

**BIRMINGHAM CITY COMMISSION AGENDA**  
**JANUARY 25, 2021**  
**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

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

**Announcements**

- The City Commission would like to congratulate Doug Koschik on his retirement and thank him for 30 years of service to the City.

**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 January 11, 2021.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated January 13, 2021, in the amount of \$6,902,069.88.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated January 20, 2021, in the amount of \$1,403,493.75.
- D. Resolution to set February 22, 2021 as the public hearing date for the Program Year 2021 Community Development Block Grant Program.

**VI. UNFINISHED BUSINESS**

- A. Resolution to recommend that the City Commission authorize the release of 14 plots available in Section C, Row 18-A for sale in Greenwood Cemetery. Furthermore the City Commission directs the Greenwood Cemetery Advisory Board to evaluate the grave site pricing and return with recommended changes prior to any further release.

- B. Resolution to approve the use of five parking spaces in the right-of-way adjacent to the property located at 856 N. Old Woodward to fulfill the parking requirements per Article 4, section 4.43 (G)(4) of the Zoning Ordinance.
- C. 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.

OR

Resolution to postpone the proposed lot combination hearing and direct City staff and the City Attorney to continue negotiations with the applicant based on the issues noted and to return with detailed plans on any property to be conveyed, including details and estimated costs to remove or reroute any utilities, specific dimensions of the parcel proposed as a result of the lot combination, and any other details needed to evaluate the terms and conditions offered by the applicant;

AND/OR

Resolution to postpone the proposed lot combination hearing and direct the applicant to first go through the site plan and SLUP amendment process at the Planning Board to obtain a recommendation from the board on expanding surface parking and the use of an auto sales agency within the MU- 7 and MU-5 zones and findings as to whether the requirements of the Zoning Ordinance and the Triangle District Plan have been met.

## **VII. NEW BUSINESS**

- A. Resolution to approve the Settlement Agreement of December 21, 2020 between the City of Birmingham and BFFA Local 911 for a renewal of the collective bargaining agreement for a term of July 1, 2020 through June 30, 2023, and to authorize staff to execute a collective bargaining agreement consistent with its terms and conditions. Further, to authorize the transfer of the appropriate funds by the Finance Department for these expenditures.
- B. Resolution to approve the Settlement Agreement of December 23, 2020 between the City of Birmingham and AFSCME Local 998 for a renewal of the collective bargaining agreement for a term of July 1, 2020 through June 30, 2023, and to authorize staff to execute a collective bargaining agreement consistent with its terms and conditions. Further, to authorize the transfer of the appropriate funds by the Finance Department for these expenditures.
- C. Resolution to approve the corrected Employment Agreement for Thomas M. Markus and authorize the Mayor and Clerk to sign on behalf of the City.
- D. Resolution to approve the request from the Birmingham City Clerk's Office to create a virtual method of celebration and recognition to take place of the traditional Celebrate Birmingham Parade and Party for 2021 and to direct the City Clerk's office to create and distribute of a video, thank you letters and token of appreciation to all board and commission members on May 16, 2021, further pursuant to any minor modifications that may be deemed necessary by administrative staff.



- E. Resolution to direct the City Manager and City Clerk to work with staff to prepare for the suggested workshops  

AND

to direct the City Clerk to continue to maintain a list of desired workshops by the Commission  

AND

to direct the City Clerk to coordinate with the Commission, City Manager and City Staff to schedule and notice future workshops as needed.
- 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.
- H. Resolution to meet in closed session to discuss a written Attorney Client Privilege Communication pursuant to Section 15.3268(h) of the Open Meetings Act & to discuss pending litigation regarding Troyan v City of Birmingham and Delpiombo v City of Birmingham pursuant to Section 15.268(e) of the Open Meetings Act.

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

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

#### **IX. COMMUNICATIONS**

- A. Communication from David Bloom in regards to a nonpartisan stance.

#### **X. REPORTS**

- A. Commissioner Reports
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff

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).*

# **BIRMINGHAM CITY COMMISSION MINUTES**

**January 11, 2021**

**7:30 P.M.**

## **VIRTUAL MEETING**

**MEETING ID: 655 079 760**

**Video Link: <https://vimeo.com/event/3470/videos/493603896/>**

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

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

### **II. ROLL CALL**

Alexandria Bingham, City Clerk, 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 Markus, City Clerk Bingham, City Planner Cowan, City Attorney Currier, City Planner Dupuis, Planning Director Ecker, Police Operations Commander Grewe, City Attorney Kucharek, Parks and Recreation Manager Carrie Laird, Fire Chief Paul Wells, DPS Director Wood

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

#### **Announcements**

- Happy New Year!
- The City's Covid-19 Hotline has concluded as Covid-19 cases continue to decline across the state. Keep an eye on [www.bhamgov.org/virusprevention](http://www.bhamgov.org/virusprevention) for the latest City, County, State and CDC news pertaining to Covid-19.
- Update from Birmingham Fire Chief Paul Wells on Covid-19 vaccinations.
- The City Commission wishes to welcome back City Manager Tom Markus.

#### **Appointments**

##### **01-001-21 Appointment of Barbara Heller to the Public Arts Board**

The Commission interviewed Barbara Heller for the appointment.

**MOTION:** Nomination by Commissioner Hoff:  
To appoint Barbara Heller to the Public Arts Board as a regular member to serve a three-year term to expire January 28, 2024.

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

Nays, None

### **01-002-21 Appointment of Monica Neville to the Public Arts Board**

Monica Neville was unable to be present for the meeting.

**MOTION:** Nomination by Commissioner Baller:  
To appoint Monica Neville to the Public Arts Board as a regular member to serve a three-year term to expire January 28, 2024.

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

Nays, None

### **01-003-21 Appointment of Jill Stress to the Board of Review**

The Commission interviewed Jill Stress for the appointment.

**MOTION:** Nomination by Commissioner Host:  
To appoint Jill Stress to the Board of Review as an alternate member to serve a three-year term to expire December 31, 2023.

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

Nays, None

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

Frank Pisano and David Bloom welcomed City Manager Markus back to the City and congratulated Doug Koschick on his retirement.

#### 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.

##### 01-004-20 Consent Agenda

Mayor Pro Tem Longe recused herself from voting on Item E citing a business relationship between her husband and the parties concerned.

The following item was pulled from the Consent Agenda:

Commissioner Hoff: Item A – City Commission Minutes of December 21, 2020

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Host:  
To approve the Consent Agenda with the exception of Item A and noting Mayor Pro Tem Longe's recusal from Item E.

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

Nays, None

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated January 6, 2021, in the amount of 6,472,146.25.
- C. Resolution to set a public hearing date for February 8, 2021 to consider the Final Site Plan and Design and Special Land Use Permit at 251 E. Merrill to allow for the operation of Tapper's Gold Exchange.
- D. Resolution to approve a purchase of two LIFEPAK 15 v4 defibrillators plus accessories from Stryker in the amount of \$37,554.50 from account #101-336.000-971.0100 and further to approve the appropriation and amendment to the 2020-2021 General Fund budget as follows:

##### General Fund

##### Revenues:

Draw from Fund Balance	101-000.000-400.0000	<u>\$37,560</u>
Total Revenues		<u>\$37,560</u>

##### Expenditures:

Public Safety – Fire – Mach. & Equip.	101-336.000-971.0100	<u>\$37,560</u>
Total Expenditures		<u>\$37,560</u>

- E. Resolution to set a public hearing for the proposed lot combination of 469-479 S. Old Woodward for February 8th, 2021.
- F. Resolution authorizing the IT department to purchase the Support and Security Subscription License renewals for the Palo Alto Firewall from AmeriNet. The purchase price not to exceed \$18,957.60. Funds are available in the IT Computer Maintenance fund account #636-228.000-933.0600.
- G. Resolution to approve the amendment to the CARES Act Interlocal Agreement between Oakland County and the City of Birmingham.

**01-005-21 (Item A) City Commission Minutes of December 21, 2020**

Commissioner Hoff made a minor correction to page nine in the “and” parts of the resolution regarding Greenwood Cemetery. ‘Section C’ should be added before Row 19-A and ‘Row 12-A’ instead of Lot 12-a.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner Host:  
To approve the City Commission meeting minutes of December 21, 2020.

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

Nays, None

<b>VI. UNFINISHED BUSINESS</b>
--------------------------------

<b>01-006-21</b>	<b>CLG Grant Application – Little San Francisco – Resident Engagement Plan and the Historical Designation Process</b>
------------------	-----------------------------------------------------------------------------------------------------------------------

CP Dupuis summarized the item. He confirmed that:

- The final cost of the project could range somewhat from the estimated quotes provided; and,
- He would write a follow-up letter to the residents of the Little San Francisco neighborhood regarding next steps if the Commission approves the CLG grant application and if the funds requested are granted.

Commissioner Baller expressed his support for the item, noting that this topic would be a good one for Bang the Table resident engagement and that City staff would have the opportunity to provide residents of the neighborhood with further information if the funds are granted.

**MOTION:** Motion by Commissioner Baller, seconded by Commissioner Host:

To adopt the resolution in support of the grant application made to the Michigan State Historic Preservation Office for the reimbursement grant application for \$8,000 to conduct a reconnaissance level survey of the Little San Francisco neighborhood.

Commissioner Hoff complemented CP Dupuis' letter to residents.

#### Public Comment

Neil Fiechtenberg, a resident of Little San Francisco, said he was supportive of the motion and also paid compliments to CP Dupuis for his letter to residents.

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

Nays,   None

#### **01-007-21                      Daxton Parking Meter Removal & Shared Valet**

Mayor Boutros recused himself from this item citing a business relationship with the management company for the Daxton.

Mayor Pro Tem Longe took over facilitation of the meeting.

Police Operations Commander Grewe reviewed the item.

Rick Rattner and Gayle McGregor, attorneys for the project, represented the request.

A number of Commissioners said the City and the Daxton would need to make it very clear that this valet station serves both the Daxton's guests and any members of the public looking to park in Birmingham. They expressed concerns about how that would be publicized sufficiently.

CM Markus said he would work with the Daxton to ensure that the valet station is publicized sufficiently. He said it might be worth considering redesigning the signage that indicates a public valet station to make it more clear.

Aaron Black, operator of the Daxton, said the hotel would charge the public the fees agreed to with the City, and would charge the hotel's users the same amount during the public valet hours of operation. He said the hotel was still exploring potential rate differences for hotel users during special events and during non-public hours of operation.

Commissioner Nickita requested that the Birmingham PD keep track of how often the adjacent parking spaces are bagged for special events or heavy use over the course of 2021 to assure the Commission that they are being used sporadically and not regularly.

Commissioner Sherman opined that it would be worthwhile to see if the City and the Daxton can make this agreement work, especially since there are relatively simple provisions for either party ending the agreement if necessary.

**MOTION:**

Motion by Commissioner Sherman, seconded by Commissioner Nickita:

At a regular meeting of the Commission for the City of Birmingham, Oakland County, Michigan, held on the 11th day of January, 2021. Whereas, Woodward Brown Ventures LLC d/b/a Daxton Hotel, Aparium Hotel Group, wish to enter into a license agreement for shared parking valet services with the City of Birmingham. Now therefore be it resolved that the City of Birmingham authorizes by this resolution the license agreement for share parking valet services. Be it further resolved that the Mayor or Mayor Pro Tem and City Clerk are hereby authorized to execute the license agreement on behalf of the City of Birmingham.

After discussion among the Commission, City Manager Markus, City Attorney Currier and Mr. Rattner, there was consensus that the agreement would last one year unless one party provides the other with a 90 day notice of intent to terminate the agreement before the end of that first year. After that first year, the agreement would continue indefinitely only to be terminated if one party offers the other 90 day notice of intent to so.

City Attorney Currier confirmed for Commissioner Baller that the contract would be updated to reflect that understanding.

CM Markus confirmed he and City staff could work within the license agreement and the Commission's concerns to likely create a situation amenable to both parties. Clarification was provided that the City would monitor how the agreement evolves and noted that it may shift to better meet both parties' needs during that time. He noted that maintaining a valet service with the Daxton is less expensive than maintaining an exclusively public one. He also stated that he was in the midst of conversations with the Police Department regarding whether it continues to be worthwhile for the City to maintain its other valet stations.

Commissioner Hoff expressed concern that the agreement as written has the City foregoing too much parking revenue in exchange for the Daxton providing valet services.

In reply to CM Markus, Operations Commander Grewe confirmed that the City-operated valet stands cost approximately \$39,000 a year whereas the agreement with the Daxton would cost approximately \$22,000 a year.

Commissioner Hoff wondered whether, without Vinoteca, there would be as much of a need for City-funded valet services in front of the Daxton. Observing that the Townsend pays the City approximately \$21,000 for its use of parking spaces while the City would waive approximately \$22,000 in fees for the Daxton the same kind of use, Commissioner Hoff expressed concern that it was not equitable. She said she was especially concerned about this in light of the fact that the spaces benign relinquished by the City near the Daxton are in a far busier area of the City.

CM Markus noted that the City would be waiving fees for those fees for the Daxton in light of their provision of City-subsidized public valet services, whereas the Townsend only offers its own visitors valet.

Commissioner Nickita asked the Engineering Department to ensure that the triangle at the south end of the new parking spaces in front of the Daxton is striped to accommodate scooters like elsewhere downtown.

Commissioner Host said he was in agreement with Commissioner Sherman's reason for making the motion.

Mayor Pro Tem Longe noted the agenda packet for the present meeting did not contain the updated motion language provided by the City Attorney to the Commission via email on the afternoon of January 11, 2021. She asked Commissioner Sherman to read the updated motion language into the

record for the public's benefit. The updated motion language is reflected in Commissioner Sherman's motion.

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

                         Nays,   Commissioner Hoff

                         Recrused,   Mayor Boutros

## **01-008-21                    The Pearl Request for Parking Assessment District (PAD) Inclusion**

Mayor Boutros resumed facilitation of the meeting.

Police Operations Commander Grewe, Planning Director Ecker and City Planner Cowan reviewed the item.

Mr. Rattner, attorney for The Pearl, spoke on behalf of the item.

A number of Commissioners expressed concern that admitting The Pearl to the PAD would overstress the system, and would allow The Pearl to potentially consider excessively high-intensity retail uses on the first floor in the future since admission to the PAD would allow them to meet nearly any required parking amount.

There was discussion regarding whether The Pearl's building would have been included in the PAD had it not been undeveloped for a number of years.

Commissioner Nickita asked staff to return with history of the northern boundary changes to the PAD so the Commission could be better informed about the potential reasons The Pearl's building was excluded from the PAD.

City Manager Markus stated that the Commission might consider reversing its previous vote and allowing the six frontage spaces to be counted towards The Pearl's retail parking requirements. He said it could be a positive compromise. He explained it could allow for some of the slightly more intensive retail uses being currently proposed while serving as a governor to make sure the uses remain at a reasonable intensity for the area.

Commissioner Hoff and Mayor Pro Tem Longe said they would be comfortable with City Manager Markus' proposed compromise.

Planning Director Ecker noted that sometimes a building such as The Pearl can enter into a shared use agreement between its residential and commercial parking if it can demonstrate that the different uses are concentrated during significantly different times of day. She said that option had not yet been explored.

### Public Comment



Lindsey Sales, co-owner of Fruition, said she wanted to clarify that seating at Fruition would be relatively low-intensity. She explained that Fruition's Grand Rapids location 80% of the business is carryout. She stated that people that stay to eat usually do so for a maximum of 10-15 minutes, and that the owners are intending there to be no more than two or three tables.

Emil Cherkasov, principal of Bloomfield Hills-based Forward Commercial Group, which is leasing the building, said that by taking no action the Commission could be hurting the business tenants that are signed on to lease in The Pearl.

Mayor Boutros said it was important for the Commission to do what it could to fairly support City businesses during the pandemic.

There was discussion as to whether the Commission could vote to grant the six frontage spaces to The Pearl during the present discussion.

CM Markus and City Attorney Kucharek concurred that a vote on granting the six parking spaces had not been noticed and therefore should not occur this evening. The public needed to be provided with appropriate opportunity to speak on the proposal.

PD Ecker confirmed that the matter could be publicly noticed for consideration at the Commission's January 25, 2021 meeting.

CM Markus said he would have a motion for the January 25, 2021 meeting proposing using the frontage spaces in The Pearl's parking calculation.

The Commission took no action.

## **VII. NEW BUSINESS**

### **01-009-21 Birmingham Ice Arena - Andrus Architecture**

Parks and Recreation Manager Laird introduced the item. Robert Stempien of Plante Moran Cresa reviewed the facility assessment and recommendations.

A number of Commissioners commended Mr. Stempien on his presentation.

Commissioners expressed concerns about:

- The proposed overall expenditure of \$5.1 million for repairs and upgrades.
- The design and design review process for the aesthetic upgrades.
- Whether there was sufficient community understanding and buy-in for these upgrades given the expense and the fact that the Ice Arena is used more often by non-residents.
- Whether the community understood that ice arenas are generally unprofitable and are at best cost-neutral between operational costs and revenue.
- Whether the proposed schedule for the work outlined in this item was too short a timeframe.
- Whether construction on the arena would negatively impact users of Kenning Park during the summer months.

Mr. Stempien said:

- He would work with Parks and Recreation Manager Laird on the designs. The designs could also be submitted to the City's Architectural Review Board.
- Andrus Architecture had reviewed the proposed timeline and confirmed they could

accommodate the proposed project scheduling.

- The biggest issue for users of Kenning Park would be the proximity between where some users park and the south side of the Ice Arena, where some of the construction would take place. Site logistics will be important for that reason and will prioritize pedestrian safety to mitigate any potential issues.
- Updating the utilities for energy efficiency would likely offset the \$3,000/month average deficit the Ice Arena currently has, getting the Ice Arena close to, or a bit over, breakeven status.
- The upgrades will also allow the Ice Arena to operate for an additional three months each year, which will bring in further revenue.

DPS Director Wood and Mayor Pro Tem Longe said that having an Ice Arena is an amenity Birmingham can be proud of, attracts residents to the city, and improves quality of life.

Commissioner Host said he was interested in operating the Ice Arena as an enterprise fund. He also said that the locker room updates would yield a complete return on investment, and that the City would likely engage in marketing to increase the Ice Arena's revenue once all updates are complete.

Commissioner Baller recommended proceeding with the recommended motion to do necessary repairs, and then said the Commission could do further community engagement regarding proposed subsequent changes. He recommended using Bang the Table as a way of soliciting some of that public feedback.

City Manager Markus said that aiming for cost neutrality with an Ice Arena is usually the best case scenario. He noted that while non-residents use the Birmingham rink, Birmingham residents use other rinks as well. He also noted that while the cost to operate a rink is more, users also pay to use the rink, which is not true for many of Birmingham's other recreational amenities. He said it is common practice for these kinds of facility improvements to be paid for out of general operating bonds and then paid back by general property taxes.

#### Public Comment

Jerry Petrovich and Steve Carroll, individuals heavily involved in running hockey programming in the City for a number of years, both spoke in favor of the proposal. They stated there had been hours of community input and surveys about the Ice Arena done by the Parks and Recreation Board, and cited the 70% Park Bond approval vote that occurred in November 2020 as proof that there is overwhelming support for the improvements. They also noted that upgrades would lead to a significant increase in revenue and usage, and that Birmingham teams have made a number of commitments to remaining financially invested in the Ice Arena post-upgrades.

Mr. Petrovich thanked DPS Director Wood, Parks and Recreation Manager Laird, Connie Folk, and Mr. Stempien for all their help in this process.

Paul Reagan said the City should make a serious effort to break even on the Ice Arena. He said he was not sure residents understood that Ice Arenas tend not to make money when they voted in November 2020 to approve the Parks Bond.

John Rusche, member of the Parks and Recreation Board, said that presently some area hockey teams avoid the Birmingham Ice Arena since it closes in the summer and that could be disruptive in terms of scheduling. He said the extra three months of operational time would not only increase use during those months, but could increase use overall by teams that previously would not schedule

time there.

David Bloom said he had voted in favor of the bond and said he wanted clarity that voters understood all aspects of the Ice Arena upgrade proposal. He also asked the Commission to ensure that creative options for generating a profit were being considered.

Andrew Haig said he was generally in support of the upgrades. He said the aesthetic and design considerations would be very important given the amount of money to be spent. He asked if having the team room off the women's locker room was too specific, said geothermal was a good idea, and asked if the timeline for the project was too tight. He said many of his friends and neighbors enjoy their hockey teams and that he just wanted to ensure that the project benefits the community.

Heather Carmona, Chair of the Parks and Recreation Board, detailed the extensive community feedback received by the P&R Board during their design of the P&R master plan about three years back. She noted there was ten pages of public engagement documented and a number of surveys. For Commissioners concerned that they were not hearing from the public, she suggested that was because the public weighed in during the P&R Board's master planning process and not much had been done at the City-level subsequently until now. She also said that Mr. Stempien's plan was thoroughly vetted by the P&R Board the week prior to the present Commission meeting and that the P&R Board was comfortable with its findings and recommendations.

Mayor Boutros spoke in favor of both the proposed safety and aesthetic improvements. He said he wanted an Ice Arena his children were proud to use. He noted that resident use would likely increase after the improvements are made. He also said the Park Bond approval in November 2020 indicated significant resident buy-in to these proposed improvements. He said the residents voted for the Commission to hire experts and carry out the proposals and that is what the City should do.

**MOTION:** Motion by Commissioner Baller, seconded by Mayor Pro Tem Longe: To award the Birmingham Ice Arena Architectural and Engineering Services project to Andrus Architecture in the amount not to exceed \$288,900.00. Funds are available in the Capital Projects Fund account #401-901.001-977.0000 for this project. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of the required insurances.

Commissioner Hoff complemented CP Dupuis' letter to residents.

Commissioner Host said that while he was aware this item proposed a tight timeline, he was confident that it could be achieved since all involved are specialists in their fields. He asked whether Commissioner Baller and Mayor Pro Tem Longe might be amenable to amending their motion to make the running of the Ice Arena an enterprise fund. He said it was important that the City make an earnest effort towards making the Ice Arena profitable even if cost neutrality is the likely best outcome.

Mayor Pro Tem Longe asked Commissioner Host to respectfully hold off on his proposed amendment to keep the approval of this particular upgrade clear. She noted that the P&R Board is confident that these upgrades will lead to opportunities for revenue growth. As long as the Ice Arena remains the home arena for Birmingham Figure Skating and the high school hockey teams she said demand for the use of the area would exist well into the future. She reiterated Mr. Petrovich's and Mr. Carroll's earlier comment that all users pay to use the Ice Arena. She said she was pleased to second the motion and pleased to support it.

Commissioner Nickita said he was unclear what kind of capital outlay would be required continuing into the future, citing an upcoming need to replace the Zamboni as one future cost. He said he wanted to better understand the likelihood of these updates adequately extending the use of the Ice Arena well into the future, versus the significant costs it takes to maintain and update it.

Public Comment

Paul Reagan said that if this is not structured as an enterprise fund the Commissioners should vote against the motion.

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

Nays, Commissioner Sherman

**Commission Discussion on items from prior meeting.**

Commissioner Host asked City staff to schedule time for a workshop between the Commission and the Planning Board for sometime in late March or early April 2021 to discuss the 2040 Master Plan.

**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.

Commissioner Hoff said she would like to see funds set aside at the upcoming long-range planning meeting for the Greenwood Cemetery Advisory Board to enact some of their recommendations for the Cemetery.

Commissioner Baller said he was still interested in a staff report regarding the PAD as he requested at the December 21, 2020 Commission meeting.

**MOTION:**                     Motion by Commissioner Baller, seconded by Commissioner Host:  
To schedule a workshop to discuss long term plans for the Ice Arena and the accounting options, whether a P&L or an enterprise fund, at a time convenient for the rest of the Commission but not within the context of a regular meeting.

In reply to CM Markus, Commissioner Baller clarified that his intention with the motion would allow the workshop to be scheduled before a regular meeting.

Public Comment

David Bloom said it would be a good idea to make sure the City is missing no additional opportunities to approve the proposal.

Paul Reagan thanked Commissioner Baller.

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

Commissioner Hoff  
Mayor Boutros

Nays, None

**MOTION:** Motion by Commissioner Host, seconded by Mayor Pro Tem Longe:  
To discuss short term rentals at the next available City Commission meeting.

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

Nays, None

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

#### **IX. COMMUNICATIONS**

#### **X. REPORTS**

- A. Commissioner Reports
- B. Commissioner Comments

Commissioner Baller spoke out against declarations made by the President, some politicians, and some members of the public, without any production of credible evidence, that the November 3, 2020 election was anything other than free and fair. He noted these declarations incited an attack on the nation's Capitol by rioters on January 6, 2021. Commissioner Baller said he echoed Senator Mitt Romney of Utah's call to speak to the fact that no credible evidence of election fraud in the November 3, 2020 election has been produced. Commissioner Baller said those statements should be made with understanding and compassion.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff

INFORMATION ONLY

#### **XI. ADJOURN**

Mayor Boutros adjourned the meeting at 12:06 a.m.

