmful matter can be held liable as if he had originally published it. *See, e.g.*, RESTATEMENT (SECOND) OF TORTS § 578. Commissioner Baller’s failure to remove the comments by others critical of Ms. Klein further evidences his intent to harm her. His disrespect for her violated the ordinance.

Commissioner Baller also acted disrespectfully toward Nextdoor itself by using its private information for his own purpose. That information was not his to possess or use. His publication of the votes and comments of the Leads will naturally chill the discussions they must

hold to perform their moderator tasks in the future. His actions undermine Nextdoor's processes, limit its utility, and diminish its value to our community. Commissioner Baller's refusal to disclose to the Board the identity of the person who gave him the information likewise undermines Nextdoor's ability to enforce its rules.

Commissioner Baller's counsel contended at the hearing, and the majority opinion states, that section 2-321 ¶ 2 is limited solely to review of his "official acts" or "official conduct" and thus does not govern private action. I disagree. The provision reads to the contrary:

All city officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-partisanship in all official acts, and by avoiding official conduct which may tend to undermine respect for city officials and employees and for the city as an institution.

Code of City Ordinances, § 2-321 ¶ 2. The majority reasons that the provision is a single sentence containing a primary and a dependent clause. Under that reasoning, the second (and third) clause of the sentence, which is limited to official acts or official conduct, would modify the first clause by imposing the "official" limitation.

I disagree that there is a similar limitation on the first clause. Each of the three clauses is preceded by the word *by*, denoting three separate ways by which Commissioner Baller must "safeguard public confidence." The first is "*by* being honest, fair and respectful of all persons and property with whom they have contact." The second is "*by* maintaining non-partisanship in all official acts." And the third is "*by* avoiding official conduct which may tend to undermine respect for city officials and employees and for the city as an institution."

I read these three clauses as being independent. The language of the sentence is plain and unambiguous and must be "enforced according to its terms." *Sibelius v. Cloer*, 569 U.S. 369, 381 (2013). "A term appearing in several places in a statutory text is generally read the same way each time it appears." *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994). This rule is "at its most vigorous when a term is repeated within a given sentence." *Brown v. Gardner*, 513 U.S. 115, 118 (1994); *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 329-30 (2000).

The majority correctly notes that the Birmingham City Commission added the "official" concept to the provision when it amended the ethics ordinance in 2016. Those amendments flowed from a recommendation by the Board of Ethics itself. Had the city commission wished to modify the first clause to impose the "official" limitation, it could have done so. And leaving the first clause free of that limitation is consistent with other sections of the ethics ordinance, including section 2-323(5) discussed below and the various other conflict of interest provisions, which clearly govern a city official's private conduct. Accordingly, I believe that to impose the "official acts" or "official conduct" limitation on the first clause of section 2-321 ¶ 2 misreads the ordinance.

Commissioner Baller's failure to be honest, fair, and respectful of both Ms. Klein and the Nextdoor organization itself resulted in his failure to safeguard the public confidence. Ms. Klein's complaint and testimony, as further noted in the next section of this opinion, were more than enough to show diminished confidence. Commissioner Baller violated the ethics ordinance.



Violation of Section 2-323(5).

Section 2-323(5) of the Ethics Ordinance requires Commissioner Baller to “*avoid any action . . . which might result in, or create the appearance of: [a]ffecting adversely the confidence of the public or the integrity of the city government.*” (Emphasis added). I find on this record that Commissioner Baller violated this provision.

Ms. Klein’s complaint and testimony raised a valid concern about whether Commissioner Baller would use confidential information possessed by the city for improper purposes, including for his own personal purposes. She alleged that Commissioner Baller’s use of Nextdoor’s private information for his own purposes engenders mistrust. Her fear is that he may use the confidential personal and private information of city citizens and businesses entrusted to him as a commissioner to serve a vendetta or private interest. Complaint, at 3.

The point is well taken. Commissioner Baller’s actions tended to adversely affect the confidence of the public and the integrity of city government. He showed no compunction in using against Ms. Klein the private, confidential information of Nextdoor that he was not entitled to possess. I find that a reasonable citizen could fear that Commissioner Baller might use city information in his possession against them or for his own benefit.

Perhaps Commissioner Baller never considered whether the confidential information was not his to use. Perhaps he never considered how his use of that information could adversely affect the public confidence. But as an official elected to the highest level of our city’s government, he should have considered his actions. Commissioner Baller certainly knows that the ethics ordinance requires city officials to safeguard the public’s confidence. Just last year, he himself brought two complaints against other city officials on that basis. *See* Board of Ethics Decisions 2019-03 and 2019-04.

The ethics ordinance explicitly forbids *any* action, whether official or private, that even *might result in or create the appearance of* adversely affecting the public confidence. Commissioner Baller’s conduct created precisely the risk of adverse effect on the public’s confidence the ordinance is designed to prevent.

Possible Violations of Sections 2-320(3), 2-323(1), and 2-324(a)(8).

Finally, the complaint suggested a possible conflict between Commissioner Baller’s private interests and the public interest and thus raised a concern for whether he was using his public office for private gain. Complaint, at 3. The ethics ordinance forbids city officials from using public office for personal gain or to obtain or seek any special consideration or advantage, and it affirmatively requires them to avoid any action that might result in, or create the appearance of, using their office for private gain. Code of City Ordinances, §§ 2-320(3), 2-323(1), 2-324(a)(8).

The concern arises from the evidence that someone with access to the confidential Nextdoor information gave it to him improperly. If that person gave it to Commissioner Baller to

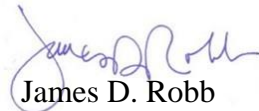
gain favor with him, or if Commissioner Baller solicited it using his public office as leverage, he may have violated the ordinance.

When questioned, Commissioner Baller refused to say who gave him the confidential information or whether he solicited it. Those questions were relevant to his motivation for his multiple repostings of the confidential discussions and votes of the Nextdoor moderators. Neither he nor his lawyer offered a valid objection. He simply refused to answer.

Commissioner Baller's groundless refusals to answer those important questions are sufficient to allow the Board to draw the adverse inference that he solicited the confidential information and, consistent with the unrebutted documentary record, that the provider of the information was not authorized to give it. Nextdoor permanently disabled Mr. Baller's account for violating policy, so he likely knows that Nextdoor would permanently disable the account of the person who gave him the information. But these adverse inferences alone are not sufficient to establish that he used his public office for private gain. More evidence would be needed before that determination could be made. Had he disclosed the identity of the person who gave him the confidential information, the Board could have recessed the hearing and asked that person to tell us what she knew. Commissioner Baller's unjustified obstruction foreclosed that inquiry.

### CONCLUSION

For these reasons, I would find that Commissioner Baller violated the ethics ordinance.



