

BIRMINGHAM CITY COMMISSION AGENDA

May 9, 2022

MUNICIPAL BUILDING, 151 MARTIN

7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Therese Longe, 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

- COVID-19 cases locally are the highest they have been since the beginning of the pandemic. Michigan and Oakland County continue to be at a high level of community transmission. As a result, the CDC recommends vaccinated and unvaccinated individuals wear a facemask indoors while in public. The City requires masks in City Hall for all employees, board and commission members, and the public. KN-95 respirators will be provided to everyone attending public meetings.
- DPS Open House is on Saturday, May 14 10 am – 2 pm. Location is at 851 S. Eton Public Services Facility. Come join us for a day of family fun, meet City staff, view equipment displays, find informational and educational exhibits. Enjoy hot dogs and refreshments!
- Join us for the 2022 Celebrate Birmingham Parade and Party in Shain Park on Sunday, May 15. The Parade will begin at 1pm on N. Old Woodward near Booth Park and end in Shain Park with a celebration featuring entertainment and family activities. Celebration in Shain Park ends at 4 pm.
- The Baldwin Public Library will be holding a public open house on Sunday, May 22 from 2:00 to 4:00 p.m., with remarks to be held at 2:30 p.m. The open house will celebrate the grand reopening of the expanded Youth Room and second floor renovations, honor Doug Koschik's retirement, dedicate Jim Miller-Melberg's Michigan Spring Statue, and commemorate Martha Baldwin's induction into the Michigan Women's Hall of Fame.
- Proclamation Supporting Participation in United Way for Southeastern Michigan's 21 Day Equity Challenge
- Proclamation Declaring the First Friday in June to be National Gun Violence Awareness Day

APPOINTMENTS

- A. Advisory Parking Committee
1. Jim Arpin

To appoint _____ to the Advisory Parking Committee as a regular member who is a resident to serve the remainder of a three-year term to expire September 4, 2024.

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 to approve the City Commission and Planning Board joint meeting minutes of April 18, 2022.
- B. Resolution to approve the City Commission meeting minutes of April 25, 2022.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated April 27, 2022, in the amount of \$1,049,582.18.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated May 4, 2022, in the amount of \$ 214,454.81.
- E. Resolution to approve an extension of the public services and minor home repair contracts with NEXT for the purpose of expending remaining program year 2018-2019 and 2020-2021 Community Development Block Grant funds for the Yard Services, Senior Outreach Services, and Minor Home Repair Services administered by NEXT through December 31, 2022; and further, to authorize the Mayor and the City Clerk to sign the amendments on behalf of the City.
- F. Resolution to approve the recommendation to add Juneteenth to the City of Birmingham's designated legal holidays pursuant to Section 2-26 of the Birmingham City Code.
- G. Resolution to approve the addendum to the Greenwood Management Services Agreement with provider Creative Collaborations, LLC, to act on behalf of the city as the service provider to the Historic Greenwood Cemetery for a term of one year, with annual renewals until either party exercises the termination provisions as stated in the contract. The addendum to the annual contract is set for an amount not to exceed \$45,600.00, which will be paid from account #101-215.000-811.0000.
- H. Resolution to authorize the IT department to renew the Cortex XDR antivirus endpoint software license from AmeriNet. The purchase price not to exceed \$9,530.56. Funds are available in the IT Software Fund Account: 636-228.000-742.0000.
- I. Resolution to approve the request for reimbursement for the maximum allotment of \$2,705.23 for eligible mosquito control activity under the Oakland County's West Nile Virus Fund Program.
- J. Resolution to approve the City Manager's authorization for the emergency expenditure related to the repair of vehicle #160 by Jack Doheny Company, the sole supplier of the

repair, for \$7,893.52 to be charged to the Auto Equipment account #641-441.006-933.0200, pursuant to Sec. 2-286 of the City Code.

- K. Resolution to approve the DTE Master Street Lighting Agreement for the removal of existing lighting and installation of the planned new lighting for the Phase 3 S. Old Woodward work. In addition, to authorize the Mayor to sign the agreement on behalf of the City. Funding for this project has been budgeted in account #401-901.010-981.0100.
- L. Resolution to set a public hearing date of June 13, 2022 to consider the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 243 E. Merrill – La Strada – to allow for the expansion of the existing bistro and the associated interior renovations and the addition of a new outdoor dining platform in the Merrill St. right-of-way.
- M. Resolution to set a public hearing date of June 13, 2022 to consider the request to rezone Parcel # 08-19-127-027 from R8 Attached Single Family Residential to R2 Single Family Residential.

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

- A. Public Hearing: 2100 E. Maple – Whole Foods/Maple Road Taproom – Special Land Use Permit
 - 1. Due to observed compliance with the provisions of their Special Land Use Permit, no action is required.
- B. Public Hearing – 220 Merrill – 220 Restaurant – Special Land Use Permit Amendment, Final Site Plan and Design Review
 - 1. Resolution to APPROVE the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 220 Merrill – 220 Restaurant – to allow the addition of a new outdoor dining platform in the Merrill St. right-of-way with the following conditions:
 - I. The applicant must remove all privately owned obstructions such as the existing planter boxes, as well as the hanging planters proposed on the new fence on the east side of the existing patio from the public right-of-way or relocate them to private property;
 - II. The applicant must install city standard tree grates over both tree boxes that exist along the right-of-way adjacent to the property; and
 - III. The applicant must submit revised site/design plans addressing the conditions of approval from the Historic District Commission for review and approval by the Planning Director.

OR

Make a motion adopting a resolution to DENY the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 220 Merrill – 220 Restaurant – to deny the addition of a new outdoor dining platform in the Merrill St. right-of-way with the conditions noted above in Staff Notes.

- C. Request to include 469-479 S. Old Woodward into the parking system.
- D. Resolution in Opposition to GLWA Member Communities Paying for the City of Highland Park's GLWA Debt, and to direct the City Manager to forward copies of the approved resolution to Governor Whitmer, our State legislators and to the Great Lakes Water Authority.
- E. Resolution to amend the City of Birmingham Charter, Chapter IV. – REGISTRATIONS, NOMINATIONS AND ELECTIONS as provided, and to direct the Mayor's signature for approval and the Clerk to proceed as dictated by state law.
- F. Resolution to amend the City of Birmingham Charter, Chapter VI. – CONTRACTS, Sections 1., 2., and 3. as provided, and to direct the Mayor's signature for approval and the Clerk to proceed as dictated by state law.
- G. Resolution directing the current City Manager to continue to train, educate and acclimate the current Assistant City Manager in order to be able to assume the duties of the City Manager. Further, the City Commission directs the City Manager to take the necessary actions to assist the City Commission in order to effectuate option ___ in the City Manager selection process.
- H. Resolution to amend the City Manager's Employment Agreement increasing the annual salary.
- I. 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.
- J. Commission discussion on items from prior meeting
 - 1. BBCC Mental Health – More Time to Discuss – Commissioner Baller

VIII. REMOVED FROM CONSENT AGENDA
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IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of intention to appoint to the Historic District Study Committee
 - 2. Notice of intention to appoint to the Board of Ethics

3. Notice of intention to appoint to the Museum Board
4. Notice of intention to appoint Hearing Officer
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff Report
 1. Update Concerning OMA
 2. 3rd Quarter Budget Report
 3. 3rd Quarter Investment Report

INFORMATION ONLY

XI. ADJOURN

Should you wish to participate in this meeting, you are invited to attend the meeting in person or virtually through ZOOM: <https://zoom.us/j/655079760> **Meeting ID: 655 079 760**

You may also present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

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

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



**Proclamation Supporting Participation in
United Way for Southeastern Michigan's 21 Day Equity Challenge
May 2022**

WHEREAS, the City of Birmingham stands firmly against racism and discrimination in all forms; and

WHEREAS, progress against discrimination requires that we openly talk about, learn about, and confront racism, sexism and inequity as a community; and

WHEREAS, there is a long history of systemic inequities within our region, which has adversely impacted the economic, health, educational, and housing outcomes of marginalized communities; and

WHEREAS, we believe that local government plays a vital role in ending systemic racism and institutional biases that negatively impact members of our community; and

WHEREAS, as a City Commission we value every community member and are committed to creating an equitable and antiracist system that honors and elevates all; and

WHEREAS, we believe that we must provide ourselves, our staff, and our community the necessary time and resources to facilitate discussions of race, inequity and privilege to foster a better understanding of our full history and celebrate our collective humanity;

NOW, THEREFORE, BE IT RESOLVED that the City of Birmingham recognizes the United Way for Southeastern Michigan 21 Day Equity Challenge as an important opportunity to expand our knowledge and understanding of the historic and persistent inequities that play a role in our social and economic landscape here in Southeastern Michigan.

BE IT FURTHER RESOLVED, the City of Birmingham will support the event as an official "Equity Partner" and encourage all municipal staff and members of our community to participate in the 21 Day Equity Challenge to deepen our shared understanding of, and develop our willingness to confront racism, sexism and other forms of inequity and inequality in our community.



Therese Longe, Mayor



**2022 PROCLAMATION
DECLARING THE FIRST FRIDAY IN JUNE TO BE
NATIONAL GUN VIOLENCE AWARENESS DAY**

This proclamation declares the first Friday in June to be National Gun Violence Awareness Day in the City of Birmingham to honor and remember all victims and survivors of gun violence and to declare that we as a country must do more to reduce gun violence.

WHEREAS, every day, more than 110 Americans are killed by gun violence, alongside more than 200 who are shot and wounded, and on average there are nearly 16,000 gun homicides every year; and

WHEREAS, Americans are 26 times more likely to die by gun homicide than people in other high-income countries; and

WHEREAS, Michigan has 1,270 gun deaths every year, with a rate of 12.7 deaths per 100,000 people. Michigan has the 29th highest rate of gun deaths in the US; and

WHEREAS, gun homicides and assaults are concentrated in cities, with more than half of all firearm related gun deaths in the nation occurring in 127 cities; and

WHEREAS, cities across the nation, including in Birmingham, are working to end the senseless violence with evidence-based solutions; and

WHEREAS, protecting public safety in the communities they serve is mayors' highest responsibility; and

WHEREAS, support for the Second Amendment rights of law-abiding citizens goes hand-in-hand with keeping guns away from people with dangerous histories; and

WHEREAS, mayors and law enforcement officers know their communities best, are the most familiar with local criminal activity and how to address it, and are best positioned to understand how to keep their citizens safe; and

WHEREAS, gun violence prevention is more important than ever as the COVID-19 pandemic continues to exacerbate gun violence after more than two years of increased

gun sales, increased calls to suicide and domestic violence hotlines, and an increase in city gun violence;

WHEREAS, in January 2013, Hadiya Pendleton was tragically shot and killed at age 15; and on June 3, 2022 to recognize the 25th birthday of Hadiya Pendleton (born: June 2, 1997), people across the United States will recognize National Gun Violence Awareness Day and wear orange in tribute to -

- (1) Hadiya Pendleton and other victims of gun violence; and
- (2) the loved ones of those victims; and

WHEREAS, the idea was inspired by a group of Hadiya's friends, who asked their classmates to commemorate her life by wearing orange; they chose this color because hunters wear orange to announce themselves to other hunters when out in the woods and orange is a color that symbolizes the value of human life; and

WHEREAS, anyone can join this campaign by pledging to wear orange on June 3rd, the first Friday in June in 2022, to help raise awareness about gun violence; and

WHEREAS, by wearing orange on June 3, 2022 Americans will raise awareness about gun violence and honor the lives of gun violence victims and survivors; and

WHEREAS, we renew our commitment to reduce gun violence and pledge to do all we can to keep firearms out of the wrong hands, and encourage responsible gun ownership to help keep our children safe.

NOW, THEREFORE BE IT RESOLVED, that Mayor Therese Longe of the City of Birmingham declares the first Friday in June, June 3, 2022, to be National Gun Violence Awareness Day. We encourage all citizens to support their local communities' efforts to prevent the tragic effects of gun violence and to honor and value human lives.

May 9, 2022



Therese Longe, Mayor



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

At the regular meeting of Monday, May 9, 2022, the Birmingham City Commission intends to appoint one regular member who is a resident to serve the remainder of a three-year term expiring September 4, 2024.

Interested citizens may submit an application available at the City Clerk's Office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's Office on or before noon on Wednesday, May 4, 2022. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and voter on appointments.

Committee Duties

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

Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
Jim Arpin	Resident

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

SUGGESTED COMMISSION ACTION:

To appoint _____ to the Advisory Parking Committee as a regular member who is a resident to serve the remainder of a three-year term to expire September 4, 2024.



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

APPLICATION FOR CITY BOARD OR COMMITTEE

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

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

(Please print clearly)

Board/Committee of Interest Advisory Parking Committee

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

Name James J. Arpin

Phone 313 949 0252

Residential Address 410 Southfield Road

Email * jjarpin@gmail.com

Residential City, Zip 48009

Length of Residence 2yr 10 mo + expat 8 yrs

Business Address Same

Occupation engineer / consultant

Business City, Zip _____

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

I am interested in serving and enhancing the community. My background in land development, HOA

Management and data analytics gives me an appreciation for multiple related parking issues.

List your related employment experience Director of Business Dev-GCM Contracting Solutions, Business

Dev Director - VROC Predictive Maintenance Solutions

List your related community activities Past president of Birmingham Place Residential Condominium
Association

List your related educational experience BSIE - Purdue University, MBA - University of Michigan -Dearborn

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

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

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

Signature of Applicant [Signature]

05/04/22

Date

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

Updated 3/24/2021

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

Please consult the criteria required to be a member of each City Board or Committees. Fill in the criteria you meet in the "Specific Category/Vacancy on Board" on the Application. If you are applying for a spot as an Alternate Member, you must still meet at least one of the criteria. Please contact the City Clerk office at 248-530-1880 or clerksoffice@bhamgov.org with any questions.

ADVISORY PARKING COMMITTEE

- Building Owner within the Parking Assessment District
- Restaurant owner within the Parking Assessment District
- Representative of a professional firm within the Parking Assessment District

ARCHITECTURAL REVIEW COMMITTEE

- Licensed architect and resident of Birmingham

CABLECASTING BOARD

- Resident of Birmingham

ALTERNATE HEARING OFFICER

- Resident of Birmingham with legal, administrative or other qualifications that will aid in the performance of the duties.

HISTORIC DISTRICT STUDY COMMITTEE

- Clearly demonstrated interest in or knowledge of historic preservation.

HOUSING BOARD OF APPEALS

- Education or experience in building construction administration, social services, real estate, or other such positions.

MULTI-MODAL TRANSPORTATION BOARD

- Urban planning, architecture or design education and/or experience.

MUSEUM BOARD

- Resident of Birmingham.

PARKS AND RECREATION BOARD – ALTERNATE MEMBER

- Registered to vote in Birmingham.

PUBLIC ARTS BOARD

- Represent a major cultural institution, be a Michigan registered architect, an artist, an art historian, or art consultant.

TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY

- Ownership or business interest in property located in the Development Area.



ADVISORY PARKING COMMITTEE

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

Terms: Three years

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

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

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

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

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Astrein	Richard	(248) 399-4228	12/9/2019	9/4/2024
13125 Ludlow			BSD member	
Huntington Woods	48070	<i>richard@astreins.com</i>		
Black	Aaron	(248)283-4200	12/8/2020	9/4/2022
2243 Dorchester Rd			Resident shopper	
Birmingham	48009	<i>ablack@daxtonhotel.com</i>		
Cobb	Kelly	(313)434-4413	4/25/2022	9/4/2024
2056 Dorchester			Restaurant Owner	
Birmingham	48009	<i>kellywcobb@gmail.com</i>		

Last Name Home Address	First Name	Home Business E-Mail	Appointed	Term Expires
Kalczynski 100 Townsend Birmingham	Steven 48009	(248) 642-7900 <i>skalczynski@yahoo.com</i>	11/26/2012 Large retail	9/4/2023
Krueger 348 Ferndale Ave Birmingham	Lisa 48009	(248) 921-0099 <i>lisakrug21@gmail.com</i>	3/30/2015 Downtown employee member	9/4/2023
Paskiewicz 560 Woodland Birmingham	Judith 48009	248-642-3337 <i>judithpaskiewicz@hotmail.com</i>	Professional firm	9/4/2022
Petcoff 463 Henley Birmingham	Mary-Claire 48009	(410)-991-1460 <i>mcp@wwwrplaw.com</i>	12/21/2020 Alternate	9/4/2023
Silverman 1200 Latham Birmingham	Lisa 48009	248-642-3337 <i>lilas229@aol.com</i>	10/7/2019 Resident	9/4/2022
Vacant			Resident	9/4/2024
Vaitas 2633 Endsleigh Drive Bloomfield Village	Algirdas 48301	(248) 593-3177 <i>alvorth@aol.com</i>	11/13/2006 Small retail	9/4/2024
Yert 490 Park St. Birmingham	Jennifer 48009	617-308-0080 <i>sulesq@yahoo.com</i>	8/13/2018 Alternate (Downtown employee)	9/4/2023

05-152-00: INTERVIEW FOR ADVISORY PARKING COMMITTEE

Mr. Peter Wilde of the Townsend Hotel was interviewed for appointment to the advisory parking committee. Commissioner Lanzetta expressed concern about the legalities of the appointment of Mr. Wilde as the "large retail" member of this committee. The city attorney advised that the commission could amend the original resolution for the advisory parking committee to broaden the interpretation of large retail representative to include retail services as well as retail goods.

MOTION: Motion by Lanzetta, seconded by Chafetz:
To interpret the category of large retail representative on the advisory parking committee to include retail services as well as retail goods.

VOTE: Yeas, 4 Nays, None Absent, 3 (DeLaura, McKeon, Wooley)

MOTION: Motion by Moss, Seconded by Chafetz
To determine that Mr. Peter Wilde of the Townsend Hotel meets the criteria as the large retail representative on the advisory parking committee and, further, to continue this appointment until the city commission meeting of June 12, 2000.

VOTE: Yeas, 4 Nays, None Absent, 3 (DeLaura, McKeon, Wooley)

05-139 -17 USE OF ALTERNATES, REPORTING BOARD ATTENDANCE, AND MODIFYING REQUIREMENTS FOR BOARD MEMBERS

Assistant to the City Manager Haines presented results of a review of board and committee attendance suggesting that three groups might benefit from having two alternate positions added to increase attendance and/or achieve quorum: 1) Advisory Parking Committee, 2) Parks and Recreation Board, and 3) Public Arts Board.

MOTION: Motion by Commissioner Bordman, seconded by Mayor Pro Tem Harris:
To amend the ordinances of the Advisory Parking Committee, the Parks and Recreation Board, and the Public Arts Board, to add 2 alternate positions to each as follows:

To amend Resolution No. 08-882-84 – August 6, 1984, Advisory Parking Committee, Members.

AND

To amend Part II of the City Code, Chapter 78, Parks and Recreation, Article II., Parks and Recreation Board, Section 78-26, Created; composition.

AND

To amend Part II of the City Code, Chapter 78, Public Arts Board, Article V., Public Arts Board, Section 78-103, Composition and terms of members.

AND

To direct the city clerk to standardize the attendance reporting of all city boards and committees as outlined in the May 12, 2017 memorandum to the city manager and as clarified by the Commission and to direct staff to amend the Recommended Process for Use of Alternates as clarified by Commissioner Bordman.

VOTE: Yeas, 7
Nays, 0
Absent, 0

10-258 -19**AMEND ADVISORY PARKING COMMITTEE MEMBERSHIP**

City Manager Valentine presented this item.

- Recommending a modification to the composition of the board to enable the City to fill some long-time vacancies.
- Replace a building owner with a BSD board member to participate on the board
- Remove the City Engineer and Replace with the City Manager or his designee.

Brad Host expressed that he thought it might be a mistake to eliminate a representative from Engineering.

MOTION:

Motion by Commissioner Sherman, seconded by Commissioner Harris:

To adopt the resolution to amend Advisory Parking Committee membership to remove the Building Owner position and replace it with a board member of the Birmingham Shopping District and to remove the City Engineer (non-voting, ex-officio) position and to replace this position with the City Manager, or his/her designee.

VOTE:	Ayes:	5
	Nays:	0
	Absent:	2

Referred to the Traffic and Safety Board for review of meters in the following locations to determine if they are still appropriate in view of the change in the entrance to the Baldwin Library: twelve 30-minute meters on Martin between Bates and Chester; five 15-minute meters on Bates between Maple and Martin; three 15-minute meters on Bates near the former entrance on Martin Street to the library.

8:07

08-881-84: CITY COMMISSIONER REPORTS

Commissioner Miller reported that the Otsu Children's Choir will sing at the Community House at 2:00 P.M., Saturday, August 11, 1984. She also commented that AAA will provide transportation for the children to Bob-Lo.

Mayor Appleford reported that he attended a reception in Ann Arbor last week for the Governor of Shiga Province.

8.08

08-882-84: ADVISORY PARKING COMMITTEE ESTABLISHED

MOTION: Motion by Miller, supported by Hockman:

To receive the report of the City Manager re: Advisory Parking Committee; to establish an Advisory Parking Committee as follows:

PURPOSE: There is hereby established an Advisory Parking Committee to provide guidance to the Birmingham City Commission in the management of the Birmingham Auto Parking System that will: recognize parking requirements of the various interests in the Central Business District (CBD); fairly assess the costs of the parking system to users of the facility; create the least possible traffic impact on the CBD and the immediately abutting residential areas; provide for attractive, well-maintained, safe facilities; include plans for an orderly and responsive answer to future parking needs.

MEMBERS: The Birmingham City Commission shall appoint the Advisory Parking Committee, consisting of seven (7) members, each to be appointed for a term of three (3) years, but in the first instance, two (2) members shall be appointed for terms expiring on the first Monday in September, 1985, two (2) members shall be appointed for terms expiring on the first Monday in September, 1986, and three (3) members shall be appointed for terms expiring on the first Monday in September, 1987.

The majority of the members shall be residents and there shall be one member representing each of the following:

- I. Downtown Commercial Representatives -
 - A. Retail - Two (2) members
 - B. Professional Firm - One (1) member
 - C. Building Owner - One (1) member
- II. Downtown Employee Representative - One (1) member
- III. Residential - Two (2) members who do not qualify under any of the above categories.

Members of the Committee can be removed for cause determined at a public hearing at any time by the City Commission. Vacancies occurring shall be filled for the unexpired term by the City Commission.

ORGANIZATION: The Committee shall elect a Chairperson from its membership annually at its first meeting after the first Monday of September. The City Engineer shall be a non-voting, ex-officio member of the Committee and shall serve as the coordinating link between the Committee and various City Departments. A secretary shall be furnished by the City for the purpose of keeping Minutes of Committee meetings.

MEETINGS: The Committee shall hold at least one (1) regular public meeting in each quarter on such date and at such time and place as may be established by resolution of the Committee. Special meetings may be called by the Chairperson of the Committee or by request of any three (3) members of the Committee. There shall be at least a two (2) day notice for any special meeting. The Committee shall adopt such rules for the conduct of its business as it may from time to time adopt by resolution. The Committee shall keep a written or printed record of its proceedings which shall be a public record and property of the City.

EXPENDITURES: The Committee shall have the power to expend such funds as may from time to time be appropriated to it by the City Commission for the purpose of carrying out the powers and duties of the Committee. Funds expended by the Committee shall be processed through regular City channels and be accounted for in the Auto Parking Fund budget.

POWERS AND DUTIES: The Committee shall recommend:

1. A proper rate relationship between the charges for street meters, parking lot fees (short term and long term), and permit fees.
2. Parking fees that, while maintaining the financial integrity of the system, are still attractive to users.
3. The proper ratio between the number of short term, long term, and permit parkers in the attendant-operated lots and structures.
4. The area in each structure that should be assigned for short term, long term, and permit parking.
5. An equitable method of assigning permit parking spaces.
6. Financial objectives that reflect the requirements of ordinances and the need for information on the revenue received from specific users of the system.
7. A public relations program that will educate the public to the location of parking facilities, their ease of use, their close proximity to many fine stores offering a great variety of merchandise and the benefits of validated parking.
8. Corrective steps if the level of either maintenance or policing of the system facilities is inadequate.
9. Specific ordinance changes that will encourage private off-street parking in the CBD and/or help to improve the system operation as a whole.

REPORTS: The Committee shall make and submit to the City Commission an annual report in January regarding the general activities, operations and accomplishments of the Committee for the preceding year. The Committee shall, from time to time as occasion requires, advise the City Commission in writing on recommendations for the improvement of the Auto Parking System.

BUDGET: Not later than the first day of February of each year, the Committee shall present to the City Commission a request for funds which the Committee believes necessary to carry out its function as an advisory committee.

VOTE: Yeas, 6 Nays, None Absent, Sights

MOTION: Motion by Kain, supported by Jeske:
That the Ad Hoc Parking Committee be dissolved.

VOTE: Yeas, 6 Nays, None Absent, Sights

Resumes for membership on the Committee are to be submitted by August 27, 1984, and Commissioners are to submit names to the Mayor by the first meeting in September. They are also to advise the Mayor if they have a particular area in which they are interested.

MOTION: Motion by Hockman, supported by Miller:
That resumes for appointment to the Advisory Parking Committee be submitted by August 27, 1984, for consideration by the City Commission at its September 4 meeting.

VOTE: Yeas, 6 Nays, None Absent, Sights

8:50

08-883-84: BORDERLINE TREES

MOTION: Motion by Jeske, supported by Jensen:
To receive the report of the City Engineer and the City Manager re: Borderline Trees; to direct the Administration to draft an ordinance whereby sidewalks damaged by trees which are entirely or partly in the public right-of-way will be City responsibility.

MOTION: Motion by Kain, supported by Hockman:
To amend the previous Motion by directing that the proposed ordinance state that the cost of sidewalk replacement resulting from damage caused by borderline trees be borne equally by the City and the property owner.

VOTE ON AMENDMENT: Yeas 3 (Hockman, Kain, Miller)
Nays, 3
Absent, Sights

AMENDING MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 3 (Appleford, Jensen, Jeske)
Nays, 3
Absent, Sights

MOTION FAILED

9:28

09-987-84: ORDINANCE AMENDMENT - B-4 PARKING
REQUIREMENTS

MOTION: Motion by Jeske, supported by Sights:
To receive the report of the City Planner and the City
Manager re: Amendment to B-4 Parking Requirements; to
refer to the Planning Board for public hearing and
recommendation to the City Commission.

VOTE: Yeas, 7 Nays, None

9:29

09-988-84: INVOICE RE: BUTZEL, LONG, GUST,
KLEIN AND VAN ZILE

Report received from the Director of Finance and the City
Manager re: Invoice from Butzel, Long, Gust, Klein and
Van Zile.

9:30

09-989-84: ADVISORY PARKING COMMITTEE APPOINTMENTS

MOTION: Motion by Hockman, supported by Sights:
To receive the report of the City Clerk re: Appointments
to Advisory Parking Committee; to direct that street
parking meters be included in the charge to the Advisory
Parking Committee.

MOTION: Motion by Kain, supported by Jensen:
To amend the previous Motion to include only those street
parking meters in the Parking Assessment District.

VOTE ON AMENDMENT: Yeas, 3 (Jensen, Kain, Sights)
Nays, 4

MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 7 Nays, None

MOTION: Motion by Jeske:
To appoint Dante Lanzetta as a Resident Member to the
Advisory Parking Committee.

MOTION: Motion by Kain:
To appoint Anne Honhart to a one-year term as Resident
Member of the Advisory Parking Committee.

MOTION: Motion by Jensen:
To appoint Keith Ege as the Small Retail Member of the
Advisory Parking Committee.

MOTION: Motion by Appleford:
To appoint Katharine Beebe as the Professional Member of
the Advisory Parking Committee.

MOTION: Motion by Miller:
To appoint Samuel Walker to a one-year term as the Building
Owner Member of the Advisory Parking Committee.

MOTION: Motion by Hockman:
To appoint Katharine Thibodeau as the Downtown Employee
Representative Member of the Advisory Parking Committee.

MOTION: Motion by Sights:
To appoint James Peabody as the Large Retail Member of the
Advisory Parking Committee.

Discussion was held on whether or not Mr. Peabody met the qualifications for the Large Retail Member and Mr. Walker for the Building Owner Member.

MOTION: Motion by Kain, supported by Sights:
That the Commission recess for five minutes.

VOTE: Yeas, 7 Nays, None

10:05 P.M. - Meeting recessed.

10:22 P.M. - Meeting reconvened.

MOTION: Motion by Jeske, supported by Miller:
That the Advisory Parking Committee be expanded to nine members to include a Restaurant Owner Member and a Resident Shopper Member.

MOTION: Motion by Kain, supported by Sights:
To amend the previous Motion by adding an ex officio member for a three-year term to the Advisory Parking Committee, the number of committee members to remain at seven.

VOTE ON AMENDMENT: Yeas, 2 (Kain, Sights) Nays, 5

MOTION FAILED

VOTE ON MAIN MOTION: Yeas, 4 Nays, 3 (Jensen, Kain, Sights)

MOTION: Motion by Sights, supported by Kain:
To vote for the nominations on the floor, and to appoint the Large Retailer Member and Resident Shopper Member at the Commission Meeting of September 10, 1984.

In response to a question from Commissioner Jeske, Commissioner Sights stated that he is changing his nomination of Mr. Peabody from the Large Retail Member to that of Restaurant Owner Member.

VOTE: Yeas, 7 Nays, None

MOTION: Motion by Kain, supported by Hockman:
That the term of office for the nine-member Advisory Parking Committee shall be three years, but, in the first instance, three members shall be appointed for terms expiring on the first Monday in September, 1985, three members shall be appointed for terms expiring on the first Monday in September, 1986, and three members shall be appointed for terms expiring on the first Monday in September, 1987.

VOTE: Yeas, 7 Nays, None

MOTION: Motion by Jeske, supported by Jensen:
That the terms of the seven remaining members be decided by draw.

VOTE: Yeas, 7 Nays, None

Birmingham City Commission-Planning Board
Special Meeting Minutes
DRAFT - April 18, 2022
Department Of Public Services
851 S. Eton
7:30 p.m.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

Commission

ROLL CALL:

Present:

Mayor Longe
Mayor Pro Tem Boutros
Commissioner Baller
Commissioner Host
Commissioner McLain
Commissioner Schafer

Absent:

Commissioner Haig

Planning Board

ROLL CALL:

Present:

Chair Scott Clein
Stuart Jeffares
Bert Koseck
Daniel Share
Janelle Whipple-Boyce
J. Bryan Williams
Jason Emerine, alternate
Nasseem Ramin, alternate

Absent:

Robin Boyle
Mackinzie Clein, student
Andrew Fuller, student

Administration: City Clerk Bingham, Planning Director Dupuis,
City Attorney Grochowski, City Manager Markus

III. PUBLIC COMMENT

The City of Birmingham welcomes public comment limited at the Mayor's discretion to allow for an efficient meeting. The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda. The public can also speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, state your name for the record, and direct all comments or questions to the presiding officer.

Occurred during discussion of new business.

IV. NEW BUSINESS

A. The Birmingham Plan 2040 – Second Draft Review

PD Dupuis and Chair Clein introduced the topic.

Commissioner Baller asked Planning Board members to state whether they felt there were any outstanding points of contention among Board members regarding the draft .

Mr. Koseck said that while some members of the Board wanted the draft to provide goals to reach towards, he felt that some aspects of the draft were beyond his comfort zone. He said that he did not see as much need to integrate drastic changes into the draft since Birmingham is already a great City. That said, he felt there was largely consensus among Board members on the direction given to the master planning team.

Mr. Jeffares said that some more advanced goals remained in the document, and that other topics that had more mixed responses from the Board and the public were retained as items for future study instead of full recommendations. He said he was glad to see both approaches.

Mr. Share said that the draft review process refined the draft to be more responsive to Birmingham's goals instead of more reliant on current, generic urban planning best practices.

Mr. Williams said the first draft was aggressive, and that the master planning team scaled back their recommendations in response to feedback from the Board and the public. He agreed with Mr. Jeffares that it was positive that some important items that could not be immediately resolved were integrated as recommendations for further study.

Chair Clein concurred with his colleagues that the majority of the recommendations to the master planning team had consensus from the Board, and that it was appropriate that some of the topics without general consensus were recommended for further study.

Commissioner Baller said he found the Board members' general agreement encouraging. He said he would also like to hear recommendations from the Board about topics that should be addressed in the upcoming strategic plan at a later date.

MPT Boutros noted that the Commission, Board, public, and Staff had previously discussed and reviewed the direction of the master plan, and said that if the Board was comfortable with the direction the draft was heading in he was also comfortable.

Chair Clein confirmed that to be the case.

Commissioner Host said he appreciated the increased focus on neighborhood and residential issues between draft one and draft two.

Commissioner Schafer offered her support for the direction of the current master plan draft. She said she appreciated the list of priorities for guiding the City's efforts and said she was eager to begin implementation of some of the shorter-term items like increasing the City's sustainability efforts.

In reply to Commissioner Baller, PD Dupuis confirmed that the detailed future land use maps were made available in the majority of the agenda packets regarding the second draft of the master plan and are also available on the front page of the 2040 Plan's website, thebirminghamplan.com. He said that any questions regarding the maps could be directed to Planning Staff.

Chair Clein stated that the master planning team created the maps at the beginning of the discussions of the second draft in order to provide clarity on the proposed changes.

Mr. Share noted that some of the recommended zoning changes would bring parcels into alignment with the zoning of adjacent parcels. He acknowledged that the colors on the maps make some of the information a bit hard to discern and noted the issue had been raised with the master planning team.

Commissioner Baller said he appreciated the reduction in planning jargon and the increase in clarity from the first to the second draft, and said he hoped that trend would continue into the third draft.

Mayor Longe recommended that:

- The page numbers be moved so they are not removed by hole punches;
- The Plan indicate somewhere that a Master Plan does not alter zoning in and of itself and that any possible zoning changes would involve an extensive public engagement process; and,
- More definitional clarity be provided, citing 'cafe', 'unbundling', and 'zoning reform' as some terms in need of clarification.

Mr. Williams noted that the Board emphasized throughout the review process that the adoption of a master plan is not the same as rezoning. He noted that the Board had recently approved a proposal that had some conflicts with the City's Triangle Plan, because the recommendations in the Triangle Plan had not been sufficiently implemented as ordinance. That experience, he noted, underscored the importance of implementing Plan recommendations through ordinance changes and other City actions.

Public Comment

Samuel Oh said he believed the master plan draft increases density in the Triangle via allowing bonus stories next to single-family residential, whereas the Triangle Plan precluded bonus stories next to single-family residential. He asked the City for clarification on the matter.

PD Dupuis noted that the Triangle Overlay District, which is part of the zoning ordinance, does not allow bonus stories for developments within 100 feet of a single-family residentially zoned area. He stated that the Triangle Overlay remains in effect today. He said that the 2040 Plan draft does not recommend any deviation from the current Triangle Overlay ordinances.

Chair Clein concurred with PD Dupuis, clarifying that the ordinance is where the distinction exists, and not the maps on draft pages 52 - 54 referenced by Mr. Oh.

Larry Bertollini asked whether the northeast corner of Eton and Lincoln, which is currently included in the Kenning Park Master Plan, is being recommended for rezoning as part of the 2040

Plan. He said that lowering the speed limit on Woodward should be one of the highest priorities of the 2040 Plan. He also said he wanted to be sure that public comment would be integrated into any future proposals to change Haynes Square.

Paul Reagan recommended that the City organize meetings between Chairs of boards that address shared topics, like parking. He said integrating those Chairs' recommendations into the third draft of the 2040 Plan and into general City policy would be positively received by residents. He recommended the master planning team also produce a map that shows where any zoning changes are recommended in order to clarify the information for the public. He concluded by saying he was still in favor of a pedestrian bridge for crossing Woodward.

Kathryn Gaines said she wanted the parcels on the north side of Oakland from Woodward to Ferndale to remain single-family residential.

Neil Fichtenberg concurred with Ms. Gaines, and added he would like to see the homes on those parcels preserved for their historic value.

Gina Russo also concurred with Ms. Gaines.

MOTION 04-110-22: Motion by MPT Boutros, seconded by Commissioner Schafer:
To direct the 2040 Plan consultant team to begin the preparation of the third and final draft of The Birmingham Plan 2040.

In reply to Commissioner Host, Mayor Longe said there would be additional opportunities to comment on the draft in the future as well.

Commissioner Host said that in his view the second draft represented a great improvement from the first draft and thanked the consultants for integrating the feedback from the Planning Board and the public.

Public Comment

Mr. Oh asked if there would be a chance for him to reply to PD Dupuis' previous comments about the Triangle.

Jim Arpin asked if the motion could include 'with full consideration of public comment during the meeting'.

The Mayor and Chair Clein advised Mr. Arpin that public comment is always minuted, and would be taken into account by the Board and the master planning team.

ROLL CALL VOTE: Ayes, MPT Boutros
 Commissioner Host
 Commissioner McLain
 Commissioner Schafer
 Mayor Longe
 Commissioner Baller

Nays, None

V. COMMUNICATIONS

- A. Zoning Protest Petition – Little San Francisco Neighborhood
- B. Additional Communications Received
 - 1. Email communication with Samuel Oh
 - 2. Letter from Kathryn Gaines regarding the Rezoning of Oakland St.
 - 3. Email Communication from Gina Russo regarding the Little San Francisco neighborhood

In reply to Mayor Longe, CA Grochowski advised that it would not be appropriate to have further conversation with Mr. Oh regarding his concerns at this time under Robert's Rules. CA Grochowski noted that Mr. Oh's comments and letter were both received and addressed, and that the Planning Board would take those comments into consideration moving forward.

VI. ADJOURN

Seeing no further comment, Mayor Longe adjourned the meeting at 8:44 p.m.

Birmingham City Commission Minutes

April 25, 2022

Municipal Building, 151 Martin

7:30 p.m.

Vimeo Link: <https://vimeo.com/event/3470/videos/700629999/>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Therese Longe, Mayor, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

Alexandria Bingham, City Clerk, called the roll.

Present: Mayor Longe
Mayor Pro Tem Boutros
Commissioner Baller
Commissioner Haig
Commissioner Host
Commissioner McLain
Commissioner Schafer

Absent: None

Administration: City Manager Markus, City Clerk Bingham, Assistant City Manager Ecker, City Attorney Kucharek, Fire Chief Wells, Parking Manager Weingartz

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

Announcements

Per the CDC, COVID-19 Community Level for Oakland County is currently Low. The City continues to recommend the public wear masks while attending city meetings. These precautions are recommended while risks for COVID-19 transmission remain from new variants. All City employees, commissioners and board members must wear a mask while indoors when 6-feet of social distancing cannot be maintained. The City continues to provide KN-95 respirators for all in-person meeting attendees.

As a reminder the community is encouraged to submit non-emergency concerns or questions to the city via the new GovAlert mobile app. The free app is fast and user-friendly. Simply download the app, available for both iOS and Android devices, and follow the prompts. A short video that explains how to use the app is available at www.bhamgov.org/govalert.

DPS Open House is on Saturday, May 14 10 a.m. – 2 p.m. Location is at 851 S. Eton Public Services Facility. Come join us for a day of family fun, meet City staff, view equipment displays, find informational and educational exhibits. Enjoy hot dogs and refreshments!

Join us for the 2022 Celebrate Birmingham Parade and Party in Shain Park on Sunday, May 15. The Parade will begin at 1pm on N. Old Woodward near Booth Park and end in Shain Park with a celebration featuring entertainment and family activities. Celebration in Shain Park ends at 4 p.m.

Arbor Day Proclamation

Mental Health Proclamation

APPOINTMENTS

04-111-22 Appointment of Wadette Bradford to the Housing Board of Appeals

The Commission interviewed Wadette Bradford for the appointment.

MOTION: Nomination by MPT Boutros:

To appoint Wadette Bradford as a regular member to the Housing Board of Appeals to serve a three-year term to expire May 4, 2025.

VOICE VOTE: Ayes, MPT Boutros
 Commissioner Baller
 Commissioner McLain
 Commissioner Schafer
 Mayor Longe
 Commissioner Haig
 Commissioner Host

Nays, None

04-112-22 Appointment of Robert Taylor Jr. to the Housing Board of Appeals

The Commission interviewed Mr. Taylor for the appointment.

MOTION: Nomination by Commissioner Haig:

To appoint Robert Taylor Jr. as a regular member to the Housing Board of Appeals to serve a three-year term to expire May 4, 2025.

VOICE VOTE: Ayes, MPT Boutros
 Commissioner Baller
 Commissioner McLain
 Commissioner Schafer
 Mayor Longe
 Commissioner Haig
 Commissioner Host

Nays, None

04-113-22 Appointment of Carl Kona to the Board of Zoning Appeals

The Commission interviewed Carl Kona for the appointment.

MOTION: Nomination by Commissioner Haig:
To appoint Carl Kona as an alternate member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire February 17, 2023.

VOICE VOTE: Ayes, MPT Boutros
Commissioner Baller
Commissioner McLain
Commissioner Schafer
Mayor Longe
Commissioner Haig
Commissioner Host

Nays, None

04-114-22 Appointment of Luke Joseph to the Board of Zoning Appeals

CA Kucharek noted that Mr. Joseph was currently serving on the Housing Board of Appeals and as a Trustee on the Board of Education. She said she could foresee potential opportunities for conflict between his current appointments and his potential service on the Board of Zoning Appeals (BZA). She said the City also has a longstanding policy allowing board members to only serve on one City board, with the exception of brief study or ad hoc appointments.

CM Markus noted Mr. Joseph could resign his position on the Housing Board of Appeals if appointed to the BZA, but the likelihood of conflict would still remain between his service on the Board of Education and potential service on the BZA.

The Commission interviewed Luke Joseph for the appointment.

Mr. Joseph said he would be willing to resign his position on the Housing Board of Appeals if appointed to the BZA, and that he could recuse himself from any Board of Education related matters to be heard by the BZA.

MOTION: Nomination by MPT Boutros:
To appoint Luke Joseph as an alternate member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire February 17, 2023.

VOICE VOTE: Ayes, None

Nays, MPT Boutros
Commissioner Baller
Commissioner McLain
Commissioner Schafer
Mayor Longe
Commissioner Haig
Commissioner Host

04-115-22 Appointment of Kristy Barrett to the Museum Board

The Commission interviewed Kristy Barrett for the appointment.

MOTION: Nomination by Commissioner Schafer:

To appoint Kristy Barrett as a regular member to the Museum Board to serve the remainder of a three-year term to expire July 5, 2023.

VOICE VOTE: Ayes, MPT Boutros
 Commissioner Baller
 Commissioner McLain
 Commissioner Schafer
 Mayor Longe
 Commissioner Haig
 Commissioner Host

Nays, None

04-116-22 Appointment of Kelly Cobb to the Advisory Parking Committee

The Commission interviewed Kelly Cobb for the appointment.

In reply to CM Markus, Mr. Cobb confirmed that Hunter House Hamburgers leases a portion of land behind the restaurant from the City for diner parking. He also confirmed that a development process is currently underway at the location of Hunter House Hamburgers, and that he and the developer have some differences in views regarding how the development should proceed. He stated he and the developer are making progress on those differences. Mr. Cobb also confirmed he would be willing to recuse himself from any matters before the Advisory Parking Committee relating to either topic.

MOTION: Nomination by Commissioner Baller:

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

VOICE VOTE: Ayes, MPT Boutros
 Commissioner Baller
 Commissioner McLain
 Commissioner Schafer
 Mayor Longe
 Commissioner Haig
 Commissioner Host

Nays, None

CC Bingham swore in the present appointees. It was noted that those appointees appearing virtually would be sworn in at a later date.

CM Markus said that, moving forward, the Commission should make a point to ask board and committee candidates whether their service could entail any potential conflicts of interest.

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

Mr. Joseph recommended that potential issues with a board or committee applicant's candidacy be raised with the candidate individually prior to the Commission meeting in order to avoid any potential embarrassment for the candidate.

CM Markus apologized for any embarrassment caused by the discussion of Mr. Joseph's candidacy, and noted that moving forward the Commission would ask all board and committee candidates about any potential conflicts of interest.

Bobby Lawrence, from State Senator Marshall Bullock's office, reminded the Commission that the Senator's office remains available to assist with any State Senate related issues.

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.

04-117-22 Consent Agenda

The following items were pulled from the Consent Agenda:

Commissioner Haig: Item E – Delinquent Special Assessments/Invoices to the Tax Roll

MOTION: Motion by MPT Boutros, seconded by Commissioner Haig:
To approve the Consent Agenda excluding Item E.

ROLL CALL VOTE: Ayes, Commissioner Baller
MPT Boutros
Commissioner Host
Commissioner McLain
Commissioner Schafer
Mayor Longe
Commissioner Haig

Nays, None

- A. Resolution to approve the City Commission workshop meeting minutes of April 11, 2022.
- B. Resolution to approve the City Commission meeting minutes of April 11, 2022.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated April 13, 2022, in the amount of \$333,312.11.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated April 20, 2022, in the amount of \$1,029,778.67.
- F. Resolution approving the recommended investment policy statement for the Retiree Health Care Investment Fund.
- G. Resolution to approve an agreement with L.G.K. Construction, Inc., for Birmingham Museum-Phase I Allen House Historic Window Restoration Project in the amount not to exceed \$112,000. In addition, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City. Funding for this project has been budgeted in account #101-804.002-811.0000.

- H. Resolution to authorize the IT department to renew the Nutanix extended service agreement from CDWG for a total cost not to exceed \$8,185.00. Funds are available in the Computer Maintenance fund account # 636-228.000-933.0600.
- I. Resolution to approve a payment of up to \$264,000 to Merritt Cieslak Design for design development, construction drawings, bidding, and construction administration for the proposed expansion and renovation of the Front Entrance and Circulation Area of the Baldwin Public Library, to be paid out of account 901.0600 (Architectural Services).
- J. Resolution to approve the purchase of holiday lights from Zoros Lighting for a total cost not to exceed \$28,800.00. Funds are available from the General Fund-Community Activities Operating Supplies account #101-441.004-729.0000 and Property Maintenance Operating Supplies account # 101-441.003-729.0000 for this purchase.
- K. Resolution to approve the 2 year contract with Cardno (now Stantec) for Parks Natural Areas Maintenance Services for a total cost not to exceed \$85,450.00. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City. Funds are available from the General Fund-Parks Other Contractual Services account #101-751.000-811.0000 for these services.

04-118-22 (Item E) Delinquent Special Assessments/Invoices to the Tax Roll

In reply to Commissioner Haig, CM Markus said that discussing the issue with repeatedly delinquent payors would not likely be worthwhile for the City. He said that adding the unpaid special assessments and invoices, plus the penalty, was likely the most efficacious way for the City to approach the issue.

FD Gerber concurred with CM Markus. He added that the delinquent payors would be notified of the Commission's decision on the present motion and would be given the opportunity to pay their balances due before the amounts are added to their property taxes.

MOTION: Motion by Commissioner Haig, seconded by Commissioner Host:
To direct the City Treasurer, in accordance with the provisions in the City Code, to transfer the reported unpaid special assessments and invoices, including interest and penalty, unpaid and delinquent on May 1, 2022 to the next annual City tax roll. The listing of unpaid and delinquent special assessments and invoices, including interest and penalty, will be transferred and reassessed to the 2022 City tax roll with an additional 15% penalty and authorization be given to remove from the list any bills paid after commission approval.

ROLL CALL VOTE: Ayes, Commissioner Haig
Commissioner Schafer
Mayor Longe
Commissioner Baller
MPT Boutros
Commissioner Host
Commissioner McLain

Nays, None

VI. UNFINISHED BUSINESS

None.

VII. NEW BUSINESS

04-119-22 1924 American LaFrance Fire Truck Donation

FC Wells and Bill Olsen, representative for the Olsen family, presented the item.

The Mayor and the Commission thanked the Olsen family for their donation.

MOTION: Motion by Commissioner Host, seconded by Commissioner McLain:
To adopt a resolution to approve the 1924 American LaFrance fire engine donation from the Olsen Family.
In addition, to authorize the Mayor, City Clerk, City Manager, and Fire Chief to sign the agreement on behalf of the City.

VOICE VOTE: Ayes, MPT Boutros
 Commissioner Schafer
 Mayor Longe
 Commissioner Baller
 Commissioner Haig
 Commissioner Host
 Commissioner McLain

Nays, None

**04-120-22 Re-set Public Hearing for 2225 E. 14 Mile – Our Shepherd – Special
Land Use Permit Amendment, Final Site Plan & Design Review**

The Mayor opened the public hearing at 8:11 p.m.

PD Dupuis stated he was requesting a rescheduling of the public hearing to a later date.

The Mayor closed the public hearing at 8:13 p.m.

MOTION: Motion by MPT Boutros, seconded by Commissioner Haig:
To re-set the public hearing date to May 23, 2022 to consider the Special Land Use Permit Amendment,
Final Site Plan and Design Review application for 2225 E. 14 Mile – Our Shepherd – to allow new parking
lot landscaping, signage and new covered entries at an existing religious institution in the R2 zoning district.

ROLL CALL VOTE: Ayes, MPT Boutros
 Commissioner Schafer
 Mayor Longe
 Commissioner Baller
 Commissioner Haig
 Commissioner Host
 Commissioner McLain

Nays, None

**04-121-22 Public Hearing for 100 Townsend – Rugby Grille – Special Land
Use Permit (SLUP), Final Site Plan & Design Review**

The Mayor opened the public hearing at 8:14 p.m.

PD Dupuis presented the item.

John Gardner, architect, and Steve Kalczynski, Managing Director, spoke on behalf of the project.

CA Kucharek noted that Mr. Kalczynski serves on the Advisory Parking Committee (APC), and advised the Commissioners to consider whether they might have any conflicts of interest relating to this item as a result.

Mr. Kalczynski noted that he did not participate in the APC's vote regarding the outdoor dining deck.

In reply to Commissioner Haig, Mr. Kalczynski confirmed that he would only be speaking regarding the existing dining deck to the light pole and the tree, and not the new dining deck.

Mr. Kalczynski confirmed The Townsend was willing to install an ADA-compliant tree grate.

The Mayor closed the public hearing at 8:26 p.m.

In reply to Commissioner McLain, Mr. Kalczynski said the project would commence upon the Commission's approval.

Commissioner Baller said that:

- To his recollection dining decks were meant for establishments that had neither private property nor sidewalk space on which to locate outdoor dining;
- The Rugby Grille's new outdoor dining deck would double the establishment's outdoor seating, would encroach into public space, and would be in addition to valet parking for the Townsend which is located on both Townsend and Merrill, all of which would further limit the limited parking available;
- Bella Piatti, located across the street from the Rugby Grille, may request outdoor dining in the future;
- Despite an APC member's contentions, outdoor dining decks are not only available to bistros; and,
- While outdoor dining is popular with the public, so is available parking.

Commissioner Baller concluded by saying he wanted to hear his fellow Commissioners' opinions regarding these issues.

Commissioner Haig said he appreciated Commissioner Baller's comments. He said he was also glad to hear that any encroachment into the five foot pedestrian clear path would be addressed, and that the planters would be removed. He spoke in favor of visually delineating the five foot clear path and emphasized the importance of establishments keeping their outdoor dining within the delineated area.

There was brief discussion about whether the current design would be legally non-conforming if the present design became disallowed by the future outdoor dining ordinance.

It was clarified by CA Kucharek and CM Markus that because this outdoor dining deck would be operating under a SLUP, the design would not be legally non-conforming and would have to be modified in order to comply with the future outdoor dining ordinance.

Mr. Gardner asked if a request could be administratively approved to use umbrellas instead of a roof-type structure. He noted that the railings and size of the deck itself would remain the same.

Kelly Allen, attorney for the project, stated that she was at the Planning Board meeting on the item and that the Board's understanding was that their decision should be made based on the current ordinance. She said that ordinance changes in the past have resulted in legal non-conforming uses. Ms. Allen acknowledged that City was permitted to include whatever language it saw fit in its agreements. She asked whether the language requiring compliance with future amended ordinances was new to the SLUP language. She also asked whether the City would be going around to all establishments to enforce compliance with the future outdoor dining ordinance.

CM Markus stated that legal non-conforming uses have generally resulted from uses on private property. He said this request was distinguished from those instances because the dining deck would be located on public property, and that it would be allowed by a SLUP and not as a permitted use. He said his recommendation was that the applicant be permitted to seek administrative approval for the use of umbrellas, instead of roof-type coverings, which would comply with both the current and potential future outdoor dining ordinances.

CA Kucharek estimated that the new SLUP language requiring compliance with future ordinances was added sometime in 2020. She said the new language was included to allow the City greater control in protecting City property.

In reply to an inquiry from the Mayor and CM Markus, PD Dupuis estimated the Townsend would occupy five total spaces, with two for the proposed deck and three for the valet service.

The Mayor said she was concerned about issues of equity where one establishment may be permitted both valet services and an outdoor dining deck, whereas another may not be.

CM Markus noted that differences in scale and type of establishment would partially impact that decision, in that one establishment is a restaurant and the Townsend is a hotel. He added that the history of permitting the Townsend to have both valet services and outdoor dining would also be a factor in the decision.

In reply to Commissioner Baller, CM Markus recommended that the City create principles for guiding the granting of outdoor dining decks, instead of a policy. He said the principles could entail consideration of the general context in which the dining deck would be located, the scale of the site, whether the establishment holds a liquor license, and if so, the type of license, the traffic level on the street, and the parking situation on the street, for examples. CM Markus affirmed Commissioner Baller's statement that dining decks were meant for establishments that had neither private property nor sidewalk space on which to locate outdoor dining. The City Manager said it would be appropriate to devise guiding principles for these decisions, but said that would take some time.

The Mayor noted that many communities including Birmingham are trying to expand outdoor dining in response to public request while also balancing the community's other interests and equity between establishments.

In reply to Commissioner Baller, CA Kucharek noted that if the Commission found that an outdoor dining deck was generally vacant they could consider removing the dining deck under paragraph 14B of the SLUP language.

Commissioner McLain said it was not an ideal balance that the request was already reviewed by the APC and the Planning Board and that the Commission was still unclear on whether the matter could go forward.

Commissioner Baller noted that the Commission has discretion, while the Planning Board has to make recommendations solely based on ordinance.

MPT Boutros spoke to the strength of the SLUP language in protecting the City's interests.

MOTION: Motion by MPT Boutros, seconded by Commissioner Host:
To approve the Special Land Use Permit, Final Site Plan and Design Review application for 100 Townsend – Rugby Grille – to allow the addition of a new outdoor dining platform in the Townsend right-of-way, with the conditions that:

1. The applicant modifies the platform to maintain the five foot clear path;
2. Adds the ADA-compliant tree grate;
3. The applicant can build the deck as proposed in the plans, with the understanding that if the new outdoor dining ordinance would prohibit awnings, then the applicant could update their deck to have umbrellas instead of the awning via an administrative approval; and,
4. The applicant pay for all parking spaces used for their valet services.

The Mayor said she did not believe that the conversation resolved the issue of equity.

Mr. Kalczynski said he would want more clarity on the additional charges for the valet spaces before agreeing to the conditions as set forth in the motion.

Commissioner Baller said he would not support the motion. He said passage of this motion would result in policy implications. He said he was not in favor of allowing a dining deck when there is already a decent amount of outdoor dining at the establishment. He said he would recommend delaying the decision until there is more clarity, and perhaps some policy, on the various issues.

CA Kucharek noted that the charges for the additional valet spaces could be addressed as part of the lease agreement the applicant would be required to enter into with the City.

Ms. Allen said she would like to receive approval for the plans this evening, and that she might recommend her client delay actual construction until the outcome of the new outdoor dining ordinance is clear.

Public Comment

Paul Reagan concurred with Commissioner Baller that the City should determine its policy or principles first regarding granting outdoor dining decks before weighing in on this particular request.

ROLL CALL VOTE: Ayes, MPT Boutros
 Commissioner Schafer
 Mayor Longe
 Commissioner Host
 Commissioner McLain

 Nays, Commissioner Haig
 Commissioner Baller

04-122-22 Approval of the City Logo Recommendation

ACM Ecker presented the item.

The Mayor and Commissioner Baller commended the Ad Hoc Committee and Staff on their work.

Commissioner Haig recommended that attention be paid to subtlety in the wayfinding and gateway signage.

Commissioner Baller spoke in favor of the logo proposal and the wayfinding RFP. He said he had some concerns about the composition and size of the proposed Committee, noting for instance that a branding professional should be included on the Committee.

MOTION: Motion by MPT Boutros, seconded by Commissioner Baller:
To adopt a resolution to approve the City logo as recommended by McCann Detroit and the BBDC in 2017, and the Wayfinding and Gateway Signage Committee in 2022.

Commissioner Host commended the Committee as well.

The Mayor noted that the City received an email from former Mayor Russell Dixon in support of the selection of logo option one.

VOICE VOTE: Ayes, MPT Boutros
Commissioner Schafer
Mayor Longe
Commissioner Host
Commissioner McLain
Commissioner Haig
Commissioner Baller

Nays, None

04-123-22 RFP for Updated Wayfinding Plan

Discussion occurred as part of Item 04-122-22.

MOTION: Motion by MPT Boutros, seconded by Commissioner Baller:
To authorize the City Manager to issue an RFP for an update of the 2004 Wayfinding Plan.

VOICE VOTE: Ayes, MPT Boutros
Commissioner Schafer
Mayor Longe
Commissioner Host
Commissioner McLain
Commissioner Haig
Commissioner Baller

Nays, None

Establishment Of The Ad Hoc Wayfinding And Gateway Signage Committee And Direction To Work On Concept Plans For The Northern And Southern Gateways To Downtown

Commissioner Baller asked that more clarity be provided regarding the composition of the proposed Committee.

ACM Ecker summarized the kinds of representatives that would be included on the Committee.

Commissioner Baller said he wanted to see a separate report that details the charge of the Committee, its terms, and its composition.

MPT Boutros and Commissioner Haig concurred with Commissioner Baller.

It was agreed that Staff would return with a report that would address the final two aspects of the Ad Hoc Wayfinding and Gateway Signage Committee Report's set of motions, and would include more information on the proposed Committee.

CM Markus noted that the current Committee made the recommendations, and noted that changing the Committee's composition would affect future decisions.

The Mayor also noted that if a branding professional is on the Committee they would not be able to respond to the RFP, which could also pose an issue for interested Committee candidates.

04-124-22 RH Coordination Agreement

ACM Ecker presented the item. She noted that Staff was recommending that paragraph 11 be changed to read:

"Condition of E. Brown Street and Daines Street Rights of Way at Expiration of Agreement Unless otherwise agreed by the parties, at the conclusion of the term of this Agreement, RH and/or Sachse shall remove all barricades, signs, equipment, construction materials, and debris from the CSA located on E. Brown Street and Daines. The City shall require RH and/or Sachse to re-pave E. Brown and to remove and replace any curb, gutters, and sidewalks on E. Brown and any sidewalk on Daines, at the sole discretion and direction of the City."

It was confirmed that RH was aware of the proposed changes and that the proposed changes had been reviewed by CA Kucharek.

MPT Boutros thanked Staff and the applicants.

MOTION: Motion by MPT Boutros, seconded by Commissioner Schafer:
To approve an agreement with RH and Sachse Construction for the coordination of construction activities on S. Old Woodward and to authorize the Mayor and City Clerk to sign the agreement on behalf of the City with the amendment of paragraph 11 as stated by ACM Ecker.

ROLL CALL VOTE: Ayes, MPT Boutros
 Commissioner Schafer
 Mayor Longe
 Commissioner Host
 Commissioner McLain
 Commissioner Haig
 Commissioner Baller

Nays, None

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.

04-125-22 Improvements in Information Provision and Methodology

MOTION: Motion by Commissioner Haig, seconded by Commissioner Baller:
To discuss improvements in information provision and methodology to help the Commission make better policy decisions and improve its service to the City.

VOICE VOTE: Ayes, MPT Boutros
 Commissioner Schafer
 Mayor Longe
 Commissioner Host
 Commissioner McLain
 Commissioner Haig
 Commissioner Baller

Nays, None

04-126-22 On-Street Parking Study

MOTION: Motion by Commissioner Haig, seconded by Commissioner Host:
To study the number of on-street parking spaces in the City and their current utilization for different uses, especially with regard to future outdoor dining requirements.

Commissioner Baller said the matter of how dining decks should be allocated should be discussed as part of the City's update of its outdoor dining ordinance. He recommended the City resolve that policy question before discussing more general parking policy matters. He also recommended that any fellow Commissioners who have not read the City's 2018 Parking Report do so.

VOICE VOTE: Ayes, Commissioner Host
 Commissioner Haig

Nays, MPT Boutros
 Commissioner Schafer
 Mayor Longe
 Commissioner McLain
 Commissioner Baller

Commission Discussion On Items From Previous Meetings

CM Markus clarified that discussions occurring under this section of the agenda should be researched, initiated, and guided by the Commissioner that made the relevant motion.

04-127-22 City Manager Selection Process

Commissioner Host noted that the City Charter tasks the Commission with hiring a City Manager. He recommended that the Commission hire a qualified search firm to conduct a City Manager search.

Commissioners Baller and Schafer expressed their preference for option three as outlined in CM Markus’ memo. Mayor Longe concurred, but said that a full discussion of the options could occur if the Commission decided to set this option as a formal agenda item.

Mayor Longe said she had participated in a number of national searches in her philanthropic career, and that she was ultimately less impressed with national search firms than she would have otherwise expected to be. She said she had seen conflicts of interest arise in national searches directed by firms. She described the process of using a national search firm as expensive and time-consuming.

MOTION: Motion by Commissioner McLain, seconded by Commissioner Schafer:
To make the City Manager Selection Process a formal agenda item.

VOICE VOTE: Ayes, Commissioner Host
Commissioner Haig
MPT Boutros
Commissioner Schafer
Mayor Longe
Commissioner McLain
Commissioner Baller

Nays, None

Assisting the Birmingham Bloomfield Community Coalition

No motion was made, but the Mayor said the Commission would have a discussion at a future meeting regarding how the Commission might be able to further assist the Birmingham Bloomfield Community Coalition in its work.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
- B. Commissioner Comments

Commissioner Host said that the Commission should have given chapter-by-chapter feedback on the 2040 Plan draft at the joint Commission and Planning Board. He continued that the Commission insufficiently interacts with resident comment, and that likely deters residents from interacting with the Commission in the future. He said he would like to see more interaction between the Commission and the public and the Commission and the City’s various boards and committees.

Commissioner Haig said that while the Chair of the Planning Board described what process they followed for working on the master plan, it would have been prudent to have the Board clarify why they followed that process.

The Mayor stated that the joint Planning Board-Commission meeting was to provide comment on the Board’s direction to the master planning team regarding the writing of the third draft. She noted that

Commissioner Baller verified whether there were any points of outstanding contention among the Board members.

Commissioner Haig said he wanted more information on why the selected priorities were chosen by the Board over other options.

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

During the City Manager's Report there was a brief discussion of parking-related matters.

INFORMATION ONLY

XI. ADJOURN

Mayor Longe adjourned the meeting at 11:05 p.m.

Alexandria Bingham
City Clerk



Laura Eichenhorn
City Transcriptionist

City of Birmingham

Warrant List Dated 04/27/2022

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Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
	*	005322	DTE ENERGY COMPANY	2,174.18
285221	*	005430	21ST CENTURY MEDIA- MICHIGAN	2,036.75
285222	*	000855	48TH DISTRICT COURT	317,095.79
285224	*	002670	MIKE ALBRECHT	135.63
285225	*	009117	ALL CITY DOGS INC	3,150.00
285226	*	009380	APRILE LAW, PLLC	220.00
285227		000500	ARTECH PRINTING INC	126.00
285228	*	006759	AT&T	251.77
285229	*	006759	AT&T	124.34
285230	*	006759	AT&T	124.36
285231	*	003703	AT&T MOBILITY	756.86
285232	*	009381	ATTISHA LAW PLC	250.00
285233	*	004027	AUTOMATED BENEFIT SVCS INC	567.00
285235		BDREFUND	BASEMENT WATERPROOFING & FOUNDATION	100.00
285236	*	009383	BATTI LAW PLLC	420.00
285238	*	MISC	BENJAMIN CASTLE	100.00
285239		000524	BIRMINGHAM LOCKSMITH INC	151.92
285240		003526	BOUND TREE MEDICAL, LLC	1,923.55
285241		006520	BS&A SOFTWARE, INC	14,315.00
285242		009078	CANON SOLUTIONS AMERICA INC	11,498.00
285243	*	MISC	CBS INTERACTIVE	4,118.30
285244	*	000444	CDW GOVERNMENT INC	2,124.26
285245		000605	CINTAS CORPORATION	25.24
285246	*	000605	CINTAS CORPORATION	115.63
285247		000605	CINTAS CORPORATION	388.20
285248	*	008006	CLEAR RATE COMMUNICATIONS, INC	1,322.89
285249	*	004026	COFINITY	1,505.00
285250		009167	COL'S FAMILY RESTAURANT	53.80
285251	*	008955	COMCAST	326.95
285252		000979	COMERICA BANK	13,107.73
285253		001367	CONTRACTORS CONNECTION INC	2,555.80
285254		008512	COOL THREADS EMBROIDERY	320.95
285255		008582	CORE & MAIN LP	720.00
285256	*	000177	DELWOOD SUPPLY	122.50
285257	*	006907	DENTEMAX, LLC	155.70
285258	*	006956	R.L. DEPPMANN COMPANY, INC	123.30
285259	*	000179	DTE ENERGY	160.88
285260	*	005322	DTE ENERGY COMPANY	925.00
285261		007702	EASY PICKER GOLF PRODUCTS, INC	291.60
285262	*	004574	FAIR-WAY TILE & CARPET, INC.	845.00
285263	*	000936	FEDEX	33.58
285264		BDREFUND	FERLITO CONSTRUCTION	100.00

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Check Number	Early Release	Vendor #	Vendor	Amount
285265		006384	GEOGRAPHIC INFORMATION SERVICES, IN	446.87
285266		MISC	GIACALONE BUILDING LLC	100.00
285267	*	004604	GORDON FOOD	818.35
285268		BDREFUND	Great Lakes Asphalt, Paving & Sealc	100.00
285270		003132	HASTINGS AIR-ENERGY CONTROL INC	134.58
285271	*	009382	HB LAW, PLLC	250.00
285272		009419	NICHOLAS HILL	58.00
285273	*	001956	HOME DEPOT CREDIT SERVICES	1,024.90
285275	*	009401	IRENE S WASSEL	500.00
285276	*	009234	JEFFREY RONDEAU	60.00
285277	*	009403	JUSTIN ZAYID	550.00
285278	*	004088	KGM DISTRIBUTORS INC	234.00
285279		BDREFUND	KOGAN, NATHAN M	100.00
285280		BDREFUND	LAKESIDE CONSTRUCTION GROUP	100.00
285281	*	009392	LAMB LEGAL CONSULTING SERVICES	800.00
285282	*	009386	LAW OFFICE OF BRIAN P. FENECH	300.00
285283		MISC	LYNCH CUSTOM HOMES	1,400.00
285284		BDREFUND	MAC CONSTRUCTION, INC.	100.00
285285	*	008802	MARK VOSS DESIGN	1,975.00
285286	*	009085	MGSE SECURITY LLC	450.00
285287		002207	MICHIGAN AUTOMATIC SPRINKLER	2,889.00
285288		000230	MIKE SAVOIE CHEVROLET INC	2,579.87
285289		007163	MOBILE HEALTH RESOURCES	1,958.30
285290		BDREFUND	MOSHER DOLAN	100.00
285292		001585	NATIONAL ALLIANCE OF	35.00
285293		BDREFUND	NEST CONSTRUCTION	600.00
285294		BDREFUND	NORTHERN SIGN CO INC	100.00
285295	*	000477	OAKLAND COUNTY	383,351.30
285296	*	003461	OBSERVER & ECCENTRIC	662.46
285297	*	004370	OCCUPATIONAL HEALTH CENTERS	80.00
285298	*	000481	OFFICE DEPOT INC	116.97
285299	*	003881	ORKIN PEST CONTROL	4,320.00
285300	*	009395	ORLANDO LAW PRACTICE PC	600.00
285301		005733	POWER LINE SUPPLY	56.52
285302		004137	R & R FIRE TRUCK REPAIR INC	914.49
285303		000218	ROYAL OAK P.D.Q. LLC	168.00
285304		008815	SHI INTERNATIONAL CORP.	451.51
285305	*	007907	SP+ CORPORATION	4,455.00
285306		001104	STATE OF MICHIGAN	42.54
285307	*	001005	STATE OF MICHIGAN	300.00
285308	*	009384	THE EDITH BLAKNEY LAW FIRM, PLLC	300.00
285309	*	MISC	TOTAL PLASTICS RESOURCES, LLC	730.00
285310	*	005449	UNEMPLOYMENT INS AGENCY	38.83

City of Birmingham
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Check Number	Early Release	Vendor #	Vendor	Amount
285311	*	000293	VAN DYKE GAS CO.	89.07
285312	*	000158	VERIZON WIRELESS	127.66
285313	*	000158	VERIZON WIRELESS	316.71
285314	*	000158	VERIZON WIRELESS	49.16
285315		000828	WALL STREET JOURNAL, THE	35.00
285316		BDREFUND	WALLSIDE INC	500.00
285317	*	004497	WATERFORD REGIONAL FIRE DEPT.	145.18
285319		BDREFUND	WHITE WOLF LANDSCAPING	100.00
285320	*	005794	WINDSTREAM HOLDINGS INC	862.90
SUBTOTAL PAPER CHECK				\$801,540.63
<u>ACH TRANSACTION</u>				
5155	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	32,837.50
5156	*	008649	ROBERT ABRAHAM JR.	75.00
5157	*	009323	ALEXANDRIA BINGHAM	219.87
5158		009126	AMAZON CAPITAL SERVICES INC	1,191.96
5158	*	009126	AMAZON CAPITAL SERVICES INC	123.27
5160	*	007345	BEVERLY HILLS ACE	5.02
5161	*	009183	BOB ADAMS TOWING	333.00
5162	*	008983	BRENNA SANDLES	457.75
5163	*	009396	CECILIA QUIRINDONGO BAUNSOE	500.00
5164	*	009352	CHRISTINA WOODS	191.21
5165		003633	CLARKE MOSQUITO CONTROL PRODUCT INC	10,772.40
5166	*	000213	FIRE DEFENSE EQUIP CO INC	88.62
5167		001230	FIRE SYSTEMS OF MICHIGAN LLC	79.00
5167	*	001230	FIRE SYSTEMS OF MICHIGAN LLC	356.25
5168	*	000243	GRAINGER	288.58
5170		000331	HUBBELL ROTH & CLARK INC	69,315.59
5171		008378	THE HUNTINGTON NATIONAL BANK	500.00
5172	*	009390	IDUMESARO LAW FIRM, PLLC	1,350.00
5173	*	007870	J.C. EHRLICH CO. INC.	53.00
5174	*	002576	JAX KAR WASH	109.00
5175		009298	JCR SUPPLY INC	904.29
5176	*	003458	JOE'S AUTO PARTS, INC.	851.32
5178	*	004085	KONE INC	2,086.45
5179	*	005876	KROPF MECHANICAL SERVICE COMPANY	516.00
5180	*	009385	LAW OFFICE OF MICHAEL J. DICK	1,810.00
5181	*	009398	MARCIA C ROSS PC	600.00
5182		001505	MEADOWBROOK INSURANCE GROUP	10,551.25
5185	*	001089	MUNICODE	500.00
5187	*	001194	NELSON BROTHERS SEWER	1,000.00
5188		001864	NOWAK & FRAUS ENGINEERS	31,183.00
5189	*	006359	NYE UNIFORM COMPANY	1,046.80
5190	*	000478	ROAD COMM FOR OAKLAND CO	3,063.82

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5191		009301	SECURE-CENTRIC INC	957.60
5192	*	003785	SIGNS-N-DESIGNS INC	180.00
5193		000254	SOCRRA	69,994.00
5193	*	000254	SOCRRA	200.00
5194		009379	YELLOW DOOR LAW	3,750.00
SUBTOTAL ACH TRANSACTION				\$248,041.55
GRAND TOTAL				\$1,049,582.18

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 05/04/2022

Meeting of 05/09/2022

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
285323		MISC	ADVANCED TECH ELECT SERVICES	200.00
285324		BDREFUND	AGH CONSTRUCTION	100.00
285325		BDREFUND	ALIMOFF BUILDING & DEVELOPMENT LLC	100.00
285326		000951	ALL AMERICAN CASH REGISTER INC	200.00
285328	*	000161	ALPHA PSYCHOLOGICAL SERVICES PC	725.00
285329		BDREFUND	ALPINE CONSTRUCTION INC	100.00
285330		BDREFUND	AMERICAN CONSTRUCTION AUTHORITY LLC	100.00
285331		BDREFUND	AMERICAN STANDARD ROOFING	100.00
285332		000500	ARTECH PRINTING INC	344.00
285333	*	006759	AT&T	251.69
285334		BDREFUND	AYAR CONSTRUCTION LLC	500.00
285335		BDREFUND	B-DRY SYSTEM OF MICHIGAN INC	200.00
285336		001122	BOB BARKER CO INC	881.60
285337		002231	BILLINGS LAWN EQUIPMENT INC.	251.94
285339		BDREFUND	BLOOMFIELD CONSTRUCTION CO	200.00
285340	*	MISC	BOBS SANITATION SERVICE INC	575.00
285341		BDREFUND	BOJI GROUP	500.00
285342	*	006953	JACQUELYN BRITO	11.23
285343		009078	CANON SOLUTIONS AMERICA INC	163.20
285345	*	007732	CAPITAL TIRE, INC.	642.48
285346	*	MISC	CHRISTIE CURTIS	415.00
285347		000605	CINTAS CORPORATION	328.12
285348		000605	CINTAS CORPORATION	52.06
285349		002234	CMP DISTRIBUTORS INC	939.00
285349	*	002234	CMP DISTRIBUTORS INC	9,180.00
285350	*	008955	COMCAST	577.12
285351		007774	COMCAST BUSINESS	90.91
285352	*	000627	CONSUMERS ENERGY	2,520.17
285353		008582	CORE & MAIN LP	528.00
285354		BDREFUND	D'AMBROSIO, MICHAEL	1,000.00
285356	*	000177	DELWOOD SUPPLY	11.08
285357		BDREFUND	DILLMAN AND UPTON	200.00
285359	*	000179	DTE ENERGY	46.53
285361	*	000179	DTE ENERGY	500.76
285362	*	000179	DTE ENERGY	16.31
285363	*	000179	DTE ENERGY	15.41
285364	*	000179	DTE ENERGY	39.11
285365	*	000179	DTE ENERGY	1,756.72
285366	*	000179	DTE ENERGY	14.76
285367	*	000179	DTE ENERGY	3,344.09
285368	*	000179	DTE ENERGY	5,357.75
285369	*	000179	DTE ENERGY	1,784.62
285370	*	000179	DTE ENERGY	6,090.41

City of Birmingham

Warrant List Dated 05/04/2022

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Check Number	Early Release	Vendor #	Vendor	Amount
285371	*	000179	DTE ENERGY	348.57
285372	*	000179	DTE ENERGY	40.93
285373	*	000179	DTE ENERGY	1,654.46
285374	*	000179	DTE ENERGY	17.61
285375	*	000179	DTE ENERGY	117.11
285376	*	000179	DTE ENERGY	21.23
285377	*	000179	DTE ENERGY	60.62
285378	*	000179	DTE ENERGY	296.88
285379		007505	EAGLE LANDSCAPING & SUPPLY	1,130.32
285381		000493	ED RINKE CHEVROLET BUICK GMC	1,109.25
285383		BDREFUND	EJH CONSTRUCTION	500.00
285384		BDREFUND	EMERGENCY EGRESS LLC	100.00
285385		001495	ETNA SUPPLY	255.00
285386		BDREFUND	FATHER & SON CONSTRUCTION CO	300.00
285387		009317	FAUM SOLUTIONS LLC	3,796.00
285388	*	000936	FEDEX	13.61
285389		BDREFUND	FINISHED BASEMENTS PLUS LLC	200.00
285390	*	MISC	FUNTASTIC FACES	325.00
285391	*	003285	GARDINER C. VOSE INC.	392.00
285392		BDREFUND	GREAT LAKES LANDSCAPE DESIGN, INC	200.00
285393		001447	HALT FIRE INC	55.72
285394		BDREFUND	HELLER & ASSOCIATES INC	500.00
285395		001836	HISTORICAL SOCIETY OF MICHIGAN	100.00
285396	*	001956	HOME DEPOT CREDIT SERVICES	1,468.10
285397		000342	IBS OF SE MICHIGAN	1,181.11
285399	*	MISC	JACK TODD	150.93
285400	*	MISC	JASON DALEY	194.00
285401		BDREFUND	JONES, DANIEL W	200.00
285402		BDREFUND	JP Craig Homebuilders	300.00
285403	*	007244	CHRISTOPHER JUDKINS	208.00
285404		BDREFUND	KELLY BUILDING & DEVELOPMENT CO LLC	1,700.00
285405		004088	KGM DISTRIBUTORS INC	171.00
285406	*	000362	KROGER COMPANY	57.52
285407		BDREFUND	KURTIS KITCHEN & BATH CENTERS	200.00
285408		BDREFUND	LAMARCO HOMES LLC	2,500.00
285409		BDREFUND	LEACH CONSTRUCTION LLC	100.00
285410		BDREFUND	LIVE WELL CUSTOM HOME LLC	2,000.00
285411		001669	MACP	100.00
285412		BDREFUND	MAINSTREET DESIGN & BUILD	300.00
285413		001417	MAJIK GRAPHICS INC	380.00
285414		BDREFUND	MANUS BUILDERS	200.00
285415	*	008229	MIKE MANZO	59.36
285417	*	009085	MGSE SECURITY LLC	467.00

City of Birmingham

Warrant List Dated 05/04/2022

Meeting of 05/09/2022

Check Number	Early Release	Vendor #	Vendor	Amount
285418		BDREFUND	MHRAC INC	200.00
285419		BDREFUND	MICHAEL FECHIK	300.00
285420	*	002022	MICHIGAN ASSN. OF FIRE CHIEFS	40.00
285421		002207	MICHIGAN AUTOMATIC SPRINKLER	545.00
285422		MISC	MICHIGAN AUTOMATIC SPRINKLER, INC.	3,941.20
285423		007479	MICHIGAN BREAD BAKERY	55.60
285424		BDREFUND	MICHIGAN SOLAR SOLUTIONS	200.00
285425		000230	MIKE SAVOIE CHEVROLET INC	684.95
285426		BDREFUND	MOSHER DOLAN	200.00
285427		008367	NATIONAL HOSPITALITY INSTITUTE	195.00
285428		BDREFUND	NEW ERA CONSTRUCTION INC	200.00
285429	*	004370	OCCUPATIONAL HEALTH CENTERS	224.00
285431	*	000481	OFFICE DEPOT INC	65.42
285432		009467	PARK PLACE TECHNOLOGIES, LLC	2,124.72
285433	*	001753	PEPSI COLA	225.35
285434		BDREFUND	PETRUCCI HOMES/MICHAEL PETRUCCI	200.00
285435		008028	PK SAFETY SUPPLY	510.00
285436	*	000801	POSTMASTER	265.00
285437	*	000801	POSTMASTER	265.00
285438		008974	PREMIER PET SUPPLY	182.97
285439	*	007463	PUBLIC RUBBER & SUPPLY CO., INC.	581.39
285440	*	002852	QMI GROUP INC	124.85
285441		BDREFUND	QUALITY ROOFING INC.	500.00
285442		004137	R & R FIRE TRUCK REPAIR INC	1,007.75
285443	*	008342	RAIN MASTER CONTROL SYSTEMS	29.85
285444		BDREFUND	RAVES CONSTRUCTION	300.00
285445		007252	RAY WIEGAND'S NURSERY INC.	1,112.00
285446		BDREFUND	RAYCO CONSTRUCTION	100.00
285447	*	MISC	REDFORD TOWNSHIP UNICYCLE CLUB INC	300.00
285448		007305	REFRIGERATION SERVICE PLUS	1,432.00
285449	*	003447	RAFT	1,130.00
285450		BDREFUND	RENEWAL BY ANDERSEN	100.00
285451		BDREFUND	RENNER BROS CONSTRUCTION INC	100.00
285452		002566	REYNOLDS WATER	127.20
285453		MISC	RICHARD WEINGARTNER	400.00
285454	*	007898	JEFFREY SCHEMANSKY	25.00
285455		MISC	SHERRY HOVE	101.09
285456		BDREFUND	SMOLYANOV HOME IMPROVMENT	100.00
285458		001363	SPECMO ENTERPRISES, INC	150.00
285459		001104	STATE OF MICHIGAN	32,677.14
285460		BDREFUND	Swift Services, LLC	100.00
285461	*	UBREFUND	TECHHOME BUILDING CO LLC	637.88
285462		BDREFUND	TEMPLETON BUILDING COMPANY	500.00

City of Birmingham
Warrant List Dated 05/04/2022

Meeting of 05/09/2022

Check Number	Early Release	Vendor #	Vendor	Amount
285463		BDREFUND	THE KROGER CO OF MICHIGAN	100.00
285464	*	004379	TURNER SANITATION, INC	290.00
285465		008632	TURNOUT RENTAL	95.20
285466	*	001279	US FIGURE SKATING ASSOC.	3,266.25
285467	*	000158	VERIZON WIRELESS	942.58
285468	*	000158	VERIZON WIRELESS	147.48
285470		BDREFUND	W CONSTRUCTION	100.00
285471		BDREFUND	WALLSIDE INC	500.00
285472	*	004497	WATERFORD REGIONAL FIRE DEPT.	178.78
285473	*	008408	WISS, JANNEY, ELSTNER ASSOC. INC	20,000.00
285474	*	008902	ZORO TOOLS, INC.	258.87
SUBTOTAL PAPER CHECK				\$142,564.92
ACH TRANSACTION				
5195	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	22,861.11
5196	*	002284	ABEL ELECTRONICS INC	660.00
5197		009126	AMAZON CAPITAL SERVICES INC	610.43
5197	*	009126	AMAZON CAPITAL SERVICES INC	624.92
5198	*	007345	BEVERLY HILLS ACE	22.62
5199	*	007624	BIRMINGHAM OIL CHANGE CENTER, LLC	56.97
5200	*	003282	LISA MARIE BRADLEY	254.37
5201		002668	CONTRACTORS CLOTHING CO	458.43
5202		000217	FOUR SEASON RADIATOR SERVICE INC	119.00
5203	*	000243	GRAINGER	662.73
5204	*	001672	HAYES PRECISION INC	32.50
5205		000331	HUBBELL ROTH & CLARK INC	2,950.00
5206	*	008851	INSIGHT INVESTMENT	5,758.37
5207		000261	J.H. HART URBAN FORESTRY	14,213.38
5207	*	000261	J.H. HART URBAN FORESTRY	1,824.00
5208		009298	JCR SUPPLY INC	102.47
5209	*	003458	JOE'S AUTO PARTS, INC.	748.72
5210	*	005550	LEE & ASSOCIATES CO., INC.	615.70
5212	*	009370	MICHAEL SIMON	243.00
5213	*	000377	MICHIGAN MUNICIPAL LEAGUE	37.00
5214	*	006359	NYE UNIFORM COMPANY	446.00
5215	*	006853	PAUL C SCOTT PLUMBING INC	772.00
5216	*	003554	RKA PETROLEUM	16,945.61
5217	*	001181	ROSE PEST SOLUTIONS	97.00
5218	*	007897	JEFFREY SCAIFE	15.20
5219	*	002037	TOTAL ARMORED CAR SERVICE, INC.	758.36
SUBTOTAL ACH TRANSACTION				\$71,889.89

City of Birmingham
Warrant List Dated 05/04/2022

Meeting of 05/09/2022

Check Number	Early Release	Vendor #	Vendor	Amount
GRAND TOTAL				\$214,454.81

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: April 22, 2022

TO: Thomas M. Markus, City Manager

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

SUBJECT: Amendment to 2018-2019 and 2020-2021 Public Service Contracts

INTRODUCTION:

Staff is recommending extensions of the 2018-2019 and 2020-2021 Public Service Contracts with NEXT in order to expend the remaining CDBG funds for those program years.