**City of Birmingham**  
**Warrant List Dated 01/13/2021**

Meeting of 01/25/2021

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
277276		008274	ACCURATE PARKING LOT SERVICES, INC.	975.00
277277	*	007266	AETNA BEHAVIORAL HEALTH LLC	445.51
277278		MISC	AL FATHI	900.00
277279		MISC	AMINE & ASSOCIATES LLC	200.00
277280	*	008977	JOBMATCH LLC DBA APPLICANTPRO	239.00
277282	*	000500	ARTECH PRINTING INC	186.00
277283	*	001466	ASCAP	367.00
277284	*	006759	AT&T	340.03
277285	*	006759	AT&T	308.54
277286	*	006759	AT&T	201.48
277287	*	006759	AT&T	322.27
277288	*	004027	AUTOMATED BENEFIT SVCS INC	13,548.22
277289		MISC	BACKERS CONSTRUCTION INC	200.00
277290	*	006534	BADER AND SONS CO	402.81
277293		001122	BOB BARKER CO INC	824.55
277294	*	003839	MATTHEW J. BARTALINO	274.81
277295		002231	BILLINGS LAWN EQUIPMENT INC.	123.36
277296		MISC	BLUE STAR	25,000.00
277297		MISC	BORGNE, KERRIN T	200.00
277298		003526	BOUND TREE MEDICAL, LLC	230.78
277299	*	MISC	BRENDAN MCGAUGHEY	25.36
277301	*	MISC	BURKS, JEANNE	171.76
277303		MISC	C & L WARD BROS CO	100.00
277304		009078	CANON SOLUTIONS AMERICA INC	163.20
277304	*	009078	CANON SOLUTIONS AMERICA INC	1,046.01
277306	*	000444	CDW GOVERNMENT INC	98.54
277307		008306	CHARTER TOWNSHIP OF BLOOMFIELD	1,748.88
277308	*	007284	CINCINNATI TIME SYSTEMS, INC.	105.00
277309		000605	CINTAS CORPORATION	114.59
277309	*	000605	CINTAS CORPORATION	72.43
277310		009187	CLEARVIEW CAPTIONING LLC	1,240.00
277311	*	004026	COFINITY	1,539.00
277312	*	008955	COMCAST	686.20
277313	*	007774	COMCAST BUSINESS	1,256.20
277314	*	000627	CONSUMERS ENERGY	2,030.46
277317	*	006907	DENTEMAX, LLC	151.20
277319	*	000179	DTE ENERGY	59.47
277320	*	000179	DTE ENERGY	2,200.22
277321	*	000179	DTE ENERGY	138.88
277322	*	000179	DTE ENERGY	1,693.16
277323	*	000179	DTE ENERGY	217.91
277324	*	000179	DTE ENERGY	860.59

**City of Birmingham**  
**Warrant List Dated 01/13/2021**

Meeting of 01/25/2021

Check Number	Early Release	Vendor #	Vendor	Amount
277325	*	000179	DTE ENERGY	15.95
277326	*	000179	DTE ENERGY	232.17
277327	*	000179	DTE ENERGY	96.12
277328	*	000179	DTE ENERGY	90.96
277329	*	000179	DTE ENERGY	162.87
277330	*	000179	DTE ENERGY	401.23
277331	*	000179	DTE ENERGY	51.21
277332	*	000179	DTE ENERGY	17.07
277333	*	000179	DTE ENERGY	34.54
277334	*	000179	DTE ENERGY	440.92
277335	*	000179	DTE ENERGY	98.86
277336	*	000179	DTE ENERGY	1,944.12
277337	*	000179	DTE ENERGY	21.49
277339	*	000179	DTE ENERGY	682.47
277340	*	000179	DTE ENERGY	72.44
277341	*	000179	DTE ENERGY	157.19
277342	*	000179	DTE ENERGY	52.07
277343	*	000179	DTE ENERGY	1,879.63
277344	*	000179	DTE ENERGY	15.38
277345	*	000179	DTE ENERGY	3,775.17
277346	*	000179	DTE ENERGY	5,686.61
277347	*	000179	DTE ENERGY	1,504.66
277348	*	000179	DTE ENERGY	5,837.65
277349	*	000179	DTE ENERGY	353.24
277350		MISC	EASY EXIT EGRESS WINDOWS	100.00
277351	*	007702	EASY PICKER GOLF PRODUCTS, INC	305.00
277352		000493	ED RINKE CHEVROLET BUICK GMC	58.63
277354	*	007538	EGANIX, INC.	720.00
277355		004671	ELDER FORD	532.32
277357	*	009100	ENZO WATER SERVICE	710.00
277358		001495	ETNA SUPPLY	2,600.00
277359		006654	FLEETPRIDE INC	94.40
277360	*	008154	GREGORY FOLEY	100.00
277362	*	MISC	GILVYDIS, DALIA	1,342.88
277363	*	MISC	GLOBAL SYNERGY LLC	4,625.55
277364	*	MISC	GLOBAL SYNERGY LLC	1,656.55
277365	*	004604	GORDON FOOD	203.47
277366		008293	GRAINGER	352.02
277367		001447	HALT FIRE INC	354.08
277368	*	MISC	HENDERSON, TRACI	1,816.36
277369	*	007339	HIGHEST HONOR, INC	348.00
277370	*	001956	HOME DEPOT CREDIT SERVICES	3,200.33
277372		000948	HYDROCORP	3,331.00

# City of Birmingham

## Warrant List Dated 01/13/2021

Meeting of 01/25/2021

Check Number	Early Release	Vendor #	Vendor	Amount
277375	*	MISC	IRONGATE OF BIRMINGHAM	55.48
277376		003823	JAY'S SEPTIC TANK SERVICE	78.00
277376	*	003823	JAY'S SEPTIC TANK SERVICE	156.00
277377	*	009249	JOHN C COOK	100.00
277378	*	003746	JOHNSTON LEWIS ASSO INC	11,930.00
277379		MISC	JR VERVISCH BUILDING COMPANY	2,500.00
277380	*	007423	K/E ELECTRIC SUPPLY	426.60
277381		MISC	KELLY BUILDING & DEVELOPMENT CO LLC	200.00
277382		000353	KNAPHEIDE TRUCK EQUIPMENT	177.05
277383		004904	KONICA MINOLTA BUSINESS SOLUTIONS	2,340.00
277384	*	000362	KROGER COMPANY	25.14
277385		MISC	KULLA CONSTRUCTION INC	500.00
277386		006817	LEXISNEXIS RISK DATA MANAGEMENT INC	171.90
277388		MISC	LMB PROPERTIES LLC	2,000.00
277389	*	008158	LOGICALIS INC	9,700.00
277390		MISC	LYNCH CUSTOM HOMES	1,400.00
277391		008793	MERGE MOBILE, INC.	73.00
277392		MISC	METRO DETROIT SIGNS INC	200.00
277393		003860	MICHIGAN CHANDELIER - TY	64.34
277394	*	007765	MICHIGAN INDEPENDENT DOOR CO.	110.00
277398		MISC	MIDWEST EXCAVATION LLC	1,000.00
277400		000230	MIKE SAVOIE CHEVROLET INC	66.00
277401	*	MISC	MOTYL, BENJAMIN	115.70
277403	*	MISC	NEFF, MATTHEW	6,422.31
277406		000919	OAKLAND COUNTY TREASURER	5,513.76
277407	*	000675	OAKLAND SCHOOLS	5,018.49
277408	*	004370	OCCUPATIONAL HEALTH CENTERS	52.00
277409	*	000481	OFFICE DEPOT INC	117.00
277410		MISC	PELLA WINDOWS & DOORS, INC.	500.00
277411	*	001753	PEPSI COLA	254.16
277412		007368	PHASE FOUR INVESTIGATIONS	2,100.00
277414		007797	QUADIENT LEASING USA, INC.	422.64
277415		006729	QUENCH USA INC	240.00
277416		MISC	R YOUNGBLOOD & CO	100.00
277417		MISC	SAROKI ARCHITECTURE	500.00
277418	*	006590	SECURE DOOR, LLC	244.20
277419	*	001551	SESAC	483.00
277420		008815	SHI INTERNATIONAL CORP.	59,823.00
277421	*	004202	SHRED-IT USA	306.18
277422	*	008073	SITEONE LANDSCAPE SUPPLY, INC	638.43
277423		MISC	SMOLYANOV HOME IMPROVMENT	100.00
277424	*	001824	SOCIETY FOR HUMAN RESOURCE MGMNT	219.00
277427		000275	TIRE WHOLESALERS CO INC	316.76



**City of Birmingham**  
**Warrant List Dated 01/13/2021**

Meeting of 01/25/2021

Check Number	Early Release	Vendor #	Vendor	Amount
277428		008339	TRANSPORTATION IMPROVEMENT ASSOC.	6,825.00
277430	*	000293	VAN DYKE GAS CO.	196.21
277431	*	000158	VERIZON WIRELESS	76.02
277432	*	000158	VERIZON WIRELESS	734.65
277433	*	000158	VERIZON WIRELESS	98.50
277434	*	000158	VERIZON WIRELESS	1,082.61
277435	*	000158	VERIZON WIRELESS	401.44
277437		MISC	WALLSIDE INC	500.00
277438		MISC	WECHSLER CONSTRUCTION LLC	500.00
277439		009128	WITMER PUBLIC SAFETY GROUP INC	364.96
277440	*	MISC	WOLF, DENNIS	1,140.53
277442	*	008391	XEROX CORPORATION	226.78
277443		009185	ZOOM VIDEO COMMUNICATIONS INC	18.55
SUBTOTAL PAPER CHECK				\$236,008.42
<b><u>ACH TRANSACTION</u></b>				
3278	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	36,701.31
3279	*	002284	ABEL ELECTRONICS INC	767.00
3283	*	007345	BEVERLY HILLS ACE	83.04
3284	*	008840	BIRMINGHAM PUBLIC SCHOOLS-TAXES	4,565,994.50
3285	*	009181	DELTA TEMP SERVICES INC	1,722.56
3287	*	001077	DUNCAN PARKING TECH INC	11,202.75
3288		000217	FOUR SEASON RADIATOR SERVICE INC	489.50
3289		001023	GABRIEL, ROEDER, SMITH & CO.	14,050.00
3290	*	000243	GRAINGER	460.16
3291	*	001672	HAYES PRECISION INC	182.50
3292		000261	J.H. HART URBAN FORESTRY	1,276.50
3293	*	003458	JOE'S AUTO PARTS, INC.	883.61
3294	*	005876	KROPF MECHANICAL SERVICE COMPANY	7,733.00
3295	*	005550	LEE & ASSOCIATES CO., INC.	1,747.50
3300		000462	MOTOR CITY INDUSTRIAL	176.96
3301	*	007856	NEXT	30,095.00
3302	*	006359	NYE UNIFORM COMPANY	53.99
3303	*	008843	OAKLAND COUNTY TREASURER- TAX PYMNT	1,912,265.93
3304	*	003785	SIGNS-N-DESIGNS INC	55.00
3305		000254	SOCRRA	77,688.00
3306	*	004692	TRANSPARENT WINDOW CLEANING	200.00
3307	*	004887	TRUCK & TRAILER SPECIALTIES INC	101.30
3308	*	000969	VIGILANTE SECURITY INC	405.00
3309	*	007278	WHITLOCK BUSINESS SYSTEMS, INC.	1,726.35
SUBTOTAL ACH TRANSACTION				\$6,666,061.46

**City of Birmingham**  
**Warrant List Dated 01/13/2021**

Meeting of 01/25/2021

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$6,902,069.88

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 01/20/2021**

Meeting of 01/25/2021

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
277444	*	009254	TOM MARKUS	2,826.37
277445	*	MISC	48TH DISTRICT COURT	125.00
277446		MISC	911 MECHANICAL	179.00
277447		003708	AIRGAS USA, LLC	236.82
277449		MISC	APS RESIDENTIAL SERVICES	200.00
277450		MISC	ARANEAE INC	200.00
277451	*	006759	AT&T	106.89
277452	*	006759	AT&T	347.31
277453		MISC	AVER SIGN COMPANY	200.00
277454		MISC	B-DRY SYSTEM OF MICHIGAN INC	100.00
277456		000522	BIG BEAVER PLUMBING, HEATING INC.	150.00
277457		002231	BILLINGS LAWN EQUIPMENT INC.	143.60
277458		001201	BIRMINGHAM YOUTH ASSISTANCE	6,059.51
277459		003526	BOUND TREE MEDICAL, LLC	2,134.34
277460	*	006953	JACQUELYN BRITO	99.00
277461		003907	CADILLAC ASPHALT, LLC	6,110.64
277462		008082	CAMFIL USA INC	558.00
277463	*	009078	CANON SOLUTIONS AMERICA INC	162.82
277465		007732	CAPITAL TIRE, INC.	549.42
277466		000444	CDW GOVERNMENT INC	4,690.70
277466	*	000444	CDW GOVERNMENT INC	4,428.65
277467		MISC	CHINOSKI BUILDING GROUP	100.00
277468		007710	CINTAS CORP	359.99
277469		000605	CINTAS CORPORATION	159.56
277470		009187	CLEARVIEW CAPTIONING LLC	1,107.50
277471		002191	COCHRANE SUPPLY AND ENG INC	95.05
277472	*	000627	CONSUMERS ENERGY	7,714.99
277473		002668	CONTRACTORS CLOTHING CO	432.99
277474		008582	CORE & MAIN LP	3,464.90
277476	*	006999	CHRISTOPHER DEMAN	11.46
277477	*	000179	DTE ENERGY	209.51
277478	*	000179	DTE ENERGY	33.30
277479	*	000180	DTE ENERGY	67,346.28
277480		004671	ELDER FORD	137.38
277482		MISC	EXPERT HEATING & COOLING	906.25
277483		001223	FAST SIGNS	653.30
277484		MISC	FAST SIGNS OF GRAND RAPIDS	200.00
277485		008656	FBINAA	110.00
277487		MISC	FOUNDATION SYSTEMS OF MICHIGAN INC.	200.00
277488		MISC	FRIESEN, CAROL W	100.00
277489		006384	GEOGRAPHIC INFORMATION SERVICES, IN	184.43
277490		000249	GUARDIAN ALARM	493.60

**City of Birmingham**  
**Warrant List Dated 01/20/2021**

Meeting of 01/25/2021

Check Number	Early Release	Vendor #	Vendor	Amount
277491		001531	GUNNERS METER & PARTS INC	1,605.00
277492		007339	HIGHEST HONOR, INC	12.90
277493	*	001956	HOME DEPOT CREDIT SERVICES	1,102.97
277494		MISC	ID ENTERPRISES LLC	400.00
277495		MISC	ITALY AMERICAN CONSTRUCTION CO	100.00
277496		MISC	J H PLBG INC	1,000.00
277497		000344	J.T. EXPRESS, LTD.	2,271.01
277498	*	007002	SHON JONES	95.00
277499	*	007244	CHRISTOPHER JUDKINS	14.00
277500	*	MISC	JUDY M EPSTEIN	5,739.10
277501	*	MISC	JUDY M EPSTEIN	825.53
277503		008518	LERMA, INC	60.00
277504		009082	MADISON ELECTRIC COMPANY	634.39
277505		MISC	MAIN STREET DESIGN & BUILD	200.00
277506		MISC	MATERAZZO, CARLO	200.00
277507		000888	MCKENNA ASSOCIATES INC	25,067.63
277508		003099	MICHIGAN POLICE EQUIP.	328.50
277510		008319	MKSK INC	6,543.50
277510	*	008319	MKSK INC	1,316.00
277511	*	009096	RYAN NEUVILLE	89.99
277512	*	000477	OAKLAND COUNTY	453,570.83
277513	*	003461	OBSERVER & ECCENTRIC	130.32
277514	*	000481	OFFICE DEPOT INC	757.51
277515		008669	OHM ADVISORS INC	31,929.75
277517		MISC	PELLA WINDOWS & DOORS, INC.	1,100.00
277518		MISC	PERFECTION BUILDING LLC	200.00
277519		006959	PHOENIX COMMUNICATIONS & CABLING	632.50
277520		008028	PK SAFETY SUPPLY	653.00
277521	*	MISC	PRIME	27.00
277522		MISC	PROSIGN AND AWNING	200.00
277523		006625	PTS COMMUNICATIONS	78.00
277524		MISC	PURE ENERGY WINDOW	500.00
277526		008852	REDGUARD FIRE & SECURITY	300.00
277527		MISC	RENAISSANCE RESTORATIONS INC	500.00
277528		MISC	RIGHT WAY REMODELING	200.00
277529	*	MISC	ROBERT DENNIS	577.18
277530		MISC	RWL SIGN COMPANY	200.00
277531	*	002806	SAM'S CLUB/SYNCHRONY BANK	52.81
277532	*	MISC	SHAPIRO, JACOB	3,751.83
277533		MISC	SIDECAR BIRMINGHAM LLC	100.00
277534		MISC	SIGNGRAPHIX, INC.	200.00
277535		002021	SMAFC	250.00
277537		MISC	STARRS ROOFING	200.00

**City of Birmingham**  
**Warrant List Dated 01/20/2021**

Meeting of 01/25/2021

Check Number	Early Release	Vendor #	Vendor	Amount
277538		001104	STATE OF MICHIGAN	228,634.04
277539		006749	SUPERIOR SCAPE, INC	1,025.00
277540	*	009254	THOMAS M MARKUS	2,652.79
277541		MISC	THOMAS SEBOLD & ASSOCIATES, IN	500.00
277542		MISC	Tim Attard	100.00
277543		MISC	TRANE U.S. INC.	390.00
277544		MISC	UNIVERSAL SIGN, INC.	200.00
277545	*	000158	VERIZON WIRELESS	80.10
277546	*	000158	VERIZON WIRELESS	495.17
277547		006491	VILLAGE AUTOMOTIVE	1,104.30
277548		MISC	VITAL SIGNS	200.00
277549		MISC	WALLSIDE INC	1,000.00
277551	*	005794	WINDSTREAM	870.34
277552		005657	WINTER EQUIP CO, INC	2,216.52
277553		009128	WITMER PUBLIC SAFETY GROUP INC	1,699.71
277554		MISC	WOZNIAK, WILLIAM	100.00
SUBTOTAL PAPER CHECK				\$898,612.78
<u>ACH TRANSACTION</u>				
3313	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	137,149.43
3314	*	002284	ABEL ELECTRONICS INC	464.98
3316	*	000517	BEIER HOWLETT P.C.	44,097.25
3317	*	007345	BEVERLY HILLS ACE	112.39
3318	*	000542	BLUE WATER INDUSTRIAL PRODUCTS INC	115.50
3319		009183	BOB ADAMS TOWING	485.00
3320	*	008044	CLUB PROPHET	540.00
3321		009195	CROWN CASTLE FIBER LLC	643.00
3322	*	001077	DUNCAN PARKING TECH INC	19.25
3323		000261	J.H. HART URBAN FORESTRY	14,407.50
3324		000186	JACK DOHENY COMPANIES INC	293.00
3325	*	002576	JAX KAR WASH	88.00
3326	*	003458	JOE'S AUTO PARTS, INC.	404.82
3327	*	005550	LEE & ASSOCIATES CO., INC.	3,593.35
3328		000462	MOTOR CITY INDUSTRIAL	798.78
3329		001864	NOWAK & FRAUS ENGINEERS	38,046.25
3330	*	002767	OSCAR W. LARSON CO.	1,200.00
3331	*	003785	SIGNS-N-DESIGNS INC	110.00
3332	*	001097	SOCWA	262,312.47
SUBTOTAL ACH TRANSACTION				\$504,880.97

**City of Birmingham**  
**Warrant List Dated 01/20/2021**

Meeting of 01/25/2021

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$1,403,493.75

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.



## MEMORANDUM

Finance Department

**DATE:** January 13, 2021

**TO:** Thomas Markus, City Manager

**FROM:** Mark Gerber, Finance Director/Treasurer  
Kathryn Burrick, Senior Accountant

**SUBJECT:** Public Hearing for PY 2021 Community Development Block Grant Application

---

### INTRODUCTION:

The Finance Department is requesting that the City Commission set a public hearing for February 22, 2021 in order to hear public comments on the City's 2021 Community Development Block Grant (CDBG) application.

### BACKGROUND:

Every year the City receives a grant for the Community Development Block Grant program. This is a federal grant program which is administered by Oakland County. The purpose of the grant is to:

- Primarily benefit low- or moderate-income persons or households
- Aid in the elimination of slum or blight conditions
- Meet an urgent community need

Previously the City has used these funds to assist low income seniors and to make ADA compliant renovations to City property.

Oakland County has given the City a planning allocation of \$36,090 for the 2021 program year (July 2021 – June 2022). This is the same amount which was originally allocated to the City for the 2020-2021 program year and is subject to change.

In order to be eligible to receive these funds, the City must conduct a public hearing to receive citizen input, make a determination of eligible projects to be pursued and submit a completed application to Oakland County by March 5, 2021. The public hearing must be noticed at least 10 days in advance of the meeting.

### LEGAL REVIEW:

None required

### FISCAL IMPACT:

None

**SUMMARY:**

It is recommended that the City Commission set February 22, 2021 as the date to conduct the required public hearing. If the public hearing is set for February 22, 2021, a list of recommended projects and funding allocation will be presented to the public and commission for consideration at that time.

**ATTACHMENTS:**

None

**SUGGESTED RESOLUTION:**

To set February 22, 2021 as the public hearing date for the Program Year 2021 Community Development Block Grant Program.





## MEMORANDUM

Clerk's Office

**DATE:** January 20, 2021  
**TO:** Tom Markus City Manager  
**FROM:** Alexandria Bingham, City Clerk  
**SUBJECT:** Consideration to Release Graves

---

### INTRODUCTION:

On December 21, 2020 the City Commission authorized release of the following:

- 10 grave plots that were sold over the previous authorization limits
- a plot that was a pending sale for a family in need in Section B, lot 21-A
- 10 plots in Section C, row 19-A to be available for future inquiries

Although there are presently 10 plots available, there is a possibility that this limited inventory could be depleted in the coming months. To ensure that there are enough plots available to meet potential demand, the Greenwood Cemetery Advisory Board considered and approved a recommendation that the City Commission release 10 more graves in Section C at their January 8, 2021 meeting, with a vote of 5 ayes and 2 nays. The two nay votes came from board members who were concerned about the price of graves and how Greenwood is progressing towards reaching its financial goals.

### BACKGROUND:

- 2015: 240 of the 530 potential grave plots were released.
- December 31, 2018: 199 of the 240 spaces had been sold.
- July of 2019: no action was taken to release more graves and the City Commission charged the Greenwood Cemetery Advisory Board with the duty of evaluating the current market price for cemetery plots
- August 16, 2019: the GCAB determined that \$3,000 was an appropriate price for graves at Greenwood Cemetery.

- December 7, 2020: the City Commission reviewed GCAB's recommendation to release 50 graves. The City Commission released 1 grave that had been sold in excess of the original 240 released and requested more detailed reporting on available graves in sections B & C.
- December 21, 2020: Museum Director Leslie Pielack and City Clerk Alexandria Bingham provided a detailed map and updated information relating to grave plot availability and activity in Greenwood Cemetery. The City Commission was concerned that graves to be released should be as far away from Section A as possible.
  - 11 graves that were sold or pending beyond the 2015 approved grave release were approved.
  - 10 additional graves in Section C, Row 19-A (furthest proximity from Section A, oldest area of cemetery) were made available for new sale inquiries.
- January 19, 2021: Cemetery Management Coordinator Cheri Arcome of Creative Collaborations, LLC confirmed that none of the 10 released graves in Section C, Row 19-A have sold yet but she is speaking with five families this week which could result in sales.

In light of the high level of interest in grave purchases at present, the currently available 10 grave plots may be depleted soon, leaving no options for persons and families in search of a final resting place at Greenwood Cemetery.

#### **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 at this price to reach the portfolio target size of \$2 million in order to generate sufficient income to pay for basic annual maintenance. Currently there are 187 identified as available for sale.

The portfolio's ending fund balance on November 30, 2020, was \$929,235, December data will be available for the February GCAB meeting due to the statement cycles of Fidelity and Vanguard.

Continued grave sales are necessary to help the city approach its financial goals for Greenwood Cemetery, although other means of building the fund balance could be explored. The GCAB will be investigating the issue of pricing, feasibility of using Ground Penetrating Radar to identify additional grave sites, and the long-term management of the cemetery in its upcoming meetings to provide additional recommendations to the City Commission.

## **SUMMARY**

Due to the depletion of available grave plots over the past five years and continued interest in ongoing grave sales, a release of additional grave plots is recommended. Adjustments have been made to data regarding recent sales and available grave plots remaining, which are located only in Sections B and C. Releasing additional graves in the west end of Section C will make more sites available, while limiting new sales to the area of furthest proximity to historic Section A.

## **ATTACHMENTS:**

1. GCAB Draft Minutes, January 8, 2021.
2. Maps, Greenwood Cemetery and Graves Sold/Available

## **SUGGESTED RESOLUTION:**

To recommend that the City Commission authorize the release of 14 plots available in Section C, Row 18-A for sale in Greenwood Cemetery. Furthermore the City Commission directs the Greenwood Cemetery Advisory Board to evaluate the grave site pricing and return with recommended changes prior to any further release.

**GREENWOOD CEMETERY ADVISORY BOARD**  
**MEETING MINUTES**  
**Friday, January 8, 2021, 10 A.M.**  
**VIRTUAL MEETING**

**I. CALL TO ORDER**

Linda Buchanan, Chair, called the meeting to order at 10:01 A.M.

**II. ROLL CALL**

Present: Chair Linda Buchanan (location: Birmingham, MI)  
Pam DeWeese (location: Birmingham, MI)  
Linda Peterson (location: Birmingham, MI)  
Margaret Suter (location: Birmingham, MI)  
George Stern (location: Birmingham, MI)  
Joseph Vercellone (location: Rochester, MI)  
Laura Schreiner (location: Birmingham, MI)

Administration: City Clerk Alex Bingham; Museum Director Leslie Pielack

Guests: None

**III. APPROVAL OF THE MINUTES**

**A. Approval of meeting minutes of November 6, 2020**

**MOTION:** by Suter, seconded by Peterson:

To approve the minutes of November 6, 2020.

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

**IV. UNFINISHED BUSINESS**

**A. Clarification on Ground Penetrating Radar**

- Members expressed desire to elaborate on the GPR memo before presenting it to the City Commission
- City Clerk will bring the report back to Greenwood Cemetery Advisory board for further review.

**B. Recommendation to the City Commission for Grave Release**

- Members expressed concern about reaching the cemeteries financial goals if more graves are released with the current price of \$3,000 per grave.
- Members also noted the importance of making sure options were available to persons interested in purchasing a grave.
- It was noted that there would need to be space reserved in the cemetery for future tree planting and landscaping needs.

**MOTION:** by Stern, seconded by DeWeese:

To recommend that the City Commission authorize the 14 plots available in Section C, Row 18-A for sale.

**VOTE:** Yeas, 5  
Nays, 2 (Suter & Peterson)  
Recused, 0

#### **V. NEW BUSINESS**

None.

#### **VI. REPORTS**

- A.** Members reviewed financial information provided by City Clerk.  
The portfolio's ending fund balance on November 30, 2020, was \$929,235, December data will be available for the February GCAB meeting due to the statement cycles of Fidelity and Vanguard.
- B.** Members reviewed sales activity and burial activity provided by the Clerk and provided feedback on statistics that were important to track.

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

There were no public comments.

#### **VIII. BOARD COMMENTS**

Linda Peterson expressed the need to reevaluate the sale price of graves to meet financial goals.

Pam DeWeese expressed the need to examine the current rules and regulations and how that information is distributed to cemetery visitors.

Linda Buchanan expressed the need to plan and reserve space for future tree planting in the cemetery.

<b>IX. ADJOURN</b>
--------------------

Ms. Buchanan noted that the next meeting will be February 5, 2021, at 10:00 AM virtually, and adjourned the meeting at 11:45 AM.

**Next Meeting: February 5, 2020, 10:00 AM (virtual).**

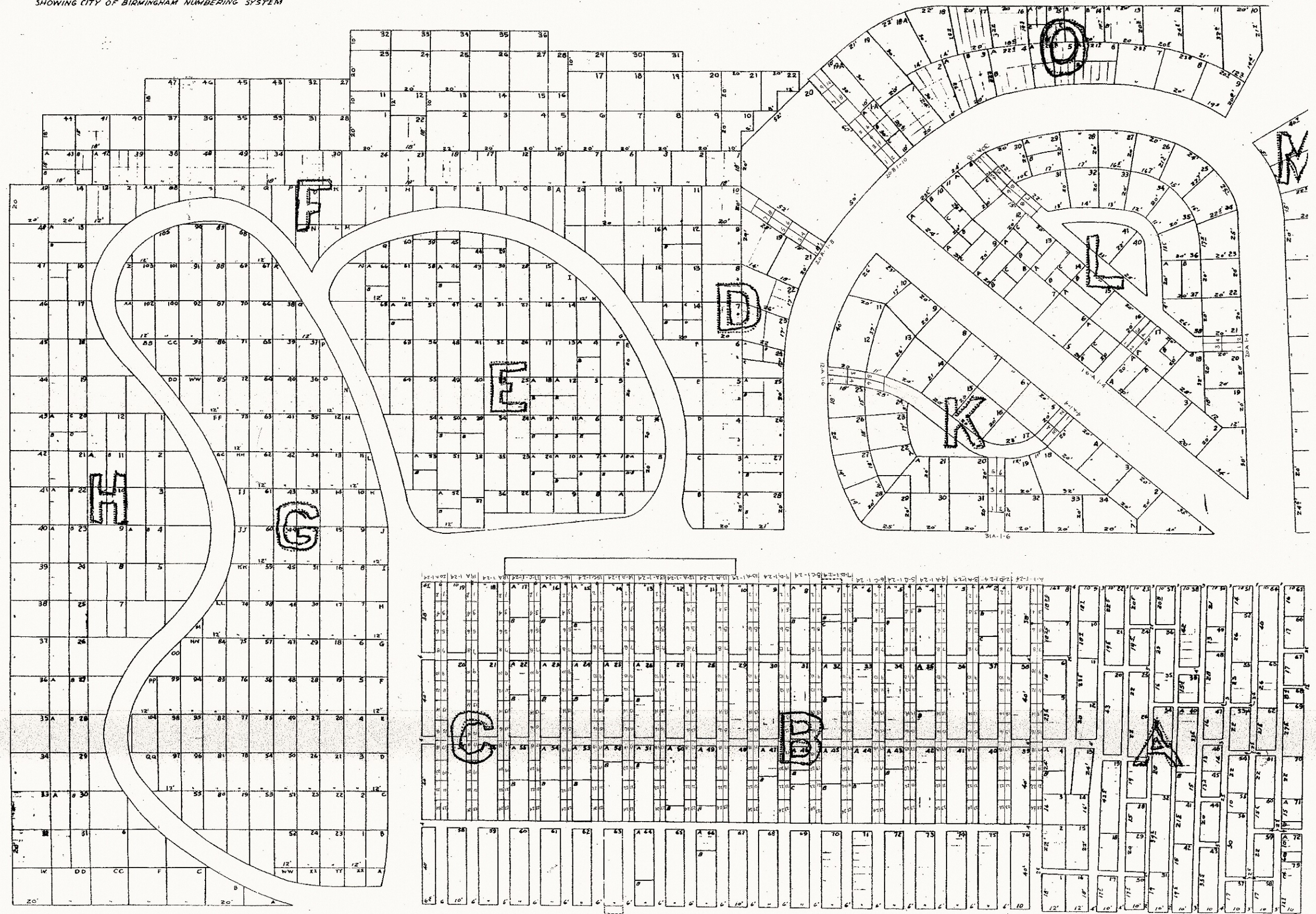
DRAFT



GREENWOOD CEMETERY OVERVIEW

GREENWOOD CEMETERY

SHOWING CITY OF BIRMINGHAM NUMBERING SYSTEM



Oak St.