James D. Robb



## MEMORANDUM

Clerk's Office

**DATE:** December 7, 2020

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

**FROM:** Leslie Pielack, Museum Director  
Alexandria Bingham, City Clerk Designee

**SUBJECT:** Greenwood Cemetery Advisory Board 2019-2020 Annual Report

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### INTRODUCTION:

The Greenwood Cemetery Advisory Board submits a report to the City Commission of activities at the Greenwood Cemetery on an annual basis that includes a summary and update of the cemetery's status, related finances, and the GCAB's planned activities for the next year. To align with the City's fiscal year, the current GCAB's report covers the period from January 1, 2019 through June 30, 2020.

### BACKGROUND:

The Greenwood Cemetery Advisory Board was established on October 13, 2014 by the City Commission. Its role is to oversee the general activities, operation, and condition of the cemetery and to meet at least quarterly. Previous annual reports were submitted on a calendar basis but the GCAB has determined that using a fiscal year schedule is better aligned with the city's needs; therefore this report covers an eighteen-month period from January 1, 2019 through June 30, 2020.

During the period, there was a relatively high level of grave sales in early 2019, followed by a gradual slowing of sales until the 2020 coronavirus pandemic disrupted activity in the last three months of the period. However, earlier sales reduced available grave plots, and more sites will be needed for the anticipated demand in the coming year.

The provider for cemetery services changed during the period from Elmwood Cemetery to Creative Collaborations, LLC on December 1, 2019. Although formerly, Elmwood retained 25% of all revenues as compensation, under Creative Collaborations, revenues are remitted directly to the City, which then makes payments for services performed. Grave sale proceeds are transferred to the Greenwood Cemetery Perpetual Care Fund, which has seen substantial growth during the period.

During the period, the Greenwood Cemetery Advisory Board has established a number of project priorities to help better define available grave sites, locate the boundaries of the former Potter's Field, and develop a GIS database of graves to make information available to the city and the public. These priorities are ongoing and will be continued in the next year. In addition, the GCAB has added project activities for documenting baseline

conditions for historic grave markers and for developing a long-term plan for the cemetery. These priorities are further detailed in the 2019/2020 Annual Report.

**LEGAL REVIEW:**

None.

**FISCAL IMPACT:**

None.

**SUMMARY**

The Greenwood Cemetery Advisory Board continues to work toward improving the City's records and understanding the needs of the cemetery and the public. The 2019/2020 Annual Report summarizes their activities and discusses progress made toward the GCAB's goals and project priorities for the coming year to more effectively plan for the cemetery's future. Due to the depletion of available grave plots, the report recommends that the City Commission release an additional 50 graves in Sections B & C for future sale, and will be bringing that item separately before the Commission for its review.

**ATTACHMENTS:**

1. Greenwood Cemetery Advisory Board 2019/2020 Annual Report

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## GREENWOOD CEMETERY ADVISORY BOARD

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## 2019/2020 ANNUAL REPORT

December 1, 2020

Linda Buchanan, Chair  
Linda Peterson, Vice Chair  
Pam DeWeese  
Laura Schreiner  
George Stern  
Margaret Suter  
Joseph Vercellone



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## INTRODUCTION

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The Greenwood Cemetery Advisory Board was established by the Birmingham City Commission on October 13, 2014. One of its duties is to submit a report to the Commission on an annual basis of the general activities, operation, and condition of the cemetery for the preceding 12-month period. The Greenwood Cemetery Advisory Board Annual Report includes a summary and update of the cemetery's status, related finances, and the GCAB's planned activities for the next fiscal year.

To align with the City's fiscal year, the current GCAB's report covers the period from January 1, 2019 through June 30, 2020.

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## GENERAL ACTIVITIES

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### Meetings

The Greenwood Cemetery Advisory Board is required to meet at least quarterly; during the report period, the board met eight times in 2019 and three times in the first half of 2020. Board activities focused primarily on established project priorities for the period.

### 2019/2020 Project Priorities

Priorities set by the GCAB for the period and their current status are noted below:

1. Ground Penetrating Radar to verify records and establish available plots

To make the most efficient use of Ground Penetrating Radar, pursuing a RFP for GPR services will be deferred pending the outcome of the GIS mapping project (see #4). This will enable focused study of those areas of the cemetery that are of greatest uncertainty after the GIS study is complete.

2. Establish baseline of plots sold and unsold

The final integration of existing records with the GIS mapping project (see #4) will yield a better understanding of the exact location of sold and unsold plots.

3. Locate Potter's Field at Greenwood

Because the location of Greenwood's Potter's Field is in Section C, it is hoped that the outcome of the GIS mapping project (see #4) will provide some clarification of exact boundaries that can be followed up with further study.

4. Create digitized map of the cemetery

City Planner Brooks Cowan has identified 904 lots and 5,158 graves through a GIS digital mapping project. When complete, this project will integrate data from other city records on individual graves to identify which graves are open and additional information. The interactive digitized map with associated data will allow online access to the public in a manner similar to a property parcel map, with geo referencing for exact location information in its first phase. Data for sales, biographical information, and other data can be integrated into the map in the future. This will offer a beneficial tool for use by the public as well as the City.

Of the approximately 3,500 individuals on record buried at Greenwood, initial data on approximately half of them has been integrated into the database thus far. It is anticipated that this phase of the project will be complete in the next couple of months.

## OPERATION

### Sales and Financial Information

Cemetery services, including lawn care and grounds maintenance, were provided by Elmwood Cemetery in recent years. On December 1, 2019, **Creative Collaborations, LLC** became transitional provider for cemetery services, with the exception of grounds maintenance, which was provided by the City's Department of Public Services. On May 1, 2020, Creative Collaborations entered into a one-year renewable contract with the City to provide cemetery services on an ongoing basis. Records and funds previously managed by Elmwood Cemetery were transferred to the City of Birmingham's Clerk's Office upon termination of their contract. Grounds maintenance continues to be provided by DPS.

By December 31, 2018, 199 of 240 graves released for sale by the City Commission in 2015 had been sold in Sections B and C. During the period from January of 2019 through June 30 of 2020, grave sales slowed; an additional 50 graves were sold, 42 of which were in Sections B and C. This total of 241 graves sold exceeds the threshold of 240 set by the commission in 2018 for the GCAB to review and recommend additional release of graves. Therefore, the GCAB is recommending the release of 50 additional graves (see Recommendations).

On January 14, 2019, the City Commission approved a payment plan policy for cemetery plots that requires full payment within 24 months. During the period from January 1, 2019 through June 30, 2020, no new payment plans were initiated. Five (5) payment plans are expected to be completed in 3Q 2020 and the remaining two (2) payment plans in 4Q 2020. Those plots under a payment plan are considered sold for purposes of availability unless the plot becomes available again in the event of a purchaser default.