BACKGROUND:

The City previously entered into agreements with NEXT for the 2018-2019 and 2020-2021 Community Development Block Grant (CDBG) program years. Under the CDBG program, the contracts provide for Yard Services, Senior Outreach Services, and Minor Home Repair Services to resident homeowners administered by NEXT for the City.

Currently, there are unexpended balances in Community Development Block Grant Funds for the program years 2018-2019 (\$732) and 2020-2021 (\$27,357.60). In order to provide for continued expenditures of these funds, the Department of Community and Economic Development at Oakland County has advised the City that our current contracts with NEXT which expired on June 30, 2021 (2018-2019) and December 31, 2021 (2020-2021) must be extended.

LEGAL REVIEW:

Legal has reviewed and approved the contract amendments.

FISCAL IMPACT:

Extending the contract will allow the City to spend the remaining CDBG funds.

PUBLIC COMMUNICATIONS:

None needed.

SUMMARY:

It is recommended that the City Commission approve the amendments to extend the contracts with NEXT through December 31, 2022.

ATTACHMENTS:

- Amendment to the 2018-2019 Public Service Contract
- Amendment to the 2020-2021 Public Service Contract

SUGGESTED ACTION:

To make a motion adopting a resolution to approve an extension of the public services and minor home repair contracts with NEXT for the purpose of expending remaining program year 2018-2019 and 2020-2021 Community Development Block Grant funds for the Yard Services, Senior Outreach Services, and Minor Home Repair Services administered by NEXT through December 31, 2022; and further, to authorize the Mayor and the City Clerk to sign the amendments on behalf of the City.

ADDENDUM TO COMMUNITY DEVELOPMENT BLOCK GRANT
PUBLIC SERVICE CONTRACT
FOR YARD SERVICES, SENIOR OUTREACH SERVICES AND
MINOR HOME REPAIR SERVICES
FOR PROGRAM YEAR 2018-2019

THIS AGREEMENT, made as of this 21 day of April, 2022, by and between the City of Birmingham and NEXT provides as follows:

WHEREAS, the City and NEXT entered into a Yard Services and Senior Outreach Services on January 14, 2019 for the Community Development Block Grant program year 2018-2019 to provide for Yard Services and Senior Outreach Services to resident homeowners of the City of Birmingham;

WHEREAS, the City and NEXT desire to include Minor Home Repair Services in the amount of \$2,335 to this Contract through December 31, 2019.

WHEREAS, the City and NEXT desire to extend this Contract through June 30, 2020 for purposes of expending remaining 2018-2019 Community Development Block Grant Funds.

WHEREAS, the City and NEXT desire to extend this Contract through June 30, 2021 for purposes of expending remaining 2018-2019 Community Development Block Grant Funds.

WHEREAS, the City and NEXT desire to extend this Contract through December 31, 2022 for purposes of expending remaining 2018-2019 Community Development Block Grant Funds.

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

1. The parties agree to further extend the Contract until December 31, 2022.
2. All other terms of the original and amended contract that do not conflict with this Agreement shall remain in full force and in effect throughout the term of this extension.

WITNESSES:

C. Woods

NEXT

By: Christi Braun

Its: Executive Director

STATE OF MICHIGAN)

) ss:

COUNTY OF OAKLAND)

C. WOODS
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES ON 10.10.2028
ACTING IN COUNTY OF Oakland

On this 21 day of April, 2022, before me personally appeared Christi Braun, who acknowledged that with authority on behalf of NEXT to do so he/she signed this Agreement.

C. Woods

Notary Public

Oakland County, Michigan
Acting in Oakland County, Michigan

My commission expires: 10/10/2028

CITY OF BIRMINGHAM

By: _____

Its: Mayor

By: _____

Alexandria Bingham

Its: City Clerk

[Faint, illegible text]

ADDENDUM TO COMMUNITY DEVELOPMENT BLOCK GRANT
PUBLIC SERVICE CONTRACT
FOR YARD SERVICES, SENIOR OUTREACH SERVICES,
AND MINOR HOME REPAIR SERVICES
FOR PROGRAM YEAR 2020-2021

THIS AGREEMENT, made as of this 24 day of April, 2022, by and between the City of Birmingham and NEXT provides as follows:

WHEREAS, the City and NEXT entered into a Yard Services, Senior Outreach Services, and Minor Home Repair Services Public Service Contract on June 25, 2021 for the Community Development Block Grant program year 2020-2021 to provide for Yard Services, Senior Outreach Services, and Minor Home Repair Services to resident homeowners of the City of Birmingham;

WHEREAS, the Contract provided that NEXT would administer these services for the City until December 31, 2021 in the funding amounts as follows: \$7,327 for yard services, \$3,500 for senior services, and \$25,550 for Minor Home Repair.

WHEREAS, the City and NEXT desire to extend this Contract through December 31, 2022 for purposes of expending remaining 2020-2021 Community Development Block Grant Funds.

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

1. The parties agree to further extend the Contract until December 31, 2022.
2. All other terms of the original and amended contract that do not conflict with this Agreement shall remain in full force and in effect throughout the term of this extension.

WITNESSES:

Cheryl Haddock

NEXT

By: Olivia Baw

Its: Executive Director

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this 20 day of April, 2022, before me personally appeared
_____, who acknowledged that with authority on behalf of
NEXT _____ to do so he/she signed this Agreement.

Ingrid Haddock
Notary Public
Oakland County, Michigan
Acting in Oakland County, Michigan

My commission expires: 8-23-2028

INGRID Z. HADDOCK
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Aug 23, 2028
ACTING IN COUNTY OF Oakland

CITY OF BIRMINGHAM

By: _____

Its: Mayor

By: _____

Alexandria Bingham
Its: City Clerk



MEMORANDUM

Office of the City Manager

DATE: May 3, 2022

TO: Thomas M. Markus, City Manager

FROM: Marianne Gamboa, Communications Director

SUBJECT: Juneteenth

INTRODUCTION:

On June 17, 2021, President Joe Biden signed the Juneteenth National Independence Day Act into law. Juneteenth is recognized annually on June 19 and is now a federal holiday in the United States, commemorating the emancipation of African-American slaves. As such, Juneteenth should be designated as a legal holiday pursuant to Section 2-26 of the Birmingham City Code.

BACKGROUND:

On August 26, 2013, the City Commission approved a resolution to establish legal holidays pursuant to Section 2-26 of the Birmingham City Code. City meetings are not held on holidays listed in the resolution.

Sec. 2-26. - Regular meetings.

Regular meetings of the city commission shall be held not less than twice a month on such days as the city commission shall determine. If a regular meeting should fall on a legal holiday, the city commission may cancel the meeting or hold the meeting on the next day that is not a legal holiday. For purposes of this section, legal holiday means any day designated as a state or national holiday and those days so designated by resolution of the city commission.

LEGAL REVIEW:

City Attorney Mary Kucharek has reviewed this information and has no objections.

FISCAL IMPACT:

N/A

PUBLIC COMMUNICATIONS:

N/A

SUMMARY:

Juneteenth, a federal holiday commemorating the emancipation of African-American slaves recognized annually on June 19, should be added to the City of Birmingham's designated legal holidays pursuant to Section 2-26 of the Birmingham City Code. This year, June 19 falls on a Sunday and will be observed on Monday, June 20, 2022. The Joint City Commission/Planning Board Meeting on June 20, 2022 will take place as scheduled, however no city meetings will be held on Juneteenth going forward.

ATTACHMENTS:

City of Birmingham Resolution to Establish Legal Holidays

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the recommendation to add Juneteenth to the City of Birmingham's designated legal holidays pursuant to Section 2-26 of the Birmingham City Code.

**CITY OF BIRMINGHAM
RESOLUTION TO ESTABLISH LEGAL HOLIDAYS**

Moved by Commission Member _____, seconded by Commission Member _____

BE IT RESOLVED, by the City Commission of the City of Birmingham, Michigan, as follows:

The City Commission does hereby designate the following as legal holidays pursuant to Section 2-26 of the Birmingham City Code:

<i>New Year's Day</i>	<i>Juneteenth</i>	<i>Eid al-Adha</i>
<i>Martin Luther King, Jr. Day</i>	<i>Independence Day</i>	<i>Thanksgiving</i>
<i>Ash Wednesday</i>	<i>Labor Day</i>	<i>Day after Thanksgiving</i>
<i>Passover</i>	<i>Eid al-Fitr</i>	<i>Hanukkah</i>
<i>Good Friday</i>	<i>Rosh Hashanah</i>	<i>Ashura</i>
<i>Easter Sunday</i>	<i>Yom Kippur</i>	<i>Christmas Eve</i>
<i>Shavuot</i>	<i>Sukkot</i>	<i>Christmas</i>
<i>Memorial Day</i>	<i>Shemini Atzeret</i>	<i>Kwanzaa</i>
	<i>Simchat Torah</i>	<i>New Year's Eve</i>

AYES: _____

NAYS: _____

ABSENT: _____

MOTION CARRIED.

I, Alexandria D. Bingham, Clerk of the City of Birmingham, certify that the foregoing is a true and compared copy of a Resolution duly made and passed by the Birmingham City Commission at a meeting held on _____, 2022.

Alexandria D. Bingham, City Clerk



MEMORANDUM

Clerks Office

DATE: April 4, 2022

TO: Thomas M. Markus, City Manager

FROM: Alexandria Bingham, City Clerk

SUBJECT: Greenwood Cemetery Service Provider Recommendation

INTRODUCTION:

Annually the City Clerk, Greenwood Cemetery Advisory Board, and the Department of Public Services reviews the contract for Cemetery Service Management for Greenwood Cemetery. This Contract has been reviewed by all involved, and at the April 1, 2022 meeting the Greenwood Cemetery Advisory Board voted to recommend approval of this contract.

BACKGROUND:

In November 2019, the City issued a RFP for Cemetery Services to provide burial services management, customer service, maintenance coordination, scheduling of burials, assisting with burial record management and assisting with plot or lot sales. It is important to note that this contracted service does not have direct access or control on Cemetery funding, and accounting for the Greenwood Cemetery is maintained through the City's finance department.

After issuing an RFP for cemetery services in November 2019, the City Commission approved an agreement with Creative Collaborations, LLC, whose Principal is Cheri Arcome, to provide burial services on behalf of the city. Each subsequent year the contract is due to be reviewed and renewed. In 2020 and 2021, this service contract was reviewed by multiple departments, recommended by GCAB and approved by the City Commission.

In April 2022 the Greenwood Cemetery Service Provider contract was reviewed by the City Clerk, City Attorney and the Greenwood Cemetery Advisory Board and all recommend a continuation of services with Creative Collaborations, LLC.

Prior to engaging in a contract with Creative Collaborations for cemetery services, Cheri Arcome had managed the Historic Greenwood Cemetery from 2013 through November 30, 2019. Cheri Arcome maintains prompt service, open communication with departments and clients, and organizes cemetery operations with efficiency and professionalism. She has more than 9 years of experience directly with Greenwood Cemetery and that institutional knowledge

along with her other experience, expertise, and proven quality of work makes Cheri Arcome and Creative Collaborations, LLC, an essential resource to the city.

Within the past year, the city has begun discussion of implementing a RFP schedule for ongoing contracted needs. The recommendation is to do RFP's in regular intervals of every five to six years. Since this contract was recently done in 2019, the anticipated year to perform a RFP for this service will be the year 2024.

LEGAL REVIEW:

The city attorney has reviewed the proposed contract.

FISCAL IMPACT:

The clerk's office has requested to utilize the budgeted amount of \$45,600 in account #101-215.000-811.000 to retain a cemetery services provider for the 2022-2023 fiscal year.

PUBLIC COMMUNICATIONS:

The Greenwood Cemetery Advisory Board meeting notices, agenda packets, and minutes are properly noticed according to the Open Meetings Act. While the public is always welcome to participate in a virtual or in person meeting, there is historically little to no participation from the public in these meetings. Additionally, cemetery updates are published as part of the monthly City Manager's Report available on the website and in Commission meeting agendas.

SUMMARY:

The City Clerk recommends the renewal of the cemetery services contract with Creative Collaborations, LLC, to continue to provide exemplary service and managed coordination of cemetery maintenance for the residents and families in the Historic Greenwood Cemetery.

ATTACHMENTS:

- Fully Executed Creative Collaborations Contract 2021-2022
- Addendum to the contract for 2022-2023
- Draft Minutes from the April 1, 2022 Greenwood Cemetery Advisory Board

SUGGESTED COMMISSION ACTION:

To recommend a motion adopting a resolution to approve the addendum to the Greenwood Management Services Agreement with provider Creative Collaborations, LLC, to act on behalf of the city as the service provider to the Historic Greenwood Cemetery for a term of one year, with annual renewals until either party exercises the termination provisions as stated in the contract. The addendum to the annual contract is set for an amount not to exceed \$45,600.00, which will be paid from account #101-215.000-811.0000.

04-129-21 7E

GREENWOOD CEMETERY MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT, made this 26 day of Apr., 2021, by and between **THE CITY OF BIRMINGHAM**, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter "CITY"), and **CREATIVE COLLABORATIONS, LLC**, a cemetery services company, having its principal office at 31356 Newport Dr., Warren, MI (hereinafter "CONTRACTOR"), provides as follows:

WITNESSETH:

WHEREAS, the CITY, desires to have management services; and,

WHEREAS, the CONTRACTOR has made a bid to provide management services in accordance with their bid/proposal dated November 21, 2019, which bid/proposal has been accepted by the CITY, included in the bid proposal is the "Management Agreement Between City of Birmingham and Cheri Arcome"; and,

WHEREAS, two (2) sections of the bid proposal in the "Management Agreement Between City of Birmingham and Cheri Arcome" are now changed: Section iii.b. "Consideration" which is hereby modified to reflect the effective date of this Agreement, which is written above, and Section v. "Indemnification," is hereby removed.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RESPECTIVE AGREEMENTS AND UNDERTAKINGS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

1. It is mutually agreed by and between the parties that the documents consisting of RFP, Bid Form, performance bond, general contract specifications and conditions, and plans and other documents mentioned in connection with the award of the bid for this project shall

be incorporated herein by reference, which are attached hereto, and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of these documents are in conflict with this Agreement, the terms of this Agreement shall take precedence. In addition, the Scope of Work is further defined in the attachment hereto which is incorporated by reference.

2. The CONTRACTOR agrees to provide the management services in accordance with the specifications and conditions contained in the RFP and outlined in the letter of November 21, 2019 which is attached hereto and incorporated by reference.

3. The CITY agrees to pay the CONTRACTOR for the annual services rendered pursuant to this Agreement in the amount of Forty-five Thousand Six Hundred Dollars (\$45,600.00).

4. This Agreement shall renew annually unless terminated as provided herein.

5. In addition to the above, either party may terminate this Agreement, for any reason, by providing ninety (90) days written notice to the other party of its intention to do so.

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

7. The CONTRACTOR and the CITY agree that the CONTRACTOR is acting as an independent contractor with respect to the CONTRACTOR's role in providing services to the CITY pursuant to this Agreement, and as such, shall be liable for its own actions and neither the CONTRACTOR nor its employees shall be construed as employees of the CITY. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or

create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the CITY nor the CONTRACTOR shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The CONTRACTOR shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the CITY, or be deemed an employee of the CITY for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the CITY.

8. The CONTRACTOR acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The CONTRACTOR recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the CITY. Therefore, the CONTRACTOR agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The CONTRACTOR shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The CONTRACTOR further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

9. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The CONTRACTOR agrees to perform

all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

10. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

11. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the CONTRACTOR without the prior written consent of the CITY. Any attempt at assignment without prior written consent shall be void and of no effect.

12. The CONTRACTOR agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The CONTRACTOR shall inform the CITY of all claims or suits asserted against it by the CONTRACTOR's employees who work pursuant to this Agreement. The CONTRACTOR shall provide the CITY with periodic status reports concerning all such claims or suits, at intervals established by the CITY.

13. The CONTRACTOR shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required by this paragraph. All certificates of insurance shall be with insurance carriers licensed and admitted to do business in the State of Michigan and shall be with insurance carriers acceptable to the CITY. The CONTRACTOR

shall procure and maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

- A. Workers Compensation Insurance: Workers Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable Statutes of the State of Michigan.
- B. Comprehensive Motor Vehicle Liability: Comprehensive Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.
- C. Commercial General Liability: Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions:

(A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, (F) Per Contract Aggregate, if applicable
- D. Additional Insured: Commercial General Liability Insurance and Comprehensive Motor Vehicle Liability Insurance as described above shall include an endorsement stating the following shall be "Additional Insured" with the following verbiage: "It is understood and agreed that the following shall be named as Additional Insured: The City of Birmingham, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, including employees and volunteers thereof. This coverage shall be primary to the additional insured, and not contributing with any other insurance or similar protections available to the additional insured, whether said other available coverage be primary, contributing or excess."
- E. Cancellation Notice: All insurance policies listed above shall include an endorsement stating the following: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to: Director of Finance, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan, 48012."

- F. Proof of Insurance Coverage: The CONTRACTOR shall provide the CITY, at the time the contracts are returned to the CITY for execution, certificates and policies as listed below:
- (1) Two (2) copies of Certificate of Insurance for Workers Compensation Insurance;
 - (2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
 - (3) Two (2) copies of Certificate of insurance for Motor Vehicle Liability Insurance;
 - (4) If so requested, certified copies of all policies mentioned above will be furnished.
- G. Expiration: If any of the above coverage expire during the term of this Agreement, the CONTRACTOR shall deliver renewal certificates and/or policies to the CITY at least thirty (30) days prior to the expiration date.
- H. Failure to Maintain Insurance: Upon failure of the CONTRACTOR to obtain or maintain such insurance coverage for the term of the Agreement, the CITY may at its option, purchase such coverage to and subtract the cost of obtaining such coverage to the CONTRACTOR. 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.

14. To the fullest extent permitted by law, the CONTRACTOR and any entity or person for whom the CONTRACTOR is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on their behalf against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the CITY, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arise out of the acts, errors or omissions

of the CONTRACTOR including its employees and agents, in the performance of 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.

The CITY agrees that the contractors shall be solely responsible for job site safety and all contractors shall be required in the CITY'S contract with such contractors to indemnify the CONTRACTOR for any liability incurred by the CONTRACTOR as a result of the contractor's negligent acts or omissions. However, such indemnification shall not extend to liability resulting from the negligence of the CONTRACTOR.

15. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have

the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

16. To the fullest extent permitted by law, the CONTRACTOR and any entity or person for whom the CONTRACTOR is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the CITY, 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 connected therewith, and for any damages which may be asserted, claimed or recovered against or from 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 contract. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of the CITY, its elected or appointed officials, employees, volunteers or others working on behalf of the CITY.

17. If, after the effective date of this Agreement, any official of the CITY, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the CONTRACTOR, the CITY shall have the right to terminate this Agreement without further liability to the CONTRACTOR if the disqualification has not been removed within thirty (30) days after the CITY has given the CONTRACTOR notice of the disqualifying interest. Ownership of less than one percent (1%)

of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

18. If CONTRACTOR fails to perform its obligations hereunder, the CITY may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

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

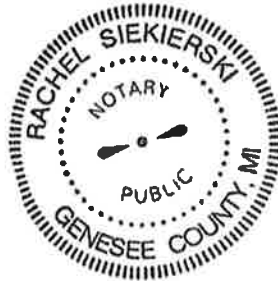
CREATIVE COLLABORATIONS, LLC

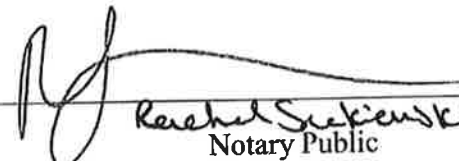
By: 
Cheri Arcome

Its: _____

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this 16th day of April, 2021, before me personally appeared CHERI ARCOME who acknowledged that she signed this Agreement with authority to do so on behalf of CREATIVE COLLABORATIONS, LLC.

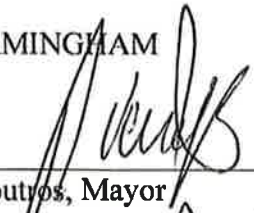


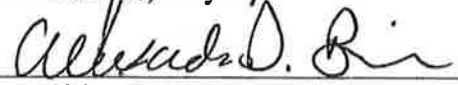

Rachel Siekierski
Notary Public

Genesee County, Michigan
Acting in Macomb County, Michigan


My commission expires: May 24, 2024

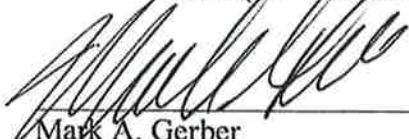
CITY OF BIRMINGHAM


By: 
Pierre Boutros, Mayor

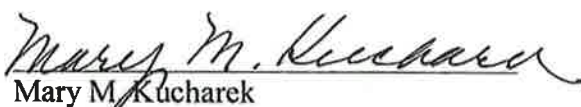
By: 
Alexandria D. Bingham, City Clerk

APPROVALS:


Lauren Wood
Director of Department of Public
Public Services (as to Substance)


Mark A. Gerber
Director of Finance
(as to Financial Obligation)


Thomas M. Markus,
City Manager (as to Substance)


Mary M. Kucharek
City Attorney (as to Form)

SCOPE OF SERVICES

1. **Records.** The Contractor shall keep records of all sales, burials and deeds issued and reported to the City Clerk within five (5) days after each transaction.

The Contractor shall be responsible and submit forms as required by the State of Michigan as necessary, and such forms shall be reported to the City Clerk within five (5) days of filing.

2. **Financial.** The Contractor will provide receipts for sales and/or refunds within five (5) days to the City Clerk.

The Contractor shall not deed to any individual or family until the grave has been fully paid for.

The Contractor will not prepare any grave for burial without a deed having been issued and fully paid.

3. **Customer Service Marketing.** The Contractor will be responsible for answering all telephone calls, web inquiries and emails regarding Greenwood Cemetery with the expectation that it will be within two (2) business days, if reasonably practical.

4. **Burial Arrangements.** The Contractor will meet with family members to discuss burial arrangements.

The Contractor will coordinate with all funeral directors regarding the burial to ensure that all conditions of the cemetery rules and regulations are met.

5. **Maintenance.** The Contractor will maintain the cemetery so as to be in compliance with the City's adopted operational procedures, conditions and regulations as they may be changed from time-to-time.

6. **Cemetery Policies and Procedures.** The Contractor shall ensure that the family members of the decedent understand the cemetery policies and procedures by providing them a copy of the current cemetery policies and procedures in effect at that time upon the purchase of the grave or interment.

7. **Communications and Reports.** The Contractor will provide monthly reports summarizing the total receipts, disbursements, grave sales and refunds.

8. **Advisory Board Meetings.** The Contractor shall be reasonably available to present at Greenwood Cemetery Advisory Board meetings to report contracted services and they will be permitted to bill hourly in excess of the meeting limit with the prior approval of the Greenwood Cemetery Advisory Board and the City Commission.

The Contractor shall provide the Greenwood Cemetery annual report to the Advisory Board and to the City Commission.

An annual review of the contract with the Contractor shall be performed by the Greenwood Cemetery Advisory Board. There shall be at least one (1) meeting every quarter between the Greenwood Advisory Board and the Contractor with a minimum of two (2) meetings per year. The Contractor shall also communicate and conduct a meeting with the City Clerk's Office as needed.

9. **Coordinating Services.** The Contractor shall coordinate services with the Department of Public Services with respect to the following items:

- Tree removal;
- Fence maintenance;
- Road maintenance;
- Snow removal;
- Acts of Vandalism;
- Weather damage;
- Lawn and weed maintenance; and,
- Monument maintenance (the Contractor may contact the families if needed).

10. **Other Duties.**

- The Contractor will provide access to its records to the City Clerk with reasonable notice.
- The Contractor shall maintain the historic character of the cemetery.
- The Contractor shall perform all operations required by this Scope of Work under the MIOSHA Rules and Regulations.

11. **Duties and Responsibilities.**

- The Contractor shall coordinate internments and disinternments with outside vendors and funeral homes.
- The Contractor shall conduct sales, delivery of rights of internment, merchandise and services.
- Manage and process all accounts and provide the records thereof to the City Clerk.
- All checks shall be sent to the City Clerk for processing.
- The Contractor shall be responsible for the timing and collection of all fees with respect to the cemetery.
- The Contractor shall maintain records in a digitized format and provide them to the City Clerk's Office.

- The Contractor shall be responsible for collecting all bills on a monthly basis.

12. **Financial reporting.** The Contractor shall maintain a standard system of accounting.

13. **Termination of Event.** If there is a breach of the contract, it may be terminated in writing within thirty (30) days, if issues are unresolved. All monies due after termination shall be paid within thirty (30) days of termination.



REQUEST FOR PROPOSALS
For Greenwood Cemetery Professional Management Services

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INTRODUCTION

For purposes of this request for proposals the City of Birmingham will hereby be referred to as "City" and the private firm will hereby be referred to as "Service Provider."

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional firms to provide professional management services for the City's historic Greenwood Cemetery. This work must be performed as specified accordance with the specifications outlined by the Scope of Work contained in this Request For Proposals (RFP).

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

It is anticipated the selection of a firm will be completed by early November 2019. An Agreement for services will be required with the selected Service Provider. A copy of the Agreement is contained herein for reference. Contract services will commence upon execution of the service agreement by the City.

REQUEST FOR PROPOSALS (RFP)

The purpose of this RFP is to request sealed bid proposals from qualified parties presenting their qualifications, capabilities and costs to provide professional management services for the City's historic Greenwood Cemetery..

INVITATION TO SUBMIT A PROPOSAL

Proposals shall be submitted no later than 3:00 p.m. on Tuesday, October 29, 2019 to:

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

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

INSTRUCTIONS TO BIDDERS

1. Any and all forms requesting information from the bidder must be completed on the attached forms contained herein (see Service Provider's Responsibilities). If more than one bid is submitted, a separate bid proposal form must be used for each.
2. Any request for clarification of this RFP shall be made in writing and delivered to: James Gallagher at 248.530.1807 or jgallagher@bhamgov.org. Such request for clarification shall be delivered, in writing, no later than 5 days prior to the deadline for submissions.
3. All proposals must be submitted following the RFP format as stated in this document and shall be subject to all requirements of this document including the instruction to respondents and general information sections. All proposals must be regular in every respect and no interlineations, excisions, or special conditions shall be made or included in the RFP format by the respondent.
4. The contract will be awarded by the City of Birmingham to the most responsive and responsible bidder with the lowest price and the contract will require the completion of the work pursuant to these documents.
5. Each respondent shall include in his or her proposal, in the format requested, the cost of performing the work. Municipalities are exempt from Michigan State Sales and Federal Excise taxes. Do not include such taxes in the proposal figure. The City will furnish the successful company with tax exemption information when requested.
6. Each respondent shall include in their proposal the following information: Firm name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of their proposal.

EVALUATION PROCEDURE AND CRITERIA

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

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

TERMS AND CONDITIONS

1. The City reserves the right to reject any or all proposals received, waive informalities, or accept any proposal, in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Service Provider if the successful Service Provider does not execute a contract within ten (10) days after the award of the proposal.
2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Service Providers.
3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Service Provider sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Service Provider for services rendered to the time of notice, subject to the contract maximum amount.
4. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.
5. The cost of preparing and submitting a proposal is the responsibility of the Service Provider and shall not be chargeable in any manner to the City.
6. The successful bidder will be required to furnish a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned upon the faithful performance of the contract, and completion on or before the date specified.
7. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.

8. The Service Provider will not exceed the timelines established for the completion of this project.
9. The successful bidder shall enter into and will execute the contract as set forth and attached as Attachment A.

SERVICE PROVIDER'S RESPONSIBILITIES

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

1. Complete and sign all forms requested for completion within this RFP.
 - a. Bidder's Agreement (Attachment B - p. 18)
 - b. Cost Proposal (Attachment C - p. 19)
 - c. Iran Sanctions Act Vendor Certification Form (Attachment D - p. 20)
 - d. Agreement (p. 12 – **only if selected by the City**).
2. Provide a description of completed projects that demonstrate the firm's ability to complete projects of similar scope, size, and purpose, and in a timely manner, and within budget.
3. Provide a written plan detailing the anticipated timeline for completion of the tasks set forth in the Scope of Work (p. 9).
4. The Service Provider will be responsible for any changes necessary for the plans to be approved by the City of Birmingham.
5. Provide a description of the firm, including resumes and professional qualifications of the principals involved in administering the project.
6. Provide a list of sub-Contractors and their qualifications, if applicable.
7. Provide three (3) client references from past projects, include current phone numbers. At least two (2) of the client references should be for projects utilizing the same materials included in the Service Provider's proposal.
8. The Service Provider will be responsible for the disposal of all material and any damages which occur as a result of any of employees or subcontractors of the Service Provider during this project.
9. The Service Provider will be responsible for getting the building and parking permits at no cost to the Service Provider.
10. The successful bidder shall provide a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned

upon the faithful performance of the contract, and completion on or before the date specified.

11. Provide a project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Service Provider will be available according to the proposed timeline.

CITY RESPONSIBILITY

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

SETTLEMENT OF DISPUTES

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

INSURANCE

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

CONTINUATION OF COVERAGE

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

EXECUTION OF CONTRACT

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

INDEMNIFICATION

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

CONFLICT OF INTEREST

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

EXAMINATION OF PROPOSAL MATERIALS

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

PROJECT TIMELINE

It is anticipated that the Birmingham City Commission will consider the agreement with the successful bidder in November 2019. Following approval, City staff will schedule a meeting with the successful bidder to begin transition of daily management tasks from current Service Provider to the successful bidder.

SCOPE OF WORK

The Service Provider, hereby referred to as "Provider", shall perform the following services in accordance with the requirements as defined and noted herein:

1. **Sales Administration & Management:** The Service Provider shall provide service to the City within Greenwood Cemetery to include, but not limited to, the following:
 - a. **Permanent Record Keeping:** Provider shall make necessary updates, edits, and deletions to ensure that the record book and map of Greenwood Cemetery are as accurate as possible. Provider is responsible for proper documentation of all burial and space ownership records to include, but not limited to, the following:
 - i. Recording all sales of grave plots with the City Clerk within five (5) business days
 - ii. Recording all grave locations with the City Clerk within five (5) business days
 - iii. Recording all title deeds with the City Clerk within five (5) business days
 - iv. Recording burials and provide any and all related burial transit permits at least once every five (5) business days with the City Clerk
 - v. Submitting all applicable forms and documents to the State of Michigan, as may be required
 - b. **Financial Record Keeping:** Provider shall be responsible for all financial transactions associated with grave plot sales and burial services including, but not limited to, the following services:
 - i. Provider shall collect, record, remit and report all sales, receipts, funds, and refunds on behalf of the City within five (5) business days
 - ii. Provider shall not execute a deed to the customer until Provider receives full payment for the cemetery space
 1. No grave can be dug or body buried without a deed of ownership
 - iii. Provider shall forward all sums collected on sales of burial plots within five (5) business days to the City Clerk
 - c. **Customer service and marketing:** Provider shall sell cemetery services and property in accordance with established policies and procedures, including but not limited to, the following services:
 - i. Provider shall be available to answer telephone, email, and web-based inquiries and to meet with persons wishing to purchase burial plots
 - ii. Provider shall provide a designated location to meet with families and discuss burial arrangements and meet on site as necessary to confirm arrangements with families as necessary
 - iii. Provider shall be available to meet with interested parties within two (2) business days to arrange for the sale of burial plots

- iv. Provider shall work directly with funeral directors and family of deceased persons in arranging all funerals at Greenwood Cemetery
- v. Provider must maintain the Cemetery in a manner which is fully in compliance with the City's adopted Operational Procedures, Conditions, and Regulations
- vi. Provider shall ensure the family of deceased persons understands and has a copy of Greenwood Cemetery's Policies & Procedures upon the sale of burial plots. The current version is included as **Attachment E – pg. 21.**

d. Communication and Reports: Provider shall prepare and submit to the City reports of the operation, financials, records, and any other pertinent records to include, but not be limited to, the following:

- i. Provider shall include in their report monthly totals for receipts, disbursements, grave plot sales, grave plot inventory, interments, repairs, number of burials, number of cremations, and safety and environmental events.
- ii. Provider is requested to be present at all Greenwood Cemetery Advisory Board meetings to report on contracted services.

2. Cemetery Operations: The Provider is responsible for hiring a Sexton who shall provide service to the City within the Greenwood Cemetery to include, but not limited to, the following:

- a. The Sexton shall report directly to and work directly with the Service Provider in arranging all funerals at Greenwood Cemetery.
- b. Stake gravesites
- c. Complete opening and closing of graves.
- d. Make arrangements for laying and setting foundations.
- e. Damage to any markers, headstones, foundations or other fixtures during the normal routine activities shall be the Providers responsibility to correct, subject to the City's approval, that sufficient actions have taken place to correct the damaged property.

3. Services Excluded From Contract: Provider shall not be responsible for providing services not specified in this Contract, including but not limited to the following services:

- a. Tree removal
- b. Fence maintenance
- c. Road maintenance
- d. Snow removal
- e. Any acts of vandalism in Greenwood Cemetery
- f. All damage caused by weather events
- g. Lawn care including weed control monument maintenance services.

4. The City, upon reasonable prior notice, shall be provided with access to any information or financial records associated with the Greenwood Cemetery.

5. Greenwood Cemetery is a historic site within the City of Birmingham. All actions and recommendations by the Service Provider shall be done in a manner which maintains the historic character and setting of the cemetery.
6. The Service Provider shall ensure all operations under its control are conducted in a safe manner and will observe all MIOSHA guidelines as necessary.
7. This section and referenced documents shall constitute the Scope of Work for this

GREENWOOD CEMETERY MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2020, by and between **THE CITY OF BIRMINGHAM**, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter "CITY"), and **CREATIVE COLLABORATIONS, LLC**, a cemetery services company, having its principal office at 31356 Newport Dr., Warren, MI (hereinafter "CONTRACTOR"), provides as follows:

WITNESSETH:

WHEREAS, the CITY, desires to have management services; and,

WHEREAS, the CONTRACTOR has made a bid to provide management services in accordance with their bid/proposal dated November 21, 2019, which bid has been accepted by the CITY.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE RESPECTIVE AGREEMENTS AND UNDERTAKINGS HEREIN CONTAINED, THE PARTIES AGREE AS FOLLOWS:

1. It is mutually agreed by and between the parties that the documents consisting of RFP, Bid Form, performance bond, general contract specifications and conditions, and plans and other documents mentioned in connection with the award of the bid for this project shall be incorporated herein by reference, and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of these documents are in conflict with this Agreement, the terms of this Agreement shall take precedence.

2. The CONTRACTOR agrees to provide the management services in accordance with the specifications and conditions contained in the RFP and outlined in the letter of November 21, 2019 which is attached hereto and incorporated by reference.

3. The CITY agrees to pay the CONTRACTOR for the annual services rendered pursuant to this Agreement in the amount of Forty-five Thousand Six Hundred Dollars (\$45,600.00).

4. This Agreement shall renew annually unless terminated as provided herein.

5. In addition to the above, either party may terminate this Agreement, for any reason, by providing ninety (90) days written notice to the other party of its intention to do so.

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

7. The CONTRACTOR and the CITY agree that the CONTRACTOR is acting as an independent contractor with respect to the CONTRACTOR's role in providing services to the CITY pursuant to this Agreement, and as such, shall be liable for its own actions and neither the CONTRACTOR nor its employees shall be construed as employees of the CITY. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the CITY nor the CONTRACTOR shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The CONTRACTOR shall not be considered entitled or

eligible to participate in any benefits or privileges given or extended by the CITY, or be deemed an employee of the CITY for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the CITY.

8. The CONTRACTOR acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The CONTRACTOR recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the CITY. Therefore, the CONTRACTOR agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The CONTRACTOR shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The CONTRACTOR further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

9. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The CONTRACTOR agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

10. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

11. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the CONTRACTOR without the prior written consent of the CITY. Any attempt at assignment without prior written consent shall be void and of no effect.

12. The CONTRACTOR agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The CONTRACTOR shall inform the CITY of all claims or suits asserted against it by the CONTRACTOR's employees who work pursuant to this Agreement. The CONTRACTOR shall provide the CITY with periodic status reports concerning all such claims or suits, at intervals established by the CITY.

13. The CONTRACTOR shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required by this paragraph. All certificates of insurance shall be with insurance carriers licensed and admitted to do business in the State of Michigan and shall be with insurance carriers acceptable to the CITY. The CONTRACTOR shall procure and maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

- A. Workers Compensation Insurance: Workers Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable Statutes of the State of Michigan.
- B. Comprehensive Motor Vehicle Liability: Comprehensive Motor Vehicle Liability Insurance, including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily

Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

- C. Commercial General Liability: Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions:
- (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, (F) Per Contract Aggregate, if applicable
- D. Additional Insured: Commercial General Liability Insurance and Comprehensive Motor Vehicle Liability Insurance as described above shall include an endorsement stating the following shall be "Additional Insured" with the following verbiage: "It is understood and agreed that the following shall be named as Additional Insured: The City of Birmingham, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, including employees and volunteers thereof. This coverage shall be primary to the additional insured, and not contributing with any other insurance or similar protections available to the additional insured, whether said other available coverage be primary, contributing or excess."
- E. Cancellation Notice: All insurance policies listed above shall include an endorsement stating the following: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to: Director of Finance, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan, 48012."
- F. Proof of Insurance Coverage: The CONTRACTOR shall provide the CITY, at the time the contracts are returned to the CITY for execution, certificates and policies as listed below:
- (1) Two (2) copies of Certificate of Insurance for Workers Compensation Insurance;
 - (2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
 - (3) Two (2) copies of Certificate of insurance for Motor Vehicle Liability Insurance;

(4) If so requested, certified copies of all policies mentioned above will be furnished.

G. Expiration: If any of the above coverage expire during the term of this Agreement, the CONTRACTOR shall deliver renewal certificates and/or policies to the CITY at least thirty (30) days prior to the expiration date.

H. Failure to Maintain Insurance: Upon failure of the CONTRACTOR to obtain or maintain such insurance coverage for the term of the Agreement, the CITY may at its option, purchase such coverage to and subtract the cost of obtaining such coverage to the CONTRACTOR. 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.

14. To the fullest extent permitted by law, the CONTRACTOR and any entity or person for whom the CONTRACTOR is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the CITY, 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 connected therewith, and for any damages which may be asserted, claimed or recovered against or from 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 contract. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of the CITY, its elected or appointed officials, employees, volunteers or others working on behalf of the CITY.

15. If, after the effective date of this Agreement, any official of the CITY, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the CONTRACTOR, the CITY shall have the

right to terminate this Agreement without further liability to the CONTRACTOR if the disqualification has not been removed within thirty (30) days after the CITY has given the CONTRACTOR notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

16. If CONTRACTOR fails to perform its obligations hereunder, the CITY may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

17. Any disputes arising under this Agreement shall be settled either by commencement of a suit in Oakland County Circuit Court or by compulsory arbitration, at the election of the CITY. The CONTRACTOR shall notify the CITY of any dispute it has arising out of this Agreement and shall demand that the CITY elect whether the dispute is to be resolved by submitting it to compulsory arbitration or by commencement of a suit in Oakland County Circuit Court. The CITY shall make its election in writing within thirty (30) days from the receipt of such notice. If the CITY elects to have the dispute resolved by compulsory arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, with each of the parties appointing one arbitrator and the two thus appointed appointing a third. In the event the CITY fails to make such an election, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court.

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

CITY OF BIRMINGHAM

By: _____
Pierre Boutros, Mayor

By: _____
Alexandria D. Bingham, City Clerk

CREATIVE COLLABORATIONS, LLC

By: _____

Its: _____

APPROVALS:

Lauren Wood
Director of Department of Public
Public Services as to Substance

Joseph A. Valentine,
City Manager as to Substance

Mark Gerber
Director of Finance as to
Financial Obligation

Timothy J. Currier
City Attorney as to Form

MANAGEMENT AGREEMENT BETWEEN CITY OF BIRMINGHAM AND CHERI ARCOME

Creative Collaborations, LLC
Cheri Arcome
31356 Newport Drive
Warren, MI 48088

November 21, 2019

Ms. Tiffany Gunter
Assistant City Manager
City of Birmingham
151 Martin
Birmingham, MI 48009

Dear Ms. Gunter,

The purpose of this letter is to outline the management services that I will provide for Greenwood Cemetery, financial responsibilities and termination guidelines.

i. DUTIES AND RESPONSIBILITIES

- a. Coordinate all interments and disinterments with an outside vendor and funeral homes.
- b. Conduct all sales and complete delivery of cemetery property rights, merchandise and services at the cemetery.
- c. On behalf of Greenwood Cemetery manage, process and pay accounts payable for interment vendors.
- d. On behalf of Greenwood Cemetery bill and collect all accounts receivable.
- e. Maintain complete books and records regarding the operation of the cemetery including but not limited to, accounts reconciliation, inventory and file maintenance and budgeting services. The City of Birmingham shall have access to all such records at any and all times.
- f. Agree to attend a minimum of two Greenwood Advisory Board meetings on a yearly basis.
- g. Coordinate the lawn care, weed control, snow removal and tree work with Birmingham's Department of Public Services.
- h. Coordinate work orders with outside vendors and Birmingham's Department of Public Services.
- i. Provide customer service to interested parties.

ii. FINANCIAL REPORTING

- a. Agree to maintain a standard system of accounting customary for cemetery operations consistent with GAAP relative to the duties and responsibilities under this agreement.
- b. Agree to remit 100% of lot sales and any collected revenue from interments, second rights of burial, installations and foundations. These funds will be issued to the City the on a monthly basis.
- c. The City of Birmingham's employees shall have the right upon reasonable notice to have access to and review such books, records and other information as well as the cemetery as it shall reasonably request with respect to this agreement.

iii. CONSIDERATION

- a. In return for the services outlined in this agreement, the City of Birmingham agrees to pay Creative Collaborations, LLC a flat fee of \$3,800 monthly.
- b. This agreement will come into effect December 1, 2019 with an option to renew in May 2020.

iv. TERMINATION – This agreement may be terminated as follows:

- a. by either party, by giving written notice to the other party in the event the other party is in breach of any provision contained in this agreement, and such breach is not cured (if curable) within thirty (30) days following delivery of such written notice of such breach; or
- b. by either party for any reason or no reason at all by giving written notice to the other party of at least ninety (90) days.
- c. Post-Termination Obligations – All monies due by one party to the other party shall be paid in full within thirty (30) days after the effective date of the termination of this agreement.

v. INDEMNIFICATION

- a. The City of Birmingham and Cheri Arcome agree to indemnify and hold each other harmless from and against any and all claims, demands, charges, losses, damages, liabilities, and obligations (including without limitation reasonable attorneys' and accountants' fees and other costs and expenses of the indemnified party incurred as an incident thereto) arising out of, based on or relating to the performance of their respective obligations under this agreement.

vi. ENTIRE AGREEMENT

- a. This agreement and any exhibits attached hereto contain the complete agreement among the parties with respect to the transactions contemplated hereby and supersede all prior agreements and understandings among the parties with respect to such transactions.

vii. GOVERNING LAW

- a. This agreement shall be governed, construed and enforced in accordance with the laws of the State of Michigan.

**ADDENDUM TO THE GREENWOOD MANAGEMENT SERVICES AGREEMENT
DATED _____, 2021**

THIS ADDENDUM to the Agreement for Greenwood Management Services dated _____, 2021 by and between the **CITY OF BIRMINGHAM**, having its principal municipal office at 151 Martin Street, Birmingham, MI, 48009 ("CITY") and **CREATIVE COLLABORATIONS, LLC**, a cemetery services company, having its principal office at 31356 Newport Dr., Warren, MI, 48088 ("CONTRACTOR") does hereby amend its Agreement, as follows:

1. The Agreement shall renew for one (1) year pursuant to the terms of the Agreement dated _____, 2021 at paragraph 4, page 2.
2. **COVID:** The CONTRACTOR shall follow all of the City's COVID-19 safety protocols while on City property. Additionally, CONTRACTOR'S staff which will be in physical contact with City staff must have current vaccinations against COVID-19. The City, at its discretion, may ask for proof of vaccination of CONTRACTOR'S staff. Failure to provide proof of vaccination when requested will cause the City to request un-vaccinated personnel to leave, request alternate staff, and if the CONTRACTOR is unable to comply, this violation of safety protocols will constitute a breach of contract by the CONTRACTOR.

All other provisions of the Greenwood Cemetery Management Services Agreement dated _____, 2021 shall remain in full force and effect.

IN WITNESS WHEREOF, the said parties have caused this Addendum to be executed

on this 29 day of April, 2022.

WITNESSES:

Yaniv Bari

CREATIVE COLLABORATIONS, LLC

By: [Signature]
Cheri Arcome

Its: CEO

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this 29 day of APRIL, 2022, before me personally appeared Cheri Arcome who acknowledged that with authority on behalf of CREATIVE COLLABORATIONS, LLC. to do so she signed this Agreement.



[Signature]
Notary Public
OAKLAND County, Michigan
Acting in MACOMB County, Michigan

My commission expires: 10/14/2026

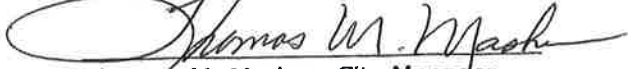


CITY OF BIRMINGHAM

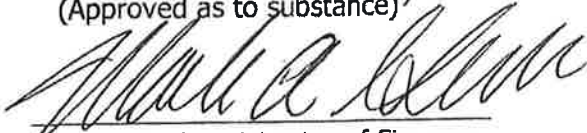
By: _____
Therese Longe, Mayor

By: _____
Alexandria D. Bingham, Clerk

Approved:



Thomas M. Markus, City Manager
(Approved as to substance)



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



Lauren Wood, Director of Public Services
(Approved as to substance)



Niccolas J. Grochowski, Assistant City Attorney
(Approved as to form)

Greenwood Cemetery Advisory Board

DRAFT Meeting Minutes

Friday, April 1, 2022, 8:30 a.m.

151 Martin St. - Room 205

I. Call To Order

Linda Buchanan, Chair, called the meeting to order at 8:30 a.m.

II. Roll Call

Present: Chair Linda Buchanan
Pam DeWeese
Linda Peterson
Laura Schreiner
George Stern
Margaret Suter
Joseph Vercellone

Absent: None

Administration: City Clerk Bingham, Museum Director Pielack, Deputy Clerk Woods

III. Approval Of The Minutes

A. Review of the Minutes of March 4, 2022

MOTION: by DeWeese, seconded by Suter:
To approve the minutes of March 4, 2022 as submitted.

VOTE: Yeas, 7
Nays, 0

IV. Unfinished Business

A. Greenwood Cemetery Operational Procedures, Conditions and Regulations

- i. Read through additional revisions and suggestions from City Attorney Mary Kucharek**
- ii. Recommend further revision or to adopt the revised rules and regulations**

CC Bingham noted the Board's agreed-upon recommended revisions, and said those would be integrated for review at the May 2022 meeting.

Items requiring further discussion at the next meeting were as follows:

In regards to I(A)10, Mr. Stern stated that the State does not recognize domestic partnerships or civil unions. He also raised the issue of common-law spouses.

CC Bingham said she would ask for further clarification from CA Kucharek on I(A)10.

The Board recommended that I(A)9, I(A)11, I(A)12, and I(A)14 be grouped together since they were thematically related.

CC Bingham said Staff would evaluate the best ordering options for those four definitions, as either alphabetical or by diminishing size, and would make a recommendation.

In reply to Mr. Stern, CC Bingham said she would verify whether Saturday should be included as a day on which overtime charges would apply for VII(A)7.

Dr. Vercellone noted a potential issue with "10 business hours of daylight" in VII(A)8, observing for instance that the sun sets at different times during the year and there might be inclement weather on certain days.

CC Bingham said she would ask Ms. Arcome if there was a better way to clarify that requirement.

V. New Business

A. Cemetery Service Provider Contract
--

Mr. Stern said Ms. Arcome should be required to put interments out for bid, with the GCAB to review the bids.

Ms. Peterson said that the matter had been looked into previously and it was determined that Ms. Arcome does unique work and that the amounts being charged were fair.

Ms. Schreiner concurred and added that Ms. Arcome also spends many hours dealing with sensitive topics and situations in addition to the logistical and clerical aspects of her work.

It was also noted that in the current difficult labor market it would not necessarily be easy to replace someone with Ms. Arcome's skill set.

MOTION: by Suter, seconded by Peterson:

To recommend authorization to the City Commission for the agreement with Creative Collaborations, LLC, a Cemetery Service Provider firm to act, on behalf of the City, as the service provider to the Historic Greenwood Cemetery for a term of one year with annual renewals until either party exercises the termination provisions as stated in the contract. The annual contract is set for an amount not to exceed \$45,600.00, which will be paid from account #101-215.000- 811.0000.

ROLL CALL VOTE:

Yeas, 6

Nays, 1 (Stern)

The Board recommended the position go out for RFP in 2023, in order to determine whether the position was priced at fair market value.

CC Bingham concurred.

B. Future Business for May

- a. Policy for Approving and Installing Markers for Persons of Historical Significance
- b. Preparation for 2021-2022 Annual Report, Goal Reflection & Setting
- c. Planning for Grave Stone Inventory
- d. Other Items for Consideration

VI. Reports

A. Update from MD Pielack

The Board confirmed for MD Pielack that they were interested in two signs, with locations and mounting to be discussed at the May 2022 meeting.

B. Update from Department of Public Services

Chair Buchanan asked for an update on the gate replacement process.

CC Bingham suggested the Board consider soliciting a gate through the City's public art program.

C. Update from Clerk's Office

D. Financial Reports

E. Cemetery Sales & Activity

F. City Manager's Report

VII. Open To The Public For Matters Not On The Agenda

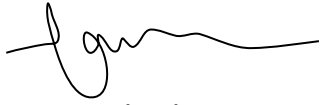
VIII. Board Comments

Ms. Peterson requested information on the status of the website for the May 2022 meeting.

IX. Adjourn

Chair Buchanan adjourned the meeting at 10:12 a.m.

Alexandria Bingham
City Clerk

A handwritten signature in black ink, appearing to read 'Laura Eichenhorn', with a stylized, flowing script.

Laura Eichenhorn
City Transcriptionist

DRAFT



MEMORANDUM

IT Department

DATE: 5/09/2022

TO: Thomas M. Markus, City Manager

FROM: Eric Brunk, IT Manager

SUBJECT: Cortex XDR Pro Antivirus Renewal

Introduction:

Support and Security Subscriptions for the Palo Alto Cortex XDR are on a yearly renewal and that Subscription needs to be renewed.

Background:

In 2020 our Traps Antivirus server was replaced by Cortex XDR – a more robust antivirus solution designed to integrate with the Palo Alto Firewall to keep our network and computer systems virus free and to track possible intrusions. The current subscription ends the first of June and needs to be renewed.

Legal Review:

Documentation has been reviewed by the City Attorney and approved.

Fiscal impact:

Palo Alto has worked with AmeriNet (their local licensed vendor) to put together a price for renewal of our Cortex XDR Antivirus endpoint software using GSA Multiple Award Schedule IT-70 Extendable contract # GS-35F-0511T which expires in June of 2022. The total cost for this renewal is \$9,530.56
Money was budgeted for this renewal in the IT Software Fund account 636-228.000-742.0000

Summary:

The IT department would like to renew the Cortex XDR Antivirus endpoint software license from AmeriNet.

Suggested Commission Action:

Make a motion adopting a resolution to authorize the IT department to renew the Cortex XDR antivirus endpoint software license from AmeriNet. The purchase price not to exceed \$9,530.56. Funds are available in the IT Software Fund Account: 636-228.000-742.0000



Birmingham City | Palo Alto | Cortex Pro Renewal 1 Year

To:	From:
Eric Brunk	Keith Shultz
City of Birmingham	AmeriNet
151 Martin Street	1241 S. Maple Rd.
Birmingham, MI 48012	Ann Arbor, MI 48103
248.530.1885	Phone: 734-995-1233
ebrunk@bhamgov.org	kshultz@amerinet.com

Summary

Total Amount:	\$9,530.56	Quote ID:	QUO-18966-N4L5X4
Shipping Method:		Date:	2/3/2022
Payment Terms:			

Details

Product ID	Product	Serial #	Start Date	End Date	Quantity	Price	Sub Total
PAN-XDR-ADV-EP	Cortex XDR Pro for 1 endpoint, includes 30 days of data retention and standard success	'0220980000005806	6/1/2022	6/1/2023	208	\$45.82	\$9,530.56
Total							\$9,530.56

Thank you for the opportunity to quote these products. Applicable taxes are additional. Important: Please renew before the expiration dates. There may be additional fees or changes if there is a lapse in coverage. We look forward to helping you in the future.

END USER AGREEMENT

THIS AGREEMENT GOVERNS THE USE OF PALO ALTO NETWORKS PRODUCTS INCLUDING SOFTWARE-AS-A-SERVICE, CLOUD-DELIVERED SECURITY SERVICES, HARDWARE AND SOFTWARE. PRODUCT BRANDS INCLUDE, BUT ARE NOT LIMITED TO, CORTEX, PRISMA, AND STRATA.

THIS IS A LEGAL AGREEMENT BETWEEN YOU (REFERRED TO HEREIN AS “CUSTOMER”, “END USER”, “YOU” or “YOUR”) AND (A) PALO ALTO NETWORKS, INC. AND ITS AFFILIATES, 3000 TANNERY WAY, SANTA CLARA, CALIFORNIA 95054, UNITED STATES, IF YOU ARE LOCATED IN NORTH OR LATIN AMERICA; OR (B) PALO ALTO NETWORKS (NETHERLANDS) B.V. AND ITS AFFILIATES, OVAL TOWER, DE ENTRÉE 99-197, 5TH FLOOR, 1101 HE AMSTERDAM, IF YOU ARE LOCATED OUTSIDE NORTH OR LATIN AMERICA (“PALO ALTO NETWORKS”).

BY DOWNLOADING, INSTALLING, REGISTERING, ACCESSING, EVALUATING OR OTHERWISE USING PALO ALTO NETWORKS PRODUCTS, YOU ACKNOWLEDGE AND AGREE THAT YOU ARE BOUND TO THIS AGREEMENT. IF YOU DO NOT ACCEPT ALL ITS TERMS, IMMEDIATELY CEASE USING OR ACCESSING THE PRODUCT. THIS AGREEMENT GOVERNS YOUR USE OF PALO ALTO NETWORKS PRODUCTS HOWEVER THEY WERE ACQUIRED INCLUDING WITHOUT LIMITATION THROUGH AN AUTHORIZED DISTRIBUTOR, RESELLER, ONLINE APP STORE, OR MARKETPLACE. MAINTENANCE AND SUPPORT SERVICES ARE GOVERNED BY THE END USER SUPPORT AGREEMENT FOUND AT www.paloaltonetworks.com/legal/eusa WHICH IS HEREBY INCORPORATED BY REFERENCE INTO THIS AGREEMENT.

If you use a Product for proof of concept, beta testing, trial, evaluation or other similar purpose (“Evaluations”), you may do so for 30 days only unless Palo Alto Networks issues an extension. Palo Alto Networks reserves the right to terminate Evaluations at any time. Upon expiration or termination of the Evaluation, you shall cease using the Product(s) provided for Evaluation and must return any Evaluation Hardware to Palo Alto Networks in the same condition as when first received, except for reasonable wear and tear. For Evaluations, only sections 1, 2, 3, 8, 10, 11 and 12 of this Agreement shall apply because Evaluations are provided “AS IS”. PALO ALTO NETWORKS DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AGAINST INFRINGEMENT OF THIRD-PARTY RIGHTS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

1. DEFINITIONS

“**Affiliate**” means any entity that Controls, is Controlled by, or is under common Control with Customer or Palo Alto Networks, as applicable, where “Control” means having the power, directly or indirectly, to direct or cause the direction of the management and policies of the entity, whether through ownership of voting securities, by contract or otherwise.

“**End User Data**” means data that may be accessed or collected by Products during the relationship governed by this Agreement, in the form of logs, session data, telemetry, user data, usage data, threat intelligence data, and copies of potentially malicious files detected by the Product. End User Data may include confidential data and personal data, such as source and destination IP addresses, active directory information, file applications, URLs, file names, and file content.

“**Enterprise Program**” means a volume licensing arrangement, valid for a specified term, during which End User may access certain Software, Subscriptions, and/or related technical support.

“**Hardware**” means hardware-based products listed on Palo Alto Networks’ then-current price list or supplied by Palo Alto Networks regardless of whether a fee is charged for such hardware.

“**Product**” means, collectively, Hardware, Software, Subscription, or any combination thereof, regardless of whether or not the Product was procured under an Enterprise Program.

“**Published Specifications**” mean the user manual and other corresponding material published by Palo Alto Networks and customarily made available to End Users of the applicable Product.

“**Software**” means any software embedded in Hardware and any standalone software that is provided without Hardware, including updates, regardless of whether a fee is charged for the use of such software.

“**Subscription**” means Software-as-a-Service and cloud-delivered security services, including updates, provided by Palo Alto Networks including, but not limited to, Cortex, Prisma, Threat Prevention, URL Filtering, WildFire, regardless of whether a fee is charged for its use. Technical support, customer success plans, and professional services are not considered Subscriptions under this Agreement.

2. USE AND RESTRICTIONS

a. Software Use Grant

This section 2a applies to Software only. Subject to your compliance with this Agreement, Palo Alto Networks grants you a limited, non-exclusive right to use the Software:

- i. in accordance with Published Specifications for the Product;
- ii. solely within the scope of the license purchased (e.g, number of users);
- iii. solely for your internal use, unless agreed otherwise in a separate written contract with Palo Alto Networks; and
- iv. through your third-party contractor providing IT services solely for your benefit, subject to their compliance with this Agreement.

All other rights in the Software are expressly reserved by Palo Alto Networks.

b. Access to Subscriptions

This section 2b applies to Subscriptions only. During the term of the Subscriptions purchased, Palo Alto Networks will use commercially reasonable efforts to make them available 24 hours a day, 7 days a week except for published downtime or any unavailability caused by circumstances beyond our control including, but not limited to, a force majeure event described in section 12g below. Palo Alto Networks grants you a non-exclusive right to access and use the Subscriptions:

- i. in accordance with Published Specifications for the Product;
- ii. solely within the usage capacity purchased (e.g., number of workloads);
- iii. solely for your internal use, unless agreed otherwise in a separate written contract with Palo Alto Networks; and
- iv. through your third-party contractor providing IT services solely for your benefit, subject to their compliance with this Agreement.

All other rights to the Subscriptions are expressly reserved by Palo Alto Networks.

c. Use Restrictions

You shall not:

- i. Use any Product that is procured under a Lab or NFR (not for resale) SKU in a production environment.
- ii. Use the Products beyond the scope of the license and/or capacity purchased;
- iii. Modify, translate, adapt or create derivative works from the Products, in whole or in part;
- iv. disassemble, decompile, reverse engineer or otherwise attempt to derive the source code, methodology, analysis, or results of the Products, in whole or in part, unless expressly permitted by applicable law in the jurisdiction of use despite this prohibition;
- v. Remove, modify, or conceal any product identification, copyright, proprietary or intellectual property notices or other such marks on or within the Product;
- vi. Disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that you (or a third-party contracted by you) run on the Products, in whole or in part;
- vii. Transfer, sublicense, or assign your rights under this Agreement to any other person or entity except as expressly provided in section 2d below, unless expressly authorized by Palo Alto Networks in writing;
- viii. Sell, resell, transfer the Products except in accordance with [Palo Alto Networks license transfer procedure \(https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html\)](https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html);
- ix. Use Software that is licensed for a specific device, whether physical or virtual, on another device, unless expressly authorized by Palo Alto Networks in writing;
- x. Duplicate the Software, its methodology, analysis, or results unless specifically permitted in accordance with Published Specifications for such Software or for the specific purpose of making a reasonable number of archival or backup copies, and provided in both cases that you reproduce in the copies the copyright and other proprietary notices or markings that appear on the original copy of the Software as delivered to you;
- xi. Use the Subscriptions to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual property rights;
- xii. Use the Subscriptions in any manner not authorized by the Published Specifications for the Product;
- xiii. Interfere with, disrupt the integrity or performance of, or attempt to gain unauthorized access to the Subscriptions, their related systems or networks, or any third-party data contained therein; or
- xiv. Provide access to or otherwise make the Products or the functionality of the Products available to any third party through any means, including without limitation, by uploading the Software to a network or file-sharing service or through any hosting, managed services provider, service bureau or other type of service unless specifically permitted by the Published Specifications or agreed otherwise in a separate managed services agreement with Palo Alto Networks.

d. Affiliates

If you purchase Product for use by your Affiliate, you shall:

- i. provide the Affiliate with a copy of this Agreement;
- ii. ensure that the Affiliate complies with this Agreement;
- iii. be responsible and liable for any breach of this Agreement by such Affiliate; and
- iv. where applicable, be responsible and liable for any local law that imposes any tariffs, fees, penalties, or fines arising from your Affiliates' use of the Product in such jurisdictions.

e. Authentication Credentials

You shall keep accounts and authentication credentials providing access to Products secure and confidential. You must notify Palo Alto Networks without undue delay about any misuse of your accounts or authentication credentials you become aware of.

3. OWNERSHIP

Palo Alto Networks and its suppliers retain all rights to intellectual and intangible property relating to the Product, including but not limited to copyrights, patents, trade secret rights, and trademarks and any other intellectual property rights therein unless otherwise indicated. You shall not delete or alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Product. To the extent you provide any suggestions or comments related to the Products, Palo Alto Networks shall have the right to retain and use any such suggestions or comments in current or future products or subscriptions, without your approval or compensation to you.

4. PAYMENT AND TAXES (Section 4 does not apply to you if you purchased Product from an authorized distributor or reseller)

a. Fees

Applicable fees will be set forth on the website at the time of purchase or in the applicable invoice. Note, however, that fees which are payable in advance for volume or capacity usage (e.g., number of accounts, credits, endpoints, devices, points, seats, terabytes of data, tokens, users, workloads, etc.) must be reconciled with actual usage at the end of each month or applicable service period. Palo Alto Networks reserves the right to perform true-up reconciliation and charge for any usage above the volume or capacity purchased. Unless you have chosen monthly billing, fees will be due net thirty (30) days from invoice date. All sums due and payable that remain unpaid after any applicable cure period herein will accrue interest at the highest rate permissible by applicable law. Palo Alto Networks reserves the right to assign its right to receive payments hereunder to a third party with notice but without your consent. For purposes of such assignment, such third party shall be considered a third-party beneficiary of the payment obligation under this Agreement. All fees are non-refundable unless otherwise specified.

b. Taxes

Prices quoted are exclusive of all sales, use, value-added, good and services, withholding and other taxes or duties. You will pay or self-assess all taxes and duties assessed in connection with this Agreement and its performance, except for taxes payable on Palo Alto Networks' net income. To the extent that any amounts payable by you are subject to withholding taxes, the amount payable shall be grossed up such that the amount paid to Palo Alto Networks net of withholding taxes equals the amount invoiced by Palo Alto Networks. If you pay any withholding taxes based on payments made by you to Palo Alto Networks hereunder, you will furnish Palo Alto Networks with written documentation of all such tax payments, including receipts and other customary documentation, to demonstrate to the relevant tax authorities that you have paid such taxes. If applicable, you shall also provide Palo Alto Networks with appropriate VAT/GST registration numbers and other documentation satisfactory to the applicable taxing authorities to substantiate any claim of exemption from any tax or duties. You agree to indemnify Palo Alto Networks from liabilities, damage, costs, fees and expenses, arising out of or resulting from any third-party claims based on or otherwise attributable to your breach of this section 4b. If you are located in Australia, the terms in this section 4 shall be binding between you and Palo Alto Networks (Australia) Pty Ltd.

5. THIRD-PARTY PRODUCTS AND SERVICES

Through its Product(s), Palo Alto Networks may make available to you third-party products or services ("third-party apps") which contain features designed to interoperate with our Products. To use such features, you must either obtain access to such third-party apps from their respective providers or permit Palo Alto Networks to obtain access on your behalf. All third-party apps are optional and if you choose to utilize such third-party apps:

- i. all governing terms and conditions, including licensing and data processing terms, shall be entered into between you and the applicable app provider;
- ii. you may be required to grant Palo Alto Networks access to your account on such third-party apps; and
- iii. you instruct Palo Alto Networks to allow the app provider to access your data as required for the interoperability with our Products.

In the event the operation of the third-party app requires the processing of personal data to which the General Data Protection Regulation (“GDPR”) applies in a country that does not provide adequate data protection safeguards, then you and the app provider will put in place an adequate data transfer mechanism as set out in Arts. 46 or 47 of the GDPR, including executing appropriate Standard Contractual Clauses, as needed. Palo Alto Networks shall not be responsible for any disclosure, modification, or deletion of your data resulting from access by such app providers. App providers do not operate as sub-processors to Palo Alto Networks, as that term is defined in the GDPR. Palo Alto Networks is not liable for and does not warrant or support any such third-party apps, whether or not they are designated as “Palo Alto Networks-certified” or otherwise. Similarly, Palo Alto Networks cannot guarantee the continued availability of such third-party apps if for example the provider of the third-party app ceases to provision its product or service at a level that is acceptable to Palo Alto Networks.

6. TERM; TERMINATION; AND EFFECT OF TERMINATION

This Agreement is effective until terminated or, as applicable, in accordance with the term of your Subscription. You may terminate this Agreement at any time by notifying Palo Alto Networks. Palo Alto Networks may terminate this Agreement at any time in the event you breach any material term and fail to cure such breach within thirty (30) days following notice. Upon termination, you shall immediately cease using the Product.

7. WARRANTY, EXCLUSIONS AND DISCLAIMERS

a. Warranty

Palo Alto Networks warrants that:

- i. Hardware shall be free from defects in material and workmanship for one (1) year from the date of shipment;
- ii. Software shall substantially conform to Palo Alto Networks’ Published Specifications for three (3) months from fulfillment; and
- iii. Subscriptions shall perform materially to Published Specifications for the entire duration of the selected term.

As your sole and exclusive remedy and Palo Alto Networks’ and its suppliers’ sole and exclusive liability for breach of warranty, Palo Alto Networks shall, at its option and expense, repair or replace the Hardware or correct the Software or the Subscriptions, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein, if any. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are returned to Palo Alto Networks and replaced become the property of Palo Alto Networks. Palo Alto Networks shall not be responsible for your or any third party’s software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Palo Alto Networks for repair or upon termination, whether under warranty or not. You will pay the shipping costs for return of Products to Palo Alto Networks. Palo Alto Networks will pay the shipping costs for repaired or replaced Products back to you.

b. Exclusions

The warranty set forth above shall not apply if the failure of the Product results from or is otherwise attributable to:

- i. repair, maintenance or modification of the Product by persons other than Palo Alto Networks or its designee;
- ii. accident, negligence, abuse or misuse of a Product;
- iii. use of the Product other than in accordance with Published Specifications;
- iv. improper installation or site preparation or your failure to comply with environmental and storage requirements set forth in the Published Specifications including, without limitation, temperature or humidity ranges; or
- v. causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage.

c. Disclaimers

EXCEPT FOR THE WARRANTIES EXPRESSLY STATED AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS ARE PROVIDED “AS IS”. PALO ALTO NETWORKS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. PALO ALTO NETWORKS DOES NOT WARRANT THAT (I) THE PRODUCTS WILL

MEET YOUR REQUIREMENTS, (II) THE USE OF PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, OR (III) THE PRODUCTS WILL PROTECT AGAINST ALL POSSIBLE THREATS WHETHER KNOWN OR UNKNOWN.

8. LIMITATION OF LIABILITY

a. Disclaimer of Indirect Damages

To the fullest extent permitted by applicable law, in no event shall either party or Palo Alto Networks' suppliers be liable for any special, indirect, incidental, punitive, exemplary or consequential damages of any kind (including but not limited to loss of business, data, profits, or use or for the cost of procuring substitute products, services or other goods), arising out of or relating to the Products to which this Agreement relates, regardless of the theory of liability and whether or not each party was advised of the possibility of such damage or loss.

b. Direct Damages

To the fullest extent permitted by applicable law, in no event shall the total liability of either party or Palo Alto Networks' suppliers, from all claims or causes of action and under all theories of liability arising out of or relating to the Products to which this Agreement relates, exceed the greater of one million United States dollars or the total amount you paid for the entire term of the Subscription or Enterprise Program on which the claim is based. The foregoing limitation in this section 8b shall not apply to liability arising from:

- i. death or bodily injury;
- ii. sections 2 (Use and Restrictions) and 9 (Indemnification); and
- iii. Customer's payment obligations for the Product and related services, if any.