# GREENWOOD CEMETERY GRAVES STATUS – Lots B and C

As of **December 15, 2020**, 187 grave plots are available in both B and C. No grave plots are available for sale to the public in any other section of the cemetery.





The image shows a grid-in answer sheet for a 12th-grade mathematics test. The grid is 12 columns wide and 12 rows high. Each column is labeled with a number (1-12) and each row with a letter (A-L). The bubbles are filled with numbers 1-12, representing the student's answers. A large 'X' is drawn over the grid, indicating that the student has not completed the test. The grid is color-coded with alternating light blue and light green columns.

Number of available  
graves shown at bottom  
of rows





## MEMORANDUM

Planning Division

**DATE:** January 25<sup>th</sup>, 2021

**TO:** Thomas Markus, City Manager

**FROM:** Brooks Cowan, City Planner

**APPROVED:** Jana Ecker, Planning Director

**SUBJECT:** 856 N. Old Woodward – Right-of-Way Parking

### INTRODUCTION:

The subject site, 856 N. Old Woodward, also known as The Pearl, is a 4 story mixed-use building with three retail tenants on the first floor and residential units on floors two, three and four. The subject building is not within the Parking Assessment District and therefore must provide all required parking on-site. The applicant is currently seeking permission from the City Commission to include five metered parking spaces in front of the building in the City's right-of-way along N. Old Woodward to assist them in meeting the parking requirements for the three tenant spaces pursuant to Article 4, Section 4.45 (G)(4) of the Zoning Ordinance:

#### 4.45 PK-01 General Parking Standards

G. Methods of Providing Parking Facilities: The required off-street parking facilities for buildings used for other than residential purposes may be provided by any one of the following methods:

4. By providing the required off-street parking on the same lot as the building being served, or where practical, and with the permission of the City Commission, the area in the public right-of-way abutting the property in question may be included as a portion of the required parking area if such area is improved in accordance with plans which have been approved by the engineering department.

### BACKGROUND:

The existing site is zoned O2 and D2 Overlay. The applicant has applied to occupy the three first floor retail spaces with two salon/spa uses and a specialty foods store which are permitted uses. The building currently has 65 parking spaces with 42 required for residential, leaving 23 parking spaces remaining for the three commercial tenant spaces. In regards to tenant parking, Lash Lounge has seven service chairs and therefore requires 14 parking spaces. Fruition is currently a 1200 SF specialty foods store which requires 4 parking spaces. Aurora Medi-Spa has applied to occupy the third retail space with 5 service chairs which requires 10 parking spaces, though the property only has 5 parking spaces remaining, therefore Aurora Medi-Spa is 5 parking spaces short of meeting their parking requirement.

<b>Tenant</b>	<b>Use</b>	<b>Square Feet / Service Chairs</b>	<b>Parking Requirement</b>	<b>Total Required Parking</b>
Fruition	Specialty Foods Store – Carryout	1200 SF	1 per 300 SF (1 per 75 SF Restaurant)	4 spaces
Lash Lounge	Salon / Spa	7 Chairs	2 per Chair or 1 per 300 SF	14 spaces
Aurora Medi-Spa	Salon / Spa	1,500 SF / 5 Chairs	2 per Chair or 1 per 300 SF	10 spaces
				28 spaces total

As mentioned above, the existing property currently has 23 parking spaces designated for commercial use. The three proposed uses for this site currently require 28 spaces, thus requiring 5 more parking spaces. An approval from City Commission for 856 N. Old Woodward to count the 5 metered parking spaces in the adjacent right-of-way towards its parking count will allow Aurora Medi-Spa to satisfy the parking requirements for this site. If approved, future uses in the subject building will be able to include the five parking spaces in their parking requirement as well. It is of note that Fruition has applied to become a restaurant use which requires SLUP review and approval in the O2 zone. Fruition will require a total of 16 parking spaces as a restaurant, and therefore will require a variance of either 17 parking spaces or 12 parking spaces if the 5 parking spaces in the right-of-way are approved to be included in the building's parking count.

The applicant received site plan approval for The Pearl in 2016. A condition of approval was that the applicant provide an easement to the City to extend the metered parking access drive and be responsible for all maintenance. The signed easement agreement did not include counting the 5 metered parking spaces towards their parking requirement at the time.

The Engineering Department has reviewed the site and determined no repairs are necessary. Applicant will be responsible for future repairs if necessary.

On November 9<sup>th</sup>, 2020, the applicant appeared before the City Commission to request the allocation of adjacent on-street metered parkings spaces towards their parking requirement. There was general consensus from the Commission that the parking shortage was a self created problem due to the intensity of proposed uses. The City Commission denied the request to count the on-street metered spaces towards their parking requirement and recommended the applicant apply to have 856 N. Old Woodward included within the Parking Assessment District.

On December 2<sup>nd</sup>, 2020, the applicant appeared before the Advisory Parking Committee for consideration to be included within the Parking Assessment District. The APC commented that they believe the area on N. Old Woodward surrounding Lot 6 often experiences parking shortages, and that including an additional building would create more parking issues for that area. The APC then recommended that the application be denied.

On January 11<sup>th</sup>, 2020, the applicant appeared before the City Commission to consider whether to set a public hearing for the applicant to be included within the Parking Assessment District, or

to deny the application for 856 N. Old Woodward to be included in the Parking Assessment District. The City Commission discussed how the building has enough parking for three retail spaces and that the current parking shortage issue is self created due to higher intensity uses. Questions regarding the initial boundary of the Parking Assessment District and the history of the boundary stopping at 800 N. Old Woodward were raised. Upon discussion about the PAD boundary, the City Manager commented that perhaps it could be considered a fair compromise to allow the applicant to count the on-street spaces. That way the parking count still remained fixed and could limit the number of parking intensive uses at the site. There was general consensus from the Commission that they were amenable to this suggestion, and would bring back the application for on-street spaces to be included in the building's parking count at the next Commission meeting.

It is also of note that the applicant had previously indicated 6 on-street metered spaces in front of 856 N. Old Woodward. The southernmost space was striped out in blue in order to provide adequate loading space for a handicapped parking spot. There are now 5 on-street parking spaces that are eligible to be included in the building's parking count with the approval of City Commission.

#### LEGAL REVIEW

The City Attorney has reviewed the documentation and has no concerns.

#### FISCAL IMPACT

The proposed request has no fiscal impact on the City.

#### PUBLIC INPUT:

There has been no public input submitted in regards to the proposal.

#### SUMMARY:

In accordance with Article 4, section 4.43(G)(4) of the Zoning Ordinance, the applicant requests that the City Commission include five right-of-way parking spaces adjacent to their property in their required parking calculation. The inclusion of these spaces will enable the applicant to meet their parking requirement for a third tenant space without pursuing a variance.

#### ATTACHMENTS:

- 1<sup>st</sup> floor and basement level site plan
- Letter from Frank Simon
- All relevant board and commission meeting minutes

#### SUGGESTED RESOLUTION:

To approve the use of five parking spaces in the right-of-way adjacent to the property located at 856 N. Old Woodward to fulfill the parking requirements per Article 4, section 4.43 (G)(4) of the Zoning Ordinance.



36880 WOODWARD AVENUE  
SUITE 100, BLOOMFIELD HILLS  
MICHIGAN 48304 - 0920

PHONE: (248) 839 5807  
johnm@marusicharchitecture.com

Client:

FLS Properties #5 LLC  
2950 Walnut Lake Road,  
West Bloomfield, MI 48323

Project:

The Pearl - Core & Shell  
856 Old North Woodward

[illegible]

Seal:

Note:

Do not scale drawings. Use  
calculated dimensions only.  
Verify existing conditions in field.

North Arrow:



### First Floor Plan

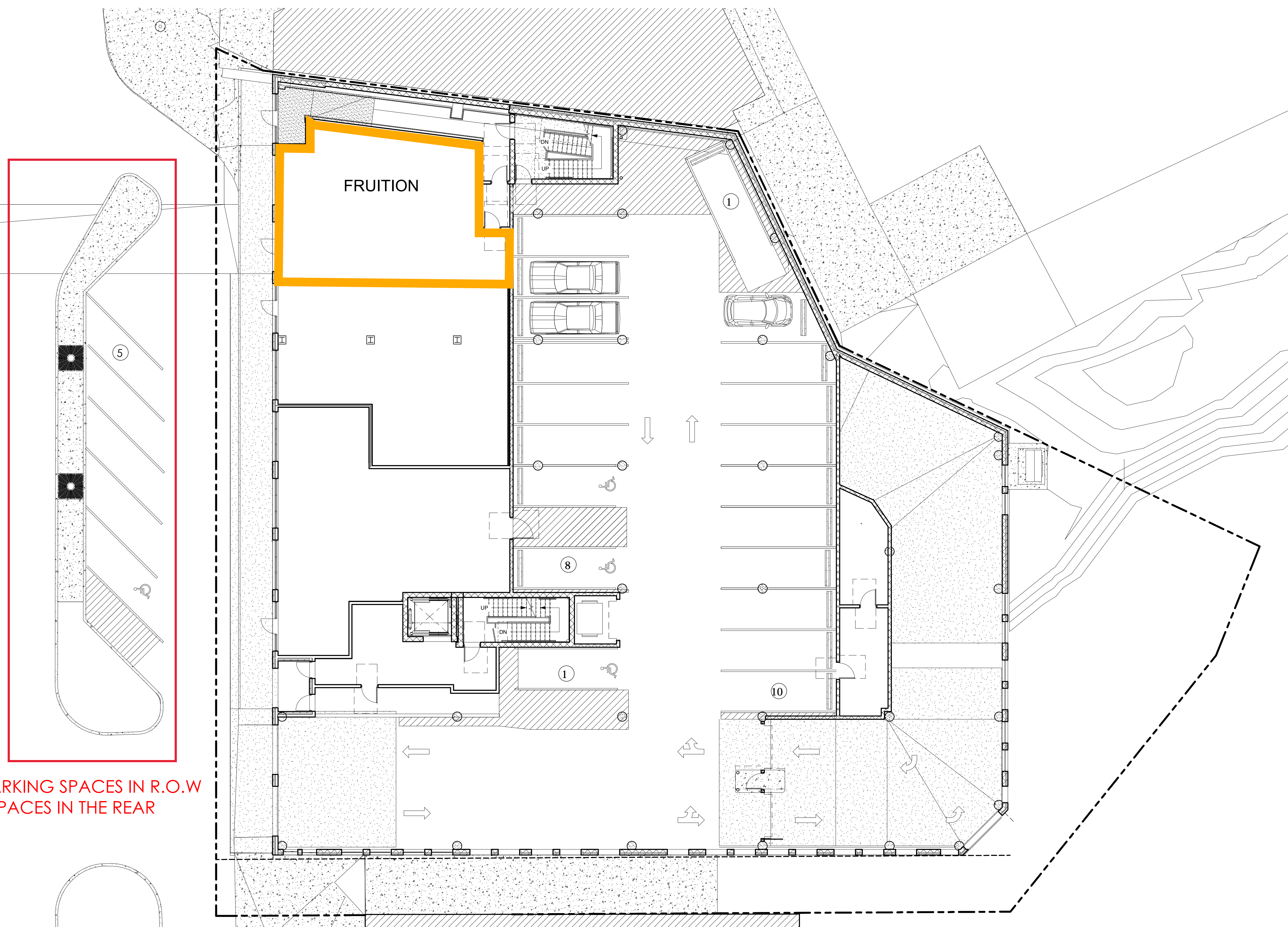
Project Number:

16-135

Sheet Number:

---

A.101



### First Floor Plan

5 PARKING SPACES IN R.O.W  
20 SPACES IN THE REAR





**FLS PROPERTIES #5, LLC**

P.O. BOX 689  
BLOOMFIELD HILLS, MICHIGAN 48303  
TELEPHONE: 248-680-1401  
FACSMILIE 248-720-0293

October 26, 2020

Birmingham City Commission  
151 Martin Street  
Birmingham, MI 48009

Re: The Pearl, 856 N. Old Woodward – Request to Use Parking in City Right of Way

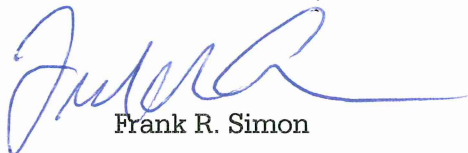
Dear Commissioners,

This letter is to request Commission approval to use the six spaces (6) that are in the City right of way adjacent to the property (as designated on the attached drawing), in the calculation of the parking requirements for our proposed use at 856 N. Old Woodward. Please note that these spaces are not street parking and they have only been used by the tenants in this building. There are also 65 parking spaces within the building parking garage (45 spaces in lower level and 20 spaces in upper level).

Thank you in advance for your time and consideration. I look forward to hearing from and discussing this further.

Very truly yours,

FLS PROPERTIES #5, LLC



Frank R. Simon

**BIRMINGHAM CITY COMMISSION AGENDA**

**NOVEMBER 9, 2020**

**MUNICIPAL BUILDING, 151 MARTIN**

**7:30 P.M.**

**VIRTUAL MEETING**

**MEETING ID: 655 079 760**

**Video Link: <https://vimeo.com/event/3470/videos/477383387/>**

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

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

**II. ROLL CALL**

Alexandria 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, Police Chief Clemence,  
City Planner Cowan, City Planner Dupuis, Planning Director Ecker, City Attorney  
Kucharek, DPS Director Wood



**11-230-20****Parking Spaces at 856 N. Old Woodward**

City Planner Cowan presented the item.

There was Commission consensus that the most appropriate approach to this item would be for the owner of 856 N. Old Woodward to buy into the Parking Assessment District. It was agreed that allowing the six spaces in question to be counted towards The Pearl's parking requirement would put parking strain on an already congested area of the City.

In reply to Commissioner Sherman, PD Ecker explained that the location had enough parking available if they had rented out their first floor uses to regular retail tenants. She explained that after that the owner rented to more high-intensive retail uses, which increased the amount of parking necessary.

Commissioner Sherman said it has been the Commission's general policy to encourage owners to resolve their own self-created issues, like renting to higher-intensity tenants, instead of requesting that the Commission do it for them.

**MOTION:** Motion by Commissioner Sherman, seconded  
by Commissioner Baller:

To deny the use of six parking spaces in the right-of-way adjacent to the property located at 856 N. Old Woodward to fulfill the parking requirements per Article 4, section 4.43 (G)(4) of the Zoning Ordinance.

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

City of Birmingham  
ADVISORY PARKING COMMITTEE  
REGULAR MEETING

Held Remotely Via Zoom And Telephone Access  
Wednesday, December 2, 2020

**MINUTES**

These are the minutes of the Advisory Parking Committee ("APC") regular meeting held on Wednesday, December 2, 2020. The meeting was called to order at 7:30 a.m. by Chairman<sup>1</sup> Al Vaitas.

Op. Cmdr. Grewe and CP Cowan reviewed the item.

CP Cowan stated the applicants want more intensive retail uses in the building which would necessitate parking over the amount currently available. He stated the applicant would have enough parking available for regular retail uses.

Dr. Paskiewicz suggested that Lot #6 be added to the parking assessment ranking system the City uses.

Dr. Paskiewicz also recalled that The Pearl came before the APC in the past and assured the APC that their plans included sufficient parking for both residential and retail.

Dr. Vaitas concurred with Dr. Paskiewicz's recollection. Dr. Vaitas expressed concern that it was somewhat of a backwards process for the applicant to assure the APC originally that there would be sufficient parking for regular retail uses, and then to come back later with a proposal for more intensive retail uses that would require admission to the Parking Assessment District (PAD).

Mr. Kalczynski said he wondered how an approval might create precedent for future requests for admission to the PAD.

Mr. Astrein said he would also be concerned about the amount the applicant would be charged for admittance to the PAD, and that if they paid too little that could set a precedent as well.

Motion by Dr. Paskiewicz

Seconded by Mr. Astrein to deny the request by The Pearl and FLS Properties #5, LLC to be part of the Parking Assessment District.

---

Motion carried, 6-0.

**ROLL CALL VOTE**

**Yeas:** Paskiewicz, Astrein, Yert, Kalczynski, Krueger, Vaitas

**Nays:** None

# **BIRMINGHAM CITY COMMISSION MINUTES**

**January 11, 2021**

**7:30 P.M.**

## **VIRTUAL MEETING**

**MEETING ID: 655 079 760**

**Video Link: <https://vimeo.com/event/3470/videos/493603896/>**

### **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, 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 Markus, City Clerk Bingham, City Planner Cowan, City Attorney Currier, City Planner Dupuis, Planning Director Ecker, Police Operations Commander Grewe, City Attorney Kucharek, Parks and Recreation Manager Carrie Laird, Fire Chief Paul Wells, DPS Director Wood

## **01-008-21                    The Pearl Request for Parking Assessment District (PAD) Inclusion**

Mayor Boutros resumed facilitation of the meeting.

Police Operations Commander Grewe, Planning Director Ecker and City Planner Cowan reviewed the item.

Mr. Rattner, attorney for The Pearl, spoke on behalf of the item.

A number of Commissioners expressed concern that admitting The Pearl to the PAD would overstress the system, and would allow The Pearl to potentially consider excessively high-intensity retail uses on the first floor in the future since admission to the PAD would allow them to meet nearly any required parking amount.

There was discussion regarding whether The Pearl's building would have been included in the PAD had it not been undeveloped for a number of years.

Commissioner Nickita asked staff to return with history of the northern boundary changes to the PAD so the Commission could be better informed about the potential reasons The Pearl's building was excluded from the PAD.

City Manager Markus stated that the Commission might consider reversing its previous vote and allowing the six frontage spaces to be counted towards The Pearl's retail parking requirements. He said it could be a positive compromise. He explained it could allow for some of the slightly more intensive retail uses being currently proposed while serving as a governor to make sure the uses remain at a reasonable intensity for the area.

Commissioner Hoff and Mayor Pro Tem Longe said they would be comfortable with City Manager Markus' proposed compromise.

Planning Director Ecker noted that sometimes a building such as The Pearl can enter into a shared use agreement between its residential and commercial parking if it can demonstrate that the different uses are concentrated during significantly different times of day. She said that option had not yet been explored.

### Public Comment

Lindsey Sales, co-owner of Fruition, said she wanted to clarify that seating at Fruition would be relatively low-intensity. She explained that Fruition's Grand Rapids location 80% of the business is carryout. She stated that people that stay to eat usually do so for a maximum of 10-15 minutes, and that the owners are intending there to be no more than two or three tables.

Emil Cherkasov, principal of Bloomfield Hills-based Forward Commercial Group, which is leasing the building, said that by taking no action the Commission could be hurting the business tenants that are signed on to lease in The Pearl.

Mayor Boutros said it was important for the Commission to do what it could to fairly support City businesses during the pandemic.

There was discussion as to whether the Commission could vote to grant the six frontage spaces to The Pearl during the present discussion.

CM Markus and City Attorney Kucharek concurred that a vote on granting the six parking spaces had not been noticed and therefore should not occur this evening. The public needed to be provided with appropriate opportunity to speak on the proposal.

PD Ecker confirmed that the matter could be publicly noticed for consideration at the Commission's January 25, 2021 meeting.

CM Markus said he would have a motion for the January 25, 2021 meeting proposing using the frontage spaces in The Pearl's parking calculation.

The Commission took no action.

**DATE:** January 25<sup>th</sup>, 2021

**TO:** Thomas Markus, City Manager

**FROM:** Brooks Cowan, City Planner

**APPROVED:** Jana Ecker, Planning Director

**SUBJECT:** **Revised Report and Draft Agreement - 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**

---

**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. 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.

On December 21<sup>st</sup>, 2020, the applicant requested that the item be postponed in order to allow the City Commission more time to review information submitted by the applicant, and to allow time for the applicant to meet with the City Manager to work towards reaching an agreement with the City. After meeting with the City to discuss issues with the lot combination and the intent of the Triangle District Plan, the applicant has proposed an agreement with the City which is attached for your review.

The proposed agreement involves a number of conditions, the most relevant being that the applicant has proposed to convey 60 feet of the easternmost portion of the 907-911 Haynes property to the City in exchange for the City granting approval of the lot combination AND conveying the portion of Elm Street on the west side of the Porsche dealership to the applicant, with the City being required to pay for all pavement removal and relocation of utilities within this portion of Elm Street. A draft of the proposed agreement proffered by the applicant was forward to the City Attorney, as well as the Engineering and Planning Departments for review and consideration. **City staff have reviewed the proposed agreement and have identified a**

**number of issues that require further discussion and direction from the City Commission. A full report of these issues is included below following the summary of the lot combination requirements.**

**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. **The applicant has yet to obtain SLUP approval for the proposed expansion of the auto sales agency.**

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 appearing before the Planning Board for a review and recommendation on the site plan and SLUP. **As noted above, the applicant has now proposed an agreement with the City in an attempt to meet the recommendations of the Triangle District Plan and obtain lot combination approval.**

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.**

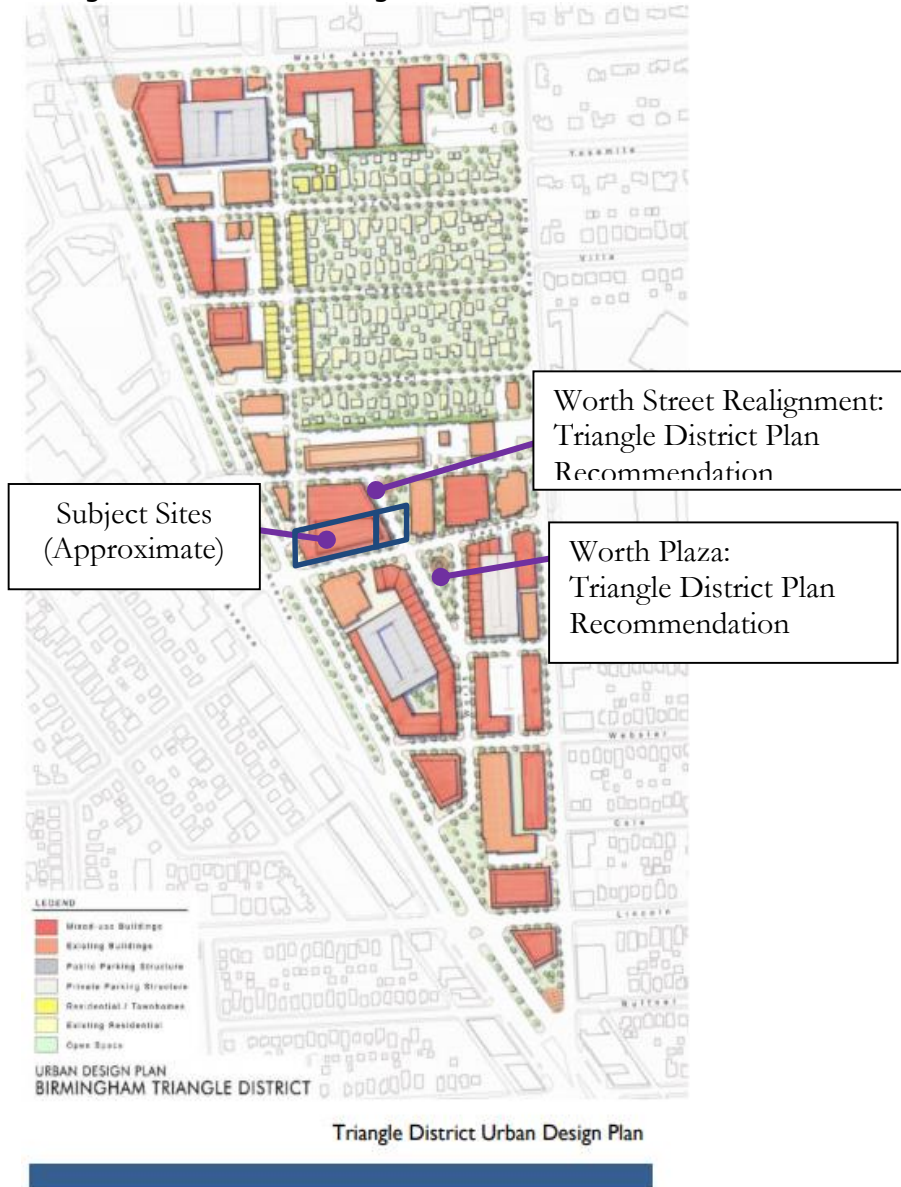
In regards to applicable Master Plans, the Triangle District Plan recommends infill development and redevelopment while advocating for an increase in building density to replace the large surface parking areas that currently exist. **The applicant's lot combination is proposed for the purpose of expanding 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, which the proposed site plan does not accommodate.** The Triangle District Plan recommends the realignment of Worth Street through the rear of the Walgreens parking lot as well as through the subject properties located between Haynes and Bowers included in the proposed lot combination.

In 2012, the City approved a donation of land from Walgreens to the City along Worth Street as a condition of their SLUP approval in order to work towards the recommendations to create Worth Plaza and realign Worth Street as recommended in the Triangle District Plan. The

proposed lot combination and request for site plan changes and an expansion of the SLUP at 34350 Woodward to include 907-911 Haynes provides an opportunity for the City to reach a similar agreement with the current applicant during the SLUP and lot combination process to continue the Worth Street realignment and extension north of the triangular City-owned property donated by Walgreens as a condition of their prior SLUP approval.

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 in the Draft Master Plan 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 upon the initial lot combination application submitted, the proposed site plan does not appear to have a significant impact on vehicular ingress and egress, the development of adjacent buildings, or hinder the value of adjacent properties.