### Grave Sales Detail, January 2019 - June 2020

	1Q 19	2Q 19	3Q 19	4Q 19	1Q 20	2Q 20	TOTAL	Sec B	Sec C	B + C *	Sec D	Sec K	Sec L	Sec O	Other
# sold by Section								32	10	42			2	4	2
Resident	4	n/a	3	2		3	12 known								
Non-Res	3	n/a	6	11	5		25								
Comp'd PmtPlans	3														
Total	10	10	9	13	5	3	50								
BEGINNING INVENTORY, 1Q 2019								261	20	281	6	0	2	4	?
TOTAL REMAINING, end of 2Q 2020								229	10	239	6	0	0	0	?

*\*Plots in Sections B and C sold under a payment plan are included in the number of sales made for the quarter in which the payment plan was instituted. The remittance to the Perpetual Care Fund of payment for the plots is recorded in total in the quarter in which the final payment is made.*

During the period January 1, 2019 through November 30, 2019, Elmwood Cemetery managed cemetery services and grave sales, remitting 75% to the City as revenue and retaining 25% as compensation. Beginning December 1, 2019, Creative Collaborations, LLC, remits 100% of revenue to the City, which then makes payments to the contractor for services performed.

#### Burials and Inurnments, January 2019 - June 2020

Burials and inurnment activity during the period can be used to understand utilization of graves and assist in planning for future sales.

	1Q 19	2Q 19	3Q 19	4Q 19	1Q 20	2Q 20	TOTAL	Sec B	Sec C	B + C	Sec D	Sec K	Sec L	Sec O	Other
Burials	4	0	2	6	4	0		9	0	9	1	0	3	0	3
Inurn- ments	2	5	4	2	1	2		6	1	7	1	1	0	1	6
Total	6	5	6	8	5	2		15	1	16	2	1	3	1	9

#### Perpetual Care Fund

After expenses, revenues from grave sales are used to increase the Perpetual Care Fund for Greenwood Cemetery, with investment earnings remaining with the PCF. This has contributed to substantial growth of the fund.

##### Detail for January 2019 through June 2020:

##### 2019 Q Ending March 31

Proceeds from cemetery plot sales	22,500.00
Investment income	<u>4,013.40</u>
Revenue for Perpetual Care Fund	26,513.40

##### 2019 Q Ending June 30

Proceeds from cemetery plot sales	29,250.00
Investment income	5,334.14
Gain on investment	53.51
Unrealized gain	<u>39,122.15</u>
Revenue for Perpetual Care Fund	35,509.80

##### 2019 Q Ending September 30

Proceeds from cemetery plot sales	0.00
Investment income	<u>5,169.42</u>
Revenue for Perpetual Care Fund	5,169.42

##### 2019 Q Ending December 31

Proceeds from cemetery plot sales	28,740.00
Investment income	6,137.05
Gain on investment	<u>156.56</u>
Revenue for Perpetual Care Fund	35,033.61

2020 Q Ending March 31

Proceeds from cemetery plot sales	2,702.00
Investment income	<u>4,474.13</u>
Revenue for Perpetual Care Fund	7,176.13

2020 Q Ending June 30

Proceeds from cemetery plot sales	22,636.00
Investment income	7,541.11
Unrealized gain (loss)	<u>(3,058.53)</u>
Revenue for Perpetual Care Fund	27,118.58

Total Fund Balance, Period ending June 30, 2020	791,940.71
Net of Revenues vs. Expenditures	<u>74,497.74</u>
Ending Fund Balance	866,438.45



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## CONDITION

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- During the period, the city's Department of Public Services has overseen cemetery landscape maintenance.
- In April of 2019, DPS planted three sugar maple trees in the cemetery in Section A near the east gate and one in Section B south of Martha Baldwin's grave.
- The Department of Public Services built and painted a new cemetery map display case and stand to replace the previous case and stand, which was deteriorated

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## PLAN FOR 2020/2021

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The Greenwood Cemetery Advisory Board has prioritized the following action items for 2020/2021:

1) Ground Penetrating Radar to verify records and establish available plots

Continue to work toward the completion of this project as the GIS project is completed and GPR can be initiated.

2) Establish baseline of plots sold and unsold

Continue to work toward the completion of establishing this inventory. The final integration of existing records with the GIS mapping project (see #4) will yield a better understanding of the exact location of sold and unsold plots.

3) Locate Potter's Field at Greenwood

Continue to work toward defining boundaries of Greenwood's Potter's Field is in Section C, in coordination with the GIS mapping project.

4) Create digitized map of the cemetery

Continue to work with the Planning Department toward the completion of the GIS mapping project. This will aid in online access to the database for the public and in planning.

5) Undertake a study to inventory historic markers

A complete inventory and condition assessment will permit the establishment of baseline conditions and identify the need for restoration or training for appropriate care and preservation.

6) Develop a long-term plan for the cemetery

Data from the GIS mapping project and other relevant information such as the changing cultural and fiscal environment can be incorporated into a long-term plan for the management and preservation of the cemetery as an important cultural and historic resource.

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## SUMMARY AND RECOMMENDATIONS

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In 2015, the City Commission released 240 graves for sale from a recently identified total of 530 available in Sections B, C, D, L, K, and O. The Commission also directed the Greenwood Cemetery Advisory Board to review and make a recommendation for additional release when the threshold of 200 in sales was reached. 199 plots had been sold by January 1, 2019, and at its June 7, 2019 meeting, the Board recommended that the city release an additional 60 plots for sale in Sections B and C.

At its July 7, 2019 meeting, the City Commission requested additional information about pricing and expressed concern about releasing additional plots in Section B. Subsequently, at their August 19, 2019 meeting, the Greenwood Cemetery Advisory Board reviewed the pricing and recommended 1) that the Commission leave the price of \$3,000 unchanged and 2) that sales in Section B be suspended, but 30 plots be released in Section C. However, this recommendation was not brought to the City Commission for review and action. Grave sales continued through 2019 and early 2020, and by June 30, 2020, 50 more grave plots had been sold, exceeding the original 2015 threshold of 240 by 1.

The GCAB revisited the issue at their November 6, 2020 meeting and revised its recommendations based on the available data that there were 229 sites remaining in Section B and 10 in Section C, for a total of 239 remaining in the two Sections. Therefore, the Board voted to recommend that the City Commission release an additional 50 plots in Sections B and C. This would leave 189 sites remaining in Sections B and C and 6 in Section D, or a total of 195 plots in reserve that can be made available in the future.