9. INDEMNIFICATION

a. Indemnification and Procedure

Palo Alto Networks will defend, at its expense, any third-party action or suit against you alleging that a Product infringes or misappropriates such third party's patent, copyright, trademark, or trade secret (a "**Claim**"), and Palo Alto Networks will pay damages awarded in final judgment against you or agreed to in settlement by Palo Alto Networks to the extent attributable to any such Claim; provided that you (i) promptly notify Palo Alto Networks in writing of the Claim; (ii) give Palo Alto Networks sole control of the defense and settlement of the Claim; and (iii) reasonably cooperate with Palo Alto Networks' requests for assistance with the defense and settlement of the Claim. Palo Alto Networks will not be bound by any settlement or compromise that you enter into without Palo Alto Networks' prior written consent.

b. Remedy

If a Product becomes, or in Palo Alto Networks' opinion is likely to become, the subject of a Claim, then Palo Alto Networks may, at its sole option and expense:

- i. procure the right for you to continue using the Product;
- ii. replace or modify the Product to avoid the Claim; or
- iii. if options (i) and (ii) cannot be accomplished despite Palo Alto Networks' reasonable efforts, then Palo Alto Networks may accept return of the Product and grant you credit for the price of the Product as depreciated on a straight-line five (5) year basis, commencing on the date you received such Product or, for Subscriptions, grant you credit for the portion of the Subscription paid but not used.

c. Exceptions

Palo Alto Networks' obligations under this section 9 shall not apply to the extent any Claim results from or is based on:

- i. modifications to a Product made by a party other than Palo Alto Networks or its designee;
- ii. the combination, operation, or use of a Product with hardware or software not supplied by Palo Alto Networks, if a Claim would not have occurred but for such combination, operation or use;
- iii. failure to use (1) the most recent version or release of a Product, or (2) an equally compatible and functionally equivalent, non-infringing version of a Product supplied by Palo Alto Networks to address such Claim;
- iv. Palo Alto Networks' compliance with your explicit or written designs, specifications or instructions; or
- v. use of a Product not in accordance with Published Specifications.

THE FOREGOING TERMS STATE PALO ALTO NETWORKS' SOLE AND EXCLUSIVE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY THIRD-PARTY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

10. CONFIDENTIALITY

"**Confidential Information**" means the non-public information that is exchanged between the parties, provided that such information is identified as confidential at the time of initial disclosure by the disclosing party ("**Discloser**"), or disclosed

under circumstances that would indicate to a reasonable person that the information ought to be treated as confidential by the party receiving such information (“**Recipient**”). Notwithstanding the foregoing, Confidential Information does not include information that Recipient can prove by credible evidence:

- i. Was in the public domain at the time it was communicated to Recipient;
- ii. Entered the public domain subsequent to the time it was communicated to Recipient through no fault of Recipient;
- iii. Was in Recipient’s possession free of any obligation of confidentiality at the time it was communicated to Recipient;
- iv. Was disclosed to Recipient free of any obligation of confidentiality; or
- v. Was developed by Recipient without use of or reference to Discloser’s Confidential Information.

Each party will not use the other party’s Confidential Information, except as necessary for the performance of this Agreement, and will not disclose such Confidential Information to any third party, except to those of its employees and subcontractors who need to know such Confidential Information for the performance of this Agreement, provided that each such employee and subcontractor is subject to use and disclosure restrictions that are at least as protective as those set forth herein. Recipient shall maintain the confidentiality of Discloser’s Confidential Information using the same effort that it ordinarily uses with respect to its own confidential information of similar nature and importance, but no less than reasonable care. The foregoing obligations will not restrict Recipient from disclosing Discloser’s Confidential Information:

- a. Pursuant to an order issued by a court, administrative agency, or other governmental body, provided that the Recipient gives reasonable notice to Discloser to enable it to contest such order;
- b. On a confidential basis to its legal or professional financial advisors; or
- c. As required under applicable securities regulations.

The foregoing obligations of each Party shall continue for the period terminating three (3) years from the date on which the Confidential Information is last disclosed, or the date of termination of this Agreement, whichever is later.

11. END USER DATA AND DATA PROTECTION

Palo Alto Networks will process End User Data, including personal data, in accordance with the [Data Processing Agreement](#), which shall be incorporated by reference herein.

12. GENERAL

a. Assignment

Neither party may assign or transfer this Agreement or any obligation herein without the prior written consent of the other party, except that, upon written notice, Palo Alto Networks may assign or transfer this Agreement or any obligation herein to its Affiliate, or an entity acquiring all or substantially all assets of Palo Alto Networks, whether by acquisition of assets or shares, or by merger or consolidation without your consent. Any attempt to assign or transfer this Agreement shall be null and of no effect. For purposes of this Agreement, a change of Control will be deemed to be an assignment. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

b. Auditing End User Compliance

You shall retain records pertaining to Product usage. You grant to Palo Alto Networks and its independent advisors the right to examine such records no more than once in any twelve-month period solely to verify compliance with this Agreement. In the event such audit reveals non-compliance with this Agreement, you shall promptly pay the appropriate license fees, plus reasonable audit costs.

c. Authorization Codes; Grace Periods

Where applicable, you will be able to download Software via the server network located closest to you. Your Product may require an authorization code to activate or access Subscriptions and support. The authorization codes will be issued at the time of order fulfillment. The Subscription or support term will commence in accordance with the grace period policy at <https://www.paloaltonetworks.com/support/support-policies/grace-period.html>

d. Compliance with Laws; Export Control

You shall comply with all applicable laws in connection with your activities arising from this Agreement. You further agree that you will not engage in any illegal activity and you acknowledge that Palo Alto Networks reserves the right to notify you or appropriate law enforcement in the event of such illegal activity. Both parties shall comply with the U.S. Export Administration Regulations, and any other export laws, restrictions, and regulations to ensure that the Product and any technical data related thereto is not exported or re-exported directly or indirectly in violation of or used for any purposes prohibited by such laws and regulations.

e. Cumulative Remedies

Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies will be without prejudice to any other remedies under this Agreement or otherwise.

f. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understanding and communications between them with respect to the subject matter hereof. Any terms or conditions contained in your purchase order or other ordering document that are inconsistent with or in addition to the terms and conditions of this Agreement are hereby rejected by Palo Alto Networks and shall be deemed null and of no effect.

g. Force Majeure

Palo Alto Networks shall not be responsible for any cessation, interruption, or delay in the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott, availability of network and telecommunications services or other similar events beyond its reasonable control.

h. Governing Law

If you are located in North or Latin America, this Agreement shall be governed by and construed in accordance with the laws of the state of California, excluding its conflict of laws principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the state or federal courts located in Santa Clara county, California. If you are located outside North or Latin America, this Agreement shall be governed by and construed in accordance with the laws of the Netherlands, excluding its conflict of laws principles. Any legal action or proceeding arising under this Agreement will be brought exclusively before the District Court of Amsterdam, the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

i. Headings

The headings, including section titles, are given solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of this document or any of its provisions.

j. Notices

All notices shall be in writing and delivered by overnight delivery service or by certified mail sent to the address published on the respective parties' websites or the address specified on the relevant order document (attention: Legal Department), and in each instance will be deemed given upon receipt.

k. Open Source Software

The Products may contain or be provided with components subject to the terms and conditions of open source software licenses ("**Open Source Software**"). A list of Open Source Software can be found at <https://www.paloaltonetworks.com/documentation/oss-listings/oss-listings.html>. These Open Source Software license terms are consistent with the license granted in section 2 (Use and Restrictions) and may contain additional rights benefitting you. Palo Alto Networks represents and warrants that the Product, when used in conformance with this Agreement, does not include Open Source Software that restricts your ability to use the Product nor requires you to disclose, license, or make available at no charge any material proprietary source code that embodies any of your intellectual property rights.

l. Reciprocal Waiver of Claims Related to United States SAFETY Act

Where a Qualified Anti-terrorism Technology (the "**QATT**") has been deployed in defense against, response to or recovery from an "act of terrorism" as that term is defined under the SAFETY Act, Palo Alto Networks and End User agree to waive all claims against each other, including their officers, directors, agents or other representatives, arising out of the manufacture, sale, use or operation of the QATT, and further agree that each is responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity arising out of such act of terrorism.

m. Survival

Sections regarding license restrictions, ownership, term and termination, U.S. Government End Users, limitations of liability, governing law, and this General section shall survive termination of this Agreement.

n. U.S. Government End Users

This section applies to United States Government end users only and does not apply to any other end users. The Software and its documentation are "commercial computer software" and "commercial computer software documentation," respectively; as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through

227.7202-4, as applicable, the U.S. Government's rights in the Software and its documentation shall be as specified in this Agreement. If any term or condition set forth in this Agreement:

- i. allows for the automatic termination of the Government's license rights or maintenance of services;
- ii. allows for the automatic renewal of services and/or fees;
- iii. allows for the Government to pay audit costs; and/or
- iv. requires the governing law to be anything other than Federal law, then such term and condition shall not apply to the U.S. Government, but shall continue to apply to prime contractors and subcontractors of the Government.

Furthermore, nothing contained in this Agreement is meant to diminish the rights of the U.S. Department of Justice as identified in 28 U.S.C. Section 516. Finally, to the extent any term and condition set forth in this Agreement is contrary to U.S. Federal procurement law, then such term and condition shall not apply to the U.S. Government, but shall continue to apply to prime contractors and subcontractors of the government.

o. Waiver and Severability

The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver or amendment of any provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties. If any provision of this Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.

p. WildFire: U.S. Government

Where End User is a U.S. Government contractor using or accessing WildFire: U.S. Government malware prevention service, End User certifies that now and so long as it uses or accesses WildFire: U.S. Government service:

- i. Only U.S. citizens will be permitted to access WildFire: U.S. Government for administration and configuration;
- ii. End User holds an active contract or subcontract with the U.S. Federal Government and has a need to exchange e-mail, documents and other forms of communication with the U.S. Federal Government under a contract or subcontract;
- iii. End User shall cease using or accessing WildFire: U.S. Government when it no longer has an active contract or subcontract with the U.S. Federal Government; and
- iv. End User will abide by the confidentiality provisions contained within this Agreement.

DATE: May 2, 2022

TO: Thomas M. Markus, City Manager

FROM: Lauren A. Wood, Director of Public Services
Mike Bernal, Public Services Manager

SUBJECT: Oakland County West Nile Expense Reimbursement Request

INTRODUCTION:

Upon recommendation of the Oakland County Executive, the Oakland County Board of Commissioners continues to establish a West Nile Virus Fund Program to assist cities, villages and townships (CVT) in addressing mosquito control activities.

Oakland County's West Nile Virus Fund Program authorizes Oakland County CVT to apply for reimbursement of eligible expenses incurred in connection with personal mosquito protection measures/activity, mosquito habitat eradication, mosquito larvicides or focused adult mosquito insecticide spraying in designated community green areas.

The 2022 West Nile Virus (WNV) Prevention Reimbursement amount designated for the City of Birmingham is \$2,705.23. Birmingham must apply for reimbursement and our project must meet the eligibility requirements as determined by the Oakland County Health Division. This is the eighteenth year for this reimbursement program.

BACKGROUND:

We have been treating the catch basins, approximately 2300, beginning in 2003. The City of Birmingham incurs expenses in connection with mosquito control activities. We currently purchase the mosquito control material from Clarke Mosquito Control. We have been pleased with the treatment plan of the citywide catch basins and continue to stay current on best practices for mosquito control. Community education has also been an integral part of this program each year. Reimbursement from Oakland County for the program this year is \$2,705.23, which is an increase of \$56.84 from last year.

LEGAL REVIEW:

There has been no legal review required for this annual Oakland County West Nile Reimbursement Program.

FISCAL IMPACT:

The reimbursement amount of \$2,705.23 will offset the expenditure made for the material purchase from the Sewer Fund-Operating Supplies Account #590-536.002-729.0000.

PUBLIC COMMUNICATIONS:

This does not apply in this case. Information on West Nile is available on the City website.

SUMMARY:

We spend approximately \$10,000 in larvicide material to administer our mosquito control program each season. The program includes treating the local catch basins throughout the community, once during the season. This activity is eligible for reimbursement under Oakland County's West Nile Virus Fund Program.

ATTACHMENTS:

Include the Resolution requesting reimbursement for the maximum allotment of \$2,705.23 for eligible mosquito control activity under the Oakland County's West Nile Virus Fund Program.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the request for reimbursement for the maximum allotment of \$2,705.23 for eligible mosquito control activity under the Oakland County's West Nile Virus Fund Program.

**CITY OF BIRMINGHAM RESOLUTION AUTHORIZING WEST
NILE VIRUS FUND EXPENSE REIMBURSEMENT REQUEST**

WHEREAS, upon recommendation of the Oakland County Executive, the Oakland County Board of Commissioners has established a West Nile Virus Fund Program to assist Oakland County cities, villages and townships in addressing mosquito control activities; and

WHEREAS, Oakland County's West Nile Virus Fund Program authorizes Oakland County cities, villages and townships to apply for reimbursement of eligible expenses incurred in connection with personal mosquito protection measures/activity, mosquito habitat eradication, mosquito larviciding or focused adult mosquito insecticide spraying in designated community green areas; and

WHEREAS, the City of Birmingham, Oakland County, Michigan has incurred expenses in connection with mosquito control activities believed to be eligible for reimbursement under Oakland County's West Nile Virus Fund Program.

NOW THEREFORE BE IT RESOLVED that the Birmingham City Commission authorizes and directs its Director of Public Services, as agent for the City of Birmingham, in the manner and to the extent provided under Oakland County Board of Commissioners, to request reimbursement of eligible mosquito control activity under Oakland County's West Nile Virus Fund Program.

DATED
SIGNED
CERTIFIED

DATE: May 2, 2022

TO: Thomas M. Markus, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Emergency Repair – Sterling Vector Truck #160

INTRODUCTION:

City vehicle #160 is a 2012 Sterling Vector Truck, which was taken to the Jack Doheny Company for diagnosis. Upon inspection, they discovered the rear axle leaking into the brake assembly. That caused the brake shoes to become saturated in oil, resulting in the brake assembly needing replacement. Our mechanics cannot perform this repair because of the specialized tools required.

On April 8, 2022, the Department of Public Services (DPS) requested an emergency authorization to repair this equipment, which is critical to the operation. The Jack Doheny Company, a sole supplier of this type of repair, provides the parts and labor.

BACKGROUND:

This specialized vector truck is the only one in the fleet. DPS uses this truck frequently to clean catch basins, assist with water main breaks and jet sewer lines. The cost of the repair is \$7,893.52, which will be charged to the Auto Equipment Fund account #641-441.006-933.0200.

LEGAL REVIEW:

No legal review is required for this item.

FISCAL IMPACT:

The final amount for this repair by Jack Doheny Company is \$7,893.52. Funds are available in the Auto Equipment Fund account #641-441.006-933.0200.

PUBLIC COMMUNICATIONS:

This does not apply to this purchase.

SUMMARY:

The Department of Public Services requests City Commission confirmation of the City Manager's authorization to proceed with emergency repairs related to vehicle #160.

ATTACHMENTS:

There are no attachments for this item.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the City Manager's authorization for the emergency expenditure related to the repair of vehicle #160 by Jack Doheny Company, the sole supplier of the repair, for \$7,893.52 to be charged to the Auto Equipment account #641-441.006-933.0200, pursuant to Sec. 2-286 of the City Code.



MEMORANDUM

Engineering

DATE: May 4, 2022

TO: Thomas M. Markus, City Manager

FROM: Scott D. Zielinski, Assistant City Engineer

SUBJECT: **S. Old Woodward Reconstruction – Phase 3 - DTE Energy Street Light Agreement**

INTRODUCTION:

As part of the S. Old Woodward Reconstruction – Phase 3 Project, the right-of-way (ROW) will be updated to the City Standard Streetscape, which includes lighting upgrades. In order to complete the removal of existing lighting and install new lighting, the City must enter into an agreement with DTE Energy for these services to be provided.

BACKGROUND:

The S. Old Woodward Road Reconstruction – Phase III Project will include the removal of the existing sidewalks, City trees, parking meters and City streetlights in order to upgrade this area to the current City Standard Streetscape and to provide wider sidewalks and larger tree wells. The project area includes S. Old Woodward between Brown Street and Landon Street. A total of forty-six (46) existing streetlights will be removed within the project area. In their place, a total of seventy-two (72) new streetlights will be installed.

The seventy-two (72) lights will include:

Pedestrian Lighting: Install fifty-three (53) Special Order Material Birmingham Green Philips/Signify Birmingham style 68w LED luminaires, and forty-two (53) Special Order Material Birmingham Green Philips/Signify Birmingham style posts (no GFIs) on concrete foundations.

Crosswalk Lighting: Install nineteen (19) Special Order Material Philips/Signify MetroScape 135w LED pendant luminaire with Special Order Material bracket arm painted Birmingham Green installed on nineteen (19) Special Order Material Philips/Signify posts painted Birmingham Green on concrete foundations.

These lights will not have electrical outlets as a new underground electrical system will be installed as part of the S. Old Woodward Road project that will provide power at each proposed tree well. The reduced number of lights is a function of the new sidewalk design as proposed by our planning consultant (MKSK), wherein the tree wells are elongated. This design reduces the number of tree wells, and the number of streetlights accordingly.

LEGAL REVIEW:

In accordance with other DTE Street Lighting projects, the attached standard form agreement prepared by DTE Energy Co. has been reviewed by the City Attorney's office, and has been approved.

FISCAL IMPACT:

As noted in the agreement, the cost being charged to the City for the installation of these street lights is \$653,312.04. While the City will be responsible for payment to DTE Energy Co., payment will not be required until the work is 100% complete. The City will be responsible for this cost, based on the fact that these properties were assessed for the lighting upgrade many years ago, and the replacement is considered maintenance at this time. The costs associated with the planned lighting upgrades has been included in the approved project budget, and will be paid from 401-901.010-981.0100 Capital Improvements Fund.

SUMMARY:

It is recommended that the Commission authorize the Mayor to sign the attached Agreement for Municipal Street Lighting presented by DTE Energy relative to the S. Old Woodward – Phase III reconstruction project. All costs relative to this agreement will be charged to the Capital Improvements Fund – 401-901.010-981.0100.

ATTACHMENTS:

DTE letter including 2 copies of the DTE Master Agreement for Street Lighting.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to approve the DTE Master Street Lighting Agreement for the removal of existing lighting and installation of the planned new lighting for the Phase 3 S. Old Woodward work. In addition, to authorize the Mayor to sign the agreement on behalf of the City. Funding for this project has been budgeted in account #401-901.010-981.0100.



May 4, 2022

City of Birmingham
151 Martin St
Birmingham, MI 48009

Re: DTE Street Lighting: Old Woodward Phase 3

Attached is the Purchase Agreement for the street lighting associated with the Old Woodward Phase 3 Project. A detailed description of the project is outlined in the agreements. Please print **TWO** copies. Please sign **BOTH** copies in the designated areas. A check in the amount of **\$653,312.04** is also required at this time. Please return **BOTH** signed agreements (as well as check made payable to **DTE Energy**) to the following address:

DTE Energy
8001 Haggerty Rd.
Belleville, MI 48111
140 WWSC-Brandon Faron

Please call if you have questions, 734-397-4017.

Sincerely,

Brandon R. Faron

Brandon R. Faron
Account Manager
Community Lighting

MASTER AGREEMENT FOR MUNICIPAL STREET LIGHTING

This Master Agreement For Municipal Street Lighting ("Master Agreement") is made between DTE Electric Company ("Company") and the City of Birmingham ("Customer") (collectively referred to as the "Parties") as of May 4, 2022.

RECITALS

A. Customer may, from time to time, request Company to furnish, install, operate and/or maintain street lighting equipment for Customer.

B. Company may provide such services, subject to the terms of this Master Agreement.

Therefore, in consideration of the foregoing, Company and Customer hereby agree as follows:

AGREEMENT

1. Master Agreement. This Master Agreement sets forth the basic terms and conditions under which Company may furnish, install, operate and/or maintain street lighting equipment for Customer. Upon the Parties' agreement as to the terms of a specific street lighting transaction, the Parties shall execute and deliver a Purchase Agreement in the form of the attached Exhibit A (a "Purchase Agreement"). In the event of an inconsistency between this Agreement and any Purchase Agreement, the terms of the Purchase Agreement shall control.

2. Rules Governing Installation of Equipment and Electric Service. Installation of street light facilities and the extension of electric service to serve those facilities are subject to the provisions of Company's Rate Book for Electric Service (the "Tariff"), Rule C 6.1, Extension of Service (or any other successor provision), as amended and approved by the Michigan Public Service Commission ("MPSC") from time to time.

3. Contribution in Aid of Construction. In connection with each Purchase Agreement and in accordance with the applicable Orders of the MPSC, Customer shall pay to Company a contribution in aid of construction ("CIAC") for the cost of installing Equipment (as defined in the applicable Purchase Agreement) and recovery of costs associated with the removal of existing equipment, if any. The amount of the CIAC (the "CIAC Amount") shall be an amount equal to the total construction cost (including all labor, materials and overhead charges), less an amount less than or equal to three (3) years' revenue expected from such Equipment, and less an amount equal to the Post Charge revenue if selected by Customer. The CIAC Amount will be as set forth on the applicable Purchase Agreement. The CIAC Amount does not include charges for any additional cost or expense for unforeseen underground objects, or unusual conditions encountered in the construction and installation of Equipment. If Company encounters any such unforeseen or unusual conditions, which would increase the CIAC Amount, it will suspend the construction and installation of Equipment and give notice of such conditions to the Customer. The Customer will either pay additional costs or modify the work to be performed. If the work is modified, the CIAC Amount will be adjusted to account for such modification. Upon any such

suspension and/or subsequent modification of the work, the schedule for completion of the work shall also be appropriately modified.

4. Payment of CIAC Amount. Customer shall pay the CIAC Amount to Company as set forth in the applicable Purchase Agreement. Failure to pay the CIAC Amount when due shall relieve Company of its obligations to perform the work required herein until the CIAC Amount is paid, at which point the schedule for completion of the work shall be appropriately modified.

5. Post Charge. For newly installed underground-fed lighting systems of greater than five (5) lights, Customer has the option to select a Post Charge, in lieu of paying all or some of the up-front CIAC Amount, pursuant to the terms of the Purchase Agreement. The Post Charge is a monthly rate, calculated based on the portion of the CIAC Amount that is not paid up front (rounded up to the nearest \$1,000.00 increment).

6. Modifications. Subject to written permission of the respective municipality, after installation of the Equipment, any cost for additional modifications, relocations or removals will be the responsibility of the requesting party.

7. Maintenance, Replacement and Removal of Equipment. In accordance with the applicable Orders of the MPSC, under the Street Lighting Rate (as defined below), Company shall provide the necessary maintenance of the Equipment, including such replacement material and equipment as may be necessary. Customer may not remove any Equipment without the prior written consent of Company. To the extent that Customer or any other local government authority requires Company to obtain any permits in order to perform any maintenance, repair, replacement or restoration of Equipment under this Master Agreement, Company shall not be responsible for any delay or interruption of service due to such permitting requirements. Customer acknowledges that compliance with such permitting requirements may result in additional charges to Customer (including, without limitation, trip charges associated with demobilizing and remobilizing personnel and materials to the worksite in connection with the pendency of required permit applications).

8. Street Lighting Service Rate.

a. Upon the installation of the Equipment, the Company will provide street lighting service to Customer under Option 1 of the Municipal Street Lighting Rate set forth in the Tariff, as approved by the MPSC from time to time (the "Street Lighting Rate"), the terms of which are incorporated herein by reference.

b. The provision of street lighting service is also governed by rules for electric service established in MPSC Case Number U-6400. The Street Lighting Rate is subject to change from time to time by orders issued by the MPSC.

9. Contract Term. This initial term of this Master Agreement shall commence upon date of installation and terminate on the later of (a) five (5) years from the date hereof or (b) the date on which the final Purchase Agreement entered into under this Master Agreement is terminated. If the optional Post Charge is selected, the initial term of this Master Agreement shall be the later of (a) ten (10) years from the date hereof or (b) the date on which the final Purchase Agreement entered into under this Master Agreement is terminated. Upon expiration of the initial

term, this Master Agreement shall continue on a month-to-month basis until terminated by mutual written consent of the parties or by either party with thirty (30) calendar days' prior written notice to the other party. Upon termination of this Master Agreement for any reason, before or after the expiration of the initial term, Company shall have the right to disconnect the Equipment and/or remove any Company-owned equipment and a portion of the Equipment corresponding to the extent to which Customer has not paid in full for the Equipment; provided, however, that Company shall not withdraw service, and Customer shall not substitute another source of service, without at least twelve (12) months' written notice to the other party

10. Customer Obligations upon Termination. In the event that this Master Agreement is terminated before the end of the initial term by Company due to an Event of Default or by Customer for convenience, Customer will promptly pay Company which shall include all of the following:

- a. If applicable, the un-recouped portion of the Company Capital Investment pro-rated for the remainder of the initial three-year period;
- b. If applicable, the aggregate total of remaining Post Charge payments that would have come due over the remainder of the applicable period ten (10) years for Post Charge.
- c. The aggregate total of remaining Luminaire Charge payments that would have been charged over the remainder of the applicable initial contract term;
- d. Any Company costs and expenses associated with disconnecting and de-energizing the Equipment from Company power supply sources; and
- e. The cost incurred by the Company to remove Company's Lighting System and restoration of impacted property as commercially reasonable as possible to its original condition.

11. Design Responsibility for Street Light Installation. Company installs municipal street lighting installations following Illuminating Engineering Society of North America ("IESNA") recommended practices. If the Customer submits its own street lighting design for the street light installation or if the street lighting installation requested by Customer does not meet the IESNA recommended practices, Customer acknowledges Company is not responsible for any compliance or noncompliance with IESNA standards or any issues arising therefrom.

12. New Subdivisions. Company agrees to install street lights in new subdivisions when subdivision occupancy reaches a minimum of 80%, pursuant to a Purchase Agreement. If Customer wishes to have installation occur prior to 80% occupancy pursuant to a Purchase Agreement, then Customer acknowledges that Customer will be financially responsible for all damages (knockdowns, etc.) and requests for modifications (movements due to modified curb cuts from original design, etc.), and that the CIAC Amount and schedule for completion of the work shall be appropriately modified.

13. Force Majeure. The obligation of Company to perform this Master Agreement shall be suspended or excused to the extent such performance is prevented or delayed because of acts beyond Company's reasonable control, including without limitation acts of God, fires, adverse

weather conditions (including severe storms and blizzards), malicious mischief, strikes and other labor disturbances, compliance with any directives of any government authority, including but not limited to obtaining permits, and force majeure events affecting suppliers or subcontractors.

14. Subcontractors. Company may sub-contract, in whole or in part, any of its obligations under this Master Agreement.

15. Waiver; Limitation of Liability. To the maximum extent allowed by law, Customer hereby waives, releases and fully discharges Company from and against any and all claims, causes of action, rights, liabilities or damages whatsoever, including attorney's fees, arising out of the installation of the Equipment and/or any replacement Equipment, including claims for bodily injury or death and property damage, unless such matter is caused by or arises as a result of the sole negligence of Company and/or its subcontractors. Company shall not be liable under this Master Agreement for any special, incidental or consequential damages, including loss of business or profits, whether based upon breach of warranty, breach of contract, negligence, strict liability, tort or any other legal theory, and whether or not Company has been advised of the possibility of such damages. In no event will Company's liability to Customer for any and all claims related to or arising out of this Master Agreement exceed the CIAC Amount set forth in the Purchase Order to which the claim relates.

16. Notices. All notices required by this Master Agreement shall be in writing. Such notices shall be sent to Company at **DTE Electric Company, Community Lighting Group, 8001 Haggerty Rd, Belleville, MI 48111** and to Customer at the address set forth on the applicable Purchase Agreement. Notice shall be deemed given hereunder upon personal delivery to the addresses set forth above or, if properly addressed, on the date sent by certified mail, return receipt requested, or the date such notice is placed in the custody of a nationally recognized overnight delivery service. A party may change its address for notices by giving notice of such change of address in the manner set forth herein.

17. Representations and Warranties. Company and Customer each represent and warrant that: (a) it has full corporate or public, as applicable, power and authority to execute and deliver this Master Agreement and to carry out the actions required of it by this Master Agreement; (b) the execution and delivery of this Master Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary corporate or public, as applicable, action required on the part of such party; and (c) this Master Agreement constitutes a legal, valid, and binding agreement of such party.

18. Miscellaneous.

a. This Master Agreement is the entire agreement of the parties concerning the subject matter hereof and supersedes all prior agreements and understandings. Any amendment or modification to this Master Agreement must be in writing and signed by both parties.

b. Customer may not assign its rights or obligations under this Master Agreement without the prior written consent of Company. This Master Agreement shall be binding

upon and shall inure to the benefit of the parties' respective successors and permitted assigns. This Master Agreement is made solely for the benefit of Company, Customer and their respective successors and permitted assigns and no other party shall have any rights to enforce or rely upon this Master Agreement.

c. A waiver of any provision of this Master Agreement must be made in writing and signed by the party against whom the waiver is enforced. Failure of any party to strictly enforce the terms of this Master Agreement shall not be deemed a waiver of such party's rights hereunder.

d. The section headings contained in this Master Agreement are for convenience only and shall not affect the meaning or interpretation thereof.

e. This Master Agreement shall be construed in accordance with the laws of the State of Michigan, without regard to any conflicts of law principles. The parties agree that any action with respect to this Master Agreement shall be brought in the courts of the State of Michigan and each party hereby submits itself to the exclusive jurisdiction of such courts.

f. This Master Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

g. The invalidity of any provision of this Master Agreement shall not invalidate the remaining provisions of the Master Agreement.

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

Company:

DTE Electric Company

By: _____

Name: _____

Title: _____

Date: _____

Customer:

City of Birmingham

By: _____

Name: _____

Title: _____

Date: _____

SIGN HERE

Exhibit A to Master Agreement


Purchase Agreement

This Purchase Agreement (this "Agreement") is dated as of May 4, 2022 between DTE Electric Company ("Company") and the City of Birmingham ("Customer").

This Agreement is a "Purchase Agreement" as referenced in the Master Agreement for Municipal Street Lighting dated May 4, 2022 (the "Master Agreement") between Company and Customer. All of the terms of the Master Agreement are incorporated herein by reference. In the event of an inconsistency between this Agreement and the Master Agreement, the terms of this Agreement shall control.

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

1. DTE Work Order Number:	64131652	
	If this is a conversion or replacement, indicate the Work Order Number for current installed equipment: N/A	
2. Location where Equipment will be installed:	[Old Woodward-E. Brown to Landon], as more fully described on the map attached hereto as <u>Attachment 1</u> .	
3. Total number of lights to be installed:	72	
4. Description of Equipment to be installed (the " <u>Equipment</u> "):	<p><u>Pedestrian Lighting:</u> Install fifty-three (53) Special Order Material Birmingham Green Philips/Signify Birmingham style 68w LED luminaires, and fifty-three (53) Special Order Material Birmingham Green Philips/Signify Birmingham style posts (no GFIs) on concrete foundations.</p> <p><u>Crosswalk Lighting:</u> Install nineteen (19) Special Order Material Philips/Signify MetroScape 135w LED pendant luminaire with Special Order Material bracket arm painted Birmingham Green installed on nineteen (19) Special Order Material Philips/Signify posts painted Birmingham Green on concrete foundations.</p> <p><u>Removals:</u> Remove forty-three (43) existing poles and fixtures. City contractor to remove foundations.</p>	
5. Estimated Total Annual Lamp Charges	\$20,811.72	
6. Estimated Total Annual Post Charges if selected	\$0.00	
7. Computation of Contribution in aid of Construction (" <u>CIAC Amount</u> ")	Total estimated construction cost, including labor, materials, and overhead:	\$715,747.20
	Revenue credit:	\$62,435.16
	CIAC Amount (cost minus revenue)	\$653,312.04
	Credit for Post Charge, if selected	\$0.00
8. Payment of CIAC Amount:	Due promptly upon execution of this Agreement \$653,315.04	
9. Term of Agreement	5 years. Upon expiration of the initial term, this Agreement shall continue on a month-to-month basis until terminated by mutual written consent of the parties or by either party with thirty (30) days prior written notice to the other party.	

	<p>If Post Charge “box” is checked the Customer agrees to following term:</p> <p>10 years. Upon expiration of the initial term, this Agreement shall continue on a month-to-month basis until terminated by mutual written consent of the parties or by either party with thirty (30) days prior written notice to the other party.</p>
10. Does the requested Customer lighting design meet IESNA recommended practices?	<p>(Check One) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>If “No”, Customer must sign below and acknowledge that the lighting design does not meet IESNA recommended practices</p> <p>_____ </p>
11. Customer Address for Notices:	<p>City of Birmingham 151 Martin Street Birmingham, MI 48009</p>

12. Special Order Material Terms:

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

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

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

B. Customer will maintain an inventory of at least 5 Pedestrian post/light assemblies and 2 Crosswalk post/light assemblies and any other materials agreed to by Company and Customer, and will replenish the stock by ordering materials no later than thirty (30) calendar days after the materials are drawn from inventory. Costs of initial inventory are included in this Agreement. If Customer fails to maintain the required inventory, Company, after 30 days' notice to Customer, may (but is not required to) order replacement SOM and Customer will reimburse Company for its costs (including the labor costs associated with Company's management of the supply chain for the SOM) no later than thirty (30) calendar days after receipt of Company's invoice for such costs. Customer's acknowledges that failure to maintain required inventory could result in extended outages due to SOM lead times.

C. The inventory will be stored at City of Birmingham DPS 851 S. Eton St. Access to Customer's inventory site must be provided between the hours of 9:00 am to 4:00 pm, Monday through Friday with the exceptions of federal Holidays. If Company is unable to access the site during such hours for any reason, Company (i) shall be relieved from any obligation or commitment to complete the work as scheduled, and (ii) may, at its option, procure the inventory itself and have Customer to reimburse Company's costs for doing so. Customer shall name an authorized representative to contact regarding inventory: levels, access, usage, transactions, and provide the following contact information to Company:

Name: Scott Zielinski

Title: Assistant City Engineer

Phone Number: 248.530.1838

Email: szielinski@bhamgov.org

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

D. In the event that SOM is damaged by a third party, Company may (but is not required to) pursue a damage claim against such third party for all of Company's costs incurred because of the claim, including all labor and replacement materials. Company will notify Customer as to whether Company will pursue such claim within a reasonable time of the SOM being damaged.

E. In the event that SOM becomes obsolete, discontinued, or incompatible with Company's infrastructure, Customer shall select new alternate SOM that is compatible with Company's then-existing infrastructure. If Customer does not select compatible alternate SOM, Company reserves the right to select compatible SOM that is, in its reasonable judgment, substantially similar, or replace the SOM with standard materials, in either case being entitled to reimbursement from Customer for Company's costs in providing such transition of supply (including internal overhead and labor costs).

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

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

Company:

DTE Electric Company

By: _____

Name: _____

Title: _____

Date: _____

Customer:

City of Birmingham

By: _____

Name: _____

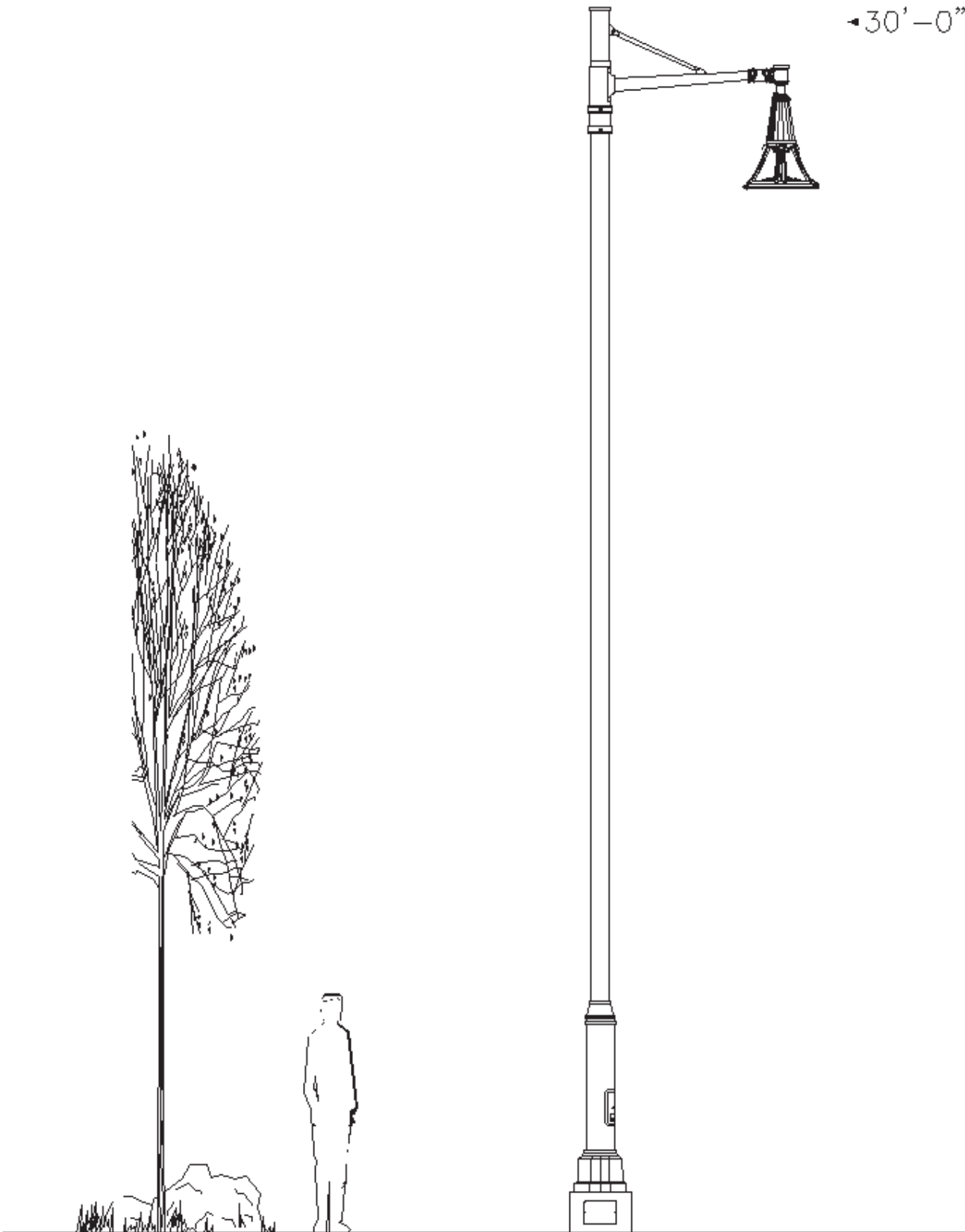
Title: _____

Date: _____

SIGN HERE

Attachment 1 to Purchase Agreement
Map of Location

[To be attached]





MEMORANDUM

Planning Division

DATE: May 9, 2022

TO: Thomas M. Markus, City Manager

FROM: Nicholas Dupuis, Planning Director

SUBJECT: Set Public Hearing for 243 E. Merrill – La Strada – Special Land Use Permit Amendment, Final Site Plan & Design Review

INTRODUCTION:

The applicant has submitted an application for a Special Land Use Permit Amendment, Final Site Plan and Design Review for an expansion into an adjacent tenant space and a new outdoor dining platform at an existing bistro in Downtown Birmingham.

BACKGROUND:

On April 27, 2022, the Planning Board moved to recommend approval to the City Commission the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 243 E. Merrill with the following conditions

1. The applicant must provide revised plans with clear dimensions to ensure compliance with the Zoning Ordinance;
2. The applicant must provide a certified survey;
3. The applicant is required to install a city standard grate to protect the street tree;
4. The applicant will need to submit revised landscape plans detailing the species of plants that will be housed in the concrete planters and ensure that no plants are on the prohibited species list;
5. The applicant must receive Historic District Commission approval for all exterior changes proposed within the Downtown Historic District;
6. The applicant must obtain a recommendation from the Advisory Parking Committee for the use of public parking spaces;
7. The applicant must submit new specification sheets for tables/chair constructed of metal or wood, or receive approval for a material of comparable quality by the Planning Board; and
8. The applicant must comply with the requests of all City Departments.

On May 4, 2022, the Advisory Parking Committee recommended approval of the use of two on-street parking spaces in the Merrill St. right-of-way to the City Commission.

In addition to the review at the Planning Board and Advisory Parking Committee, the applicant is also required to submit a Design Review application to the Historic District Commission, as the proposed platform is located within the Central Business Historic District. The Design Review is currently scheduled at the Historic District Commission on May 18, 2022.

The Planning Division will provide amended site and design plans addressing the Planning Board, Historic District Commission and/or Advisory Parking Committee comments at the Public Hearing on June 13, 2022.

LEGAL REVIEW:

The City Attorney has reviewed this request and resolution and has no objections as to form and content.

FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

PUBLIC COMMUNICATIONS:

As required for Special Land Use Permit and Final Site Plan Reviews, a legal ad was placed in a newspaper of local circulation to advertise the nature of the request in advance of the April 27, 2022 Planning Board meeting, and notices were sent out to all property owners and tenants within 300 ft. of the property. In addition, a second round of notices will be sent out to advertise the public hearing at the City Commission on June 13, 2022.

SUMMARY:

The Planning Division requests that the City Commission set a public hearing date of June 13, 2022 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 243 E. Merrill – La Strada.

ATTACHMENTS:

Please find attached the following documents for your review:

- Special Land Use Permit Resolution
- Current Site/Design Plans
- Planning Board Review Documents

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to set a public hearing date of June 13, 2022 to consider the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 243 E. Merrill – La Strada – to allow for the expansion of the existing bistro and the associated interior renovations and the addition of a new outdoor dining platform in the Merrill St. right-of-way.

La Strada
243 E. Merrill St.
Special Land Use Permit Amendment 2022

WHEREAS, A Special Land Use Permit Amendment application was filed in February 2022 for approval of an expansion into an adjacent tenant space, interior renovations, and a new outdoor dining platform in the Merrill right-of-way at 243 E. Merrill;

WHEREAS, The land for which the Special Land Use Permit Amendment is sought is located on the north side of Merrill, east of Pierce and West of S. Old Woodward;

WHEREAS, The land is zoned B4, which permits the operation of food and drink establishments serving alcoholic beverages for on premise consumption with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board on April 27, 2022 reviewed the application for a Special Land Use Permit Amendment, Final Site Plan and Design Review and recommended approval to the City Commission to allow an expansion into an adjacent tenant space, interior renovations, and a new outdoor dining platform in the Merrill right-of-way with the following conditions:

1. The applicant must provide revised plans with clear dimensions to ensure compliance with the Zoning Ordinance;
2. The applicant must provide a certified survey;
3. The applicant is required to install a city standard grate to protect the street tree;
4. The applicant will need to submit revised landscape plans detailing the species of plants that will be housed in the concrete planters and ensure that no plants are on the prohibited species list;
5. The applicant must receive Historic District Commission approval for all exterior changes proposed within the Downtown Historic District;
6. The applicant must obtain a recommendation from the Advisory Parking Committee for the use of public parking spaces;
7. The applicant must submit new specification sheets for tables/chair constructed of metal or wood, or receive approval for a material of comparable quality by the Planning Board; and
8. The applicant must comply with the requests of all City Departments.

WHEREAS, The applicant has complied with the conditions of approval required by the Planning Board and all City Departments;

WHEREAS, The Advisory Parking Committee on May 4, 2022 reviewed the application for a Special Land Use Permit Amendment, Final Site Plan and Design Review and recommended approval to the City Commission to allow a new outdoor dining platform in the Merrill right-of-way and to utilize two public parking spaces;

WHEREAS, The Historic District Commission on May 18, 2022 _____ a Design Review

application to allow a new outdoor dining platform in the Merrill right-of-way and the Central Business Historic District with the following condition:

1. The applicant obtain full approval from the City Commission prior to installation.

WHEREAS, The applicant has agreed to provide all requested information and to comply with the requests of all City departments;

WHEREAS, The Birmingham City Commission has reviewed La Strada's Special Land Use Permit Amendment application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that La Strada's application for a Special Land Use Permit Amendment, Final Site Plan and Design Review at 243 E. Merrill is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to ensure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit Amendment is granted subject to the following conditions:

1. La Strada shall abide by all provisions of the Birmingham City Code;
2. La Strada must maintain a valid Outdoor Dining Permit and enter into a Lease Agreement for the use of public property;
3. La Strada must install city-standard tree grates for the two tree boxes in front of their storefront; and
4. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, La Strada 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 La Strada to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

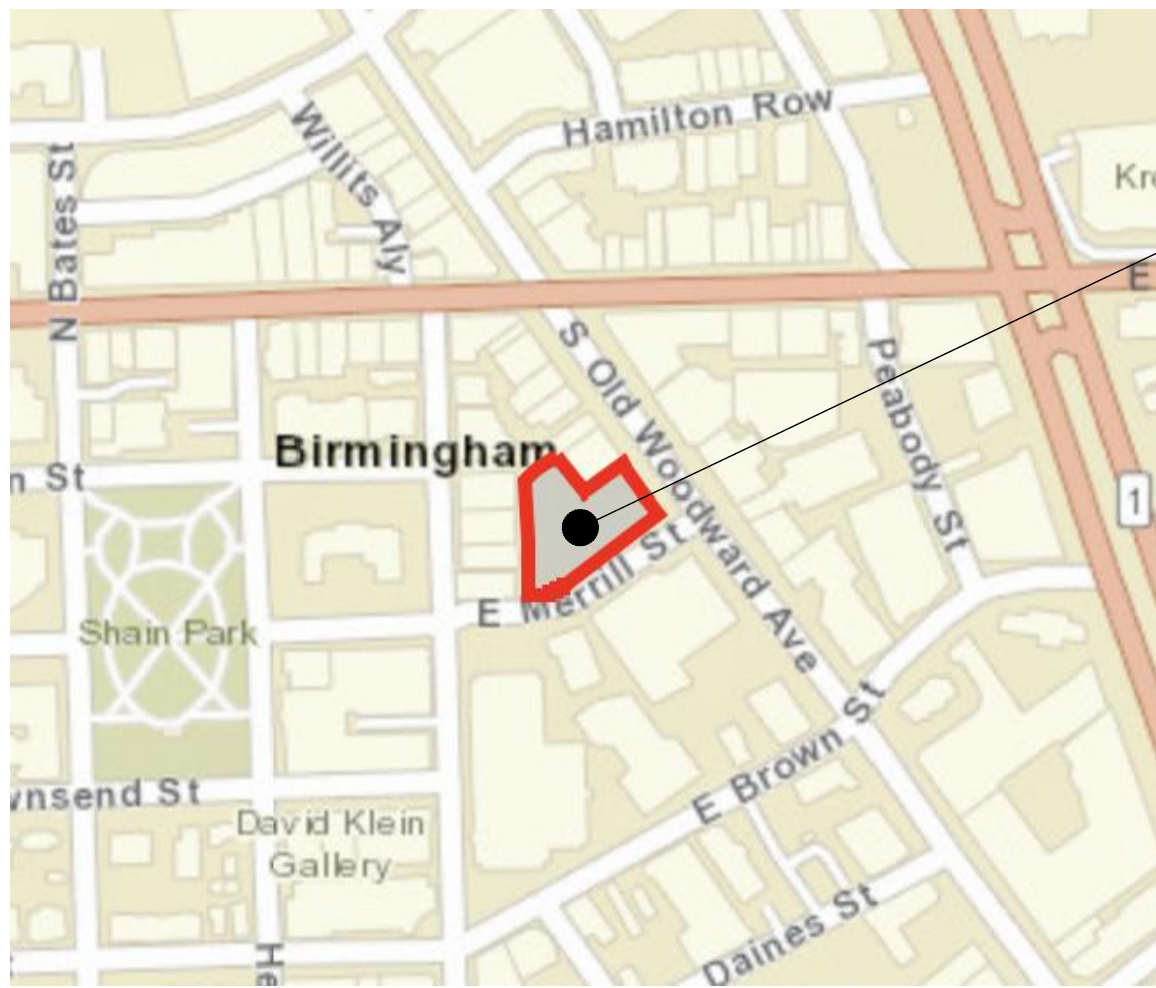
BE FURTHER RESOLVED that La Strada is recommended for an expansion into an adjacent tenant space, interior renovations, and the operation of a new outdoor dining platform in the Merrill right-of-way, above all others, subject to final inspection.

I, Alexandria Bingham, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on June 13, 2022.

Alexandria Bingham
City Clerk

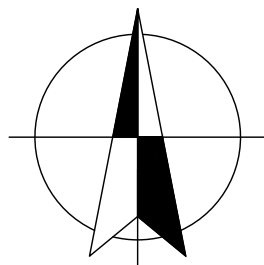
Current Site/Design Plans

LASTRADA CAFE'
241 Merrill Street
Birmingham, Michigan 48009



LASTRADA CAFE'
241 EAST MERRILL STREET
Zoned: B-4
Overlay: D-5

Location Map



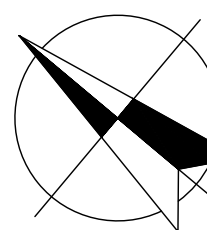
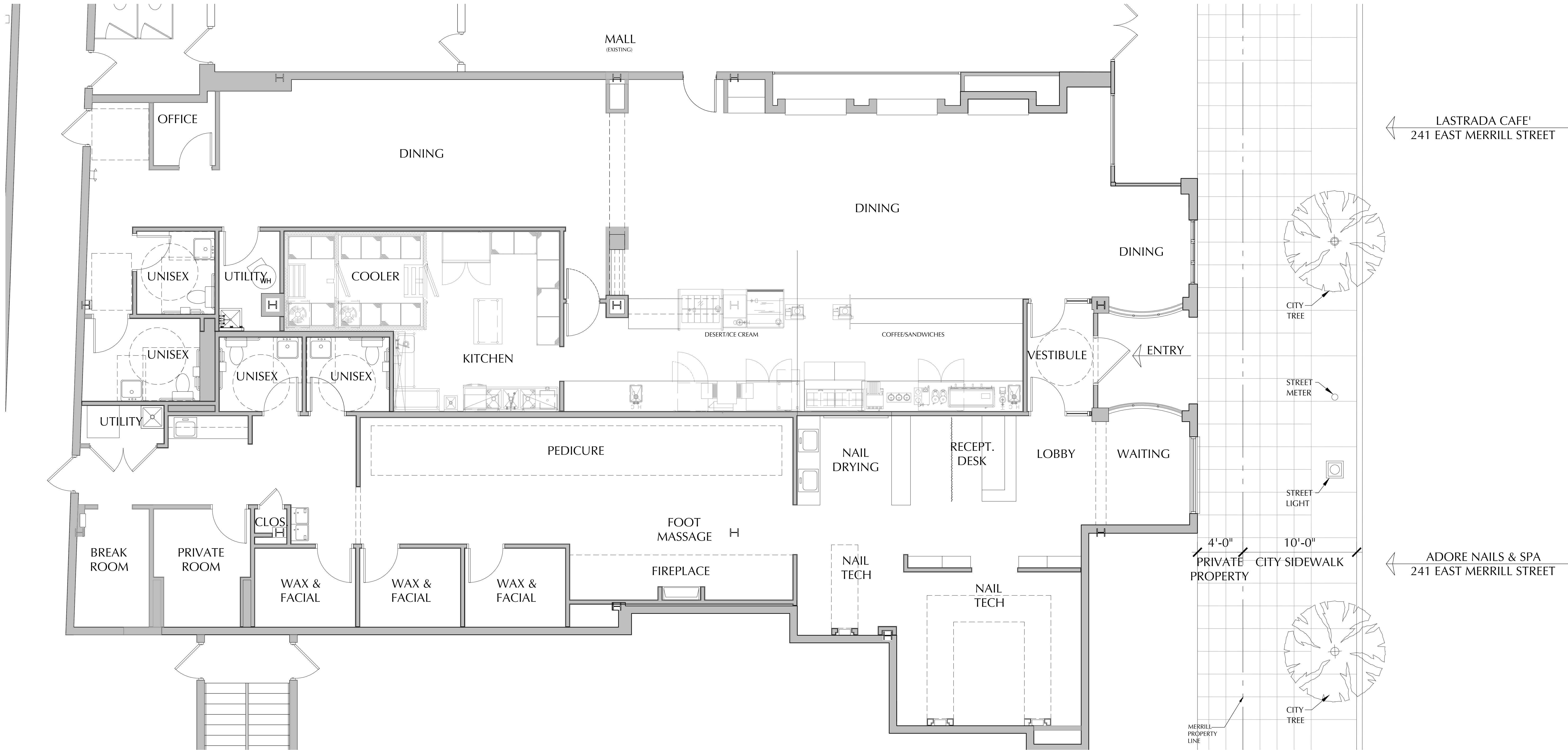
Site Plan

NOT TO SCALE

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6940

LASTRADA CAFE'

241 Merrill Street
Birmingham, Michigan 48009

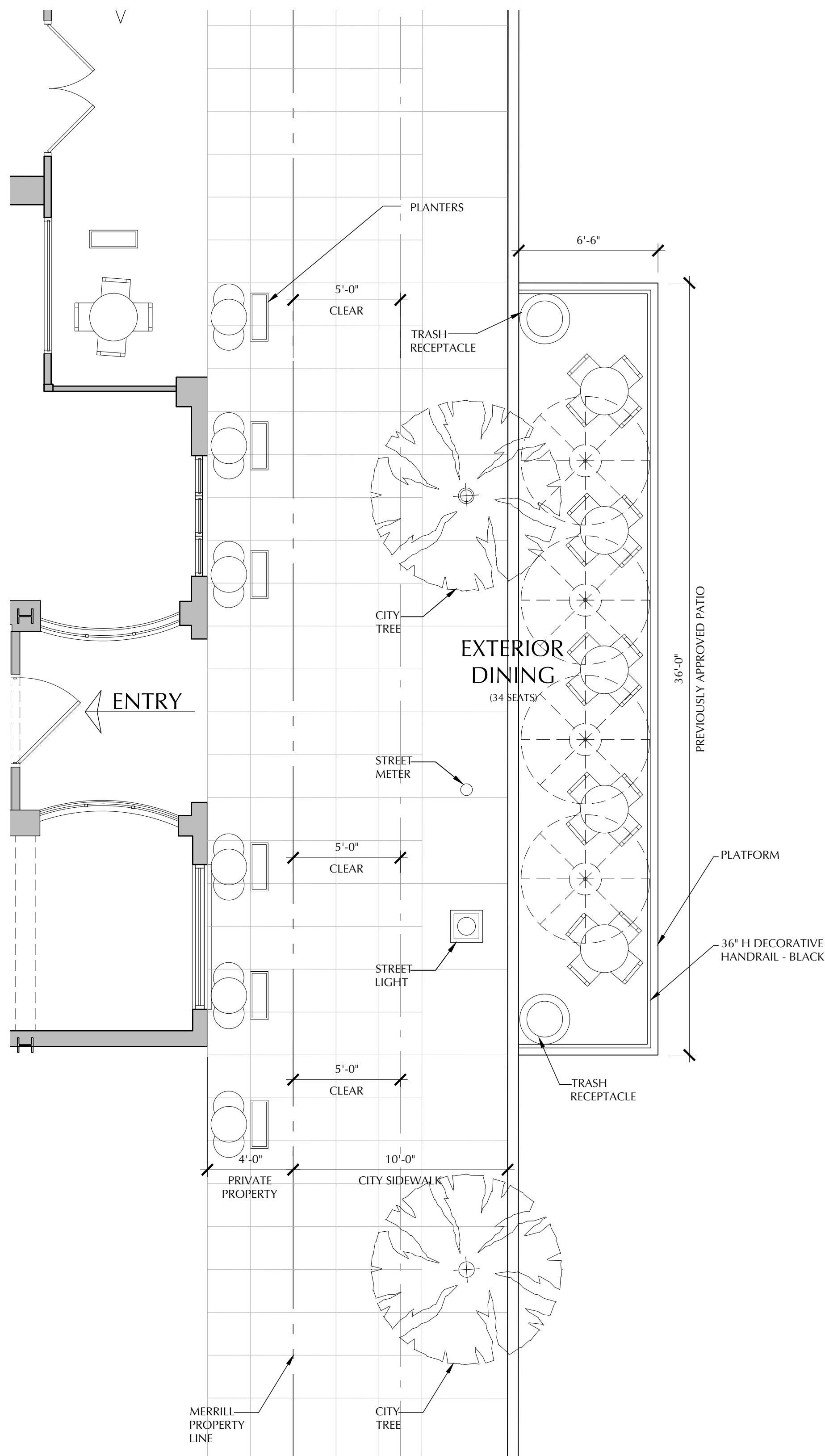


EXISTING PLAN

NOT TO SCALE

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6940

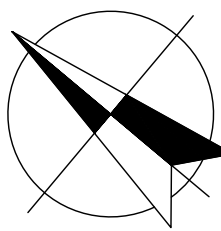
LASTRADA CAFE'
241 Merrill Street
Birmingham, Michigan 48009



PREVIOUSLY PERMITTED PATIO

OUTDOOR SEAT COUNT:

TABLE TYPE	No. of SEATS
2-TOP TABLE (6)	12 SEATS
4-TOP TABLE (6)	24 SEATS
TOTAL SEATS:	36 SEATS



Proposed Outdoor Dining Plan

1/4" = 1'-0"

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6940



PREVIOUSLY APPROVED - **UMBRELLA**
RED TREASURE GARDEN

PREVIOUSLY APPROVED - **RAIL**
36" H - BLACK DECORATIVE HANDRAIL

PREVIOUSLY APPROVED - **PLATFORM**
COMPOSITE WOOD



PREVIOUSLY APPROVED - **CHAIR**
ALUMINUM - FRAME
WHITE PLASTIC PANEL - SEAT AND BACK



PREVIOUSLY APPROVED - **TABLE**
ROUND BLACK PAINTED STEEL - FRAME
TEMPERED GLASS - TOP



TRASH RECEPTACLE
GLOBAL INDUSTRIAL™ ALUMINUM
ROUND OPEN TOP TRASH CAN,
20 GALLON, SATIN CLEAR



PLANTER
CONCRETE PLANTER
10"Wx27"Lx12"H

LASTRADA CAFE'
241 Merrill Street
Birmingham, Michigan 48009

LaStrada Hour of Operation:

Indoor: Tuesday - Saturday | Dinner 4pm - 12am
Outdoor: Tuesday - Saturday | Dinner 4pm - 12am

Monday Nights open for Special Events



We proudly Serve The Best of Food To The Best Of People. Please Accept Our Appreciation And Sincere Thanks For Letting Us Serve You. Sometimes in a Rush of Business Life, We Fail To Say "Thanks" Loud Enough. But You Can Be Assured That Your Patronage Is Never Taken For Granted. Our aim is to please and satisfy.

Formaggi	Salumi
Parmigiano Reggiano DOP 36 Month Aged 13	Tartufo Presciutto Cotto 11
Parmigiano Reggiano DOP "Red Cow" 36 Month Aged 25	Salame Piacentino DOP 12
Taleggio DOP 12	Coppa Piacentina DOP 13
Pecorino Toscano DOP 15	Spalla All'Aiolo - Smoked Presciutto 15
Asiago Vecchio DOP 15	Prosciutto San Daniele "Seccolo" DOP 15
Pekali Siv - Croatian's Sheep's Milk 12 Month Aged 15	Presciutto di Parma Label Label DOP 16
Caccavaccio - 36 Month Cured Aged DOP 17	Bresaola - Air Dried Fillet Pig 17
Gorgonzola Dolce DOP 17	Berico di Salina (Special Presciutto) - Azzone level 100 % 17

[illegible]

Insalate	
<p>Tre Colore 13 <i>Angelo, Radicchio, Belgian Endive, L'Uovo - Lemon, Shaved Fennel</i> <i>Signature</i></p>	<p>Campagnola 15 <i>Baby greens, Roasted Peppers, Olives, Artichoke Heart, Tomatoes, Fennel Seeds, Fresh shallots, Candied Vinegar</i></p>
<p>Barbabietola 15 <i>Carpaccio Style Golden Beets, Baby Angelo, Toasted Almonds, Pistachio, L'Uovo</i></p>	<p>Cesar 15 <i>Assorted Lett, Mozzarella, Parmigiano Reggiano, Crisp Dress, Parmigiano Dressing</i></p>

Pizza	
Margherita [18] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Prosciutto</i>	Flaminio [13] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Wurst</i> di <i>Spilina</i>
Marinara [20] con <i>Mozzarella</i> , <i>San Marzano</i>	Marinara – <i>Spock</i> <i>Hot-Aldo</i> [22] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Hot-Aldo</i>
San Marzano [23] con <i>Mozzarella</i> , <i>Spilina</i> (ciligio) <i>no</i>	Peperoncino [24] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Peperoncino</i>
San Marzano [25] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Parmigiano</i>	Quattro Formaggi [26] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Prosciutto</i> , <i>Parmigiano</i>
Capricciole [27] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Prosciutto</i> , <i>Caci</i> , <i>Artichoke</i> , <i>Peperoncino</i> , <i>Mozzarella</i> , <i>San Marzano</i>	Ricotta [28] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Prosciutto</i> , <i>Angelo</i> , <i>Parmigiano</i> , <i>Parmigiano</i>
Piccante [29] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Prosciutto</i> , <i>Peperoncino</i>	San Marzano [30] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Prosciutto</i> , <i>Angelo</i> , <i>Parmigiano</i>
Valdolina [31] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Caci</i> , <i>Zanetti</i> <i>Cheese</i>	La Siciliana [32] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Prosciutto</i> , <i>Parmigiano</i> , <i>Parmigiano</i> , <i>Parmigiano</i>
Catinese [33] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Prosciutto</i> , <i>Caci</i> , <i>Peperoncino</i> , <i>Peperoncino</i>	Funghi e Tortelli [34] con <i>Mozzarella</i> , <i>San Marzano</i> , <i>Prosciutto</i> , <i>Angelo</i> , <i>Parmigiano</i>

[illegible]

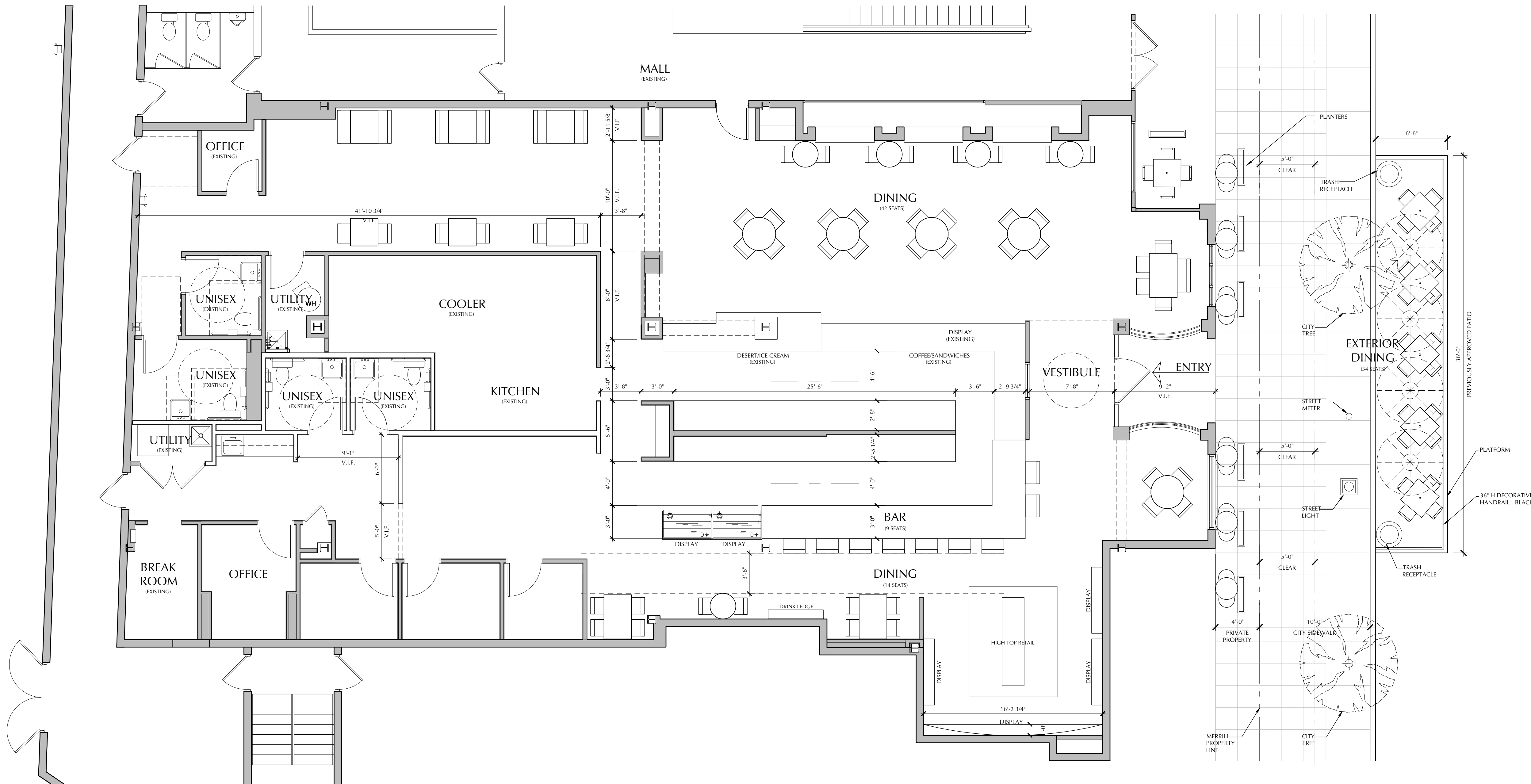
Risotto Aquarello Carnarali 7 Year Aged	
Risotto Pargimiana 25 <i>Pargim, Amarone Selection</i>	Risotto Maro Monte 35 <i>Siring, Forest Madrovere, Pinot</i>
Risotto al Prosecco Limone e Zaferano 30 <i>Limone Siciliano, Saffron Prosecco, Pargimiana Tronale</i>	Risotto ai Funghi e Tartufo 35 <i>Carnarali - gourmet forest madrovere, truffle sauce</i>
Preparation Time 45 Minutes	
Carnarali	

[illegible]

Contomi				
Spinach-9	Gourmet-Mushrooms-11	Polenta-Paro-9	Creamy-Polenta-9	Broccoli-Di-Rabe-15
Ask your server about menu items that are cooked to order or served raw.				
Consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase your risk of food borne illness.				

INDOOR SEAT COUNT:

TABLE TYPE	No. of SEATS
2-TOP TABLE (11)	22 SEATS
4-TOP TABLE (7)	28 SEATS
6-TOP TABLE (1)	6 SEATS
BAR (9)	9 SEATS
TOTAL SEATS:	65 SEATS



Proposed Plan

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6940

124 Peabody, Birmingham, Michigan 48009 248.258.6940

$$3/16'' = 1' - 0''$$

SD.3.0

LASTRADA CAFE'
241 Merrill Street
Birmingham, Michigan 48009



Existing Elevation



Proposed Elevation

EXISTING SIGN TO BE RELOCATED
CENTERED ABOVE ENTRANCE AWNING

NOTES CORRESPONDING TO SCHEDULE B-II

6. Interest of Detroit Cellular Telephone Company, a Michigan Co-Partnership, Lessee, and Terms, Conditions and Provisions of Lease, as evidenced by Affidavit of Interest, dated June 8, 1992, recorded June 18, 1992, in Liber 12696, Page 332, as to Parcel 1.
Item located as shown hereon.
7. Interest of Einstein/Noah Bagel Partners, L.P., a Delaware limited partnership, Lessee, and Terms, Conditions and Provisions of Lease, as evidenced by Collateral Assignment of Tenant's Rights in Lease, dated February 18, 1998, recorded May 12, 1998, in Liber 18460, Page 183, as to Parcel 1.
Covers entire Parcel 1. Not shown.
8. Interest of Great Lakes Bagels, L.L.C., a Delaware limited liability company, Lessee, and Terms, Conditions and Provisions of Lease, as evidenced by Collateral Assignment of Tenant's Rights in Lease, dated October 29, 1996, recorded April 2, 1999, in Liber 19778, Page 693, as to Parcel 1.
Covers entire Parcel 1. Not shown.
12. Right of Way in favor of The Detroit Edison Company and the Covenants, Conditions and Restrictions contained in instrument recorded in Liber 5068, Page 565.
An easement over part of Lot 7. Sketch showing exact location is illegible. Not shown.
17. Grant of Easement in favor of Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC and the Covenants, Conditions and Restrictions contained in instrument recorded in Liber 49398, Page 807.
Outside of subject property. Not shown.

GENERAL NOTES

- GN1 Described bearings are based on Record Description.
- GN2 The address of the property is per record documents and was confirmed in the field.
- GN3 Subject property has direct vehicular access to East Merrill St., a public street, direct pedestrian access to South Old Woodward Ave., a public street, and unclear status of vehicular access to Public Alley.
- GN4 Surveyor is unaware of proposed changes in street right of way lines. Surveyor did not observe evidence of recent street or sidewalk construction or repairs.
- GN5 Surveyor did not observe evidence of current earth moving work, building construction or building additions.
- GN6 Surveyor was not provided with documents relating to locations and did not observe evidence of cemeteries, gravesites and burial grounds.
- GN7 No wetland markers were observed during the survey.
- GN8 Locations of utilities are shown hereon by observed evidence and plans obtained from the City of Birmingham.
- GN9 Only observable surface and above ground structures were located. No underground improvements, such as foundation footings, were located. Some features shown on this survey may be shown out of scale for clarity.

AREA OF PARCEL (to the ROW)

Parcel 1	0.68 ac	29,506 sf
Parcel 2	0.15 ac	6,339 sf
Total	0.83 ac	35,845 sf

MARKED PARKING

Regular	68
Handicapped	7
Car Wash	1
Total	76

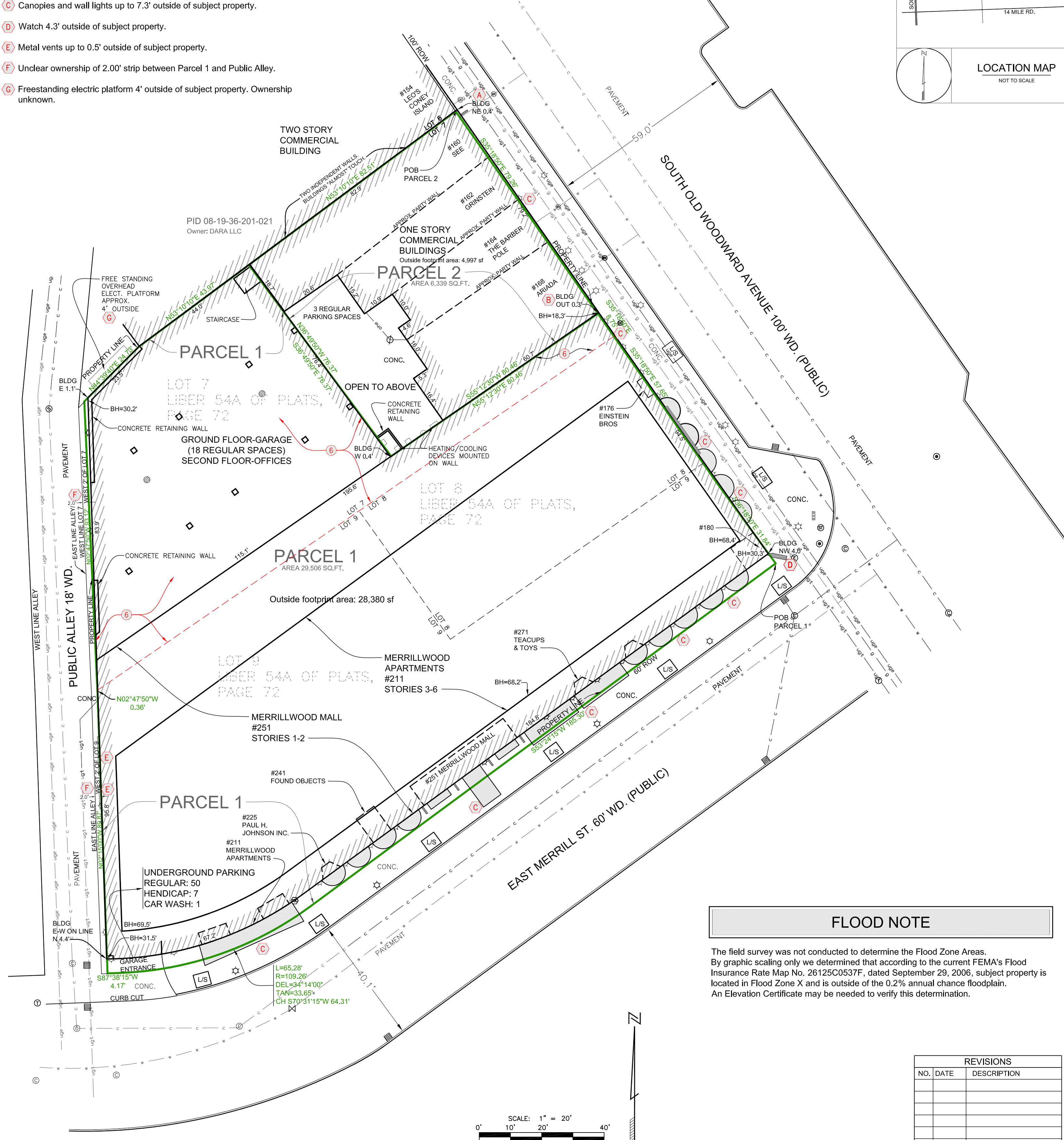
LEGEND OF SYMBOLS & ABBREVIATIONS

- PROPERTY LINE
- SET IRON W/CAP43058
- FOUND IRON/PIPE/MON/NAIL (F/FP/FM/FN)
- ⊙ SECTION CORNER
- ② EASEMENT
- Ⓐ ENCROACHMENTS
- BH BUILDING HEIGHT
- L/S LANDSCAPING
- ① REGULAR PARKING SPACES
- ② HANDICAP PARKING SPACES
- ③ SANITARY DRAIN, MANHOLE
- ④ COMBINED SEWER
- ⑤ STORM DRAIN, MANHOLE
- ⑥ CATCH BASIN SQUARE, ROUND, END SECTION
- ⑦ WATERMAIN, HYDRANT, GATE VALVE
- ⑧ WATERMAIN, WATER KEY, SHUT-OFF
- ⑨ UNKNOWN MANHOLE
- ⑩ GAS VALVE
- ⑪ UTILITY LINE O/H, POLE, GUY WIRE
- ⑫ ELECTRIC MANHOLE
- ⑬ LIGHT POLE
- ⑭ ELECTRIC METER/PEDESTAL
- ⑮ TRANSFORMER
- ⑯ UTILITY PEDESTAL
- ⑰ FLAGPOLE
- ⑱ FENCE
- ⑲ WALL
- ⑳ CANOPY

POSSIBLE ENCROACHMENTS

The following list of encroachments is only the opinion of this surveyor and should not be interpreted as complete listing.

- A Building 0.4' outside of subject property.
- B Building 0.3' outside of subject property.
- C Canopies and wall lights up to 7.3' outside of subject property.
- D Watch 4.3' outside of subject property.
- E Metal vents up to 0.5' outside of subject property.
- F Unclear ownership of 2.00' strip between Parcel 1 and Public Alley.
- G Freestanding electric platform 4' outside of subject property. Ownership unknown.



FLOOD NOTE

The field survey was not conducted to determine the Flood Zone Areas. By graphic scaling only we determined that according to the current FEMA's Flood Insurance Rate Map No. 26125C0537F, dated September 29, 2008, subject property is located in Flood Zone X and is outside of the 0.2% annual chance floodplain. An Elevation Certificate may be needed to verify this determination.