However, the agreement now proffered by the applicant appears to have a significant impact on vehicular ingress and egress if approved, as it proposes vacating the southern portion of Elm Street for private commercial development. The portion of Elm Street that the applicant suggests the City transfer to private ownership is the existing roadway that allows northbound traffic on Woodward to continue north on Elm Street, and allows southbound traffic on Elm Street to turn onto northbound Woodward Avenue. The proposed agreement also proposes that the applicant convey a portion of the 907 – 911 Haynes parcel to the City to provide an opportunity for the City to extend Worth Street to Bowers Street in the future, which may have a significant impact on the ingress and egress to the property and have a significant

impact on the use, development and value of adjacent properties. **Given the beginning stage of the applicant's proposal and the lack of adequate review for the SLUP by appropriate reviewing bodies, including the Engineering Department, the Planning Board, and the City Commission, it is yet to be determined whether the proposed agreement satisfies 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 initial lot combination application submitted does not appear to impact the supply of light and air to adjacent properties or the ability of the City to provide essential services. However, the lot combination agreement proposed by the applicant appears to have a significant impact on drainage structures, municipal sanitary sewer and water, and refuse disposal. The Engineering Department has indicated that there are a number of utilities located below the proposed conveyance parcel on the southern portion of Elm Street which the applicant wishes to obtain ownership of in their proposed lot combination agreement. Article III, Section 2 of the proposed agreement requires that the City give the applicant the area on South Elm Street west of the Porsche dealership, and that the City be solely responsible for costs related to removing all pavement from the road and relocating all utilities above and below the subject area. The Engineering Department has indicated this would be very expensive for the City to do so. **Therefore, the proposed agreement does not appear to satisfy this requirement.**

Based on the discussion at the City Commission meeting on December 21, 2020, the applicant has proposed to convey the easternmost 60 feet of the 907-911 Haynes Street property to the City in order to obtain approval for the lot combination and satisfy recommendations of the Triangle District Plan for the Worth Street extension. Conditions of this agreement include but are not limited to the the City approving the proposed lot combination, the City conveying the area of South Elm Street adjacent to the Porsche dealership to the applicant, and the City paying for removal of concrete and relocation of utilities above and below the subject area of South Elm Street. The applicant would gain additional commercial space in the MU-7 Zone if the South Elm Street conveyance parcel is approved. City staff have identified several issues with the numerous conditions of the agreement proposed by the applicant at this time.

By conveying the easternmost 60 feet of the 907-911 Haynes Street property, the applicant offers the possibility of Worth Street being re-routed through the current Walgreens parking lot and through the subject property on the north of Haynes Street. The Triangle District Plan recommends that Worth Street shift to the west in order to create more room for the triangular shaped Worth Plaza. Approval of this agreement would not complete the Worth Street extension though, as an agreement would still have to be reached with the owner(s) north of the subject



property facing Bowers Street. Related parcels for the proposed lot combination are outlined in the illustration below. An image of the Triangle District Plan land use recommendations has also been included below for reference of the Worth Street extension recommendation.

Figure 2: Subject parcels highlighted below are areas involved in the proposed lot combination agreement and future Worth Street extension to Bowers Street

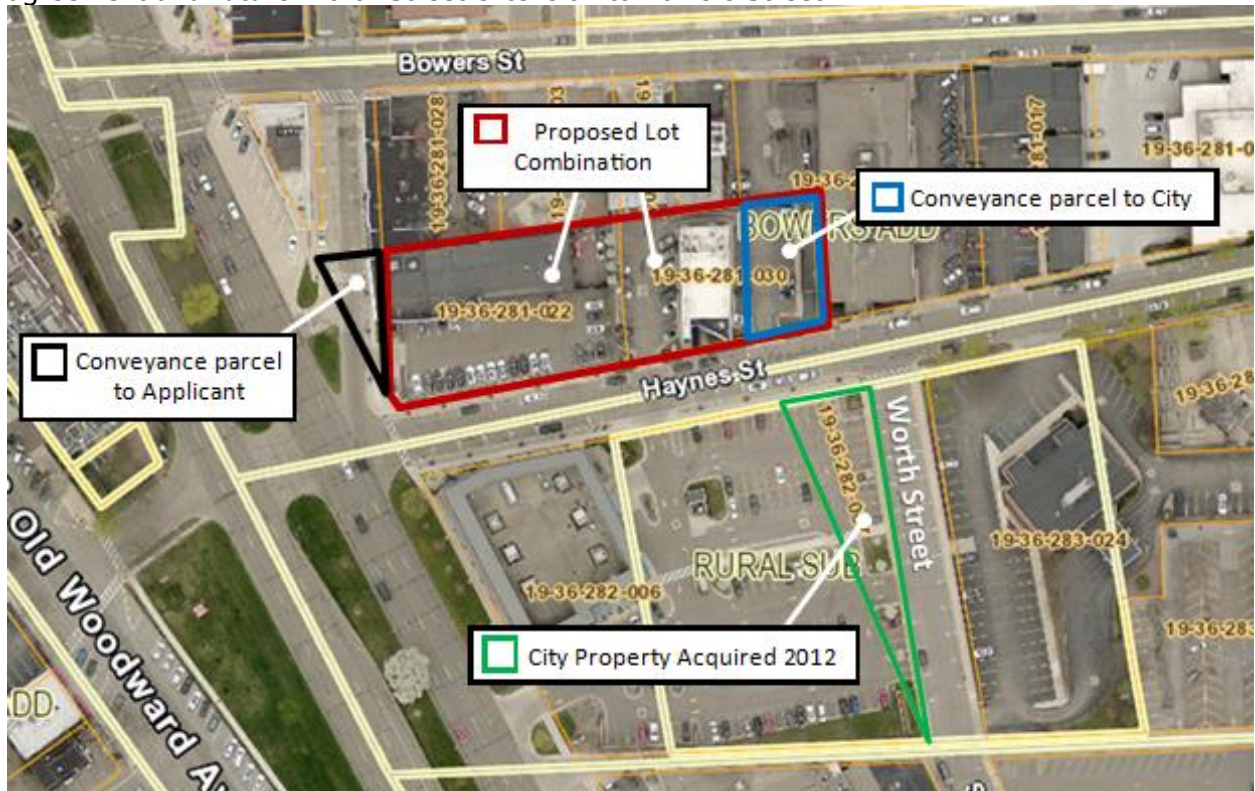
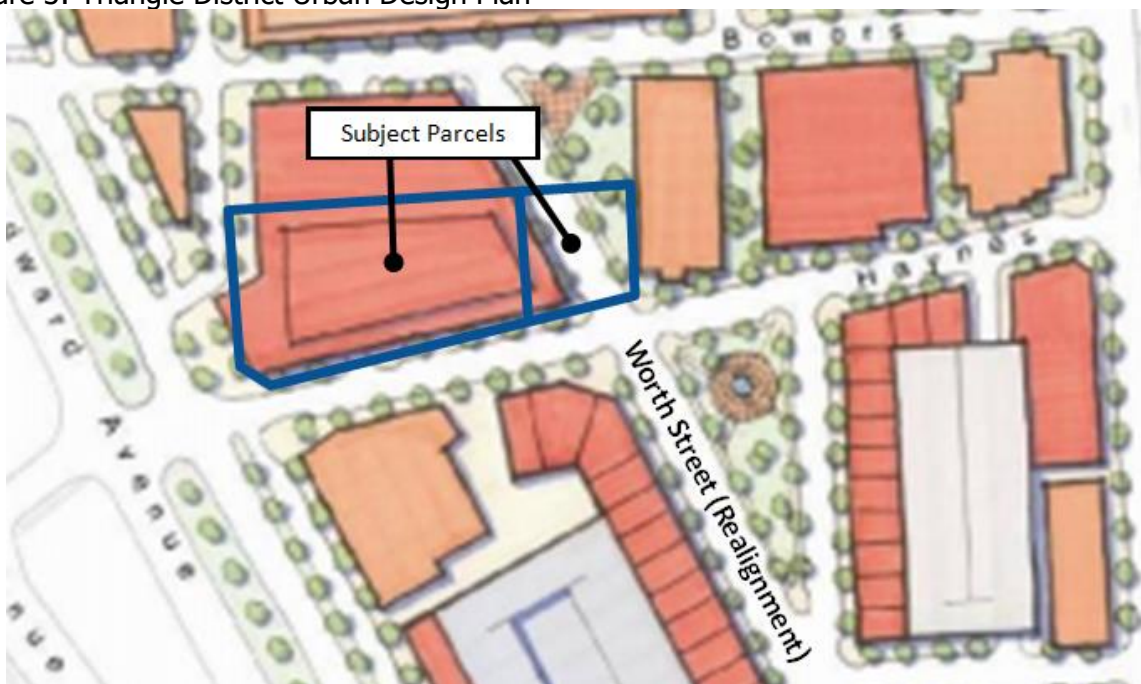


Figure 3: Triangle District Urban Design Plan



With regards to the proposed agreement offered by the applicant, City staff have raised a number of issues with the conditions of approval included in the agreement. Such issues include, but are not limited to, the following:

- The agreement proposes a lot combination approval before the subject properties obtain the necessary SLUP approval from the City Commission and the necessary variances from the Board of Zoning Appeals to accommodate additional surface parking for an auto show room use (Agreement Recitals H & I).
  - City staff recommends the applicant obtain a recommendation from the Planning Board on the site plan changes and SLUP and the necessary variances from the Board of Zoning Appeals prior to the City Commission making a decision on the requested lot combination.
- The agreement proposes that the applicant will pursue SLUP approval and necessary variances if the lot combination is approved, but that the proposed agreement will automatically terminate if the SLUP approval and necessary variances have not been granted within 6 months of the agreement approval, leaving the lot combination approval in place.
  - The proposed changes for South Elm Street and the impact of the proposal for the Worth Street extension will involve extensive research from the Engineering Department and traffic consultants, and may require a number of public meetings for review and public input before a final recommendation and approval may be granted. City staff does not recommend a decision on the requested lot combination until all of the relevant details can be resolved and noted on detailed and specific plans to be attached as an exhibit to the agreement, to be considered as a condition of the lot combination approval.
- The City has yet to determine if the proposed conveyance of the easternmost 60 feet of the 907-911 Haynes property provides adequate width for a road extension (Agreement Article II, Section 1).
  - Additional research and design work must be completed by both the Engineering Department and the City's traffic engineering consultants to determine if the 60' proposed will align with the piece of property to the south donated to the City by Walgreens, and whether it will be of a sufficient size. City staff does not recommend approval of the proposed agreement or lot split until this work has been completed and can be reviewed by City staff and the City Commission.
- The agreement proposes that the described portion of the South Elm Street area is to be conveyed by the City to the applicant, with the City to cover all costs and expenses related to the removal of the conveyance parcel pavement, the removal and/or relocation of all underground and overhead utilities, and restoration of any disturbed areas during such work (Article III, Section 2).
  - The Engineering Department has noted that there are large sewers and a number of utilities on the Elm Street parcel that would have to be re-routed if agreed upon and that relocating these utilities would be quite costly for the City. Additional research and design work must be

completed to determine the cost to the City. City staff does not recommend approval of the proposed agreement or lot split until this work has been completed and can be reviewed by City staff and the City Commission.

- The agreement proposes that if any non-conformities are created by the vacation of South Elm Street or the City's use of the conveyance parcel proposed on 907-911 Haynes Street, any such non-conformities for the use or development of the use shall be waived by the City (Article 3, Section 6(a)).
  - City staff does not recommend waivers of any non-conformities so created, but rather recommends review and approval of any non-conformities by the Board of Zoning Appeals as required by the City Code.
- The agreement proposes that any loss of parking spots on the applicant's property created by the Worth Street extension shall be made up by the City through such agreeable means as on-street permit parking or providing permit parking in any available deck which may hereafter be constructed (Article 3, Section 6(c)).
  - The City has not committed to the construction of any new public parking structures in the Triangle District at this time, nor should the City support the expansion of surface parking in the Triangle District which is specifically discouraged by the Triangle District Plan.

#### LEGAL REVIEW:

The City Attorney has reviewed the lot combination application, as well as the proposed agreement for an exchange of conveyance parcels and raised a number of issues. The lot combination agreement proposed by the applicant does not appear to benefit the long term goals of the City.

#### *FISCAL IMPACT:*

The proposed agreement from the applicant for the lot combination indicates that the City would be responsible to cover all costs and expenses related to the removal of pavement, as well as relocation of all underground and overhead utilities within the South Elm Street area proposed to be conveyed by the City to the applicant. Removing pavement and relocating all underground and overhead utilities for the subject area on South Elm Street would be very costly to the City.

#### PUBLIC COMMUNICATIONS:

Prior to the lot combination application being considered by the City Commission, the City Clerk's office sent 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 for the purposed of demolishing a building to expand the surface parking area for Porsche is not consistent with the Zoning Ordinance, nor the applicable Master Plan for the Triangle District. The applicant has proposed an agreement with the City for a lot combination approval which attempts to satisfy the Worth Street extension recommendation of the Triangle District Plan, however City staff have raised a number of issues with the terms and conditions in the proposed agreement. Accordingly, direction from the City Commission is sought on each of the issues raised to continue the negotiation

process. In addition, direction from the City Commission is sought on the order of proceedings given the complicated and interwoven nature of the site plan changes, the SLUP amendment, lot combination and variances required. The City Commission may wish to postpone the lot combination hearing until the applicant goes through the SLUP Amendment process with the Planning Board and City Commission. Doing so would include more in depth review of the Zoning Ordinance and Triangle District Plan, allow all variances required from the Board of Zoning Appeals to be identified, and permit more public input related to the site plan changes and proposed exchange of property.

ATTACHMENTS:

- Proposed Site Plan
- Proposed Lot Combination Agreement from applicant
- Letter to Planning Department and Commission from applicant dated 12.17.2020
- Staff Report to Planning Board for SLUP Amendment
- Application for Lot Combination and Letter to the City dated 08.27.2020
- 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.

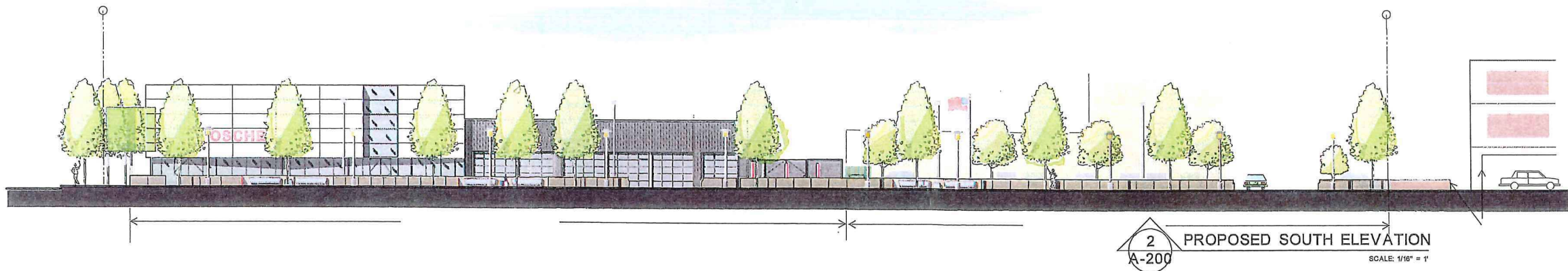
OR

To postpone the proposed lot combination hearing and direct City staff and the City Attorney to continue negotiations with the applicant based on the issues noted and to return with detailed plans on any property to be conveyed, including details and estimated costs to remove or reroute any utilities, specific dimensions of the parcel proposed as a result of the lot combination, and any other details needed to evaluate the terms and conditions offered by the applicant;

AND / OR

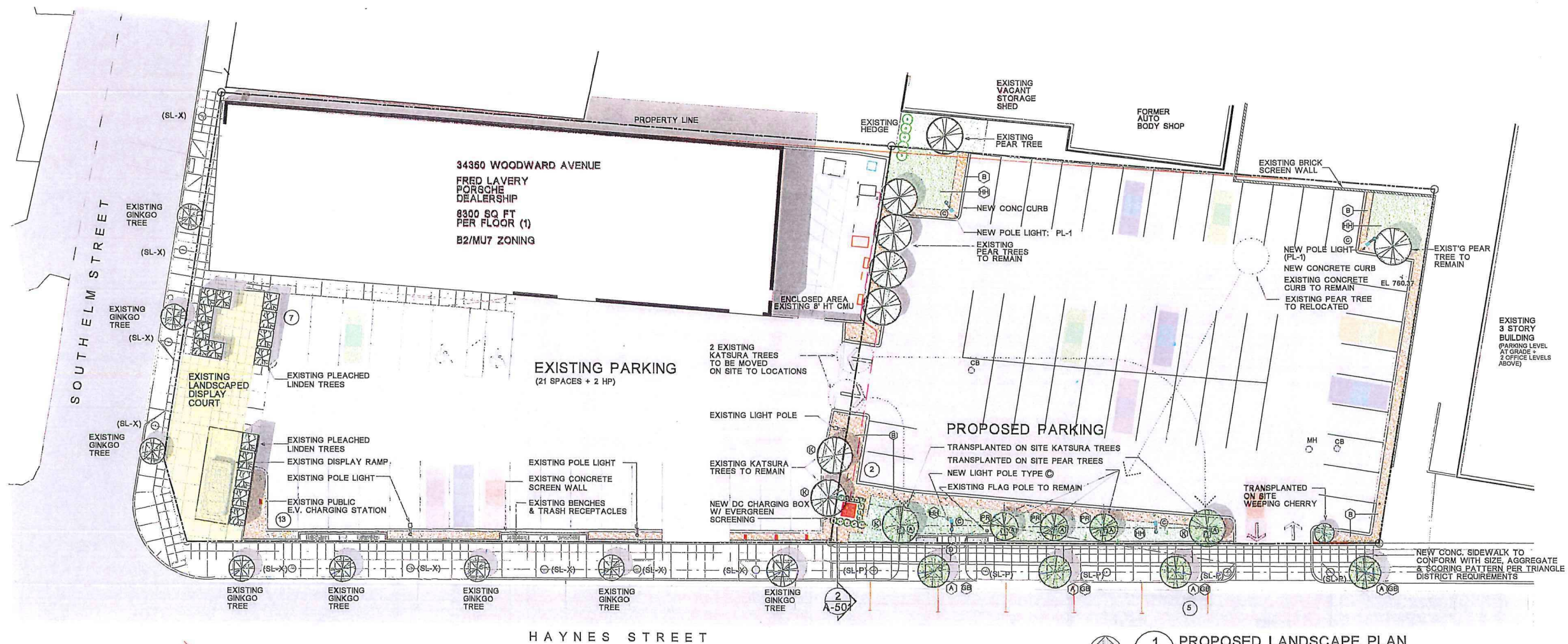
To postpone the proposed lot combination hearing and direct the applicant to first go through the site plan and SLUP amendment process at the Planning Board to obtain a recommendation from the board on expanding surface parking and the use of an auto sales agency within the MU-7 and MU-5 zones and findings as to whether the requirements of the Zoning Ordinance and the Triangle District Plan have been met.





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:

**1 PROPOSED LANDSCAPE PLAN**  
A/LA-200  
SCALE: 1/16\"/>

#### LANDSCAPE KEY

- (A) NEW TREE WELL LOCATION  
INSTALL WITH PLANTER BASE PER  
TRIANGLE DISTRICT STANDARDS  
Ginkgo biloba, "Autumn Gold"
- (B) EXISTING STONE (1\"/>

#### LIGHTING KEY

- (A) Auraltight 12V LED Micro well Uplight
- (B) Lumenation Street Light Model PT90 - 42W  
TO MATCH EXISTING  
(CONFORM TO TRIANGLE  
DISTRICT STANDARDS)
- (C) PARKING LIGHT POLE  
Cooper Lighting - Lumark  
Model MPTR (match existing)

project number:  
LZG 2019.0025

sheet number:

**A-200**



# Luckenbach Ziegelman Gardner Architects PLLC

555 South Old Woodward Suite 27L  
Birmingham, Michigan 48009  
248.644.0600

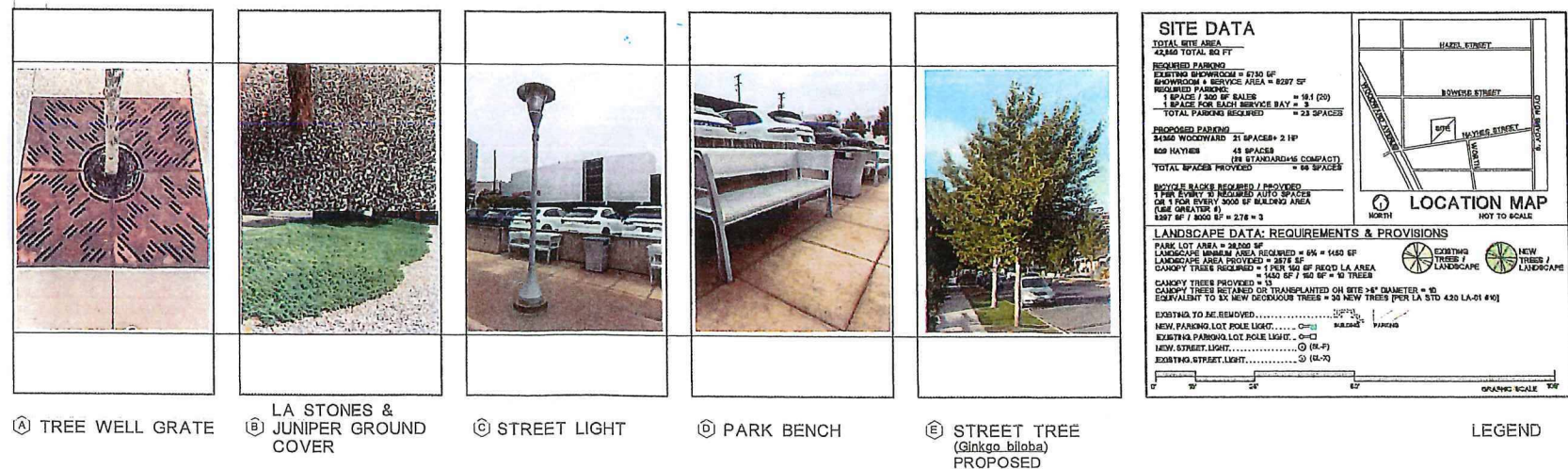
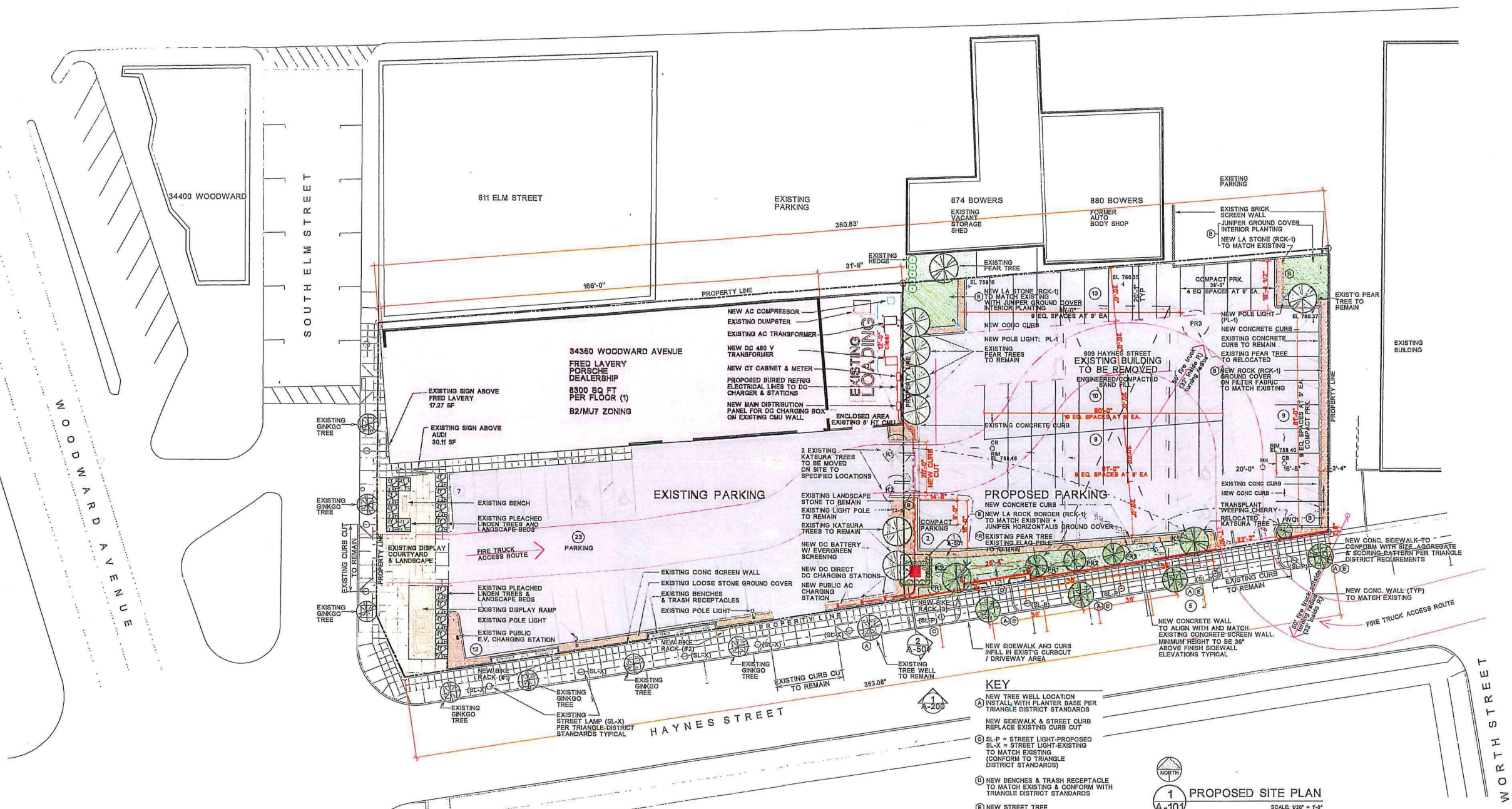
project:  
**Fred Lavery  
PORSCHE**  
Special Land Use  
Permit Review  
835 Haynes Street  
Birmingham, Michigan

client use:  
**PROPOSED SITE PLAN  
FOR SPECIAL LAND  
USE PLANNING  
AMENDMENT**

date issued:  
09.23.2019 OWNER REVIEW  
09.29.2019 OWNER REVIEW  
10.14.2019 OWNER REVIEW  
10.16.2019 OWNER REVIEW

project number:  
LZG 2019.0025

sheet number:  
A-101



## **AGREEMENT**

**THIS AGREEMENT** (this "Agreement"), dated as of this \_\_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), is made by and between **Lavery Michigan Dealership Properties No. 1, LLC, a Michigan limited liability company** ("LMDP"), whose address is 440 Lake Park Drive, Birmingham, Michigan 48009, and the **City of Birmingham, a Michigan municipal corporation** (the "City"), whose address is 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001.

### **RECITALS**

A. LMDP owns certain real property situated in the City of Birmingham, Oakland County, Michigan, being more particularly described on attached **Exhibit A** and identified as the "Woodward Parcel" and the "Haynes Parcel."

B. The Woodward Parcel is situated to the west of and adjacent to the Haynes Parcel, is bounded by South Elm Street on the west and by Haynes Street on the south, and is zoned B2 with MU-7 Triangle District Overlay. The Haynes Parcel is bounded by the Woodward Parcel on the west and by Haynes Street on the south, and is zoned B2 with MU-5 Triangle District Overlay.

C. Automotive show rooms and sales agencies are permitted uses under the current zoning of both the Woodward Parcel and the Haynes Parcel pursuant to a Special Land Use Permit.

D. In 2010, LMDP received a Special Land Use Permit ("2010 SLUP") to operate a Porsche automotive dealership on the Woodward Parcel.