# MEMORANDUM

City Clerk's Office

**DATE:** December 2, 2020

**TO:** Joe Valentine

**FROM:** Alexandria Bingham, City Clerk Designee

**SUBJECT:** City Commission Sub Committee to Recognize Outgoing City Manager Joe Valentine

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## INTRODUCTION:

- On November 9, 2020 the City Commission voted to accept the resignation of current City Manager Joe Valentine and appoint a subcommittee comprised of Mayor Pro Tem Longe and Commissioner Hoff to recognize Mr. Valentine for his years of service.

## BACKGROUND:

- The subcommittee was charged with the duty to will meet to discuss, plan, and come to a consensus on how the City Commission will recognize departing City Manager Valentine.

## SUMMARY

- In the City Commission subcommittee met on November 24, 2020.
- After taking a look at how previous city managers have been recognized and coming to a consensus on how to recognize the outgoing City Manager, the subcommittee decided that they wish to present at the next scheduled City Commission meeting on December 21, 2020.

## ATTACHMENTS:

Minutes from November 24, 2020

**BIRMINGHAM CITY COMMISSION - SUB COMMITTEE  
TO HONOR DEPARTING CITY MANAGER JOE VALENTINE  
NOVEMBER 24, 2020  
VIRTUAL MEETING  
3:00 P.M.**

**I. CALL TO ORDER**

The meeting was called to order at 3:00 p.m.

**II. ROLL CALL**

Alexandria Bingham, City Clerk Designee, called the roll.

PRESENT: Mayor Pro-Tem Longe (location: Birmingham, MI)  
Commissioner Hoff (location: Birmingham, MI)

ABSENT: None

Administration: City Clerk Designee Bingham, IT Manager Brunk, DPS Director  
Wood (arrived 3:10 p.m.)

**III. PUBLIC COMMENT**

**IV. NEW BUSINESS**

A. Discussion and brainstorming session to determine how to recognize departing City Manager Joe Valentine.

Mayor Pro Tem Longe noted she and Commissioner Hoff agreed that while a send-off gathering would generally be appropriate, it would not be appropriate at this time in light of the current pandemic. She continued that she and Commissioner Hoff agreed that the other appropriate ways of recognizing CM Valentine.

There was consensus that:

- There should be a proclamation regarding the recognition to be read by the Mayor at the Commission's December 21, 2020 meeting.
- The proclamation should be written up as a hard copy to be aesthetically pleasing and presented to CM Valentine in the type of folder the Commission uses to give copies of proclamations.
- City Clerk Designee Bingham would work with Commissioner Hoff on the wording of the proclamation and motion.
- At the December 7, 2020 meeting under 'Committee Reports' at the end of the agenda a member of the present subcommittee will report that the subcommittee met, came to a decision on recognition of CM Valentine's service for his departure, and that the presentation will take place at the December 21, 2020 Commission meeting.
- At the December 21, 2020 Commission meeting the presentation of the proclamation, mockup, and motion will be done during the 'Proclamations, Congratulatory Resolutions, Awards, Appointments, Resignations and Confirmations, Administration of Oaths, Introduction Of Guests And Announcements' portion of the agenda.



- City Clerk Designee Bingham will verify with City Attorney Kucharek that the aforementioned plans for the December 7 and December 21, 2020 Commission meetings meet all pertinent legal requirements.

<b>V. ADJOURN</b>
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The meeting adjourned at 3:49 p.m.

DRAFT



## MEMORANDUM

Planning Division

**DATE:** December 1, 2020

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

**FROM:** Joel Campbell, Fire Marshall  
Mark Clemence, Police Chief  
Jana Ecker, Planning Director  
Bruce Johnson, Building Official  
Mike Morad, Assistant Building Official  
Paul Wells, Fire Chief

**SUBJECT:** Temporary Outdoor Dining Structures

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### INTRODUCTION:

As we continue to struggle with the challenges of the COVID-19 pandemic with no end in sight, the City has provided options to assist restaurants throughout the fall and winter seasons by allowing temporary enclosed "outdoor dining" space to allow indoor seats lost to be provided outdoors in temporary enclosures or other structures through April 1, 2021.

### BACKGROUND:

On May 11, 2020, the City Commission adopted several resolutions to provide temporary assistance to business owners navigating the COVID-19 Pandemic and social distancing guidelines. The City approved the waiver of many fees, made changes to existing policies to assist businesses during the pandemic, and adopted temporary resolutions to allow for expanded outdoor dining and temporary uses outdoors through September 8, 2020. Outdoor dining areas were permitted to double in size from that previously approved to accommodate social distancing and move more diners outside.

On June 8, 2020, the City Commission rescinded the previous resolution on outdoor dining and adopted a new resolution that allowed outdoor dining areas to expand greater than 200% as previously permitted in the May 2020 resolution, and permitted for expansion into the street in unique circumstances. This resolution did not require restaurant owners to obtain approval from adjacent property owners that may be impacted by the temporary outdoor dining expansion. The new resolution was adopted in response to new Executive Orders from the Governor, and temporary licensing changes approved by the Michigan Liquor Licensing Commission ("MLCC") with regards to a new limited term outdoor service area program for establishments serving alcoholic beverages through October 31, 2020. The 2020 Limited Permanent Outdoor Service Permission Application allows restaurants to provide or expand outdoor seating areas temporarily to accommodate social distancing guidelines and assist businesses through the pandemic.

On August 24, 2020, the City Commission also added another option to assist restaurants throughout the fall and winter seasons by allowing temporary enclosed “outdoor dining” space during the off-season to permit indoor restaurant seats lost to reduced capacity requirements to be provided outdoors in temporary enclosures or other structures from October 1, 2020 through April 1, 2021. This resolution was intended to provide “outdoor dining” options during the off-season and was proposed in addition to the resolution adopted by the City Commission on June 8, 2020 that provided temporary expanded outdoor dining. Detailed Building and Fire Code requirements were included as part of the resolution adopted by the City Commission.

Since August 24, 2020, City officials have spent many hours working with the business owners to assist them in bringing temporary outdoor dining structures into compliance with all relevant regulations and orders. The above named representatives of the Fire Department, Police Department, Building Department and Planning Department have continuously met to review ongoing compliance issues and to provide updates on guidance issued to all establishments with temporary enclosed outdoor dining structures. Walk-throughs and inspections have been conducted regularly, and staff has met with all business owners with outdoor dining enclosures to explain the permitting and approval process for temporary outdoor dining structures, Fire and Building Code requirements, and State Health Orders. Business owners were warned that the Police Department would be monitoring compliance with all State Health Orders from the MDHHS and reporting violations.

On November 23, 2020, the City Commission discussed the use of temporary outdoor dining enclosures and expressed concern about several of the structures erected in the City. City staff advised that many of the temporary structures did not obtain approval from the City prior to construction as required, and that all relevant departments had been working with restaurant owners to assist them with their applications. City staff also noted that all restaurant owners in violation had been notified in writing in October and again in November regarding violations and the actions needed to comply with all City ordinances and resolutions.