REVISIONS		
NO.	DATE	DESCRIPTION

RECORD DESCRIPTION

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

PARCEL 1:

All of Lot 8 and part of Lots 7 and 9, of City of Birmingham, Oakland County, Michigan, Assessor's Plat No. 24 being a Replat of Hunter's Addition and Plat of part of NE 1/4, Sec. 36, T.2N., R10E., according to the Plat thereof as recorded in Liber 54A of Plats, Page 72, Oakland County Records and described as follows: Beginning at the Southeast corner of said Lot 9; thence S53°24'15"W 185.30 feet along the Southerly line of said Lot 9 to a point of curve; thence along a curve concave Northerly on an arc, distance of 65.28 feet, radius is 109.26 feet, central angle is 34°14'00", tangent is 33.65 feet and long chord bears S70°31'15"W 64.31 feet; thence S87°38'15"W 4.17 feet; thence N02°15'00"W 89.87 feet parallel with and 2.00 feet Easterly of the West line of said Lot 9; thence N02°47'50"W 0.36 feet to a point on the line between said Lots 7 and 9; thence N02°47'50"W 93.12 feet parallel with and 2.00 feet East of the West of said Lot 7 to a point on the North line of said Lot 7; thence N44°39'40"E 24.73 feet along the Northerly line of said Lot 7; thence N53°10'10"E 43.97 feet along the Northerly line of said Lot 7; thence S36°49'50"E 76.37 feet; thence N55°12'30"E 80.46 feet to a point on the East line of said Lot 7; thence S35°18'50"E 8.75 feet to the corner common to said Lots 7 and 8; thence continuing S35°18'50"E 57.65 feet across the front of said Lot 8 to a point on the front line of said Lot 9; thence S36°18'50"E 31.84 feet along the front line of said Lot 9 to the Point of Beginning.

Tax Item No. 19-36-201-019

PARCEL 2:

Part of Lot 7, of City of Birmingham, Oakland County, Michigan, Assessor's Plat No. 24 being a Replat of Hunter's Addition and Plat of part of NE 1/4, Sec. 36, T.2N., R10E., according to the Plat thereof as recorded in Liber 54A of Plats, Page 72, Oakland County Records, described as: Beginning at the Northeast corner of Lot 7; thence S35°18'50"E, 79.26 feet; thence S55°12'30"W, 80.46 feet; thence N36°49'50"W, 76.37 feet; thence N53°10'10"E, 82.51 feet to the Point of Beginning.

Tax Item No. 19-36-201-018

Address Reference: 251 E Merrill Street, 158 S Old Woodward Avenue, Birmingham, MI 48009

The property described in this Survey is the same property as described in the Commitment for Title Insurance upon which this survey is based.

ALTA/NSPS LAND TITLE SURVEY

for
251 Merrill St.
Birmingham, MI 48009
County of Oakland

Based upon the Commitment for Title Insurance Issued by
First American Title Insurance Company; File No.: 725382;
Date Printed: April 13, 2017; Revision D; Commitment Date: April 03, 2017 @ 8:00 am.

Surveyor's Certification

- To:
- Ishco, LLC;
 - Chemical Bank;
 - First American Title Insurance Company.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6a, 6b, 7a, 7b1, 7c, 8, 9, 10a, 11, 13, 14, 16, 17, 18 and 19 of Table A thereof. The fieldwork was completed on April 25, 2017.

Derek Kosicki, PS #43058 MI
Professional Surveyor
Derek.K@MichiganSurveying.com

Field Date: April 25, 2017
Print Date: May 2, 2017



Sheet 1 OF 1 JOB No.: 17-119



MICHIGAN SURVEYING, INC.

37637 Five Mile Rd., Suite 364, Livonia, MI 48154
tel. (734) 542-9088, fax (734) 799-5737
www.MichiganSurveying.com

Planning Board Review Docs.



MEMORANDUM

Community Development

DATE: April 27, 2022

TO: Planning Board Members

FROM: Leah Blizinski, City Planner

APPROVED BY: Nick Dupuis, Planning Director

SUBJECT: Final Site Plan & Special Land Use Permit Amendment
243 Merrill – La Strada Italian Kitchen and Bar

The subject site is located at 243 Merrill St. between S. Old Woodward and Pierce. The parcel is zoned B-4, Business-Residential and D-5 in the Downtown Overlay District. The applicant, an existing Food and Drink Establishment is seeking approval of a Special Land Use Permit (SLUP) Amendment pursuant to Chapter 7, Section 7.37 (D) of the Zoning Ordinance. La Strada is requesting to reconfigure and expand the restaurant into the now vacant adjacent space (vacated by Adore Nails and Spa) in the Merrillwood Building as well as to create a new outdoor dining area in an on-street deck. Due to the buildings location within the Central Business Historic District, the applicant will need to obtain approval from the Historic District Commission. The applicant must also obtain a recommendation from the Advisory Parking Committee for the use of public parking spaces.

1.0 Land Use and Zoning

- 1.1 Existing Land Use – La Strada Italian Kitchen and Bar is an existing Food and Drink Establishment in a first-floor tenant space within the Merrillwood Building. The adjacent space is currently vacant and was previously occupied by Adore Nails and Spa. Land uses surrounding the site are retail, commercial and residential.
- 1.2 Zoning – The property is currently zoned B-4, Business-Residential, and D-5 in the Downtown Overlay District. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.
- 1.3 Summary of Adjacent Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.

(See next page)

	North	South	East	West
Existing Land Use	Commercial /Retail	Commercial / Retail	Commercial / Retail	Commercial / Retail
Existing Zoning District	B-4 Business-Residential	B-4 Business-Residential	B4 Business-Residential	B-4 Business-Residential
Downtown Overlay Zoning District	D-4	D-4	D-4	D-4

2.0 **Bistro Requirements**

Article 9, section 9.02, Definitions, of the Zoning Ordinance defines a bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining of no more than 65 people. La Strada is an existing Bistro with 57 dining seats and 8 bar seats and is proposing an expansion which will adjust their seat total to 56 indoor dining seats with 9 bar seats.

La Strada proposes to continue to operate a full service kitchen, with an extensive "Italian Caffè" menu which includes baked goods, panini sandwiches, pizza, meats and cheeses. The restaurant concept will remain largely the same, with the addition of a small retail component in the new space. The existing restaurant space will be entirely dining while the expansion into the adjacent space will contain the bar seating, a small amount of floor dining and the retail displays. The applicant states that they hope to reopen the restaurant for lunch business. They are proposing to have outdoor dining for 36 patrons on private and public property. The applicant proposes 16 outdoor dining seats on private property alongside the exterior length of the restaurants frontage and an additional 20 dining seats are proposed in a dining deck located in two on-street parking spaces.

Article 3, section 3.04 (C)(10) Building Use of the Zoning Ordinance permits bistros in the Overlay District as long as the following conditions are met:

- a. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- b. Alcohol is served only to seated patrons, except those standing in a defined bar area;
- c. No dance area is provided;
- d. Only low key entertainment is permitted;
- e. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- f. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1' and 8' in height;

- g. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro;
- h. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- i. Enclosures facilitating year round dining outdoors are not permitted.
- j. Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.
- k. Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.

As discussed above, La Strada is proposing to have 9 seats situated at a bar towards the West side of the bistro. The applicant proposes to install seating at the front of the restaurant so that they are lining the storefront window. There are no changes proposed to the windows or doors. No direct connect bar permit will be permitted from this license if it is approved. Alcohol may only be served to seated patrons and those standing in the bar area only. La Strada does not propose any dancing area or low key entertainment.

La Strada is proposing to have outdoor dining for 16 patrons on private property directly adjacent to the building. The outdoor dining area as proposed provides for pedestrian flow via the required 5' wide pathway between the proposed dining area and the street. However, there is a discrepancy between the width of dining area as proposed in the plans and the width needed to accommodate the proposed tables and planters. **The applicant should provide revised plans detailing the exact dimensions of the proposed frontage dining area to ensure that it can accommodate the proposed tables and planters without encroaching into the 5 ft. clear pedestrian pathway. Additionally, the applicant should clarify the location of the 5ft clear pedestrian pathway and whether it is entirely on the sidewalk or whether it will coincide with some portion of the aggregate 'furniture zone'.**

In addition to clarifying the dimensions on the plan and the 5 ft. pedestrian clear path, the Planning Board should also require the applicant to install tree grates on each tree box affected by the proposed outdoor dining patio to ensure that a 5 ft. ADA clear path is being provided.

The applicant intends to have business hours of 4 pm to 12 am Tuesday – Saturday.

3.0 Setback and Height Requirements

There are no bulk, area, height or placement issues with the proposed interior renovations or outdoor dining patios.

4.0 Screening and Landscaping

- 4.1 Dumpster Screening – No changes are proposed to dumpsters or screening.
- 4.2 Parking Lot Screening – The subject site is located within the Parking Assessment District. Therefore, no additional off-street parking facility and accompanying screening is required or proposed.
- 4.3 Mechanical Equipment Screening – The applicant is not proposing any changes to the existing rooftop mechanical units on the building. If any additional mechanical units or venting is required, all changes must be submitted to the Planning Division prior to installation or changes.
- 4.4 Landscaping – The applicant proposes concrete planters lining each of the outdoor dining areas to separate them from the sidewalk. However, the applicant did not include species of plants in the provided plans. **The applicant will need to submit revised landscape plans detailing the species of plants that will be housed in the concrete planters and ensure that no plants are on the prohibited species list.**
- 4.5 Streetscape – The existing streetscape was completely reconstructed in 2013 and was built to the current downtown streetscape standards. The streetscape includes a streetlight and a street tree, which currently does not have a special treatment grate. **As noted above, the applicant will be required to install a city standard tree grate.**

5.0 Parking, Loading, Access, and Circulation

- 5.1 Parking – As the subject site is located within the Parking Assessment District, the applicant is not required to provide on-site parking.
- 5.2 Loading - Loading spaces are not required, nor proposed.
- 5.3 Vehicular Access & Circulation - Vehicular access to the building will not be altered.
- 5.4 Pedestrian Access & Circulation – Pedestrian access to the café is available directly from the City sidewalk. Under the 2016 Plan, outdoor cafes are encouraged as they create a more pedestrian friendly environment. The proposed street dining platform layout does provide for a 5 ft. clear pedestrian path along the storefront.

6.0 Lighting

Existing pedestrian scale street light fixtures illuminate Merrill St. The applicant is not proposing additional lighting on the building façade or the outdoor dining area.







7.0 Departmental Reports

- 7.1 Engineering Division – See attached memo and comments from the Engineering Division.
- 7.2 Department of Public Services – The Department of Public Services has no concerns at this time.
- 7.3 Fire Department – Comments received from the Fire Department are attached.
- 7.4 Police Department - The Police Department reported having no concerns.
- 7.5 Parking Manager – **The Parking Manager has expressed concern that if both this applicant and 220 Merrill are approved, that will remove 5 of the existing 19 on-street parking spaces on Merrill between Old Woodward and Pierce St.**
- 7.6 Building Department – Comments received from the Building Department are attached.

8.0 Design Review

No changes are proposed to the exterior building façade except to move the existing sign to center it over the entrance. Moving an existing sign within the sign band does not require administrative approval or permits.

The changes specific to the proposed new outdoor dining are simple and involve a new deck platform, umbrellas, planters, tables, chairs and trash receptacles. A complete list of all the new proposed materials is as follows:

Material	Location	Color
Aluminum and Plastic	Outdoor dining chairs	
Steel and Tempered Glass	Outdoor dining tables	
Concrete	Planter boxes	
Composite Wood	On-street deck	
Not Provided	Platform railings	
Not Provided	Umbrellas on-street	

Outdoor Dining Area

Outdoor cafés must comply with the site plan criteria as required by Article 04, Section 4.42 OD-01, Outdoor Dining Standards. Outdoor cafes are permitted immediately adjacent to the principal use and are subject to site plan review and the following conditions:

1. Outdoor dining areas shall provide and service refuse containers within the outdoor dining area and maintain the area in good order.
2. All outdoor activity must cease at the close of business, or as noted in Subsection 3 below, whichever is earlier.
3. When an outdoor dining area is immediately adjacent to any single-family or multiple-family residential district, all outdoor activity must cease at the close of business or 10:00pm, whichever is earlier.
4. Outdoor dining may be permitted on the sidewalk throughout the year with a valid Outdoor Dining License.
5. All tables and chairs provided in the outdoor dining area shall be constructed primarily of metal, wood, or material of comparable quality.
6. Table umbrellas shall be considered under Site Plan Review and shall not impede sight lines into a retail establishment, pedestrian flow in the outdoor dining area, or pedestrian or vehicular traffic flow outside the outdoor dining area.
7. For outdoor dining located in the public right-of-way:
 - a. All such uses shall be subject to a license from the city, upon forms provided by the Community Development Department, contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - b. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 5 feet.
 - c. Outdoor dining is permitted to extend in the right-of-way in front of neighboring properties, with the written permission of the property owner(s) and with Planning Board approval, if such property is vacant or the first floor storefront(s) is/are vacant. Outdoor dining areas may extend up to 50% of the width of the neighboring lot(s) storefront(s), or up to 50% of the lot(s) frontage, if such lot is vacant.
 - d. City Commission approval is also required for outdoor dining extensions onto neighboring property if the establishment making such a request holds a bistro license.
 - e. An elevated, ADA compliant platform may be erected on the street in front of an eating establishment to create an outdoor dining area only if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - f. No such facility shall erect or install permanent fixtures in the public right-of-way.
 - g. Outdoor dining is permitted in a B1 District at a rate of 4 seats for every 12 linear feet of store frontage, with no more than 12 seats total per building; no elevated enclosed platforms on the street are permitted in a B1 District.

The applicant is proposing to create an outdoor dining area with 16 seats located directly in front of the cafe's frontage and 20 seats in an on-street deck for a total of 36 outdoor dining seats. The proposal includes 6 two-top tables and 6 four-top tables. The tables are proposed to be round black painted steel with tempered glass top and the chairs are proposed to be aluminum frame with white plastic panel seat and back. Specification sheets on the tables and chairs are included in the plans. **The Planning Board should discuss the proposed chairs, and determine whether or not the proposed plastic material utilized for the seat and back may be considered a material of comparable quality to wood or metal.**

The applicant has provided trash receptacles within the outdoor dining areas as required by Article 04, section 4.42 OD-01 of the Zoning Ordinance. The proposed trash receptacles are Global Industrial aluminum round open top trash can in 20-gallon satin clear. The applicant proposes two trash receptacles within the outdoor dining area, both located on the on-street deck, one at the easternmost end and one at the westernmost end. The applicant intends to have business hours of 4pm to 12am Tuesday – Saturday. The proposed outdoor café is not immediately adjacent to single-family or multi-family zoned property and therefore may stay open until 12am or the close of business.

The plans include umbrellas on the tables in the on-street dining deck area only. The proposed umbrellas are "red treasure garden".

Signage

There is no additional signage proposed as a part of this site plan review. The applicant proposes to move the existing sign to center it over the restaurant entry. As stated above, moving an existing sign does not require administrative approval or additional permits.

9.0 Required Attachments

	Submitted	Not Submitted	Not Required
Existing Conditions Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Detailed and Scaled Site Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Certified Land Survey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interior Floor Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Landscape Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Photometric Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Colored Elevations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Material Specification Sheets	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Material Samples	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Site & Aerial Photographs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10.0 Downtown Birmingham 2016 Overlay District

The site is located on Merrill between Old Woodward and Pierce within the D-5 within the Downtown Overlay District. The purpose of the Downtown Overlay District is in part to “encourage a form of development that will achieve the physical qualities necessary to maintain and enhance the economic vitality of Downtown Birmingham and to maintain the desired character of the City of Birmingham”. Specifically, the 2016 Plan recommends the addition of outdoor dining areas in the public right-of-way as being in the public’s best interest as it enhances street life, thus promoting a pedestrian friendly environment. The 2016 Plan also recommends that the 5’ clear pedestrian passage be provided against the storefronts to ensure that merchants can display and sell their products and so as not to distort the flow of pedestrians.

10.0 Approval Criteria for Final Site Plan

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

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

11.0 Recommendation

Based on a review of the site plan submitted, the Planning Division recommends that the Planning Board recommend **APPROVAL** to the City Commission the Special Land Use Permit Amendment and Final Site Plan/Design Review application for 243 Merrill St. – La Strada – with the following conditions:

1. The applicant must provide revised plans with clear dimensions to ensure compliance with the Zoning Ordinance;
 2. The applicant must provide a certified survey;
 3. The applicant is required to install a city standard grate to protect the street tree;
 4. The applicant will need to submit revised landscape plans detailing the species of plants that will be housed in the concrete planters and ensure that no plants are on the prohibited species list;
 5. The applicant must receive Historic District Commission approval for all exterior changes proposed within the Central Business Historic District;
 6. The applicant must obtain a recommendation from the Advisory Parking Committee for the use of public parking spaces;
 7. The applicant must submit new specification sheets for tables/chair constructed of metal or wood, or receive approval for a material of comparable quality by the Planning Board; and
- The applicant must comply with the requests of all City Departments.

12.0 Sample Motion Language (*Special Land Use Permit Amendment*)

Motion to recommend **APPROVAL** to the City Commission the Special Land Use Permit Amendment application for 243 Merrill St. – La Strada – with the following conditions:

1. The applicant must provide revised plans with clear dimensions to ensure compliance with the Zoning Ordinance;
2. The applicant must provide a certified survey;
3. The applicant is required to install a city standard grate to protect the street tree;
4. The applicant will need to submit revised landscape plans detailing the species of plants that will be housed in the concrete planters and ensure that no plants are on the prohibited species list;
5. The applicant must receive Historic District Commission approval for all exterior changes proposed within the Downtown Historic District;
6. The applicant must obtain a recommendation from the Advisory Parking Committee for the use of public parking spaces;
7. The applicant must submit new specification sheets for tables/chair constructed of metal or wood, or receive approval for a material of comparable quality by the Planning Board; and
8. The applicant must comply with the requests of all City Departments.

OR

Motion to recommend **DENIAL** to the City Commission the Special Land Use Permit Amendment application for 243 E. Merrill – La Strada – for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to **POSTPONE** the Special Land Use Permit Amendment application for 243 E. Merrill – La Strada – pending receipt of the following:

1. _____
2. _____
3. _____

13.0 Sample Motion Language (*Final Site Plan & Design Review*)

Motion to recommend **APPROVAL** to the City Commission the Final Site Plan & Design Review application for 243 Merrill St. – La Strada – with the following conditions:

1. The applicant must provide revised plans with clear dimensions to ensure compliance with the Zoning Ordinance;
2. The applicant must provide a certified survey;
3. The applicant is required to install a city standard grate to protect the street tree;
4. The applicant will need to submit revised landscape plans detailing the species of plants that will be housed in the concrete planters and ensure that no plants are on the prohibited species list;
5. The applicant must receive Historic District Commission approval for all exterior changes proposed within the Downtown Historic District;
6. The applicant must obtain a recommendation from the Advisory Parking Committee for the use of public parking spaces;
7. The applicant must submit new specification sheets for tables/chair constructed of metal or wood, or receive approval for a material of comparable quality by the Planning Board; and
8. The applicant must comply with the requests of all City Departments.

OR

Motion to recommend **DENIAL** to the City Commission the Final Site Plan & Design Review application for 243 E. Merrill – La Strada – for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to **POSTPONE** the Final Site Plan and Design Review application for 243 E. Merrill – La Strada – pending receipt of the following:

1. _____
2. _____
3. _____



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

April 19th, 2022

RE: Final site Plan Review Comments

243 E. Merrill, Lastrada Cafe

As requested, the Fire Department has examined the plans for the proposed project referenced above. The plans were provided to the Planning Department for site plan review purposes only and present conceptual elevations and floor plans. Although the plans lack sufficient detail to perform a code review, the following comments are offered for Planning Design Review purposes and applicant consideration:

Applicable Fire Code:

- **2015 International Fire Code**

Review Comments:

1. Fire alarm shall be fully operational during all phases of construction.
2. Fire suppression system shall be fully operational during all phases of construction.
3. Submit fire alarm and fire suppression plans to the AHJ for review and approval.
4. Submit commercial kitchen hood system plans to AHJ for review and approval.
5. Occupant load shall be determined by Assistant Building Official and Fire Marshal.
6. Fire extinguisher installation locations determined by Fire Marshal.
7. Installation of Knox box may be required for this occupancy.

Jack D. Pesha

Fire Marshal

Birmingham Fire Department

CITY OF BIRMINGHAM
Community Development – Building Department
151 Martin Street, Birmingham, MI 48009

April 19, 2022

RE: Final Site Plan Review Comments
243 E. Merrill, Lastrada Cafe

As requested, the Building Department has examined the plans for the proposed project referenced above. The plans were provided to the Planning Department for site plan review purposes only and present conceptual elevations and floor plans. Although the plans lack sufficient detail to perform a code review, the following comments are offered for Planning Design Review purposes and applicant consideration:

Applicable Building Codes:

- **2015 Michigan Building Code.** Applies to all buildings other than those regulated by the *Michigan Residential Code*.
- **2015 Michigan Mechanical Code.** (Residential requirements for mechanical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- **2018 Michigan Plumbing Code.** (Residential requirements for plumbing construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- **2017 National Electrical Code along with the Michigan Part 8 Rules.** (Residential requirements for electrical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)

Review Comments:

1. No building code concerns at this time.



MEMORANDUM

Engineering Department

DATE: April 22, 2022
TO: Leah Blizinski, City Planner
FROM: Scott D. Zielinski, Assistant City Engineer
SUBJECT: Preliminary Site Plan Review – 243 E Merrill St

The Engineering Department has completed a review of the Preliminary Site Plan, with respect to conformance with City ordinances and engineering standards, and has the following comments:

SEWER:

- Plans appear to indicate no major changes in plumbing that would affect the current City connection.

WATER SYSTEM:

- Plans appear to indicate no changes in the current City connection. Records do not indicate current City connection. Water supply should be verified by the property.

PERMITS FOR CONSTRUCTION:

- Street Obstruction Permit for any temporary traffic interference on any surrounding road, or for pedestrian traffic interference on public sidewalks during construction activities.

GENERAL:

- 5ft sidewalk open space for pedestrian travel must be maintained.
- If outdoor dining deck is to be approved it should be limited to the width of the current parking space (Approximately 6-6.5 ft) and should not encroach on the driving lane. This item is subject to additional review for approval if a current permit has not been obtained.

Please note these are our initial comments and the City should be provided an opportunity to review engineered drawings prior to final submission. Engineering comments could impact design requirements.



Leah Blizinski <lblizinski@bhamgov.org>

243 E. Merrill - Design Review Requested

Mark Clemence <Mclemence@bhamgov.org>
To: Leah Blizinski <lblizinski@bhamgov.org>

Tue, Apr 19, 2022 at 1:43 PM

No Police Department concerns at this time.

Mark H. Clemence
Chief of Police
Birmingham Police Department
151 Martin St.
Birmingham, MI. 48009
248-530-1875



On Tue, Apr 19, 2022 at 9:19 AM Leah Blizinski <lblizinski@bhamgov.org> wrote:
[Quoted text hidden]



Leah Blizinski <lblizinski@bhamgov.org>

243 E. Merrill - Design Review Requested

Carrie Laird <Claird@bhamgov.org>

Fri, Apr 22, 2022 at 8:40 AM

To: Scott Zielinski <szielinski@bhamgov.org>

Cc: Bruce Johnson <Bjohnson@bhamgov.org>, Leah Blizinski <lblizinski@bhamgov.org>, Mark Clemence <Mclemence@bhamgov.org>, Jim Surhigh <cityengineer@bhamgov.org>, Jack Pesha <jpesha@bhamgov.org>, Ryan Weingartz <rweingartz@bhamgov.org>, Lauren Wood <Lwood@bhamgov.org>, Nicholas Dupuis <ndupuis@bhamgov.org>

At this time DPS has no concerns. Thanks!

[Quoted text hidden]

--

Carrie A. Laird
Parks & Recreation Manager
[851 S. Eton](#)
[Birmingham, MI 48009](#)
248-530-1714

[Quoted text hidden]



Leah Blizinski <lblizinski@bhamgov.org>

243 E. Merrill - Design Review Requested

Ryan Weingartz <rweingartz@bhamgov.org>
To: Leah Blizinski <lblizinski@bhamgov.org>

Wed, Apr 20, 2022 at 2:40 PM

Got it, thanks.

Only concern I see is if this and 220 Merrill outdoor dining get approved we will lose 7 of the 19 total on street parking that is on Merrill between Old Woodward and Pierce.

2 for 243 E. Merrill

5 for 220 Merrill

[Quoted text hidden]



Leah Blizinski <lblizinski@bhamgov.org>

220 Parking/Valet

Nicholas Dupuis <ndupuis@bhamgov.org>
To: Ryan Weingartz <rweingartz@bhamgov.org>
Cc: Leah Blizinski <lblizinski@bhamgov.org>

Wed, Apr 20, 2022 at 3:20 PM

I clarified this with Zaid Elia of 220.

If the platform gets approved by the CC, they will ONLY be using the 3 spaces in front of their establishment for the deck. There will NOT be any additional spaces for valet.

Leah, Ryan has noted that his comment still stands regarding La Strada, but please change the numbers to reflect this information.

--

Nicholas J. Dupuis
Planning Director

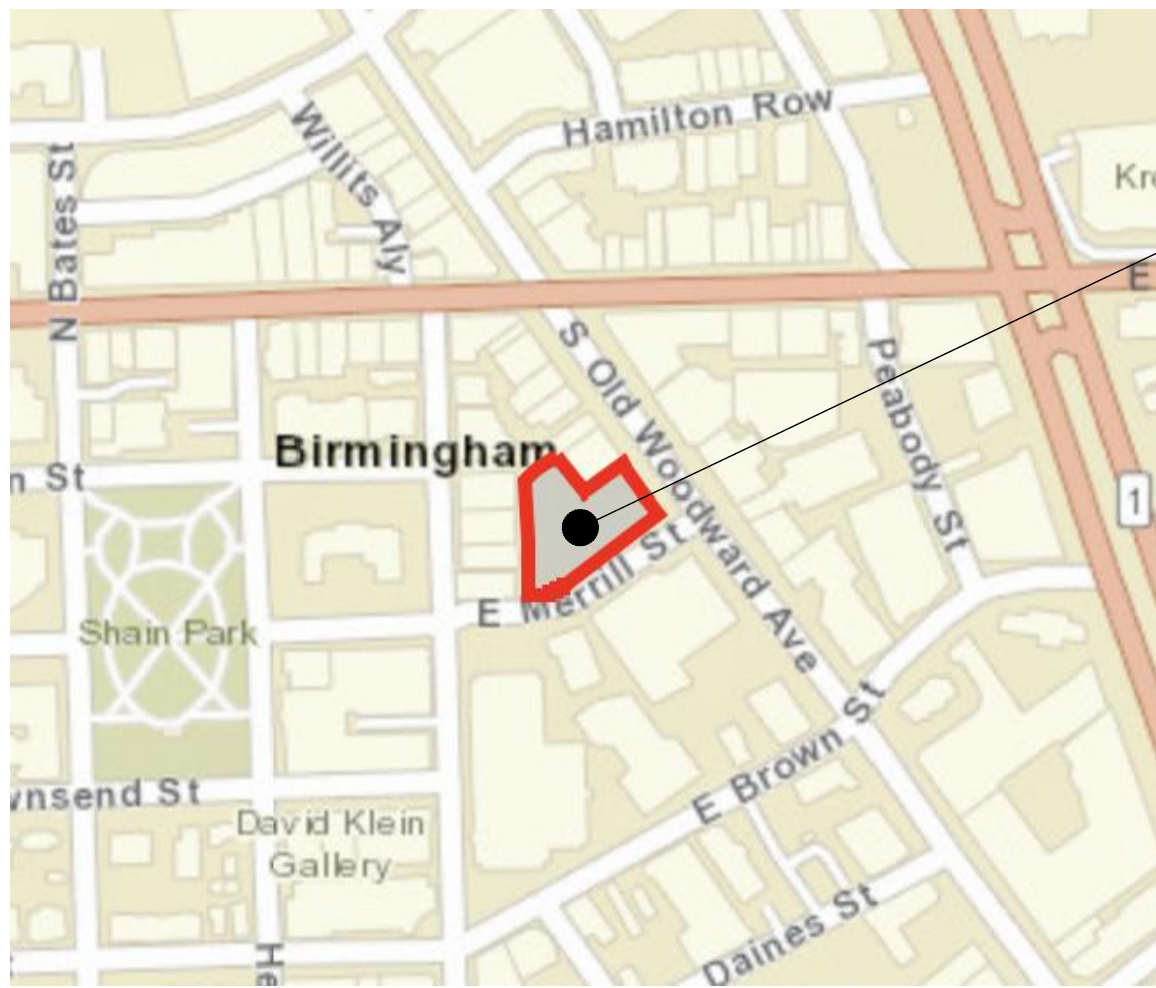


Email: ndupuis@bhamgov.org
Office: 248-530-1856
Social: [Linkedin](#)

Important Note to Residents

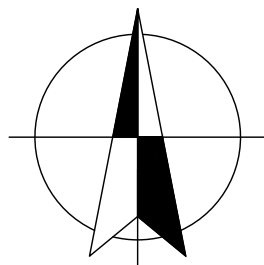
Let's connect! Join the Citywide Email System to receive important City updates and critical information specific to your neighborhood at www.bhamgov.org/citywideemail.

LASTRADA CAFE'
241 Merrill Street
Birmingham, Michigan 48009



LASTRADA CAFE'
241 EAST MERRILL STREET
Zoned: B-4
Overlay: D-5

Location Map



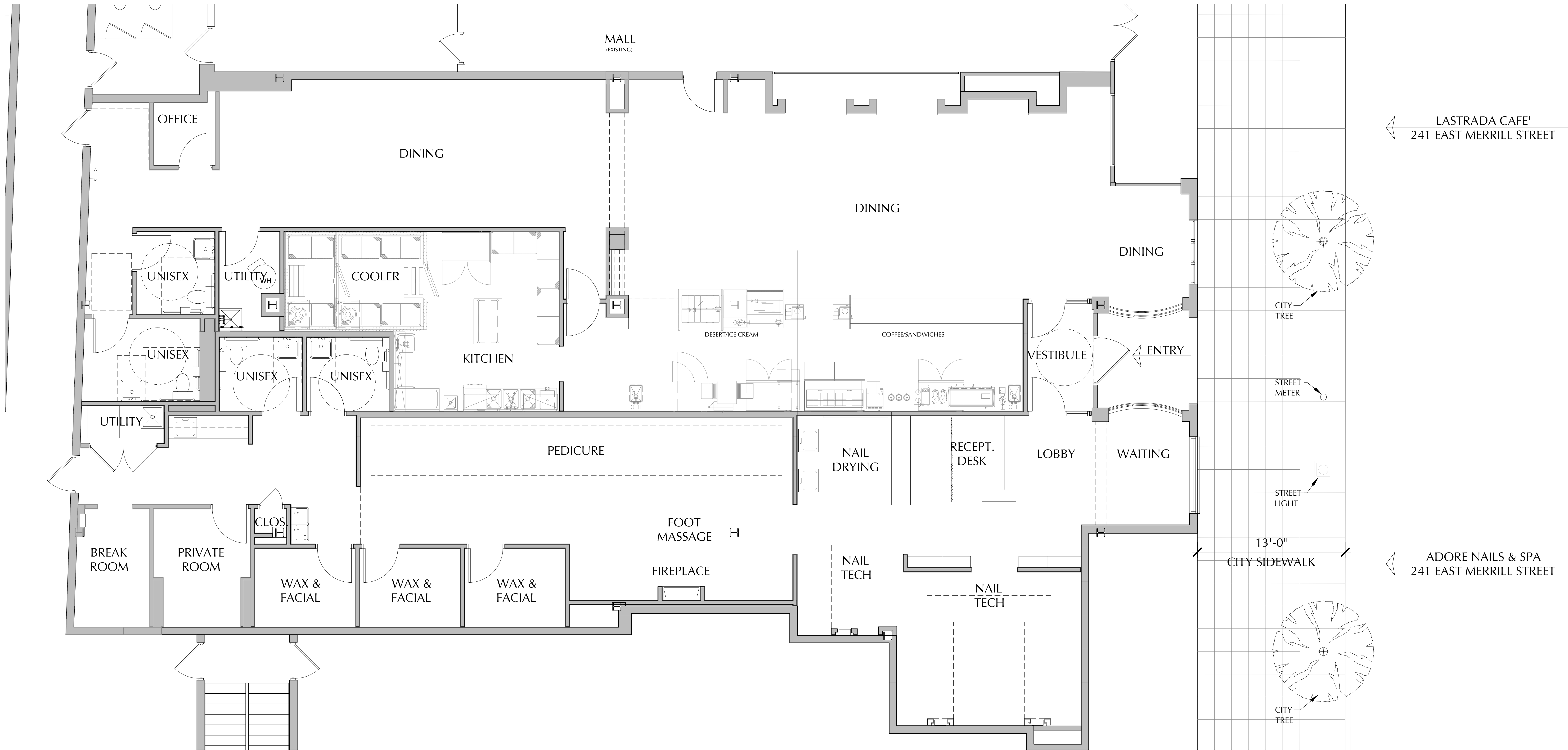
Site Plan

NOT TO SCALE

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6940

LASTRADA CAFE'

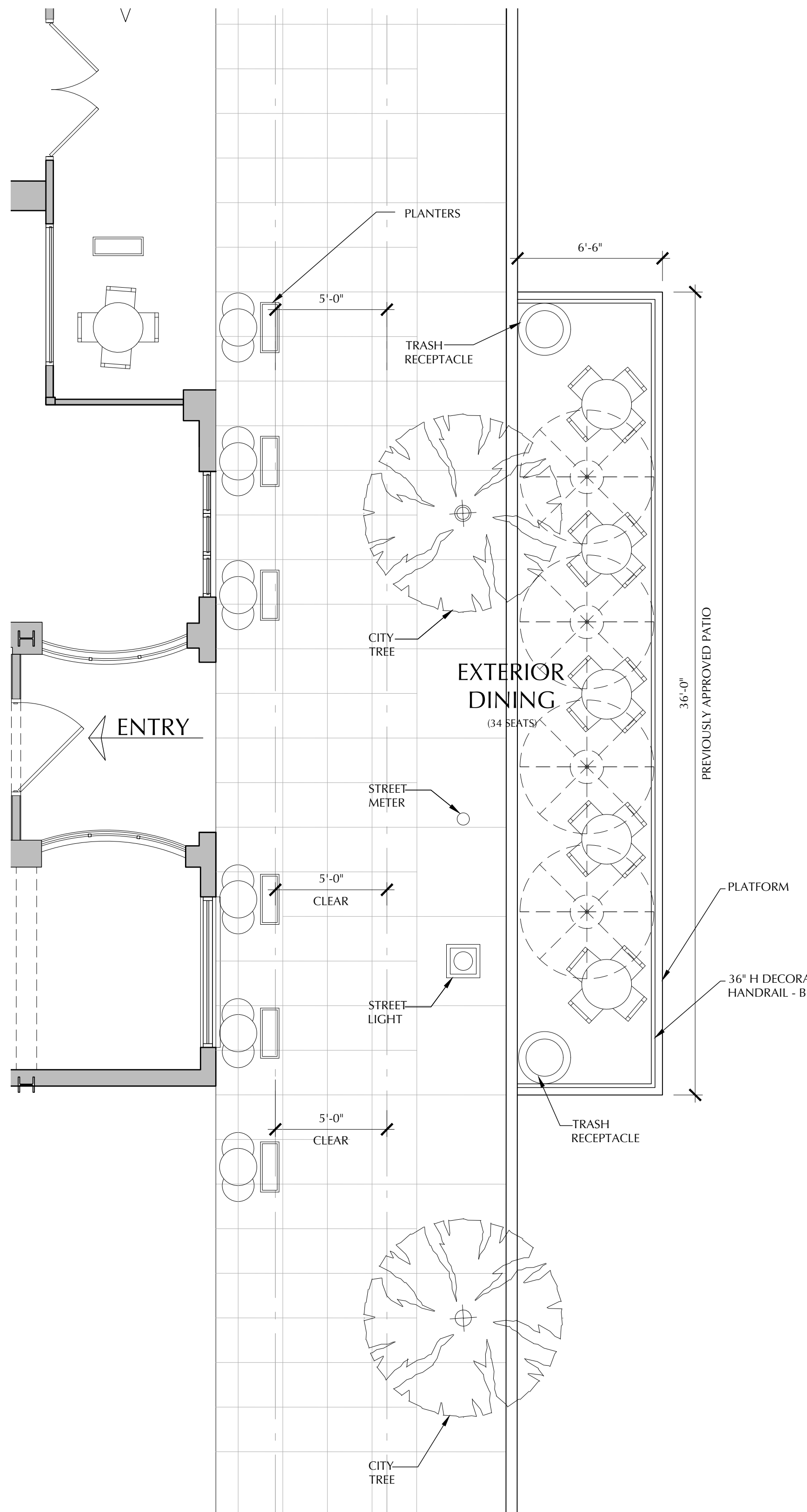
241 Merrill Street
Birmingham, Michigan 48009



EXISTING PLAN

NOT TO SCALE

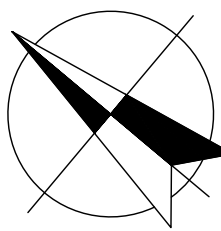
LASTRADA CAFE'
241 Merrill Street
Birmingham, Michigan 48009



PREVIOUSLY PERMITTED PATIO

OUTDOOR SEAT COUNT:

TABLE TYPE	No. of SEATS
2-TOP TABLE (6)	12 SEATS
4-TOP TABLE (6)	24 SEATS
TOTAL SEATS:	36 SEATS



Proposed Outdoor Dining Plan

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6940

1/4" = 1'-0"



PREVIOUSLY APPROVED - **UMBRELLA**
RED TREASURE GARDEN

PREVIOUSLY APPROVED - **RAIL**
36" H - BLACK DECORATIVE HANDRAIL

PREVIOUSLY APPROVED - **PLATFORM**
COMPOSITE WOOD



PREVIOUSLY APPROVED - **CHAIR**
ALUMINUM - FRAME
WHITE PLASTIC PANEL - SEAT AND BACK



PREVIOUSLY APPROVED - **TABLE**
ROUND BLACK PAINTED STEEL - FRAME
TEMPERED GLASS - TOP



TRASH RECEPTACLE
GLOBAL INDUSTRIAL™ ALUMINUM
ROUND OPEN TOP TRASH CAN,
20 GALLON, SATIN CLEAR



PLANTER
CONCRETE PLANTER
10"Wx27"Lx12"H

Birmingham, Michigan 48009

LaStrada Hour of Operation:

Indoor: Tuesday - Saturday | Dinner 4pm - 12am
Outdoor: Tuesday - Saturday | Dinner 4pm - 12am

Monday Nights open for Special Events



We proudly Serve The Best Of Food To The Best Of People. Please Accept Our Appreciation And Sincere Thanks For Letting Us Serve Sometimes In A Rush Of Business Life, We Fail To Say "Thanks" Loud Enough. But You Can Be Assured That Your Patronage Is Never Taken Granted. Our aim is to please and satisfy. To serve you is a real privilege and pleasure!

Thank You

[illegible]

Insalate	
<p>Tre Colore 13</p> <p>Angelo, Radicchio, Belgian Endive, FVOO - Lemon, Shaved Parmigano Reggiano</p>	<p>Campagnola 15</p> <p>Baby Greens, Toasted Peppers, Olives, Artichoke Heart, Tomatoes, Piciun Beans, Fava Beans, Candied Walnuts, Vinaigrette</p>
<p>Barbabietole 15</p> <p>Carpaccio Crisp Golden Beets, Baby Angelo, Toasted Almonds, Pistachio, FVOO</p>	<p>Caesar 15</p> <p>Armadillo Hearts, Shredded Tomatoes, Parmigiano Reggiano, Crisp Greek, Parmigiano Dressing</p>

[illegible]

Pasta

All pastas are prepared on an individual salted boiling water pots, please allow ample time! Adding more cheese is illegal!!!!

All pastas are prepared on an individual salted boiling water pots, please allow ample time! Adding more cheese is illegal!!!! 😊

[illegible]

Risotto Aquarello Carnarali 7 Year Aged	
Risotto Parmigiana 25 <i>Pappone, Amarone Redaction</i>	Risotto Mare Monte 35 <i>Sbriso, Terroir Madroverno, Post</i>
Risotto al Prosecco Limone e Zafferano 30 <i>Lenon Ribotto, Saffron Prosecco, Parmigiana Tronide</i>	Risotto ai Funghi e Tartufo 35 <i>Carnarali, gourmet forest madroverno, truffe sauce</i>
Preparation Time 45 Minutes	

[illegible]

Contomi

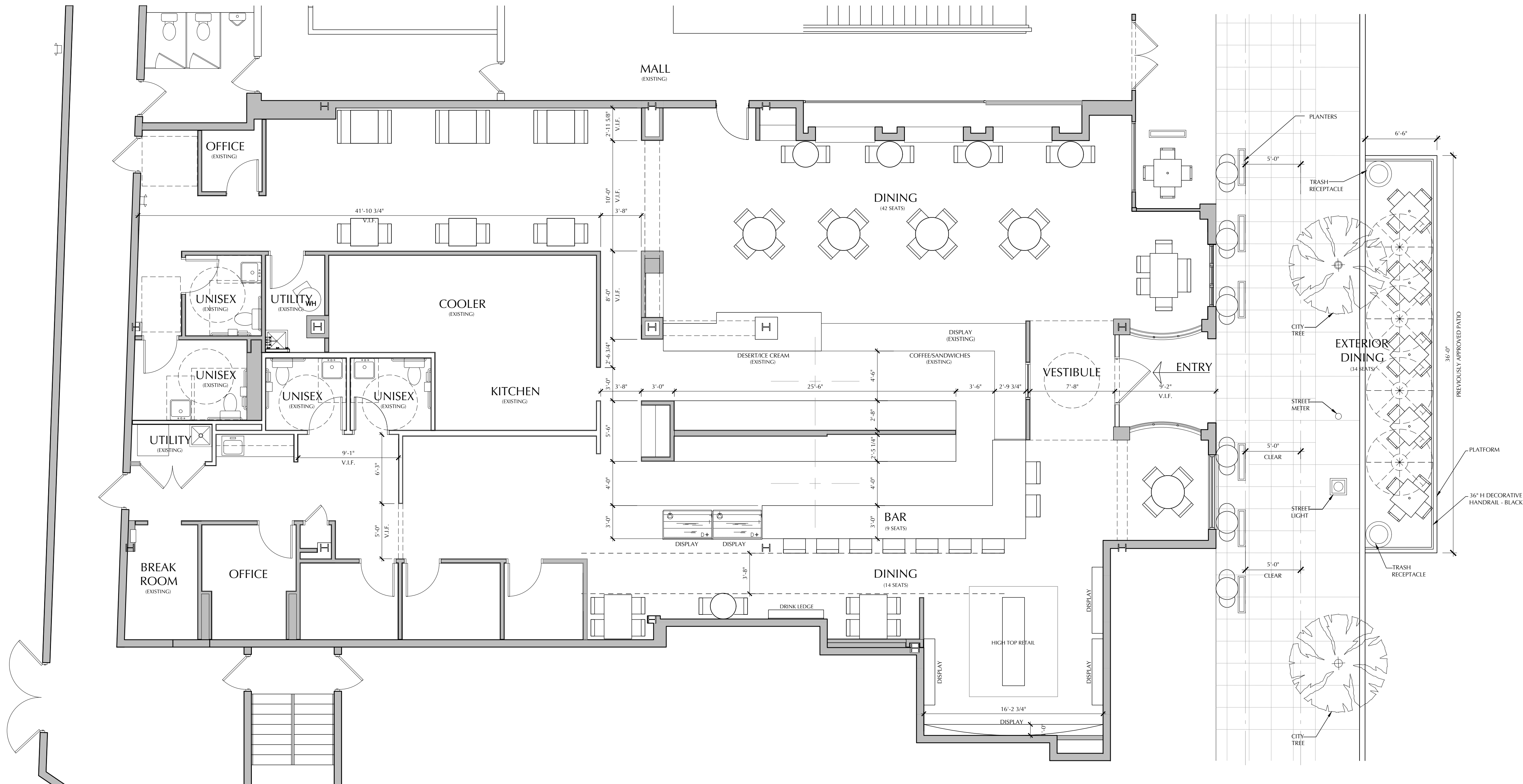
Spinach-9 Gourmet-Mushrooms-11 Potato-Pure-9 Creamy-Potato-9 Broccoli-Di-Kaife-15

Ask your server about menu items that are cooked to order or served raw.

Consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase your risk of food borne illness.

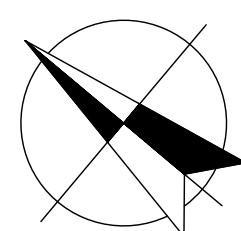
INDOOR SEAT COUNT:

TABLE TYPE	No. of SEAT
2-TOP TABLE (11)	22 SEAT
4-TOP TABLE (7)	28 SEAT
6-TOP TABLE (1)	6 SEAT
BAR (9)	9 SEAT
TOTAL SEATS:	65 SEAT



Proposed Plan

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIOR
124 Peabody, Birmingham, Michigan 48009 248.258.6940

$$\overline{3/16'' = 1'-0''}$$


SD.3.0

LASTRADA CAFE'
241 Merrill Street
Birmingham, Michigan 48009



Existing Elevation



EXISTING SIGN TO BE RELOCATED
CENTERED ABOVE ENTRANCE AWNING

Proposed Elevation



Special Land Use Permit Application – Bistro

Planning Division

AMENDMENT TO SLUP.

Form will not be processed until it is completely filled out.

1. Applicant

Name: LA STRADA CAFE LLC.
Address: 243 E. MEZILL ST.
BIRMINGHAM, MI 48009.
Phone Number: 248 480-0492
Fax Number: _____
Email address: 2PALUSHAT@YAHOO.COM.

2. Property Owner

Name: MEZILLWOOD COLLECTION.
Address: 251 MEZILL ST
BIRMINGHAM, MI 48009.
Phone Number: 248 647-8390.
Fax Number: _____
Email address: IKELUP@IGLAWFIRM.COM

3. Applicant's Attorney/Contact Person

Name: JOHN W. HENKELL
Address: 251 MEZILL ST #212
BIRMINGHAM, MI 48009
Phone Number: _____
Fax Number: _____
Email address: JWHENKE@AOL.COM.
JWHENKE@IGLAWFIRM.COM.

4. Project Designer/Developer

Name: CHRISTOPHER LONGE
Address: 124 PEAISODY ST.
BIRMINGHAM, MI 48009
Phone Number: 248 258 6940.
Fax Number: _____
Email address: CJLONGE@CJLONGEAIA.COM

5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:
 - i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines;
 - ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - iii. A Certified Land Survey;
 - iv. Interior floor plans;

- v. A Landscape Plan;
 - vi. A Photometric Plan;
 - vii. Colored elevation drawings for each building elevation;
- II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;
- III. Samples of all proposed materials;
- IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- V. Current aerial photographs of the site and surrounding properties;
- VI. Warranty Deed, or Consent of Property Owner if the applicant is not the owner;
- VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information

Address/Location of the property: 243 E. MEZILL ST.
Name of development: _____
Sidwell #: _____
Current Use: _____
Proposed Use: _____
Area of Site in Acres: _____
Current zoning: _____
Is the property located in the floodplain? _____
Name of Historic District Site is Located in: _____
Date of Historic District Commission Approval: _____

Date of Application for Preliminary Site Plan: _____
Date of Preliminary Site Plan Approval: _____
Date of Application for Final Site Plan: _____
Date of Final Site Plan Approval: _____
Date of Application for Revised Final Site Plan: _____
Date of Revised Final Site Plan Approval: _____
Date of Design Review Board Approval: _____
Is there a current SLUP in effect for this site? _____
Date of Application for SLUP: _____
Date of SLUP Approval: _____
Date of Last SLUP Amendment: _____

7. Details of the Proposed Development (attach separate sheet if necessary)

SEE ATTACHED

8. Buildings and Structures

Number of Buildings on Site: _____
Height of Buildings & # of Stories: _____

Use of Buildings: _____
Height of Rooftop Mechanical Equipment: _____

9. Floor Use and Area (in Square Feet)

Structures:

Restaurant Space: _____
Office Space: _____
Retail Space: _____

Number of Residential Units: _____
Rental or Condominium? _____
Total Floor Area: _____

10. Proposed Bistro Operation

Number of Indoor Seats: 65
Number of Outdoor Seats: 32
Entertainment Proposed: NO.
Previous LCC Complaints? NO
Number of Tables along Street Façade: _____
Type of Cuisine: ITALIAN

Bar Area? YES
Number of Seats at Bar: 9
Full Service Kitchen? YES
Percentage of Glazing Proposed: _____
Years of Experience in Birmingham: 6 yrs
Years of Experience Outside Birmingham: 35 yrs

11. Required and Proposed Setbacks

Required Front Setback: _____
Required Rear Setback: _____
Required Total Side Setback: _____

Proposed Front Setback: _____
Proposed Rear Setback: _____
Proposed Total Side Setback: _____

12. Outdoor Dining Facility

Location (sidewalk right-of-way or on-street parking space): SEE ATTACHED
Hours of Operation: _____
Width of unobstructed sidewalk between door and café? (5 ft. required): _____
Platform Proposed: _____
Trash Receptacles: _____

Number of Tables/Chairs: _____
Material of Tables/Chairs: _____
Tables Umbrellas Height & Material: _____
Number and Location of Parking Spaces Utilized: _____
Screenwall Material: _____
Enclosure Material: _____

13. Required and Proposed Parking

Required number of parking spaces: _____
Location of parking on site: _____
Screenwall material: _____

Shared Parking Agreement? _____
Location of parking off site: _____
Height of screenwall: _____

14. Landscaping

Location of landscape areas: _____

Proposed landscape material: _____

Attachment to SLUP amendment request

LaStrada is requesting an Amendment to its 2015 SLUP to reconfigure and expand the Restaurant into the now vacant adjacent space (vacated by Adore') in the Merrillwood Building.

LaStrada has the opportunity to redesign and reconfigure the Restaurant. The proposed redesign will provide enhanced open flow design and retail goods for sales display, better bar and server counter areas.

Indoor seating will be increased from its current forty-eight (48) seats with six (6) bar stools to fifty-six (56) dining seats and nine (9) bar stools.

It is also hoped the Restaurant will be able to re-open for lunch business.

15. Streetscape

Sidewalk width: _____
Number of benches: _____
Number of planters: _____
Number of existing street trees: _____
Number of proposed street trees: _____
Streetscape plan submitted? _____

Description of benches or planters: _____

Species of existing trees: _____

Species of proposed trees: _____

16. Loading

Required number of loading spaces: _____
Typical angle of loading spaces: _____
Screenwall material: _____
Location of loading spaces on site: _____

Proposed number of loading spaces: _____

Typical size of loading spaces: _____

Height of screenwall: _____

Typical time loading spaces are used: _____

17. Exterior Waste Receptacles

Required number of waste receptacles: _____
Location of waste receptacles: _____
Screenwall material: _____

Proposed number of waste receptacles: _____

Size of waste receptacles: _____

Height of screenwall: _____

18. Mechanical Equipment

Utilities and Transformers:

Number of ground mounted transformers: _____
Size of transformers (L•W•H): _____
Number of utility easements: _____
Screenwall material: _____

Location of all utilities & easements: _____

Height of screenwall: _____

Ground Mounted Mechanical Equipment:

Number of ground mounted units: _____
Size of ground mounted units (L•W•H): _____
Screenwall material: _____

Location of all ground mounted units: _____

Height of screenwall: _____

Rooftop Mechanical Equipment:

Number of rooftop units: _____
Type of rooftop units: _____
Screenwall material: _____
Location of screenwall: _____

Location of all rooftop units: _____

Size of rooftop units (L•W•H): _____

Percentage of rooftop covered by mechanical units: _____

Height of screenwall: _____

Distance from rooftop units to all screenwalls: _____

19. Accessory Buildings

Number of accessory buildings: _____
Location of accessory buildings: _____

Size of accessory buildings: _____

Height of accessory buildings: _____

20. Building Lighting

Number of light standards on building: _____
Size of light fixtures (L•W•H): _____
Maximum wattage per fixture: _____
Light level at each property line: _____

Type of light standards on building: _____

Height from grade: _____

Proposed wattage per fixture: _____

21. Site Lighting

Number of light fixtures: _____
Size of light fixtures (L•W•H): _____
Maximum wattage per fixture: _____
Light level at each property line: _____

Type of light fixtures: _____

Height from grade: _____

Proposed wattage per fixture: _____

Holiday tree lighting receptacles: _____

22. Adjacent Properties

Number of properties within 200 ft.: _____

Property #1

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #2

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #3

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #4

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #5

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #6

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

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 Owner: _____

Date: 2/10/2022

Print Name: Jeffrey ISHBIA

Signature of Applicant: _____

Date: 2/10/2022

Print Name: ZHAIZKO PAUSIAT / LA STRADA CAFE, LLC
MEMBER

Signature of Architect: Christopher J. Longe

Date: _____

Print Name: CHRISTOPHER J. LONGE

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____



MEMORANDUM

Planning Division

DATE: May 2nd, 2022

TO: Thomas M. Markus, City Manager

FROM: Brooks Cowan, Senior Planner

APPROVED: Nick Dupuis, Planning Director

SUBJECT: Set Public Hearing – 695 W. Brown, Request to Rezone Parcel # 08-19-127-027 from R8 Attached Single Family Residential to R2 Single Family Residential

INTRODUCTION:

The owner of the Westbrown Condominium Development, located at 695 W. Brown, is requesting approval to rezone the southern portion of their property, parcel # 08-19-127-027, from R8 Attached Single Family Residential to R2 Single Family Residential. The applicant is proposing to rezone the lot in order to meet the City of Birmingham's lot split requirements and to construct a single-family home on the property.

BACKGROUND:

The property located at 695 W. Brown, known as the Westbrown Condominiums, received site plan approval from the Planning Board on February 21st, 2018 for eight townhomes facing Brown Street. The existing zone of R8 Attached Single Family has a maximum of 8 units per lot, therefore the applicant has maximized the number of residential units on the lot. A condition of the applicant's site plan approval was that the subject greenspace on the southern portion of the property be used for staging during development and then act as landscaping until a proposal for a single family residential unit was brought to the City.

In order to construct a new home on the subject property, the applicant must receive approval for a lot split from the 695 W. Brown property, given that the current lot is maxed out for residential units. The only way for the subject area to meet the City of Birmingham's lot split criteria is if the property is zoned R2 single family residential like the surrounding single family homes on Watkins Street.

On May 24th, 2021, the subject property applied for a lot split under the current zoning of R8 Attached Single Family. The proposed lot width of 59 feet did not meet the lot split standards

because the only other R8 zoned lot for comparison on Watkins Street is the apartment complex at 525 Watkins which has a lot width of 106 feet. Lot splits are required to result in lot widths equal or greater to the surrounding lot widths within 300 feet on the same street in the same zone. The application was denied and recommended to pursue a rezoning to R2 Single Family in order to satisfy the lot split requirements.

On April 27th, 2022, the applicant appeared before the Planning Board for the review of the rezoning request. Upon review, the Planning Board determined that the applicant did not satisfy the Zoning Ordinance criteria to receive approval for a rezoning. The Planning Board voted to recommend the City Commission deny the request to rezone the subject property to R2 Single Family Residential.

LEGAL REVIEW:

Legal comments regarding the rezoning of the subject property will be provided for the Public Hearing.

FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

PUBLIC NOTIFICATION:

As required for requests to rezone a property, a legal ad was placed in a newspaper of local circulation to advertise the nature of the request in advance of the April 27th, 2022 Planning Board meeting, and notices were sent out to all property owners and tenants within 300 ft. of the property. In addition, a second round of notices will be sent out to advertise the public hearing at the City Commission on June 13th, 2022.

SUMMARY:

The Planning Division requests that the City Commission set a public hearing date of June 13th, 2022 to consider the request to rezone Parcel # 08-19-127-027 from R8 Attached Single Family Residential to R2 Single Family Residential.

ATTACHMENTS:

- Application & Supporting Documents
- Planning Division Report
- Relevant Meeting Minutes (April 27th, 2022 Planning Board minutes not yet available)

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to set a public hearing date of June 13th, 2022 to consider the request to rezone Parcel # 08-19-127-027 from R8 Attached Single Family Residential to R2 Single Family Residential.



MEMORANDUM

Planning Division

DATE: April 22nd, 2022

TO: Planning Board

FROM: Brooks Cowan, Senior Planner

APPROVED: Nick Dupuis, Planning Director

SUBJECT: Request to Rezone Parcel # 08-19-36-151-027 from R8 Attached Single-Family Residential to R2 Single-Family Residential Zone on Watkins Street (695 W. Brown vacant parcel)

The subject site includes the vacant lot on the west side of Watkins Street, south of the 695 W. Brown townhome development (Westbrown Condominiums). The subject property has a total land area of 10,507 square feet (0.25 acres). The property is situated between the R8 Attached Single-Family Residential development at 695 W Brown to the north and the R2 Single Family Residential home at 525 Watkins to the south.

The applicant, LB Land, LLC, is applying to rezone the subject property from R8 Attached Single-Family to R2 Single-Family Residential to match the surrounding R2 Single-Family zone on Watkins Street to the south. The proposed zone of R2 Single-Family would permit a single family dwelling on site only – **a duplex, multi-family units, or attached single-family development would not be permitted.**

The subject greenspace remains part of the Westbrown Condominium development which is maxed out on the number of permissible residential units. The applicant will have to formally separate the greenspace lot from the Westbrown Condominium development for it to be eligible for a new dwelling.

Being zoned R2 Single Family enables the subject area to satisfy the City of Birmingham's lot split requirements which factors in lot widths of properties on the same street in the same zone within 300 feet. **The applicant is required to obtain lot split approval of the City Commission to formalize the creation of the new lot and enable a single family home to be constructed on it. The lot split will be a separate application reviewed at City Commission after the hearing for the request to rezone from R8 to R2.**

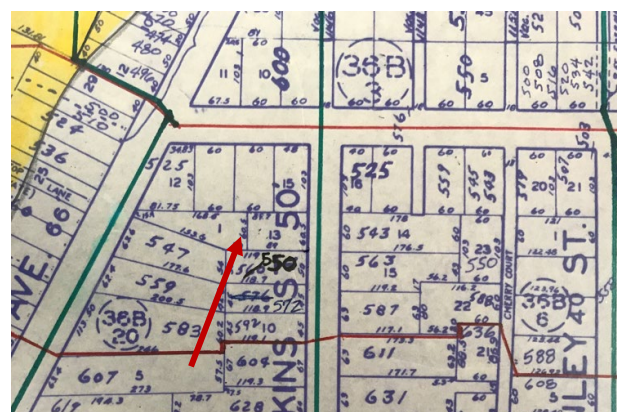
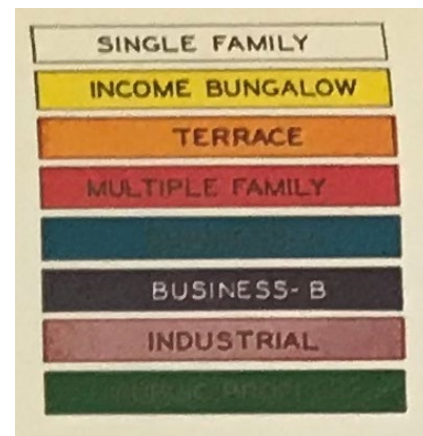
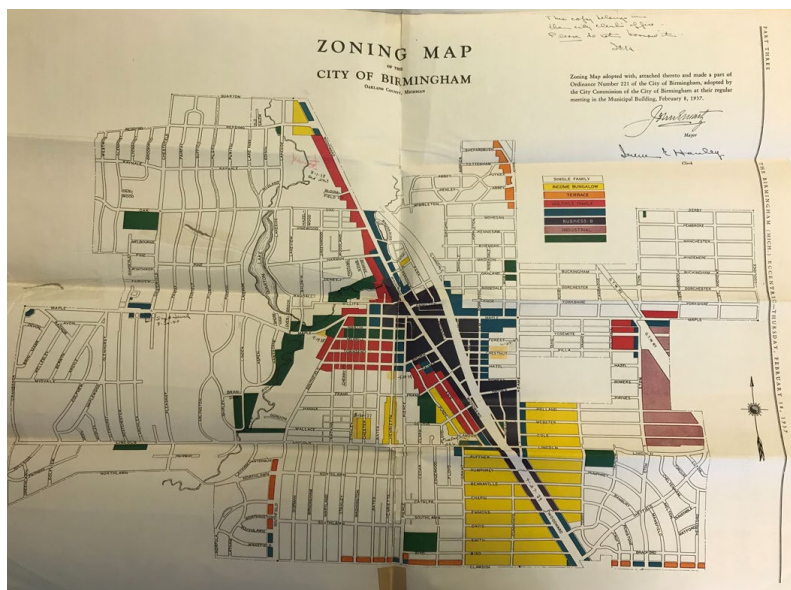
City staff would like to mention that 695 W. Brown submitted their condominium documentation for the master deed to Oakland County in 2018 indicating a "general common area" for the northern portion of the property known as the Westbrown Condominium. Instead of maintaining the original lot and creating Parcel ID #s for each individual condo, the general common area, and future development area outlined on the master deed survey, the county created a "balance parcel" that sits outside of the common element area. In effect, the county split the parcel and

created a new lot. The county cannot approve a lot split in Birmingham without City Commission approval. Therefore the applicant has been advised to go through the proper city protocol. **No error was made by the applicant - representatives of the Westbrowm Condominium development contacted city staff to inquire about what had transpired.**

Since that time, the review process for all new parcel IDs has been updated to require review and approval from the Planning Department before new taxable IDs can be finalized. The City will require the County to undo the lot split for the "balance parcel" if the City Commission does not approve the lot split application.

History of Property

The subject property has been zoned multi-family since Birmingham's first Zoning Ordinance as indicated in the 1937 Zoning Map. The original plat map from 1932 shows that the subject area spanned from Watkins Street to Southfield Road and was included in the Multiple Family zone with the adjacent properties facing Brown Street. The subject area was the only non-Brown Street facing lot that was included in the Multiple Family zone on the south side of Brown street between Southfield and Henrietta.



Prior to the Westbrown Development, there was a medical office with a large parking lot and greenspace in the area.

2017 aerial (Google Maps)



2012 Streetview (Google Maps)



On February 21st, 2018, the property now know as 695 W. Brown (formerly 525 Southfield) was approved for 8 attached single-family units facing Brown Street between Southfield Road and Watkins Street. **According to the Planning Board minutes from February 21st, 2018, the applicant explained how the intended use for the space under consideration for rezoning would be a single-family home that will be contextual with the townhomes and the neighborhood.** Condition of site plan approval item #7 for the Westbrown Condominium development stated the following (Minutes are attached):

Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.

On May 24th, 2021, the property owner appeared before City Commission to request a lot split for the subject property under the current zone of R8. Birmingham's lot split ordinance standards for approval states that the proposed lot may not be less than the average lot width of properties on the same street in the same zone. The only other R8 property on Watkins Street (525 Watkins) has a lot width of 106 feet, therefore the proposed lot width of 58 feet would not satisfy the lot split requirements because the proposal would be less than the 106 feet standard from 525 Watkins. City staff's recommended action was to cancel the public hearing for the lot split and direct the applicant to seek a rezoning of the property to R2 Single-Family in order to satisfy the lot split requirements. City Commission concurred with staff's recommendation and motioned to direct the applicant to pursue a rezoning of the subject property to R2-Single Family Zone in order to meet the lot split requirements of the municipal code (minutes attached).

Requirements for Rezoning

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

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

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

Applicant response:

- A rezone to R2 is consistent with adjacent single-family homes (see attached zoning map). The property has been zoned for multi-family since 1937, but the 1980 Master Plan recommends it be single-family residential.

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

Applicant response:

- The existing zoning classification of R8 is no longer appropriate given intention is to build a single family home separate from the recently constructed townhouses (Westbrown Condominiums). The property in question is currently vacant and maintained by LB Land LLC.

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

Applicant response:

- LB Land LLC has performed extensive due diligence to ensure that the requested rezone will be of no detriment to the surrounding properties and is consistent in aesthetic and scale with adjacent single-family homes. LB Land LLC has contracted the services of local Birmingham architecture firm, Brian Neeper Architecture P.C. to design a home that is appropriate for the lot and surrounding areas. LB Land LLC is working with a landscape architect to maximize green space and privacy for all neighboring properties.

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

Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. Information required on plot plans shall be as follows:

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

A land survey was provided by the applicant with the required details and is attached to this report.

Planning Division Analysis & Findings

In accordance with Article 7 of the Zoning Ordinance, the Planning Board is required to conduct a public hearing on an application for rezoning, and to make a recommendation on the rezoning to the City Commission. Article 7, section 7.02(B)(5) of the Zoning Ordinance states:

The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

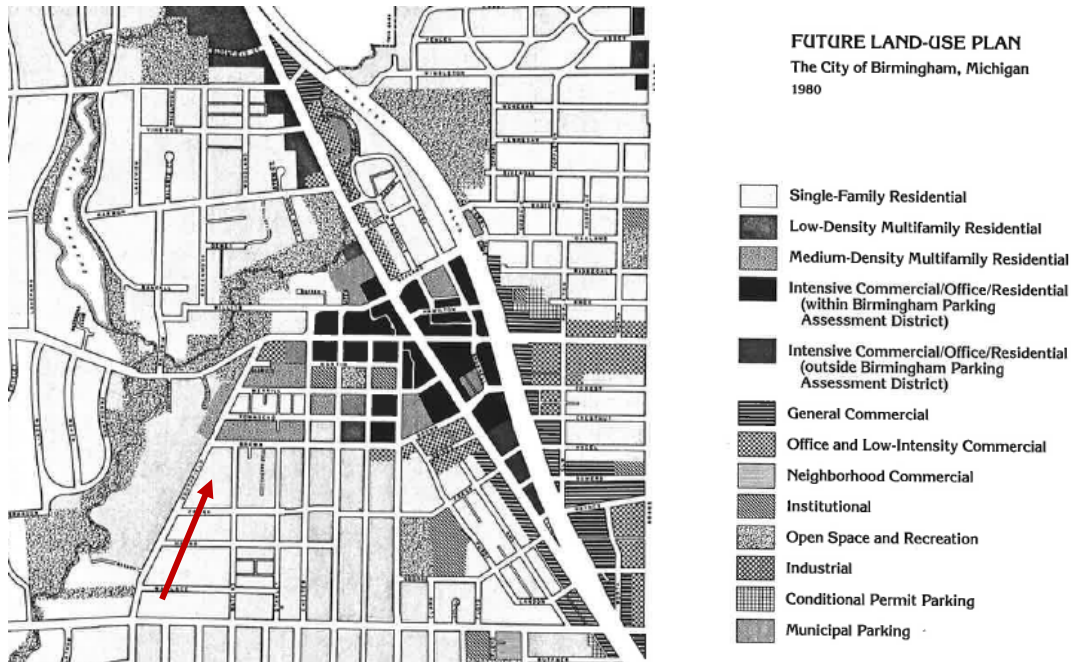
- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within the general area of the property in question.

- c. Zoning classification of property within the general area of the property in question.
- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Accordingly, the Planning Division has reviewed the evidence presented with respect to the matters listed in Article 7, section 7.02(B)(5) of the Zoning Ordinance as noted below.

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

The Birmingham Plan (1980) is the master plan currently in effect for the entire city. The 1980 Future Land Use Plan recommends the subject property to be a single-family residential use. The 1980 Plan also recommends single family use on the south side of Brown Street from Southfield Road to Henrietta Street.



The 1980 Birmingham Plan has a chapter titled "Sensitive Residential Areas" which identifies the subject property within the "Merrill-Townsend-Brown Residential Area" and states:

The City of Birmingham contains no declining neighborhoods. In fact, many of the older residential areas of the city have experienced dramatic reinvigoration due to the substantial improvements made by private homeowners. However, there are certain residential areas of the city which merit special attention from the Planning Board and the city administration in to ensure continued preservation and enhancement of residential quality (pg. 47).

The section titled "Single-Family Residential Development" states:

Most areas indicated for single family-residential development are already built-up. New residential development can occur on the few remaining vacant lots located within these areas.

...

Single-family residential development is indicated in the Future Land-Use Plan for some areas in which two-family and multiple-family residential development has occurred in the past. These areas are indicated as single-family residential areas because it is the intention of the plan to prevent further proliferation of two-family and multiple-family residential development within them (pg. 94).

The objective of the City's current Master Plan for the subject area appears to support the applicant's request to rezone the property to R2 Single-Family Residential given the recommendations of the Future Land Use Map and the Single Family Residential Development chapter.

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

The building to the north of the subject site is the Westbrowm Condominium development with 8 townhomes. Further to the north across Brown Street is a five story multi-family apartment complex next to a single family house at 576 Brown Street. Brown Street appears to have a mix of townhomes, multi-family, and single family homes.

The property directly to the east of the site include a single family home at 543 Watkins Steet. Northeast of the property is an apartment complex at 525 Watkins. The properties to the west of the subject site includes a parking a lot for the Westbrowm Condominium development and a single-family residential house facing Southfield. Further across Southfield Road to the west are a mix of townhomes, single family homes, and single family cluster developments.

The properties to the south are single family residential homes facing Watkins Street or Southfield Road. There is a Single Family Cluster Development half a block south along Southfield Road. Single family clusters are only permitted on lots 36,000 square feet or more.

	North	South	East	West
Existing Land Use	Attached Single-Family	Single Family Residential	Single Family Residential	Attached Single-Family
Existing Zoning	R8, Attached Single Family	R2, Single Family Residential	R2, Single Family Residential	R8, Attached Single Family
Overlay Zoning	N/A	N/A	N/A	N/A

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

The building immediately north of the subject site is zoned R-8 Attached Single Family. The north side of Brown Street from Southfield Road to S. Chester Street is zoned R7 Multiple-Family Residential.

Properties directly to the east are zoned R2 Single Family and transition to R3 Single Family one block east at Stanley Drive. West of the property is R8 Attached Single Family and R2 Single Family Residential. Across Southfield road to the west is R1 Single Family with single family cluster developments.

The properties to the south on Watkins Street are all zoned R2 Single Family.

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

Under the current zoning, the subject property cannot be built upon because the area is still considered to be part of the Westbrowm Condominium development. The R8 zone has a maximum of 8 units as defined in Article 9, Section 9.02 as follows:

A building that has not more than 8 one-family dwelling units erected side-by-side as a single building, each being separated from the adjoining units by walls extending from the basement floor to the roof, which meet or exceed the sound transmission class (STC) rating of 45 for residential buildings as established by the most current addition of the International Code Council's (ICC) Building Code as promulgated and published by the Building Officials and Code Administrators International, Inc. No two single-family dwelling units may be served by the same stairway or by the same exterior door of the dwelling.

The subject property must be split from the Westbrowm Condominium development before new units can be built upon it, and the property can only satisfy the lot split requirements if zoned R2-Single Family like the surrounding properties on Watkins Street to the south.

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

Recent development in the general area has consisted of the Westbrowm Condominium development. The development trend in the surrounding area has been townhome updates along Brown Street and Southfield Road. Properties to the south have mostly experienced single family home construction and remodeling. Single family cluster developments have also occurred along Southfield Road.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements in Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from R8 Attached Single Family to R2 Single Family.

Departmental Reports

1. Engineering Division – The Engineering Department has no concerns with the rezoning at this time.
2. Department of Public Services – The Department of Public Services has no concerns with the rezoning at this time.
3. Fire Department – The Fire Department has no concerns with the rezoning at this time.
4. Police Department – The Police Department has no concerns with the rezoning application.
5. Building Department – The Building Department has no concerns with the rezoning application at this time.
6. Parking Management – Parking Management has no concerns with the rezoning application at this time.

Sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

Suggested Action:

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board adopts the findings of fact contained in the staff report dated April 22nd, 2022 and recommends **APPROVAL** to the City Commission for the rezoning of parcel #19-36-151-027 from R8 Attached Single Family to R2 Single Family Residential.

OR

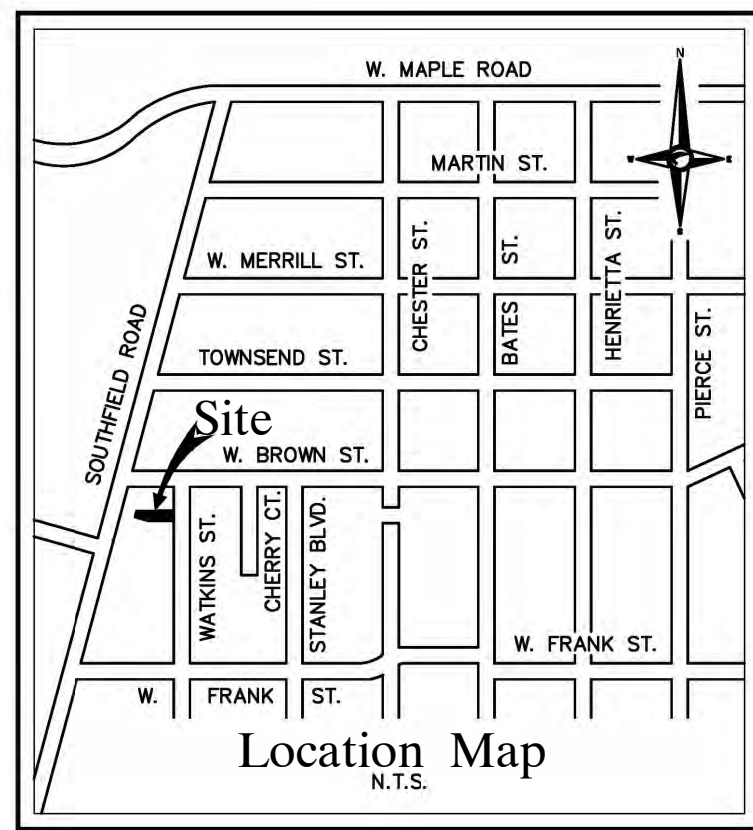
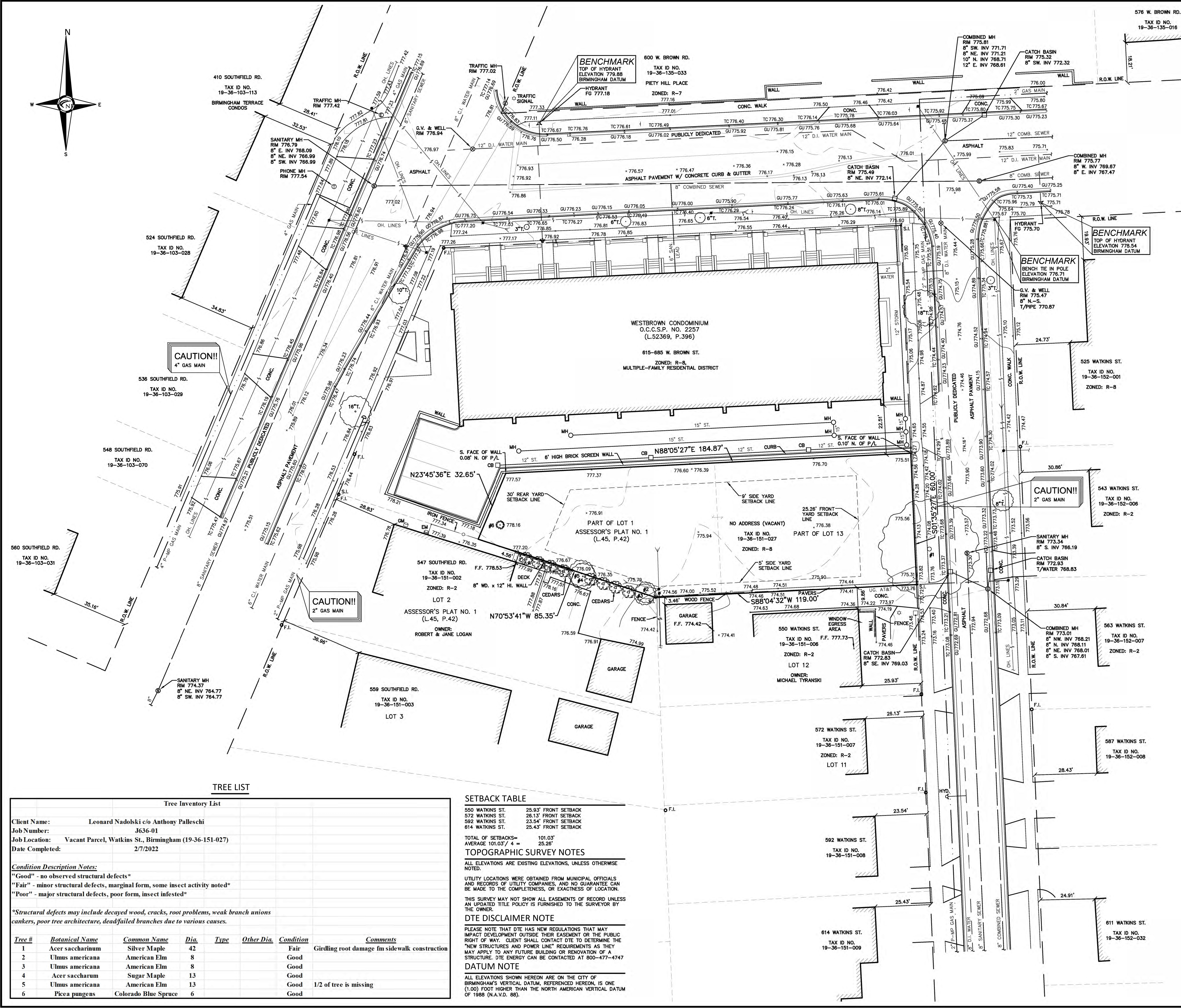
Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends **DENIAL** to the City Commission of the applicant's request for the rezoning of parcel #19-36-151-027 from R8 Attached Single Family to R2 Single Family Residential.