E. The City approved an amendment to the 2010 SLUP to allow for the temporary use of the Haynes Parcel as an office for the Lavery Audi sales and management team during the



completion of renovations at the Lavery Audi automotive dealership located at 34602 Woodward Avenue, Birmingham, Michigan 48009 (the "Temporary SLUP Amendment," and together with the 2010 SLUP, the "SLUP").

F. LMDP desires to amend the site plan of the Woodward Parcel in combination with the Haynes Parcel to demolish the currently-existing building on the Haynes Parcel and to accommodate changes in Porche's dealership requirements that will impact both the Woodward Parcel and the Haynes Parcel (the "Amended Site Plan").

G. In advance of formal submittal to the City for approval of the Amended Site Plan, LMDP has applied to the City to combine the Woodward Parcel and the Haynes Parcel (the "Parcel Combination").

H. In the event that the Parcel Combination is approved, LMDP intends to proceed with formal submittal to the City for approval of the Amended Site Plan for related approval of a further amendment to the SLUP to incorporate the Haynes Parcel.

I. LMDP and the City mutually agree that the approval of the Parcel Combination, the Amended Site Plan (including any necessary variances) and the further amendment to the SLUP are in the best interest of both parties and, while the City cannot commit to such approvals outside of the formal procedures prescribed therefor, LMDP and the City desire to enter into this Agreement for the purpose of evidencing certain agreements and understandings between the parties should formal approval of the Parcel Combination, the Amended Site Plan and the further amendment to the SLUP be issued by the City.

**NOW, THEREFORE,** for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LMDP and the City hereby agree as follows:

**ARTICLE I**  
**INCORPORATION OF RECITALS; CONTINGENT AGREEMENT**

1.     **Incorporation of Recitals.** The Recitals to this Agreement are fully incorporated in this Agreement by this reference thereto with the same force and effect as though restated in this Agreement.

2.     **Contingent Agreement.** This Agreement, and the obligations of LMDP and the City hereunder, are fully contingent upon formal approval by the City of the Parcel Combination, the Amended Site Plan (including any necessary variances) and the further amendment to the SLUP (collectively, the "Contingencies"). This Agreement shall automatically terminate and shall be of no further force or effect if the Contingencies have not been satisfied within six (6) months after the Effective Date. The City agrees to reasonably cooperate with LMDP in causing the Contingencies to be timely satisfied in a mutually-agreeable manner.

**ARTICLE II**  
**CONVEYANCE OF PROPERTY FROM LMDP TO THE CITY**

1.     **Conveyance from LMDP.** Within a reasonable period of time after the satisfaction of all of the Contingencies, LMDP shall convey by quit claim deed to the City a certain parcel of real property, which shall be more particularly described by surveyed legal description at or prior to the time of conveyance, but which shall generally consist of the easterly sixty (60) feet of the Haynes Parcel (the "LMDP Conveyance Parcel"), for the future use by the City in connection with the northerly extension of South Worth Street from Haynes Street to Bowers Street (the "South Worth Street Extension"). LMDP and the City shall cooperate with each other as necessary to effect any parcel division that may be required to allow for the conveyance of the LMDP Conveyance Parcel to the City as a separate and distinct parcel.

2. **Reservation of LMDP Easement.** The quit claim deed from LMDP to the City shall contain language reserving an exclusive, limited easement (the "LMDP Easement") in favor of LMDP and its successors and assigns, including successors-in-title to all or any portion of the combined Woodward Parcel and Haynes Parcel, over the surface of the LMDP Conveyance Parcel for purposes of providing parking for the combined Woodward Parcel and Haynes Parcel until such time that the South Worth Street Extension occurs. In the alternative to a reservation in the quit claim deed, LMDP and the City may enter into a separately-recorded easement agreement to establish the LMDP Easement.

3. **Term of LMDP Easement.** The LMDP Easement shall run with the land and shall benefit LMDP and its successors and assigns until such time as the City determines, in its sole discretion, that the LMDP Conveyance Parcel is needed for future use by the City in connection with the South Worth Street Extension. The City shall give a one (1) year notice of the termination of the LMDP Easement, which notice shall be recorded with the Oakland County Register of Deeds, and the LMDP Easement shall automatically terminate and shall be of no further force or effect on the date that is one (1) year from the date of such recording. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, the City agrees that it shall not terminate the LMDP Easement until such time that the City has terminated the City Easement pursuant to Article III, Section 3, below.

4. **Taxes, Maintenance and Repair of LMDP Conveyance Parcel.** LMDP shall be responsible for any and all taxes, maintenance and repair of the surface of any improvements now or hereafter existing within the LMDP Conveyance Parcel until such time as the LMDP Easement is terminated by the City. Until such time as the LMDP Easement is terminated by the City, the City shall have no obligation to maintain and repair the surface of any improvements

now or hereafter existing within the LMDP Conveyance Parcel or to contribute to the cost thereof, and such improvements shall be maintained by LMDP as required by all federal, state, local laws and policies of the City.

5. **Insurance and Indemnification.** Until such time as the LMDP Easement is terminated by the City, LMDP shall, at its sole expense, obtain insurance as required herein. 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.

- A. **Commercial General Liability Insurance:** Until such time as the LMDP Easement is terminated by the City, LMDP shall procure and maintain 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; and (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
- B. **Additional Insured:** The Commercial General 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, without regard to any other available coverage by primary, contributing or excess.
- C. **Cancellation Notice:** The Commercial General Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days' Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Finance Director, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001."
- D. **Proof of Insurance Coverage:** LMDP shall provide the City, at the time this Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City, as listed below.
  - 1) Two (2) copies of a Certificate of Insurance for Commercial General Liability Insurance;
  - 2) If so requested, Certified Copies of all policies mentioned above will be furnished.

- E. Coverage Expiration: If any of the above coverages expire prior to such time as the LMDP Easement is terminated by the City, LMDP shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.
- F. Maintaining Insurance: Upon failure of LMDP to obtain or maintain such insurance coverage until such time as the LMDP Easement is terminated by the City, the City may, at its option, purchase such coverage and invoice LMDP for the cost of obtaining such coverage. In obtaining such coverage, the City shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

Further, indemnification shall be provided as follows:

To the fullest extent permitted by law, LMDP agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City, 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, its elected and appointed officials, employees, volunteers or others working on behalf of the City, 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.

### **ARTICLE III CONVEYANCE OF PROPERTY FROM THE CITY TO LMDP**

1. **Conveyance by City.** Within a reasonable period of time after the satisfaction of all of the Contingencies, the City shall convey by quit claim deed to LMDP a certain parcel of real property, which shall be more particularly described by surveyed legal description at or prior to the time of conveyance, but which shall generally consist of the area formed by extending the



northerly and southerly property lines of the Woodward Parcel west to the easterly right-of-way line of Woodward Avenue (the "City Conveyance Parcel"), for the future use by LMDP in connection with the development or redevelopment of the combined Woodward Parcel and Haynes Parcel. The City Conveyance Parcel shall be bounded on the west by the easterly right-of-way line of Woodward Avenue, to the north by the westerly extension of the northerly property line of the Woodward Parcel, to the east by the westerly property line of the Woodward Parcel and to the south by the westerly extension of the southerly property line of the Woodward Parcel. LMDP and the City shall cooperate with each other as necessary to effect any parcel division that may be required to allow for the conveyance of the City Conveyance Parcel to LMDP as a separate and distinct parcel and, if desired by LMDP, any parcel combination that may be required to combine the City Conveyance Parcel with the combined Woodward Parcel and Haynes Parcel.

2.     **Reservation of City Easement.** The quit claim deed from the City to LMDP shall contain language reserving a non-exclusive, limited easement (the "City Easement") in favor of the public and the City, over the surface of the City Conveyance Parcel for purposes of providing for the continued use by the public and continued maintenance, repair and replacement by the City of the portion of South Elm Street and related improvements situated on the City Conveyance Parcel until such time that the City vacates such portion of South Elm Street, which vacation must also include, at the City's sole cost and expense, the removal from the City Conveyance Parcel of all pavement and the removal and relocation from the City Conveyance Parcel of all underground and overhead utilities, if any, and the restoration of the City Conveyance Parcel after such removal by finish-grading and seeding and/or sodding all disturbed

areas. In the alternative to a reservation in the quit claim deed, LMDP and the City may enter into a separately-recorded easement agreement to establish the City Easement.

3. **Term of City Easement.** The City Easement shall run with the land and shall benefit the public and the City until such time as the City determines, in its sole discretion, to vacate the portion of South Elm Street and related improvements situated on the City Conveyance Parcel. Upon the vacation of such portion, and the removal and relocation of all pavement and utilities and the restoration of the City Conveyance Parcel as set forth in Article III, Section 2, above, the City shall cause an appropriate vacating resolution to be recorded with the Oakland County Register of Deeds, whereupon the City Easement shall automatically terminate and shall be of no further force or effect. The City agrees that no easements will be reserved within the City Conveyance Parcel by the City in connection with the vacation.

4. **Maintenance and Repair of City Conveyance Parcel.** The City shall be responsible for any and all maintenance and repair of the surface of any improvements now or hereafter existing within the City Conveyance Parcel until such time as the City Easement is terminated. Until such time as the City Easement is terminated, LMDP shall have no obligation to maintain and repair the surface of any improvements now or hereafter existing within the City Conveyance Parcel or to contribute to the cost thereof, and such improvements shall be maintained by the City as required by all federal, state, local laws and policies of the City.

5. **Insurance.** Until such time as the City Easement is terminated by the City, the City shall, at its sole expense, obtain insurance as required herein. 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 LMDP.

- A. Commercial General Liability Insurance: Until such time as the City Easement is terminated by the City, the City shall procure and maintain 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) Broad Form General Liability Extensions or equivalent; and (B) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
- B. Additional Insured: The Commercial General Liability Insurance, as described above, shall include an endorsement stating LMDP shall be *Additional Insured*. This coverage shall be primary to any other coverage that may be available to the additional insured, without regard to any other available coverage by primary, contributing or excess.
- C. Cancellation Notice: The Commercial General Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days' Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Lavery Michigan Dealership Properties No. 1, LLC, 440 Lake Park Drive, Birmingham, Michigan 48009."
- D. Proof of Insurance Coverage: The City shall provide LMDP, at the time this Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to LMDP, as listed below.
- 3) Two (2) copies of a Certificate of Insurance for Commercial General Liability Insurance;
- 4) If so requested, Certified Copies of all policies mentioned above will be furnished.
- E. Coverage Expiration: If any of the above coverages expire prior to such time as the City Easement is terminated by the City, the City shall deliver renewal certificates and/or policies to LMDP at least (10) days prior to the expiration date.
- F. Maintaining Insurance: Upon failure of the City to obtain or maintain such insurance coverage until such time as the City Easement is terminated by the City, LMDP may, at its option, purchase such coverage and invoice the City for the cost of obtaining such coverage. In obtaining such coverage, LMDP shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.
6. **Responsibilities of the City**. At such time, as applicable, as the LMDP Easement and the City Easement are terminated, the City shall provide assurances to LMDP or its successors in interest that:

a) Nonconformance. In the event that the vacation of South Elm Street or the use of the LMDP Conveyance Parcel by the City in connection with the South Worth Street Extension creates any nonconformance of the combined Woodward Parcel and Haynes Parcel, or the current use or development thereof, with the then-existing City codes or ordinances, including, but not limited to, the City's Zoning Ordinance, any such noncompliance shall be and is hereby waived.

b) Restore Property. The City, in performing any work with respect to the vacation of South Elm Street or the use of the LMDP Conveyance Parcel by the City in connection with the South Worth Street Extension, agrees that it shall be responsible to restore the combined Woodward Parcel and Haynes Parcel in like manner to the then-existing conditions, with the exception of restoring the lost striped surface parking spaces in the parking lot.

c) Parking Loss. The City understands and agrees that implementing the South Worth Street Extension will result in the loss of parking to LMDP. Any diminishment of the total number of parking spots from that total number shall be made up by the City. This parking loss is currently estimated at \_\_\_\_\_ parking spaces. The City shall make up for any loss of parking through such agreeable means as: on street permit parking, or providing permit parking in any available deck which may hereafter be constructed. The total current parking on the Woodward Parcel and the Haynes Parcel is \_\_\_\_\_ parking spaces. Any loss of parking made up for by the City pursuant to this provision must be located within the southern portion of the Triangle District.

## **ARTICLE IV MISCELLANEOUS**

1.     **Arbitration.** 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 48<sup>th</sup> 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 take place in Oakland County, Michigan, and 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. 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 48<sup>th</sup> District Court.

2.     **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of LMDP and the City and their respective successors and assigns; provided, however, the rights of the City hereunder are assignable by the City only if the City has received prior written consent from LMDP, which consent may be withheld at LMDP's sole discretion, in which case the City's rights shall not be assignable.

3.     **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent by registered or certified U.S. Mail or by Federal Express or other nationally recognized overnight delivery service to the party entitled to receive the same at the

address as stated hereafter or such alternative address as may be furnished by either party to the other in the future. Copies of such notices shall be addressed as follows:

If to the City:

City of Birmingham  
151 Martin Street, P.O. Box 3001  
Birmingham, Michigan 48012-3001  
Attention: Joseph A. Valentine, City Manager

AND

Beier Howlett, P.C.  
3001 West Big Beaver Road, Suite 200  
Troy, Michigan 48084  
Attention: Timothy J. Currier

If to LMDP:

Lavery Michigan Dealership Properties No. 1, LLC  
440 Lake Park Drive  
Birmingham, Michigan 48009  
Attention: Frederick A. Lavery, Jr.

AND

Clark Hill PLC  
500 Woodward Avenue, Suite 3500  
Detroit, Michigan 48226  
Attention: Stuart M. Schwartz

4. **Governing Law.** This Agreement shall be governed by and construed exclusively in accordance with the laws of the State of Michigan.

*[Remainder of page intentionally left blank  
signatures on following pages.]*

SIGNATURE PAGE TO AGREEMENT  
BY AND BETWEEN LAVERY MICHIGAN DEALERSHIP  
PROPERTIES NO. 1, LLC AND THE CITY OF BIRMINGHAM

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective  
Date.

**LAVERY MICHIGAN DEALERSHIP  
PROPERTIES NO. 1, LLC**, a Michigan  
limited liability company

By: \_\_\_\_\_  
Frederick A. Lavery, Jr., Member

SIGNATURE PAGE TO AGREEMENT  
BY AND BETWEEN LAVERY MICHIGAN DEALERSHIP  
PROPERTIES NO. 1, LLC AND THE CITY OF BIRMINGHAM

**CITY OF BIRMINGHAM**, a Michigan  
municipal corporation

By: \_\_\_\_\_  
Pierre Boutros, Mayer

By: \_\_\_\_\_  
Alexandria Bingham, Clerk



## **Exhibit A to Agreement**

### **Legal Description**

Land situated in the City of Birmingham, Oakland County, Michigan, more particularly described as:

#### Woodward Parcel

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.

Commonly known as 835 and 845 Haynes Street

Tax Parcel No. 19-36-281-022

#### Haynes Parcel

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.

Commonly known as 907 and 911 Haynes Street

Tax Parcel No. 19-36-281-030

# 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**

December 17, 2020

## VIA FEDERAL EXPRESS AND EMAIL

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:

Please let this letter serve as a supplement to Lavery Michigan Dealership Properties No. 1, LLC’s (“LMDP”) application to combine the Woodward Property and the Haynes Property. We ask that you add to the City Commission packet prior to Monday’s public hearing.

By way of background, LMDP appeared before the Planning Board on January 22, 2020 in regard to a Special Land Use Permit amendment (“SLUP”) and site plan amendment for the Woodward Property and the Haynes Property. At that time, City Planner Brooks Cowan noted that:

Although the construction of a surface parking [sic] does not appear to meet the intent of the Triangle District Plan, permitting this parking lot construction with the condition that the applicant reach an agreement with the City regarding the Worth Street realignment and extension could serve as an important step towards implementing the goals of the Triangle District Plan.

A copy of that memo is attached as **Exhibit 1**. Ultimately, Mr. Cowan recommended **approval** of LMDP’s application:

Based on a review of the site plan submitted, as well as the goals and intent of the Triangle District Plan, ***the Planning Division recommends that the Planning Board RECOMMEND APPROVAL of the applicant’s request for Final Site Plan and a SLUP amendment to allow the demolition of the building at 907-911 Haynes Street*** and for the property to be converted into a surface parking lot for

car sales, with the condition that the applicant reach an agreement with the City of Birmingham to comply with the goals of the Triangle District Plan, including but not limited to the accommodation of the Worth Street realignment.

*Id.* (emphasis added).

At the hearing on January 22, 2020, it became quickly evident that Planning Director Jana Ecker had a different view of LMDP's application. Ultimately, based on the direction in which Director Ecker was steering the conversation, LMDP decided to withdraw its application.

Thereafter, LMDP reached out to Director Ecker to discuss options relative to the Woodward Property and Haynes Property, including, without limitation, to discuss the plan for the Worth Street realignment project. Despite LMDP's best efforts, those discussions did not gain any traction and LMDP was left with no other option but to seek a lot combination, and limited its application accordingly at this time.

In response to LMDP's request for a lot combination, it appears the Planning Department is prepared to (pre) dispose of the application with a recommended denial of the same concept it previously recommended be approved. However, recently, Porsche rejected LMDP's draft plan and requested a number of revisions. Many of those revisions are not feasible at the Woodward Property and LMDP has not determined whether it will seek a modified SLUP amendment or take other action. Therefore, the factual basis for the Planning Department's memo is entirely misplaced.

Moreover, the Planning Departments proposed denial of LMDP's application is wholly inappropriate. Section 82-56 of the City of Birmingham's Code of Ordinances provides that the "planning director shall make the necessary studies and surveys of matters relating to city growth and development, advise the city manager as to the implementation of the city plan, furnish technical advice and assistance in planning and zoning matters and furnish such information and data to the city planning board, the design review board, and the historic district commission as they may require in the performance of their duties and functions." Accordingly, in recommending a denial, Director Ecker has exceeded the authority granted to her. Instead, the Planning Director should be proposing information and data to the City Commission so that it can make an informed decision. By simply recommending denial, Director Ecker has severely prejudiced LMDP's ability to have the City Commission fairly consider its request.

In addition to unduly prejudicing LMDP by recommending denial (instead of furnishing advice and information for the City Commission to make its decision), the Planning Department also has provided inaccurate information to the City Commission upon which its decision will be based regarding LMDP's future plans for the Woodward Property and the Hayne Property. **To be clear, LMDP is only seeking a lot combination at this time.** It has not reapplied for a SLUP amendment and therefore, the Planning Department's assumptions, based on LMDP's past application, is entirely misplaced. LMDP continues to evaluate options, which include, among

other things, closing the Porsche and Audi dealerships, seeking a revised SLUP amendment, and redevelopment of the combined lots. However, under all scenarios, a lot combination will be necessary and highly beneficial to the City.

LMDP also meets the standards set forth in Section 102-83 of the Ordinance relating to the combination of land parcels. With the exception of section (1), the Planning Department recognized that LMDP satisfies this standard as well. For the reasons that follow, LMDP believes that the City Commission can only conclude that a lot combination meets the standards set forth in the Ordinance:

*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 regard to the 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. The lot combination will result in a combined parcel of land that is consistent with the character of the area and will indeed, enhance the character by the removal of an outdated building, that is not code compliant, on the Haynes Property.

In regard to zoning, the Woodward Property is zoned MU-7 in the Triangle Overlay District while the Haynes Property is zoned MU-5. Both parcels are zoned B-2 in the underlying Zoning District. Auto sales and auto showrooms are permitted with approval of a Special Land Use Permit in the MU-5 and MU-7 Zones, which LMDP obtained for the Woodward Property in 2010. The lot combination will not alter any aspect of zoning compliance for these properties. Rather, by allowing a lot combination, greater possibilities exist to develop these properties in compliance with the Zoning Ordinance.

The lot combination also complies with the Master Plan, and more importantly, the draft new Master Plan for the Triangle District. On November 11, 2020, the Planning Board held a study session regarding the first draft of the Master Plan, and specifically discussed the Triangle District, and "Haynes Square," which includes the Woodward Property and the Haynes Property. In the words of the City's consultant, Matt Lambert, "the whole area is a mess." He also noted numerous instances of dangerous road conditions for pedestrians, cyclists, and drivers, including, the sharp turn off of Woodward Avenue that fronts the Woodward Property. Mr. Lambert further noted that the failure to build a parking structure in the area has held back development. Mr. Lambert stated that the current Master Plan is not working for the area, and that the City will need to relax its development standards, with the greatest relief being afforded to the Rail

District, and other relief being afforded to surrounding areas, including Haynes Square.

As it relates to mixed use development, Mr. Lambert raised a number of questions regarding retail and questioned what businesses would survive the COVID-19 pandemic. He stated that it was important to talk about housing since the United States is massively “over retailed.” Based on these comments, strict compliance with the current Master Plan is infeasible and does not make sense.

Many of the Planning Board members had similar concerns. Mr. Boyle, for example, questioned the mechanisms for implementing the new Master Plan and noted that the City has failed in the past with trying to achieve compliance; specifically mentioning the lack of any parking deck solution in the Triangle District.

Despite all of these concerns, any future compliance with the Master Plan will be predicated on a combination of these lots. **As such, a lot combination clearly will result in a parcel of land consistent with the Master Plan’s land use requirements.**

*(1) 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.**

*(2) 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.**

*(3) 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 and therefore, **the lot combination meets this requirement.**

(4) *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.**

(5) *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.*

A lot combination will ultimately help to improve vehicular ingress and egress should the City vacate the land in front of the Woodward Property to LMDP. It should otherwise have no impact on adjacent land and buildings. **As such, the lot combination and building envelope meet this requirement and will not have any impact on vehicular ingress or egress. It will also not hinder or impair adjacent land or buildings.**

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 flood plain 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 has no impact on the supply of light and air to adjacent properties or the ability of the City to provide essential services.**

In addition to meeting the requirements of the Ordinance's standard for a lot combination, a lot combination also makes sense for the City. The Worth Street realignment, parking issues, and the possible vacating of the area between the Porsche dealership and Woodward Avenue are all

City of Birmingham  
Planning Department  
December 17, 2020  
Page 6

issues that should be resolved in the next ten years (if not sooner). Combining the lots opens numerous opportunities for these properties, while a failure to do so can only result in higher hurdles to change any aspect of these properties. Putting in place short term solutions, while these issues are resolved, will ultimately benefit LMDP and the City.

Sincerely,

CLARK HILL PLC

*/s/Stuart M. Schwartz*

Stuart M. Schwartz

SMS:dem  
Enclosure

cc: Mr. Brooks Cowan, City Planner (via email to [bcowan@bhamgov.org](mailto:bcowan@bhamgov.org))

# EXHIBIT 1





## MEMORANDUM

Planning Department

**DATE:** January 22, 2020

**TO:** Planning Board

**FROM:** Brooks Cowan, City Planner

**SUBJECT:** 34350 Woodward & 907-911 Haynes Street Fred Lavery Special Land Use Permit amendment (SLUP) for lot combination and site plan amendment

---

### Executive Summary

The subject properties are located at 34350 Woodward and 907-911 Haynes Street. Both parcels are zoned B-2, General Business. 34350 Woodward is zoned MU-7 in the Triangle Overlay District while 907-911 Haynes Street is zoned MU-5. Auto sales agencies require a Special Land Use Permit to operate in the B2 District, which can be obtained as long as they meet their obligations required by the City. The applicant, Fred Lavery Company, received a Special Land Use Permit in 2010 to operate a Porsche car dealership within the B2 Zone and MU-7 Triangle District Overlay at 34350 Woodward.

In 2016, the applicant received a temporary SLUP amendment to use the 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. It appears as though the applicant has continued to store cars at the 907-911 Haynes location.

The applicant is proposing to demolish the two story building on Haynes Street and construct a surface parking lot to accommodate a larger fleet of cars for sale. The Birmingham Zoning Ordinance requires that the applicant obtain a Special Land Use Permit Amendment and approval from the City Commission to expand the auto sales agency use. Accordingly, the applicant will be required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit amendment, and then obtain approval from the City Commission for the Final Site Plan and Special Land Use Permit amendment. **A lot combination will also be required to be approved by the City Commission.**

### 1.0 Land Use and Zoning

- 1.1 Existing Land Use – 34350 Woodward is a single story building used as a Porsche Dealership. 907-911 Haynes contains a two-story building where the first floor is unoccupied and the second floor is used as a spa.

1.2 Existing Zoning – Both properties are zoned B-2, Business-Residential. 34350 Woodward is zoned MU-7 in the Triangle Overlay District while 907-911 Haynes is zoned MU-5. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.

1.3 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.

	North	South	East	West
<b>Existing Land Use</b>	Office	Retail/ Commercial (Walgreens)	Commercial (Goodwin & Scieszka Law)	Woodward Ave & Elm St Intersection
<b>Existing Zoning District</b>	B-2, General Business	B-2, General Business	B-2, General Business	B-2, General Business
<b>Triangle Overlay Zoning District</b>	MU-3	MU-7/MU-5	MU-5	MU-3

1.4 Proposed Use – The proposed use that would remain at 34350 Woodward is permitted within the MU-7 zoning district with a Special Land Use Permit. At this time, the applicant is requesting approval of a SLUP Amendment for 34350 Woodward to expand the use of the auto sales agency by expanding the parking lot to be used for storage and display of vehicles for sale to include the site at 907-911 Haynes Street.

## 2.0 Screening and Landscaping

2.1 Screening –All parking facilities must be screened in accordance with Article 4, section 4.53 of the Zoning Ordinance. A minimum 32" masonry screen wall is required. The applicant is proposing a new concrete wall to align with and match the existing concrete screen wall with a maximum height of 36" along Haynes Street. The existing brick screen wall in the northeast corner of the property is proposed to remain.

The length of the new proposed screenwall is not provided, although it appears to be longer than 50 feet. Article 4, Section 4.54(B)(5) requires a break in the screenwall every 50-100 feet. **The applicant must submit plans indicating a break in the screenwall to reduce the length of the gray concrete screening.**

The site plan also indicates a new DC battery charging box in the front of the property along Haynes Street that will be screened by Juniper Evergreens ranging from four to six feet in height.

- 2.2 Landscaping— There are no proposed landscape changes to the site at 34350 Woodward. This portion of the site plan has a landscaped display court with Pleached Linden trees along Elm Street. Changes to landscaping for 907-911 Haynes are proposed which includes a new landscaping bed along Haynes with new trees.

The size of the parking area exceeds 7,500 sq. ft. (approximately 29,000 sq ft after demolition), therefore the applicant must provide landscaping that equals 5% of the parking lot size. ( $29,000 * 0.05 = 1,450$  square feet of required landscaping). The applicant has proposed 2,575 square feet of landscape coverage, thus satisfying the coverage requirement.

Article 04 section 4.20 LA-01 states that the interior planting areas shall be located in a manner that breaks the expanse of paving throughout the parking lot interior. Each interior planting area shall be at least 150 square feet in size, and not less than 8 feet in any single dimension. **The proposed landscaping is only located on the edges of the property, and does not break up the expanse of the parking lot interior. The applicant must place landscaping plantings no smaller than 150 square feet, and not less than 8 feet in any single dimension throughout the parking lot in a manner that breaks the expanse of paving throughout the parking lot interior, or obtain a variance from the Board of Zoning Appeals.**

Article 04 section 4.20 LA-01 also states there shall be at least one canopy tree for each 150 square feet or fraction thereof of interior planting area required. The applicant is required to provide 10 canopy trees ( $1,450 / 150 = 10$ ) within the parking lot area, or obtain a variance from the Board of Zoning Appeals. The applicant has proposed 13 trees which satisfies the requirement. Seven of these trees are existing along the sides of the property which include two Katsura trees and five Pear trees. Five new trees are proposed along the front of the property which include two Pear trees and three Katsura trees while a Weeping Cherry tree will be transplanted on site.