As requested by the City Commission on November 23, 2020, please see information below for a summary of the status and compliance of temporary outdoor dining structures within the City:

## **220, 220 Merrill**

<b>Planning Approval</b>	Approved
<b>Building Permit</b>	Issued
<b>Certificate of Occupancy</b>	None, In Process
<b>Fire Department</b>	Nov 4, 20, 21 – Fire Code Inspections
<b>Police Department</b>	Nov 20 – PD spoke to owner regarding new MDHHS order that requires 3 sides to be open air

**Adachi, 325 S. Old Woodward**

<b>Planning Approval</b>	Applied, not yet approved
<b>Building Permit</b>	None
<b>Certificate of Occupancy</b>	None
<b>Fire Department</b>	Oct 26, Nov 18, 20 – Fire Code Inspections, Ordered to remove heaters from inside enclosed tent and create unobstructed egress path
<b>Police Department</b>	Nov 19 – Complaint and Inspection - patrons were <b>not</b> being served in enclosed outdoor structure against MDHHS
	Nov 20 – PD spoke to owner regarding new MDHHS order that requires 3 sides to be open air
<b>Code Enforcement</b>	<b>Nov 25 - Court appearance ticket issued for failure to obtain required permits</b>

**Bella Piatti, 167 Townsend**

<b>Planning Approval</b>	Approved
<b>Building Permit</b>	Issued
<b>Certificate of Occupancy</b>	None, In Process
<b>Fire Department</b>	Nov 6, 20, 21 – Fire Code Inspections
<b>Police Department</b>	Nov 18 – Complaint and Inspection - patrons being served in enclosed outdoor structure against MDHHS, warning issued
	Nov 20 – PD spoke to owner regarding new MDHHS order that requires 3 sides to be open air

**Big Rock, 245 S. Eton**

<b>Planning Approval</b>	Pre-pandemic approval for previous enclosed tent dining, no new application received or approved to meet pandemic requirements
<b>Building Permit</b>	Issued pre-pandemic only
<b>Certificate of Occupancy</b>	Issued pre-pandemic only
<b>Fire Department</b>	Nov 18, 20, 21 – Fire Code Inspections
<b>Police Department</b>	Nov 20 – PD advised manager regarding new MDHHS order that requires 3 sides to be open air
<b>Code Enforcement</b>	<b>Nov 25 - Court appearance ticket issued for failure to obtain required permits</b>

**Bistro Joe's, 34244 Woodward**

<b>Planning Approval</b>	Pre-pandemic approval for previous enclosed balcony only, no new application received or approved to meet pandemic requirements, no application received or approved for enclosed area under the balcony
<b>Building Permit</b>	Issued pre-pandemic only
<b>Certificate of Occupancy</b>	Issued pre-pandemic only
<b>Fire Department</b>	Nov 17, 18 – Fire Code Inspections
	<b>Nov 29 – Court appearance ticket issued for violation of Fire Codes (egress issues, storage of propane and combustible materials)</b>
<b>Police Department</b>	Nov 19 – Complaint and Inspection - patrons were being served in enclosed outdoor structure against MDHHS order, warning issued
	Nov 20 – Complaint and Inspection - patrons were being served in enclosed outdoor structure against MDHHS order, second warning issued
	Nov 29 – Complaint and Inspection – patrons were being served in enclosed outdoor structure against MDHHS order
	<b>Nov 30 – Formal complaint forwarded to Oakland County Health Dept, Michigan AG and Oakland County Prosecutor's Office</b>
<b>Code Enforcement</b>	<b>Nov 25 - Court appearance ticket issued for failure to obtain required permits</b>

**Cannelle Patisserie, 159 N. Eton**

<b>Planning Approval</b>	Applied, not yet approved
<b>Building Permit</b>	None
<b>Certificate of Occupancy</b>	None
<b>Fire Department</b>	Nov 5, 6 – Fire Code Inspections - Advised structure is non-compliant
<b>Police Department</b>	No recent activity
<b>Code Enforcement</b>	<b>Nov 25 - Court appearance ticket issued for failure to obtain required permits</b>



**Elies, 263 Pierce (Temporary Structure Removed)**

<b>Planning Approval</b>	Applied, not yet approved (assumed withdrawn)
<b>Building Permit</b>	None
<b>Certificate of Occupancy</b>	None
<b>Fire Department</b>	Sept 30, Nov 20 – Fire Code Inspections
<b>Police Department</b>	No recent activity

**Market, 474 N. Old Woodward**

<b>Planning Approval</b>	Applied, not yet approved
<b>Building Permit</b>	None
<b>Certificate of Occupancy</b>	None
<b>Fire Department</b>	No inspection activity
<b>Police Department</b>	Nov 20 – PD spoke to owner regarding new MDHHS order that requires 3 sides to be open air

**Morrie, 260 N. Old Woodward (Temporary Structure Removed)**

<b>Planning Approval</b>	Applied, not yet approved (assumed withdrawn)
<b>Building Permit</b>	None
<b>Certificate of Occupancy</b>	None
<b>Fire Department</b>	Oct 15 – Fire Code Inspections – Ordered to remove propane tank from inside enclosure
<b>Police Department</b>	No recent activity

**Pernoi, 310 E. Maple**

<b>Planning Approval</b>	Applied, not yet approved
<b>Building Permit</b>	None
<b>Certificate of Occupancy</b>	None
<b>Fire Department</b>	Nov 20, 21 – Fire Code Inspections – Ordered to remove heaters from inside enclosed via and tents
	<b>Nov 25 – Court appearance ticket issued for operation of an outdoor propane heating device inside of an enclosed tent</b>
<b>Police Department</b>	Nov 20 – Complaint and Inspection - patrons were being served in enclosed outdoor structures against MDHHS order, warning issued
<b>Code Enforcement</b>	<b>Nov 25 – Court appearance ticket issued for failure to obtain required permits</b>

**Streetside Seafood, 273 Pierce (Temporary Structure Removed)**

<b>Planning Approval</b>	Applied, not yet approved (assumed withdrawn)
<b>Building Permit</b>	None
<b>Certificate of Occupancy</b>	None
<b>Fire Department</b>	Sept 30, Nov 17, 20, 21 – Fire Code Inspections – Ordered to remove heaters from inside enclosed structure, patrons were being served in enclosed outdoor structure against MDHHS order, warning issued for occupancy, court citation for violation of Fire Code issued
<b>Police Department</b>	No recent activity
<b>Code Enforcement</b>	<b>Nov 25 – Court appearance ticket issued for failure to obtain required permits</b>
	Nov 30 – Temporary structure removed