1. _____
2. _____
3. _____

OR

Motion to recommend **POSTPONEMENT** of the applicant's request for the rezoning for the rezoning of parcel #19-36-151-027 from R8 Attached Single Family to R2 Single Family Residential, pending receipt and review of the following information:

1. _____
2. _____
3. _____



NF ENGINEERS
CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257
WWW.NOWAKFRAUS.COM

CERTIFICATE OF SURVEY
WE HEREBY CERTIFY THAT WE HAVE SURVEYED THE PROPERTY HEREIN DESCRIBED.

Kevin Navaroli
KEVIN NAVAROLI, P.S. NO. 4001053503

2-14-2022
DATE

LEGAL DESCRIPTION - PER TAX RECORD

PART OF LOTS 1 AND 13 OF ASSESSOR'S PLAT NO. 1 AS RECORDED IN LIBER 45 OF PLATS, ON PAGE 42, OAKLAND COUNTY RECORDS, BEING A PART OF THE NORTHWEST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 13, THENCE SOUTH 68 DEGREES 04 MINUTES 32 SECONDS WEST, 119.00 FEET; THENCE NORTH 70 DEGREES 53 MINUTES 41 SECONDS WEST, 85.35 FEET; THENCE NORTH 23 DEGREES 45 MINUTES 36 SECONDS EAST, 32.65 FEET; THENCE NORTH 88 DEGREES 05 MINUTES 27 SECONDS EAST, 184.87 FEET; THENCE SOUTH 01 DEGREES 35 MINUTES 27 SECONDS EAST, 60.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 10,507 SQUARE FEET OR 0.24 ACRES OF LAND.

BASIS OF BEARING NOTE

ALL BEARINGS ARE IN RELATION TO THE PREVIOUSLY ESTABLISHED EASTERLY LINE OF SOUTHFIELD AVENUE (NOW ROAD) OF ASSESSOR'S PLAT NO. 1, A SUBDIVISION OF PART OF THE NORTHWEST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, VILLAGE OF BIRMINGHAM (NOW CITY), OAKLAND COUNTY, MICHIGAN AS RECORDED IN LIBER 45 OF PLATS, PAGE 42, OAKLAND COUNTY RECORDS. (N.24°05'00"E.)

FLOOD HAZARD NOTE

THE PROPERTY DESCRIBED ON THIS SURVEY DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AREA AS DEFINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. THE PROPERTY LIES WITHIN ZONE X OF THE FLOOD INSURANCE RATE MAP IDENTIFIED AS MAP NO. 26125C0536F BEARING AN EFFECTIVE DATE OF 09-29-2006.

MISS DIG / UTILITY DISCLAIMER NOTE

A MISS DIG TICKET NUMBER 2022013100454, PURSUANT TO MICHIGAN PUBLIC ACT 174 WAS ENTERED FOR THE SURVEYED PROPERTY, DUE TO THE EXTENDED REPORTING PERIOD FOR UNDERGROUND FACILITY OWNERS TO PROVIDE THEIR RECORDS, THE SURVEY MAY NOT REFLECT ALL THE UTILITIES AT THE TIME THE SURVEY WAS ISSUED. ON FEBRUARY 8, 2022, THE SURVEY ONLY REFLECTS THOSE UTILITIES WHICH COULD BE OBSERVED BY THE SURVEYOR IN THE FIELD OR AS DEPICTED BY THE UTILITY COMPANY RECORDS FURNISH PRIOR TO THE DATE THIS SURVEY WAS ISSUED. THE CLIENT AND/OR THEIR AUTHORIZED AGENT SHALL VERIFY WITH THE FACILITY OWNERS AND/OR THEIR AUTHORIZED AGENTS, THE COMPLETENESS AND EXACTNESS OF THE UTILITIES LOCATION.

SITE DATA

SITE AREA: 10,507 SFT. OR 0.24 ACRES
GROSS/NET: 10,507 SFT. OR 0.24 ACRES

ZONING: EXISTING: R-8 (ATTACHED SINGLE FAMILY RESIDENTIAL)
PROPOSED: R-2 (SINGLE FAMILY RESIDENTIAL)

PROPOSED SETBACK REQUIREMENTS:

FRONT:	25.26 FEET
SIDE:	9.00 FEET
REAR:	30.00 FEET

LEGEND	
MANHOLE(MH)	EXISTING SANITARY SEWER
HYDRANT(HYD)	EXISTING SAN. CLEAN OUT
GATE VALVE(GV)	EXISTING WATER MAIN
MANHOLE(MH)	CATCH BASIN(CB)
CBB	EXISTING STORM SEWER
EX. BEEHIVE	CATCH BASIN
EX. UNDERGROUND (UG.) CABLE	
UTILITY POLE	GUY POLE
UP	GUY WIRE
LP	LIGHT POLE
SGN	SIGN
EXISTING GAS MAIN	
ASPH.	ASPHALT
CONC.	CONCRETE
FD. / FND.	FOUND
RET. WALL	RETAINING WALL
R.O.W.	RIGHT-OF-WAY
SPK	SET PK NAIL
(TYP)	TYPICAL
(R)	RECORD
(M)	MEASURED
C/L	CENTERLINE
P/L	PROPERTY LINE
GM	GAS METER
EM	ELECTRIC METER
L/S	LANDSCAPE
DS	DOWNSPOUT
GP	GUARD POST
MB	MAIL BOX

SEAL

PROJECT
Vacant Parcel
Watkins Street
Birmingham, MI 48009
(Tax ID No. 19-36-151-027)

CLIENT
Leonard Nadolski c/o
Anthony Palleschi

Contact: Anthony Palleschi
Phone: 586.822.0851
Email: apalleschi@championautoinc.com

PROJECT LOCATION
Part of the NW 1/4
of Section 36
T.2N., R.10E.,
City of Birmingham,
Oakland County, Michigan

SHEET
Boundary / Topographic /
Tree Survey / Rezoning
Plan

811
Know what's below
Call before you dig.

DATE ISSUED/REVISED
02-08-22 SURVEY ISSUED
02-14-22 ISSUED FOR REZONING

DRAWN BY:
M. Carnaghi
DESIGNED BY:

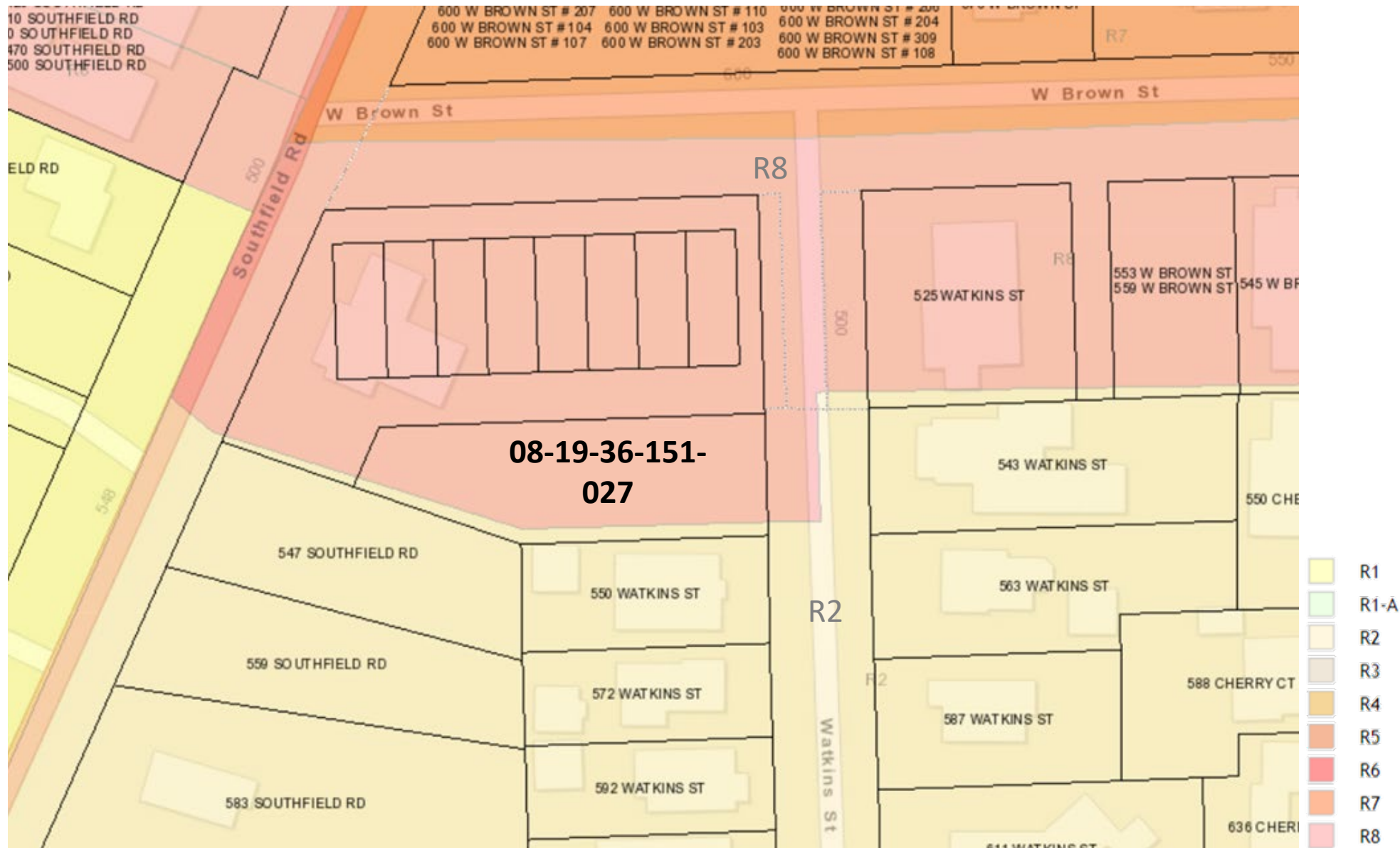
APPROVED BY:
K. Navaroli
DATE:
February 8, 2022

SCALE: 1" = 20'
20 10 0 10 20 30
NFE JOB NO. SHEET NO.
J636-01 1 of 1

∞ **Proposed Build**
Lot: 10,507 sqft.
Home: 4,500 sqft.

550 Watkins
Lot: 6,098 sqft.
Home: 3,900 sqft.

587 Watkins
Lot: 7,449 sqft.
Home: 3,905 sqft.



APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:

The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

Change premises described as:

Parcel ID No: 08-19-36-151-027 Watkins St.

No. Street
See attached plan for legal description

Legal Description

_____ from its present zoning

classification of R-8 to R-2.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

Parcel ID No: 08-19-36-151-027 Watkins St.

No. Street
See attached plan for legal description

Legal Description

_____ from its present zoning

classification of R-8 to R-2.

A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: Anthony P. Palleschi

Print Name: Anthony P. Palleschi

Name of Owner: LB Land, LLC

Address and Telephone Number: 5000 E Grand River Avenue, Howell MI 48843

(586) 822-0851

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: _____ Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00 Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.

ZONING MAP OR ORDINANCE AMENDMENT PROCEDURE

Procedure to be followed on all applications for Zoning Map or Ordinance amendments.

1. Preliminary discussion with the Community Development Director or City Planner.
2. Formal application to City Commission with the following information:
 - a) Change requested
 - b) Signature and name of persons requesting change
 - c) Reasons for requested change
3. City Commission will refer request to the Planning Board for recommendation and final report.
4. Planning Board will hold a public hearing prior to which a notice will be published in an official paper or a paper of general circulation not less than fifteen (15) days prior to the hearing.
5. At the conclusion of a public hearing, the Planning Board will forward a recommendation of the Zoning Map or Ordinance amendment request. The City Commission may, by ordinance, change the Zoning Map or Ordinance only after the Planning Board had held at least one (1) public hearing regarding the proposed amendment and has reported to the City Commission thereon. The City Commission may hold additional public hearings as it deems necessary.
6. Upon the presentation of protest petition meeting the requirements listed below, an amendment to the Zoning Map or Ordinance which is the object of the petition shall be passed only by a three-fourths (3/4) vote of the City Commission. The protest petition shall be presented to the City Commission before final action on the amendment, and shall be signed by one (1) of the following:
 - a) The owners of at least twenty percent (20%) of the area of land included in the proposed change.
 - b) The owners of at least twenty percent (20%) of the area of the land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included in the proposed change.

For the purpose of calculating the twenty percent (20%) requirement, publicly-owned land shall be excluded.

7. The City Commission will then take action on the application upon review of the Planning Board's recommendation and approved minutes of the Public Hearing.
8. Following adoption of a Zoning Map or Ordinance change by the City Commission, one (1) notice of adoption shall be published in the newspaper of general circulation in the City within fifteen (15) days after adoption.

LB Land LLC

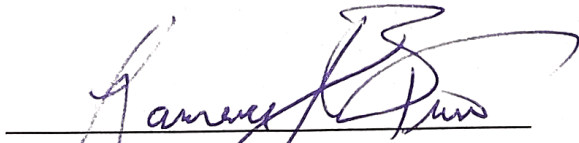
5000 E GRAND RIVER AVE, HOWELL, MI 48843

February 14, 2022

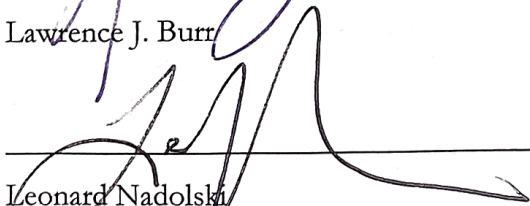
I, Anthony Palleschi, on behalf of LB Land LLC, request the rezoning of the parcel in question (Tax ID No. 19-36-151-027) from R8 to R2 as to fulfill the requirements for a lot split, per conversations with City Planner Brooks Cowan. LB Land LLC intends to build a single-family home of approximately 4,500 sqft (consistent with neighborhood; see attached zoning map). A rezone to R2 is consistent with existing adjacent single-family homes (see attached zoning map). The property has been zoned for multifamily since 1937, but the 1980 Master Plan recommends it be single-family residential.

The existing zoning classification of R8 is no longer appropriate given intention is to build a single-family home separate from the recently constructed townhouses (Westbrown Condominiums). The property in question is currently vacant and maintained by LB Land LLC.

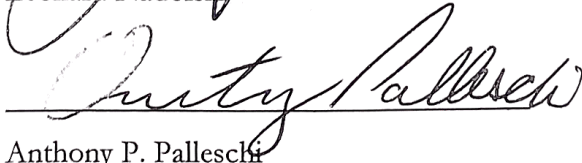
LB Land LLC has performed extensive due diligence to ensure that the requested rezone will be of no detriment to the surrounding properties and is consistent in aesthetic and scale with adjacent single-family homes. LB Land LLC has contracted the services of local Birmingham architecture firm, Brian Neeper Architecture P.C. to design a home that is appropriate for the lot and surrounding areas. LB Land LLC is working with a landscape architect to maximize green space and privacy for all neighboring properties.



Lawrence J. Burr



Leonard Nadolski



Anthony P. Palleschi

LB Land LLC

5000 E GRAND RIVER AVE, HOWELL, MI 48843

To whom it may concern:

I, Leonard Nadolski, hereby authorize Anthony P. Palleschi to represent publicly and make decisions on behalf of LB Land LLC in matters regarding land ownership, development, zoning, etc. in Birmingham, MI. Please extend him the same courtesies as if I were handling the matters myself. I ensure you my full consent with regards to this authorization.

This authorization is effective January 24, 2022 until further notice.

If you have questions regarding this matter, please contact me at (810) 577-7156, or lnadolski@champion-chev.com.


Leonard Nadolski Member Date
L.B. LAND.

To the Birmingham Planning Board:

APR 22 2022
4pm CWoods

RECEIVED

My wife and I live at 615 West Brown Street and were the first owners/residents at The Westbrowne Condominium, located immediately North of Parcel # 1936151027, the parcel in question for rezoning. We are writing this letter because we are on a long-planned trip with our children, but if we could be present for the hearing, we would be.

We strongly recommend that this request be **DENIED**. This property is controlled by the developer, L. B. Land LLC. It was approved November 19, 2018 in the Master Deed with the option that it could be combined with The Westbrowne Condominium (Sec 7.2 AND 7.3 "None of the additional land and unit area need to be developed for residential use"). It is also interesting that 100% of the value of the project is assigned to the original 8 units, per Sec 5.2. The idea of combining it and developing it as greenspace has been held out as a carrot to potential buyers of townhomes (and to us, as homeowners) since early on in this process, though with constant delays and price increases. Approving this rezoning and allowing the building of one very large home on this lot would be detrimental to the views from our kitchens and decks and would reward this disingenuous developer, while reinforcing its shoddy business practices. We suggest that the original option for this space to be attached to The Westbrowne Condominium be reconsidered with the vision that this could be developed as "green space" or as a small park that would enhance the experience and value of our homes as well as all of those on Watkins.

By way of history, Mike Tyranski and I approached the developers last summer with the option above and while greeted with reservation, it was not dismissed. It was a matter of price. Later in a conversation with Larry, one of the partners in L. B. Land LLC, it was expressed that this was a fruitful idea and that we should wait until more units were sold. That way, the costs of landscaping could be spread among more participants. The next communication, months later, was that they were planning to build a substantial home, completely opposite to what had been discussed with us. The developer did not reach out to us or follow through to consider other alternatives that could be a win-win for everyone, but rather only considered a money grab for themselves. In the meantime, they began to (finally) sell more of the six remaining units.

Based on conversations with others who subsequently purchased at The Westbrowne, it was obvious that representations were made to purchasers that the adjacent property might be developed as a Green Space. Was this a representation made to induce further sales? If this was done by realtors, where did they get this information from? If it was done in good faith, why didn't they discuss the plan with us?

In the meantime, we have had design problems, construction difficulties, never-ending delays that were far more than could be excused by the pandemic. To name but a few:

- An EV charger installed by the builder **AFTER** the electrical inspection resulted in a fire. If we had not caught the fire immediately as it started, the results would have been catastrophic. Among the problems later identified, the electrician did not even follow the instructions provided by the factory which clearly delineated what type of circuit breaker to install. This electrician has been used for the entire Westbrowne project.
- Inadequate diversion of snow and water from the roof due to poor design now dumps onto the front steps of every unit, resulting in a constant cycle of melt/freeze on stone which is so

dangerous that the USPS refused delivery for some residents due to obvious safety issues. This is a huge design flaw that the builder *refuses to address*.

- Several units, including ours, have experienced significant water damage from roof leaks, due to improper installation and/or design.
- The developers built a wall that extends along the back of our access all the way to the sidewalk at a height that is simply dangerous. You cannot see pedestrians or dogs or strollers on the sidewalk. It is a tragedy waiting to happen. In addition, with the ongoing construction and trucks parked along Watkins, visibility is even further diminished. Foot traffic is not diminished, however.
- The developer is in violation of the Association documents regarding the appointment of directors. They have been notified of this "oversight" and done nothing to correct it. As a result, we who live at Westbrowne have no input into our own management, nor do we even have access to the names and phone numbers of each other, other than by going door to door.

It is our view that the City of Birmingham should recognize that this developer, L. B. Land LLC., is interested in profit at any cost - to the city or its residents - and they have been disingenuous, not willing to reasonably negotiate an alternative and had a history of poor business practices. After dealing with them for well over two years, we do not see that they are likely to change if given a chance to "build a \$4 million dollar spec house" next door. We are willing to join with my neighbors to compensate this developer fairly for their property, enhance what we have purchased and to further develop it as a "Green Space". We need to send these non-resident "Carpetbaggers" packing.

Gerald L Seizert & Margaret Overton

The image shows two handwritten signatures in cursive. The top signature is "Gerald L Seizert" and the bottom signature is "Margaret Overton". The ink is dark and the handwriting is fluid.

Southfield / Brown
525 Southfield Road
Birmingham, Michigan 48009

Westbrowm Condominium Approved Site Plan - 02.28.2018

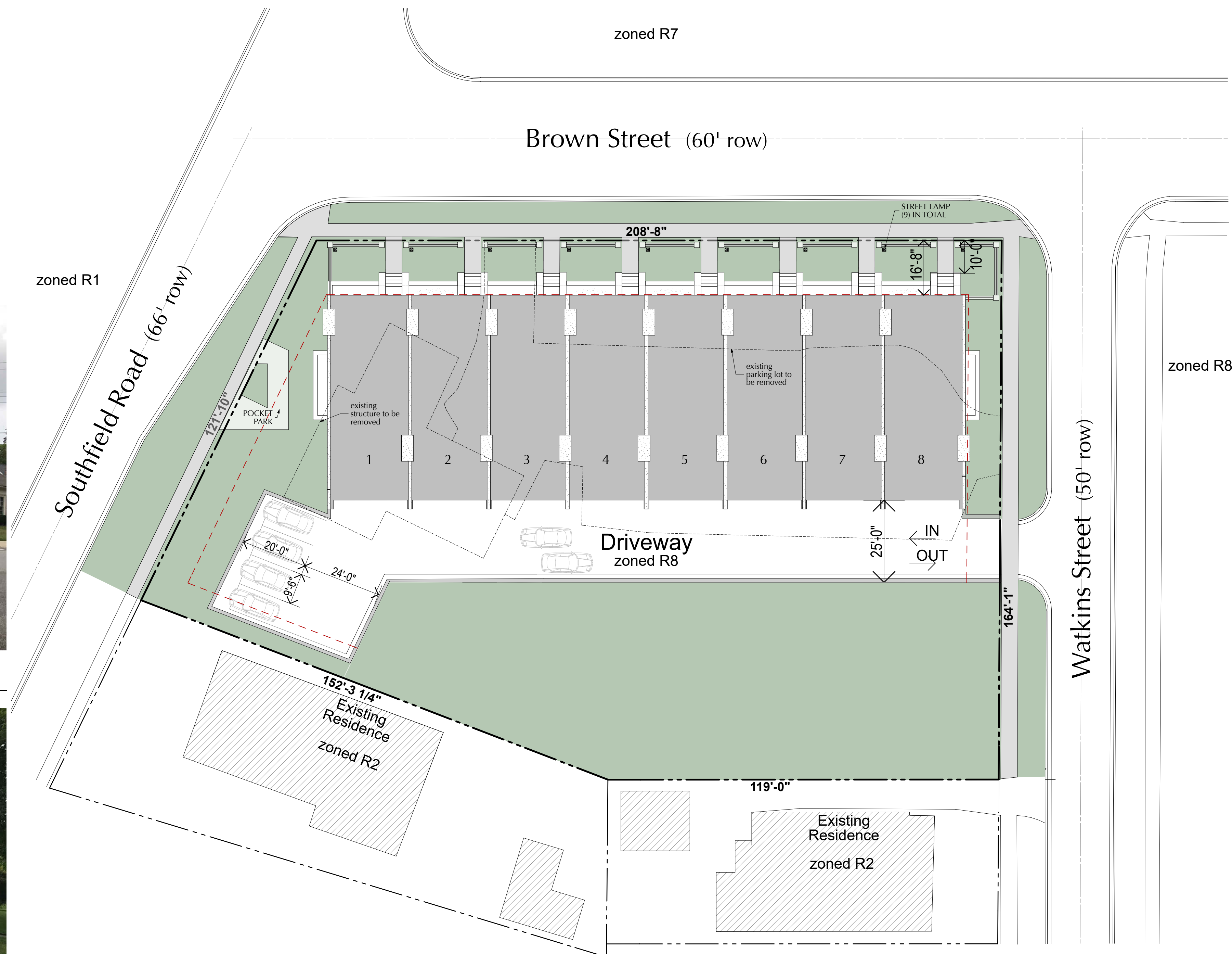
Site Data		required	proposed
1.	Site Area (existing)	36,127.02 sf	
2.	Lot Area/unit (minimum)	3,000sf/unit	
	36,127.02sf/ 3,000sf =	12 units	8 units
3.	Front Yard Setback (average within 200')	16.50'	16.67'
4.	Rear Yard Setback	20'	20'
5.	Side Yard Setback (R8 corner)	10'.0"	10.0'
6.	Building Height	30.0'	30.0'
7.	Stories	2.5	2.5
8.	Parking	2cars/unit	2cars/unit
9.	Screenwall (retaining)	6' masonry	6' masonry
10.	Private open space (Terrace)	180 sf	180 sf



Southfield looking East



Southfield looking North



Site Plan

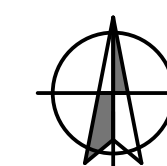
SCALE: 1" = 20'



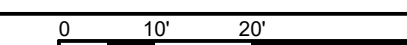
Brown looking West



Watkins looking South



CHRISTOPHER J. LONGE AIA
A R C H I T E C T U R E
I N T E R I O R S
124 Peabody, Birmingham, Michigan 48009 248.258.6940



12/06/2017

D.1

Seconded by Mr. Koseck to continue the public hearing to March 14, 2018 at 7:30 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

Absent: None

The public hearing closed at 7:42 p.m.

02-25-18

FINAL SITE PLAN AND DESIGN REVIEW

1. 525 Southfield Rd. (former Wellness Center)

Final Site Plan and Design Review of request to demolish existing building and replace with eight-unit attached single-family residences

Mr. Baka reported that the subject site is a 0.829 acre parcel confined by Southfield Rd. to the west, Brown St. to the north, and Watkins St. to the east in the R-8 Zoning District. The existing parcel currently contains a wellness center and parking lot. The applicant is proposing to demolish the existing building and parking lot to construct eight new attached single-family residential units that are proposed to be erected side by side in a single building facing Brown St. Each residential unit has its own stairway and individual front door that leads directly into each unit. The applicant appeared before the Planning Board on September 27, 2017 for Preliminary Site Plan Review and was approved with five conditions.

The applicant has updated the plans to reflect the request for a landscaping and photometric plan, and added four additional parking spaces, but has failed to include specification sheets for all of the screenwalls. A rooftop plan is not needed, as all mechanicals are proposed to be located within the attic of each unit. The applicant has also revised the east and west sides of the building to show more interest, adding numerous windows, some decorative features, and a base constructed of a different material.

The applicant must add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to twelve, or obtain a waiver from the Staff Arborist.

The Building Official has determined that the enclosed outdoor terraces on the back of each unit comply with the open space requirement of 180 sq. ft./unit mandated in Article 4, section 4.34 OS-05 of the Zoning Ordinance.

Design Review

The applicant is proposing to create eight units, each with a different façade facing Brown St. The units are comprised of varied high quality building materials with different and tasteful colors. The materials used include brick, limestone, painted wood trim, stucco, copper flashing, and painted metal features. The applicant has not submitted specifications on where the material will be sourced from, or what the exact colors will be. The applicant must submit

specifications on the materials used for the construction of the building to complete the Design Review.

The applicant is proposing a total of 52 new light fixtures at various locations on the property.

Mr. Williams received confirmation from Mr. Baka that the entire site is zoned R-8, including the parcel to the south. Permitted uses on that vacant land to the south are R-8 and R-3 single-family. Anything that happens on that portion of the property would have to return for site plan review.

Mr. Chris Longe, Architect, came forward to represent the applicant. He stated they will meet all of the ordinance requirements. As a result of discussion last time, they have added four guest parking spaces on the west/southwest side of the driveway. A brick wall with limestone cap traces the whole perimeter of the townhome development.

Mr. Boyle asked what the land to the south would look like in four years. Mr. Longe replied that what has been left vacant is a 10,000 sq. ft. site. The intent is to propose a single-family home that will be contextual with the townhomes and with the neighborhood. He explained for Mr. Boyle that it will be a staging area during construction for the townhomes. He will be back before the board in the next couple of weeks with a house design for that parcel. Until the house is constructed the site will be stabilized with grass.

Chairman Clein opened discussion from the audience at 8 p.m.

Mr. Alan Kaplan, 600 W. Brown St., was concerned the construction workers would park in their lot in Piety Hill Place. His other concern was there are only four extra spaces for this project. Therefore, visitors will also park in their lot and he feels that more excess parking is needed.

Ms. Colleen LeGoff, 543 Watkins St., wanted the green space returned after staging is completed until a house is built.

Mr. Paul Gozolo, 550 Watkins St., received confirmation there will not be accessible parking along his street because Watkins St. has residential permit parking. He questioned why the development needs to open up onto Watkins St. rather than onto Southfield Rd. Regarding the lot to the south, he asked that "single-family" be written into the agreement if it is approved. Lastly, he noted there are large, hundred year-old trees on the lot and it will not remain the same as it is now.

Mr. Baka explained the parking provided exceeds ordinance requirements by four spaces.

Mr. Longe stated that it is not feasible to enter the development off of Southfield Rd. that close to the corner. Also, entering off of Brown St. destroys the composition.

It was discussed that cars could be parallel parked along the wall that surrounds the complex when there is a need. There is 25 ft. between the garages and the wall.

Chairman Clein noted for Mr. Gozolo that the Planning Board does not have legal authority to put contract zoning in place to mandate single-family residential use for the southern lot.

Mr. Jeffares remembered that the former use on this site was a pediatric office. They probably had more people in and out in one day than this complex will have in a month.

Mr. Williams announced he would look askance at any attached single-family development going in on the south parcel.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to recommend APROVAL of the Final Site Plan and Design Review for 525 Southfield Rd. subject to the following conditions:

- 1. The applicant submit a specification sheet for the parking area screening wall for administrative approval to ensure that the screening is complementary to the building, uses proper materials, and meets the required dimensions;**
- 2. The applicant add one street tree to the Southfield Rd. or Watkins St. frontage, bringing the total number of street trees to 12, or obtain a waiver from the Staff Arborist;**
- 3. The applicant submit a revised photometric plan showing luminance levels no greater than 1.5 maintained foot candles at the northern property line;**
- 4. The applicant must submit specifications on the materials used in the construction of the building facade to complete the design review;**
- 5. The applicant must address the concerns of City Departments; and**
- 6. The Planning Board approves the use of cut-off fixtures as proposed.**

Amended by Mr. Boyle and accepted:

7. Regarding the open land to the south of the site, the land to be used for staging, that the land be restored per ordinance (until such time as the other development comes forward) with a landscape plan to be administratively approved. This condition would be maintained until, at a date yet to be determined, the owner brings a proposed development for that site.

Motion carried, 7-0.

The Chairman called for public comments on the motion at 8:12 p.m.

Mr. Gozolo showed the board a picture of one of the mature trees on the property.

Mr. Koseck thought this is a great project. It has quality design, it has variety, it anchors the corner, and he feels that it fits that street.

ROLLCALL VOTE

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

Nays: None

Absent: None

02-26-18

2. 34965 Woodward Ave. (former Peabody Restaurant and Frame Shop)

Request for approval of a Final Site Plan and Design to allow for construction of a new five-story mixed-use building

Chairman Clein announced he would recuse himself as in the past, since his firm provided some consultant services at the front end of the project. Vice-Chairperson Lazar took over the gavel.

VII. NEW BUSINESS**05-145-21 Public Hearing of Necessity - Grant Street Paving Project**

The Mayor opened the public hearing at 8:03 p.m.

Deputy Treasurer Todd presented the item.

The Mayor closed the public hearing at 8:05 p.m.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Sherman:
To confirm Special Assessment Roll No. 894 for Grant Street Paving Special Assessment District (see complete resolution in agenda packet).

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

Nays, None

05-146-21 Public Hearing – 720 N. Old Woodward

The Mayor opened the public hearing at 8:07 p.m.

It was noted that the applicant requested a postponement.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To postpone the Special Land Use Permit, Final Site Plan and Design Review application for 720 N. Old Woodward – Vinewood Kitchen & Cocktails to the June 14, 2021 meeting.

Commissioner Hoff asked Staff to be in touch with the applicant to determine whether they would be ready by June 14, 2021 since the evening already had a lengthy agenda.

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

Nays, None

The public hearing was not closed.

05-147-21 Public Hearing - 695 W. Brown Street – Lot Split

The Mayor opened the public hearing at 8:12 p.m.

Mayor Pro Tem Longe notified the Commission she would be recusing herself from the item because her spouse was involved in the original project from which this property was asking to be split.

City Planner Cowan presented the item.

In reply to Commissioner Sherman, Planning Director Ecker said she could provide the Commission with information about the previous development proposals regarding this lot.

Commissioner Sherman said he would rather have that information before making a decision on this item. He said he recalled there being previous disagreements between the neighbors and the developer regarding this parcel.

Christopher Brokovich, applicant, said that when he had previously proposed a development adjacent to 685 W. Brown the proposal left 685 W. Brown itself undesignated. Subsequently, he proposed to build two more townhouses on 685 W. Brown, which the neighbors were not in favor of. As a result, Mr. Brokovich chose to put 685 W. Brown on the market.

Public Comment

Guy Simons reviewed the contents of his letter to the Commission.

In reply to Mr. Simons, PD Ecker said she could provide the interpretation of the side setback that was used to build the eight units adjacent to 685 W. Brown.

Thomas Saracino indicated he was interested in purchasing the lot if it was split within R-8 and advocated for the split.

Michael Talansky, neighbor of 695 W. Brown Street, expressed concern about the lot split proposal.

Andrew Haig expressed skepticism that adequate parking could be provided on the lots in question given the City's lot coverage ordinances and the average turning radiuses of vehicles.

In reply to Mr. Haig, CP Cowan stated that even with the lot split the eight adjacent units would still meet the minimum area-per-unit required for all units in R-8.

Mr. Reagan said the Central Birmingham Residents' Association has historically not been in favor of new multi-family residences being built on Watkins.

Maria Van Hees, neighbor of 685 W. Brown, said she and her family had purchased a nearby home with an understanding that there would be a single family home built on 685 W. Brown.

Wendy Zebrowski concurred with Commissioner Sherman's recollection and agreed that previous minutes regarding this parcel should be reviewed for clarity. She stated that in general the neighbors want this parcel to be zoned for a single family home.

Mr. Bloom said that if plans could be developed that were amenable to the neighbors, he was supportive of Mr. Saracino doing the work. He attested to Mr. Saracino's integrity and other building work in Birmingham.

Commissioner Host concurred with Commissioner Sherman's request for previous records regarding this parcel. He said the neighbors' preferences should take precedence since they live there. He also said it was an issue that the final site plan approved by the Planning Board for this parcel was subsequently changed.

The Mayor closed the public hearing at 9:06 p.m.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Baller:
To direct the applicant to pursue a rezoning of the subject property to R2-Single Family Zone in order to meet the lot split requirements of the municipal code.

Commissioner Sherman commented the Commission took a similar stance regarding a proposal for the former Franklin Bank and Mountain King properties.

Commissioner Host said he concurred with the comments of Mr. Simons and Mr. Reagan.

ROLL CALL VOTE: Ayes, Commissioner Hoff
Commissioner Baller
Commissioner Host
Commissioner Sherman
Commissioner Nickita
Mayor Boutros

Nays, None

05-148-21 Public Hearing – 353 & 385 Fairfax – Lot Combination

Mayor Pro Tem Longe rejoined the meeting.

The Mayor opened the public hearing at 9:11 p.m.

City Planner Cowan presented the item.

MOTION: Motion by Commissioner Host, seconded by Commissioner Sherman:
To cancel the public hearing.

Commissioners Sherman and Nickita stated the applicant would run into issues with Item Four of the Subdivision Regulation Ordinance (Chapter 102, Section 102-83).

Commissioner Baller agreed with Commissioners Sherman and Nickita, and said he would support the motion as a result.

Commissioner Hoff said the variance request would likely meet the definition of self-creation and prevent the owner from obtaining a variance. She said the petitioner would likely have more luck amending their proposal to meet the lot combination requirements.



MEMORANDUM

Planning Division

DATE: May 9, 2022

TO: Thomas M. Markus, City Manager

FROM: Nicholas Dupuis, Planning Director

SUBJECT: 2100 E. Maple – Whole Foods/Maple Road Taproom – Special Land Use Permit Hearing

INTRODUCTION:

During the annual liquor license renewal process, it was observed that the Maple Road Taproom was not operating in accordance with their approved Special Land Use Permit.

BACKGROUND:

On February 28, 2022, the City Commission moved to set a public hearing to consider whether the City Commission shall file objections with the Michigan Liquor Control Commission for the renewal of the Whole Foods/Maple Road Taproom liquor license.

On March 28, 2022, the City Commission moved to approve the renewal of the liquor license for the 2022 licensing period for Maple Road Tap Room in Whole Foods, holding a Class B, Class C or Microbrewery Liquor License that is now in compliance with Chapter 10, Alcoholic Liquors of the City Code and to set a public hearing on the SLUP for May 9, 2022.

On May 2, 2022, City Staff inspected the establishment to determine whether or not the Maple Road Taproom had been reopened as a bistro. City Staff observed that all of the storage and employee-related items had been removed and that patrons were being served. The posted hours of operation were 2:00 PM – 9:00 PM. The Maple Road Taproom was not restricted in terms of hours in their original Special Land Use Permit contract, thus the posted hours of operation are not an issue. The establishment's general layout (including the number of seats) and the theme/menu all appear to be consistent with the 2017 Special Land Use Permit approval and the corresponding approved site plans.

Staff review of Whole Foods/Maple Road Taproom for SLUP compliance also included a review of recent enforcement action. The establishment received several Fire Code violations over the last two years, including recent citations in April 2022. A full set of Fire Code violations from 2020-2022 is attached for your review.

LEGAL REVIEW:

The City Attorney has reviewed this request and resolution and has no objections as to form and content.

FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

PUBLIC COMMUNICATIONS:

As required for Special Land Use Permit Reviews, a legal ad was placed in a newspaper of local circulation to advertise the nature of the request in advance of the May 9, 2022 public hearing, and notices were sent out to all property owners and tenants within 300 ft. of the property.

SUMMARY:

The Planning Division requests that the City Commission consider the Special Land Use Permit for 2100 E. Maple – Whole Foods/Maple Road Taproom.

ATTACHMENTS:

Please find attached the following documents for your review:

- Current photo of operating establishment
- Liquor License Renewal Memo and Docs
- City Commission Meeting Minutes
- 2017 Maple Road Taproom Special Land Use Permit Documents
- Existing Special Land Use Permit Contract
- List of Violations

SUGGESTED COMMISSION ACTION:

Due to observed compliance with the provisions of their Special Land Use Permit, no action is required.

Maple Road
Tap Room
operating

2:00pm - 9:00pm

Questions?
Please ask a Team
Member for assistance.



Liquor License Renewal Memo & Associated Docs.



MEMORANDUM

Planning Division

DATE: March 28, 2022
TO: Alexandria Bingham, City Clerk
FROM: Nicholas Dupuis,
SUBJECT: 2022 Liquor License Renewal Inspections – Planning Division
(Updates in RED)

Please be advised that the Planning Division has completed the inspections for the annual renewal of liquor licenses across the City. These inspections serve as a means to ensure that all license holders in the City are in compliance with their Special Land Use Permits and have kept a well-maintained building and general site in accordance with the approved plans on file with the Planning Division. The following observations were made:

- **220 Merrill – 220 Restaurant - RESOLVED**
 - Clutter/outdoor storage around the building
 - Clutter/outdoor storage has been cleaned up, representative of 220 was spoken to about maintaining the site.
 - A-frame signs without permits (green sticker)
 - Excess signs have been removed, existing permitted sign received new sticker/permit.
 - Dumpster screen gate damaged and in need of repair
 - 220 representative advised me that a contractor has been contacted about repairing the enclosure gate. Follow up will be required.
 - 5 ft. clear walking path does not seem to be fully maintained along Merrill
 - Met with representative on-site with tape measure to confirm 5 ft. clear walking path.
- **325 S. Old Woodward – Adachi Sushi - RESOLVED**
 - Propane heaters damaged and left on the ground in disarray.
 - Heaters were picked up and broken pieces were cleaned up.
 - Minor indoor seating discrepancies (please see attached spreadsheet). Restaurant manager was advised of the issue and assured compliance.
 - Re-inspection met expectations; restaurant is in compliance with approved seating plans. Additional inspections for compliance will occur throughout the year.
- **111 Elm – All Seasons – RESOLVED**
 - Large, unpermitted-frame signs
 - Signs were removed.
- **167 Townsend – Bella Piatti - RESOLVED**
 - Outdoor dining platform appears to be used to store table/chairs/etc.

- Tables/ chairs were removed.
- **211 S. Old Woodward – Birmingham 8 Theater - RESOLVED**
 - A-frame sign without permit (green sticker)
 - A-frame sign was removed and an application for permits has been submitted and approved.
- **555 S. Old Woodward – Birmingham Pub - RESOLVED**
 - Windows on Woodward side are blocked with opaque materials
 - Non-window treatment coverings have been removed. Restaurant manager was spoken to about the blinds on Woodward/Bowers, and was advised that the Planning Board requested that these remain open and engaging. Manager advised that there are times during the day that they are needed for sun relief, but will endeavor to keep them open when possible.
 - Outdoor dining tables/chairs appear to be stacked, stored and unused
 - Tables and chairs were removed.
- **34244 Woodward – Bistro Joes – RESOLVED**
 - Window signage appears to exceed 18 sq. ft. permitted
 - “Now Serving Brunch” window sign was removed. Remaining window signage appears to meet the Sign Ordinance.
- **116 S. Old Woodward – Churchill’s Cigar Bar and Bistro - RESOLVED**
 - Permitted portable sign needs new permit sticker
 - Restaurant manager was given new sticker.
 - Minor indoor seating discrepancies (please see attached spreadsheet). Restaurant manager was advised of the issue and assured compliance.
 - Issue has been resolved. Additional inspections for compliance will occur throughout the year.
- **160 W. Maple – Dick O’ Dows – RESOLVED**
 - A-frame sign without permit (green sticker)
 - Applicant was given a Sign Permit application to complete for the approval of the temporary portable a-frame sign.
 - Outdoor dining patio in rear may extend beyond the approved dimensions
 - The Planning Division met with Dick O’ Dows ownership and measured the rear patio together. The patio boundary did exceed the approved site plan. The owner understood the issue and assured compliance. A new line will need to be painted, and they plan to do so as soon as the weather permits. The Planning Division furnished a copy of the approved site plans with the measurements listed to the owner. Follow up will be required.
- **575 S. Eton – Griffin Claw – RESOLVED**
 - Barrels and pallet’s stored across parking lot
 - Planning Division spoke with the owner of Griffin Claw. We were advised that pallets and barrels are frequently moved as a part of the brewing process, as well as preparation for seasonal draft offerings. The Planning Division encouraged Griffin Claw to reduce the amount of pallets on site, and to keep storage organized and within the barrel storage building in the back of the property. Follow up will be required.
- **201 S. Old Woodward – Hyde Park Prime – RESOLVED**
 - Blinds closed throughout all hours of the day

- Regional manager was contacted and the Planning Division explained the desire to have open, active storefronts.
- **525 N. Old Woodward – Luxe - RESOLVED**
 - Remnants of temporary COVID-19 outdoor dining enclosure remain on the façade
 - Restaurant owner advised that they plan to embark on the storefront renovation that was approved in 2020 this year, thus remedying the issue. Follow up will be required.
- **115 Willits – Mare Mediterranean - RESOLVED**
 - A-frame sign without permit (green sticker)
 - A-frame sign has been removed. Sign Permit application is in progress.
- **310 E. Maple – Pernoi – RESOLVED**
 - Propane heaters stored in via
 - Propane heaters have been removed/relocated.
 - Outdoor dining being used with eisnglass enclosure. Eisnglass enclosures are not permitted for outdoor dining.
 - Pernoi has submitted a letter (please see attached) stating that the eisnglass will not be used for outdoor dining, and that a Special Land Use Permit applicaton has been submitted seeking full approval of the eisnglass. Follow up will be required.
- **588 S. Old Woodward – Phonecia – RESOLVED**
 - Planters used for outdoor dining being stored in right-of-way near the street
 - Planters have been removed.
 - Back of building appears cluttered
 - Clutter has been removed.
- **100 Townsend – Rugby Grille - RESOLVED**
 - Canvas panel on west side of outdoor dining not approved.
 - Canvas panel has been removed.
- **505 N. Old Woodward – Salvatore Scallopini - RESOLVED**
 - Planters that appear to have been part of the outdoor dining patio stored in right-of-way and blocking bike rack
 - Planters have been moved, bike rack no longer blocked.
 - Minor indoor seating discrepancies (please see attached spreadsheet). Restaurant manager was advised of the issue and assured compliance
 - Issue has been resolved. Additional inspections for compliance will occur throughout the year.
- **117 Willits – Shift/Sidecar/Slice (S-Three) - RESOLVED**
 - A-frame signs without permits (green stickers)
 - A-frame signs have been removed.
 - Outdoor dining furnishing may be being stored in right-of-way
 - Tables/chairs set up for dining and no longer stacked and stored.
- **225 E. Maple – Social Kitchen & Bar – RESOLVED**
 - A-frame sign without permit (green sticker)
 - A-frame sign has been removed.
 - Some clutter in rear dumpster area, linen storage stored outside of screening
 - Clutter and linen receptacle have been cleaned up.
 - Minor indoor seating discrepancies (please see attached spreadsheet). Restaurant manager was advised of the issue and assured compliance

- Issue has been resolved. Additional inspections for compliance will occur throughout the year.
- **155 Bates – Tallulah – RESOLVED**
 - Minor indoor seating discrepancies (please see attached spreadsheet). Restaurant manager was advised of the issue and assured compliance
 - Re-inspection met expectations, restaurant is in compliance with approved seating plans. Additional inspections for compliance will occur throughout the year.
- **203 Pierce – Toast – RESOLVED**
 - Large seat discrepancy observed. Restaurant manager was advised of the issue and assured compliance.
 - Re-inspection met expectations, restaurant is in compliance with approved seating plans. Additional inspections for compliance will occur throughout the year.
- **2100 E. Maple – Maple Road Taproom – RESOLVED**
 - Restaurant currently being used as employee break room and storage
 - The Maple Road Taproom has submitted a letter (please see attached) indicating that they had been closed due to COVID and have plans to reopen the restaurant on May 1, 2022. Follow up will be required.

Liquor License	Issue(s)	Resolved?		Invoice Paid?	
		Yes	No	Paid	Unpaid
220 Merrill – 220 Restaurant	Clutter, signage, dumpster	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
325 S. Old Woodward – Adachi Sushi	Indoor seats, damaged heaters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
111 Elm – All Seasons	Signage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
167 Townsend – Bella Piatti	Dining platform	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
211 S. Old Woodward – Birmingham 8 Theater	Signage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
555 S. Old Woodward – Birmingham Pub	Outdoor storage, windows	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
34244 Woodward – Bistro Joes	Signage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
116 S. Old Woodward – Churchill's Cigar Bar and Bistro	Indoor seating	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
160 W. Maple – Dick O' Dows	Signage, rear outdoor patio	<input type="checkbox"/>	<input checked="" type="checkbox"/> *	<input type="checkbox"/>	<input type="checkbox"/>
575 S. Eton – Griffin Claw	Outdoor storage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
201 S. Old Woodward – Hyde Park Prime	Window coverings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
525 N. Old Woodward – Luxe	Building façade	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
115 Willits – Mare Mediterranean	Signage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
310 E. Maple – Pernoi	Eisnglass, heaters	<input type="checkbox"/>	<input checked="" type="checkbox"/> *	<input type="checkbox"/>	<input type="checkbox"/>
588 S. Old Woodward – Phonecia	Clutter, Planters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
100 Townsend – Rugby Grille	Canvas panel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
505 N. Old Woodward – Salvatore Scallopini	Planters, indoor seating	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
117 Willits – Shift/Sidecar/Slice (S-Three)	Outdoor storage, signage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
225 E. Maple – Social Kitchen & Bar	Signage, dumpster area	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
155 Bates – Tallulah	Indoor seating	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
203 Pierce – Toast	Indoor seating	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2100 E. Maple – Maple Road Taproom	Use change	<input type="checkbox"/>	<input checked="" type="checkbox"/> *	<input type="checkbox"/>	<input type="checkbox"/>



MEMORANDUM

Planning Division

DATE: February 22, 2022
TO: Alexandria Bingham, City Clerk
FROM: Nicholas Dupuis,
SUBJECT: 2022 Liquor License Renewal Inspections – Planning Division

Please be advised that the Planning Division has completed the inspections for the annual renewal of liquor licenses across the City. These inspections serve as a means to ensure that all license holders in the City are in compliance with their Special Land Use Permits and have kept a well-maintained building and general site in accordance with the approved plans on file with the Planning Division. The following observations were made:

- **220 Merrill – 220 Restaurant**
 - Clutter/outdoor storage around the building
 - A-frame signs without permits (green sticker)
 - Dumpster screen gate damaged and in need of repair
 - 5 ft. clear walking path does not seem to be fully maintained along Merrill
- **325 S. Old Woodward – Adachi Sushi**
 - Propane heaters damaged and left on the ground in disarray.
 - Minor indoor seating discrepancies (please see attached spreadsheet). Restaurant manager was advised of the issue and assured compliance.
- **111 Elm – All Seasons**
 - Large, unpermitted-frame signs
- **167 Townsend – Bella Piatti**
 - Outdoor dining platform appears to be used to store table/chairs/etc
- **211 S. Old Woodward – Birmingham 8 Theater**
 - A-frame sign without permit (green sticker)
- **555 S. Old Woodward – Birmingham Pub**
 - Windows on Woodward side are blocked with opaque materials
 - Outdoor dining tables/chairs appear to be stacked, stored and unused
- **34244 Woodward – Bistro Joes**
 - Window signage appears to exceed 18 sq. ft. permitted
- **116 S. Old Woodward – Churchill's Cigar Bar and Bistro**
 - Permitted portable sign needs new permit sticker
 - Minor indoor seating discrepancies (please see attached spreadsheet). Restaurant manager was advised of the issue and assured compliance.
- **160 W. Maple – Dick O' Dows**
 - A-frame sign without permit (green sticker)
 - Outdoor dining patio in rear may extend beyond the approved dimensions

- **575 S. Eton – Griffin Claw**
 - Barrels and pallet's stored across parking lot
- **201 S. Old Woodward – Hyde Park Prime**
 - Blinds closed throughout all hours of the day
- **525 N. Old Woodward – Luxe**
 - Remnants of temporary COVID-19 outdoor dining enclosure remain on the façade
- **115 Willits – Mare Mediterranean**
 - A-frame sign without permit (green sticker)
- **310 E. Maple – Perno**
 - Propane heaters stored in via
 - Outdoor dining being used with eisnglass enclosure. Eisnglass enclosures are not permitted for outdoor dining.
- **588 S. Old Woodward – Phonecia**
 - Planters used for outdoor dining being stored in right-of-way near the street
 - Back of building appears cluttered
- **100 Townsend – Rugby Grille**
 - Canvas panel on west side of outdoor dining not approved.
- **505 N. Old Woodward – Salvatore Scallopini**
 - Planters that appear to have been part of the outdoor dining patio stored in right-of-way and blocking bike rack
 - Minor indoor seating discrepancies (please see attached spreadsheet). Restaurant manager was advised of the issue and assured compliance
- **117 Willits – Shift/Sidecar/Slice (S-Three)**
 - A-frame signs without permits (green stickers)
 - Outdoor dining furnishing may be being stored in right-of-way
- **225 E. Maple – Social Kitchen & Bar**
 - A-frame sign without permit (green sticker)
 - Some clutter in rear dumpster area, linen storage stored outside of screening
 - Minor indoor seating discrepancies (please see attached spreadsheet). Restaurant manager was advised of the issue and assured compliance
- **155 Bates – Tallulah**
 - Minor indoor seating discrepancies (please see attached spreadsheet). Restaurant manager was advised of the issue and assured compliance
- **203 Pierce – Toast**
 - Large seat discrepancy observed. Restaurant manager was advised of the issue and assured compliance.
- **2100 E. Maple – Maple Road Taproom**
 - Restaurant currently being used as employee break room and storage



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

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OF COUNSEL:

PHILLIP G. ADKISON
KEVIN M. CHUDLER
KATHERINE A. TOMASIK

March 21, 2022

Via Electronic Mail

Nicholas Dupuis, Planning Director
City of Birmingham
151 Martin St.
Birmingham, MI 48009
ndupuis@bhamgov.org

**Re: Maple Road Tap Room (Whole Foods Market)
2100 E Maple Rd.
City Liquor License Review 2022**

Dear Mr. Dupuis:

We represent Whole Foods Market. Whole Foods Market was approved in April 2017 to operate the Maple Road Tap Room inside of the market, pursuant to a Special Land Use Permit. The relevant portions of the SLUP are attached.

At the City Commission's meeting on February 28, 2022, City staff reported that the Maple Road Tap Room was not set up for restaurant service but rather was being used as an employee breakroom.

Whole Foods temporarily suspended the operation of its on-premises service of alcohol due to the Covid-19 pandemic.

The Maple Road Tap Room will be set up and resume regular service on May 1, 2022. The layout will not change, it will be as approved by the City Commission. The hours of operation will be from 2 p.m. to 9 p.m. daily.

I understand that the City must file any objection it has to licensure with the Michigan Liquor Control Commission prior to the scheduled reopening date.

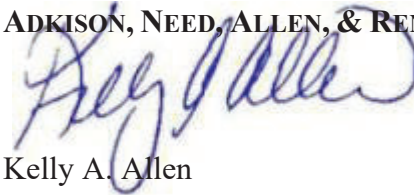
However, since there is a SLUP in place, the City would have the remedy of revoking the SLUP if the licensee is not in compliance. As soon as the restaurant is set up for service, Whole Foods will call for reinspection.

I will attend the City Commission's meeting on March 28, 2022, on Whole Food's behalf if necessary.

Please call me with any questions or concerns you may have.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



Kelly A. Allen

KAA/kjp
Enclosures

Cc: Ryan Bissett, Licensing Team (*via electronic mail*)
Ed Kipella, Store Team Leader (*via electronic mail*)

**WHOLE FOODS BISTRO
2100 E. MAPLE
SPECIAL LAND USE PERMIT
2017**

WHEREAS, Whole Foods Bistro filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a new restaurant as a bistro as defined in Article 9, section 9.02 of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the south side of E. Maple between Eton and Coolidge Highway;

WHEREAS, The land is zoned B2 (Grocery Store use only), General Business, which permits bistros as an accessory use with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board on February 22, 2017 reviewed the application for Final Site Plan Review and a Special Land Use Permit and recommended approval with the following conditions:

- 1) The applicant will be required to enter into a contract with the City outlining the nature of the bistro operation;
- 2) Comply with the requirements of City departments; and
- 3) The applicant must provide appropriate restroom facilities to be submitted to staff in the Planning Dept. and approved.

WHEREAS, The applicant has committed to comply with all conditions for approval as recommended by the Planning Board on February 22, 2017;

WHEREAS, The Birmingham City Commission has reviewed the Whole Foods Bistro Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that Whole Foods Bistro's application for a Special Land Use Permit authorizing the operation of a bistro at 2100 E. Maple in accordance with Chapter 10, Alcoholic Liquors, is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. Whole Foods Bistro shall abide by all provisions of the Birmingham City Code;
-

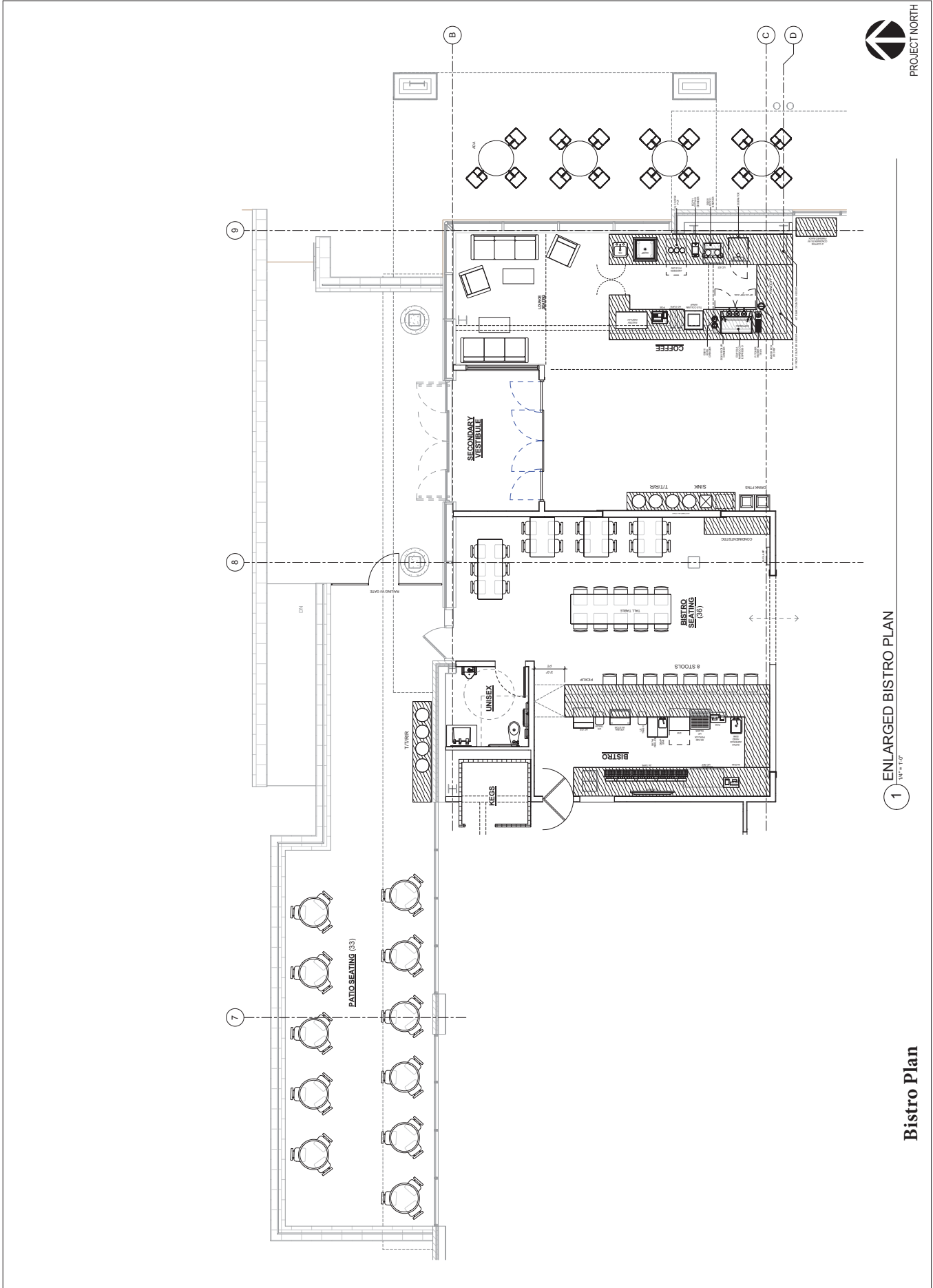
2. The Special Land Use Permit may be cancelled by the City Commission upon finding that the continued use is not in the public interest;
3. The hours of operation for outdoor dining shall cease at 10:00 p.m. 7 days a week;
4. The use of eisenglass and other enclosure materials on any outdoor dining area shall require approval by the City Commission through a Special Land Use Permit Amendment;
5. Outdoor dining is seasonally permitted from April 1st through November 15th only, with an Outdoor Dining Permit. The use of an enclosure system(s) does not allow the outdoor dining season to be extended.
6. Whole Foods Bistro shall provide for the removal of disposable materials resulting from the operation and maintain the area in a clean and orderly condition by providing the necessary employees to guarantee this condition, and by the placement of a trash receptacle in the outdoor seating area;
7. Whole Foods Bistro shall enter into a contract with the City outlining the details of the proposed bistro option, and enter into an outdoor dining license agreement with the City;
8. Whole Foods Bistro shall not increase the number of interior or exterior seats at any time without approval by the City Commission through a Special Land Use Permit Amendment;
9. Whole Foods Bistro shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance;
10. Whole Foods Bistro agrees to resolve any future parking issues that may arise, including but not limited to parking overflow and encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit may be cancelled by the City Commission; and
11. Whole Foods Bistro is required to have any modifications to the site plan, floor plan or operation of the bistro approved through a Special Land Use Permit Amendment as required in 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, Whole Foods Bistro and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Whole Foods Bistro to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

I, Cherilynn Brown, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on April 24, 2017.

Cherilynn Brown, City Clerk





City Commission Meeting Minutes

ROLL CALL VOTE: Ayes, Mayor Pro Tem Boutros
 Commissioner Baller
 Commissioner Haig
 Commissioner Host
 Commissioner McLain
 Commissioner Schafer
 Mayor Longe

Nays, None

02-064-22 La Strada Cafe 2022 Liquor License Renewal

The Mayor recused herself at 8:52 p.m. citing a business relationship between her spouse and the owner of La Strada Cafe.

The Mayor Pro Tem assumed facilitation of the meeting at 8:52 p.m.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
 To approve the renewal of the liquor license for La Strada Cafe for the 2022 licensing period as an establishment that is in compliance with Chapter 10, Alcoholic Liquors of the City Code:

ROLL CALL VOTE: Ayes, Mayor Pro Tem Boutros
 Commissioner Baller
 Commissioner Haig
 Commissioner Host
 Commissioner McLain
 Commissioner Schafer

Nays, None

02-065-22 2021 Liquor License Review and 2022 Liquor License Renewal (Part 2)

The Mayor resumed facilitation of the meeting at 8:53 p.m. She noted that she had previously had personal interest regarding Adachi Restaurant, Dick O' Dow's and Slice/Shift/Sidecar, but that those personal interests were no longer present and the relevant business relationships have concluded.

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Host:
 To adopt a resolution to set public hearings on Monday, March 28, 2022 to consider whether the City Commission shall file objections with the Michigan Liquor Control Commission for the renewal of licenses held by the owners/operators of the following establishments that are in violation of Chapter 10, Alcoholic Liquors of the City Code:

- Adachi Restaurant
- All Seasons Of Birmingham
- Bella Piatti
- Birmingham 8 Theater
- Birmingham Pub
- Churchill's Bistro/Cigar Bar
- Dick O Dow's Irish Pub
- Griffin Claw Brewing Company

- Hyde Park Prime Steakhouse
- Luxe Bar And Grill
- Maple Road Tap Room (Whole Foods)
- Mare
- Papa Joe's Gourmet Market Place Birmingham
- Per Noi
- Phoenicia
- Salvatore Scallopini
- Slice/Shift/Sidecar
- Social Kitchen And Bar
- Tallulah Wine Bar & Bistro
- The Townsend
- Toast
- Townhouse

Mayor Pro Tem Boutros and Commissioner Baller asked how the City might resolve more of the outstanding issues with establishments before those issues are brought before the Commission in the future.

CM Markus noted that all of the listed establishments were notified well before the present meeting of their outstanding issues, some of them a number of times. He said that repeatedly addressing enforcement issues with some of these establishments is a poor use of taxpayers' funds that should not have to occur.

Commissioner Haig thanked CM Markus for raising the issue, especially in regards to outdoor dining encroaching into the pedestrian walkway. He said that perhaps establishments should be expected to self-police or that all establishments would lose the privilege of outdoor dining.

Mayor Longe ventured that CA Kucharek would probably have cautions about the legality of Commissioner Haig's proposal.

In reply to additional comments from CM Markus, Commissioner Baller asked whether the City might be able to either mandate or foster a restaurant association that might assist with these issues.

CM Markus said the restaurants would have to make a choice to re-form an association and that mandating it would not likely be effective.

Public Comment

Joe Bongiovanni said the City and dining establishments should work together to resolve their issues and should avoid having a contentious relationship.

ROLL CALL VOTE: Ayes, Mayor Pro Tem Boutros
 Commissioner Baller
 Commissioner Haig
 Commissioner Host
 Commissioner McLain
 Commissioner Schafer
 Mayor Longe

Nays, None

02-066-22 Setting a Public Hearing for 220 Merrill 2022 Liquor License

The Mayor recused herself at 9:09 p.m., citing a business relationship with 220 Merrill.

The Mayor Pro Tem assumed facilitation of the meeting at 9:09 p.m.

MOTION: Motion by Commissioner Haig, seconded by Commissioner Host:
To adopt a resolution to set a public hearing on Monday, March 28, 2022 to consider whether the City Commission shall file objections with the Michigan Liquor Control Commission for the renewal of licenses held by the owners/operators of 220 Merrill which is in violation of Chapter 10, Alcoholic Liquors of the City Code:

ROLL CALL VOTE: Ayes, Mayor Pro Tem Boutros
Commissioner Baller
Commissioner Haig
Commissioner Host
Commissioner McLain
Commissioner Schafer

Nays, None

02-067-22 Setting a Public Hearing for the Daxton 2022 Liquor License

The Mayor resumed facilitation of the meeting at 9:10 p.m.

The Mayor Pro Tem recused himself at 9:10 p.m., citing a business relationship with the Daxton.

MOTION: Motion by Commissioner Host, seconded by Commissioner Schafer:
To adopt a resolution to set a public hearing on Monday, March 28, 2022 to consider whether the City Commission shall file objections with the Michigan Liquor Control Commission for the renewal of licenses held by the owners/operators of the Daxton which is in violation of Chapter 10, Alcoholic Liquors of the City Code:

ROLL CALL VOTE: Ayes, Mayor Longe
Commissioner Baller
Commissioner Haig
Commissioner Host
Commissioner McLain
Commissioner Schafer

Nays, None

02-068-22 2021 Liquor License Review and 2022 Liquor License Renewal (Part 3)

The Mayor Pro Tem rejoined the meeting at 9:11 p.m.

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Host:
To direct the City Manager to notify the owners/operators of licensed establishments for which a public hearing is set, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may

appear in person at the hearing or be represented by counsel, and that the licensee may present witnesses or written evidence at the hearing.

VOICE VOTE: Ayes, Mayor Longe
 Commissioner Baller
 Commissioner Haig
 Commissioner Host
 Commissioner McLain
 Commissioner Schafer
 Mayor Pro Tem Boutros

Nays, None

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

The Commission and the City Manager had a brief discussion regarding how best to further show the City's support for Ukraine.

The Mayor Pro Tem asked if there should be an official motion, and the Mayor noted that there is occasional precedent for the Commission to just have a brief discussion on a topic in this agenda section to provide direction to the City Manager.

Commissioner Schafer said she wanted the Commission to discuss ways to encourage the community to get involved.

Commissioner Haig noted that other communities are likely to be in distress in the future, and recommended the City develop a policy for when and how the City demonstrates solidarity with other communities.

Mayor Pro Tem Boutros concurred.

The Mayor recommended that the City Attorney verify that the City has the ability to do this demonstration of solidarity now, and that the Commission consider possible future policies once that has been clarified.

CM Markus noted that individuals' direct donations and philanthropy to legitimate non-profit organizations tend to have the most direct, positive impact.

The Commission consensus was to direct the City Manager to further explore ways of lighting up City Hall with the colors of the Ukrainian flag to demonstrate Birmingham's solidarity with the Ukrainian people.

Commission discussion on items from prior meeting

VIII. REMOVED FROM CONSENT AGENDA
--

IX. COMMUNICATIONS

X. REPORTS

A. Commissioner Reports

DPSD Wood presented the item.

CM Markus addressed the cost increases between the estimates and the bids, and described some potential ways of mitigating the project's costs.

Commissioner McLain and MPT Boutros both spoke in favor of moving forward with the project.

Commissioner Haig noted that Southeast Michigan Council of Governments (SEMCOG) was offering a grant for green infrastructure and recommended Staff consider applying to get funding for the rain garden aspect of the project. He said he was in favor of moving the project forward either way, but that the grant could be helpful.

MOTION: Motion by MPT Boutros, seconded by Commissioner Host:

To approve the award of the Adams Park Improvement project contract to Michigan Recreational Construction, in the amount of \$1,046,576.00 to be funded from account number 408-751.000-979.0000, to have the Mayor sign the contract on behalf of the City, and further to approve the appropriation and amendment to the 2021-2022 budget as follows:

Park System Construction Fund:

Revenues: Draw from Fund Balance 408-000.000-400.0000 \$346,580.00

Expenditures: Land Improvements 408-751.000-979.0000 \$346,580.00

Public Comment

Geri Rinschler, Vice-President of the S. Poppleton Homeowners' Association, said many in the S. Poppleton neighborhood would be enthusiastic about the opportunity to purchase naming rights and participate in other modes of fundraising for Adams Park.

Pam Graham, member of the S. Poppleton Homeowners' Association and the Parks and Recreation Board, encouraged the Commission to approve the resolution.

Gordon Rinschler agreed with Ms. Rinschler that the neighborhoods near Adams would be enthusiastic about the opportunity to fundraise for Adams Park.

In reply to the Mayor, DPSD Wood confirmed that the naming opportunities would be priced and listed clearly on the website in short order.

Commissioner Host spoke in favor of the project.

ROLL CALL VOTE: Ayes, MPT Boutros
Commissioner Host
Commissioner McLain
Commissioner Schafer
Mayor Longe
Commissioner Baller
Commissioner Haig

Nays, None

03-092-22

Public Hearings of Liquor License establishments with Resolved and Outstanding Violations

The Mayor opened the public hearing at 9:18 p.m.

The Mayor asked ACM Ecker to begin by discussing the establishments now in compliance, with the exceptions of the Daxton and 220 Merrill.

ACM Ecker reviewed the item.

The Mayor closed the public hearing at 9:21 p.m.

Commissioners Haig and Host asked Commissioner Baller whether he has business with any of the listed establishments.

Commissioner Baller said he would have noted a conflict were there one.

MOTION: Motion by MPT Boutros, seconded by Commissioner Schafer:

To approve the renewal of liquor licenses for the 2022 licensing period, for the following establishments holding a Class B, Class C or Microbrewery Liquor License that are now in compliance with Chapter 10, Alcoholic Liquors of the City Code:

- Adachi Restaurant
- All Seasons Of Birmingham
- Bella Piatti
- Birmingham 8 Theater
- Birmingham Pub
- Churchill's Bistro/Cigar Bar
- Griffin Claw Brewing Company
- Hyde Park Prime Steakhouse
- Luxe Bar And Grill
- Mare
- Papa Joe's Gourmet Market Place Birmingham
- Phoenicia
- Salvatore Scallopini
- Slice/Shift/Sidecar
- Social Kitchen And Bar
- Tallulah Wine Bar & Bistro
- The Townsend
- Toast
- Townhouse

ROLL CALL VOTE: Ayes, MPT Boutros
 Commissioner Host
 Commissioner McLain
 Commissioner Schafer
 Mayor Longe
 Commissioner Baller
 Commissioner Haig

Nays, None

03-093-22 Public Hearing of Liquor License Renewal for 220 Merrill

The Mayor recused herself from the discussion and vote on 220 Merrill at 9:23 p.m.

The Mayor Pro Tem opened the public hearing at 9:23 p.m.

ACM Ecker reviewed the item.

The Mayor Pro Tem closed the public hearing at 9:24 p.m.

MOTION: Motion by Commissioner Haig, seconded by Commissioner Schafer:
To approve the renewal of a liquor license for the 2022 licensing period for 220 Merrill as an establishment that holds a Class B, Class C or Microbrewery Liquor License and is now in compliance with Chapter 10, Alcoholic Liquors of the City Code.

ROLL CALL VOTE: Ayes, MPT Boutros
Commissioner Host
Commissioner McLain
Commissioner Schafer
Commissioner Baller
Commissioner Haig

Nays, None

03-094-22 Public Hearing of Liquor License Renewal for the Daxton

The Mayor rejoined the meeting and resumed facilitation at 9:24 p.m.

The Mayor Pro Tem recused himself from the discussion and vote on the Daxton at 9:24 p.m. citing a business relationship with the applicant.

The Mayor opened the public hearing at 9:24 p.m.

ACM Ecker reviewed the item.

The Mayor closed the public hearing at 9:25 p.m.

MOTION: Motion by Commissioner Schafer, seconded by Commissioner Haig:
To approve the renewal of a liquor license for the 2022 licensing period for the Daxton as an establishment that holds a Class B, Class C or Microbrewery Liquor License and is now in compliance with Chapter 10, Alcoholic Liquors of the City Code.

ROLL CALL VOTE: Ayes, Mayor Longe
Commissioner Host
Commissioner McLain
Commissioner Schafer
Commissioner Baller
Commissioner Haig

Nays, None

03-095-22 Public Hearing to consider the renewal of the liquor license for Dick

O'Dow's at 160 W. Maple

The Mayor Pro Tem rejoined the meeting at 9:26 p.m.

The Mayor opened the public hearing at 9:26 p.m.

ACM Ecker reviewed the item.

Mitch Black, owner of Dick O'Dow's, said it was his intent to comply with the City's requirements.

The Mayor closed the public hearing at 9:31 p.m.

In reply to Commissioner Host, CM Markus said he would recommend taking Mr. Black at his word at this point and proceeding as if the outstanding issue would be resolved within the next 25 days.

MOTION: Motion by MPT Boutros, seconded by Commissioner Host:
To approve the renewal of a liquor license for the 2022 licensing period for Dick O'Dow's as an establishment that holds a Class B, Class C or Microbrewery Liquor License and is now in compliance with Chapter 10, Alcoholic Liquors of the City Code.

Commissioner Haig said he was comfortable with the 'trust but verify' approach recommended by CM Markus at this time. He advocated, however, that establishments only be given one chance to remediate encroachment into the five-foot clear path before the matter is dealt with more severely in the future.

CM Markus noted that encroachment into the five-foot clear path could also result in liability for the City. He agreed that 'trust but verify' accurately described his recommended approach.

ROLL CALL VOTE: Ayes, Mayor Longe
Commissioner Host
Commissioner McLain
Commissioner Schafer
Commissioner Baller
Commissioner Haig
MPT Boutros

Nays, None

03-096-22

Public Hearing to consider the renewal of the liquor license for Maple Road Tap Room in Whole Foods at 2100 E. Maple

The Mayor opened the public hearing at 9:38 p.m.

ACM Ecker and CM Markus reviewed the item. CM Markus recommended that if a public hearing is scheduled that it be scheduled for the beginning of May 2022, which is when the applicant should be operational again.

Kelly Allen, attorney, was present on behalf of the applicant. She said the applicant closed down their bistro due to the pandemic, and were in the process of cleaning all the equipment and re-staffing now.

The Mayor closed the public hearing at 9:43 p.m.

In reply to MPT Boutros, CM Markus said the Commission would have the option to continue the hearing in the future if deemed necessary.

In reply to Commissioner Haig, CA Kucharek confirmed that the Commission would have the option to revoke the SLUP for the Maple Road Tap Room if desired because of the violations. CM Markus noted that the circumstances of the pandemic caused confusion for many establishments and suggested that the best course of action would be to have this bistro up and running again.

MOTION: Motion by Commissioner Baller, seconded by Commissioner McLain:
To approve the renewal of the liquor license for the 2022 licensing period for Maple Road Tap Room in Whole Foods, holding a Class B, Class C or Microbrewery Liquor License that is now in compliance with Chapter 10, Alcoholic Liquors of the City Code and to set a public hearing on the SLUP for May 9, 2022.

ROLL CALL VOTE: Ayes, Mayor Longe
Commissioner Host
Commissioner McLain
Commissioner Schafer
Commissioner Baller
Commissioner Haig
MPT Boutros

Nays, None

03-097-22 Public Hearing to consider the renewal of the liquor license for Casa Perno at 310 E. Maple

The Mayor opened the public hearing at 9:50 p.m.

ACM Ecker reviewed the item.

Kelly Allen, attorney, and Luciano Delsignore, owner, spoke on behalf of the request.

The Mayor closed the public hearing at 9:55 p.m.

Commissioner Haig said he would support letting Casa Perno continue operation while a solution is sought that would satisfy all parties. He noted that part of his support was contingent on the fact that the area with the eisenglass is both on private property and out of public view.

CM Markus recommended the Commission allow the business to continue operations with the eisenglass in use as long as it commits to pursuing a SLUP amendment and a variance. He noted that the Commission retains the right to review the SLUP if the establishment does not pursue a SLUP amendment and a variance and remains out of compliance.