### 3.0 Parking, Loading, Access, and Circulation

- 3.1 Parking – The Porsche showroom area is 5,730 square feet while the service area has three service bays. The applicant is required to provide one parking space for each 300 sq. ft. of floor area of sales room plus one space for each auto service stall, not to be used for new or used car storage. Accordingly, the applicant is required to provide a total of 22 spaces on site. The applicant has proposed a total of 66 parking spaces, with 23 parking spaces on the current 34350 Woodward site and a proposed 43 parking spaces on 907-911 Haynes. **The Zoning Ordinance requires that the 22 parking spaces required be available for employees**

**and customers of the business for 34350 Woodward, and cannot be used as car storage for dealership inventory.**

The applicant has also provided 3 bike racks which satisfies the Zoning Ordinance requirements of 1 for every 3000 square feet of building area.

- 3.2 Loading – The applicant has indicated there is an existing loading area on the east side of the Porsche dealership which is enclosed by an 8' fence that screens the area from the right-of-way, therefore satisfying the Zoning Ordinance requirement of one loading space for a commercial use between 5,001-20,000 square feet.

- 3.3 Vehicular Access & Circulation - Vehicular access to the Porsche dealership on 34350 Woodward has two curb cuts for ingress and egress, one on Elm Street and one on Haynes Street. The applicant has indicated one curb cut for ingress and egress at the proposed parking lot expansion on 907-911 Haynes. The site plan also indicates a two-way access drive connecting the current dealership to the proposed parking lot.

An existing curb cut on 907-911 Haynes Street will be replaced with new sidewalk and street curb installed.

- 3.4 Pedestrian Access & Circulation –Pedestrian access is via sidewalks along Haynes and Elm. A pedestrian sidewalk connects the dealership entrance to the City sidewalk on Elm Street. The site plan does not indicate a pedestrian walkway from either curb cut along Haynes Street. **The applicant must submit plans indicating a pedestrian path through the parking lot at 907-911 Haynes Street where the screen wall opening is placed.**

- 3.5 Streetscape – This site is located within the Triangle District, which states that the sidewalk environment should accommodate ample space for pedestrians, street furniture and prominent storefronts. The Plan also states that there should be ample space for sidewalk cafés, street trees, pedestrian scale lights, benches and other elements in order to create a comfortable pedestrian experience

The applicant is not proposing any changes to the existing streetscape surrounding the current Porsche dealership. The site plan indicates four new tree well locations in front of 907-911 Haynes with Ginko Biloba trees planted and tree grates per Triangle District Standards. The proposed Haynes Street frontage will be 353 feet which will require 9 total street trees, therefore the applicant has satisfied this requirement.

The site plan also indicates two new benches and a trash receptacle in front of 907-911 Haynes Street that appear to be the same type and make as the existing benches and trash receptacles in front of the dealership at 34350 Woodward. Three new bike racks along the sidewalk are also proposed.

Five new Lumenton Street Light Models PT90 pedestrian scale street lights are proposed in front of 907-911 Haynes Street to match existing street lights and conform to the Triangle District Standards.

#### **4.0 Lighting**

The applicant is not proposing any lighting changes to the current dealership at 34350 Woodward Haynes. The site plan for 907-911 Haynes indicates four new light poles to illuminate the proposed parking lot. The Proposed lights are Tru-Tribute pulse start metal halide 100-400 watt full-cutoff luminaires. Light pole plans indicate a height of 16 feet which satisfies the ordinance.

The photometric plan for the proposed parking lot indicates a foot-candle ratio of 13.63 within the circulation area which satisfies the requirements of 20 or less in Article 4, Section 4.21(F)(3).

#### **5.0 Departmental Reports**

- 6.1 Engineering Division – Engineering Division has not yet provided comments, but will do so prior to the meeting on January 22, 2020.
- 6.2 Department of Public Services – No concerns were reported.
- 6.3 Fire Department – Fire Department has not yet provided comments, but will do so prior to the meeting on January 22, 2020.
- 6.4 Police Department - No concerns were reported from the Police Dept.
- 6.5 Building Division – The additional parking spaces will require another accessible parking space be provided in addition to the two existing. One of the three will need to be van accessible.

#### **6.0 Design Review**

The applicant has proposed to remove the two-story building at 907-911 Haynes Street to make way for a 43 space surface parking lot. The parking lot will be surrounded by a concrete screenwall and additional landscaping. The parking lot will be accommodated with new AC & DC charging stations for vehicles.

No changes to the existing Porsche Dealership building at 34350 Woodward are proposed at this time. The site plan does indicate a new access drive connecting 34350 Woodward to 907-911 Haynes. See Figure 1 for an aerial of this area.

#### **7.0 Signage Review**

No changes or additions to the signage have been proposed. The applicant currently has signs advertising "Fred Lavery", "PORSCHE", a Porsche logo wall sign, and a Porsche logo ground sign.

## **8.0 Birmingham Triangle District**

The opening paragraph for the Triangle District Plan states, *"The Triangle District is a stage for bold and distinctive architecture that creates a unique identity for the neighborhood and City. Building masses are the primary features, replacing the bleak parking lots that currently dominate the landscape"* (pg. 1).

In regards to the Development Plan Summary, *"Infill development and redevelopment is recommended to create a distinct character for the Triangle District while complementing the Downtown and surrounding neighborhoods,"* (pg. 4).

**The Triangle District Plan advocates for an increase in building density to replace the large surface parking areas that currently exist. Demolishing a two-story building to make way for a larger surface parking lot appears to be counterproductive to what the Triangle District Plan recommends.**

In regards to the recommended Worth Street Plaza and Worth Street realignment, the subject site faces the suggested urban plaza which is recommended to be *"... an island of activity bounded by tree-lined sidewalks and brick lined local streets, and enclosed by five to seven story buildings, (pg. 10).* **Constructing a 43-space surface parking lot to serve an expanding car dealership does not appear to meet the intent of the Triangle District Plan's vision for the spaces surrounding Worth Plaza.**

In regards to rerouting Worth Street, the *Circulation* section of the Triangle District Plan states:

*Currently Worth Street ends at Haynes Street. This prevents circulation between the Triangle District's northern and southern halves. Worth should be realigned parallel to Woodward Avenue and extended to Bowers. This will improve north/south interior connectivity with the Triangle District and better link the north and south halves of the District, which will help support redevelopment of the area. This road reconfiguration will also allow the creation of Worth Plaza in the heart of the Triangle District. The alignment of Worth Street will be through the rear of the Borders (Now Walgreens) parking lot and buildings currently located between Bowers and Haynes. **Therefore Worth Street realignment will need to be done in conjunction with the development of a parking structure and redevelopment of the properties on the north side of Haynes. The specific alignment shown on this plan is conceptual and could be varied, provided the ultimate alignment created Worth Plaza (pg. 19).***

Phase I of the Triangle District Plan states that Worth Plaza is the centerpiece of the plan and also mentions the necessity of acquiring additional roadway right-of-way stating:

*There are two key improvements that will be necessary precursors to the successful implementation of Phase I. They are the realignment of Worth Street to create the Worth Plaza open space and a substantial public or public-private parking deck. The reconfiguration Worth Street requires public acquisition of additional roadway right-of-way and includes the extension of Worth Street to Bowers (pg. 26).*

See Figure 2 for Triangle District Urban Design Plan.

On February 3<sup>rd</sup>, 2012, a similar situation regarding Worth Street realignment on the rear property line of Walgreens was brought to City Commission. A condition of approval for the Walgreens SLUP was that Walgreens grant a portion of property to the City for future rerouting of Worth Street. An agreement was reached between the City and the property owner, hence the triangular piece of property on the east side of Walgreens which is now owned by the City of Birmingham. See Figures 1 & 3.

The Triangle District Plan recommends acquiring additional land for the Worth Street realignment during redevelopment of the properties on the north side of Haynes which would include this subject's application. 907-911 Haynes plays a crucial role in the realignment of Worth Street and connecting Worth Street to Bowers Street as the subject site is located in the Triangle District Urban Design Plan's Worth Street right-of-way extension.

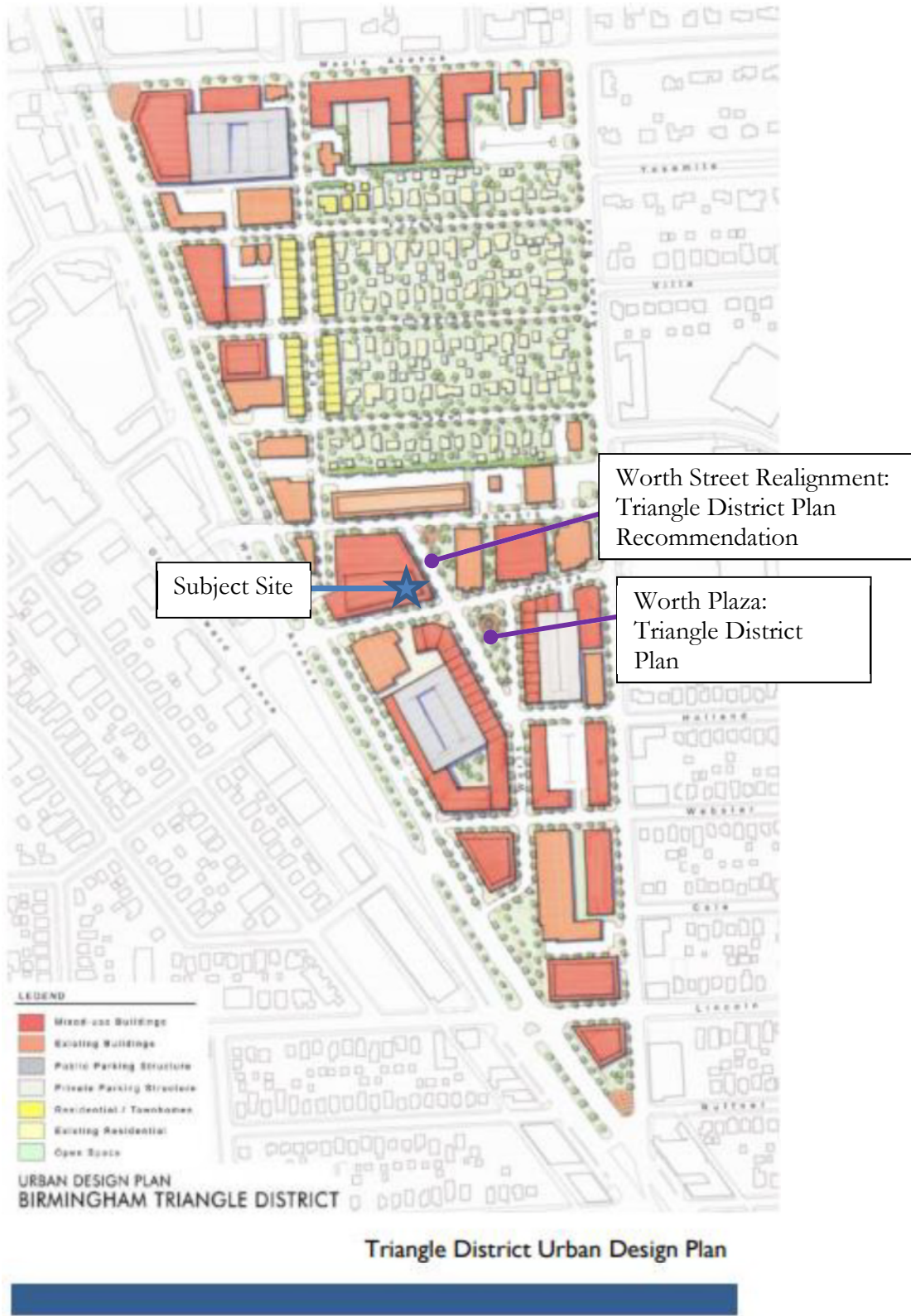
**Although the construction of a surface parking does not appear to meet the intent of the Triangle District Plan, permitting this parking lot construction with the condition that the applicant reach an agreement with the City regarding the Worth Street realignment and extension could serve as an important step towards implementing the goals of the Triangle District Plan.**

**Figure 1: Parcel Map and Aerial Image of Subject Properties:**





**Figure 2: Triangle District Urban Design Plan**



**Figure 3: Current Parcel Outlines Overlaid on Triangle Design Plan**



## 9.0 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.

## 10.0 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.

## **11.0 Suggested Action**

Based on a review of the site plan submitted, as well as the goals and intent of the Triangle District Plan, the Planning Division recommends that the Planning Board RECOMMEND APPROVAL of the applicant's request for Final Site Plan and a SLUP amendment to allow the demolition of the building at 907-911 Haynes Street and for the property to be converted into a surface parking lot for car sales, with the condition that the applicant reach an agreement with the City of Birmingham to comply with the goals of the Triangle District Plan, including but not limited to the accommodation of the Worth Street realignment.

## **12.0 Sample Motion Language**

Based on a review of the site plan submitted, as well as the goals and intent of the Triangle District Plan, the Planning Board RECOMMENDS APPROVAL of the applicant's request for Final Site Plan approval to allow the demolition of the 907-911 Haynes Street building and for the property to be converted into a surface parking lot for car sales with the following conditions;

1. The applicant reach an agreement with the City of Birmingham to comply with the goals of the Triangle District Plan, including but not limited to the accommodation of the Worth Street realignment;
2. The applicant obtain lot combination approval from City Commission; and
3. The applicant break up the expanse of the parking lot with various landscaping islands.
4. The applicant provide a break in the new screenwall;
5. The applicant provide a pedestrian pathway through the lot currently at 907-911 Haynes where the new screenwall opening is placed; and
6. The applicant ensures that 22 of the parking spaces are used for employee and customer parking only and not used for the storage of new or used vehicles for sale, lease or repair.

AND

Based on a review of the site plan submitted, as well as the goals and intent of the Triangle District Plan, the Planning Board RECOMMENDS APPROVAL of the applicant's request for a Special Land Use Permit amendment to allow the demolition of the 907-911 Haynes Street building and for the property to be converted into a surface parking lot for car sales with the following conditions;

1. The applicant reach an agreement with the City of Birmingham to comply with the goals of the Triangle District Plan, including but not limited to the accommodation of the Worth Street realignment;
2. The applicant obtain lot combination approval from City Commission; and
3. The applicant break up the expanse of the parking lot with various landscaping islands.
4. The applicant provide a break in the new screenwall;

5. The applicant provide a pedestrian pathway through the lot currently at 907-911 Haynes where the new screenwall opening is placed; and
6. The applicant ensures that 22 of the parking spaces are used for employee and customer parking only and not used for the storage of new or used vehicles for sale, lease or repair.

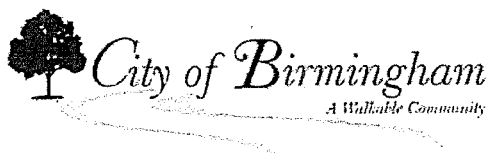
OR

Based on a review of the site plan submitted, the Planning Board RECOMMENDS DENIAL of the applicant's request for Final Site Plan and a SLUP Amendment to allow the demolition of the 907-911 Haynes Street building and for the property to be converted into a surface parking lot for car sales for the following reasons:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

OR

Motion to POSTPONE the Final Site Plan and SLUP Amendment to the City Commission for Lavery Porsche at 34350 Woodward & 907-911 Haynes, with the following conditions:



## 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

$$\begin{array}{r} 6-12 \\ \hline 410 \end{array}$$

AMOUNT OF CHECK	
*****	400.00

**VOID AFTER 90 DAYS**

4 23 1566 10611

# 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



## 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

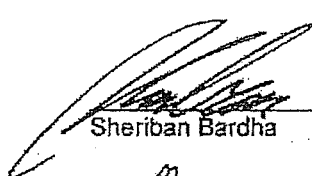
REVENUE TO BE AFFIXED  
AFTER RECORDING


Covenant Deed  
Page 1 of 2


RECEIVED  
OAKLAND COUNTY  
REGISTER OF DEEDS  
2014 JUN -6 PM 3:17

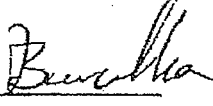
**SIGNATURE PAGE TO COVENANT DEED FROM  
SHERIBAN AND AGIM BARDHA TO LAVERY MICHIGAN DEALERSHIP  
PROPERTIES NO. 1, LLC**

**GRANTOR:**

  
\_\_\_\_\_  
Sheriban Bardha

  
\_\_\_\_\_  
Agim Bardha

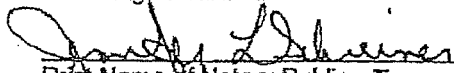
  
\_\_\_\_\_  
Sheriban Bardha

  
\_\_\_\_\_  
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

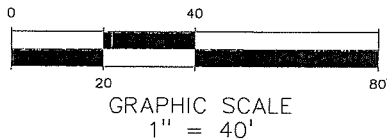
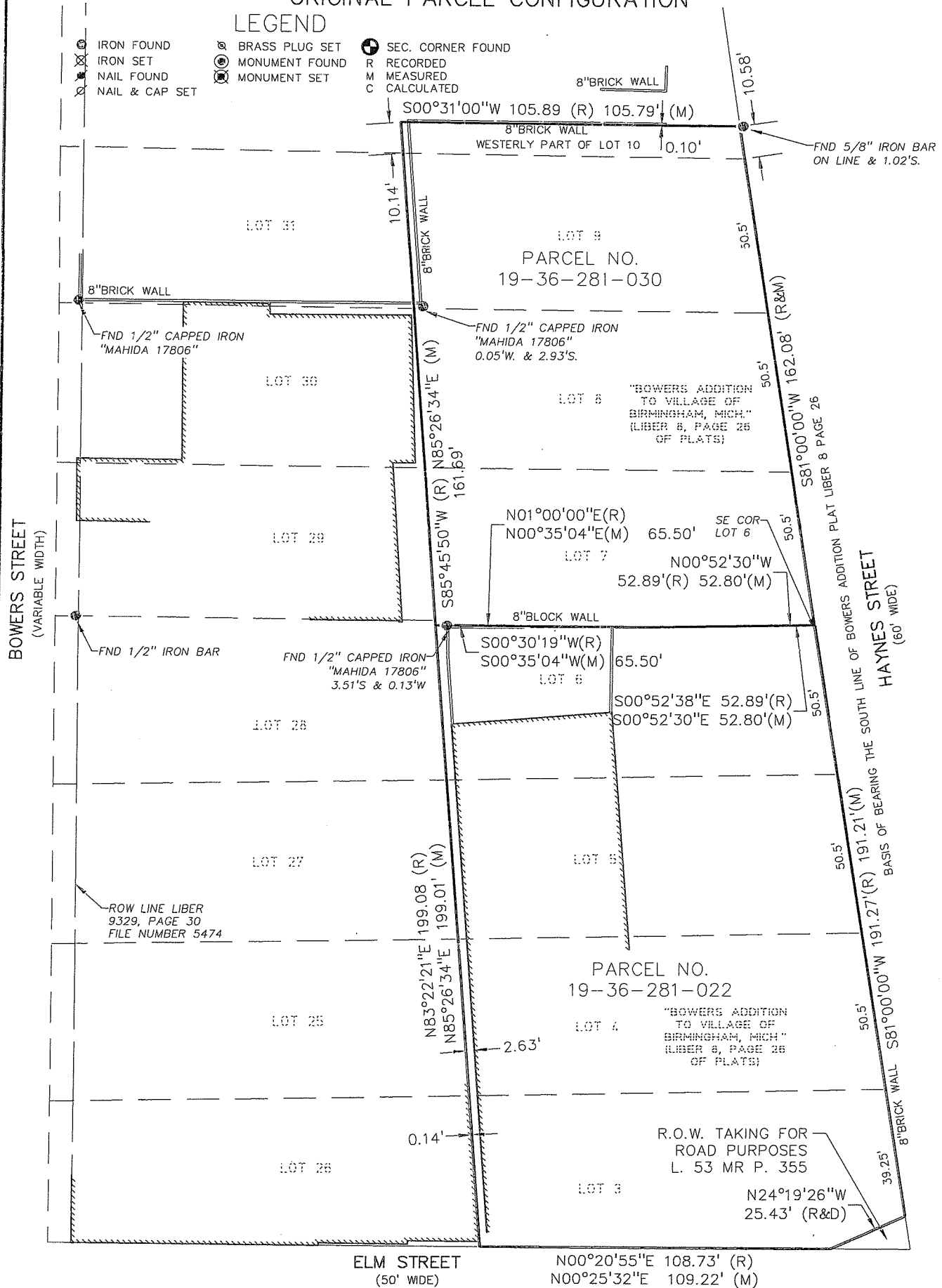
DATE: 9/18/19

DWG. No: 1 of 4

# CERTIFICATE OF SURVEY ORIGINAL PARCEL CONFIGURATION

## LEGEND

- |                  |                  |                     |
|------------------|------------------|---------------------|
| ⊙ IRON FOUND     | ⊙ BRASS PLUG SET | ⊙ SEC. CORNER FOUND |
| ⊙ IRON SET       | ⊙ MONUMENT FOUND | R RECORDED          |
| ⊙ NAIL FOUND     | ⊙ MONUMENT SET   | M MEASURED          |
| ⊙ NAIL & CAP SET |                  | 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: 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;

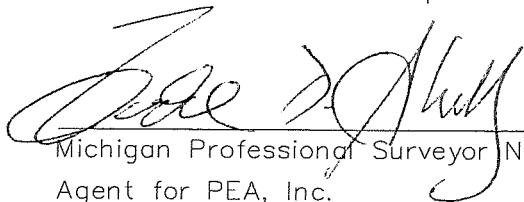
Commencing at the southwest corner of Lot 3, thence N81°00'00"E, 10.79 feet along the south line of said Lot 3 to the Point of Beginning;  
thence N24°19'26"W, 25.43 feet;  
thence N00°25'32"E, 109.22 feet along the West Line of said Lot 3 and the East Line of Elm Street;  
thence N85°26'34"E, 360.70 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.

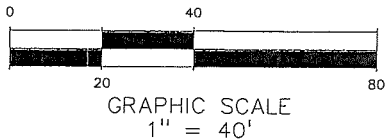
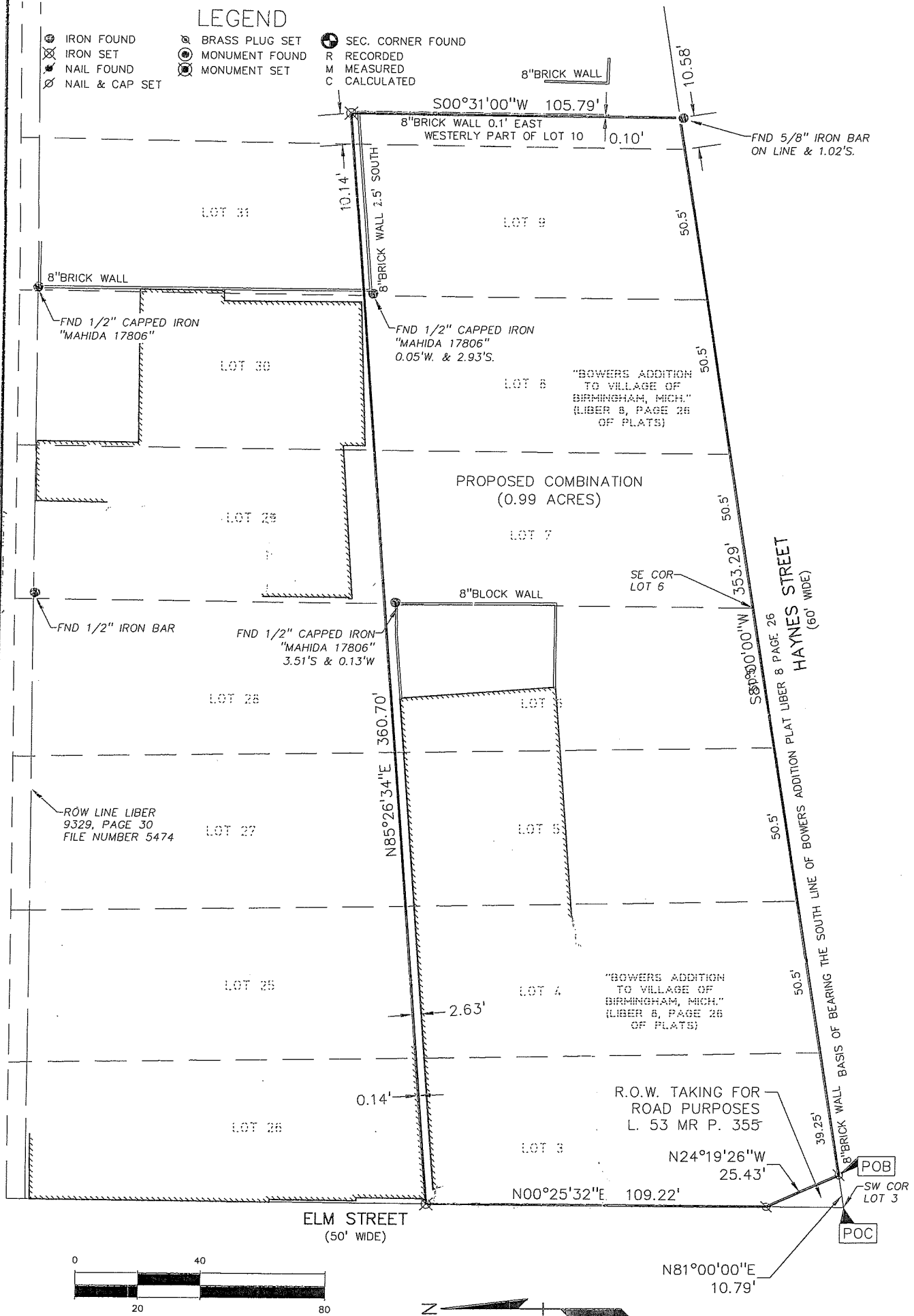
2430 Rochester Ct, Ste 100  
Troy, MI 48063-1872  
t: 248.689.9090  
f: 248.689.1044  
www.peainc.com

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



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

---

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

---

**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, APRIL 27, 2016  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

---

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.

**BIRMINGHAM CITY COMMISSION MINUTES**

**DECEMBER 21, 2020**

**7:30 P.M.**

**VIRTUAL MEETING**

**MEETING ID: 655 079 760**

**Video Link:** <https://vimeo.com/event/3470/videos/488387498/>

**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, 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 Bingham, City Planner Brooks Cowan, Planning Director Ecker, Finance Director Gerber, City Attorney Kucharek, Consulting City Engineer Surhigh, DPS Director Wood

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.

The Mayor opened the public hearing at 8:20 p.m.

Jason Canvasser, representing the applicant, asked that the item be postponed to January 25, 2021 and that the City Manager schedule time to meet with the applicant regarding the proposed lot combination before then.

**MOTION:** Motion by Commissioner Host, seconded by Commissioner Sherman:  
To postpone the Public Hearing for 34350 Woodward & 907-911 Haynes – Lot Combo to January 25, 2021.

Commissioners Sherman, Baller, Hoff, and Nickita all expressed doubts that a consensus between the City and the applicant would be reached in advance of a January 25, 2021 meeting. They agreed that the City could attempt to hold a meeting between the City Manager and the applicant in January 2021, noting it would only be a first step in the conversation. Among the reasons cited for the Commissioners' doubts that a consensus would be reached in January 2021 were the fact that the new City Manager will still be onboarding during that time, that the master plan remains in flux, that the applicant's proposal is inconsistent with the Triangle District Plan, and that the applicant's proposals have not been sufficiently reviewed or approved by other City boards.