**Svenska Café, 930 E. Maple (Temporary Structure Removed)**

<b>Planning Approval</b>	No application received or approved
<b>Building Permit</b>	None
<b>Certificate of Occupancy</b>	None
<b>Fire Department</b>	Nov 16, 17 – Fire Code Inspections – Ordered to remove igloos as non-compliant
<b>Police Department</b>	Nov 20 – Complaint and Inspection - patrons were being served in enclosed outdoor structures against MDHHS order, warning issued

**Toast, 203 Pierce (Temporary Enclosure Removed)**

<b>Planning Approval</b>	Applied, not yet approved
<b>Building Permit</b>	None
<b>Certificate of Occupancy</b>	None
<b>Fire Department</b>	Oct 15, Nov 20, 21 – Fire Code Inspections
<b>Police Department</b>	No recent activity

## Townhouse, 180 Pierce

<b>Planning Approval</b>	Applied, not yet approved
<b>Building Permit</b>	None
<b>Certificate of Occupancy</b>	None
<b>Department of Public Services</b>	Determined violation of Chapter 118, Vegetation for enclosure of street tree
<b>Fire Department</b>	Nov 17, 20, 21 – Fire Code Inspections, owner instructed not to use heaters in the enclosed tent
<b>Police Department</b>	Nov 20 – PD spoke to manager regarding new MDHHS order that requires 3 sides to be open air
	Nov 20 – Complaint and Inspection - patrons were being served in enclosed outdoor structure against MDHHS, warning issued
	Nov 22 – Inspection for MDHHS compliance, no issues
<b>Code Enforcement</b>	<b>Nov 25 – Court appearance ticket issued for failure to obtain required permits</b>
	<b>Dec 2 – Court appearance ticket issued for tree violation – enclosed City tree within tent</b>

Given the issues that have developed as a result of the creative design of several temporary outdoor dining tents and structures, City staff recommends the use of policy guidelines to be applied to all proposed temporary outdoor dining tents and structures through April 1, 2020. Please find attached a copy of the August 24, 2020 resolution passed by the City Commission for reference, as well as a new document, Policy Guidelines for Temporary Off-Season Outdoor Dining Tents and Structures, outlining new guidelines to be applied as well.

### LEGAL REVIEW:

The City Attorney has reviewed this report and has provided ongoing assistance in advising business owners and residents with regards to City and State requirements for temporary outdoor dining structures.

### FISCAL IMPACT:

Not applicable.

### PUBLIC COMMUNICATIONS:

As noted above, City officials have spent many hours working with the business owners to assist them in bringing temporary outdoor dining structures into compliance with all relevant regulations and orders. Walk-throughs and inspections have been conducted regularly, and staff has met with all business owners with outdoor dining enclosures to explain the permitting and approval process for temporary outdoor dining structures, Fire and Building Code requirements, and State Health Orders.

ATTACHMENTS:

- Approved Resolution of the City Commission dated August 24, 2020, Temporary COVID-19 Off-Season Outdoor Dining Standards
- Policy Guidelines for Temporary Off-Season Outdoor Dining Tents and Structures

**RESOLUTION # \_\_\_\_\_**  
**TEMPORARY COVID-19 OFF-SEASON**  
**OUTDOOR DINING STANDARDS**

WHEREAS the novel coronavirus (COVID-19) is a respiratory disease that is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person;

WHEREAS the spread of COVID-19 has resulted in the State of Michigan declaring a State of Emergency under Section 1 of Article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, and the Emergency Powers of the Governor Act, 1945 PA 302, as amended, as evidenced in Executive Order 2020-99;

WHEREAS the City of Birmingham has activated their Emergency Operation Center to respond to the COVID-19 pandemic;

WHEREAS the City of Birmingham is committed to encouraging economic activity and assisting local businesses impacted by the COVID-19 pandemic to ease back into operation while containing the spread of COVID-19;

WHEREAS it is the intent of the City of Birmingham to assist establishments permitted to open to the public to expand into outdoor space to allow for the provision of the number of seats previously approved for their operation while also accommodating social distancing guidelines currently in force within the State of Michigan;

WHEREAS it is the intent of the City of Birmingham to continue to provide expanded outdoor dining options to assist food and drink establishments to navigate the challenges of the pandemic throughout the fall and winter months while also accommodating social distancing guidelines;

NOW THEREFORE BE IT RESOLVED, all food and drink establishments in existence as of October 1, 2020 will be permitted to operate off-season outdoor dining areas in accordance with the following Temporary COVID-19 standards from October 1, 2020 through March 31, 2021:

1. Establishments may add new outdoor dining areas or expand previously approved outdoor dining areas in order to add additional seating to compensate for lost interior seating as a result of COVID-19 related restrictions to accommodate social distancing and/or to allow for phased reopening;
2. The number of seats to be removed from the interior of the restaurant due to health guidelines is the maximum number that each establishment shall be permitted to add outdoors in the public right-of-way on the sidewalk, in the on-street parking zone, in a via and / or on private property;



3. Outdoor dining areas must commence adjacent to the establishment in accordance with Michigan Liquor Control Commission standards, and may extend out in front of neighboring establishments, or on abutting private property (with consent of the owner), as space permits;
4. Outdoor dining areas permitted temporarily in the off-season from October 1, 2020 through March 31, 2021 under this resolution may include the use of tents, coverings or other temporary structures with side enclosures to provide protection from the weather for the entire period that this resolution remains in effect;
5. All structures proposed temporarily during the off-season to enclose outdoor dining areas must meet all of the requirements listed in Exhibit A, and must be constructed and inspected under a valid building permit;
6. If a food and drink establishment is unable to provide or expand outdoor dining into the public right-of-way on the sidewalk, in the on-street parking zone, in a via or on private property and / or is unable to meet requirements (1) through (4) above in these locations, the City may permit other options for outdoor dining on a case by case basis if unique or mitigating circumstances exist.
7. All establishments seeking temporary changes in accordance with this resolution must obtain a building permit for all enclosure structures and submit an Administrative Approval application to the Planning Division, and include the following documents;
  - i) A plan view of the proposed outdoor dining area showing all fixtures and furnishings with all distances clearly marked for pedestrian paths and between seating;
  - ii) Proof of insurance to include coverage of the existing outdoor dining area and the area proposed for expansion; and
  - iii) A temporary license agreement, if located on public property.
  - iv) Documentation of any indoor heating equipment.