CM Markus added, in reply to Ms. Allen, that it may be worthwhile for the City to consider an ordinance amendment regarding the restrictions to outdoor dining on private property. He observed that the five foot clear path would still need to be maintained.

In reply to Commission inquiry, Ms. Allen stated that the SLUP amendment documentation was already filed and that she would commit to filing a variance request immediately. She said she would also work

with Staff on a potential ordinance amendment. She said she also appreciated the City Manager's offer to allow the establishment to operate with its eisenglass in place while a solution is sought.

Commissioner Baller said he was supportive of the establishment and hoped it reaches a positive conclusion.

MPT Boutros also voiced support for the establishment.

Commissioner McLain acknowledged the difficulties posed by the pandemic while also stating that contracts between the City and establishments must be respected and enforced. She added that she was supportive of Casa Pernoi.

Commissioner Haig concurred with Commissioner McLain's comment about the necessity of respecting and enforcing contracts between the City and a given establishment. He echoed his previous statement that he was interested in giving operators one chance to remedy a violation.

MOTION: Motion by MPT Boutros, seconded by Commissioner Haig:
To approve the renewal of the liquor license for the 2022 licensing period for Casa Pernoi, holding a Class B, Class C or Microbrewery Liquor License that is now in compliance with Chapter 10, Alcoholic Liquors of the City Code.

ROLL CALL VOTE: Ayes, Mayor Longe
Commissioner Host
Commissioner McLain
Commissioner Schafer
Commissioner Baller
Commissioner Haig
MPT Boutros

Nays, None

CM Markus stated that the City does not seek to damage any establishments, but to ensure that they comply with their contractual obligations. He explained that when bistros were created the City made commitments to the residents to ensure compliance with the parameters of those licenses. He stated that ACM Ecker and other Staff did a superlative job making sure that all these establishments were either in compliance or returning to compliance as part of this year's liquor license renewal process.

Commissioner Haig recommended that code enforcement apply the five 'S's in order to streamline the process of inspecting an establishment.

2017 Maple Road Taproom SLUP Docs.



MEMORANDUM

Planning Division

DATE: April 17, 2017

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public Hearing for 2100 E. Maple, Whole Foods Bistro
Special Land Use Permit and Final Site Plan

The subject site is a 4.95 acre site located at 2100 E. Maple Rd. The parcel is zoned B2. The applicant, Whole Foods, is seeking approval of a Bistro License under Chapter 10, Alcoholic Liquors, of the City Code. Chapter 10 requires that the applicant obtain a Special Land Use Permit and approval from the City Commission to operate an establishment with a Bistro License within the City of Birmingham. As part of the previously approved grocery store, the applicant is now proposing a small bistro which will serve customers and provide indoor and outdoor seating. This will be located on the northeast portion of the building.

Thus, at this time the applicant is seeking approval of a Bistro License under Chapter 10, Alcoholic Liquors, of the City Code to allow the service of alcoholic beverages in the proposed bistro. Chapter 10 requires that the applicant obtain a Special Land Use Permit and approval from the City Commission to operate an establishment with a Bistro License within the City of Birmingham. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan, Special Land Use Permit, and for the operation of a Bistro License.

On February 22, 2017, the Planning Board conducted a public hearing to discuss a request by the applicant to operate a new bistro. The Planning Board voted unanimously to recommend approval to the City Commission of the Special Land Use Permit ("SLUP") and Final Site Plan for 2100 E. Maple, Whole Foods Bistro with the following conditions:

- 1) The applicant will be required to enter into a contract with the City outlining the nature of the bistro operation;
- 2) Comply with the requirements of City departments; and
- 3) The applicant must provide appropriate restroom facilities to be submitted to staff in the Planning Dept. and approved.

In addition, after reviewing all three bistro applications for 2017 licenses, the Planning Board also discussed whether to recommend a priority order for recommendation to the City Commission. The board passed a unanimous motion to rank Lincoln Yard bistro as the number one priority because it best fits the goal to activate an area within the Rail District that merits activation. The Planning Board did not provide a ranking for a second or third priority among the bistro applications.

Thus, the Planning Division requests that the City Commission consider approval of the Final Site Plan and Special Land Use Permit to allow the operation of Whole Foods Bistro at 2100 E. Maple. Please find attached the staff report presented to the Planning Board, along with the relevant meeting minutes for your review.

SUGGESTED ACTION:

To approve the Final Site Plan and Special Land Use Permit for 2100 E. Maple - Whole Foods Bistro, to allow the operation of a new bistro within the Whole Foods grocery store, subject to execution of a contract between Whole Foods Bistro and the City of Birmingham.

**WHOLE FOODS BISTRO
2100 E. MAPLE
SPECIAL LAND USE PERMIT
2017**

WHEREAS, Whole Foods Bistro filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a new restaurant as a bistro as defined in Article 9, section 9.02 of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the south side of E. Maple between Eton and Coolidge Highway;

WHEREAS, The land is zoned B2 (Grocery Store use only), General Business, which permits bistros as an accessory use with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board on February 22, 2017 reviewed the application for Final Site Plan Review and a Special Land Use Permit and recommended approval with the following conditions:

- 1) The applicant will be required to enter into a contract with the City outlining the nature of the bistro operation;
- 2) Comply with the requirements of City departments; and
- 3) The applicant must provide appropriate restroom facilities to be submitted to staff in the Planning Dept. and approved.

WHEREAS, The applicant has committed to comply with all conditions for approval as recommended by the Planning Board on February 22, 2017;

WHEREAS, The Birmingham City Commission has reviewed the Whole Foods Bistro Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that Whole Foods Bistro's application for a Special Land Use Permit authorizing the operation of a bistro at 2100 E. Maple in accordance with Chapter 10, Alcoholic Liquors, is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. Whole Foods Bistro shall abide by all provisions of the Birmingham City Code;
-

2. The Special Land Use Permit may be cancelled by the City Commission upon finding that the continued use is not in the public interest;
3. The hours of operation for outdoor dining shall cease at 10:00 p.m. 7 days a week;
4. The use of eisenglass and other enclosure materials on any outdoor dining area shall require approval by the City Commission through a Special Land Use Permit Amendment;
5. Outdoor dining is seasonally permitted from April 1st through November 15th only, with an Outdoor Dining Permit. The use of an enclosure system(s) does not allow the outdoor dining season to be extended.
6. Whole Foods Bistro shall provide for the removal of disposable materials resulting from the operation and maintain the area in a clean and orderly condition by providing the necessary employees to guarantee this condition, and by the placement of a trash receptacle in the outdoor seating area;
7. Whole Foods Bistro shall enter into a contract with the City outlining the details of the proposed bistro option, and enter into an outdoor dining license agreement with the City;
8. Whole Foods Bistro shall not increase the number of interior or exterior seats at any time without approval by the City Commission through a Special Land Use Permit Amendment;
9. Whole Foods Bistro shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance;
10. Whole Foods Bistro agrees to resolve any future parking issues that may arise, including but not limited to parking overflow and encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit may be cancelled by the City Commission; and
11. Whole Foods Bistro is required to have any modifications to the site plan, floor plan or operation of the bistro approved through a Special Land Use Permit Amendment as required in 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, Whole Foods Bistro and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Whole Foods Bistro to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

I, Cherilynn Brown, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on April 24, 2017.

Cherilynn Brown, City Clerk



Whole Foods Birmingham Bistro

**2100 East Maple Road
Birmingham, Michigan 48009**

**Proposal for Bistro License
October 1, 2016**

**Submitted by:
Kelly A. Allen
Adkison, Need, Allen, & Rentrop, PLLC
39572 Woodward Ave., Suite 222
Bloomfield Hills, MI 48304**

WHOLE FOODS BIRMINGHAM BISTRO (WORKING NAME)

Whole Foods is a store unique in character, philosophy, and spirit. Whole Foods is likely the best source for healthy eating and cooking in the country. But “healthy” means a whole lot more at Whole Foods. It goes beyond “good for you” to also encompass the “greater good.”

Whole Foods stocks organic produce, fresh seafood, prime meats, shelf staples, and natural body care and safe cleaning products. Whole Foods also has a full calendar of special events, such as speakers and Oktoberfest celebrations. Honestly, a customer could spend hours at Whole Foods and not run out of opportunities!

Whole Foods will be operating its full service grocery with licenses which allow for the sale of beer, wine, and spirits “to go.” Whole Foods seeks a Bistro license to enable the customer to enjoy a glass of wine or beer with lunch or dinner. This is a perfect complement to a slice of hand-tossed pizza from a brick oven, fresh sushi, hot soup, salad, or an item from the “hot bar.” Whole Foods has perfected the art of fresh, “homemade” prepared foods and meals made to order. Whole Foods’ meals will be available to enjoy on site in two sections of the store; the Bistro, and the other cafeteria-style area of the store.

Whole Foods Birmingham Bistro will be a laid-back “flex casual” style of dining. Guests will order their choices at the counter. When the order is ready, a Whole Foods team member will deliver the order to the guest’s table. A guest may also have a seat at the small bar to order beverages, coffee, juices, and gelatos. Many guests prefer to enjoy their meal at the bar. Of course, Whole Foods has a strict procedure in place to ensure that alcohol beverages are served only to those guests who are over the age of 21. Whole Foods operates with liquor licenses in Michigan at seven of their stores; of these, six stores operate with Class C licenses similar to this Bistro proposal.

The idea behind Whole Foods Birmingham Bistro is to further enhance the neighborhood store feeling. The addition of the Bistro will instantly convert the venue into a gathering place for families to enjoy a healthy meal with an adult beverage. Whole Foods will truly be a one-stop shop, offering all the best things the community of Birmingham will love.

HOURS: Whole Foods hours of operation will be seven days a week from 8:00 a.m. to 10:00 p.m.

OPENING: The anticipated opening date of Whole Foods is November of 2017.

Financial feasibility information can be made available upon request.

WHOLE FOODS BIRMINGHAM BISTRO

DAILY SPECIALS

Monday – All MN drafts \$4
Tuesday – Select \$2 drafts (with burger purchase)
Wednesday – Half off wines by the glass
Thursday – All drafts \$4 (All day!)
Saturday & Sunday – \$3 Micheladas & mimosas
All Day Every Day – \$3 Staff Pick Drafts

HAPPY HOUR

Monday – Friday, 4-6pm
Select \$3 wine + Select \$3 draft beer

DRINKS \$5

BEER-MOSA – Destihl Hefeweizen with fresh squeezed orange juice

MIMOSA – Prosecco with fresh squeezed orange juice

MICHELADA – Lager, cholula, lime

BOTTLES & CANS \$2

Central Waters Mudpuppy Porter
Lagunitas Pils
Founders All Day IPA
Destihl Hefeweizen
Two Brothers Ebel's Weiss
Bell's Amber Ale
Loon Juice Cider
Great Lakes Commodore Perry IPA
Left Hand Milk Stout
Two Brothers Prairie Path – Gluten Free

WINE BY THE GLASS

SPARKLING

Riondo Prosecco \$5
Henriot Brut \$8

WHITE WINE

Clos Du Bois Chardonnay \$5
Ruffino Pinot Grigio \$5
Hogue Riesling \$5
Apothic White Blend \$5
William Fevre Chablis \$8
Kim Crawford Sauvignon Blanc \$8

RED WINE

La Vielle Ferme Rose \$5
Josh Cabernet Sauvignon \$5
Alamos Malbec \$5
Apothic Red Blend \$5
Tenuta di Ghizzano Toscana \$8
Bouchard Pinot Noir \$8
Meomi Pinot Noir \$8
Ghost Pines Cabernet Sauvignon \$8

SIDES \$2.50 each

FRENCH FRIES
POTATO CHIPS

LOADED BAKED POTATO TOTS
BROCCOLI TOTS

BREAKFAST

Served all day!

SIDE OF BACON OR SAUSAGE \$2

2 EGGS ANY STYLE \$6
Served with home fries & toast

3 EGG OMELETTE \$7
Choice of three ingredients: mushroom, onion, spinach, peppers, tomato, ham, bacon, mozzarella, cheddar or Swiss cheese. Served with home fries & toast

BREAKFAST SANDWICH \$5
Fried egg, cheddar cheese, choice of buttermilk biscuit. Add bacon, sausage patty or Black Forest ham \$1

SINGLE BUTTERMILK PANCAKES  \$2 each
Served with maple syrup & butter

STACK OF PANCAKES  \$6
3 buttermilk pancakes served with maple syrup & butter

BISCUITS AND GRAVY \$5
Split buttermilk biscuit topped with sausage cream gravy

BREAKFAST POUTINE \$6
Hand-cut French fries, beef gravy, white cheddar cheese curds topped with 2 fried eggs. Add Black Forest ham \$1

SNACK BASKETS

FRIED CHEESE CURDS  \$5
Served with classic ranch dipping sauce

LOADED TATER TOT NACHOS \$5
Bacon, sour cream, chive and cheese stuffed tater tots topped with taco meat, cheese sauce, sour cream, olives, jalapeño & green onions

POUTINE \$5
Hand-cut French fries topped with beef gravy & white cheddar cheese curds

SANDWICHES

*All sandwiches served with choice of side

CLASSIC GRILLED CHEESE  \$5
Cheddar cheese on sourdough

BLACKENED CHICKEN PO' BOY \$8
Chicken breast, spicy remoulade, shredded lettuce, tomato & pickle on ciabatta

WALLEYE PO' BOY \$8
Breaded walleye, spicy remoulade, lettuce, tomato & pickle on a ciabatta

GRILLED PORTOBELLO  \$8
Marinated portobello mushroom, balsamic aioli, lettuce, tomato, red onion & avocado on a toasted sesame bun

BEET REUBEN  \$8
Smoked beets, sauerkraut, Thousand Island & Swiss cheese on marble rye

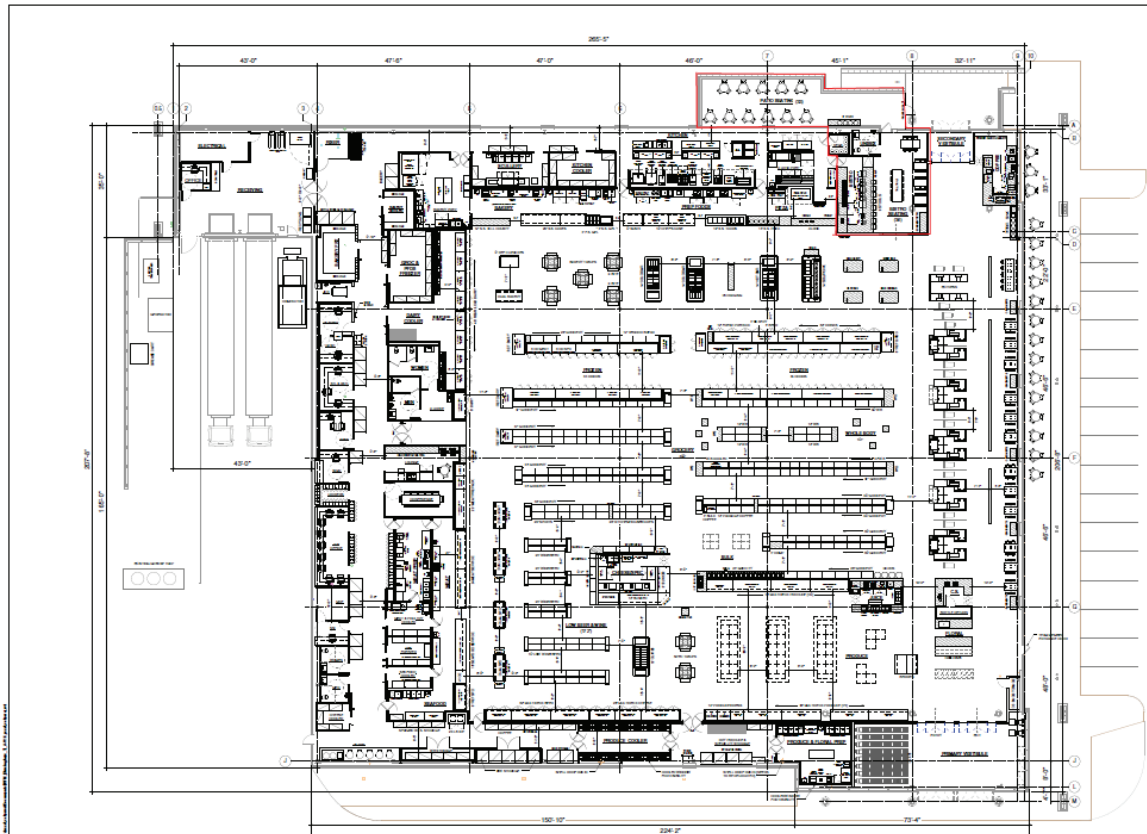
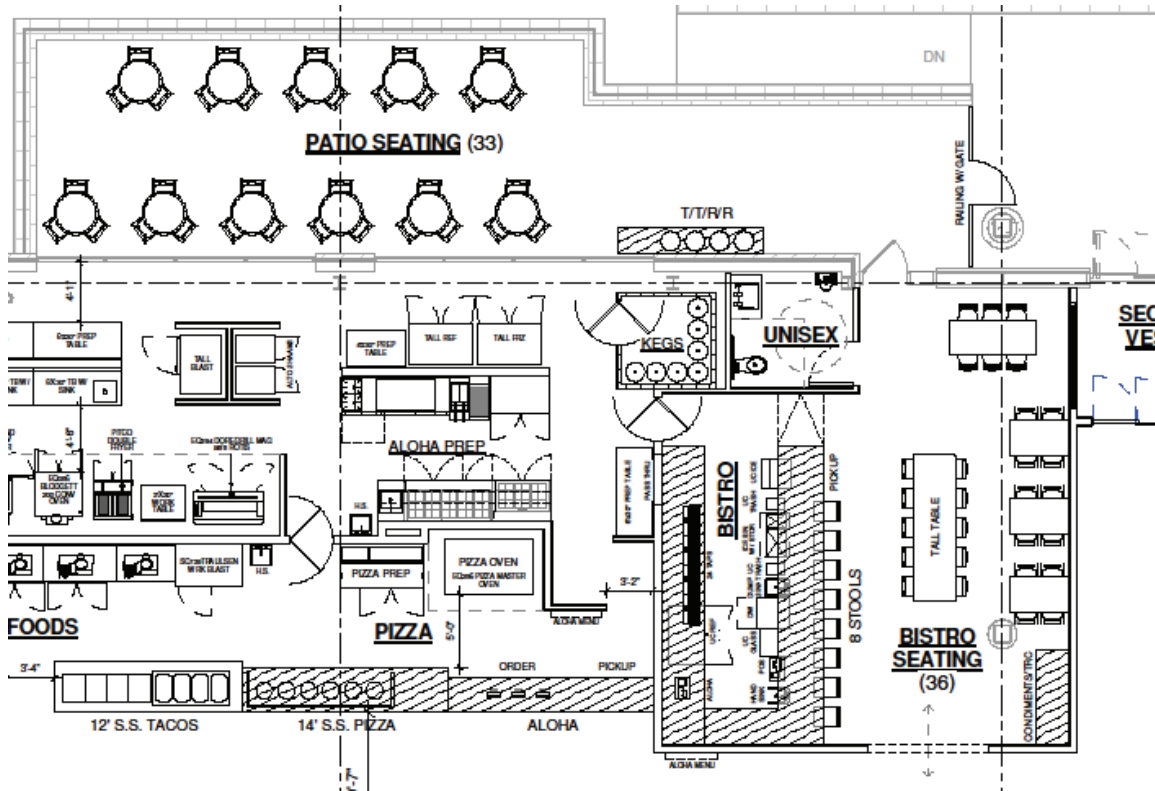
BURGERS

*All burgers served with choice of side

CLASSIC BURGER \$8
American cheese, lettuce, tomato & red onion on a sesame seed bun

BLUE BURGER \$8
Blue cheese, mushrooms, lettuce, tomato & red onion on a sesame seed bun

UP IN SMOKE BURGER \$8
Chipotle pepper, cheddar cheese, bacon, lettuce, tomato & red onion on a sesame seed bun



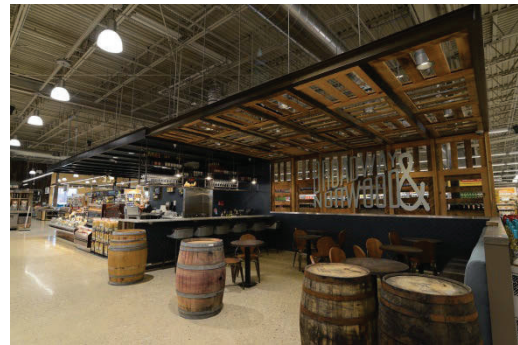
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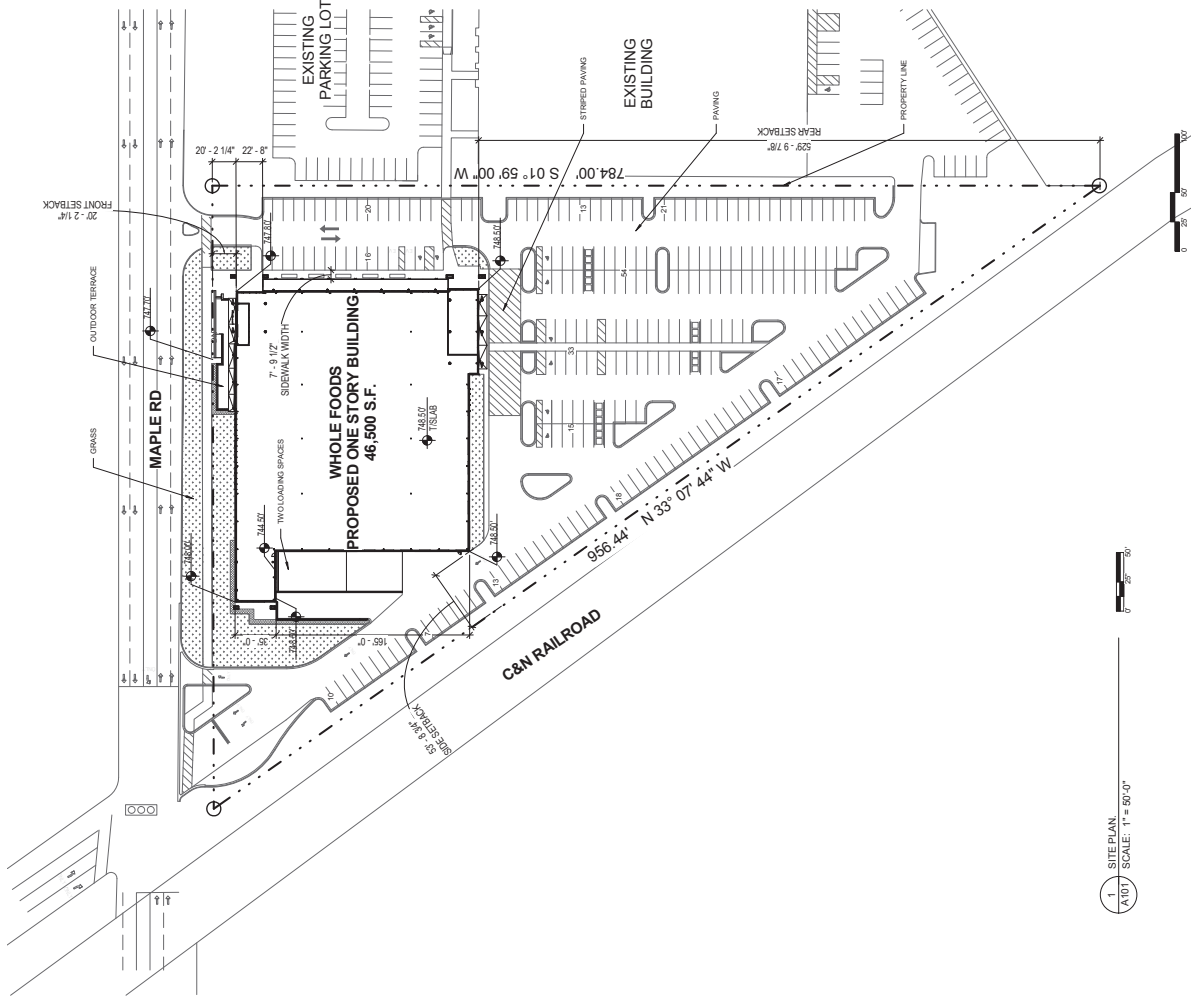
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WHOLE FOODS MARKET - BIR
 2100 EAST MAPLE ROAD
 BIRMINGHAM, AL 35209



WHOLE FOODS
 MARKET
 BIRMINGHAM, AL
 2100 EAST MAPLE ROAD
 BIRMINGHAM, AL 35209
 2024.01.15
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1 SITE PLAN
A101 SCALE: 1" = 50'-0"

WHOLE FOODS
MARKET-BIR
2100 E MAPLE RD., BIRMINGHAM, MI 48009
01/03/17 Project #: 15006

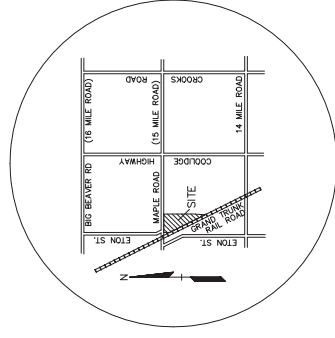
Vicinity Plan

WHOLE
FOODS
MARKET

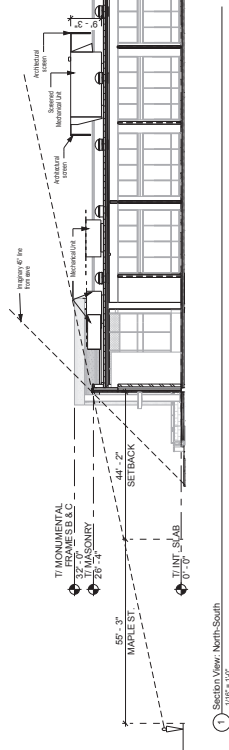


OKW ARCHITECTS
600 W. Jackson, Suite 250
Chicago, IL 60661

OKW
Architects



2 City Review Vicinity Plan Copy 1
A102 SCALE: 1" = 10'-0"

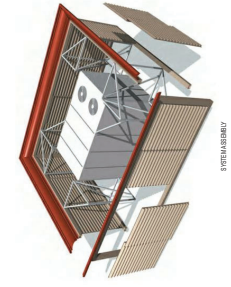


3 Section View: North-South
1/16" = 1'-0"

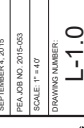
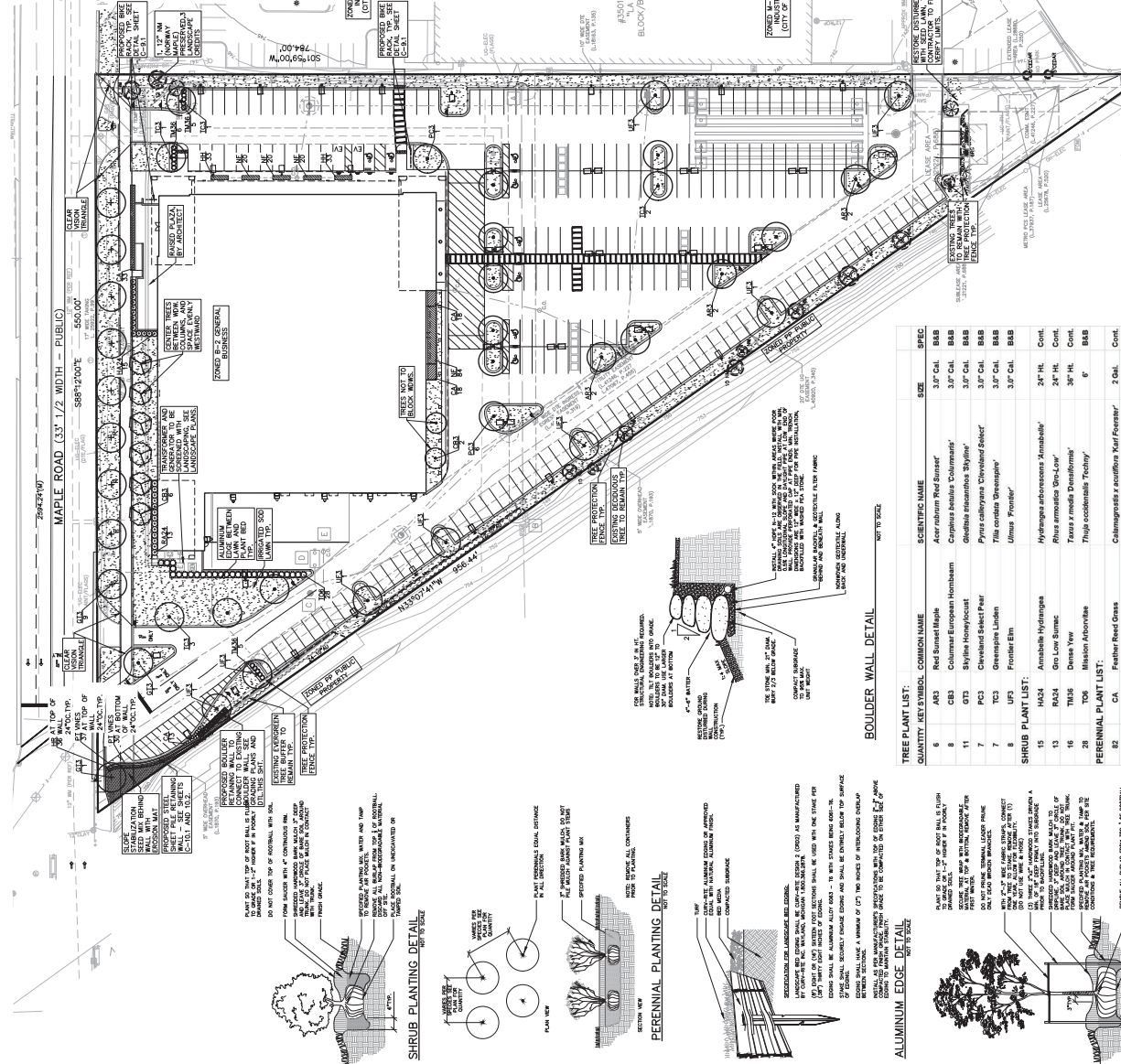
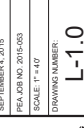
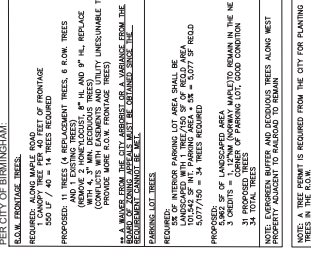
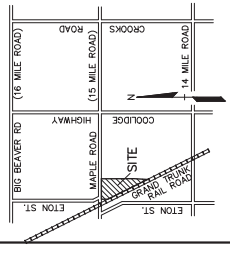
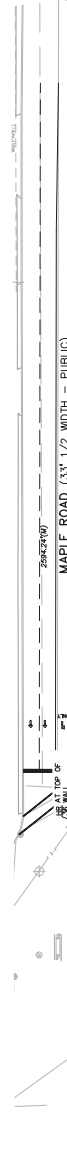
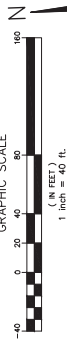


PROPOSED DESIGN INTERIOR
CORNER DETAIL

ENVIOR
SCREENING SYSTEMS
BY CITYSCALE



SYSTEM SHEET



NO.	DATE	DESCRIPTION
1	10/1/13	ISSUED FOR PERMIT
2	10/1/13	REVISIONS TO PERMIT
3	10/1/13	REVISIONS TO PERMIT
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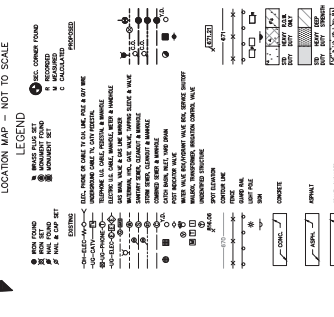
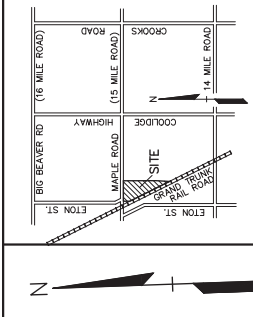
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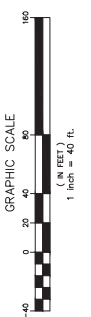
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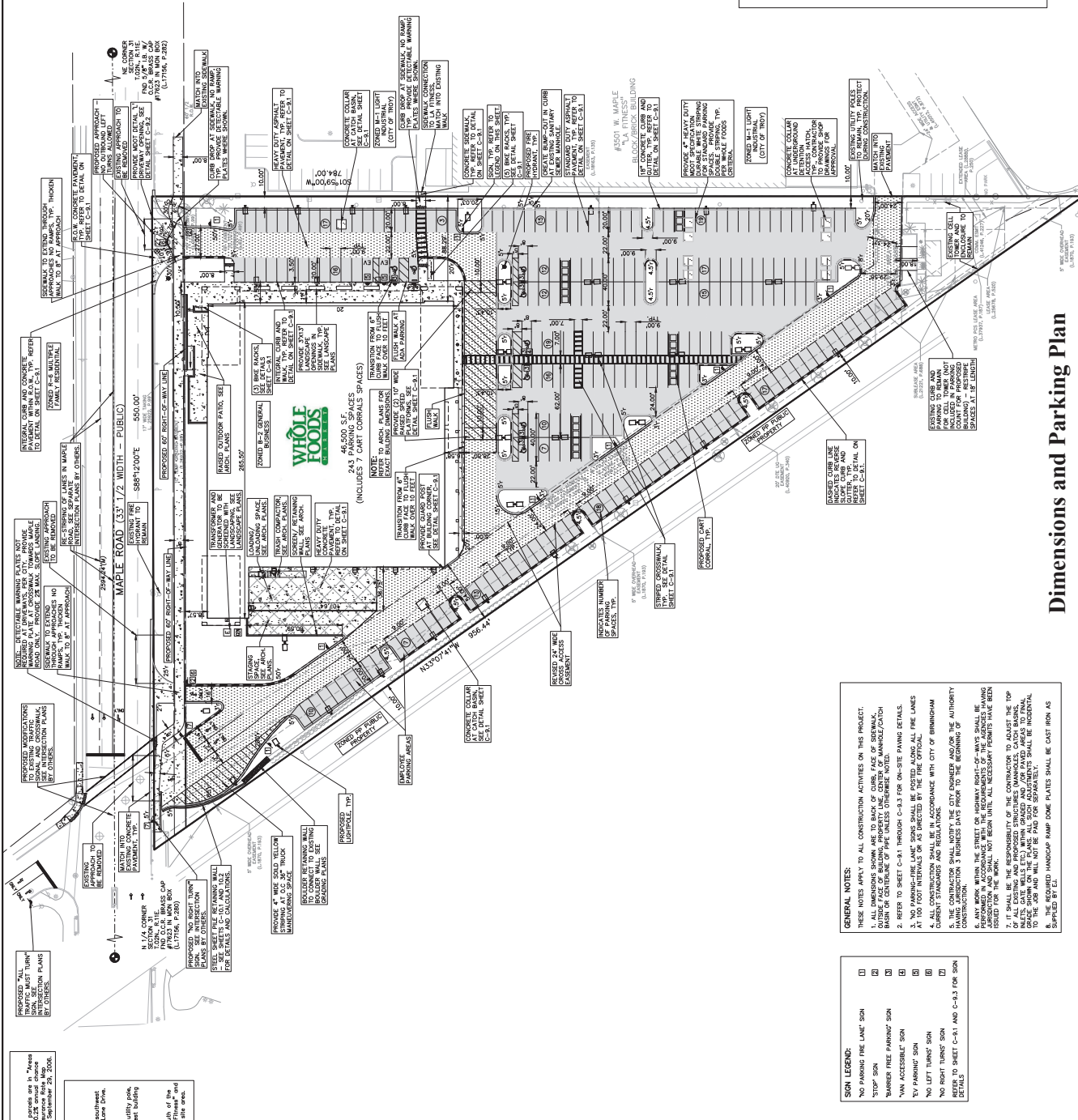
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SITE DATA TABLE

1) TOTAL SITE AREA	= 4.45 ACRES (GROSS)
2) ZONED	R-2 (GENERAL BUSINESS DISTRICT)
3) PROPOSED USE	GROcery STORE
4) BUILDING SETBACKS	FRONT: 10' SIDE: 5' REAR: 5'
5) MAX LOT COVERAGE	N/A
6) MAX BUILDING HEIGHT	40' 3\"/>

PROVIDED:
 1. 1\"/>



FLOODPLAIN
 By graphical means, the subject property is in "Zone A" per Flood Insurance Rate Map (FIRM) 17000-01-0001, Effective September 20, 2006.

BENCHMARKS
 (GPS DERIVED - MAGN) 1. 1\"/>

GENERAL NOTES
 THESE NOTES APPLY TO ALL CONSTRUCTION ACTIVITIES ON THIS PROJECT.
 1. ALL DIMENSIONS SHOWN ARE TO BACK OF CURB FACE OF SIDEWALK, DRIVE OR CENTERLINE OF PAVEMENT UNLESS OTHERWISE NOTED.
 2. REFER TO SHEET C-4.1 THROUGH C-4.3 FOR ON-SITE PAVING DETAILS.
 3. NO PARKING-PAVING LANE SIGNS SHALL BE POSTED ALONG ALL PAVEMENT LANE INTERSECTIONS OR AS DIRECTED BY THE CITY OF BIRMINGHAM CURRENT STANDARD AND REGULATIONS.
 4. THE CONTRACTOR SHALL NOTIFY THE CITY ENGINEER AND/OR THE AUTHORITY OF BIRMINGHAM 3 BUSINESS DAYS PRIOR TO THE BEGINNING OF CONSTRUCTION.
 5. ANY WORK WITHIN THE STREET OR HIGHWAY RIGHT-OF-WAY SHALL BE IN ACCORDANCE WITH THE CITY OF BIRMINGHAM STANDARD AND REGULATIONS.
 6. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME AND SHALL NOT BEIN UNITS. ALL NECESSARY PERMITS HAVE BEEN OBTAINED.
 7. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO ADJUST THE TOP OF ALL EXISTING AND PROPOSED STRUCTURES, MANHOLES, CATCH BASINS, ETC., TO THE FINISHED GRADE SHOWN ON THE PLANS. ALL SUCH ADJUSTMENTS SHALL BE INCIDENTAL TO THE WORK AND WILL NOT BE PAID FOR SEPARATELY.
 8. ALL DIMENSIONS SHOWN ON THE PLANS SHALL BE CAST IRON AS SUPPLIED BY E.I.

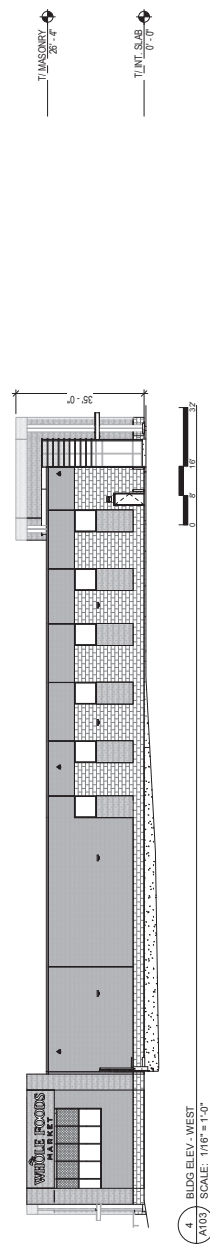
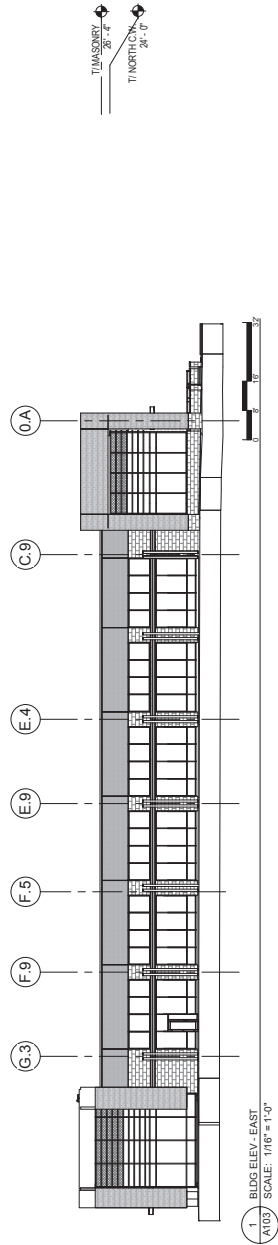
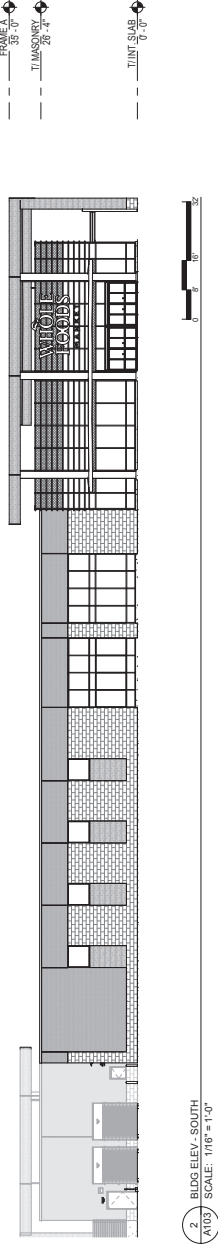
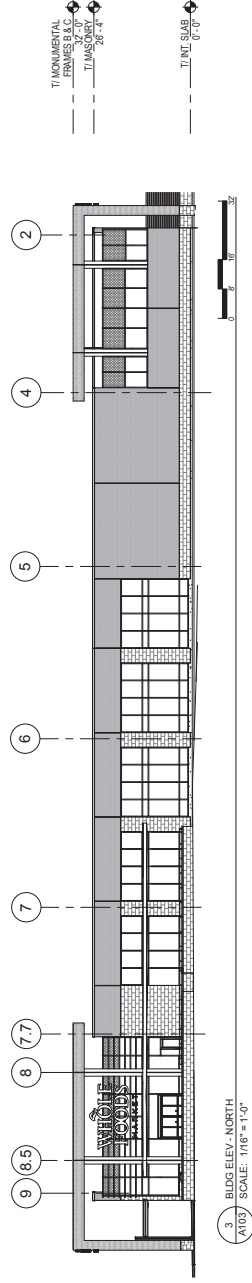
SIGN LEGEND:
 (1) NO PARKING FIRE LANE SIGN
 (2) STOP SIGN
 (3) "BARRIER FREE PARKING" SIGN
 (4) "VAN ACCESSIBLE" SIGN
 (5) "V" PARKING SIGN
 (6) NO LEFT TURN SIGN
 (7) NO RIGHT TURN SIGN
 (8) REFER TO SHEET C-4.1 AND C-4.3 FOR SIGN DETAILS

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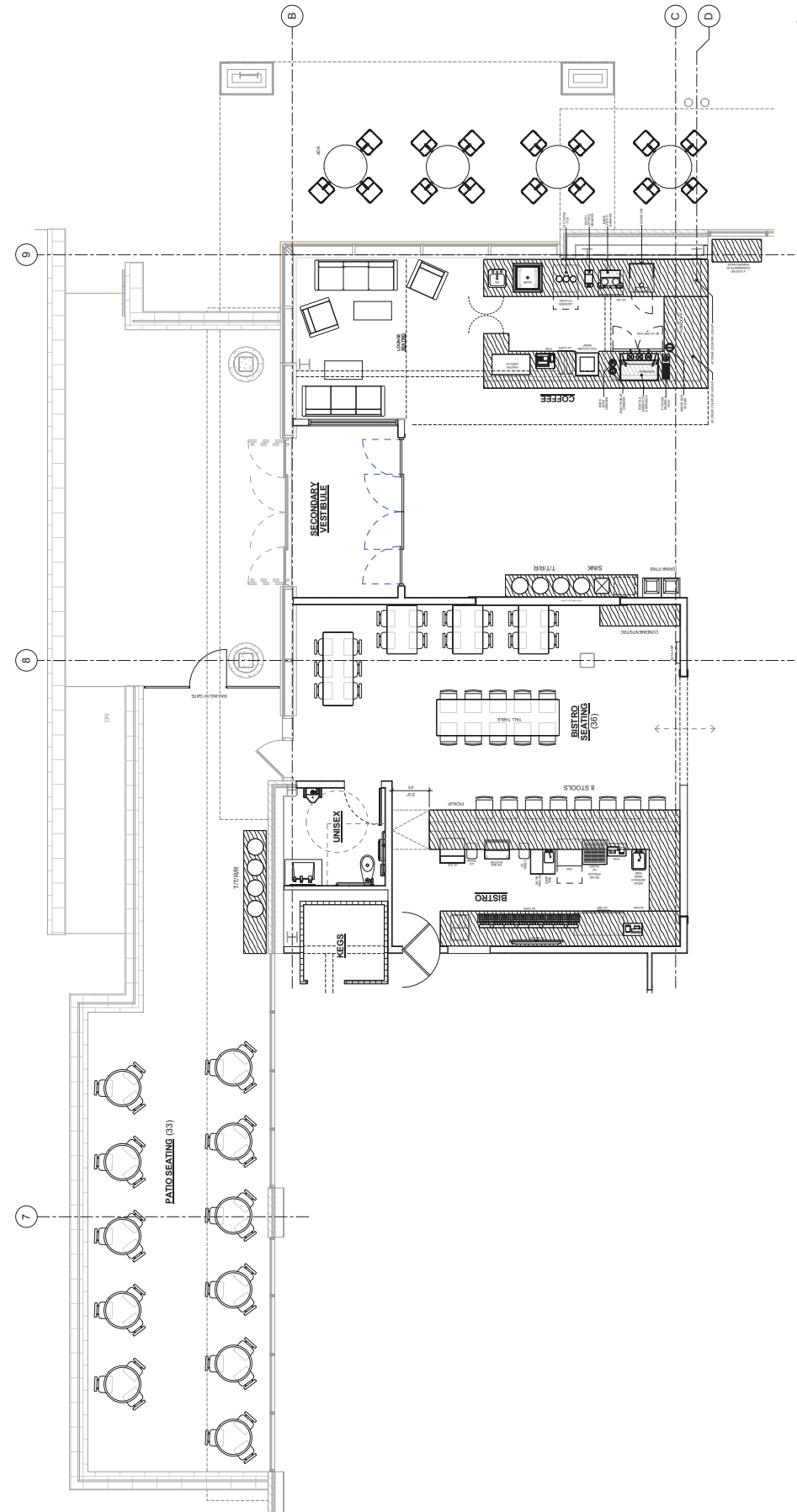
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1 ENLARGED BISTRO PLAN
1/4" = 1'-0"

Bistro Plan



PROOF OF ABILITY TO FINANCE THE PROPOSED PROJECT

Whole Foods Market successfully owns and operates 467 stores across North America and the United Kingdom, with seven of those stores in the State of Michigan. Whole Foods Market has sufficient ability to finance the project in Birmingham. If further information is required, a copy of Whole Foods Market's most recent corporate annual report (10k) is available on the Whole Foods Market website, <http://www.wholefoodsmarket.com/>.



MEMORANDUM

Planning Department

DATE: February 13, 2017

TO: Planning Board

FROM: Lauren Chapman, Assistant Planner

SUBJECT: 2100 E. Maple, Whole Foods Bistro – Final Site Plan and Special Land Use Permit Review

Executive Summary

The subject site is a 4.95 acre site located at 2100 E. Maple Rd. The parcel is zoned B2. The applicant, Whole Foods, is seeking approval of a Bistro License under Chapter 10, Alcoholic Liquors, of the City Code. Chapter 10 requires that the applicant obtain a Special Land Use Permit and approval from the City Commission to operate an establishment with a Bistro License within the City of Birmingham. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and Special Land Use Permit, and then obtain approval from the City Commission for the Final Site Plan, Special Land Use Permit, and for the operation of a Bistro License.

As part of the previously approved grocery store, the applicant is now proposing a small bistro which will serve customers and provide indoor and outdoor seating. This will be located on the northeast portion of the building.

1.0 Land Use and Zoning

- 1.1 Existing Land Use – Currently, the applicant is constructing a 46,500 sq. ft. grocery store, and an adjacent surface parking lot. An existing cell tower and associated equipment enclosure at the far south end of the site will remain.
 - 1.2 Existing Zoning – The property is currently zoned B-2, General Business, with the limitation of grocery stores as the only primary permitted use. The existing use and surrounding uses appear to conform to the permitted uses of each Zoning District.
 - 1.3 2016 Report – The subject site is not located within the boundaries of the Downtown Birmingham 2016 Overlay District.
 - 1.4 Summary of Land Use and Zoning - The following chart summarizes existing land use and zoning adjacent to and/or in the vicinity of the subject site.
-

	North	South	East	West
Existing Land Use	Residential and Commercial	Railroad/ Industrial	Retail/ Commercial	Railroad/ Commercial
Existing Zoning District	R6 Multiple-Family Residential and B1 Neighborhood Business	PP Public Property (Grand Trunk Railroad)	M-1 Light Industrial (City of Troy)	PP Public Property (Grand Trunk Railroad)
Overlay Zoning District	N/A	N/A	N/A	N/A

2.0 Setback, Height, and Floor Area Requirements

A summary of all standards is provided for your review on the attached Zoning Compliance Summary. The summary demonstrates that the proposed plan does meet all the setback, height and floor area requirements for a B-2 (General Business) development.

3.0 Bistro Requirements

Article 9, section 9.02, Definitions, of the Zoning Ordinance defines a bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining. Whole Foods is proposing a bistro with 28 seats in the main dining room, and an additional 8 seats at the bar, for a total of 36 interior seats. Thirty-three outdoor dining seats are also proposed. Whole Foods Bistro will be a new restaurant applying for a new bistro license.

On February 13, 2017, the City Commission voted to amend the Zoning Ordinance to permit bistros in a B2 (General Business) zone located within the Rail District. The applicant is currently applying for a bistro license in the Rail District. The applicant must meet the following conditions to be approved for a bistro:

- (a) No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
 - (b) Alcohol is served only to seated patrons, except those standing in a defined bar area;
 - (c) No dance area is provided;
 - (d) Only low key entertainment is permitted;
 - (e) Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
 - (f) A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1' and 8' in height;
 - (g) All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
-

- (h) Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.

As previously mentioned, Whole Foods is proposing 8 seats at a bar towards west side of the dining room. No direct connect additional bar permit will be permitted from this license if approved. Alcohol may only be served to seated patrons and those standing in the bar area. The applicant has provided a 257 sq.ft. designated bar area, which includes the 8 seats, drink storage, and a beverage station. Whole Foods does not propose any dancing or entertainment area.

Whole Foods is proposing to have 6 seats in the restaurant dining space lining E. Maple Rd. **The applicant has not provided glazing calculations for the front wall of the bistro. A minimum of 70% glazing is required between 1' and 8' in height, or the applicant will be required to obtain a variance from the Board of Zoning Appeals.**

Whole Foods is proposing 33 outdoor dining seats. All of the seats will be on a raised patio, located on the E. Maple frontage of the building.

The applicant intends to have business hours of 8 am to 10 pm seven days a week for both the indoor and outdoor areas of the bistro.

The applicant will be required to enter into a contract with the City outlining the nature of the bistro operation. This must be signed by the applicant prior to review by the City Commission.

4.0 Screening and Landscaping

- 4.1 Dumpster Screening – All trash will be stored within a designated trash room within the building. A trash compactor will be located on the west side of the building within the loading dock screened by a 12' screen/retaining wall and 6' Arborvitae shrubs.
 - 4.2 Parking Lot Screening –Portions of the parking lot along E. Maple Road (both east and west of the building) are not screened by the proposed building. The applicant is proposing 36" high Dense Yew shrubs to act as a screen wall. The shrubs are evergreen and thus meet the screening requirement. The Planning Board may approve an evergreen screen in place of a screen wall.
 - 4.3 Mechanical Equipment Screening –The rooftop mechanical units will be screened by Enviro Screen Systems by Cityscapes using thermoplastic panels. No new rooftop mechanical units are proposed as part of the bistro improvements.
 - 4.4 Landscaping – The applicant is proposing 42 trees and 75 shrubs for the entirety of the property. The trees and shrubs are located around the outer edges of the
-

property and the interior parking lot area. The species and sizes have been provided; they include: Red Sunset Maples, Columnar European Hornbeams, Skyline Honeylocusts, Black Gum, Cleveland Select Pears, Greenspire Lindens and Frontier Elm trees, as well as Annabelle Hydrangea, Gro Low Sumac, Neon Flash Spirea, and Mission Arborvitae.

Article 4, section 4.20 (LA) of the Zoning Ordinance requires that one street tree be provided in the right-of-way for every 40' of street frontage. Thus, 14 trees are required along the E. Maple frontage (550 / 40). The plans note that the applicant is proposing to remove 2 existing street trees, and to plant 5 new street trees. The applicant has stated that more trees cannot be provided due to conflicts with easements and utility lines. The applicant is also proposing 8 new Columnar European Hornbeam trees along the proposed storefront, 6 on the north elevation and 2 on the south elevation, but none of these count as street trees as they are set back on private property up against the building. One Skyline Honeylocust and three Greenspire Linden trees are proposed to be on private property within the landscaped areas to the west of the building. The applicant obtained a waiver from the Arborist to reduce the number of street trees along E. Maple.

In accordance with Article 4, section 4.20 (LA) of the Zoning Ordinance, parking lots larger than 7,500 sf must contain interior landscaping areas for no less than 5% of entire lot. The proposed parking lot is 101,702sq.ft. in size, thus requiring a total of 5,085sq.ft. of landscaped area, with one canopy tree required for each 150 sq.ft. of required landscaped area. Thus, the applicant is required to provide a total of 34 canopy trees. The applicant is proposing a total of 5,962 sq.ft. of landscaped area in the parking lot interior. The landscape plan indicates 31 proposed trees, 28 new and 3 preserved. The applicant sought, and was granted, a credit of three trees based on the size of one of the existing trees on site. The applicant has indicated that the tree to be preserved is a Norway Maple of 12" caliper which does meet the credit requirements, and thus the required number of trees have been provided.

5.0 Parking, Loading, Access, and Circulation

- 5.1** Parking – The applicant has indicated 237 parking spaces are proposed for the entire site. The proposed building is 46,500 sq ft, and requires 1 parking space per 300 sq ft, thus the applicant is required to provide 152 spaces for the store, plus 10 additional parking spaces for the bistro with indoor and outdoor seating (1 parking space / 75 sq.ft. in the bistro area 760 sq.ft.), for a total of 162 parking spaces.
 - 5.2** Loading – In accordance with Article 4, section 4.22 of the Zoning Ordinance, two loading spaces are required for the proposed development. Both loading spaces are proposed to be located on the west side of the building in a loading dock area which will be screened by both the building itself at the northwest corner, and by a 12' high wood slat screen wall on a masonry base which is further obscured with the planting of 28 Mission Arborvitae shrubs. The loading spaces are depressed below the grade of the adjacent parking area to further screen the loading area.
-

- 5.3 Vehicular Circulation and Access – There are currently three curb cuts off of E. Maple onto the subject site. The applicant is proposing to maintain three curb cuts, but is proposing to shift and reconfigure each one. The approach at the west end of the site near the intersection of N. Eton and E. Maple will be widened by approximately 5' to the east and 10' to the west to allow for inbound truck traffic turning left from westbound E. Maple. No inbound right turns will be permitted from eastbound W. Maple. The applicant is proposing one 12' wide inbound lane running south into the site, and two outbound lanes, one left turn only 12' lane and one through lane 14' in width. On July 22, 2015, concerns were raised regarding the capacity of the N. Eton intersection to handle cars queuing to make all turning movements, and concerns over traffic being allowed to travel north from the Whole Foods site to travel northbound on N. Eton. Currently, both the N. Eton and the S. Eton intersections are now controlled by one signal controller and thus are timed together. The applicant is now proposing to add a new controller for the S. Eton intersection to the west, which would allow both intersections to be controlled independently and to provide a longer green signal at S. Eton for most of the signal cycle, allowing more cars to clear the intersection, thus reducing congestion. With regards to the issue of closing northbound traffic flow onto N. Eton, it was determined that eliminating this flow will create more problems than it solves by forcing vehicles off of N. Eton (a minor collector road) and onto surrounding local streets such as St. Andrews and Edenborough which are designed for residential traffic only. Vehicles wishing to turn right are proposed to be accommodated at the next curb cut approximately 40' to the east. This curb cut is proposed to allow one lane to exit the site to accommodate right turns onto eastbound E. Maple. The third existing curb cut will be shifted to the west slightly, and be configured to allow right turns in and right turns out only. No left turns from westbound E. Maple will be permitted, and a median is proposed to eliminate this movement.

With regards to internal circulation on the site, 22' and 24' wide two way drives have been provided running north and south through the parking lot. The 24' wide lane running down the west side of the proposed parking area and curving to the east at the south end of the site is proposed to accommodate delivery trucks exiting from the loading area. These trucks will continue east onto the LA Fitness property to access E. Maple to the east of the subject site. A 28.5' wide drive running east and west along the south elevation of the proposed grocery store is also proposed to accommodate drop off and pick up of patrons. The proposed drive widths on the interior of the site are adequate for proper maneuvering within the site.

- 5.4 Pedestrian Access & Circulation – Pedestrian access to both the interior and exterior seating areas of the Whole Foods bistro is available directly from the City sidewalk along E. Maple Rd. The proposed bistro is also open to the interior of the grocery store. The proposed layout provides for good circulation between the restaurant and the outdoor dining area.
- 5.5 Streetscape – The existing sidewalk along E. Maple is concrete. The applicant is proposing eleven street trees on E. Maple. A waiver from the City Arborist was obtained since the requirement of 14 street trees cannot be met. The proposed outdoor dining will complement the existing streetscape, and add life. The windows
-

along the E. Maple will provide visibility of activity between patrons seated indoors and out, and will assist in creating visual interest at this location.

6.0 Lighting

No new lighting is proposed for the bistro.

7.0 Departmental Reports

- 7.1 Engineering Department – The Engineering Department has no concerns with the development as proposed.
- 7.2 Department of Public Services – The Department of Public Services has no concerns with the development as proposed. They do request that the new trees planted in the ROW are watered regularly to guarantee their survival.
- 7.3 Fire Department – The Fire Department has no concerns with the development as proposed.
- 7.4 Police Department - The Police Department has no concerns with the development as proposed.
- 7.5 Building Division – The Building Division has no concerns with the development as proposed, and has provided their standard comments with regards to Building Code requirements.

8.0 Design Review

The applicant is proposing to utilize the following materials for the exterior of the building (which is already under construction):

- Cast stone to be used on the building base and main body of the building;
- Brick to be used on main body of the building;
- Ceramic tile “wood-look” siding used as detail around smaller windows and at prominent corners of the building;
- Aluminum and glass storefronts with clear glazing; Pre-finished metal coping along the parapet
- Tinted glass for upper windows along the west, north and east elevations. All glazing is required to be clear, or lightly tinted in neutral colors. The applicant has not specified the degree to which the glass is tinted;
- Clear glass
- Metal canopies and column covers along the east, west and north elevations; and
- Metal frame sunshades surrounding windows along the east and west elevations.
- Metal Coping
- Brick

The north elevation is framed at each corner with Ceramic tile “wood-look” siding. The base of the building is cast stone except in three instances where windows extend to the bottom

of the building. The remaining building face is composed of brick and clear glass windows. The east entrance is framed with two columns covered in metal with a green and white "Whole Foods Market" sign centered above the entrance. The entrance is surrounded by a patio that extends towards E. Maple Road and the east parking lot. The patio is shaded with a projecting metal canopy, and contains guard rails along its cast stone retaining wall base. The bistro is proposed to be just west of the large Whole Foods entry doors.

Outdoor Dining Area

Outdoor cafés must comply with the site plan criteria as required by Article 04, Section 4.42 OD-01, Outdoor Dining Standards. Outdoor cafes are permitted immediately adjacent to the principal use and are subject to site plan review and the following conditions:

1. Outdoor dining areas shall provide and service refuse containers within the outdoor dining area and maintain the area in good order.
 2. All outdoor activity must cease at the close of business, or as noted in Subsection 3 below, whichever is earlier.
 3. When an outdoor dining area is immediately adjacent to any single-family or multiple-family residential district, all outdoor activity must cease at the close of business or 12:00 a.m., whichever is earlier.
 4. All tables and chairs provided in the outdoor dining area shall be constructed primarily of metal, wood, or material of comparable quality.
 5. Table umbrellas shall be considered under Site Plan Review and shall not impede sight lines into a retail establishment, pedestrian flow in the outdoor dining area, or pedestrian or vehicular traffic flow outside the outdoor dining area.
 6. For outdoor dining located in the public right-of-way:
 - a. All such uses shall be subject to a license from the city, upon forms provided by the Community Development Department, contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - b. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 5 feet.
 - c. An elevated, ADA compliant, enclosed platform may be erected on the street adjacent to an eating establishment to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - d. No such facility shall erect or install permanent fixtures in the public right-of-way.
 - e. Commercial General Liability Insurance must be procured and maintained on an "occurrence basis" with limits of liability not less than \$1,000,000 per occurrence combined single limit, personal injury, bodily injury and property damage. This coverage shall include an endorsement naming the city, including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members, as an additional insured. This coverage must be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance, and shall include an endorsement providing for a thirty (30) day advance written notice of cancellation or non-renewal to be sent to the city's Director of Finance.
-

The applicant has not provided a trash receptacle within the outdoor dining area along the E. Maple as required by Article 04, section 4.42 OD-01 of the Zoning Ordinance, and is required to do so.

The applicant intends to have business hours of 8am to 10pm seven days a week for both the indoor and outdoor dining areas. The proposed outdoor dining area is immediately adjacent to multi-family zoned property to the north and therefore all outdoor activity must cease at the close of business or 12:00 a.m., whichever is earlier.

The applicant has provided specification sheets of the proposed tables and chairs. The applicant is proposing a total of 11 tables and 33 chairs in the outdoor dining area. The tables are round perforated steel mesh umbrella tables, with tubular steel legs. **The color of the tables has not been provided.** The chairs proposed are Darwin #522; the chairs have a tubular steel frame and seats and backs of extended steel mesh. **The color of the chairs has not been provided.** The same tables are proposed for the interior and the exterior dining areas.

Eleven Shade #980 umbrellas are proposed for the outdoor dining area with either a furniture grade fabric cover or an awning commercial grade fabric. This umbrella does not impede views into any E. Maple storefronts.

The applicant is proposing outdoor seating along the north side of the building, along (but not on) an existing City sidewalk. The outdoor café area is proposed on a raised patio to be enclosed with a railing. The café area is proposed to directly adjacent to the northern building façade. The café area proposes to maintain the required 5' pedestrian pathway at the tightest point.

Signage

No new signage is proposed at this time for the bistro.

9.0 Overlay District

The site is located within the newly created Rail District. The City Commission recently established the boundaries of the Rail District to include 2100 E. Maple, and amended the permitted uses in B2 and B2B zone districts located within the Rail District to allow a bistro with an approved Special Land Use Permit.

10.0 Selection Criteria for Bistro Licenses

Chapter 10, Alcoholic Liquors, section 10-82 provides a limitation on the number of Bistro Licenses that the City Commission may approve, and provides selection criteria to assist the Planning Board and City Commission in evaluating applications for Bistro Licenses. For existing restaurants in the City of Birmingham, section 10-82 states:

- (a) Maximum Number of Bistro Licenses. The City Commission may approve a maximum number of license transfers for Bistro licenses per calendar year as follows:
-

(b) New establishments. Two (2) Bistro Licenses may be approved each calendar year to applicants who do not meet the definition of existing establishments as set forth in (a)(1) above. In addition to the usual criteria used by the City Commission for liquor license requests, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the new establishment applicants, if any, should be approved:

- The applicant's demonstrated ability to finance the proposed project.
- The applicant's track record with the city including responding to city and/or citizen concerns.
- Whether the applicant has an adequate site plan to handle the bistro liquor license activities.
- Whether the applicant has adequate health and sanitary facilities.
- The establishment's location in relation to the determined interest in the establishment of bistros in the Overlay District and the Triangle District.
- The extent that the cuisine offered by applicant is represented in the city.
- Whether the applicant has outstanding obligations to the city (ie property taxes, utilities, etc.).

Whole Foods' application for a bistro license was one of the three applications sent to the Planning Board for consideration for the 2017 calendar year. Whole Foods' bistro will be a new establishment.

The selection criteria provided above must be considered to provide a recommendation to the City Commission as to whether or not to approve the operation of a Bistro License at Whole Foods.

The applicant has stated that Whole Foods owns 467 stores nationwide, and has sufficient resources to open and successfully operate the Birmingham store and proposed bistro.

Whole Foods was not previously located in the City of Birmingham, however they have been responsive to citizen concerns raised during construction.

The plans proposed for the Whole Foods bistro are adequate to handle the bistro food and liquor activities. The applicant has adequate health and sanitary facilities for the proposed bistro.

Whole Foods is now located in the newly created Rail District, and thus is located in one of the areas of interest for bistro establishments.

Whole Foods Bistro is proposing to serve healthy "American" style food. American style food can be found in other restaurants in the City, although the Whole Foods bistro may offer more organic and healthier dishes.

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

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.

11.0 Approval Criteria for Special Land Use Permits

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

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

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

12.0 Suggested Action

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board RECOMMEND APPROVAL of the applicant's request for Final Site Plan and a SLUP to the City Commission to permit a Bistro License for Whole Foods at 2100 E. Maple Rd. with the following conditions:

1. The applicant must provide a minimum of 70% glazing between 1' and 8' in height for the front of the bistro space or obtain a variance from the Board of Zoning Appeals;
2. The applicant will be required to enter into a contract with the City outlining the nature of the bistro operation;
3. The applicant must provide a trash receptacle within the outdoor dining area along the E. Maple or obtain a variance from the Board of Zoning Appeals;
4. The applicant must provide the proposed colors of all of the outdoor furnishings; and
5. Comply with the requirements of City departments.

13.0 Sample Motion Language

Based on a review of the site plans submitted, the Planning Division recommends that the Planning Board RECOMMEND APPROVAL of the applicant's request for Final Site Plan and a SLUP to the City Commission to permit a Bistro License for Whole Foods at 2100 E. Maple Rd.

1. The applicant must provide a minimum of 70% glazing between 1' and 8' in height for the front of the bistro space or obtain a variance from the Board of Zoning Appeals;
2. The applicant will be required to enter into a contract with the City outlining the nature of the bistro operation;
3. The applicant must provide a trash receptacle within the outdoor dining area along the E. Maple or obtain a variance from the Board of Zoning Appeals;
4. The applicant must provide the proposed colors of all of the outdoor furnishings; and
5. Comply with the requirements of City departments.

OR

Motion to recommend DENIAL of the Final Site Plan and SLUP amendment to the City Commission for the commercial space at 2100 E. Maple Rd. for the following reasons:

OR

Motion to recommend POSTPONEMENT of the Final Site Plan and SLUP amendment to the City Commission for the commercial space at 2100 E. Maple Rd, with the following conditions:

1. _____
2. _____

**Planning Board Minutes
February 22, 2017**

3. 2100 E. Maple Rd.

Whole Foods (inside the Whole Foods building)

Request for a SLUP and Final Site Plan Review to allow the operation of a new bistro serving alcoholic liquors inside the Whole Foods Grocery Store currently under construction.

Ms. Ecker explained the applicant went before the City Commission last Monday evening with the recommendations from the Planning Board that the City Commission either clarify the boundaries of the Rail District and include Whole Foods and allow bistros in B-2 if they are in the Rail District; or approve an amendment to the Economic Development Map to include this site to allow an Economic Development License and to allow Economic Development Licenses in B-2. The City Commission decided to go with the Rail District option and concluded this property is not qualified for an Economic Development License.

Ms. Ecker advised the subject site is a 4.95 acre site that is zoned B-2. The applicant, Whole Foods, is seeking approval of a Bistro License under Chapter 10, Alcoholic Liquors, of the City Code. Chapter 10 requires that the applicant obtain a SLUP and approval from the City Commission to operate an establishment with a Bistro License within the City of Birmingham. Accordingly, the applicant is required to obtain a recommendation from the Planning Board on the Final Site Plan and SLUP, and then obtain approval from the City Commission for the Final Site Plan, SLUP, and for the operation of a Bistro License. As part of the previously approved grocery store, the applicant is now proposing a small bistro which will serve customers and provide indoor and outdoor seating. This will be located in the northeast portion of the building.

The proposal is to serve healthy American food.

Whole Foods is proposing 28 seats in the main dining room and eight seats at a bar towards the west side of the dining room. No direct connect additional bar permit will be permitted from this license if approved. Alcohol may only be served to seated patrons and those standing in the bar area. The applicant has provided a 257 sq. ft. designated bar area, which includes the eight seats.

Whole Foods is proposing to have six seats in the restaurant dining space lining E. Maple Rd. The applicant has not provided glazing calculations for the front wall of the bistro. ***A minimum of 70% glazing is required between 1 ft. and 8 ft. in height, or the applicant will be required to obtain a variance from the Board of Zoning Appeals.***

Whole Foods is proposing 33 outdoor dining seats. All of the seats will be on a raised patio, located on the E. Maple Rd. frontage of the building.

They are only required to have 162 parking spaces and they have 237.

The north elevation is framed at each corner with Ceramic tile "wood-look" siding. The base of the building is cast stone except in three instances where windows extend to the bottom of the building. The remaining building face is composed of brick and clear glass windows. The east entrance is framed with two columns covered in metal with a green and white "Whole Foods

Market” sign centered above the entrance. The entrance is surrounded by a patio that extends towards E. Maple Rd. and the east parking lot.

The patio is shaded with a projecting metal canopy, and contains guard rails along its cast stone retaining wall base. The bistro is proposed to be just west of the large Whole Foods entry doors.

Outdoor seating is proposed along the north side of the building, along (but not on) an existing City sidewalk. The outdoor cafe area is proposed on a raised patio enclosed with a railing adjacent to the northern building facade.

The applicant must provide a trash receptacle within the outdoor dining area along E. Maple Rd. or obtain a variance from the BZA.

Ms. Kelly Allen was present on behalf of Whole Foods. She introduced Mr. Scott Salsbury, Executive Director of Store Development from their Chicago office; and Mr. Mark Sherrer, BRR Architecture. She stated this will be the Whole Foods Birmingham Bistro and it is a destination.

Mr. Sherrer talked about how they are able to meet the 70% glazing requirement by shifting the bistro wall. They just found out that two bathrooms rather than one are needed and they will have to work on that.

Mr. Salsbury said these bistros are a key design in their new stores and they are retrofitting their older stores with them. This is a great location and they would love to have a bistro at this store. There will be a fixed menu and the plan is to have wait service inside and outside for dinner.

Mr. Williams said he will not be present at the next meeting. Therefore, he offered the comment that he doesn't understand why the Economic Development License wasn't granted by the City Commission. His view is that they sent three bistros to this board and this board should send the three bistros back to them without prioritizing, since they created the problem.

There were no comments from the public at 10:30 p.m.

Motion by Mr. Boyle

Seconded by Mr. Williams that the Planning Board recommend approval of the applicant's request for Final Site Plan and a SLUP to the City Commission to permit a Bistro License for Whole Foods at 2100 E. Maple Rd. with the following conditions:

- 1) The applicant will be required to enter into a contract with the City outlining the nature of the bistro operation;**
- 2) Comply with the requirements of City departments; and**
- 3) The applicant must provide appropriate restroom facilities to be submitted to staff in the Planning Dept. and approved.**

No one from the audience wished to discuss the motion at 10:33 p.m.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None
Absent: Clein

Existing SLUP Contract

BISTRO CONTRACT

This Contract is entered into this 24th day of April, 2017, by and between **WHOLE FOODS MARKET GROUP, INC.**, whose address is 2100 E. Maple Rd. Birmingham, Michigan 48009, (Licensee) and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48012 (City).

RECITALS:

WHEREAS, Licensee wishes to obtain a liquor license pursuant to MCLA 436.1521a(1)(b); and

WHEREAS, local legislative approval is required by the **CITY OF BIRMINGHAM** for the issuance of a liquor license pursuant to MCLA §436.152a(1)(b) of the Michigan Liquor Control Code of 1998; and

WHEREAS, Licensee desires to enter into this Contract as an inducement to the **CITY OF BIRMINGHAM** to approve the request of the aforementioned issuance of the liquor license; and,

WHEREAS, the **CITY OF BIRMINGHAM** is relying upon this Contract in giving its approval to the issuance of the on-premises licenses as described herein.

NOW, THEREFORE, the parties agree as follows:

1. Licensee shall be permitted to obtain a liquor license for use solely at the Property. Any transfer of the aforementioned license from the Property to any other location in the CITY OF BIRMINGHAM shall require the approval of the Birmingham City Commission in accordance with Section 10-83. In addition, any expansion of the building location at the Property shall also require the approval of the Birmingham City Commission.

2. Licensee does hereby agree that it shall establish a bistro, as defined in Birmingham City Code Chapter 126, Zoning, Article 9, section 9.02, at the Property within 18 months from the date of Special Land Use Permit approval granted by the Birmingham City Commission. Licensee agrees that the bistro must be open and fully operational within this time period, or approval of the Special Land Use Permit will automatically be revoked by the City.

3. Licensee further acknowledges that it must secure a special land use permit for a bistro as required by the Birmingham City Code. It is further agreed that it shall comply with all provisions of the special land use permit, or any amendments thereto, as a condition of this contract. Licensee further acknowledges and agrees that a violation of any provision of the special land use permit or the Michigan Liquor Control Code is a

violation of the terms of the contract entitling the City to exercise any or all of the remedies provided herein.

4. Licensee acknowledges that no modifications to the site plan, floor plan, elevations or operation of the bistro may be made unless approved by the City Commission through a Special Land Use Permit Amendment as required in the Zoning Ordinance. Modifications include, but are not limited to, name changes, ownership changes, remodeling, changes in the number of interior or exterior seats, the use of eisenglass and other enclosure materials on any outdoor dining area, relocation or addition of bar, etc.

5. Licensee acknowledges that it shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance, and further agrees to resolve any future parking issues that may arise, including but not limited to parking overflow and encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit may be cancelled by the City Commission.

6. License further acknowledges that outdoor dining is seasonally permitted from April 1st through November 15th only, with a valid Outdoor Dining Permit. The use of an enclosure system(s) does not allow the outdoor dining season to be extended.

7. Licensee further agrees that it shall not apply or seek from the Michigan Liquor Control Commission any permit endorsements to its liquor license whether available in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without the prior approval of the Birmingham City Commission.

8. Licensee further agrees that it shall not seek any change in its license status/class whether such changes are available now in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without prior approval of the Birmingham City Commission.

9. Licensee agrees that it shall adhere to all Federal, State and Local laws currently in effect or as subsequently amended or enacted.

10. Licensee agrees that its failure to follow any of the provisions herein shall be grounds for the Michigan Liquor Control Commission to suspend, revoke or not renew its liquor license and/or for the Birmingham City Commission to revoke the special land use permit, either of which would prohibit Licensee from operating the bistro. Licensee agrees that in addition to the City of Birmingham's right to seek suspension, revocation or non-renewal of its liquor license and/or revocation of the special land use permit, the City retains any and all rights to enforce this Contract that may be available to it in law or in equity. Licensee further agrees that it shall reimburse the City all of its costs and actual attorney fees incurred by the City in seeking the suspension, revocation or non-renewal of its liquor license and revocation of the special land use

permit, as well as enforcing such other rights as may be available at law and/or in equity.

11. To the fullest extent permitted by law, Licensee and any entity or person for whom Licensee is legally liable, 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 connected therewith, including all costs and actual attorney fees, and for any damages which may be asserted, claimed or recovered against or from 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, death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with Licensee's operation of a bistro at the Property.

12. In the event Licensee fails to reimburse the City the costs and/or attorney fees as required herein, or any part thereof, then said amount could be transferred to the tax roll in accordance with Section 1-14 of the Birmingham City Code.

13. Any disputes arising under this Contract, not within the jurisdiction of the Michigan Liquor Control Commission, shall be settled either by commencement of a suit in Oakland County Circuit Court or by compulsory arbitration, at the election of the City. The Licensee shall notify the City of any dispute it has arising out of this Contract and shall demand that the City elect whether the dispute is to be resolved by submitting it to compulsory arbitration or by commencement of a suit in Oakland County Circuit Court. The City shall make its election in writing within thirty (30) days from the receipt of such notice. If the City elects to have the dispute resolved by compulsory arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, with each of the parties appointing one arbitrator and the two thus appointed appointing a third. In the event the City fails to make such an election, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court.