The possibility of moving the public hearing to the first Commission meeting in February 2021 was discussed, but Mr. Canvasser stressed the applicant's desire to have it at the January 25, 2021 meeting since the applicant is trying to navigate a potential capital outlay in February 2021 that will hinge on the Commission's decision.

Commissioner Baller said he was comfortable with the public hearing being held on January 25, 2021 with the understanding that the matter could be continued to the following meeting if necessary.

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

Nays, Commissioner Sherman



# MEMORANDUM

Human Resources Department

**DATE:** January 19, 2021

**TO:** Thomas Markus, City Manager

**FROM:** James Hock, Interim HR Manager

**SUBJECT:** Settlement agreement and Contract Renewal of Local 911, Birmingham Firefighters Association

## INTRODUCTION

Local 911 represents all of the Birmingham sworn Fire Department employees, excluding the Fire Chief, Assistant Chief, Fire Marshal and part-time/temporary employees. Negotiations began November 3 and continued 6 additional meetings along with various other proposals passed via email. This agreement was reached voluntarily by the parties without the assistance of outside mediation or arbitration. The Union membership ratified the agreement on December 20, 2020. The agreement term is retroactive from July 1, 2020 through June 30, 2023.

## KEY ISSUES

The primary economic provisions are consistent with the City's overall bargaining strategy of balancing wages with health care and other benefits costs, and continues the trend on increased employee cost sharing for health care coverage. Also, this settlement continues a wage pattern for ongoing and upcoming negotiations in 2021, and 2022.

Significant provisions of the Settlement Agreement include:

1. 3-year agreement through June 30, 2023
2. Wage increases of 1.5% in each year of the contract (plus 2% on each step of all wage rates for Captains). All members, except Captains, receive a one time payment of \$750 that is not rolled into base wage rates.
3. Additional compensation amounts to recognize certifications
4. Increases in employee cost sharing for health care.
5. Modest improvements in other minor economic provisions.

## LEGAL REVIEW

The City's labor attorney has reviewed, and is party to, the signed Settlement Agreement.

## **FISCAL IMPACT**

Funds are budgeted and available in the 2020-2021 FY Budget. Costs are partially offset by savings from employee health care cost sharing provisions in the Settlement Agreement.

## **SUMMARY**

The Human Resources Department recommends approval of the Settlement Agreement.

## **ATTACHMENTS**

1. Settlement Agreement between the City of Birmingham and BFFA Local 911
2. Ratification notification from the Union

## **SUGGESTED RESOLUTION:**

To approve the Settlement Agreement of December 21, 2020 between the City of Birmingham and BFFA Local 911 for a renewal of the collective bargaining agreement for a term of July 1, 2020 through June 30, 2023, and to authorize staff to execute a collective bargaining agreement consistent with its terms and conditions. Further, to authorize the transfer of the appropriate funds by the Finance Department for these expenditures.



**City of Birmingham**  
**- and -**  
**Birmingham Firefighters Association, Local 911**

**SETTLEMENT AGREEMENT**

IT IS HEREBY AGREED between the City of Birmingham ("the City") and the Birmingham Firefighters Association Local 911 ("the Union"), that in tentative agreement of all outstanding issues under negotiation, the parties agree to the following, and agree to recommend ratification of the following to their respective principals:

1. The parties' new contract will be in effect from July 1, 2020 through June 30, 2023.
2. The parties' new contract will be the same as the parties' current agreement, except as modified by this Settlement Agreement.
3. Wages

All wage rates set forth in Supplement A of the parties' collective bargaining agreement shall be increased as follows:

July 1, 2020	1.5% on each step of all wage rates (retroactive to July 1, 2020) plus 2.0% on each step of all wage rates for Captains
July 1, 2021	1.5% on each step of all wage rates
July 1, 2022	1.5% on each step of all wage rates

Effective July 1, 2020, the annual payment for Lieutenants who are designated by the City as Paramedics in the Department Paramedic Program will increase from 4.0% to 5.5%.

Effective July 1, 2020, Captains who are designated by the City as Paramedics in the Department Paramedic Program will earn an annual payment of 2.0%.

Effective July 1, 2020, amend Fire Inspector assignment pay from \$1,000 per year/first 36 months and \$2,000 per year thereafter (paid semi-annually) to the following:

Fire Inspector (Firefighter) – \$2,750 per year paid as December lump sum  
Fire Inspector (Officer) – \$1,500 per year paid as December lump sum

Effective July 1, 2020, increase EMS Coordinator assignment pay from \$2,000 per year, paid semi-annually, to \$3,000 per year paid in December.

In addition, in the first full pay period following the execution of the new collective bargaining agreement by both parties, the following employees who were employed by the City as of the date of City Commission ratification shall receive a one-time, off schedule payment of \$750, less applicable deductions: Firefighters, Paramedic/Firefighters, and the Non-Paramedic Lieutenant. This payment will not be added to the wage scales contained in the parties' collective bargaining agreement.

4. Throughout the collective bargaining agreement, change the rank title of "Captain" to "Battalion Chief".

5. Health Insurance

A. Effective as soon as practicable after ratification of this Agreement by both parties, increase health insurance deductible from \$500/\$1,000 to \$600/\$1,200.

B. Effective as soon as practicable after ratification of this Agreement by both parties, increase health insurance out-of-pocket maximums from \$1,000/\$2,000 to \$1,100/\$2,200.

C. Effective as soon as practicable after ratification of this Agreement by both parties, increase ER visit co-pay from \$100 to \$125.

D. Effective as soon as practicable after ratification of this Agreement by both parties, revise Rx co-pays from \$20/\$45/\$45 to \$25/\$50/\$50. Proton Pump Inhibitors are not covered unless the physician deems it to be medically necessary.

E. Effective as soon as practicable after ratification of this Agreement by both parties, increase dental benefit cap from \$1,200 to \$1,500.

F. Effective as soon as practicable after ratification of this Agreement by both parties, increase orthodontic benefit cap from \$2,000 to \$2,500.

6. Military Leave (Replacement Language)

Effective January 1, 2021 Employees who currently serve in the National Guard, service reserves, or other such units will be permitted up to six (6) days of leave to attend weekend unit drills. These days hold no other monetary value and are not to be considered to be cumulative, or will have the ability to be paid out at the end of the year. For such purposes, these days are allotted for "military" activity only and if not used they will be relinquished at the year's end. Documentation of military orders shall be provided to Fire Chief.

7. Uniform Allowance

Effective as soon as practicable after ratification by both parties, increase the annual uniform allowance from \$400 to \$500, and establish an annual maximum cap of \$1,000. Effective with ratification, the maximum uniform allowance payout at separation shall be \$3,000. Effective January 1, 2022, the maximum uniform allowance payout at separation shall be \$1,000.

8. Distribution of Agreement

Copies of this Agreement shall be distributed by the City to all Fire Department employees by means of hard copy, or a preferred method through electronic database technology (email).

9. Letter of Understanding Incorporation

Incorporate into the Agreement the executed Letter of Understanding concerning the ordering in of personnel and residence boundaries.

10. The City withdraws all other proposals.

11. The Union withdraws all other proposals.

12. The Union will ratify the Agreement first, and will notify the City in writing when the Agreement has been ratified.

Dated: December , 2020

THE CITY

THE UNION

---

---

---

---

---

---





Good afternoon Ben and Joseph,

First and foremost, I (on behalf of the Executive Board) would like to thank you both for your diligence in continuing the negotiation process to ensure a settlement agreement was reached prior to the end of the year.

We would like all parties to know that we have met as a union local and have by majority vote ratified the settlement agreement that was agreed upon by the City and Local 911.

With that said, we look forward to a continued, and growing relationship with our administrative staff, and the city leadership moving into 2021 and beyond.

I, along with Vice President Mike Slack have signed the settlement agreement as ratified and will have it returned on Monday December 21, 2020. Should you have any questions or concerns please do not hesitate to contact me.

Again, thank you for all of your diligence and cooperation in this matter.

Respectfully,

Jeff Scaife

President

Birmingham Firefighters Local 911





## MEMORANDUM

Human Resources Department

**DATE:** January 18, 2021

**TO:** Thomas Markus, City Manager

**FROM:** James Hock, Interim HR Manager

**SUBJECT:** Settlement Agreement and Contract Renewal of Local 998, Birmingham Clerical Employees Chapter, affiliated with International Union, American Federation of State, County, and Municipal Employees and Council No. 25

### INTRODUCTION

AFSCME represents all full time and regularly scheduled part time clerical, technical and parking enforcement assistants employed by the City of Birmingham. The current collective bargaining agreement expired on June 30, 2020. Negotiations began September 16 and continued 4 additional meetings along with various other proposals passed via email. This agreement was reached voluntarily by the parties without the assistance of outside mediation. The Union membership ratified the agreement on January 15, 2021. The agreement term is retroactive from July 1, 2020 through June 30, 2023.

### KEY ISSUES

The primary economic provisions are consistent with the City's overall bargaining strategy of balancing wages with health care and other benefits costs, and continues the trend on increased employee cost sharing for health care coverages. misconduct. Also, this settlement continues a wage pattern for ongoing and upcoming negotiations in 2021, and 2022.

Significant provisions of the Settlement Agreement include:

1. 3-year agreement through June 30, 2023
2. Wage increases of 1.5% in each year of the contract.
3. Increases in employee cost sharing for health care.
4. Increases in the City and employee contributions to the 401(a) retirement plan.
5. Modest improvements in other minor economic provisions.

### LEGAL REVIEW

The City's labor attorney has reviewed, and is party to, the signed Settlement Agreement.



## **FISCAL IMPACT**

Funds are budgeted and available in the 2020-2021 FY Budget. Costs are partially offset by savings from employee health care cost sharing provisions in the Settlement Agreement.

## **SUMMARY**

The Human Resources Department recommends approval of the Settlement Agreement.

## **ATTACHMENTS**

1. Settlement Agreement between the City of Birmingham and AFSCME Local 998
2. Ratification notification from the Union

## **SUGGESTED RESOLUTION:**

To approve the Settlement Agreement of December 23, 2020 between the City of Birmingham and AFSCME Local 998 for a renewal of the collective bargaining agreement for a term of July 1, 2020 through June 30, 2023, and to authorize staff to execute a collective bargaining agreement consistent with its terms and conditions. Further, to authorize the transfer of the appropriate funds by the Finance Department for these expenditures.

# **The City of Birmingham**

**and**

## **Local 998, Birmingham Clerical Employees Chapter, affiliated with International Union, American Federation of State, County, and Municipal Employees and Council No. 25**

### **Tentative Agreement**

IT IS HEREBY AGREED between the City of Birmingham ("the City") and Local 998, Birmingham Clerical Employees Chapter, affiliated with International Union, American Federation of State, County, and Municipal Employees and Council No. 25 ("the Union") that, in tentative settlement of all outstanding issues under negotiation, the parties' bargaining teams agree, and agree to recommend ratification to their respective principals, as follows:

1. The parties agree to a collective bargaining agreement commencing the date this Agreement is ratified by all parties to, and including, June 30, 2023.
2. The parties' new agreement shall be the same as the existing collective bargaining agreement, except as modified herein by this Agreement.
3. Amend Article XVIII, Section L ("Illness Allowance") as follows:

#### **Section L.**

Upon death, normal or disability retirement, or deferred retirement with twenty (20) or more years of service or fifteen (15) years of service and 55 years of age at the time of retirement under the City's retirement plan, an employee shall be entitled to receive a sum equivalent to the following amounts of unused hours accumulated in his illness allowance bank:

0 – <del>480</del> <b>400</b> hours	0%
<del>481</del> <b>401</b> – <del>575</del> <b>480</b> hours	50% for all hours over <del>480</del> <b>400</b> hours
<del>576</del> <b>481</b> - <del>575</del> <b>674</b> hours	60% for all hours over <del>480</del> <b>400</b> hours
<del>672</del> <b>576</b> – <del>671</del> <b>766</b> hours	70% for all hours over <del>480</del> <b>400</b> hours
<del>767</del> <b>672</b> hours and over	80% for all hours over <del>480</del> <b>400</b> hours

4. Amend Article XX, Section A ("Vacations") as follows:

#### **Section A (No change to paragraphs 1-3)**

4. Seniority employees with ten (10) years of service, but less than twenty-five ~~(25-20)~~ years of service prior to January 1<sup>st</sup> of any year, shall receive four (4) weeks (twenty [20] work days) vacation.

5. ~~Effective for vacations to be taken on or after January 1, 1989, s~~ Seniority employees with twenty (20) or more years of service prior to January 1<sup>st</sup> of any year shall receive five (5) weeks (twenty-five [25] work days) vacation.

[No other changes to this Article]

5. Amend Article XXI, Section B as follows:

Section B. – Personal Days

A regular employee who has completed six (6) months of continuous service shall be granted two (2) work days during the calendar year as Personal Leave Days (3 work days effective July 1, 1989) **(4 work days effective upon the date of ratification by both parties)**. [no other changes to this section]

6. Amend Article XXIII, Section C (“Insurance”) as follows:

Section C. – Disability.

1. Maximum weekly sickness and accident benefits for non-duty connected disability including liabilities due to pregnancy will be sixty (60%) percent of average weekly earnings, not to exceed ~~\$570520.00~~ per week beginning on the 31st calendar day of disability and continuing for a maximum period of one year from the date of the sickness or accident, if the employee is otherwise qualified. **The 31 day waiting period shall not apply to the seniority employee's disability related to pregnancy or childbirth.**

2. Maximum weekly sickness and accident benefits for service-connected disability shall not exceed an aggregate figure of seventy (70%) percent of average weekly earnings, but no more than a maximum of ~~\$675.00625.00~~, beginning on the 31st calendar day of disability and continuing for a maximum period of one year from the date of sickness or accident, if the employee is otherwise qualified.

3. Monthly Long Term Disability Benefit including disabilities due to pregnancy provides for an aggregate income of seventy (70%) percent of monthly base pay, provided that for nonduty connected disability the maximum is \$2,000.00 per month, beginning one (1) year from the date of sickness or accident and continuing to the age of 65, if employee is otherwise qualified.

7. Amend Article XXVI, Section A (“Retirement”) as follows:



Employees hired after January 1, 2007 shall not be covered under the Birmingham Employees Retirement System current defined benefit plan. Employees hired after January 1, 2007 shall be covered under the Birmingham 401(a) defined contribution plan as administered by the ICMA (or equivalent). The City and the employee shall make contributions as follows:

		7/1/08	7/1/09	7/1/10
Employer	\$1.00/hr	\$1.10/hr	\$1.20/hr	\$1.30/hr
Employee	\$ .50/hr	\$ .55/hr	\$ .60/hr	\$ .65/hr

For all hours worked on an overtime basis, the contributions shall be made at 1 ½ times the amounts set forth above.

	<del>10/8/16</del>	7/1/17 <del>21</del>	7/1/18 <del>22</del>	7/1/19
Employer	<del>5.0%</del>	<del>6.0</del> 8.25%	<del>7.0</del> 8.5%	8.0%
Employee	<del>2.5%</del>	<del>3.0</del> 3.75%	<del>3.5</del> 4%	3.5%

The employee will always be 100% vested for employee contributions. Employee vesting in employer contributions will be at five (5) years of service.

#### 8. Article XXXIII, Wages.

- Base wage increase of 1.5% for each year of the contract.
- One time, off schedule payments as follows: one payment of \$500 to each member of the bargaining unit; to those members eligible for the supplemental training program, an additional one time payment of \$350 to facilitate implementation of the training program. These off schedule payments shall be made upon ratification by both parties.
- Replace the existing certification table in Article XXXIII, Section C with the attached.

#### 9. Amend the Out of Pocket Maximum deductible and co-insurance amounts listed in Schedule D, as follows. Effective Date of January 1, 2021.

##### a. Deductibles

Individual	From \$600 to \$700	(Combined in and out of network)
Family	From \$1,200 to \$1,400	(Combined in and out of network)

##### b. In-Network Out of Pocket Maximums

Individual	From \$1,100 to \$1,200
Family	From \$2,200 to \$2,400

##### c. Prescriptions

Increase Co-pays from \$25/\$50/\$75 to **\$25/\$60/\$100**  
**Participation in Manufacturer's Assistance Program for Specialty Drugs**

d. Emergency Room Co-Pay

Increase ER Visit Co-Pay from \$100 to **\$200**

10. Revise Schedule B, Article II as follows:

12. Life Insurance Clarification:

A) Life Insurance:

(1.) Life Insurance shall be provided in the amount of \$30,000

(2.) Additional Coverage Life Insurance shall be provided in the following amounts:

<u>All AFSCME employees whose age is:</u>	<u>Amount of Life Insurance:</u>
Less than age 35	\$25,000
Age 35 but less than age 40	\$20,000
Age 40 but less than age 45	\$16,500
Age 45 but less than age 50	\$10,000
Age 50 but less than age 55	\$6,000
Age 55 but less than age 60	\$4,000
Age 60 or more	\$3,500

11. The parties withdraw all other proposals.

12. The Union shall ratify this Tentative Agreement first and shall provide written notice to the City upon ratification.

THE CITY

THE UNION

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

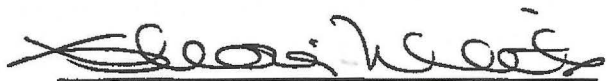
Date: \_\_\_\_\_

Department	Position	Certifications & Training Courses	Hourly Premium
Community Development	<b>Comm. Dev. Clerical:</b> Secretary A Secretary C Office Coord. Comm. Dev. Coord.	Permit Technician (International Code Council)	\$0.50/Hr per certification, up to 3
	<b>Comm. Dev. Technical:</b> Building Inspector Electrical Inspector Plumbing Inspector	Classification-related Inspector Certification (International Code Council)	\$0.50/Hr per Certification for up to 5 Certifications
	<b>Engineering:</b> Engineering Inspector II Senior Engineering Tech	Construction Storm Water Operator (CSWO)	\$0.50/Hr
DPS	<b>Ice Arena:</b> Recreation Coordinator	ServSafe Food Safety	\$0.50/Hr
DPS/Treasury/Police	<b>DPS, Treasury, non-TAC Certified Police Staff:</b> Secretary A, B, and C Clerk / Typist B Senior Clerk / Cashier Parking Enforcement Assts.	Completion of Supplemental Training Program <i>*See details regarding program below</i>	Full Time: \$0.50/Hr  Part Time: \$0.25/Hr
Treasury	<b>Payroll:</b> Payroll Coordinator	Certified Payroll Professional Fundamental Payroll Certification	CPP = \$0.50 FPC = \$0.25
	<b>Treasury:</b>	Michigan Certified Assessing Technician (MCAT) Assigned and designated by Treasurer	\$0.50/Hr
Police	<b>Police:</b> Clerk / Typist B	Terminal Agency Coordinator (TAC) – Assigned and designated by Police Chief	\$0.50/Hr

**Supplemental Training Program:**

- Employees must take a minimum of two approved training programs through Oakland County Training and/or Birmingham Community Education.
- Trainings must be approved and scheduled by the employee's supervisor, and a copy of employee's training program details will be placed in their file.
- Employees must take a minimum of two approved training programs through Oakland County Training and/or Birmingham Community Education per fiscal year (July 1 – June 30) to maintain training premium. Notwithstanding the foregoing, however, for this contract period only, from 7/1/20-6/30/23, employees in the supplemental training program who complete one approved training course by June 30, 2021, shall be eligible for premium pay for their training.

Please let this serve as notice that AFSCME local 998 union members voted on 1-15-2021 to ratify the settlement agreement dated 12-23-2020 for a renewal of the collective bargaining agreement through June 30, 2023.

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

Sherri White, AFSCME Chairperson 1-15-2021

# MEMORANDUM

---

**DATE:** January 20, 2021  
**TO:** City Commission  
**FROM:** Timothy J. Currier  
**SUBJECT:** City Manager's Employment Agreement

---

## INTRODUCTION AND BACKGROUND:

- It was brought to our attention there was terminology used in the City Manager's Employment Agreement prepared by outside counsel that could be misinterpreted. After discussions with the City Manager, it was decided that more appropriate terminology should be utilized so there would be no misunderstanding as to what was discussed and approved.

## LEGAL REVIEW:

- The primary scrivener's error was that the Employment Agreement referred to the City Manager being a participant in the defined compensation pension plan, which could have been construed as the defined benefit pension plan, which he is not eligible to belong to. He can only participate in the defined contribution plan. The references to the defined pension plan were eliminated and corrected throughout the agreement. Additionally, it was noticed that the adjustment for the automobile allowance referred to April of 2006. It should state January of 2021.

## FISCAL IMPACT:

- None

## SUMMARY:

- After discussions with the City Manager, this matter is being brought back to you for purposes of correcting these scrivener's errors, but also for purposes of transparency so the Commission is aware of what the corrections are.

## ATTACHMENTS:

- City Manager's Employment Agreement.

## SUGGESTED RESOLUTION:

- It is recommended that the City Commission approve the corrected Employment Agreement and authorize the Mayor and Clerk to sign on behalf of the City.



**EMPLOYMENT AGREEMENT BETWEEN  
THOMAS M. MARKUS  
AND THE COMMISSION OF THE CITY OF BIRMINGHAM**

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of November, 2020~~2021~~, by and between the **CITY OF BIRMINGHAM**, A Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, MI 48009 ("the City") and Thomas M. Markus, whose address is 425 Bird Street, Birmingham, MI 48009 ("Employee").

**WITNESSETH:**

**WHEREAS**, pursuant to Chapter III of the Charter of the City of Birmingham, the Commission of the City of Birmingham has the responsibility to retain a City Manager to perform certain duties as set forth; and,

**WHEREAS**, the City Commission wishes to appoint Thomas M. Markus as City Manager; and,

**WHEREAS**, the City Commission is desirous of establishing certain conditions and benefits of employment of the Employee.

**NOW, THEREFORE**, the City and the Employee in consideration of the promises and mutual agreements herein, agree to the following:

1. **Duties.** The Employee agrees to perform all of the functions and duties as specified in the City Charter at Chapter 3, Section 8, and to perform whatever legally permissible and proper additional functions and duties which the Commission shall, from time to time, assign to the City Manager. The Employee agrees that all duties and functions shall be performed in a diligent, responsible, and equitable manner in accordance with the City Charter, City Code, and policies and resolutions established by the Commission.

The Commission agrees that it shall establish certain goals and objectives upon which the Employee's performance may be evaluated. In the event the parties agree to renew this Agreement as set forth in Paragraph 3, the Commission will conduct a performance

evaluation prior to the renewal of this Agreement.

2. **Professional Status.** The City acknowledges and agrees that the Employee is being employed in a bonafide, executive, administrative and professional capacity which will undoubtedly require him to spend more than forty (40) hours per week in the performance of his duties and functions. It is recognized that the Employee must devote a great deal of time outside of the normal office hours on business for the City, and to that end the Employee shall be allowed to establish an appropriate work schedule.

3. **Term of Employment.** The term of this Agreement is for two and one-half (2-½) years, or thirty (30) months, and shall terminate on June 30, 2023 unless the Agreement is mutually renewed in writing by the parties, provided, however, that the Employee may terminate upon ninety (90) days' written notice, and the City may terminate upon thirty (30) days' written notice. Notwithstanding any other provisions of this contract, the Employee agrees to serve at the pleasure of the Commission and agrees that this contract may be terminated with or without cause by either party.

The Employee agrees to remain in the exclusive employ of the City until his employment with the City terminates and will neither accept other employment nor become employed by any other employer until the date on which his employment with the City terminates. The term "employed" as used in this Paragraph shall not be construed to include occasional teaching, consulting, or writing performed on Employee's own time except that in no case shall Employee spend more than 10 hours per week in such activities.

4. **Salary.** The City agrees to pay the Employee a salary of One Hundred Sixty Thousand Dollars (\$160,000.00) per year in bi-weekly increments. The City agrees to increase the Employee's annual salary in such amount and at such time as the Commission may find desirable, except that in no event shall the Employee's salary be increased less than the

average of the salary increases for base wages negotiated for that year with the City's bargaining units.

5. **Professional Development.** Employer agrees to pay for the professional dues and subscriptions of the Employee for his participation in national, state, regional, and local associations necessary for his continued professional development and the good of the City. The City further agrees to pay the cost associated with participation in one local service club of the Employee's choosing.

The City further agrees to pay the travel, registration, and subsistence expenses of the Employee for his attendance at meetings or seminars necessary to continue the Employee's professional development or for the City's good, subject to the City's expense reimbursement policy.

6. **Benefits.** The City agrees to provide the Employee all employee benefits provided to City employees in accordance with the published City of Birmingham personnel policy except as modified as follows:

A. Paid Time Off, Illness Allowance, and Holiday Benefits:

- (i) Effective January 1, 2021, the Employee shall receive a one-time bank of fifteen (15) paid days *off*, to be used as the Employee determines. The Employee shall thereafter beginning January 1, 2021 start receiving the proportionate share for each pay period the equivalent of twenty-five (25) days of vacation per year for each year of this Agreement.
- (ii) The City shall offer the Employee participation in an illness allowance program equal to that which is offered to all other City employees.

- (iii) The City shall offer the Employee participation in a holiday benefit program equal to that which is offered to all other City employees.

B. Retirement:

- (i) The City agrees to allow the Employee to participate in the City's defined ~~compensation pension~~contribution retirement plan, with the City and the Employee each making annual contributions in accordance with the plan documents, as they may be amended from time to time. In the event the Employee has not vested in the employee and employer contributions at the end of the Employee's 2-1/2 years of employment, the City shall make an equivalent employer contribution to the ICMA deferred compensation ~~pension~~ plan (see Paragraph 5.B(ii)), on behalf of the Employee.
- (ii) The City shall provide an annual contribution of Ten Thousand Dollars (\$10,000.00) into the deferred compensation plan established and maintained by the International City Management Association. The accumulated deferred compensation will be paid to the Employee upon the termination of the Employee's employment with the City.

C. Insurance:

- (i) The City and the Employee agree that the Employee is not requesting participation in and will not receive health insurance coverage through the City during the term of this Agreement, provided, however, that nothing in this Agreement shall alter or affect the Employee's participation in the City's Retiree Plan 712 during the term of this Agreement or after its termination.

- (ii) The City agrees to put into force and make required premium payments for the Employee's insurance policies for life, accident, sickness, disability, income benefits, and optical and dental group insurance covering the Employee and his dependents.
- (iii) The City agrees to pay the required premiums on a term insurance policy including double indemnity for accidental death and dismemberment in an amount equal to three (3) times the Employee's annual salary, with the beneficiary named by the Employee to receive the benefits paid. The Employee agrees to contribute 20% of the annual premium for such insurance policy which will be paid proportionately through the biweekly payroll deduction.
- (iv) The Employee agrees to submit once every eighteen (18) months to a complete physical examination by a qualified physician whom the City selects, the cost of which the City shall pay. The City will receive a summary report of the physical examination determining the Employee's fitness to complete the physical requirements of the City Manager position. The City will treat this information with complete confidentiality in accordance with applicable state and federal laws.

7. **Cell Phone/Computer:** The City shall provide the Employee with a cell phone, computer devices, and other technology-based equipment needed to perform his City Manager duties for his use during his employment with the City. It is expressly understood and agreed that the cell phone, computer devices, and other technology-based equipment are the property of the City and shall remain with the City upon the termination of the Employee's employment with the City.