BE IT FURTHER RESOLVED, that all existing and expanded outdoor dining areas with or without enclosure structures on both public and private property are required to alter the design and layout of tables, chairs, fixtures and enclosure systems to meet social distancing guidelines in effect and contain the spread of COVID19 as follows:

1. Reconfigure the layout of the entire outdoor dining area, to the maximum extent practical, to provide a minimum 6' clear pedestrian walking path adjacent to the dining area;
2. Reconfigure tables and chairs to allow seating for patrons only in accordance with social distancing guidelines in effect;
3. Remove all previously approved chairs and other seating that does not meet social distancing guidelines;
4. Install temporary signage to encourage compliance with social distancing guidelines;
5. Provide a temporary hand sanitizing station adjacent to the outdoor dining area; and

6. Provide a temporary service station outdoors that includes a trash receptacle and disinfecting wipes or other supplies for the cleaning of tables and chairs between patrons and of high touch points in the outdoor dining area.

BE IT FURTHER RESOLVED, that the City of Birmingham will waive all application fees, permit fees, license and rental fees for the expanded portion of the outdoor dining area, any structures used to cover or enclose such outdoor dining areas permitted by this resolution, and any fees relating to the use of both on street and off street right-of-ways and City owned property.

BE IT FURTHER RESOLVED, Except as herein specifically provided, all ordinances of the City of Birmingham in effect at the time of the issuance of this resolution, and as they may be subsequently amended, shall remain in force. Failure to comply with all Federal and State laws and regulations and the ordinances of the City may result in enforcement action and/or termination of an existing Special Land Use Permit.

I, Alexandria Bingham, City Clerk Designee, of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on August 24, 2020.

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Alexandria Bingham, City Clerk Designee

**Exhibit A**  
**Requirements for all Temporary Off-Season**  
**Outdoor Dining Tents and Structures**

- Detailed plans and specifications shall be submitted for review and approval by the Fire and Community Development Departments.
- The tent/structure must be inspected and approved prior to use.
- All tents/structures must be flame resistant with certificate on site.
- Tents/structures must be properly anchored for the weather conditions, no stakes allowed.
- Aisles inside of tents/structures shall have a minimum width of 36 inches for up to 10 occupants and 44 inches for over 10 occupants.
- Clear Fire Department access must be maintained around all tents and temporary structures.
- Tents/structures may not obstruct fire hydrants or fire sprinkler connections on buildings.
- No smoking is permitted in any tent/structure. Signs are to be posted.
- No open flame or other devices emitting flame, or fire are permitted in any tents/structures. Cooking devices shall not be permitted within 20 feet of the tents/structures.
- All cords, hoses, etc. shall be matted to eliminate trip hazards.
- All exit openings shall be egress compliant.
  - ✓ Curtains shall be free sliding on a metal support not less than 80 inches above floor level. The curtain shall be arranged so when open, no part of the curtain obstructs the exit. Curtains shall be of color, or colors, that contrasts with the color of the tent/structure.
  - ✓ Doors shall swing in the direction of egress with an opening force not to exceed 15 pounds.
- Exits must be clearly marked within tents/structures.
- Two means of egress shall be provided for an occupant load of 10 to 199 people, with a minimum egress width of 72 inches for tents, 36 inches for membrane structures.
- Exits shall be spaced at approximately equal intervals around the perimeter of the structure.
- The means of egress shall be illuminated at all times.

- Heating equipment must be listed and approved for indoor use, and comply with the International Fire Code, International Fuel Gas Code, the International Mechanical Code, and shall be approved by the Fire Marshal and Mechanical Inspector. Documentation must be submitted for review and approval.
- Heating equipment shall not be located within 10 feet of exits and must be installed per the manufacturer's recommendations including clearance to combustibles.
- LP-Gas cannot be stored inside the tent/structure or adjacent buildings.
- Portable fire extinguishers with a minimum rating of 2A, 10BC shall be installed inside all tent/structures.
- Carbon Monoxide detectors shall be installed in all tents/structures.

## **Policy Guidelines for Temporary Off-Season Outdoor Dining Tents and Structures**

- Temporary outdoor dining structures must not enclose or block access to City trees, City lighting, fire hydrants or other similar infrastructure or appurtenances.
- The maximum height for temporary outdoor dining structures shall be no more than 14' to the highest point.
- All temporary structures must be self-supporting and free-standing.
- Temporary outdoor dining structures must be properly anchored for weather conditions, but may not use stakes or any other equipment or material that bores into the ground on public property.
- No temporary or permanent changes or additions may be made to historic buildings without review and approval by the Historic District Commission.
- Temporary outdoor dining structures must not directly block signage of abutting storefronts.

December 7, 2020



CITY OF AUBURN HILLS, VILLAGE OF BEVERLY HILLS, VILLAGE OF BINGHAM FARMS, CITY OF BIRMINGHAM, CHARTER TOWNSHIP OF BLOOMFIELD, CITY OF BLOOMFIELD HILLS, CITY OF FARMINGTON, CITY OF FARMINGTON HILLS, VILLAGE OF FRANKLIN, CITY OF KEEGO HARBOR, CITY OF LATHRUP VILLAGE, CITY OF ORCHARD LAKE VILLAGE, CITY OF SOUTHFIELD, CITY OF TROY, CHARTER TOWNSHIP OF WEST BLOOMFIELD  
COUNTY OF OAKLAND

#### NOTICE OF HEARING

RE: PETITIONS TO LOCATE, ESTABLISH AND CONSTRUCT AN INTRA-COUNTY DRAIN PROJECT IN THE CITY OF AUBURN HILLS, VILLAGE OF BEVERLY HILLS, VILLAGE OF BINGHAM FARMS, CITY OF BIRMINGHAM, CHARTER TOWNSHIP OF BLOOMFIELD, CITY OF BLOOMFIELD HILLS, CITY OF FARMINGTON, CITY OF FARMINGTON HILLS, VILLAGE OF FRANKLIN, CITY OF KEEGO HARBOR, CITY OF LATHRUP VILLAGE, CITY OF ORCHARD LAKE VILLAGE, CITY OF SOUTHFIELD, CITY OF TROY, CHARTER TOWNSHIP OF WEST BLOOMFIELD, OAKLAND COUNTY, MICHIGAN.

NOTICE IS HEREBY GIVEN, that pursuant to the provisions of Chapter 20 of Act No. 40 of the Public Acts of 1956, as amended, petitions were filed with the Water Resources Commissioner of Oakland County, Michigan, petitioning for the location, establishment and construction of an intra-county drain project consisting of the existing Evergreen-Farmington Sewage Disposal System and all improvements necessary to bring the Evergreen-Farmington Sewage Disposal System into compliance with Administrative Consent Order 04995 entered by the State of Michigan Department of the Environment, Great Lakes, and Energy on August 14, 2019, that serve property located within the City of Auburn Hills, the Village of Beverly Hills, the Village of Bingham Farms, the City of Birmingham, the Charter Township of Bloomfield, the City of Bloomfield Hills, the City of Farmington, the City of Farmington Hills, the Village of Franklin, the City of Keego Harbor, the City of Lathrup Village, the City of Orchard Lake Village, the City of Southfield, the City of Troy and the Charter Township of West Bloomfield.