14. This Contract shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.

15. If any provision of this contract is declared invalid, illegal or unenforceable, such provision shall be severed from this contract and all other provisions shall remain in full force and effect.

16. This Contract shall be binding upon and apply and inure to the benefit of the parties hereto and their respective successors or assigns. The covenants, conditions, and the agreements herein contained are hereby declared binding on the CITY OF BIRMINGHAM and Licensee. It is further agreed that there shall be no change, modification, or alteration hereof, except in writing, signed by both of the parties

hereto. Neither party shall assign any of the rights under this contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

WHOLE FOODS MARKET GROUP, INC.

By: [Signature]

Its: President

Date: 5/2/17

CITY OF BIRMINGHAM

By: [Signature]
Mark Nickita, Mayor

Date: 5/24/17

By: [Signature]
Cherilynn Brown, City Clerk

Date: 5/24/17

List of Violations



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

DATE: May 3, 2022
TO: Nicholas Dupuis, Planning Director
FROM: Jack D. Pesh, Fire Marshal
SUBJECT: Whole Foods Fire Inspections 2020-present

Fire Inspection Records

2020

- 1/8/20 Liquor License Annual Inspection – No issues
- 12/1/20 Target Hazard Inspection – No violations found

2021

- 1/27/21 Liquor License Annual Inspection – No issues
- 4/15/21 Site Plan Review – Outdoor dining approved

2022

- 1/10/22 Liquor License Annual Inspection – 3 violations found, (corrected) no citations Issued.
- 4/6/22 Target Hazard Inspection – 3 violations found
 - **Citations issued for:**
 - Obstructed egress door (table and chairs)
 - Combustible materials in exit (storage)
 - Egress continuity

All violations were corrected immediately following citation issuance. Court appearance is pending.

- 4/26/22 Target Hazard Inspection – Commercial hood system deficiencies found during scheduled cleaning and maintenance. Contractor to correct deficiencies. No citations issued at this time. Business owner has scheduled service.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	Whole Foods	Inspection Date:	1/8/2020
Address:	2100 East Maple	InspectionType:	Annual, Liquor License
Suite:			
		Inspected By:	Joel Campbell 248-530-1924 jcampbell@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Passed.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	Whole Foods	Inspection Date:	12/1/2020
Address:	2100 East Maple	InspectionType:	Target/ Hazard Inspection
Suite:		Inspected By:	Joel Campbell 248-530-1924 jcampbell@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Went to this business to follow up on a complaint about a blocked exit door. Upon investigation, and discussion with the manager on duty, one set of sliding doors on the exterior of the building, on the south side are blocked for occupant capacity control due to COVID-19. Business has stationed and employee at this blocked door to count people entering and exiting. Upon evaluation with Mike Morad, Jack Pesha, and myself, the business has plenty of egress doors. No hazard.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	Whole Foods	Inspection Date:	1/27/2021
Address:	2100 East Maple	InspectionType:	Annual, Liquor License
Suite:		Inspected By:	Joel Campbell 248-530-1924 jcampbell@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Annual Liquor License inspection with Mike Morad. Passed.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	Whole Foods	Inspection Date:	4/15/2021
Address:	2100 East Maple	InspectionType:	Site Plan Review
Suite:		Inspected By:	Jack Pesha

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Outdoor dining approved as presented on this day.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: Whole Foods **Inspection Date:** 1/18/2022 (Initial Insp. Date: 1/10/2022)
Address: 2100 East Maple **InspectionType:** Reinspection #1 (Annual, Liquor License)
Suite:
Inspected By: Jack Pesha

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 Chapter 3 General Requirements	315.3.1 - Ceiling clearance.

 **Cleared on 1/18/2022**

Code Text:

Storage shall be maintained 2 feet (610 mm) or more below the ceiling in nonsprinklered areas of buildings or not less than 18 inches (457 mm) below sprinkler head deflectors in sprinklered areas of buildings.

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 6 Building Services and Systems	605.1 - Abatement of electrical hazards.
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 **Cleared on 1/18/2022**

Code Text:

Identified electrical hazards shall be abated. Identified hazardous electrical conditions in permanent wiring shall be brought to the attention of the responsible code official. Electrical wiring, devices, appliances and other equipment that is modified or damaged and constitutes an electrical shock or fire hazard shall not be used.

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 6 Building Services and Systems	605.3.1 - Electrical room labeling.
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 **Cleared on 1/18/2022**

Code Text:

Doors into electrical control panel rooms shall be marked with a plainly visible and legible sign stating ELECTRICAL ROOM or similar approved wording. The disconnecting means for each service, feeder or branch circuit originating on a switchboard or panelboard shall be legibly and durably marked to indicate its purpose unless such purpose is clearly evident.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord,

Birmingham Fire Department

572 South Adams Road
Birmingham, MI 48009
Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: Whole Foods
Address: 2100 East Maple
Suite:
Inspection Date: 4/6/2022
InspectionType: Target/ Hazard Inspection
Inspected By: Jack Pesha

Insp. Result	Location	Code Set	Code
Pass	Floor 1	IFC 2015 Chapter 5 Fire Service Features	505.1 - Address identification.
Fail	Floor 1	IFC 2015 Chapter 10 Means of Egress	1031.3 - Obstructions.
Inspector Comments: Table and chairs blocking exit door in lounge. Remove immediately. Keep exit door clear at all times.			
Fail	Floor 1	IFC 2015 Chapter 3 General Requirements	315.3.2 - Combustible Materials in Exits
Inspector Comments: Combustible storage in path of egress in hallway labeled exit. Remove combustible storage from this area.			
Fail	Floor 1	IFC 2015 Chapter 10 Means of Egress	1003.6 - Means of egress continuity.
Inspector Comments: Several obstructions found in hallway including: carts, boxes, protrusions, garbage/recycle cans. Keep this marked exit path clear at all times and maintain minimum width requirements.			

Inspector Comments:

At 6:29 am on 4/6/22 Chief Wells informed myself that on his way into work he passed Whole Foods located at 2100 East Maple and noticed possible fire code violations through the windows facing East Maple.

I performed a target hazard inspection at 8:00 am when the store was opened to the public and found that combustible materials were stored in an exit path and the exit path width was impinged by carts, waste/recycle cans and protrusions. Also, an exit door located in the lounge was blocked with a table and chairs.

Manager on duty was informed of violations and told citations would be issued.

Three misdemeanor citations were issued on this day for listed violations to manager on duty Daniel Copeland representing Whole Foods.

UNLESS OTHER ARRANGEMENTS ARE MADE, AN INSPECTOR WILL RETURN ON 4/20/2022 FOR RE-INSPECTION. YOUR CO-OPERATION IN TAKING CARE OF THE MATTERS LISTED IS APPRECIATED.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord, and/or its representative needs additional time due to the scheduling of specialty contractors. In such a case, written notification shall be provided to the Fire Inspector from said contractor that work/parts have been ordered. This notification shall be emailed, faxed, or hand delivered to the Birmingham Fire Department c/o Fire Prevention as soon as possible.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: Whole Foods
Address: 2100 East Maple
Suite:
Inspection Date: 4/21/2022 (Initial Insp. Date: 4/6/2022)
InspectionType: Reinspection #1 (Target/ Hazard Inspection)
Inspected By: Jack Pesha

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 Chapter 3 General Requirements	315.3.2 - Combustible Materials in Exits

 **Cleared on 4/21/2022**

Code Text:

Combustible materials shall not be stored in exits or enclosures for stairways and ramps.

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 10 Means of Egress	1003.6 - Means of egress continuity.
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 **Cleared on 4/21/2022**

Code Text:

The path of egress travel along a means of egress shall not be interrupted by a building element other than a means of egress component as specified in this chapter. Obstructions shall not be placed in the minimum width or required capacity of a means of egress component except projections permitted by this chapter. The minimum width or required capacity of a means of egress system shall not be diminished along the path of egress travel.

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 10 Means of Egress	1031.3 - Obstructions.
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 **Cleared on 4/21/2022**

Code Text:

A means of egress shall be free from obstructions that would prevent its use, including the accumulation of snow and ice.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord,

State of Michigan Uniform Law Citation Ticket No. BC 93024 [] Victim Involved

US DOT # Incident No. Dept. No.

The People of: [] the State of Michigan [] Township [] City [] Village [] County Local Use/Arrest No. Detection Device

OF: Birmingham BAC

THE UNDERSIGNED Month Day Year At approximately M. Date Month Day Year
SAYS THAT ON: 4 6 22 0800 P.M. 5 17 81

State [] Oper./Chauff. Driver License Number C145 135 429 374
[] CDL

Race Sex Height Weight Hair Eyes Occupation/Employer Whole Foods-MGR.

Name (First, Middle, Last) DANIEL Copeland for Whole Foods

Street 14910 Arwater

City State Zip Code Sterling Heights MI. 48313

E-mail Address Cellular Phone 248-550-9196

Vehicle Plate No. Year State Vehicle Description (Year, Make, Color) Veh. Type

THE PERSON NAMED ABOVE, in violation of [] Local Ordinance [] State Law [] Administrative Rule

UPON 2100E. MAPLE

AT OR NEAR Whole Foods

WITHIN [X] CITY [] VILLAGE [] TOWNSHIP OF BIRMINGHAM

COUNTY OF OAKLAND DID THE FOLLOWING Charge

Type	MCL Cite/PACC Code/ Ordinance	Description (include any bond amount collected on each charge)	No.
<input type="checkbox"/> C/I <input type="checkbox"/> Warn <input type="checkbox"/> Authorization pend.		OBSTRUCTIONS	
<input checked="" type="checkbox"/> Misd <input type="checkbox"/> Fug <input type="checkbox"/> Fel <input type="checkbox"/> Waiv	1031.3	Means of Egress	1
<input checked="" type="checkbox"/> C/I <input type="checkbox"/> Warn <input type="checkbox"/> Authorization pend.		Combustible Materials	
<input checked="" type="checkbox"/> Misd <input type="checkbox"/> Fug <input type="checkbox"/> Fel <input type="checkbox"/> Waiv	315.3.2	IN EXITS-MEANS	
<input checked="" type="checkbox"/> C/I <input type="checkbox"/> Warn <input type="checkbox"/> Authorization pend.		Means of Egress	
<input checked="" type="checkbox"/> Misd <input type="checkbox"/> Fug <input type="checkbox"/> Fel <input type="checkbox"/> Waiv	1003.6	CONTINUITY	3

TO THE COURT: Do not arraign on a felony charge until an authorized complaint is filed.

Offense Code(s) 1 2 3

Key for Type: C/I=Civil Infraction Misd=Misdemeanor Fel=Felony Warn=Warning Fug=Fugitive
Waiv=Violation for Which Fines/Costs May be Waived Authorization pend.=Authorization pending

- Egress Blocked with Tables
- Chains, Cars - Do on
- Damage in Path of Egress
- Cars, Cans, Blocking Egress with

CHECK IF APPROPRIATE [] Damage to Property [] Local Court Bond \$
[] Vehicle Impounded [] Injury [] License Posted in Lieu of Bond
[] Traffic Crash [] Death [] Appearance Certificate
Person In Active Military Service [] Yes [] No [] None

SEE DATE BELOW. SEE BACK OF CITATION FOR EXPLANATION AND INSTRUCTIONS

Appearance Date on or before
Hearing Date (if applicable) on [] Contact Court
[] Juvenile Traffic Misd. (Court will Notify) [] Formal Hearing Required. (Court will Notify)

In the 48TH DISTRICT Court of MICHIGAN

Court Address & Phone Number 4280 TELEGRAPH RD.
BLOOMFIELD HILLS, MI 48302-3200
PHONE (248) 647-1141

I served a copy of the civil infraction complaint upon the defendant (or owner/occupant by posting if applicable).
I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief.

Complainant's Signature and receipt (if applicable) Month Day Year 4 6 22
Officer's Name (printed) Jack D. Lesha Officer's No. 99988

Agency ORI MI- 6325900 Agency Name BIRMINGHAM POLICE Fire Marshal

UC-01a, Rev. 10/21

COURT COPY

Daniel Copeland-Whole Foods

2100 East Maple

Citation Explanation

Citation #: BC 93024

1031.3 Obstructions

Egress door blocked with tables in chairs located in lounge.

315.3.2 Means of egress

Combustible materials stored in exit path.

1003.6 Means of egress continuity

Egress width impinged and blocked with carts, cans and protrusions.





Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: Whole Foods **Inspection Date:** 4/26/2022
Address: 2100 East Maple **InspectionType:** Target/ Hazard Inspection
Suite:

Inspected By: Nick Slanda
 248-530-1906
 nslanda@bhamgov.org

#	Insp. Result	Location	Code Set	Code
0	Fail	Floor 1	IFC 2015 Chapter 9 Fire Protection Systems	907.8.5 - Inspection, testing and maintenance.

Code Text:

The building owner shall be responsible to maintain the fire and life safety systems in an operable condition at all times. Service personnel shall meet the qualification requirements of NFPA 72 for inspection, testing and maintenance of such systems. Records of inspection, testing and maintenance shall be maintained.

Inspector Comments: Multiple deficiencies were found during hood inspection. Manager Jolie stated they are working on getting deficiencies corrected as soon as possible.

UNLESS OTHER ARRANGEMENTS ARE MADE, AN INSPECTOR WILL RETURN ON 5/10/2022 FOR RE-INSPECTION. YOUR CO-OPERATION IN TAKING CARE OF THE MATTERS LISTED IS APPRECIATED.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord, and/or its representative needs additional time due to the scheduling of specialty contractors. In such a case, written notification shall be provided to the Fire Inspector from said contractor that work/parts have been ordered. This notification shall be emailed, faxed, or hand delivered to the Birmingham Fire Department c/o Fire Prevention as soon as possible.

Failure to remedy cited violations within ten (10) business days will result in the issuance of a misdemeanor ticket(s) requiring a court appearance and fines.

Thank you for your cooperation in keeping your business and our community safe!



MEMORANDUM

Planning Division

DATE: May 9, 2022

TO: Thomas M. Markus, City Manager

FROM: Nicholas Dupuis, Planning Director

SUBJECT: Public Hearing for 220 Merrill – 220 Restaurant – Special Land Use Permit Amendment, Final Site Plan & Design Review

INTRODUCTION:

The applicant has submitted an application for a Special Land Use Permit Amendment, Final Site Plan and Design Review for a new outdoor dining platform at an existing food and drink establishment in Downtown Birmingham. The applicant is also proposing minor changes to the existing outdoor dining patio private property, but is not requesting any interior or building façade changes at this time.

BACKGROUND:

On March 31, 2022, the Planning Board moved to recommend approval to the City Commission the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 220 Merrill with the following conditions

1. The applicant must obtain an Outdoor Dining Permit and enter into a contract with the City for the SLUP Amendment;
2. All outdoor activity must cease at the close of business;
3. The applicant must obtain a favorable recommendation from the Advisory Parking Committee prior to City Commission review;
4. The applicant must submit a Design Review application to the Historic District Commission prior to City Commission review;
5. The applicant must comply with the requests of all City Departments; and
6. The applicant must submit revised site plans addressing Planning Board comments prior to City Commission review.

On April 6, 2022, the Advisory Parking Committee recommended denial to the City Commission citing issues with valet and the limited parking available on Merrill St.

On May 4, 2022, the Historic District Commission moved to approve the Design Review application for 220 Merrill with the following conditions:

1. The applicant obtain full approval from the City Commission prior to installation; and
2. The applicant must revise the color palette of the platform to reduce the platform's overall visual effect on the Central Business Historic District.

At this time, the applicant has provided amended site and design plans addressing the Planning Board and Advisory Parking Committee comments for review by the City Commission. However, the color changes suggested by the Historic District Commission are not reflected in the documents.

In regards to statements made at the Planning Board and Advisory Parking Committee related to the valet service at 220 Restaurant, Planning Division Staff has verified with the Clerk that the valet service provider for 220 Restaurant, In House Valet, applied to use a total of 2 metered on-street parking spaces for valet for the period of January 2022-June 2022. The applicant has stated that they do NOT intend to continue the use of metered on-street parking spaces for valet if the proposed dining platform were to be approved. Rather, they would shift their valet operations entirely to the adjacent private alley.

LEGAL REVIEW:

The City Attorney has reviewed this request and resolution and has no objections as to form and content.

FISCAL IMPACT:

There are no fiscal impacts for this agenda item.

PUBLIC COMMUNICATIONS:

As required for Special Land Use Permit and Final Site Plan Reviews, a legal ad was placed in a newspaper of local circulation to advertise the nature of the request in advance of the March 31, 2022 Planning Board meeting, and notices were sent out to all property owners and tenants within 300 ft. of the property. In addition, a second round of notices was sent out to advertise the public hearing at the City Commission on May 9, 2022.

SUMMARY:

The Planning Division requests that the City Commission consider the Special Land Use Permit, Final Site Plan and Design Review application for 220 Merrill – 220 Restaurant.

ATTACHMENTS:

Please find attached the following documents for your review:

- Special Land Use Permit Resolution
- Executed Special Land Use Permit Contract
- Current Site/Design Plans
- Planning Board Review Documents
- Historic District Commission Review Documents
- Meeting Minutes
- Enforcement History

STAFF NOTE:

Similar to other projects, based on site inspections, a review of the site plans, the slim margins within the required 5 ft. clear walking path, and the competing crossing pedestrian traffic flow that

would result from the installation of the new platform, Staff recommends that the City Commission require the applicant to submit revised site plans addressing the following as a part of the Special Land Use Permit Amendment:

1. The applicant must remove all privately owned obstructions such as the existing planter boxes, as well as the hanging planters proposed on the new fence on the east side of the existing patio from the public right-of-way or relocate them to private property; and
2. The applicant must install city standard tree grates over both tree boxes that exist along the right-of-way adjacent to the property.

In addition, the Planning Division recommends that the City Commission require the applicant to submit revised site/design plans addressing the conditions of approval from the Historic District Commission for review and approval by the Planning Director (Staff Liaison to the Historic District Commission)

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to APPROVE the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 220 Merrill – 220 Restaurant – to allow the addition of a new outdoor dining platform in the Merrill St. right-of-way with the following conditions:

1. The applicant must remove all privately owned obstructions such as the existing planter boxes, as well as the hanging planters proposed on the new fence on the east side of the existing patio from the public right-of-way or relocate them to private property;
2. The applicant must install city standard tree grates over both tree boxes that exist along the right-of-way adjacent to the property; and
3. The applicant must submit revised site/design plans addressing the conditions of approval from the Historic District Commission for review and approval by the Planning Director.

OR

Make a motion adopting a resolution to DENY the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 220 Merrill – 220 Restaurant – to deny the addition of a new outdoor dining platform in the Merrill St. right-of-way with the conditions noted above in Staff Notes.

220 Restaurant
220 Merrill St.
Special Land Use Permit Amendment 2022

WHEREAS, A Special Land Use Permit Amendment application was filed in January 2022 for approval of a new outdoor dining platform in the Merrill right-of-way at 220 Merrill;

WHEREAS, The land for which the Special Land Use Permit Amendment is sought is located on the south side of Merrill, east of Pierce and West of S. Old Woodward;

WHEREAS, The land is zoned B4, which permits the operation of food and drink establishments serving alcoholic beverages for on premise consumption with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board on March 31, 2022 reviewed the application for a Special Land Use Permit Amendment, Final Site Plan and Design Review and recommended approval to the City Commission to allow a new outdoor dining platform in the Merrill right-of-way with the following conditions:

1. The applicant must obtain an Outdoor Dining Permit and enter into a contract with the City for the SLUP Amendment;
2. All outdoor activity must cease at the close of business;
3. The applicant must obtain a favorable recommendation from the Advisory Parking Committee prior to City Commission review;
4. The applicant must submit a Design Review application to the Historic District Commission prior to City Commission review;
5. The applicant must comply with the requests of all City Departments; and
6. The applicant must submit revised site plans addressing Planning Board comments prior to City Commission review.

WHEREAS, The Advisory Parking Committee on April 6, 2022 reviewed the application for a Special Land Use Permit Amendment, Final Site Plan and Design Review and recommended denial to the City Commission to allow a new outdoor dining platform in the Merrill right-of-way and to utilize three public parking spaces;

WHEREAS, The Historic District Commission on May 4, 2022 approved a Design Review application to allow a new outdoor dining platform within the Merrill right-of-way and the Central Business Historic District with the following conditions:

1. The applicant obtain full approval from the City Commission prior to installation; and
2. The applicant must revise the color palette of the platform to reduce the platform's overall visual effect on the Central Business Historic District.

WHEREAS, The applicant has agreed to provide all requested information and to

comply with the requests of all City departments;

WHEREAS, The Birmingham City Commission has reviewed 220 Restaurant's Special Land Use Permit Amendment application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that 220 Restaurant's application for a Special Land Use Permit Amendment, Final Site Plan and Design Review at 220 Merrill is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to ensure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit Amendment is granted subject to the following conditions:

1. 220 Restaurant shall abide by all provisions of the Birmingham City Code;
2. 220 Restaurant must maintain a valid Outdoor Dining Permit and enter into a Lease Agreement for the use of public property;
3. 220 Restaurant shall provide city standard tree grates for the two tree boxes in front of the restaurant along Merrill St.;
4. 220 Restaurant must remove all privately owned obstructions such as planter boxes and hanging planters from the Merrill St. right-of-way;
5. 220 Restaurant must submit revised site/design plans addressing the conditions of approval from the Historic District Commission for review and approval by the Planning Director; and
6. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, 220 Restaurant 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 220 Restaurant to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

BE FURTHER RESOLVED that 220 Restaurant is recommended for the operation of a new outdoor dining platform in the Merrill right-of-way, above all others, subject to final inspection.

I, Alexandria Bingham, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on May 9, 2022.

Alexandria Bingham
City Clerk

Special Land Use Permit Contract

**CONTRACT FOR A SPECIAL LAND USE PERMIT AMENDMENT
FOR 220 MERRILL – 220 RESTAURANT**

This Contract is entered into this 24 day of April, 2022 by and between 220 Restaurant, whose address is 220 Merrill, (Licensee) and the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation, whose address is 151 Martin Street, Birmingham, Michigan 48012 (City).

R E C I T A L S:

WHEREAS, a Special Land Use Permit Application was filed in January, 2022 for approval of a new outdoor dining platform in the Merrill St. right-of-way at an existing food and drink establishment serving alcoholic liquors for on premise consumption; and,

WHEREAS, the land for which the Special Land Use Permit Agreement is sought is located on the south side of Merrill St. between Pierce St. and S. Old Woodward; and,

WHEREAS, the land is zoned B4 (Business-Residential) and D4 (Downtown Overlay) which permits the operation of a food and drink establishment serving alcoholic liquors for on premise consumption with a Special Land Use Permit; and,

WHEREAS, Article 7, Section 7.34 of Chapter 126 Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission after reviewing recommendations on the site plan and design from the Planning Board for the proposed Special Land Use; and,

WHEREAS, the City of Birmingham Commission is approving this agreement in granting a contract to 220 Restaurant for the issuance of an on-premises license, Special Land Use Permit.

NOW, THEREFORE, the parties agree as follows:

1. Licensee has a liquor license for use solely at the Property. Any transfer of the aforementioned license from the Property to any other location in the CITY OF BIRMINGHAM shall require the approval of the Birmingham City Commission in accordance with Section 10-83. In addition, any expansion, of the Property shall also require the approval of the Birmingham City Commission.

2. Licensee further acknowledges that it must secure a Special Land Use Permit for a food and drink establishment as required by the Birmingham City Code. It is further agreed that it shall comply with all provisions of the Special Land Use Permit, or any amendments thereto, as a condition of this contract. Licensee further acknowledges and agrees that a violation of any provision of the Special Land Use Permit or the Michigan Liquor Control Code is a violation of the terms of this contract entitling the City to exercise any or all of the remedies provided herein.

3. Licensee acknowledges that no modifications to the site plan, floor plan, elevations

or operation of the establishment may be made unless approved by the City Commission through a Special Land Use Permit Amendment as required in the Zoning Ordinance. Modifications include, but are not limited to, name changes, ownership changes, remodeling, changes in the number of interior or exterior seats, etc.

4. Licensee further acknowledges that outdoor dining is permitted with a valid Outdoor Dining Permit.

5. Licensee further agrees that it shall not apply or seek from the Michigan Liquor Control Commission any permit endorsements to its liquor license whether available in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without the prior approval of the Birmingham City Commission.

6. Licensee further agrees that it shall not seek any change in its license status/class whether such changes are available now in the current Michigan Liquor Control Code or in future Michigan Liquor Control Codes, or amendments thereto, without prior approval of the Birmingham City Commission.

7. Licensee agrees that it shall adhere to all Federal, State and Local laws currently in effect or as subsequently amended or enacted.

8. Licensee agrees that its failure to follow any of the provisions herein may be grounds for the Michigan Liquor Control Commission to suspend, revoke or not renew its liquor license and/or for the Birmingham City Commission to revoke the Special Land Use Permit, either of which would prohibit Licensee from operating the establishment. Licensee agrees that in addition to the City of Birmingham's right to seek suspension, revocation or non-renewal of its liquor license and/or revocation of the Special Land Use Permit, the City retains any and all rights to enforce this Contract that may be available to it in law or in equity. Licensee further agrees that it shall reimburse the City all of its costs and actual attorney fees incurred by the City in seeking the suspension, revocation or non-renewal of its liquor license and revocation of the Special Land Use Permit, as well as enforcing such other rights as may be available at law and/or in equity.

9. To the fullest extent permitted by law, Licensee and any entity or person for whom Licensee is legally liable, 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 connected therewith, including all costs and actual attorney fees, and for any damages which may be asserted, claimed or recovered against or from 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, death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with Licensee's operation of an establishment at the Property.

10. In the event Licensee fails to reimburse the City the costs and/or attorney fees as required herein, or any part thereof, then said amount could be transferred to the tax roll in accordance with Section 1-14 of the Birmingham City Code.

11. Any disputes arising under this Contract, not within the jurisdiction of the Michigan

Liquor Control Commission, shall be settled either by commencement of a suit in Oakland County Circuit Court or by compulsory arbitration, at the election of the City. The Licensee shall notify the City of any dispute it has arising out of this Contract and shall demand that the City elect whether the dispute is to be resolved by submitting it to compulsory arbitration or by commencement of a suit in Oakland County Circuit Court. The City shall make its election in writing within thirty (30) days from the receipt of such notice. If the City elects to have the dispute resolved by compulsory arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan, with each of the parties appointing one arbitrator and the two thus appointed appointing a third. In the event the City fails to make such an election, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court.

12. This Contract shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan.

13. If any provision of this contract is declared invalid, illegal or unenforceable, such provision shall be severed from this contract and all other provisions shall remain in full force and effect.

14. The City Commission determines that to ensure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

a. 220 RESTAURANT shall abide by all provisions of the Birmingham City Code; and

b. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest.

15. Failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

16. Except as herein specifically provided, 220 RESTAURANT 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 220 RESTAURANT to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

17. 220 RESTAURANT is recommended for the continued operation of a new food and drink establishment serving alcoholic beverages for on premise consumption and associated interior/exterior renovations, above all others, subject to final inspection.

18. This Contract shall be binding upon and apply and inure to the benefit of the parties hereto and their respective successors or assigns. The covenants, conditions, and the agreements herein contained are hereby declared binding on the CITY OF BIRMINGHAM and Licensee. It is further agreed that there shall be no change, modification, or alteration hereof, except in writing, signed by both of the parties hereto. Neither party shall assign any of the rights under this contract without prior approval, in writing, of the other. Any attempt at assignment without prior written consent shall be void and of no effect.

IN WITNESS WHEREOF, the parties hereby have executed this Contract as of the date set forth above.

220 murrell (Licensee)

By: Zaid SIA

Its: murrell

Date: 4/24/22

STATE OF MICHIGAN)
) ss:
COUNTY OF OAKLAND)

On this 29th day of April, 2022, before me personally appeared Zaid SIA, who acknowledged that with authority on behalf of 220 to do so he/she signed this Agreement.

Acting in _____
My commission expires _____
 Joanne W. Cherkasky
Notary Public - STATE OF MICHIGAN
Michigan County of Oakland
My Commission Expires 11/11/2024
Acting in the County of _____


CITY OF BIRMINGHAM

By: _____
Therese Longe, Mayor

By: _____
Alexandria D. Bingham, City Clerk

APPROVED:

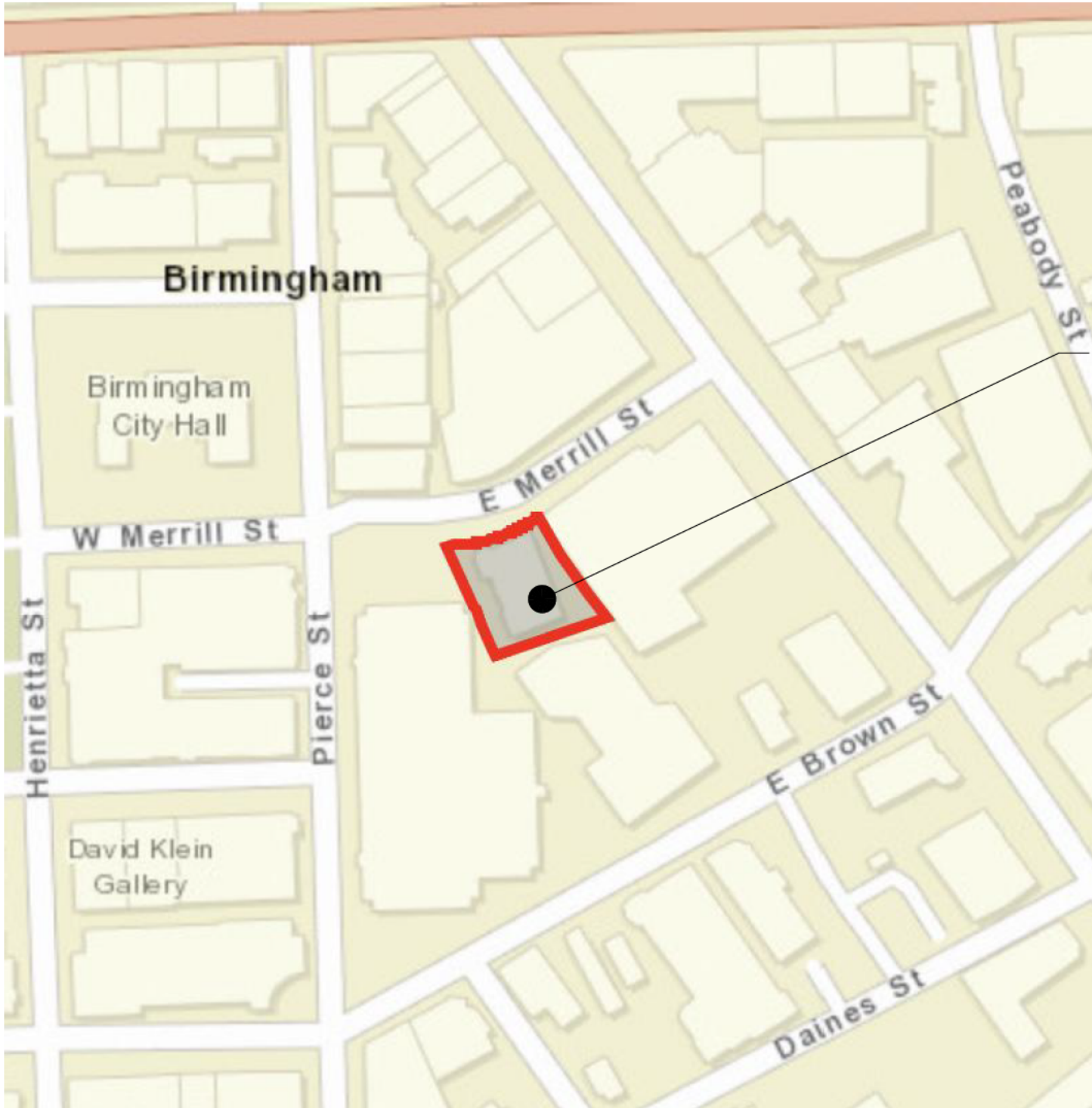
Thomas M. Markus, City Manager
(Approved as to substance)



Nicholas Dupuis, Planning Director
(Approved as to substance)

Mary M. Kucharek, City Attorney
(Approved as to form)

Current Site/Design Plans



Location Map

220 EAST MERRILL
220 EAST MERRILL STREET
Zoned: B-4
Overlay: D-4

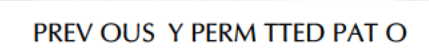


Site Plan

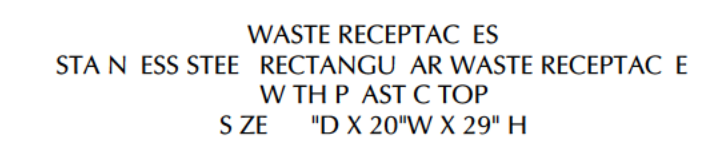
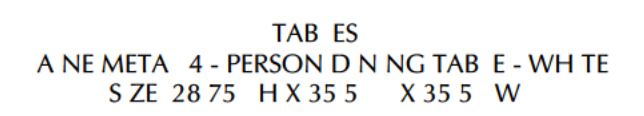
220 East Merrill Street
Birmingham, Michigan 48009



OUTDOOR SEAT COUNT	
TAB E TYPE	No o SEATS
4-TOP TAB E (9)	36 SEATS



UMBRE A
VEUVE C QUOT - YE OW

PAT O
0°H RA SED - GREEN TURF

PROPOSED PLAN

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6040

SD.2.0

Planning Board Review Docs.



MEMORANDUM

Planning Division

DATE: March 31, 2022

TO: Planning Board Members

FROM: Nicholas Dupuis, Planning Director

SUBJECT: 220 Merrill – 220 Restaurant – Special Land Use Permit Amendment, Final Site Plan & Design Review

The subject site, 220 Merrill, is currently used as a restaurant within an existing 2-story commercial building fronting Merrill St. The applicant has submitted a Special Land Use Permit Amendment and Final Site Plan/Design Review (SLUP) application requesting the addition of a dining platform in the Merrill St. right-of-way to their outdoor dining plan. The existing outdoor dining patio for 220 resides on private property adjacent to the building, and contains 78 seats at 23 tables.

In April 2021, 220 was approved for expanded outdoor dining pursuant to the Temporary Outdoor Dining expansion allowanced adopted by the City Commission on May 11th, 2020 and extended on March 8th, 2021. The expansion involved the addition of a 480 sq. ft. platform within the parking area in front of the property that contains 3 metered parking spaces. The applicant has submitted the SLUP application seeking permanent approval of this area.

In addition to the required review at the Planning Board, the building in which 220 Restaurant resides as a designated historic resource. The applicant will be required to submit a Design Review application to the Historic District Commission prior to City Commission review.

The Birmingham Code of Ordinances states that a contract for transfer and a Special Land Use Permit are required for all licenses approved under Chapter 10 – Alcoholic Liquors. The licensee must comply with all provisions of the contract and Special Land Use Permit, and any amendments thereto as a condition of granting of a requested transfer. Accordingly, the applicant must obtain a recommendation from the Planning Board on the Special Land Use and Final Site Plan/Design Review application, which is then reviewed for final consideration by the City Commission.

1.0 Land Use and Zoning

1.1 Existing Land Use – 2-story multi-tenant commercial building.

1.2 Zoning – B4 (Business-Residential) & D4 (Downtown Overlay)

1.3 Summary of Adjacent Land Use and Zoning –

	North	South	East	West
Existing Land Use	Mixed-Use	Commercial	Commercial	Parking
Existing Zoning District	B4 (Business Residential)	B4 (Business Residential)	B4 (Business Residential)	PP (Public Property)
Overlay Zoning District	D5	D4	D4	P/D3

2.0 Setback and Height Requirements

Please see the attached zoning compliance summary sheet for details on setback and height requirements. There are currently no issues with bulk, height or placement with the Special Land Use Permit, Final Site Plan/Design Review application submitted.

3.0 Screening and Landscaping

3.1 Dumpster Screening – There are no changes proposed to the dumpster or screening on site.

3.2 Parking Lot Screening – There are no changes proposed to the parking lot or associated screening.

3.3 Mechanical Equipment Screening – There are no changes proposed to the mechanical equipment or screening on site.

3.4 Landscaping – There are no changes proposed to the landscaping on site.

3.5 Streetscape – There are no changes proposed to the streetscape.

4.0 Parking, Loading and Circulation

4.1 Parking – There are no changes to the parking requirements on site.

4.2 Loading – There are no changes proposed to the loading requirements.

4.3 Vehicular Circulation and Access – There are no changes proposed to the vehicular circulation and access.

4.4 Pedestrian Circulation and Access – There are no changes to pedestrian circulation and access on the site.

5.0 Lighting

There are no new light fixtures or changes in lighting proposed that will significantly alter the light intensity on the site at this time.

6.0 Departmental Reports

6.1 Engineering Department – Please see attached Engineering Department comments dated 3/24/22.

6.2 Department of Public Services – The Department of Public Services has no concerns at this time.

6.3 Fire Department – Please see attached Fire Department comments.

6.4 Police Department – Please see attached Police Department comments dated 3/15/22.

6.5 Building Division – Please see attached Building Division comments dated 3/21/22.

6.6 Parking Manager – Please see attached Parking Manager comments dated 3/15/22.

7.0 Design Review

There are no changes proposed to the building at this time. However, the new dining platform is subject to several design requirements found in Article 4, Section 4.44 of the Zoning Ordinance. In accordance with Article 4, Section 4.44 of the Zoning Ordinance, the following outdoor dining standards apply:

A. Outdoor Dining: Outdoor dining is permitted immediately next to the principal use, subject to Site Plan Review, and the following conditions:

1. Outdoor dining areas shall provide and service refuse containers within the outdoor dining area and maintain the area in good order.
2. All outdoor activity must cease at the close of business or as noted in subsection 3 below.
3. When an outdoor dining area is immediately adjacent to any single-family or multiple-family residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.

4. Outdoor dining may be permitted on the sidewalk throughout the year with a valid Outdoor Dining License, provided that all outdoor dining fixtures and furnishings must be stored indoors each night between November 16 and March 31 to allow for snow removal.
5. All tables and chairs provided in the outdoor dining area shall be constructed primarily of metal, wood, or material of comparable quality.
6. Table umbrellas shall be considered under Site Plan Review and shall not impede sight lines into a retail establishment, pedestrian flow in the outdoor dining area, or pedestrian or vehicular traffic flow outside the outdoor dining area.
7. For outdoor dining located in the public right-of-way:
 - a. All such uses shall be subject to a license from the city, upon forms provided by the Community Development Department, contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - b. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 5 feet.
 - c. Outdoor dining is permitted to extend in the right-of-way in front of neighboring properties, with the written permission of the property owner(s) and with Planning Board approval, if such property is vacant or the first floor storefront(s) is/are vacant. Outdoor dining areas may extend up to 50% of the width of the neighboring lot(s) storefront(s), or up to 50% of the lot(s) frontage, if such lot is vacant.
 - d. City Commission approval is also required for outdoor dining extensions onto neighboring property if the establishment making such a request holds a bistro license.
 - e. An elevated, ADA compliant, enclosed platform may be erected on the street in front of an eating establishment to create an outdoor dining area from April 1 through November 15 only if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - f. No such facility shall erect or install permanent fixtures in the public right-of-way.
8. Outdoor dining is permitted in a B1 District at a rate of 4 seats for every 12 linear feet of store frontage, with no more than 12 seats total per building; no elevated enclosed platforms on the street are permitted in a B1 District.

As noted above, the applicant is proposing to install a new 480 sq. ft. dining platform in the off street parking area in the public right-of-way in front of the existing restaurant. The platform as proposed contains 9 tables and 36 additional seats. The proposed deck would add to an existing outdoor dining plan, which contains 23 tables and 78 chairs on private property. The proposed plans include two trash receptacles within the platform, umbrellas, railings, and an access ramp.

In accordance with section 4.44, all outdoor activity must cease at the close of business.

The applicant is proposing 36 Burt Stacking Patio Dining side polypropylene chairs in pink for use on the outdoor dining platform, as well as 9 Laine Metal 4-person dining tables constructed of white painted metal. In addition, the applicant is proposing a 36 in. black decorative railing system. As far as the chair material, the ordinance requires tables and chairs to be constructed of wood, metal, or a material of comparable quality. **The Planning Board should discuss the pink polypropylene chairs and determine whether or not polypropylene is a material of comparable quality.**

The applicant is also proposing 3 yellow Vueve Cliquot umbrellas. The umbrellas are proposed to be fully contained within the new outdoor dining platform. The proposed table umbrellas do not block pedestrian or vehicular traffic flow, nor do they block the view into the interior of the restaurant.

As for the platform structure itself, it is proposed to be constructed of wood with green turn floor covering at 10 in. total height. The existing curb on Merrill St. in that area is around 5-7 in. in height, thus necessitating the ramp as proposed.

As the proposed platform is located in the public right-of-way, the applicant will be required to enter into a license agreement with the City, as well as an Outdoor Dining permit. The proposed platform location does provide the required 5' wide pedestrian walkway on the sidewalk between the private outdoor seating and obstructions within the furnishing zone such as tree boxes, light poles, and parking meters.

The platform proposed by the applicant is proposed to cover 3 on-street parking spaces. The applicant will be required to pay for the use of all parking spaces partially or fully obstructed by the dining platform. **The applicant will be required to comply with the comments of the Engineering Department and to receive a favorable recommendation from the Advisory Parking Committee prior to review by the City Commission.**

8.0 Required Attachments

(see next page)

	Submitted	Not Submitted	Not Required
Existing Conditions Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Detailed and Scaled Site Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Certified Land Survey	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Interior Floor Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Landscape Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Photometric Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Colored Elevations	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Material Specification Sheets	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Material Samples	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Site & Aerial Photographs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9.0 Approval Criteria

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

- 1 The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
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.
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 nor diminish the value thereof.
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.
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.
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.

In addition, Article 7, Section 7.26 requires applications for a Special Land Use Permit to meet the following criteria:

- 1 The use is consistent with and will promote the intent and purpose of this Zoning Ordinance.
The use will be compatible with adjacent uses of land, the natural environment, and the capabilities of public services and facilities affected by the land use.
The use is consistent with the public health, safety and welfare of the city.
The use is in compliance with all other requirements of this Zoning Ordinance.
The use will not be injurious to the surrounding neighborhood.
The use is in compliance with state and federal statutes.

10.0 Recommendation

Based on a review of the site and design plans submitted, and the various departmental concerns raised, the Planning Division recommends that the Planning Board recommend **DENIAL** to the City Commission the Special Land Use Permit Amendment and Final Site Plan and Design Review for 220 Merrill – 220 Restaurant.

11.0 Sample Motion Language

Motion to recommend **DENIAL** to the City Commission the Special Land Use Permit Amendment and the Final Site Plan & Design Review for 220 Merrill – 220 Restaurant – for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **APPROVAL** to the City Commission the Special Land Use Permit Amendment for 220 Merrill – 220 Restaurant – subject to the conditions of Final Site Plan and Design Review.

AND

Motion to recommend **APPROVAL** to the City Commission the Final Site Plan and Design Review for 220 Merrill – 220 Restaurant – with the following conditions:

1. The applicant must obtain an Outdoor Dining Permit and enter into a contract with the City for the SLUP Amendment;
2. All outdoor activity must cease at the close of business;
3. The applicant must obtain a favorable recommendation from the Advisory Parking Committee prior to City Commission review;

4. The applicant must submit a Design Review application to the Historic District Commission prior to City Commission review; and
5. The applicant must comply with the requirements of all departments.

OR

Motion to **POSTPONE** the Special Land Use Permit Amendment and Final Site Plan & Design Review for 220 Merrill – 220 Restaurant – pending receipt of the following:

1. _____
2. _____



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

220 East Merrill

New Outdoor Dining Plan

The following comments are for the new proposed outdoor dining plan.

1. Provide mounted fire extinguisher on outdoor dining structure. A 3A:40B:C, 5 lb. fire extinguisher shall be mounted to this structure.
2. Do not install structure to impede thru lane of traffic.
3. Fuel for portable heating devices shall be stored in a storage cage and placed in an area to prevent vehicle strikes. Loose fuel tanks prohibited.
4. Egress to outdoor dining shall not to be obstructed by tables, chairs or other. Fueled equipment to be a minimum of 5 feet from ingress/egress.

If you have any questions please contact my office.

Jack D. Pesha

Fire Marshal

Birmingham Fire Department

DATE: 3/24/2022

TO: Nicholas Dupuis, Planning Director

FROM: Scott D. Zielinski, Assistant City Engineer

SUBJECT: 220 E. Merrill - SLUP - Review Comments

The Engineering Department has completed a review of the drawings issued for SLUP Review.

East Merrill Street is approximately 39' Wide Street, with approximately 6'-6" wide parking spaces on both sides of the road. Directly across from 220 E Merrill is an entrance to basement parking for the property across the street. A driveway is adjacent to either side of the proposed location. Based on provided drawings the Engineering Department has the following comments;

- In the interest of health and safety
 - to limit additional congestion of the street, the patio should be limited in width to extend no further then approximately 7'-4" from the Back of the existing curb line (edge of Patio should not extend farther then the edge of the existing marked parking locations)
 - The patio is constructed in a manner in which water is able to flow along the curb line to the catch basin along the curb.
 - The planned ramp for accessing the patio should be constructed to ADA compliance, as the exposed aggregate concrete is not a primary walking surface the ramp should be extended to the edge of the regular concrete walkway.

This concludes the Engineering Department comments.



Nicholas Dupuis <ndupuis@bhamgov.org>

220 Merrill - SLUP Application

Ryan Weingartz <rweingartz@bhamgov.org>
To: Nicholas Dupuis <ndupuis@bhamgov.org>

Tue, Mar 15, 2022 at 1:35 PM

My biggest concern is that they are taking the valet lane away for the patio. From what I understand they do not use the alley for valet, they use the 3 spaces in front. So if they take the 3 away for the patio they will then need to move the valet to another location which then takes more on street parking away. I almost think they need to decide one or the other, not both.

[Quoted text hidden]



Nicholas Dupuis <ndupuis@bhamgov.org>

220 Merrill - SLUP Application

Scott Grewe <Sgrewe@bhamgov.org>
To: Nicholas Dupuis <ndupuis@bhamgov.org>

Tue, Mar 15, 2022 at 1:15 PM

Thanks

In the proposed outdoor dining language didn't it state that the ramp could not extend beyond the curb?

Also, I would echo the concerns of Ryan. This valet has been an issue in the past and with adding the extra seating on top of what they already have for outdoor dining, I would think they would need to not only relocate their valet stand but would also need to extend it and/or require additional personnel to staff it.

[Quoted text hidden]

CITY OF BIRMINGHAM
Community Development – Building Department
151 Martin Street, Birmingham, MI 48009

March 21, 2022

RE: Special Land Use Permit Review Comments
220 Merrill, Dining Deck

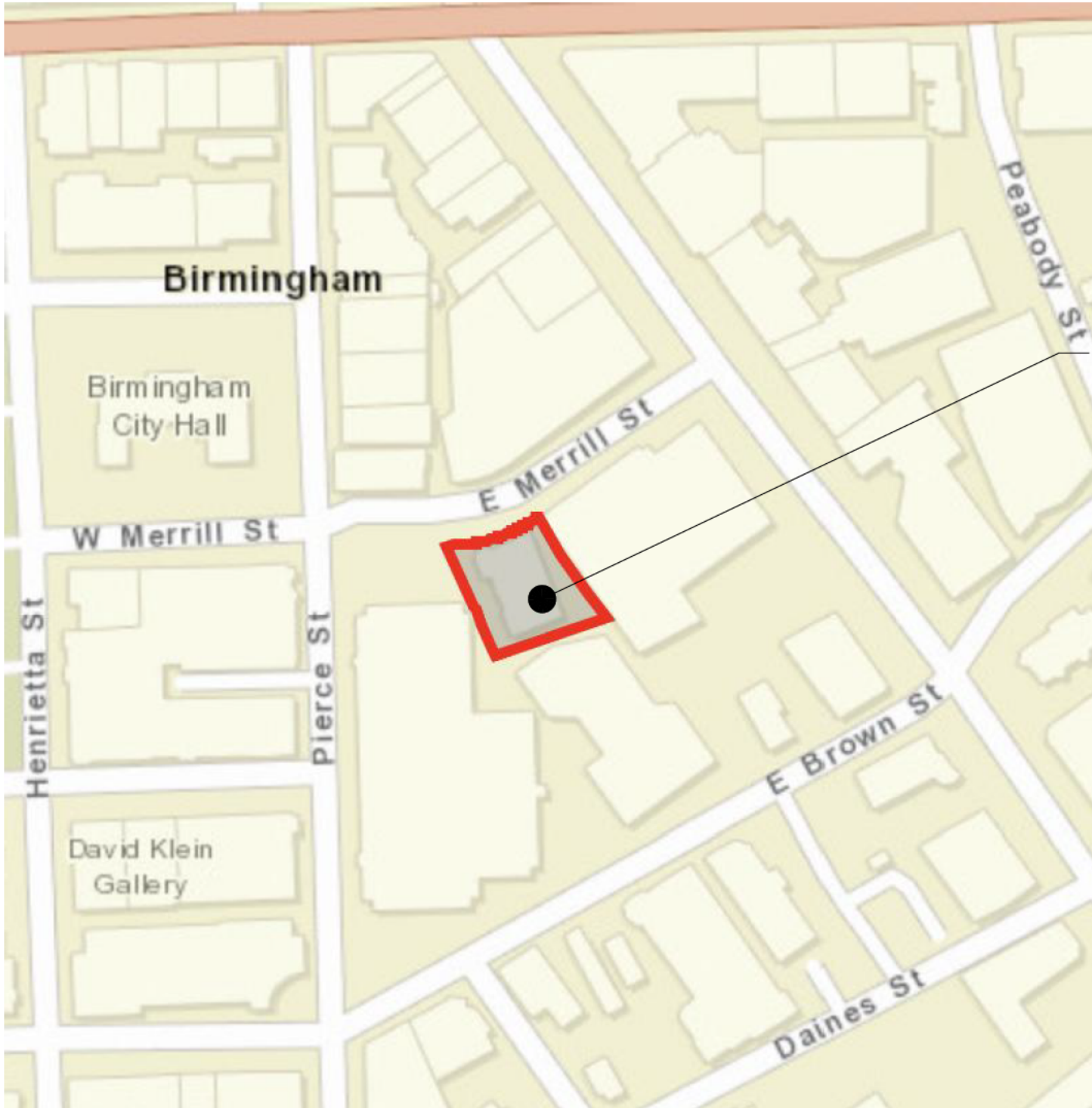
As requested, the Building Department has examined the plans for the proposed project referenced above. The plans were provided to the Planning Department for site plan review purposes only and present conceptual elevations and floor plans. Although the plans lack sufficient detail to perform a code review, the following comments are offered for Planning Design Review purposes and applicant consideration:

Applicable Building Codes:

- **2015 Michigan Building Code.** Applies to all buildings other than those regulated by the *Michigan Residential Code*.
- **2015 Michigan Residential Code.** Applies to all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures.
- **2015 Michigan Mechanical Code.** (Residential requirements for mechanical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- **2018 Michigan Plumbing Code.** (Residential requirements for plumbing construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- **2017 National Electrical Code along with the Michigan Part 8 Rules.** (Residential requirements for electrical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)

Review Comments:

1. The plumbing code requires the occupant load for seasonal outdoor seating areas shall be included when determining the minimum number of toilet room facilities for the establishment. Compliance must be documented on the plans. (MPC Table 403.1 Note d)
2. Construction details must be provided for the proposed platform showing how it will be constructed including sections with material list.



Location Map

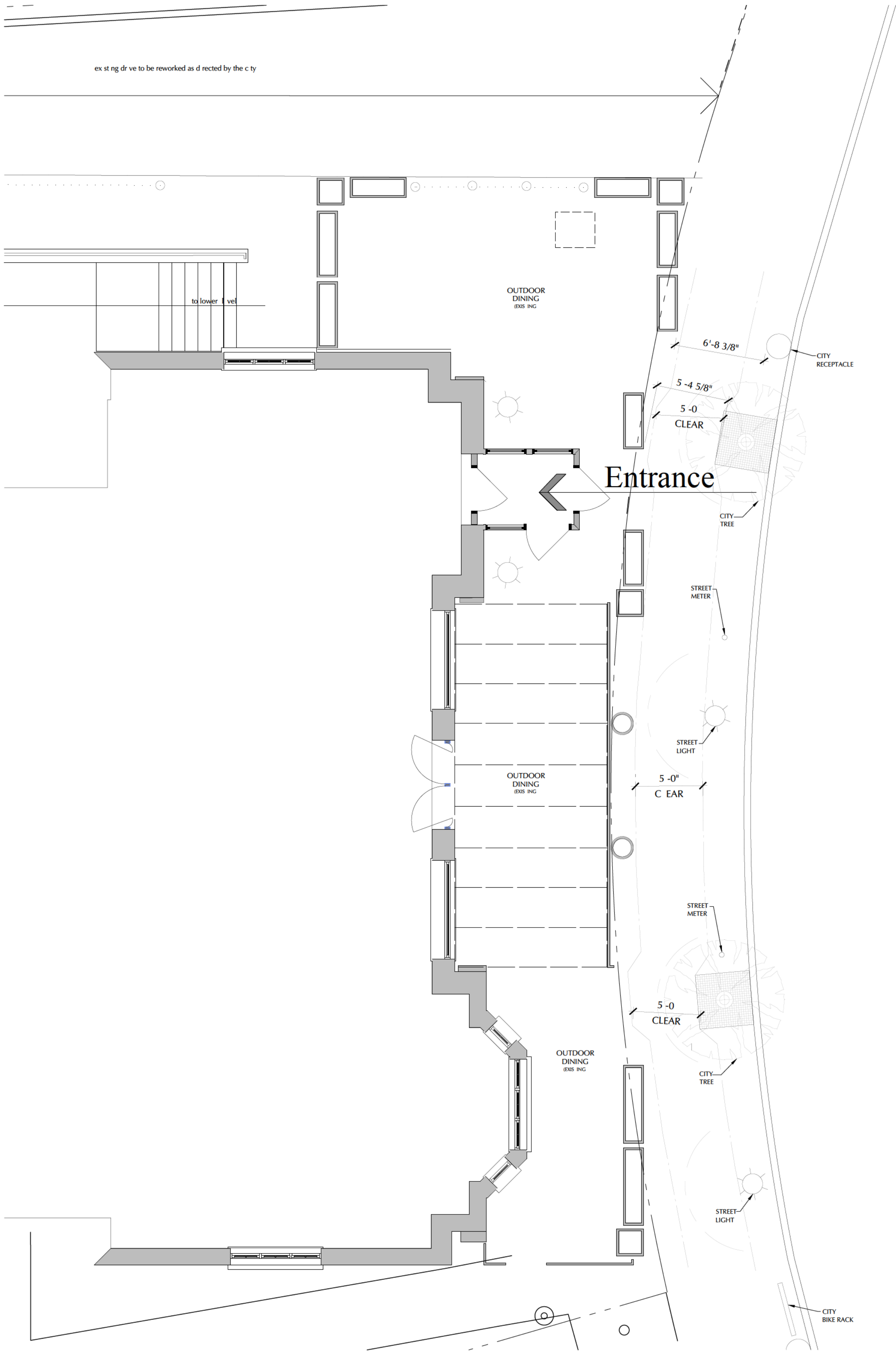
220 EAST MERRILL
220 EAST MERRILL STREET
Zoned: B-4
Overlay: D-4



Site Plan

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.8940

NOT TO SCALE

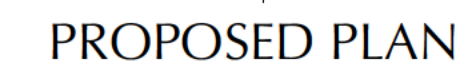


East Merrill Street (60' R.O.W.)

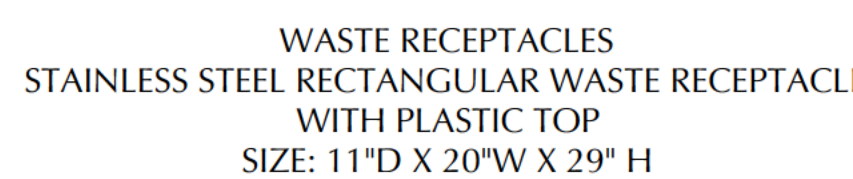
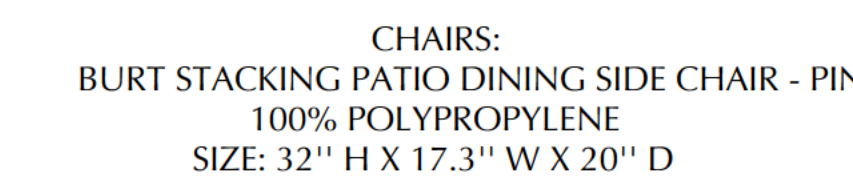
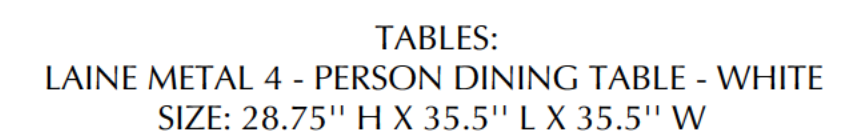
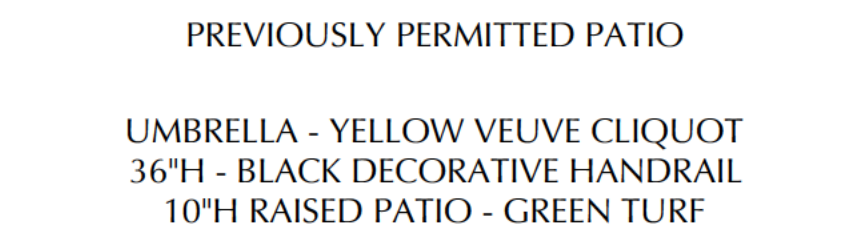


Existing Plan

220 East Merrill Street
Birmingham, Michigan 48009



CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 248.258.6940





Special Land Use Permit Application Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: 220 Merrill
Address: 220 E Merrill
Phone Number: 41009
Fax Number: 313-570-1456
Email address: BEGAN@THEEDGROUP.COM

3. Applicant's Attorney/Contact Person

Name: Barrington Elan
Address: 124 S. 110 Woodward
Phone Number: 313-570-1456
Fax Number:
Email address: BEGAN@THEEDGROUP.COM

2. Property Owner

Name: Birmingham Bank Place, LLC
Address: 124 S. 110 Woodward
Phone Number: 41009
Fax Number: 248-645-7777
Email address: ZAD@THEEDGROUP.COM

4. Project Designer/Developer

Name: Charles Long
Address: 124 Parkway
Phone Number: Birmingham MI 4607
Fax Number: 248 256 6940
Email address: C.LONG@CZLWMA.COM

5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:
 - i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject site's property lines;
 - ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - iii. A certified Land Survey;
 - iv. Interior floor plans;

- v. A Landscape Plan;
- vi. A Photometric Plan;
- vii. Colored elevation drawings for each building elevation;
- II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;
- III. Samples of all proposed materials;
- IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- V. Current aerial photographs of the site and surrounding properties;
- VI. Warranty Deed, or Consent of Property Owner if applicant is not the owner;
- VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information

Address/Location of the property: 220 E Merrill
Name of development: 220
Sidwell #: 19-26-202-017
Current Use: RESTAURANT
Proposed Use: RESTAURANT w/ STREET PATIO
Area of Site in Acres: 0.4
Current zoning: B-4
Is the property located in the floodplain? m
Name of Historic District Site is located in:
Date of Historic District Commission Approval:
Date of Application for Preliminary Site Plan:
Date of Preliminary Site Plan Approval:

Date of Application for Final Site Plan:
Date of Final Site Plan Approval:
Date of Application for Revised Final Site Plan:
Date of Revised Final Site Plan Approval:
Date of Design Review Board Approval:
Is there a current SLUP in effect for this site?
Date of Application for SLUP:
Date of SLUP Approval:
Date of Last SLUP Amendment:
Will proposed project require the division of platted lots?
Will proposed project require the combination of platted lots? N

7. Details of the Proposed Development (attach separate sheet if necessary)

ADD STREET PARKING IN PARKING SPACES IN FRONT OF 220 Marshall
PER DRAWING

8. Buildings and Structures

Number of Buildings on Site: 1

Height of Buildings & # of Stories: 2 stories

Use of Buildings: Restaurant

Height of Rooftop Mechanical Equipment: unknown

9. Floor Use and Area (in Square Feet)

Proposed Commercial Structures:

Total basement floor area:

Number of square feet per upper floor: N/A

Total floor area:

Floor area ratio (total floor area ÷ total land area):

Open space:

Percent of open space:

Office Space:

Retail Space:

Industrial Space:

Assembly Space:

Seating Capacity: 36 seats

Maximum Occupancy Load:

Proposed Residential Structures:

Total number of units:

Number of one bedroom units: N/A

Number of two bedroom units: N/A

Number of three bedroom units: N/A

Open space:

Percent of open space:

Rental units or condominiums?

Size of one bedroom units: N/A

Size of two bedroom units: N/A

Size of three bedroom units: N/A

Seating Capacity:

Maximum Occupancy Load:

Proposed Additions:

Total basement floor area, if any, of addition:

Number of floors to be added:

Square footage added per floor: N/A

Total building floor area (including addition):

Floor area ratio (total floor area ÷ total land area):

Open Space:

Percent of open space:

Use of addition:

Height of addition:

Office space in addition: N/A

Retail space in addition:

Industrial space in addition:

Assembly space in addition:

Maximum building occupancy load (including addition):

10. Required and Proposed Setbacks

Required front setback:

Required rear setback:

Required total side setback: N/A

Side setback:

Proposed front setback:

Proposed rear setback: N/A

Proposed total side setback:

Second side setback:

11. Required and Proposed Parking

Required number of parking spaces:

Typical angle of parking spaces:

Typical width of maneuvering lanes:

Location of parking on site: N/A

Location of parking off site:

Number of light standards in parking area:

Screenwall material:

Proposed number of parking spaces:

Typical size of parking spaces:

Number of spaces <180 sq. ft.: N/A

Number of handicap spaces:

Shared parking agreement?

Height of light standards in parking area:

Height of screenwall:

12. Landscaping

Location of landscape areas:

N/A

Proposed landscape material:

N/A

13. Streetscape

Sidewalk width: NO CHANGE TO CITY SIDEWALK
Number of benches: _____
Number of planters: _____
Number of existing street trees: 2
Number of proposed street trees: _____
Streetscape plan submitted? _____

Description of benches or planters:

N/A

Species of existing trees:

N/A

Species of proposed trees:

N/A

14. Loading

Required number of loading spaces: _____
Typical angle of loading spaces: _____
Screenwall material: _____
Location of loading spaces on site: _____

Proposed number of loading spaces:

Typical size of loading spaces:

Height of screenwall:

Typical time loading spaces are used:

15. Exterior Waste Receptacles

Required number of waste receptacles: CITY RECEPTACLES
Location of waste receptacles: NO CHANGE
Screenwall material: _____

Proposed number of waste receptacles:

Size of waste receptacles:

Height of screenwall:

16. Mechanical Equipment

Utilities and Transformers:

Number of ground mounted transformers: _____
Size of transformers (L·W·H): _____
Number of utility easements: _____
Screenwall material: _____

Location of all utilities & easements:

Height of screenwall:

Ground Mounted Mechanical Equipment:

Number of ground mounted units: _____
Size of ground mounted units (L·W·H): _____
Screenwall material: _____

Location of all ground mounted units:

Height of screenwall:

Rooftop Mechanical Equipment:

Number of rooftop units: _____
Type of rooftop units: _____

Screenwall material: _____

Location of screenwall: _____

Location of all rooftop units:

Size of rooftop units (L·W·H): _____

Percentage of rooftop covered by mechanical units: _____

Height of screenwall: _____

Distance from rooftop units to all screenwalls: _____

17. Accessory Buildings

Number of accessory buildings: _____
Location of accessory buildings: _____

Size of accessory buildings: _____

Height of accessory buildings: _____

18. Building Lighting

Number of light standards on building: _____

Type of light standards on building: _____

Size of light fixtures (L•W•H): _____
Maximum wattage per fixture: _____
Light level at each property line: _____

19. Site Lighting

Number of light fixtures: 2 City Street Lights
Size of light fixtures (L•W•H): _____
Maximum wattage per fixture: _____
Light level at each property line: _____

Height from grade: _____
Proposed wattage per fixture: _____

Type of light fixtures: _____
Height from grade: _____
Proposed wattage per fixture: _____
Holiday tree lighting receptacles: _____

20. Adjacent Properties

Number of properties within 200 ft.: _____

Property #1

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #2

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #3

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #4

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

Property #5

Number of buildings on site: _____
Zoning district: _____
Use type: _____
Square footage of principal building: _____
Square footage of accessory buildings: _____
Number of parking spaces: _____

Property Description: _____

North, south, east or west of property? _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

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 Owner: [Signature] Date: 1/26/22
Print Name: ZABO ELGA
Signature of Applicant: [Signature] Date: 1/26/22
Print Name: Bernard Egan
Signature of Architect: [Signature] Date: 1.26.22
Print Name: CHRISTOPHER LACE

Office Use Only

Application #: _____ Date Received: _____ Fee: _____
Date of Approval: _____ Date of Denial: _____ Accepted by: _____



Notice Signs - Rental Application Community Development

1. Applicant

Name: 220 Merrill
Address: 220 E Merrill
48009
Phone Number: 317-530-1456
Fax Number: _____
Email address: Rehan@TheElanGroup.com

Property Owner

Name: Birmingham Park Place LLC
Address: 124 S. Old Woodward
48009
Phone Number: 248-645-7777
Fax Number: _____
Email address: ZAIN@TheElanGroup.com

2. Project Information

Address/Location of Property: 220 E Merrill
Name of Development: 220
Area in Acres: _____

Name of Historic District site is in, if any: _____
Current Use: Restaurant
Current Zoning: B-4

3. Date of Board Review

Board of Building Trades Appeals: _____
City Commission: _____
Historic District Commission: _____
Planning Board: _____

Board of Zoning Appeals: _____
Design Review Board: _____
Housing Board of Appeals: _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant: [Signature]

Date: 1/24/22

Office Use Only		
Application #:	Date Received:	Fee:
Date of Approval:	Date of Denial:	Reviewed by:



SPECIAL LAND USE PERMIT APPLICATION CHECKLIST – PLANNING DIVISION

Applicant: 220 Maxwell Case #: _____ Date: 1/20/22
Address: 220 Maxwell Project: STREET PAVED

All site plans and elevation drawings prepared for approval shall be prepared in accordance with the following specifications and other applicable requirements of the City of Birmingham. If more than one page is used, each page shall be numbered sequentially. All plans must be legible and of sufficient quality to provide for quality reproduction or recording. Plans must be no larger than 24" x 36", and must be folded and stapled together. The address of the site must be clearly noted on all plans and supporting documentation.

Site Plan for Special Land Use Permit

A full Site Plan detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1" = 100' (unless the drawing will not fit on one 24" X 36" sheet) and shall include:

- ☒ 1. Name and address of applicant and proof of ownership;
- ☒ 2. Name of Development (if applicable);
- ☒ 3. Address of site and legal description of the real estate;
- ☐ 4. Name and address of the land surveyor;
- ☒ 5. Legend and notes, including a graphic scale, north point, and date;
- ☒ 6. A separate location map;
- ☐ 7. A map showing the boundary lines of adjacent land and the existing zoning of the area proposed to be developed as well as the adjacent land;
- ☐ 8. Aerial photographs of the subject site and surrounding properties;
- ☐ 9. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
- ☐ 10. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject site's property lines;
- ☐ 11. Interior floor plans;
- ☐ 12. A chart indicating the dates of any previous approvals by the Planning Board, Board of Zoning Appeals, Design Review Board, or the Historic District Commission ("HDC");

- ☒ 13. Existing and proposed layout of streets, open space and other basic elements of the plan:
- ☐ 14. Existing and proposed utilities and easements and their purpose:
- ☐ 15. Location of natural streams, regulated drains, 100-year flood plains, floodway, water courses, marshes, wooded areas, isolated preserve-able trees, wetlands, historic features, existing structures, dry wells, utility lines, fire hydrants and any other significant feature(s) that may influence the design of the development:
- ☐ 16. General description, location, and types of structures on site:
- ☐ 17. Location of sidewalks, curb cuts, and parking lots on subject site and all sites within 200 ft. of the property line:
- ☐ 18. Details of existing or proposed lighting, signage and other pertinent development features:
- ☐ 19. Elevation drawings showing proposed design:
- ☐ 20. Screening to be utilized in concealing any exposed mechanical or electrical equipment and all trash receptacle areas:
- ☐ 21. Location of all exterior lighting fixtures:
- ☐ 22. A Photometric Plan depicting proposed illuminance levels at all property lines:
- ☐ 23. A Landscape Plan showing all existing and proposed planting and screening materials, including the number, size, and type of plantings proposed and the method of irrigation: and
- ☐ 24. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.

Elevation Drawings

Complete elevation drawings detailing the proposed changes for which approval is requested shall be drawn at a scale no smaller than 1" = 100' (unless the drawing will not fit on one 24" X 36" sheet) and shall include:

- ☐ 25. Color elevation drawings showing the proposed design for each façade of the building:
- ☐ 26. List of all materials to be used for the building, marked on the elevation drawings:
- ☐ 27. Elevation drawings of all screenwalls to be utilized in concealing any exposed mechanical or electrical equipment, trash receptacle areas and parking areas:
- ☐ 28. Details of existing or proposed lighting, signage and other pertinent development features:
- ☐ 29. A list of any requested design changes:
- ☐ 30. Itemized list and specification sheets of all materials, light fixtures and mechanical equipment to be used, including exact size specifications, color, style, and the name of the manufacturer:
- ☐ 31. Location of all exterior lighting fixtures, exact size specifications, color, style and the name of the manufacturer of all fixtures, and a photometric analysis of all exterior lighting fixtures showing light levels to all property lines; and
- ☐ 32. Any other information requested in writing by the Planning Division, the Planning Board, or the Building Official deemed important to the development.



124 S. Old Woodward • Suite A • Birmingham, MI 48009 • 248.645.7777(*Phone*) • 248.645.7771(*Fax*)

March 30, 2022

Mr. Nick Dupuis
Planning Director
City of Birmingham

Via: Email to ndupuis@bhamgov.org

RE: 220 Merrill – Special Land Use Permit for Dining Platform: Updated Plans

Dear Mr. Dupuis:

Pursuant to our most recent discussion, please find below changes made to our initial plan and clarification points regarding the valet lane.

Please note the following changes have been made:

- 1) The patio chair color is changed to white.
- 2) The width of the patio deck has been reduced from 8' to 7' 4".
- 3) The planters located on the eastern side of our property line will be removed and a black fence, as illustrated in the attached revised drawings, will be installed. Please note it matches the current fence that is already located on that end of the property.
- 4) Increase Valet Staff during working hours.

As it relates to the valet service, 220 Merrill utilizes our private drive lane located immediately West of the building. Our goal with valet service has always been to provide First Class convenience to our customers and the community, while reducing the congestion on the public streets.

As it relates to the loading and unloading of the product to 220 Merrill, 220 Merrill utilizes our drive lane located immediately West of the building.

As you know our customers greatly enjoy the outdoor patio that we have had the privilege of using the past two summers. We appreciate your consideration of these changes for the approval of the proposed deck. While this patio was in place, we did not experience any issues with this patio or the surrounding area. In addition, it is critical for our business to garner approval of this patio as it will also help drive revenue that was substantially decreased during COVID. Thank you.

Sincerely,

Zaid Elia
Owner - 220 Merrill Restaurant



Historic District Commission Review Docs.



MEMORANDUM

Planning Division

DATE: May 4, 2022

TO: Historic District Commission

FROM: Nicholas Dupuis, Planning Director

SUBJECT: 220 Merrill – 220 Restaurant – Design Review

Zoning: B-4 (Business-Residential) & D-4 (Downtown Overlay)

Existing Use: Restaurant

Introductions

The applicant operates a restaurant at 220 Merrill St. under an existing Special Land Use Permit (SLUP). The subject site is located, on the south side of Merrill St. between Pierce and S. Old Woodward. The applicant is proposing to expand their outdoor café by adding an additional outdoor dining platform in the Merrill St. right of way. An outdoor café is permitted in the B-4 Zoning District per Article 2.37 (C) (d).

On March 31, 2022, the Planning Board moved to recommend to the City Commission approval of the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 220 Merrill – 220 Restaurant – with the following conditions:

1. The applicant must obtain an Outdoor Dining Permit and enter into a contract with the City for the SLUP Amendment;
2. All outdoor activity must cease at the close of business;
3. The applicant must obtain a favorable recommendation from the Advisory Parking Committee prior to City Commission review;
4. The applicant must submit a Design Review application to the Historic District Commission prior to City Commission review;
5. The applicant must comply with the requirements of all departments;
6. The applicant must submit, for administrative review, a site plan that adheres to the requirements as set by the discussion tonight.

The applicant has submitted a Design Review application pursuant to Article 7, Section 7.08 of the Zoning Ordinance. The proposed outdoor dining platform is located within the Central Business Historic District, and is adjacent to the historic Detroit Edison Building in which 220 Restaurant is housed.

Planning & Zoning

The proposed project and the relevant planning and zoning issues were reviewed in depth at the Planning Board for Final Site Plan and Design Review. For this reason, the Planning Division will not be including a review of planning and zoning issues in this report, and will instead focus on a review of applicable design review standards as discussed below.

Signage

There are no new signs proposed as a part of the Design Review application submitted.

Design Review Standards and Guidelines

As noted above, the proposed outdoor dining platform is being constructed within the Central Business Historic District. However, the construction does not attach to any historic structures, nor does the platform have a detrimental effect on the neighboring Detroit Edison Building or its site. Therefore, the design review standards in Chapter 127, Section 127-11 are not applicable to the proposed outdoor dining platform. Thus, the Design Review standards in Article 7, Section 7.09 were applied to the proposal.

Article 7, Section 7.09 of the Zoning Ordinance states that the Historic District Commission shall review all documents submitted pursuant to this section and shall determine the following:

1. All of the materials required by this section have been submitted for review.
2. All provisions of this Zoning Ordinance have been complied with.
3. The appearance, color, texture and materials being used will preserve property values in the immediate neighborhood and will not adversely affect any property values.
4. The appearance of the building exterior will not detract from the general harmony of and is compatible with other buildings already existing in the immediate neighborhood.
5. The appearance of the building exterior will not be garish or otherwise offensive to the sense of sight.
6. The appearance of the building exterior will tend to minimize or prevent discordant and unsightly properties in the City.
7. The total design, including but not limited to colors and materials of all walls, screens, towers, openings, windows, lighting and signs, as well as treatment to be utilized in concealing any exposed mechanical and electrical equipment, is compatible with the intent of the urban design plan or such future modifications of that plan as may be approved by the City Commission.