8. **Automobile.** The City shall provide the Employee an automobile allowance of Five Hundred Dollars (\$500.00) per month for his business and personal use during his employment with the City and the City shall pay automobile insurance on the Employee's vehicle. This automobile allowance shall be adjusted by the yearly percentage change of the Detroit area CPIU as published by the Department of Labor for ~~April of 2006~~January of 2021 and ~~April~~January of each contract year thereafter.

9. **Relocation Expenses.** The City shall reimburse the Employee up to Fifteen Thousand Dollars (\$15,000.00) in relocation expenses, upon submittal by the Employee of duly executed expense statements, receipts, or personal affidavits to the City.

10. **Other Expenses.** The Employee is authorized to incur non-personal and job related expenses on behalf of the City. The Employee shall be reimbursed for such expenses upon submitting duly executed expense or petty cash vouchers, receipts, statements or personal affidavits to the City.

11. **Financial Interests.** The Employee understands that any financial investment or equity ownership in any business which performs services or supplies goods to the City may create a legal or ethical conflict of interest. Accordingly, the Employee agrees not to acquire any beneficial ownership in any business or organization which supplies goods or services to the City without first disclosing such acquisition to the Commission.

**12. Termination and Severance Pay.**

- A. In the event that the Employee, after declaring that he is ready, willing, and able to perform the duties of the City Manager, is separated from his employment with the City for any of the reasons listed in Paragraph 12.B, then the City shall pay to the Employee Severance Pay for the lesser of a period of twelve (12) months or the remainder of the term of this Agreement.

As used herein, Severance Pay shall consist of all of the following:

- An amount equal to the Employee's base pay at the time of separation, less reductions and withholdings required by law, paid in biweekly installments;
- Continuation of the employer and employee contributions to the defined contribution ~~pension~~retirement plan;
- Employer contribution to the deferred compensation plan **(ICMA)**;
- Continuation of the insurance policies referenced in Paragraph 6.c.ii; and
- Payment of all accrued vacation time and any other termination benefits available to other City employees at the time of separation, less reductions and withholdings required by law.

B. The Severance Pay described in Paragraph 12.A shall be paid to the Employee if he is separated from employment for any of the following reasons:

- (i) If, at a public meeting, a majority of the City Commission votes, for any reason other than the Employee's conviction of a felony or misdemeanor involving malfeasance or dishonesty, to terminate the Employee's employment with the City with or without cause.
- (ii) If the State of Michigan or the City takes any action that would eliminate the position of City Manager, or substantially alter or change the duties or authority of the City Manager position.
- (iii) If the City reduces the compensation, annual base salary, or other financial benefits accruing to the Employee hereunder, unless the

percentage reduction is equal to or less than the percentage reduction of all management employees of the City.

(iv) If the City offers to accept the employee's resignation in lieu of termination of his employment and, in acceptance of that offer, the Employee resigns.

(v) If the City suspends the Employee with or without pay for a period of three (3) or more business days in any calendar year.

(vi) If the City breaches any provision of this Employment agreement and fails, within ten (10) days after receiving written notice thereof from the Employee, to remedy any such breach.

C. In the event that the Employee voluntarily retires or resigns his position as City Manager or leaves the City's employment for reasons other than reasons listed in Paragraph 12.B, then the Employee shall not be entitled to the Severance Pay described in Paragraph 12.A.

D. Unless the parties agree otherwise, the Employee agrees to give written notice to the City no less than ninety (90) days in advance of any voluntary retirement or voluntary resignation of his position.

13. **Commencement Date.** This contract shall commence on January 1, 2021.

14. **Indemnification.** Beyond that required under Federal, State or Local law, the City shall defend, save harmless, and indemnify the Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of the Employee's employment or duties, unless the act or omission involved willful or wanton misconduct. In the defense of such claims, the Employee may request and the City shall not unreasonably refuse to provide independent legal representation at the City's expense and the City may



not unreasonably withhold approval. Legal representation, provided by the City for the Employee, shall extend until a final determination of legal action including any appeals brought by either party. The City shall indemnify the Employee against any and all losses, damages, judgements, interest, settlements, fines, court costs, and other reasonable costs and expenses of legal proceedings including attorneys' fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties unless the act or omission involved willful or wanton misconduct. Any settlement of any claim must be made with prior approval of the City, which approval shall not be unreasonably withheld, in order for indemnification as provided in this Section, to be available. The Employee recognizes that the City shall have the right to compromise, adjust, and settle claims against the Employee for which the Employee is entitled to indemnification. Further, the City agrees to pay all reasonable litigation expenses of the Employee throughout the pendency of any litigation to which the Employee is a party, witness, or adviser to the City. Such expense payments shall continue beyond Employee's service to the City as long as litigation is pending.

15. **General Provisions.** The text herein shall constitute the entire agreement between the parties.

No modification of this agreement shall be valid unless such modification is in writing and signed by the City and the Employee. No waiver of any provision of this Agreement shall be valid unless such modification is in writing and signed by the person or party against whom charged.

This Agreement shall be binding upon and inure to the benefit of the City and the Employee and their successors and assigns; provided, however, that neither party may

assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other party.

If any provision, or any portion thereof, contained in this agreement shall be held unconstitutional, invalid or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

16. **Governing Law.** This contract shall be governed by the laws of the State of Michigan, County of Oakland.

**IN WITNESS WHEREOF**, the City of Birmingham has caused this agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this agreement, both in duplicate, the day and year first above written.

WITNESSED:

\_\_\_\_\_

CITY OF BIRMINGHAM, A Michigan  
Municipal Corporation

By: \_\_\_\_\_  
Pierre Boutros, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Alexandria D. Bingham, Clerk

WITNESSED:

\_\_\_\_\_

By: \_\_\_\_\_  
Thomas M. Markus

**EMPLOYMENT AGREEMENT BETWEEN  
THOMAS M. MARKUS  
AND THE COMMISSION OF THE CITY OF BIRMINGHAM**

**THIS AGREEMENT**, made and entered into this            day of \_\_\_\_\_, 2021, by and between the **CITY OF BIRMINGHAM**, A Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, MI 48009 ("the City") and Thomas M. Markus, whose address is 425 Bird Street, Birmingham, MI 48009 ("Employee").

**WITNESSETH:**

**WHEREAS**, pursuant to Chapter III of the Charter of the City of Birmingham, the Commission of the City of Birmingham has the responsibility to retain a City Manager to perform certain duties as set forth; and,

**WHEREAS**, the City Commission wishes to appoint Thomas M. Markus as City Manager; and,

**WHEREAS**, the City Commission is desirous of establishing certain conditions and benefits of employment of the Employee.

**NOW, THEREFORE**, the City and the Employee in consideration of the promises and mutual agreements herein, agree to the following:

1.     **Duties.** The Employee agrees to perform all of the functions and duties as specified in the City Charter at Chapter 3, Section 8, and to perform whatever legally permissible and proper additional functions and duties which the Commission shall, from time to time, assign to the City Manager. The Employee agrees that all duties and functions shall be performed in a diligent, responsible, and equitable manner in accordance with the City Charter, City Code, and policies and resolutions established by the Commission.

The Commission agrees that it shall establish certain goals and objectives upon which the Employee's performance may be evaluated. In the event the parties agree to renew this Agreement as set forth in Paragraph 3, the Commission will conduct a performance

evaluation prior to the renewal of this Agreement.

2. **Professional Status.** The City acknowledges and agrees that the Employee is being employed in a bonafide, executive, administrative and professional capacity which will undoubtedly require him to spend more than forty (40) hours per week in the performance of his duties and functions. It is recognized that the Employee must devote a great deal of time outside of the normal office hours on business for the City, and to that end the Employee shall be allowed to establish an appropriate work schedule.

3. **Term of Employment.** The term of this Agreement is for two and one-half (2-½) years, or thirty (30) months, and shall terminate on June 30, 2023 unless the Agreement is mutually renewed in writing by the parties, provided, however, that the Employee may terminate upon ninety (90) days' written notice, and the City may terminate upon thirty (30) days' written notice. Notwithstanding any other provisions of this contract, the Employee agrees to serve at the pleasure of the Commission and agrees that this contract may be terminated with or without cause by either party.

The Employee agrees to remain in the exclusive employ of the City until his employment with the City terminates and will neither accept other employment nor become employed by any other employer until the date on which his employment with the City terminates. The term "employed" as used in this Paragraph shall not be construed to include occasional teaching, consulting, or writing performed on Employee's own time except that in no case shall Employee spend more than 10 hours per week in such activities.

4. **Salary.** The City agrees to pay the Employee a salary of One Hundred Sixty Thousand Dollars (\$160,000.00) per year in bi-weekly increments. The City agrees to increase the Employee's annual salary in such amount and at such time as the Commission may find desirable, except that in no event shall the Employee's salary be increased less than the

average of the salary increases for base wages negotiated for that year with the City's bargaining units.

5. **Professional Development.** Employer agrees to pay for the professional dues and subscriptions of the Employee for his participation in national, state, regional, and local associations necessary for his continued professional development and the good of the City. The City further agrees to pay the cost associated with participation in one local service club of the Employee's choosing.

The City further agrees to pay the travel, registration, and subsistence expenses of the Employee for his attendance at meetings or seminars necessary to continue the Employee's professional development or for the City's good, subject to the City's expense reimbursement policy.

6. **Benefits.** The City agrees to provide the Employee all employee benefits provided to City employees in accordance with the published City of Birmingham personnel policy except as modified as follows:

A. Paid Time Off, Illness Allowance, and Holiday Benefits:

- (i) Effective January 1, 2021, the Employee shall receive a one-time bank of fifteen (15) paid days *off*, to be used as the Employee determines. The Employee shall thereafter beginning January 1, 2021 start receiving the proportionate share for each pay period the equivalent of twenty-five (25) days of vacation per year for each year of this Agreement.
- (ii) The City shall offer the Employee participation in an illness allowance program equal to that which is offered to all other City employees.

- (iii) The City shall offer the Employee participation in a holiday benefit program equal to that which is offered to all other City employees.

B. Retirement:

- (i) The City agrees to allow the Employee to participate in the City's defined contribution retirement plan, with the City and the Employee each making annual contributions in accordance with the plan documents, as they may be amended from time to time. In the event the Employee has not vested in the employee and employer contributions at the end of the Employee's 2-1/2 years of employment, the City shall make an equivalent employer contribution to the ICMA deferred compensation plan (see Paragraph 5.B(ii)), on behalf of the Employee.
- (ii) The City shall provide an annual contribution of Ten Thousand Dollars (\$10,000.00) into the deferred compensation plan established and maintained by the International City Management Association. The accumulated deferred compensation will be paid to the Employee upon the termination of the Employee's employment with the City.

C. Insurance:

- (i) The City and the Employee agree that the Employee is not requesting participation in and will not receive health insurance coverage through the City during the term of this Agreement, provided, however, that nothing in this Agreement shall alter or affect the Employee's participation in the City's Retiree Plan 712 during the term of this Agreement or after its termination.

- (ii) The City agrees to put into force and make required premium payments for the Employee's insurance policies for life, accident, sickness, disability, income benefits, and optical and dental group insurance covering the Employee and his dependents.
- (iii) The City agrees to pay the required premiums on a term insurance policy including double indemnity for accidental death and dismemberment in an amount equal to three (3) times the Employee's annual salary, with the beneficiary named by the Employee to receive the benefits paid. The Employee agrees to contribute 20% of the annual premium for such insurance policy which will be paid proportionately through the biweekly payroll deduction.
- (iv) The Employee agrees to submit once every eighteen (18) months to a complete physical examination by a qualified physician whom the City selects, the cost of which the City shall pay. The City will receive a summary report of the physical examination determining the Employee's fitness to complete the physical requirements of the City Manager position. The City will treat this information with complete confidentiality in accordance with applicable state and federal laws.

7. **Cell Phone/Computer:** The City shall provide the Employee with a cell phone, computer devices, and other technology-based equipment needed to perform his City Manager duties for his use during his employment with the City. It is expressly understood and agreed that the cell phone, computer devices, and other technology-based equipment are the property of the City and shall remain with the City upon the termination of the Employee's employment with the City.

8. **Automobile.** The City shall provide the Employee an automobile allowance of Five Hundred Dollars (\$500.00) per month for his business and personal use during his employment with the City and the City shall pay automobile insurance on the Employee's vehicle. This automobile allowance shall be adjusted by the yearly percentage change of the Detroit area CPIU as published by the Department of Labor for January of 2021 and January of each contract year thereafter.

9. **Relocation Expenses.** The City shall reimburse the Employee up to Fifteen Thousand Dollars (\$15,000.00) in relocation expenses, upon submittal by the Employee of duly executed expense statements, receipts, or personal affidavits to the City.

10. **Other Expenses.** The Employee is authorized to incur non-personal and job related expenses on behalf of the City. The Employee shall be reimbursed for such expenses upon submitting duly executed expense or petty cash vouchers, receipts, statements or personal affidavits to the City.

11. **Financial Interests.** The Employee understands that any financial investment or equity ownership in any business which performs services or supplies goods to the City may create a legal or ethical conflict of interest. Accordingly, the Employee agrees not to acquire any beneficial ownership in any business or organization which supplies goods or services to the City without first disclosing such acquisition to the Commission.

**12. Termination and Severance Pay.**

- A. In the event that the Employee, after declaring that he is ready, willing, and able to perform the duties of the City Manager, is separated from his employment with the City for any of the reasons listed in Paragraph 12.B, then the City shall pay to the Employee Severance Pay for the lesser of a period of twelve (12) months or the remainder of the term of this Agreement.



As used herein, Severance Pay shall consist of all of the following:

- An amount equal to the Employee's base pay at the time of separation, less reductions and withholdings required by law, paid in biweekly installments;
- Continuation of the employer and employee contributions to the defined contribution retirement plan;
- Employer contribution to the deferred compensation plan (**ICMA**).
- Continuation of the insurance policies referenced in Paragraph 6.c.ii; and
- Payment of all accrued vacation time and any other termination benefits available to other City employees at the time of separation, less reductions and withholdings required by law.

B. The Severance Pay described in Paragraph 12.A shall be paid to the Employee if he is separated from employment for any of the following reasons:

- (i) If, at a public meeting, a majority of the City Commission votes, for any reason other than the Employee's conviction of a felony or misdemeanor involving malfeasance or dishonesty, to terminate the Employee's employment with the City with or without cause.
- (ii) If the State of Michigan or the City takes any action that would eliminate the position of City Manager, or substantially alter or change the duties or authority of the City Manager position.
- (iii) If the City reduces the compensation, annual base salary, or other financial benefits accruing to the Employee hereunder, unless the

percentage reduction is equal to or less than the percentage reduction of all management employees of the City.

(iv) If the City offers to accept the employee's resignation in lieu of termination of his employment and, in acceptance of that offer, the Employee resigns.

(v) If the City suspends the Employee with or without pay for a period of three (3) or more business days in any calendar year.

(vi) If the City breaches any provision of this Employment agreement and fails, within ten (10) days after receiving written notice thereof from the Employee, to remedy any such breach.

C. In the event that the Employee voluntarily retires or resigns his position as City Manager or leaves the City's employment for reasons other than reasons listed in Paragraph 12.B, then the Employee shall not be entitled to the Severance Pay described in Paragraph 12.A.

D. Unless the parties agree otherwise, the Employee agrees to give written notice to the City no less than ninety (90) days in advance of any voluntary retirement or voluntary resignation of his position.

13. **Commencement Date.** This contract shall commence on January 1, 2021.

14. **Indemnification.** Beyond that required under Federal, State or Local law, the City shall defend, save harmless, and indemnify the Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of the Employee's employment or duties, unless the act or omission involved willful or wanton misconduct. In the defense of such claims, the Employee may request and the City shall not unreasonably refuse to provide independent legal representation at the City's expense and the City may

not unreasonably withhold approval. Legal representation, provided by the City for the Employee, shall extend until a final determination of legal action including any appeals brought by either party. The City shall indemnify the Employee against any and all losses, damages, judgements, interest, settlements, fines, court costs, and other reasonable costs and expenses of legal proceedings including attorneys' fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties unless the act or omission involved willful or wanton misconduct. Any settlement of any claim must be made with prior approval of the City, which approval shall not be unreasonably withheld, in order for indemnification as provided in this Section, to be available. The Employee recognizes that the City shall have the right to compromise, adjust, and settle claims against the Employee for which the Employee is entitled to indemnification. Further, the City agrees to pay all reasonable litigation expenses of the Employee throughout the pendency of any litigation to which the Employee is a party, witness, or adviser to the City. Such expense payments shall continue beyond Employee's service to the City as long as litigation is pending.

15. **General Provisions.** The text herein shall constitute the entire agreement between the parties.

No modification of this agreement shall be valid unless such modification is in writing and signed by the City and the Employee. No waiver of any provision of this Agreement shall be valid unless such modification is in writing and signed by the person or party against whom charged.

This Agreement shall be binding upon and inure to the benefit of the City and the Employee and their successors and assigns; provided, however, that neither party may

assign or delegate any of its rights or obligations hereunder without first obtaining the written consent of the other party.

If any provision, or any portion thereof, contained in this agreement shall be held unconstitutional, invalid or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

16. **Governing Law.** This contract shall be governed by the laws of the State of Michigan, County of Oakland.

**IN WITNESS WHEREOF**, the City of Birmingham has caused this agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this agreement, both in duplicate, the day and year first above written.

WITNESSED:

\_\_\_\_\_

CITY OF BIRMINGHAM, A Michigan  
Municipal Corporation

By: \_\_\_\_\_  
Pierre Boutros, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Alexandria D. Bingham, Clerk

WITNESSED:

\_\_\_\_\_

By: \_\_\_\_\_  
Thomas M. Markus

**DATE:** January 15, 2021

**TO:** Tom Markus, City Manager

**FROM:** Alexandria Bingham, City Clerk

**SUBJECT:** 2021 Celebrate Birmingham

---

**INTRODUCTION:**

The city's annual Celebrate Birmingham Hometown Parade is a beloved tradition that regularly occurs in May. The celebration serves in part to recognize residents who give their time and talents as members of city boards and commissions. Last year the City Clerk's office pondered rescheduling the event but with the vigorous 2020 election season and limitations on public gatherings there was no opportunity. In light of the current statistics and progression of the COVID-19 pandemic the City Clerk's office recommends canceling the in-person gathering components of the celebration but still wishes to show gratitude for the city's volunteers and find an alternative way to celebrate Birmingham.

**BACKGROUND:**

For more than 40 years, the City of Birmingham has recognized its dedicated board and commission members annually by inviting them to walk or ride in the Celebrate Birmingham Hometown Parade, typically held the Sunday before Memorial Day weekend, and with a "Government Day" reception and small gift. Government Day is typically a week before the parade. The City Clerk's Office would like to celebrate our board members in these safe ways:

- Create an appreciation video that includes each board/commission's accomplishments and photos of members with a scheduled release date of May 16, 2021, to be coordinated with Communications Director Marianne Gamboa.
- Mail out thank you letters and a *token of appreciation* to all board members currently serving and members that recently resigned or did not renew their positions since the 2019 Birmingham Celebration.

**LEGAL REVIEW:**

- None.

**FISCAL IMPACT:**

The City Clerk's office regularly budgets \$9,500 per fiscal year for the celebration. Due to the economic stress in the past year the Clerk's office will not solicit for donations as it typically would under *normal* circumstances. The City Clerk's office will not exceed the Celebrate Birmingham budget for 2021.



#### SUMMARY

The City Commission is being asked to approve the creation of a virtual recognition slideshow to be released on May 16, 2021 and the mailing of a thank you letter and *token of appreciation* to the members of the city's various boards and commissions.

If approved the Clerk's office plans to communicate the alternative celebration plans through social media, in the announcements at City Commission meetings, on the City's website and in the City's various print and digital newsletters.

#### ATTACHMENTS:

- None.

#### SUGGESTED RESOLUTION:

To approve a request from the Birmingham City Clerk's Office to create a virtual method of celebration and recognition to take place of the traditional Celebrate Birmingham Parade and Party for 2021 and to direct the City Clerk's office to create and distribute of a video, thank you letters and *token of appreciation* to all board and commission members on May 16, 2021, further pursuant to any minor modifications that may be deemed necessary by administrative staff.

**DATE:** January 18, 2021

**TO:** Tom Markus, City Manager

**FROM:** Alexandria Bingham, City Clerk

**SUBJECT:** Workshops for the City Commission

---

**INTRODUCTION:**

The City Commission has expressed an interest and need to take the time to have deeper discussion and learn more about certain topics. Often a regular City Commission meeting does not provide enough time to review all the details and investigate all the possible concerns on a topic. Reserving time for workshops will allow the City Commission to gain extra training and insight on important issues that can help with future decision making.

**SUGGESTED TENTATIVE SCHEDULE:**

*\*The proposed schedule below is tentative and can evolve with the City Commission's needs and the time required by staff to prepare resources.*

City Manager Tom Markus suggested that for scheduling purposes it would be best to schedule workshops 1.5 hours before a regularly scheduled City Commission Meeting. Workshops will start promptly at 6:00 P.M. Workshops will have a separate notices and packets but will be distributed on a similar schedule as regular meeting notices and packets.

Date	Topic
March 8, 2021	Future and Funding of the Ice Arena
April 12, 2021	2024 Plan
May 10, 2021	Parking Assessment District – Deep Dive
June 14, 2021	Short Term Rentals
July 12, 2021	Commission Standards for Online Platform & Social Media Conduct

**LEGAL REVIEW:**

- None.

**FISCAL IMPACT:**

Fiscal impact is unknown at this time, it is possible that some of the sessions may require fees for trainers and facilitators on special topics.

**SUGGESTED RESOLUTION:**

To direct the City Manager and City Clerk to work with staff to prepare for the suggested workshops

and

to direct the City Clerk to continue to maintain a list of desired workshops by the Commission

and

to direct the City Clerk to coordinate with the Commission, City Manager and City Staff to schedule and notice future workshops as needed.



## MEMORANDUM

Office of the City Manager

**DATE:** January 20, 2021

**TO:** City Commission

**FROM:** Tom Markus, City Manager

**SUBJECT:** Request for Closed Session to discuss:  
**Attorney Client Privilege Communication (Section 8(h)) &  
Pending Litigation (Section 8(e))**

---

It is requested that the city commission meet in closed session to receive and discuss two items:

1. Discuss a written Attorney Client Written Privilege Communication pursuant to Section 15.268(h) of the Open Meetings Act.
2. Discuss pending litigation regarding Troyan v City of Birmingham and Delpiombo v City of Birmingham pursuant to Section 15.268(e) of the Open Meetings Act.

**SUGGESTED RESOLUTION:**

To meet in closed session to discuss a written Attorney Client Privilege Communication pursuant to Section 15.3268(h) of the Open Meetings Act & to discuss pending litigation regarding Troyan v City of Birmingham and Delpiombo v City of Birmingham pursuant to Section 15.268(e) of the Open Meetings Act.

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



Alex Bingham &lt;abingham@bhamgov.org&gt;

---

## Communication to City Commission

---

David Bloom <davembloom@yahoo.com>  
To: Alex Bingham <abingham@bhamgov.org>

Sun, Jan 17, 2021 at 2:13 PM

Dear City Clerk Bingham,

Would you please forward this communication to the commissioners and city manager for inclusion in the next packet?

Dear Commissioners,

The forwarded note below from the Chair of the Oakland County is being sent to you with concern.

In it the new chair states her plans to begin supporting municipal candidates.

Birmingham has always been a non partisan community, at least as far as I am aware. It would be nice to keep it that way. As everyone knows there is enough contentiousness in our city already without adding a toxic mix of more money and a political party free for all making it even more difficult to manage and guide our community forward. We need to be able to focus our energies and efforts on local governance and not be distracted by an outside agenda of controlling the state legislature.

I ask that you please discuss this communication and consider issuing a public statement that there is no place for partisan party politics in our town and that it is completely unwelcome.

Thanks,

David Bloom  
Birmingham resident

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Sunday, January 17, 2021, 10:45 AM, Jody LaMacchia <chair@ocdp.org> wrote:



Hi David --

For those of you who don't know me, my name is Jody LaMacchia and I'm the newly elected Chair of the Oakland County Democratic Party. My term started earlier this month and I'd like to tell you about myself and our plans for the OCDP.

9A

For the past 4 years I served as the Chair of the North Oakland Democratic Club. North Oakland is traditionally a challenging area for Democrats. I should know, this past cycle I ran for State Representative in one of most conservative districts in the county. In spite of the challenging geography, I'm proud that under my leadership we doubled the membership of the NODC, started a political action committee, made real investments into local candidates and I earned more votes than any Democrat running in my district ever.

**I'm looking forward to building on the approach and success we had in North Oakland to elevate the Oakland County Democratic Party into the premiere County Democratic organization in the country.**

Over the next two years we have a lot of work ahead of us. (1) Supporting local candidates running for key 2021 municipal offices in places like Novi, Pontiac, and Farmington Hills. (2) Investing in local Democratic Clubs to build the infrastructure needed for long term community organizing. (3) Prepare for 2022 where Oakland County will be the lynchpin to re-electing Governor Whitmer AND taking control of the Michigan Legislature.

**I'm so fired up for the work ahead, but we can't do it without you! I'm asking you to make an early investment in the OCDP and help us with this critical work ahead. [Click here to chip in today!](#)**

I'm looking forward to communicating with you regularly about our goals and how, working together, we can secure a more just, equitable, and prosperous county and state by electing more Democrats from Oakland County.

Best,

Jody LaMacchia  
Chair, Oakland County Democratic Party

**DONATE**

Connect With Us:

Contact Info:



Facebook

[staff@ocdp.org](mailto:staff@ocdp.org)

Twitter

Oakland County Democratic Party  
555 Horace Brown Drive, Suite 202  
Madison Heights, MI 48071  
United States

If you believe you received this message in error or wish to no longer receive email from us, please [unsubscribe](#).



January 8, 2021

Ms. Cherilynn Mynsberge, Clerk  
City of Birmingham  
151 Martin St.  
Birmingham, MI 48012-3001

Dear Ms. Mynsberge:

Comcast is continuing its investment in the Bloomfield Hills area with the opening of a new Xfinity Store at 1991 S. Telegraph rd., Bloomfield Hills, MI 48302 on February 11, 2021.

The facility will serve Comcast customers in and around the Bloomfield Hills area. The new Xfinity Stores are much larger and more experiential than traditional Comcast Service Centers. Staff will be available to demonstrate each Comcast product in an interactive way, answer customer questions, help sign up for service, pay bills and replace equipment.

Other features of this new Xfinity Store include:

- Free in-store WiFi
- Mobile phones and service
- Connected Home simulation
- Multiple large screen TVs
- Multiple customer experience and education areas

Comcast customers will have an opportunity to explore, learn about and interact directly with the latest XFINITY products and services, including the X1 Entertainment Operating System®. Visitors can explore X1, the simplest, fastest and most complete way to access all of their entertainment on all of their screens.

In addition, Comcast customers can take advantage of the speed and convenience of paying their bills using express payment kiosks. Customers also will spend less time in line, because the store utilizes a queue system that gives them the freedom to roam the store and learn more about the latest XFINITY products while waiting for service.

The new facility will operate expanded hours, Monday through Saturday from 9 a.m. until 7 p.m. and 12 p.m. to 5 p.m. on Sunday.

It is our goal to continue to position ourselves to most effectively operate in a competitive environment and provide our customers with the greatest value for services. Should you have any questions, please contact me at 734-359-2308.

Sincerely,

Kyle V. Mazurek  
Manager of External Affairs  
Comcast, Heartland Region  
41112 Concept Drive  
Plymouth, MI 48170

**INFORMATION ONLY**