NOTICE IS FURTHER GIVEN, that the Drainage Board for the drain project has considered the petitions and has made a tentative determination that the petitions are sufficient and that the drain project is practical; has given the name "EVERGREEN-FARMINGTON SANITARY DRAIN" as the name of the drain project and the name "EVERGREEN-FARMINGTON SANITARY DRAIN DRAINAGE DISTRICT" as the name of the drainage district therefor; and has made a tentative determination that the following public corporations should be assessed for the cost of the drain project, to wit:

City of Auburn Hills

**INFORMATION ONLY**

Village of Beverly Hills  
Village of Bingham Farms  
City of Birmingham  
Charter Township of Bloomfield  
City of Bloomfield Hills  
City of Farmington  
City of Farmington Hills  
Village of Franklin  
City of Keego Harbor  
City of Lathrup Village  
City of Orchard Lake Village  
City of Southfield  
City of Troy  
Charter Township of West Bloomfield

NOTICE IS FURTHER GIVEN, that the Drainage Board will meet on the 17<sup>th</sup> day of November, 2020, at 2:00 p.m., Eastern Standard Time, for the purpose of hearing any objections to the drain project, to the petitions therefor, and to the matter of assessing the cost thereof to the public corporations above named. This Board meeting is being conducted electronically via GoToMeeting, in accordance with the provisions of the Open Meetings Act, PA 267 of 1976, as amended. Those that wish to participate remotely may do so by utilizing the following link <https://global.gotomeeting.com/join/261429821> or by dialing 1 (312) 757-3121, access code 261-429-821. This notice is given to and for the benefit of the said public corporations and all taxpayers thereof. At the hearing any of said public corporations or any taxpayer thereof will be entitled to be heard. During the meeting, there will be an agenda item for public comment, during which the public may provide input or ask questions of the Board. In the event a member of the public would like to submit their input or questions to be read at the meeting by the Board Chairperson, please provide the input or questions in writing to Megan Koss at [kossm@oakgov.com](mailto:kossm@oakgov.com). Further, persons with disabilities that need assistance participating in the meeting should contact Megan Koss at [kossm@oakgov.com](mailto:kossm@oakgov.com) no later than 24 hours before the meeting.

NOTICE IS FURTHER GIVEN, that after such hearing the Drainage Board shall make a determination as to the sufficiency of the petitions, the practicability of the drain project, whether the drain project should be constructed, and if so, the public corporations to be assessed and shall issue an order known as the Final Order of Determination. Section 483 of Act No. 40 of the Public Acts of 1956, as amended, provides that the Final Order of Determination shall not be subject to attack in any court, except by proceedings in certiorari brought within 20 days after the order is filed in the Office of the Oakland County Water Resources Commissioner, the Chairperson of the Drainage Board for the Evergreen-Farmington Sanitary Drain, and that if no such proceeding shall be brought within said 20 day period the drain project shall not thereafter be questioned in any suit at law or in equity, either on jurisdictional or non-jurisdictional grounds.

This notice is given by order of the Drainage Board for the Evergreen-Farmington Sanitary Drain.



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Jim Nash  
Chairperson of the Drainage Board for the  
Evergreen-Farmington Sanitary Drain;  
Oakland County Water Resources  
Commissioner

Dated: October 22, 2020



November 17, 2020

Ms. Cherilynn Mynsberge, Clerk  
City of Birmingham  
151 Martin St.  
Birmingham, MI 48012-3001

RE: Important Information—Price Changes

Dear Ms. Mynsberge,

At Comcast, we are always committed to delivering the entertainment and services that matter most to our customers in Birmingham, as well as exciting experiences they won't find anywhere else. We are also focused on making our network stronger in order to meet our customers' current needs and future demands. As we continue to invest in our network, products, and services, the cost of doing business rises. Rising programming costs, most notably for broadcast TV and sports, continue to be the biggest factors driving price increases. While we absorb some of these costs, these fee increases affect service pricing. As a result, starting January 1, 2021, prices for certain services and fees will be increasing, including the Broadcast TV Fee and the Regional Sports Network Fee. Please see the enclosed Customer Notice for more information.

We know you may have questions about these changes. If I can be of any further assistance, please contact me at 734-359-2308.

Sincerely,

Kyle V. Mazurek  
Manager of External Affairs  
Comcast, Heartland Region  
41112 Concept Drive  
Plymouth, MI 48170

Enclosure

**INFORMATION ONLY**

# Important Information Regarding Xfinity Services and Pricing

Effective January 1, 2021

<b>Xfinity TV</b>	Current	New
<b>Choice TV</b>	\$25.00	\$30.00
<b>Choice TV with TV Box (Flex upgrade)</b>	\$30.00	\$37.50
<b>Broadcast TV Fee</b>	\$11.30	\$14.85
<b>Regional Sports Fee</b>	\$8.25	\$9.10
<b>Service to Additional TV</b>	\$9.95	\$7.50

<b>On Demand Subscription Services</b>	Current	New
<b>AMC + On Demand</b>	\$4.99	\$6.99
<b>Docurama On Demand</b>	\$2.99	\$4.99
<b>Gaia On Demand</b>	\$9.99	\$11.99
<b>Gaiam TV Fit &amp; Yoga On Demand</b>	\$6.99	\$7.99
<b>UP Faith and Family On Demand</b>	\$4.99	\$5.99
<b>WE tv + On Demand</b>	\$4.99	\$5.99

<b>Xfinity Internet</b>	Current	New
<b>Performance Starter</b>	\$53.00	\$56.00
<b>Performance</b>	\$73.00	\$76.00
<b>Blast!</b>	\$83.00	\$86.00
<b>Extreme</b>	\$93.00	\$96.00
<b>Extreme Pro</b>	\$103.00	\$106.00
<b>Gigabit Speed</b>	\$113.00	\$116.00
<b>xFi Advantage</b>	\$20.00	\$25.00

<b>Xfinity Home</b>	Current	New
<b>Xfinity Home Security</b>	\$40.00	\$50.00
<b>Xfinity Home Security Plus</b>	\$50.00	\$60.00

<b>Xfinity Equipment</b>	Current	New
<b>TV Box</b>	\$5.00	\$7.50
<b>Customer-Owned Video Equipment Credit</b>	\$5.00	\$7.50

<b>Installation</b>	Current	New
<b>Professional Install</b>	\$70.00	\$100.00
<b>In-Home Service Visit</b>	\$70.00	\$100.00

Beverly Hills, Bingham Farms, Birmingham, Bloomfield Hills, Franklin, Redford