Recommendation

Based on the review above, the Planning Division recommends that the Historic District Commission **APPROVE** the Design Review application for 220 Merrill - 220 Restaurant – subject to the following condition:

1. The applicant obtain full approval from the City Commission prior to installation.

Wording for Motions

I move that the Commission **APPROVE** the Design Review application for 220 Merrill – 220 Restaurant – with the following condition:

1. The applicant obtain full approval from the City Commission prior to installation.

OR

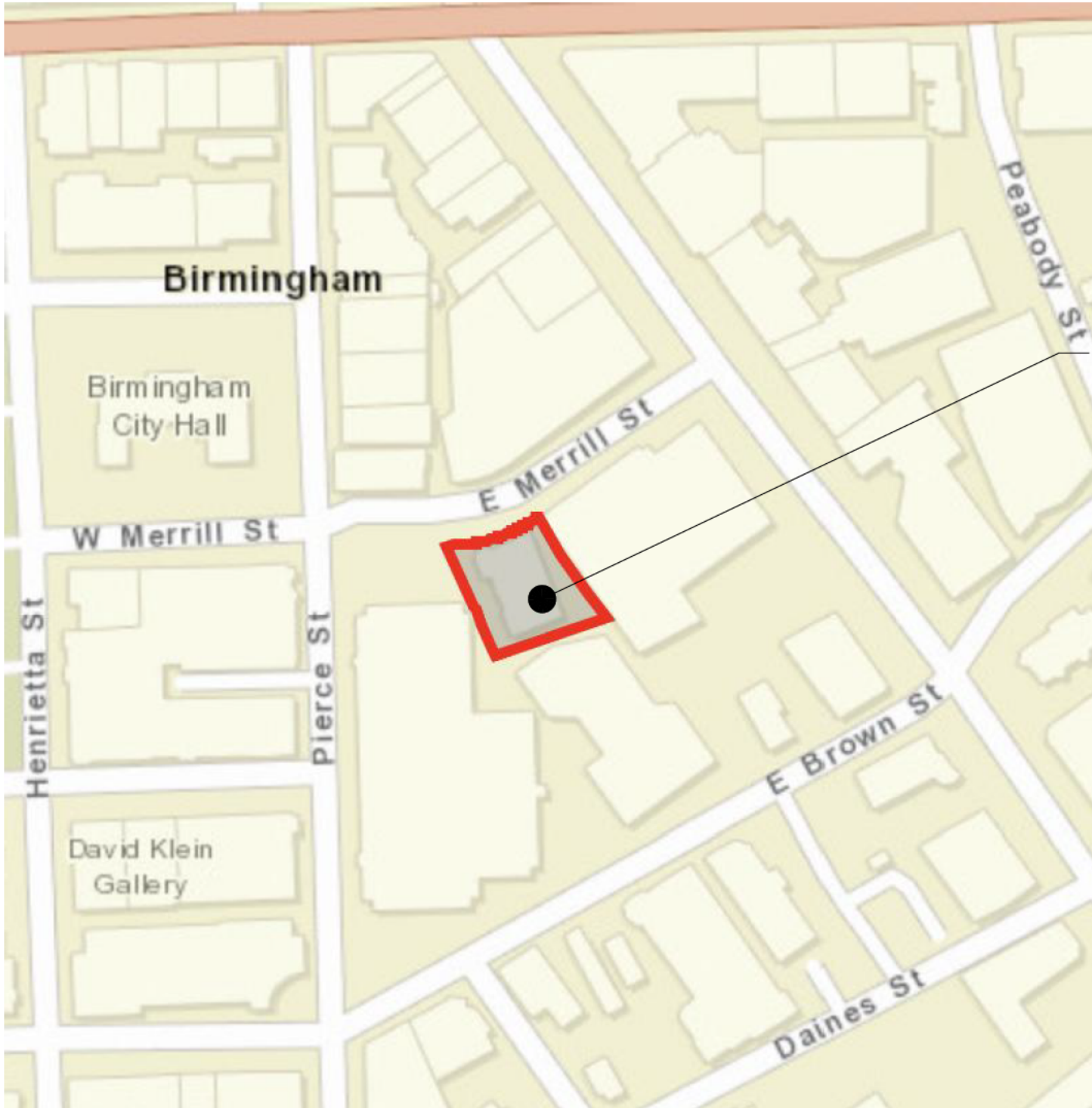
I move that the Commission **POSTPONE** the Design Review application for 220 Merrill - 220 Restaurant – pending receipt of the following:

1. _____
2. _____
3. _____

OR

I move that the Commission **DENY** the Design Review application 220 Merrill - 220 Restaurant – for the following reasons:

1. _____
2. _____
3. _____



Location Map

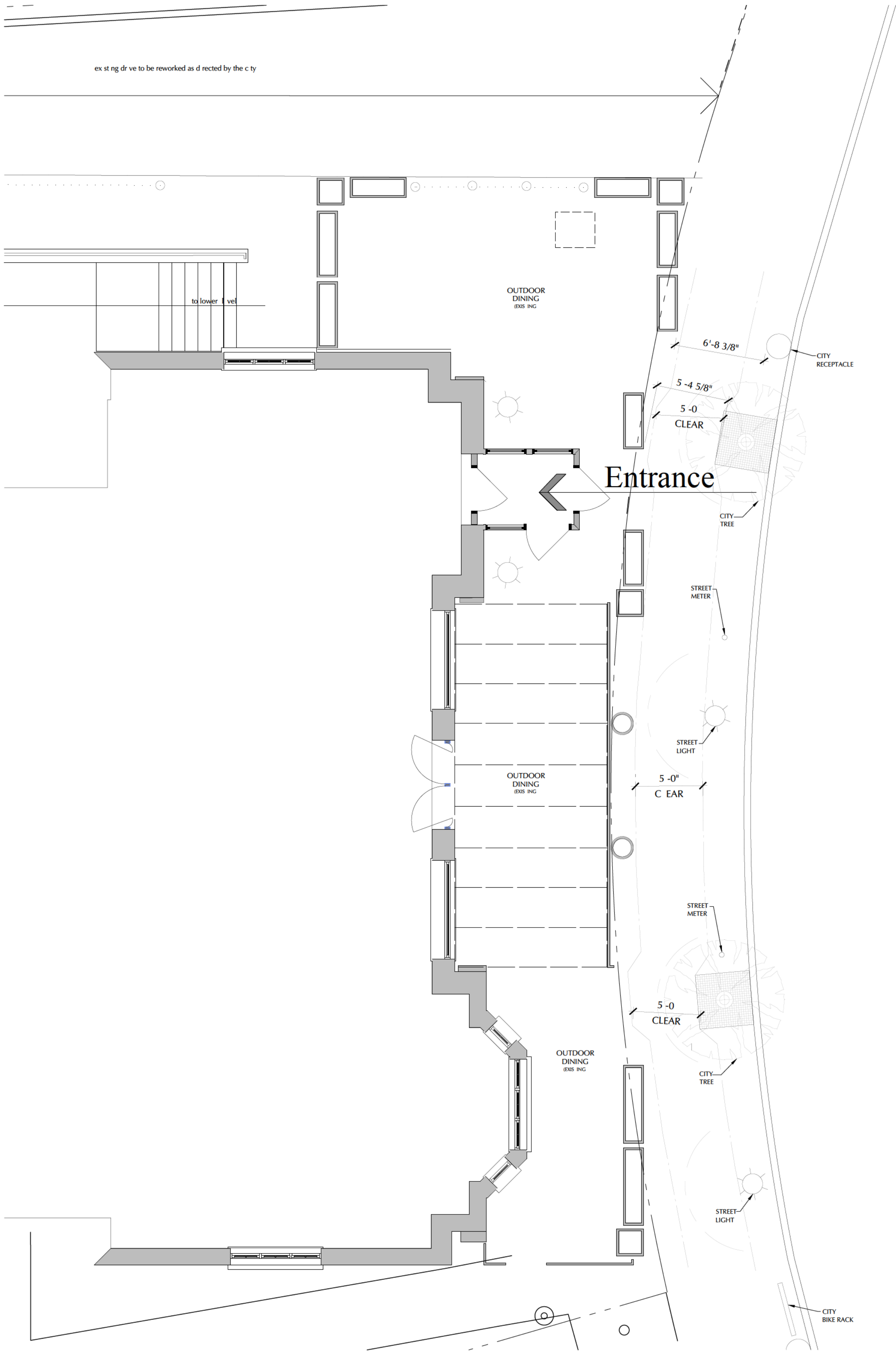
220 EAST MERRILL
220 EAST MERRILL STREET
Zoned: B-4
Overlay: D-4



Site Plan

CHRISTOPHER J. LONGE AIA
ARCHITECTURE
INTERIORS
124 Peabody, Birmingham, Michigan 48009 205.258.0940

NOT TO SCALE

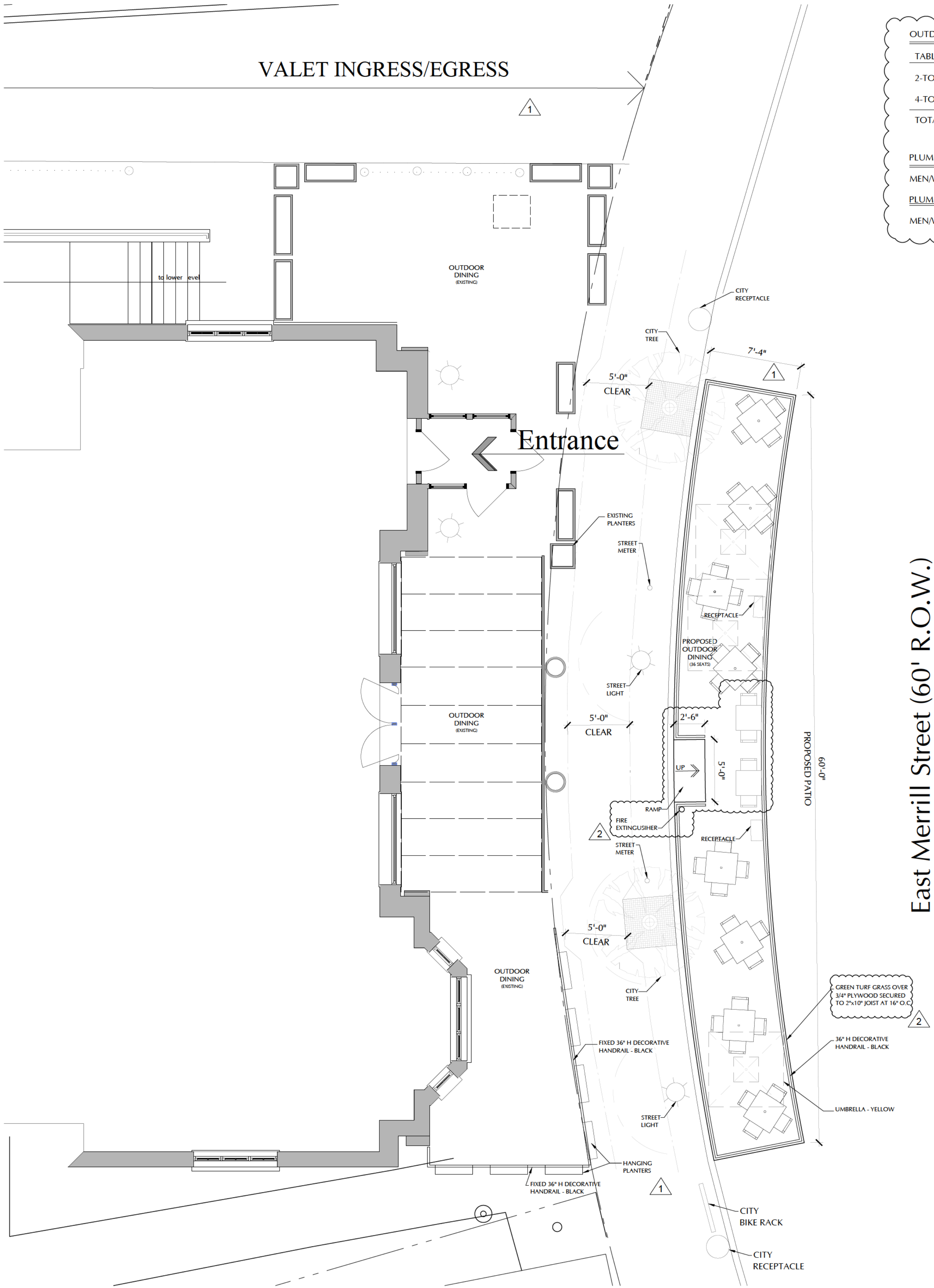


East Merrill Street (60' R.O.W.)



Existing Plan

220 East Merrill Street
220 East Merrill Street
Birmingham, Michigan 48009



OUTDOOR SEAT COUNT:

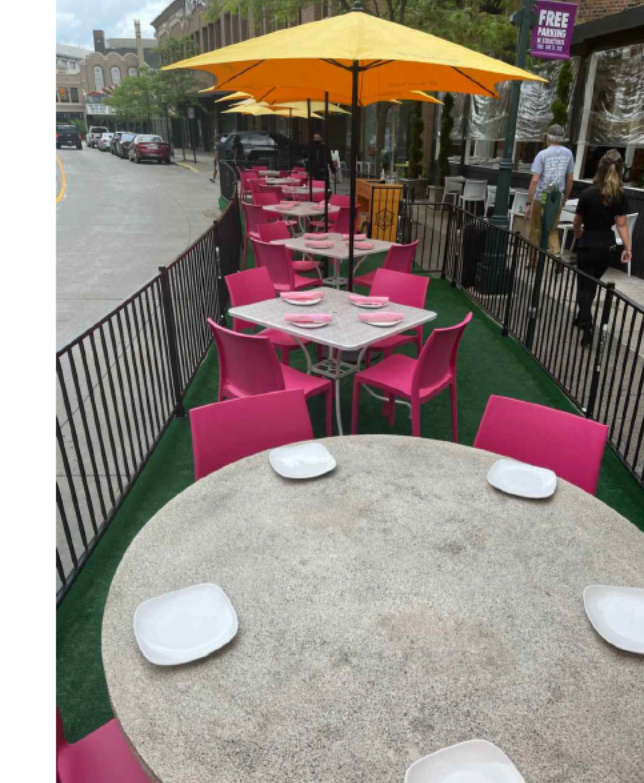
TABLE TYPE	No. of SEATS
2-TOP TABLE (2)	4 SEATS
4-TOP TABLE (8)	32 SEATS
TOTAL	36 SEATS

PLUMBING FIXTURE REQUIREMENTS:

MEN/WOMEN:	5 WC / UR, 2 LAV
------------	------------------

PLUMBING FIXTURE PROVIDED:

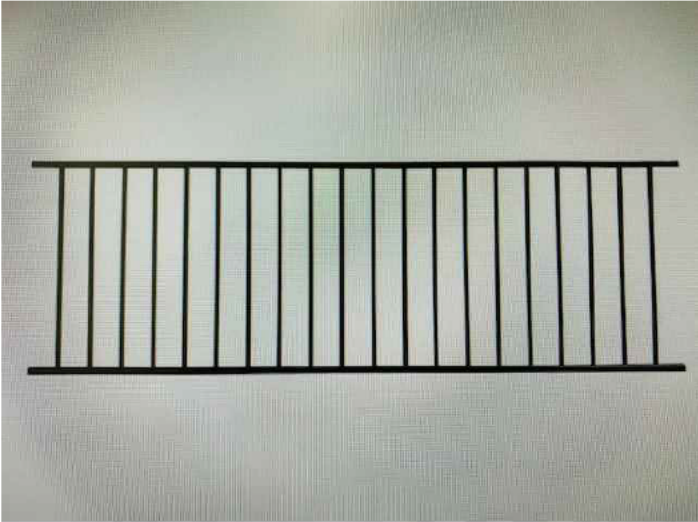
MEN/WOMEN:	5 WC / 2 UR, 6 LAV
------------	--------------------



PREVIOUSLY PERMITTED PATIO

UMBRELLA:
VEUVE CLIQUOT - YELLOW

PATIO:
10"H RAISED - GREEN TURF



HANDRAIL:
36"H DECORATIVE METAL - BLACK



TABLES:
LAINE METAL 4 - PERSON DINING TABLE - WHITE
SIZE: 28.75" H X 35.5" L X 35.5" W



CHAIRS:
BURT STACKING PATIO DINING SIDE CHAIR - PINK
100% POLYPROPYLENE
SIZE: 32" H X 17.3" W X 20" D



WASTE RECEPTACLES
STAINLESS STEEL RECTANGULAR WASTE RECEPTACLE
WITH PLASTIC TOP
SIZE: 11"D X 20"W X 29" H

PROPOSED PLAN

CHRISTOPHER J LONGE AIA
ARCHITECTURE
INTERIORS
124 Piedmont, Birmingham, Michigan 48009 246.258.8840



Design Review Application Planning Division

Form will not be processed until it is completely filled out

1. Applicant

Name: 220 Merrill - Birmingham Park Place, LLC
 Address: 220 E Merrill
 Phone Number: 248-645-7777
 Email address: began@theeliagroup.com

2. Property Owner

Name: Birmingham Park Place, LLC
 Address: 124 S. Old Woodward
 Phone Number: 248-645-7777
 Email address: zaid@theeliagroup.com

3. Project Contact Person

Name: Bradford Egan
 Address: 124 S Old Woodward
 Phone Number: 313-530-1456
 Email address: began@theeliagroup.com

4. Project Designer/Developer

Name: Chris Longe
 Address: 124 Peabody
Birmingham MI 48009
 Phone Number: 248-258-6940
 Email address: cjlonge@cjlongeai.com

5. Required Attachments

- | | |
|---|---|
| <p>I. Two (2) paper copies and one (1) digital copy of all project plans including:</p> <ul style="list-style-type: none"> i. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair; ii. Colored elevation drawings for each building elevation; iii. A Landscape Plan (if applicable); iv. A Photometric Plan (if applicable); <p>II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;</p> | <p>III. Samples of all proposed materials;</p> <p>IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;</p> <p>V. Current aerial photographs of the site and surrounding properties;</p> <p>VI. Warranty Deed, or Consent of Property Owner if applicant is not the owner;</p> <p>VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.</p> |
|---|---|

6. Project Information

Address/Location of the property: 220 E Merrill
 Name of development: 220
 Sidwell #: 19-36-202-017
 Current Use: Restaurant
 Proposed Use: Restaurant w/ street patio
 Area of Site in Acres: _____
 Current zoning: B-4

	Yes	No
Is the property located in a floodplain? -----	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the property within a Historic District? -----	<input checked="" type="checkbox"/>	<input type="checkbox"/>
→ If so, which? <u>CBD</u>		
Will the project require a variance? -----	<input type="checkbox"/>	<input checked="" type="checkbox"/>
→ If so, how many? _____		
Has the project been reviewed by another board?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
→ If so, which? <u>Planning Commission</u>		

7. Details of the Proposed Development (attach separate sheet if necessary)

Add street patio in parking spaces in front of 220 Merrill per drawing. Street patio does not touch actual building in any way. Located on street in existing parking spaces.

8. Required and Proposed Parking - N/A

Required number of parking spaces: N/A
Proposed number of parking spaces: _____
Location of parking on site: _____
Location of parking off site: _____
Shared parking agreement? _____
Size of surface parking lot: _____

Number of underground parking levels: _____
Typical size of parking spaces: _____
Typical width of maneuvering lanes: _____
Number of handicap spaces: _____
Screenwall material: _____
Height of screenwall: _____

9. Landscaping

Location of landscape areas: Only existing city landscaping

Proposed landscape material: N/A

10. Streetscape

Sidewalk width: as existing
Number of benches: none
Number of planters: _____

Number of existing street trees: 2
Number of proposed street trees: 2 (existing)
Number of waste receptacles: 2 city receptacles existing

11. Loading - N/A

Required number of loading spaces: _____
Proposed number of loading spaces: _____
Location of loading spaces on site: _____

Typical size of loading spaces: _____
Screenwall material: _____
Height of screenwall: _____

12. Exterior Waste Receptacles

Required number of waste receptacles: _____
Proposed number of waste receptacles: 2
Location of waste receptacles: on dining deck (on plan)

Size of waste receptacles: 11" D x 20" W x 29" H
Screenwall material: _____
Height of screenwall: _____

13. Mechanical Equipment - N/A

Utilities and Transformers:

Number of ground mounted transformers: _____
Location of all utilities & easements: _____

Size of transformers (L•W•H): _____
Screenwall material: _____
Height of screenwall: _____

Ground Mounted Mechanical Equipment:

Number of ground mounted units: _____
Location of all ground mounted units: _____

Size of ground mounted units (L•W•H): _____
Screenwall material: _____
Height of screenwall: _____

Rooftop Mechanical Equipment:

Number of rooftop units: _____
Type of rooftop units: _____
Location of all rooftop units: _____
Size of rooftop units (L•W•H): _____

Location of screenwall: _____
Screenwall material: _____
Height of screenwall: _____
Distance from rooftop units to all screenwalls: _____

14. Building & Site Lighting - N/A

Number of light fixtures on building: _____
Light level at each property line: _____
Type of light fixtures on building: _____
Location of light fixtures on building: _____

Number of light fixtures on site: 2 existing city light poles
Type of light fixtures on site: _____
Height from grade: _____
Location of light fixtures on site: on city sidewalk (on plan)

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with the same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

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 Owner: _____

Date: 4/4/22

Print name: ZACH ELIA

Signature of Applicant: (SAME AS OWNER)

Date: _____

Print Name: _____

Signature of Architect: [Signature]

Date: 4.5.22

Print Name: CHRISTOPHER J. LANCE

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted By: _____



Notice Sign Rental Application Community Development

1. Applicant

Name: 220 Merrill - Birmingham Park Place, LLC

Address: 220 Merrill

Phone Number: 248-645-7777

Fax Number:

Email address: began@theeliagroup.com

2. Property Owner

Name: Birmingham Park Place, LLC

Address: 124 S Old Woodward

Phone Number: 248-645-7777

Fax Number:

Email address: zaid@theeliagroup.com

3. Project Information

Address/Location of Property: 220 Merrill

Name of Development: 220 Merrill

Area in Acres:

Name of Historic District, if any: CBD

Current Use: Restaurant / Street parking

Current Zoning: B-4

4. Date of Board/Commission Review

City Commission:

Planning Board: 3/31/2022

Historic District Commission:

Design Review Board:

Board of Zoning Appeals:

Board of Building Trades Appeals:

Housing Board of Appeals:

Other:

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to post the Notice Sign(s) at least 15 days prior to the date on which the project will be reviewed by the appropriate board or commission, and to ensure that the Notice Sign(s) remains posted during the entire 15 day mandatory posting period. The undersigned further agrees to pay a rental fee and security deposit for the Notice Sign(s), and to remove all such signs on the day immediately following the date of the hearing at which the project was reviewed. The security deposit will be refunded when the Notice Sign(s) are returned undamaged to the Community Development Department. Failure to return the Notice Sign(s) and/or damage to the Notice Sign(s) will result in forfeiture of the security deposit.

Signature of Applicant: _____

Date: 4/4/22

Office Use Only

Application#: _____

Date Received: _____

Fee: _____

Date of Approval: _____

Date of Denial: _____

Reviewed By: _____



FEE SCHEDULE

Application	Fees
Administrative Approval	\$100
Administrative Sign Approval	\$100
Board of Zoning Appeals* <ul style="list-style-type: none"> Single Family Residential All Other Zoning Districts 	\$310 \$510
Community Impact Study Review*	\$2,050
Design Review*	\$350
Division/Combination of Platted Lots	\$200
Historic District Review* <ul style="list-style-type: none"> Single Family Residential All Other Zoning Districts 	No Charge \$350
Public Notice Sign <ul style="list-style-type: none"> Notice Sign Rental Returnable Sign Bond 	\$50 \$100 ➔ \$150 total
Preliminary/Final Site Plan Review <ul style="list-style-type: none"> R4 – R8 Zoning District Nonresidential Districts 	\$850, plus \$50 per dwelling unit \$1,050, plus \$50 per acre or portion of acre
Special Land Use Permit* <ul style="list-style-type: none"> Plus Site Plan Review Plus Design Review Plus Publish of Legal Notice Plus Sign Rental and Deposit 	\$800 \$1,050 \$350 \$450 \$150 ➔ \$2,800 total
Special Land Use Permit Annual Renewal	\$200
Temporary Use Permit	\$100
Zoning Compliance Letter	\$50

***The fees for Board of Zoning Appeals, Community Impact Study Review, Design Review, Site Plan Review, Historic District Review and Special Land Use Permits shall be double the listed amounts in the event the work is commenced prior to the filing of an application for review by the City of Birmingham.**

3804

220 Restaurant Hospitality, LLC124 S. Old Woodward
Birmingham, MI 48009

9-9/720

4/5/2022

PAY TO THE
ORDER OF

City of Birmingham

\$ **350.00

Three Hundred Fifty and 00/100*****

DOLLARS

City of Birmingham
151 Martin St
Birmingham, MI 48009

VOID AFTER 60 DAYS



MEMO

AUTHORIZED SIGNATURE

220 Restaurant Hospitality, LLC

3804

City of Birmingham

Date	Type	Reference
4/5/2022	Bill	'22 HistoricZoneRvw

Original Amt.
350.00

Balance Due
350.00

4/5/2022

Discount

Check Amount

Payment
350.00
350.00

Operating Account

350.00

Meeting Minutes

Mr. Wertheimer confirmed that the language regarding the \$20,000 and \$100,000 contributions was acceptable.

Motion carried, 4-1.

ROLL CALL VOTE

Yeas: Share, Boyle, Whipple-Boyce, Williams

Nays: Jeffares

Vice-Chair Williams advised the applicant to consider Board comment regarding the three residential units on Adams in advance of the final site plan review.

03-80-22

I. Special Land Use Permit

1. 220 Merrill – Request for new outdoor dining platform in Merrill St. right-of-way

Chair Clein and Mr. Emerine returned at 8:23 p.m. Chair Clein resumed facilitation of the meeting at 8:23 p.m.

PD Dupuis presented the item.

Zaid Elia, owner of 220 Merrill, spoke on behalf of project.

In reply to Mr. Boyle, Mr. Elia stated that there have been no traffic incidents, accidents or police reports that would indicate an issue with the dining platform in its two years of operation.

Steve Ferich, In-House Valet, described 220 Merrill's valet operations.

In reply to Mr. Share, Mr. Ferich said that of the valet operations he runs in the City 220 Merrill is one of the least challenging.

In reply to Mr. Emerine, Mr. Elia stated he has an easement with the owners of the private alley to the south and the circular area allowing shared access.

In reply to Board inquiry, Mr. Elia stated that the rail and ramp are interior to the platform and do not extend onto the sidewalk.

In reply to Ms. Whipple-Boyce, PD Dupuis said he would double-check with the Building Department to determine whether there are any concerns about the distance between the railing on the platform and the backs of the chairs.

In reply to Mr. Jeffares' comment regarding the total amount of proposed outdoor dining, Mr. Elia stated that compared to some other operators in the City 220 Merrill has a lower ratio of indoor to outdoor seating. He opined that the proposed outdoor dining was proportional to the size of the restaurant overall.

Mr. Boyle said that the view of the platform coming off of Old Woodward might help slow traffic coming in that direction, and would add vitality to the street. He said he had no preference for the color of the outdoor seating and that 220 Merrill's valet operations had been well-explained. He said he would support the request.

Mr. Williams concurred with Mr. Boyle that drivers are likely to be more cautious when seeing an outdoor dining deck, and that the valet operations were well-explained. He said he has dined on 220 Merrill's dining deck and found no problem with its navigability. He said he was glad to know the ramp is within the deck and does not extend to the sidewalk.

Ms. Whipple-Boyce said the applicant should maintain the pink for the outdoor seating if they prefer, praising the uniqueness of the choice. She concurred with Messrs. Boyle and Williams that the platform slows traffic and that it has worked well in its two years of operation. Since the platform will be smaller than before, she expressed concern about the same four-tops fitting well. She said that the drawings need to be updated to accurately reflect the proposal. She said she was inclined to support it but would like to see it drawn as intended.

Mr. Emerine said he concurred with Messrs. Boyle and Williams. He said he was not worried about the loss of parking spaces given 220 Merrill's proximity to the Pierce Street Garage. He echoed Ms. Whipple-Boyce's comment that the drawings should be revised to accurately reflect the proposal. He said he was supportive of the project.

Mr. Jeffares said he was unsure about wheelchair or scooter maneuverability on the platform if the ramp is interior. He said he was more concerned about speeding on the street than some of his colleagues, but that increased police enforcement could help. He said the platform seemed to work well when it was in operation.

There was a discussion regarding whether the platform would be accessible. A number of Board members expressed concern that it would not be, given its size and layout.

Mr. Emerine noted that since 220 Merrill's other outdoor dining area is accessible, the platform may not need to be accessible.

Chair Clein said he just wanted to ensure that the applicant was aware that accessibility of the platform may be an issue.

After brief discussion, the Board also concurred that the necessary revisions to the site plan could be administratively approved before it goes to the Commission.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to recommend approval to the City Commission for the Special Land Use Permit Amendment for 220 Merrill – 220 Restaurant – subject to the conditions of Final Site Plan and Design Review.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

03-81-22

J. Site Plan & Design Review

- 1. 220 Merrill – Request for new outdoor dining platform in Merrill St. right-of-way**

Discussed during Item I1.

Motion by Mr. Boyle

Seconded by Mr. Williams to recommend approval to the City Commission for the Final Site Plan and Design Review for 220 Merrill – 220 Restaurant – with the following conditions:

- 1. The applicant must obtain an Outdoor Dining Permit and enter into a contract with the City for the SLUP Amendment;**
- 2. All outdoor activity must cease at the close of business;**
- 3. The applicant must obtain a favorable recommendation from the Advisory Parking Committee prior to City Commission review;**
- 4. The applicant must submit a Design Review application to the Historic District Commission prior to City Commission review;**
- 5. The applicant must comply with the requirements of all departments;**
- 6. The applicant must submit, for administrative review, a site plan that adheres to the requirements as set by the discussion tonight.**

Public Comment

In reply to Mr. Elia, the Board had no direction regarding the color of the outdoor seating.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

03-82-22

K. Study Session

None.

03-83-22

L. Miscellaneous Business and Communications

- 1. Pre-Application Discussions**
- 2. Communications**

Yeas: Yert, Paskiewicz, Silverman, Petcoff, Vaitas, Kalczynski, Astrein
Nays: None

5. 220 Merrill – Outdoor Dining

PD Dupuis presented the item.

The majority of the APC did not believe it was appropriate for 220 Merrill to be granted an outdoor dining deck when it already has 78 outdoor dining seats on its patio. They also expressed concern about the number of parking spots 220 Merrill would be occupying between its valet and its proposed deck.

Mr. Astrein emphasized the economic importance of available on-street parking for tailors and other businesses. He said that on-street dining decks represent a special privilege for restaurants versus other businesses.

Chair Vaitas concurred.

Dr. Silverman said she already hears complaints about congestion near 220 Merrill from drivers and pedestrians and expressed concern that a dining deck would make that congestion worse.

PM Weingartz recommended that 220 Merrill should be required to choose between valet and a dining deck.

In reply to Ms. Petcoff, PM Weingartz said he would not recommend a reduced combination of valet and dining deck spaces given concerns about congestion near the establishment.

Chair Vaitas and Mr. Astrein expressed concerns about a potential saturation of on-street outdoor dining decks in the City.

Chair Vaitas, Mr. Astrein and Dr. Silverman said they did not understand why dining decks are billed to the establishments at a reduced meter rate.

Dr. Paskiewicz expressed confusion about why 220 Merrill has a valet when it is next to the Pierce parking deck.

Mr. Kalczynski noted that the impact of the pandemic is still being felt by dining establishments and that diners continue to want to dine outside. He said the APC represents the residents, and that residents' desire to dine outside outweighs the loss of the three parking spots in this case.

Brad Egan, representative for 220 Merrill, spoke on behalf of the request.

Mr. Egan clarified for the APC that:

- The valet services offered by 220 Merrill serve the public, not just customers of the restaurant;

- The operation of the valet uses their private alley, meaning that the vehicles using their valet are largely not causing congestion on the street; and,
- A dining deck would not impede the sidewalk.

Mr. Egan questioned the precedent that would be set for other dining deck requests if 220 Merrill's request was recommended for denial by the APC.

Mr. Egan contended that the size of 220 Merrill and its extant outdoor dining should not count against this request. He said that the request was proportionate, given the size of the restaurant. He also said that granting the dining deck would allow 220 Merrill's employees to recoup some of the income that was lost during the pandemic.

Chair Vaitas stated that each request is evaluated according to its particular circumstances. He also noted that the APC is in part charged with the creation and preservation of parking. He stated that the size of an establishment does not impact the APC's recommendation.

Ms. Petcoff asked if 220 Merrill could still consider reducing the number of valet or dining deck spaces in order to reduce the extent of their request. She noted that if 220 Merrill is already planning on increasing their valet staff, as was previously mentioned, then two on-street valet spaces may be sufficient.

Motion by Dr. Silverman

Seconded by Ms. Yert to recommend denial to the City Commission of the outdoor dining platform for 220 Merrill

Motion carried, 6-1.

VOICE VOTE

Yeas: Yert, Paskiewicz, Silverman, Petcoff, Vaitas, Astrein

Nays: Kalczynski

6. Birmingham Shopping District Fund Request for S. Old Woodward Construction

BSDD Kummer and CE Zielinski presented the item.

Mr. Astrein spoke in favor of the request, stating that the S. Old Woodward Construction will impact businesses during two of the busiest shopping times - the summer and early fall.

PM Weingartz stated that in 2018, the APC gave \$135,000 to the BSD for a similar request. He said that according to FD Gerber, all \$135,000 was not used by the BSD but the entirety of the funds were retained by the BSD.

In light of this information, PM Weingartz recommended that the APC grant the BSD the right to request funds up to a certain amount, to be reimbursed as the monies are spent. He explained this would help him retain the necessary funds for other parking projects.

Enforcement History

Sidewalk Obstruction Enforcement | E21-1631

Property Information

08-19-36-202-017 220 E MERRILL ST Subdivision:
Birmingham MI, 48009 Lot: Block:

Name Information

Owner: 220 PARK PLACE LLC Phone:
Occupant: 220 RESTAURANT HOSPITALITY LLC Phone: (248) 645 7777
Filer: Phone:

Enforcement Information

Date Filed: 09/13/2021 Date Closed: 10/28/2021 Status: CLOSED

Complaint:
hostess stand blocking sidewalk

Last Action Date: Last Inspection: 10/28/2021

Last Action:

Follow Up Inspection | Doug Manigold

Status: Completed Result: Complied
Scheduled: 10/28/2021 Completed: 10/28/2021

Initial Inspection Inspection | Doug Manigold

Status: Completed Result: Violation(s)
Scheduled: 09/15/2021 Completed: 09/13/2021

Comments:

Hostess stand at 220 Merrill in the sidewalk area causing pedestrian traffic to go around. The restaurant has been warned several times about putting the stand on the sidewalk. The stand has not been approved on the outdoor dining plan. Building Official, Bruce Johnson, prepared a letter to the restaurant outlining the violation and to remove the stand. Writer will issue violation notice and attach same to letter

Follow Up Inspection | Doug Manigold

Status: Completed Result: Violation(s)
Scheduled: 09/15/2021 Completed: 09/15/2021

Comments:

NOTE Writer drove by today at approx 1235pm and observed the hostess stand approx 1 ft onto the sidewalk. There was a 6 ft red carpet runner also on the sidewalk.

Writer stopped and asked the hostess to remove the runner and move the stand off the sidewalk. see pic



September 17, 2021

Mr. Zaid Elia
220 Park Place LLC.
124 S. Old Woodward Ave Ste. A
Birmingham, MI. 48009

RE: 220 Merrill Restaurant
Outdoor Dining Violation

Mr. Elia:

The maître d' stand in front of your restaurant was observed to be in the public right of way blocking the city sidewalk. This stand has been placed here after many warnings and directives to remove it. This stand is not part of your approved plans for your outdoor dining permit. Use of the stand must be discontinued immediately.

Outdoor Dining approval is contingent upon conformance with your approved plan. This requirement is for the safety of your patrons and for the safety and convenience of the general public. The primary purpose of our sidewalks is to allow a safe walkway for our pedestrians. Your continued obstruction of the public walkway beyond the limits of your approved plan is unacceptable. Continued noncompliance can place your current outdoor dining approval at risk of revocation and/or from being authorized next year.

You are being issued a notice of violation and a record of this will be placed in your file to be considered during the city commission's review of your liquor license renewal. Citations will be issued if the stand is used or other sidewalk obstructions are found in the future.

Our goal is to have all residents and guests of our city to enjoy the amenities the city has to offer. Your cooperation will ensure a safe and enjoyable experience for residents, guests and your patrons.

Sincerely,

Bruce R. Johnson
Building Official

CC: City Commission
Thomas M. Markus, City Manager
Annual liquor license renewal file

Site Plan ComplaintEnforcement | E21-0792

Property Information

08-19-36-202-017 220 E MERRILL ST Subdivision:
 Birmingham MI, 48009 Lot: Block:

Name Information

Owner: 220 PARK PLACE LLC Phone:
Occupant: 220 RESTAURANT HOSPITALITY LLC Phone: (248) 645 7777
Filer: Phone:

Enforcement Information

Date Filed: 05/21/2021 Date Closed: 10/28/2021 Status: CLOSED
Complaint:
 outdoor dining violation.
Last Action Date: Last Inspection: 10/28/2021
Last Action:

Follow Up Inspection | Doug Manigold

Status: Completed Result: Complied
Scheduled: 10/28/2021 Completed: 10/28/2021

Initial Inspection Inspection | Doug Manigold

Status: Completed Result: Violation(s)
Scheduled: 05/24/2021 Completed: 05/21/2021

Comments:

NOTE Writer assigned complaint that tables placed along city sidewalk was in violation of the original outdoor dining site plan.

 Writer spoke with general manager Steve, who stated they were approved by the city to have tables along the sidewalk.
 Writer spoke with Nick in Planning who stated they had been tentatively approved to place tables.
 Writer asked Steve to move a planter and table that violated the 5 ft space for pedestrians.
 Writer also asked Steve to move a cart and a hostess stand onto their own property. No further action taken.

Sidewalk ObstructionEnforcement | E19-0781

Property Information

08-19-36-202-017 220 E MERRILL ST Subdivision:
Birmingham MI, 48009 Lot: Block:

Name Information

Owner: 220 PARK PLACE LLC Phone:
Occupant: 220 RESTAURANT HOSPITALITY LLC Phone: (248) 645 7777
Filer: Phone:

Enforcement Information

Date Filed: 04/08/2019 Date Closed: 04/26/2019 Status: CLOSED
Complaint:
 PLANTERS BLOCKING SIDEWALK
Last Action Date: Last Inspection: 04/26/2019
Last Action:

Follow Up Inspection | Doug Manigold

Status: Completed Result: Complied
Scheduled: 04/29/2019 Completed: 04/26/2019

Follow Up Inspection | Doug Manigold

Status: Completed Result: No Change
Scheduled: 04/15/2019 Completed: 04/12/2019

Initial Inspection Inspection | Doug Manigold

Status: Completed Result: Violation(s)
Scheduled: 04/09/2019 Completed: 04/08/2019

Comments:

NOTE COMPLAINT FROM PLANNING (NICK) THAT PLANTERS FOR OUTDOOR DINING AREA ARE IN VIOLATION OF THE 5 FT RULE ABUTTING SIDEWALKS.

WRITER CONTACTED MANAGER OF REATAURANT AND ADVISED HER OF WHICH PLANTERS MUST BE MOVED TO COMPLY. MANAGER STATED SHE WOULD GET THEM MOVED.



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

DATE: May 3, 2022
TO: Nicholas Dupuis, Planning Director
FROM: Jack D. Pesho, Fire Marshal
SUBJECT: 220 Merrill Fire Inspections 2020-present

Fire Inspection Records

2020

- 1/6/20 Liquor License Annual Inspection – Violation corrected, no citation issued
- 5/15/20 Target Hazard Inspection – Sprinkler system maintenance, violation corrected no citation issued.
- 10/15/20 Target Hazard Inspection – Sprinkler system maintenance, violation corrected, no citation issued.
- 10/23/20 Site Plan Review – Temporary COVID 19 structure review.
- 11/4/20 Site Plan Review – Temporary COVID 19 structure review (revised plans).
- 11/4/20 Site Plan Review – Temporary COVID 19 structure review (final approval).
- 11/20/20 Target Hazard Inspection – No violations found on outdoor dining platform.
- 11/20/20 Target Hazard Inspection – No violations found.
- 11/21/20 Target Hazard Inspection – No violations found.
- 11/27/20 Target Hazard Inspection – No violations found.
- 11/29/20 Target Hazard Inspection – No violations found.
- 12/12/20 Target Hazard Inspection – No violations found.

2021

- 1/18/21 Liquor License Annual Inspection – All violations cleared.
- 1/21/21 Target Hazard Inspection – LP gas storage. No violations found.
- 4/19/21 Site Plan Review – Outdoor dining platform approved.
- 4/30/21 Target Hazard Inspection – COVID 19 occupancy (outdoor dining 75% capacity) (indoor dining 80% capacity) MDHHS regulations exceeded for capacity.
Saturday, May 1, 2021 occupancies within MDHHS regulations for capacity.
- 6/23/21 Target Hazard Inspection – One violation open due to contractor schedule.
- 6/24/21 Target Hazard Inspection – All violations corrected.
- 11/9/21 Target Hazard Inspection – LP gas storage. No violations found.



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 Fax 248.530.1950

2022

- 1/14/22 Liquor License Annual Inspection – Violations corrected, no citation issued.
- 3/21/22 Plan Review – Outdoor dining platform reviewed, approved.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: 220 Restaurant **Inspection Date:** 1/24/2020 (Initial Insp. Date: 1/6/2020)
Address: 220 East Merrill **InspectionType:** Reinspection #2 (Annual, Liquor License)
Suite:

Inspected By: Joel Campbell
 248-530-1924
 jcampbell@bhamgov.org

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 Chapter 9 Fire Protection Systems	904.12 - Commercial cooking systems.



Cleared on 1/24/2020

Code Text:

The automatic fire-extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems of the type and arrangement protected. Preengineered automatic dry- and wet-chemical extinguishing systems shall be tested in accordance with UL 300 and listed and labeled for the intended application. Other types of automatic fire-extinguishing systems shall be listed and labeled for specific use as protection for commercial cooking operations. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. Automatic fire-extinguishing systems of the following types shall be installed in accordance with the referenced standard indicated, as follows:

1. Carbon dioxide extinguishing systems, NFPA 12.
2. Automatic sprinkler systems, NFPA 13.
3. Foam-water sprinkler system or foam-water spray systems, NFPA 16.
4. Dry-chemical extinguishing systems, NFPA 17.
5. Wet-chemical extinguishing systems, NFPA 17A.

Exception: Factory-built commercial cooking recirculating systems that are tested in accordance with UL 710B and listed, labeled and installed in accordance with Section 304.1 of the International Mechanical Code.

Inspector Comments: Kitchen deep fryer has been drained, disconnected, and moved. Fire suppression contractor is scheduled to reconfigure the hood fire suppression to place the fryer back in service. Head chef, and restaurant manager were instructed to contact me when the work is completed.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord, and/or its representative needs additional time due to the scheduling of specialty contractors. In such a case, written notification shall be provided to the Fire

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: 220 Restaurant **Inspection Date:** 7/20/2020 (Initial Insp. Date: 5/15/2020)
Address: 220 East Merrill **InspectionType:** Reinspection #2 (Target/ Hazard Inspection)
Suite:

Inspected By: Nick Slanda
 248-530-1906
 nslanda@bhamgov.org

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 SECTION 903 AUTOMATIC SPRINKLER SYSTEMS	903.5 - Testing and maintenance.



Cleared on 7/20/2020

Code Text:

Sprinkler systems shall be tested and maintained in accordance with Section 901.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord, and/or its representative needs additional time due to the scheduling of specialty contractors. In such a case, written notification shall be provided to the Fire Inspector from said contractor that work/parts have been ordered. This notification shall be emailed, faxed, or hand delivered to the Birmingham Fire Department c/o Fire Prevention as soon as possible.

Failure to remedy cited violations within ten (10) business days will result in the issuance of a misdemeanor ticket(s) requiring a court appearance and fines.

Thank you for your cooperation in keeping your business and our community safe!

Birmingham Fire Department

572 South Adams Road
Birmingham, MI 48009
Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: 220 Restaurant **Inspection Date:** 1/19/2021 (Initial Insp. Date: 10/15/2020)
Address: 220 East Merrill **InspectionType:** Reinspection #1 (Target/ Hazard Inspection)
Suite:

Inspected By: Jeff Schemansky
248-530-1906
jschemansky@bhamgov.org

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 SECTION 903 AUTOMATIC SPRINKLER SYSTEMS	903.3.1.1 - NFPA 13 sprinkler systems.

 **Cleared on 1/19/2021**

Code Text:

Where the provisions of this code require that a building or portion thereof be equipped throughout with an automatic sprinkler system in accordance with this section, sprinklers shall be installed throughout in accordance with NFPA 13 except as provided in Sections 903.3.1.1.1 and 903.3.1.1.2.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord, and/or its representative needs additional time due to the scheduling of specialty contractors. In such a case, written notification shall be provided to the Fire Inspector from said contractor that work/parts have been ordered. This notification shall be emailed, faxed, or hand delivered to the Birmingham Fire Department c/o Fire Prevention as soon as possible.

Failure to remedy cited violations within ten (10) business days will result in the issuance of a misdemeanor ticket(s) requiring a court appearance and fines.

Thank you for your cooperation in keeping your business and our community safe!

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	10/23/2020
Address:	220 East Merrill	InspectionType:	Site Plan Review
Suite:		Inspected By:	Joel Campbell 248-530-1924 jcampbell@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Reviewed site plan for temporary COVID-19 outdoor structure. More documents must be submitted.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	11/4/2020
Address:	220 East Merrill	InspectionType:	Site Plan Review
Suite:		Inspected By:	Joel Campbell 248-530-1924 jcampbell@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Reviewed revised site plan for temporary outdoor structure due to COVID-19. Comments returned.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	11/4/2020
Address:	220 East Merrill	InspectionType:	Site Plan Review
Suite:		Inspected By:	Joel Campbell 248-530-1924 jcampbell@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Reviewed site plan submittal with additional information. Approved for construction. A final inspection must be performed prior to using the space.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	11/20/2020
Address:	220 East Merrill	InspectionType:	Target/ Hazard Inspection
Suite:		Inspected By:	Joel Campbell 248-530-1924 jcampbell@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Mike Morad and myself stopped at this business to view the progress of the temporary outdoor structure. Met with the business owner and the contractor performing the work. Answered questions related to the project and the current MDHHS mandates. Structure need to be completed and final inspection performed.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	11/20/2020
Address:	220 East Merrill	InspectionType:	Target/ Hazard Inspection
Suite:			
		Inspected By:	Nick Slanda 248-530-1906 nslanda@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	11/21/2020
Address:	220 East Merrill	InspectionType:	Target/ Hazard Inspection
Suite:		Inspected By:	Nick Slanda 248-530-1906 nslanda@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	11/27/2020
Address:	220 East Merrill	InspectionType:	Target/ Hazard Inspection
Suite:		Inspected By:	Nick Slanda 248-530-1906 nslanda@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	11/29/2020
Address:	220 East Merrill	InspectionType:	Target/ Hazard Inspection
Suite:		Inspected By:	Marshall Crawford 248-530-1906 mcrawford@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	12/12/2020
Address:	220 East Merrill	InspectionType:	Target/ Hazard Inspection
Suite:		Inspected By:	Jeff Schemansky 248-530-1906 jschemansky@bhamgov.org

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Birmingham Fire Department

572 South Adams Road
Birmingham, MI 48009
Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: 220 Restaurant **Inspection Date:** 1/29/2021 (Initial Insp. Date: 1/18/2021)
Address: 220 East Merrill **Inspection Type:** Reinspection #1 (Annual, Liquor License)
Suite:
Inspected By: Jack Pesha

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 Chapter 6 Building Services and Systems	605.3 - Electrical Service Equipment Clearance

 **Cleared on 1/18/2021**

Code Text:

A working space of not less than 30 inches (762 mm) in width, 36 inches (914 mm) in depth and 78 inches (1981 mm) in height shall be provided in front of electrical service equipment. Where the electrical service equipment is wider than 30 inches (762 mm), the working space shall be not less than the width of the equipment. Storage of materials shall not be located within the designated working space.

Exceptions:

1. Where other dimensions are required or allowed by NFPA 70.
2. Access openings into attics or under-floor areas which provide a minimum clear opening of 22 inches (559 mm) by 30 inches (762 mm).

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 6 Building Services and Systems	605.5 - Extension cords.
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 **Cleared on 1/18/2021**

Code Text:

Extension cords and flexible cords shall not be a substitute for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings or floors, or under doors or floor coverings, nor shall such cords be subject to environmental damage or physical impact. Extension cords shall be used only with portable appliances.

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 10 Means of Egress	1031.3 - Obstructions.
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 **Cleared on 1/18/2021**

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	1/21/2021
Address:	220 East Merrill	InspectionType:	Target/ Hazard Inspection
Suite:		Inspected By:	Jack Pesha

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Complaint made regarding storage of propane tanks on the property. Fire Marshal Campbell and myself made a site visit to investigate issue. 4-5 patio heaters were found with 20lb propane tanks secured and enclosed in the bottom of the units. These items were stored away from entrance / exit doors and presented no tipping hazards. There is no other suitable location for these devices.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	4/19/2021
Address:	220 East Merrill	InspectionType:	Site Plan Review
Suite:		Inspected By:	Jack Pesha

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Outdoor dining platform approved as presented.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: 220 Restaurant **Inspection Date:** 5/1/2021 (Initial Insp. Date: 4/30/2021)
Address: 220 East Merrill **InspectionType:** Reinspection #1 (Target/ Hazard Inspection)
Suite:
Inspected By: Jack Pesha

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 Chapter 53 Compressed Gas	5303.5.3 - Securing compressed gas containers, cylinders and tanks.

 **Cleared on 5/1/2021**

Code Text:

Compressed gas containers, cylinders and tanks shall be secured to prevent falling caused by contact, vibration or seismic activity. Securing of compressed gas containers, cylinders and tanks shall be by one of the following methods:

1. Securing containers, cylinders and tanks to a fixed object with one or more restraints.
2. Securing containers, cylinders and tanks on a cart or other mobile device designed for the movement of compressed gas containers, cylinders or tanks.
3. Nesting of compressed gas containers, cylinders and tanks at container filling or servicing facilities or in sellers' warehouses not accessible to the public. Nesting shall be allowed provided the nested containers, cylinders or tanks, if dislodged, do not obstruct the required means of egress.
4. Securing of compressed gas containers, cylinders and tanks to or within a rack, framework, cabinet or similar assembly designed for such use.

Exception: Compressed gas containers, cylinders and tanks in the process of examination, filling, transport or servicing.

Inspector Comments: Target hazard inspection performed.
 COVID 19 guidelines for dining being followed with the exception of:
 Occupancy limits exceed regulations for COVID 19.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord, and/or its representative needs additional time due to the scheduling of specialty contractors. In such a case, written notification shall be provided to the Fire Inspector from said contractor that work/parts have been ordered. This notification shall be emailed, faxed, or hand delivered to the Birmingham Fire Department c/o Fire

Birmingham Fire Department


572 South Adams Road
Birmingham, MI 48009
Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: 220 Restaurant **Inspection Date:** 7/26/2021 (Initial Insp. Date: 6/23/2021)
Address: 220 East Merrill **InspectionType:** Reinspection #1 (Target/ Hazard Inspection)
Suite:
Inspected By: Jack Pesha

#	Insp. Result	Location	Code Set	Code
1	Fail - Cleared	Floor 1	IFC 2015 SECTION 903 AUTOMATIC SPRINKLER SYSTEMS	903.2.1 - Group A.
 Cleared on 7/26/2021				


Code Text:

An automatic sprinkler system shall be provided throughout buildings and portions thereof used as Group A occupancies as provided in this section. For Group A-1, A-2, A-3 and A-4 occupancies, the automatic sprinkler system shall be provided throughout the story where the fire area containing the Group A-1, A-2, A-3 or A-4 occupancy is located, and throughout all stories from the Group A occupancy to, and including, the levels of exit discharge serving the Group A occupancy. For Group A-5 occupancies, the automatic sprinkler system shall be provided in the spaces indicated in Section 903.2.1.5.

2	Fail - Cleared	Floor 1	IFC 2015 SECTION 903 AUTOMATIC SPRINKLER SYSTEMS	903.3 - Sprinkler System Installation Requirements
 Cleared on 7/26/2021				

Code Text:

Automatic sprinkler systems shall be designed and installed in accordance with Sections 903.3.1 through 903.3.8.

3	Fail - Cleared	Floor 1	IFC 2015 Chapter 10 Means of Egress	1013.3 - Exit Sign Internal/External Illumination
 Cleared on 7/26/2021				

Code Text:

Exit signs shall be internally or externally illuminated.

Exception: Tactile signs required by Section 1013.4 need not be provided with illumination.

4	Fail - Cleared	Floor 1	IFC 2015 Chapter 10 Means of Egress	1008.2 - Illumination required.
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Birmingham Fire Department

572 South Adams Road
Birmingham, MI 48009
Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: 220 Restaurant **Inspection Date:** 7/26/2021 (Initial Insp. Date: 6/24/2021)
Address: 220 East Merrill **InspectionType:** Reinspection #1 (Target/ Hazard Inspection)
Suite:
Inspected By: Jack Pesha

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 SECTION 903 AUTOMATIC SPRINKLER SYSTEMS	903.3 - Sprinkler System Installation Requirements

 **Cleared on 7/26/2021**

Code Text:

Automatic sprinkler systems shall be designed and installed in accordance with Sections 903.3.1 through 903.3.8.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord, and/or its representative needs additional time due to the scheduling of specialty contractors. In such a case, written notification shall be provided to the Fire Inspector from said contractor that work/parts have been ordered. This notification shall be emailed, faxed, or hand delivered to the Birmingham Fire Department c/o Fire Prevention as soon as possible.

Failure to remedy cited violations within ten (10) business days will result in the issuance of a misdemeanor ticket(s) requiring a court appearance and fines.

Thank you for your cooperation in keeping your business and our community safe!

Birmingham Fire Department

572 South Adams Road
Birmingham, MI 48009
Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: 220 Restaurant **Inspection Date:** 11/29/2021 (Initial Insp. Date: 11/9/2021)
Address: 220 East Merrill **InspectionType:** Reinspection #1 (Target/ Hazard Inspection)
Suite:
Inspected By: Jack Pesha

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 Chapter 53 Compressed Gas	5303.5 - Security

 **Cleared on 11/29/2021**

Code Text:

Compressed gas containers, cylinders, tanks and systems shall be secured against accidental dislodgement and against access by unauthorized personnel in accordance with Sections 5303.5.1 through 5303.5.3.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord, and/or its representative needs additional time due to the scheduling of specialty contractors. In such a case, written notification shall be provided to the Fire Inspector from said contractor that work/parts have been ordered. This notification shall be emailed, faxed, or hand delivered to the Birmingham Fire Department c/o Fire Prevention as soon as possible.

Failure to remedy cited violations within ten (10) business days will result in the issuance of a misdemeanor ticket(s) requiring a court appearance and fines.

Thank you for your cooperation in keeping your business and our community safe!

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: 220 Restaurant **Inspection Date:** 1/24/2022 (Initial Insp. Date: 1/14/2022)
Address: 220 East Merrill **InspectionType:** Reinspection #1 (Annual, Liquor License)
Suite:
Inspected By: Jack Pesha

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 SECTION 609 COMMERCIAL KITCHEN HOODS	609.2 - Where required.



Cleared on 1/24/2022

Code Text:

A Type I hood shall be installed at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease vapors.

Exception: A Type I hood shall not be required for an electric cooking appliance where an approved testing agency provides documentation that the appliance effluent contains 5 mg/m³ or less of grease when tested at an exhaust flow rate of 500 cfm (0.236 m³/s) in accordance with UL 710B.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord, and/or its representative needs additional time due to the scheduling of specialty contractors. In such a case, written notification shall be provided to the Fire Inspector from said contractor that work/parts have been ordered. This notification shall be emailed, faxed, or hand delivered to the Birmingham Fire Department c/o Fire Prevention as soon as possible.

Failure to remedy cited violations within ten (10) business days will result in the issuance of a misdemeanor ticket(s) requiring a court appearance and fines.

Thank you for your cooperation in keeping your business and our community safe!

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	220 Restaurant	Inspection Date:	3/21/2022
Address:	220 East Merrill	InspectionType:	Plan Review
Suite:		Inspected By:	Jack Pesha

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Plan review for new proposed outdoor dining reviewed. Approved with conditions.

Comments:

Fire extinguisher mounted, 5 lb. size

Do not impede thru lane of traffic

Fuel for heating equipment to be stored in cage to prevent vehicle strikes. No loose fuel tanks permitted.

Egress to outdoor dining shall not be obstructed by tables, chairs or other. Fueled equipment to be a minimum of 5 feet from ingress/egress.



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

DATE: May 3, 2022
TO: Nicholas Dupuis, Planning Director
FROM: Jack D. Pesho, Fire Marshal
SUBJECT: 220 Merrill – Rose Room Fire Inspections 2020-present

Fire Inspection Records

2020

- 1/6/20 Liquor License Annual Inspection – All violations corrected, no citation issued.

2021

- 1/18/21 Liquor License Annual Inspection – All violations corrected, no citation issued.
- 4/30/21 Target Hazard Inspection – COVID 19 occupancy (10% occupancy, within MDHHS guidelines.
- 5/1/21 Target Hazard Inspection – COVID 19 occupancy (10% occupancy, within MDHHS guidelines.

2022

- 1/14/22 Liquor License Annual Inspection – All violations corrected, no citations issued.

Birmingham Fire Department

572 South Adams Road
Birmingham, MI 48009
Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: Rose Room **Inspection Date:** 1/20/2020 (Initial Insp. Date: 1/6/2020)
Address: 220 East Merrill **InspectionType:** Reinspection #1 (Annual, Liquor License)
Suite:

Inspected By: Joel Campbell
248-530-1924
jcampbell@bhamgov.org

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 Chapter 6 Building Services and Systems	605.3 - Electrical Service Equipment Clearance

 **Cleared on 1/20/2020**

Code Text:

A working space of not less than 30 inches (762 mm) in width, 36 inches (914 mm) in depth and 78 inches (1981 mm) in height shall be provided in front of electrical service equipment. Where the electrical service equipment is wider than 30 inches (762 mm), the working space shall be not less than the width of the equipment. Storage of materials shall not be located within the designated working space.

Exceptions:

1. Where other dimensions are required or allowed by NFPA 70.
2. Access openings into attics or under-floor areas which provide a minimum clear opening of 22 inches (559 mm) by 30 inches (762 mm).

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 6 Building Services and Systems	605.6 - Open junction boxes and open-wiring splices.
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 **Cleared on 1/20/2020**

Code Text:

Open junction boxes and open-wiring splices shall be prohibited. Approved covers shall be provided for all switch and electrical outlet boxes.

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 9 Fire Protection Systems	901.6 - Fire Alarm and Extinguishing System Maintenance
---	----------------	---------	---	--

 **Cleared on 1/20/2020**

Code Text:

Fire detection, alarm, and extinguishing systems, mechanical smoke exhaust systems, and smoke and heat vents shall be maintained in an operative condition at all times, and shall be replaced or repaired where defective. Nonrequired fire protection systems and equipment shall be inspected, tested and maintained or removed.

Birmingham Fire Department


572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: Rose Room **Inspection Date:** 1/29/2021 (Initial Insp. Date: 1/18/2021)
Address: 220 East Merrill **InspectionType:** Reinspection #1 (Annual, Liquor License)
Suite:
Inspected By: Jack Pesha

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 Chapter 3 General Requirements	315.3.3 - Combustible Storage in Equipment Rooms

 **Cleared on 1/29/2021**

Code Text:

Combustible material shall not be stored in boiler rooms, mechanical rooms, electrical equipment rooms or in fire command centers as specified in Section 508.1.5.

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 9 Fire Protection Systems	901.6 - Fire Alarm and Extinguishing System Maintenance
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 **Cleared on 1/29/2021**

Code Text:

Fire detection, alarm, and extinguishing systems, mechanical smoke exhaust systems, and smoke and heat vents shall be maintained in an operative condition at all times, and shall be replaced or repaired where defective. Nonrequired fire protection systems and equipment shall be inspected, tested and maintained or removed.

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 9 Fire Protection Systems	904.12 - Commercial cooking systems.
---	----------------	---------	---	--------------------------------------

 **Cleared on 1/29/2021**

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	Rose Room	Inspection Date:	4/30/2021
Address:	220 East Merrill	InspectionType:	Target/ Hazard Inspection
Suite:		Inspected By:	Jack Pesha

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Inspection performed to site any fire code violations and perform COVID 19 survey.
No hazards found.
Appears to follow COVID guidelines.

Birmingham Fire Department

572 South Adams Road

Birmingham, MI 48009

Office (248) 530-1906 Fax (248) 530-1950

Occupant Name:	Rose Room	Inspection Date:	5/1/2021
Address:	220 East Merrill	InspectionType:	Target/ Hazard Inspection
Suite:		Inspected By:	Jack Pesha

No violations have been noted at this time. If you have any questions, please call our office. No violations.

Inspector Comments: Target hazard inspection performed.
COVID 19 guidelines for dining being followed.
Occupancy limits within regulations for COVID 19.

Birmingham Fire Department

572 South Adams Road
Birmingham, MI 48009
Office (248) 530-1906 Fax (248) 530-1950

Occupant Name: Rose Room **Inspection Date:** 1/24/2022 (Initial Insp. Date: 1/14/2022)
Address: 220 East Merrill **InspectionType:** Reinspection #1 (Annual, Liquor License)
Suite:
Inspected By: Jack Pesha

#	Insp. Result	Location	Code Set	Code
0	Fail - Cleared	Floor 1	IFC 2015 Chapter 3 General Requirements	315.3.3 - Combustible Storage in Equipment Rooms

 **Cleared on 1/24/2022**

Code Text:

Combustible material shall not be stored in boiler rooms, mechanical rooms, electrical equipment rooms or in fire command centers as specified in Section 508.1.5.

0	Fail - Cleared	Floor 1	IFC 2015 Chapter 5 Fire Service Features	509.1 - Identification.
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 **Cleared on 1/24/2022**

Code Text:

Fire protection equipment shall be identified in an approved manner. Rooms containing controls for air-conditioning systems, sprinkler risers and valves, or other fire detection, suppression or control elements shall be identified for the use of the fire department. Approved signs required to identify fire protection equipment and equipment location shall be constructed of durable materials, permanently installed and readily visible.

It is hereby ordered by the office of the Fire Marshal:

All violations cited in this inspection report must be corrected within ten (10) business days. Unless such a situation prevails where the property owner, landlord, and/or its representative needs additional time due to the scheduling of specialty contractors. In such a case, written notification shall be provided to the Fire Inspector from said contractor that work/parts have been ordered. This notification shall be emailed, faxed, or hand delivered to the Birmingham Fire Department c/o Fire Prevention as soon as possible.

Failure to remedy cited violations within ten (10) business days will result in the issuance of a misdemeanor ticket(s) requiring a court appearance and fines.

Thank you for your cooperation in keeping your business and our community safe!

Valet Information



APPLICATION FOR VALET PARKING LICENSE

Chapter 26, Article VIII – Fees: Initial application fee \$1,000.00
Renewal fee \$ 500.00

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

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

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

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

2592

Background Check:

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

APPLICANT INFORMATION

Name of Business/Businesses 220 Merrill

Business address/addresses 220 Merrill Street

(include city and zip) Birmingham, MT 48004

Business Phone 248 646 2220

Business Fax _____

Contact Person Zaid ELIA

Contact Email Kdiab@theiconiccollection.com

Hours of operation 4pm - midnight

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

Number of meter spaces utilized (approved by Chief of Police) 2

Location of meter spaces Merrill Street

Estimated number of vehicles to be parked per month 400

Location of parking structure where vehicles will be parked Private lot Women's Excellence

VALET INFORMATIONValet Parking Service Provider IN House VALETOn-site Manager Steve FerichPhone 248-755-4082Has the valet company's previous license been revoked or suspended? NO

If yes, explain reason for revocation or suspension _____

Will a keybox be used? Yes
SIGNATURE OF APPLICANT1/11/2022
DATE**THE FOLLOWING MUST BE INCLUDED WITH THE APPLICATION:**

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

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

FOR OFFICE USE ONLY

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

POLICE DEPT APPROVAL: _____

INSURANCE APPROVAL: _____

12/17/2020

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

December 23, 2021

220 Restaurant Hospitality, LLC
Attn: Zaid Elia
220 E. Merrill
Birmingham, MI 48009

Your annual Birmingham Valet Parking License will expire on December 31, 2021.

Please return the enclosed 2022 application with your payment of the license renewal fee and meter fees for the first half of 2022, detailed below. Your valet service provider will be required to submit an insurance certificate, a copy of current driver's license for each driver, and a driving record and criminal background check for each driver. As new drivers are hired, they must submit the driving record, background check and driver's license to the City Clerk's Office for approval. See enclosed application for details.

		Monthly Fee x 6 (Jan -June)	Amount Due
Renewal Fee (Jan-Dec)			\$500.00
Meter Space (Jan-June)* 585-000.000-612.0015	Meters: 2	\$216 x 2 x 6	\$2,592.00
TOTAL DUE			\$3,092.00

*if your establishment needs to replace or obtain new meter bags, please contact the Police Department at 248.530.1870. There is a \$50 deposit per meter bag.

In accordance with the City Code, you must renew **before February 1, 2022**. Failure to do so will result in a 50% penalty. **Your application will not be accepted unless all of the required information is submitted.**

If you have any questions, please call the Clerk's Office at 248.530.1880.

Regards,



Christina Woods
Deputy City Clerk

cc: In House Valet
Police Chief

Enclosures



Dykema Gossett PLLC
39577 Woodward Avenue
Suite 300
Bloomfield Hills, MI 48304
WWW.DYKEMA.COM
Tel: (248) 203-0700
Fax: (248) 203-0763
Stephen R. Estey
Direct Dial: (248) 203-0538
Direct Fax: (855) 232-1793
Email: SEstey@dykema.com

March 25, 2022

Via Federal Express and Email

City of Birmingham
c/o Mary M. Kucharek
151 Martin Street
Birmingham, MI 48009

Birmingham City Commission
151 Martin Street
Birmingham, MI 48009

**Re: *Request To Correct Irregularity In Parking Assessment District – Property
Located at 479 S. Old Woodward Avenue***

Dear City Commissioners,

We represent the owner (“Client” or “Applicant”) of the combined lots of 469-479 S. Old Woodward Avenue, now known as 479 S. Old Woodward Avenue (the “Property”). For over a year now applicant has attempted to get a decision from the City as to whether or not the Property must be included in the City of Birmingham Parking Assessment District (“PAD”). This matter arises from a previous submission before the Advisory Parking Committee in 2021 by our Client to be included in the Parking Assessment District. That matter remains unresolved. Our Client has since submitted two prior written letters to the City of Birmingham (“City”) regarding this matter, dated February 23, 2022 and March 7, 2022, which are attached hereto as **Exhibits A and B**.

The Applicant is respectfully requesting to be placed on the next regularly scheduled City Commission meeting to (i) have a public hearing on the pending application for admission into PAD; and (ii) receive a determination under Section 94-13 to correct the 1982 irregularity and add the Property into the PAD.

i. Pending Application for Inclusion into the Parking District

In December 2020, our Client submitted an application to the City of Birmingham to have the Property added to the PAD (“Application”). After months of delays, the City’s Advisory Parking Committee (“APC”) held a public hearing on the Application during its October 6, 2021 meeting. See attached APC meeting minutes from October 6, 2021 attached hereto as **Exhibit C**. At the October 6, 2021 meeting, after an hour long discussion on the matter and four (4) motions

failing to carry or be seconded, the APC could not reach a conclusion on a recommendation to the City Commission for the Application. The Vice-Chair noted on the record that it was unfair to the Applicant that it had been waiting for a decision since December of 2020. Instead the APC concluded without a motion that the City Commission was in the best position to address the issues raised by the Applicant.

ii. Correction To Special Assessments With Irregularities

As requested in the previous letters submitted to the City in **Exhibits A and B**, the City has authority under Section 94-13 to correct an irregularity or informality in the PAD and add the Property into the PAD – even though the PAD has been fully paid for. As outlined in detail in our Client’s February 23, 2022 letter (**Exhibit A**), the City Commission should have included the Property in its addition to the assessment roll in 1982, but inadvertently failed to do so. The Property is the only parcel located in the Downtown Birmingham Overlay District (formerly the Central Business District - CBD) that is zoned D-4 and located outside of the Parking Assessment District. Therefore, the Property is uniquely prejudiced and subject to different standards than all of other similarly situated D-4 properties located downtown within the former CBD. This results in the Property being unsuitable for development – as well as not competitive with other similarly situated properties within the PAD, causing ongoing financial and economic harm to our Client.

There is historical precedent in the City of Birmingham to allow properties to be added to the PAD. On November 23, 2015, the City Commission approved of the inclusion of 369-397 N. Old Woodward Ave. (Brookside Terrace Condominiums) to the PAD upon the payment of a one-time fee of \$29,682.00 (even though the PAD had been fully paid). In essence, this prior action also corrected an irregularity. Client is aware that there is a formula to calculate the total amount that should have been assessed to the Property and our Client is prepared and willing to pay the one-time assessment fee (similar to 369-397 N. Old Woodward), as calculated by the City’s Finance Department to be \$33,682.00. These fees can be used for future maintenance and upkeep of the structures in the PAD and/or for the benefit of the PAD.

In conclusion, the applicant is requesting they be placed on the next regularly scheduled City Commission meeting to i) have a public hearing and determination on the Application; and ii) make a determination under Section 94-13 to correct the 1982 irregularity and add the Property into the PAD. It is simply not fair to arbitrarily exclude this one D4 Property (which rightfully should have been included in 1982) from the PAD. The correction of the irregularity and/or inclusion of the Property in the PAD will allow the Property to be developed in the same manner and pursuant to the same rules as all other D4 properties in the Downtown Overlay District, that is, with the benefits provided by being a part of the PAD. Moreover, inclusion in the PAD would allow greater flexibility in the retail uses at the corner of S. Old Woodward and Hazel - all to the benefit of the Property, the City and the Downtown Overlay District purposes.



c/o City of Birmingham
March 25, 2022
Page 3

The delays to date to reach a decision and include the Property in the PAD is causing economic hardship to the applicant. The Property is currently unable to be developed in an economically viable manner without inclusion into the PAD, nor can it return to be utilized for its prior uses.

While our Client hopes to resolve this matter amicably and is not seeking to enter into a legal dispute with the City, further inaction, deferment or denial by the City will necessitate legal action to correct the plain irregularity and enforce our Client's rights to the fullest extent of the law.

Regards,

DYKEMA GOSSETT PLLC

A handwritten signature in blue ink, appearing to read "Stephen R. Estey", with a long horizontal stroke extending to the right.

Stephen R. Estey

Enclosures

cc: Therese Longe, Mayor (via email)
 Pierre Boutros, Mayor Pro-Tem (via email)
 Clinton Baller, Commissioner (via email)
 Andrew Haig, Commissioner (via email)
 Brad Host, Commissioner (via email)
 Elaine McLain, Commissioner (via email)
 Katie Schafer, Commissioner (via email)
 Tom Markus, City Manager (via email)
 Jana Ecker, Assistant City Manager (via email)

EXHIBIT A



Dykema Gossett PLLC
39577 Woodward Avenue
Suite 300
Bloomfield Hills, MI 48304
WWW.DYKEMA.COM
Tel: (248) 203-0700
Fax: (248) 203-0763
Stephen R. Estey
Direct Dial: (248) 203-0538
Direct Fax: (855) 232-1793
Email: SEstey@dykema.com

February 23, 2022

Via Federal Express

City of Birmingham
c/o Mary M. Kucharek
151 Martin Street
Birmingham, MI 48009

Re: *Parking Assessment District Irregularity – Property Located at 479 S. Old Woodward Avenue*

Dear Ms. Kucharek,

We represent the owner of the combined lots of 469-479 S. Old Woodward Avenue, now known as 479 S. Old Woodward Avenue (the “Property”). As a result of an irregularity or informality in the calculation of Parking Assessment District (“PAD”) in the City of Birmingham, the Property was inadvertently not included in the PAD. The Property is the only parcel located in the Downtown Birmingham Overlay District (formerly the Central Business District) that is zoned D-4 and located outside of the Parking Assessment District. Therefore, the Property is unfairly prejudiced and subject to different standards than all of the other similarly situated D-4 properties located downtown. This results in the Property being unsuitable for development, causing financial and economic harm to the owner.

I. THE PROPERTY

The physical practicalities of the Property create unique problems for development under the City’s current zoning ordinance, given the manner in which parking is treated for parcels included in the Parking Assessment District (“PAD”) vs. all others. The overall lot size is 0.423 acres. The lot is long and narrow, and it is situated on two corners with frontage on three streets, S. Old Woodward, Hazel and M-1. Because of the size and narrow corner configuration of the Property, it cannot support street-level retail, commercial use, residential use, *and* the required parking for those uses as discussed herein.

The off-street parking requirements for this Property make the engineering and design of a mixed-use, D4-allowable building challenging – if not impossible. Even with a significant amount

of the ground floor area and an underground garage dedicated to parking, there simply is not enough onsite parking to support street-level-activating retail uses, such as a café or coffee shop, at the S. Old Woodward frontage. The owner can only plan to house a leasing office in the S. Old Woodward frontage, which fails to optimize retail for a pedestrian streetscape or to make the development economically viable.

Such construction/engineering difficulties is why the City of Birmingham does not require off-street parking for properties/businesses located in the Downtown Birmingham Overlay District - Parking Assessment District. The Property is the only building located downtown that is zoned D-4 and located outside of the Parking Assessment District. Therefore, the Property is unfairly prejudiced and subject to different standards than all of the other similarly situated D-4 zoned properties.

II. BIRMINGHAM ORDINANCE

a. Parking Disparity

Article 3, Section 3.04(D) provides in pertinent part:

D. Parking requirements.

1. For all nonresidential uses located within the parking assessment district, parking on the site shall not be required, provided such site is in full compliance with the requirements of the parking assessment district.
2. For all residential uses located within the parking assessment district, the on-site parking requirements contained in Section [4.46](#), Section [4.49](#), Section [4.50](#) and Section [4.51](#) may be complied with through leasing the required spaces from an off-site parking area, provided the requirements of Section [4.45](#)(G) are met and all parking is supplied on site or within 300 feet of the residential lobby entrance of the building
3. **For all sites located outside of the parking assessment district, off-street parking must be provided in accordance with the requirements of [Article 4](#) for parking, loading and screening.**
4. Notwithstanding the above regulations, residential dwelling units within the existing second and third floors of landmark buildings, as defined in Section 62-87 of the Birmingham City Code, located within the central business historic district are exempt from required off-street parking requirements.
5. Off-street parking contained in the first story shall not be permitted within

20 feet of any building facade on a frontage line or between the building facade and the frontage line.

6. The placement of two abutting off-street parking lots with continuous street frontages shall not be permitted.

Based on the foregoing, the Property is required to provide off-street parking in accordance with the requirements of Article 4.

b. Correction To Special Assessments With Irregularities

Under the Birmingham's Code of Ordinances, the City of Birmingham may amend a special assessment when it determines that an "irregularity" had occurred. Section 94-13(c)(1) provides in pertinent part:

(1) whenever any special assessment shall, in the opinion of the commission, be incorrect or invalid by reason of any irregularity or informality in the proceedings, or if any court or tribunal of competent jurisdiction shall adjudge the assessment to be illegal, the commission may, regardless of whether the improvement has been made or not, or whether any part of the assessment has been paid or not, cause a new assessment to be made for the same purpose for which the former assessment was made.

Therefore, the City of Birmingham has the authority to amend and correct the PAD to allow for the inclusion of the Property. Importantly, correcting this irregularity will not open up the PAD to further corrections, as it is a finite irregularity that occurred at a particular moment in time as noted below and based on our review of the background documents there were no other irregularities.

III. THE HISTORY OF THE PARKING ASSESSMENT DISTRICT

In 1954, the first parking assessment district was created for the Merrill Lot in Birmingham. In 1957 and 1958 the City created a Parking Special Assessment Ordinance. Ordinance 527 - Article 6 Section F.4. Thereafter, in 1965, due to high traffic concerns, the City began planning to construct the parking structures in the City. The first parking structure to be constructed in Birmingham was Lot 5. In order to pay for the Lot 5 structure the City decided to use an assessment district. During the May 26, 1965 discussions regarding the formula to be used for the parking assessment district for Lot 5, the City decided to use the entire Central Business District, stating,

"it was recalled the formula established during the creation of Parking lot #1, using the basis of a 600ft radius, had been used for all succeeding lots, but that it is proposed to include the entire Central Business District for the parking structure,

making the distance factor range from 1-10. Merchandising factors range from 5-50 and building use factors range from 0-; these being merely refinements to be used in producing equity in the formula.” (emphasis added), *See* Birmingham City commission Proceedings, May 26, 1965 attached hereto as **Exhibit 1**

This was a critical change to the PAD because it expanded the assessment roll for parking from those businesses within a 600-foot radius, which is what was used for the parking lots, to inclusion of the entire central business district (“CBD”). The same CBD assessment roll would go on to be used in 1967 as the assessment roll for the construction of the Pierce parking structure.

In 1968, the building located at 469-479 South Woodward, which our client now owns was built. In 1982, the City Commission directed that the parking assessment formula be studied to determine if it was still equitable in light of the changes to the CBD that had occurred over the years. The Committee determined that the assessment formula should be changed to place “additional emphasis on existing buildings and less emphasis on land which is not built upon and creates no current parking demand.” (emphasis added), *See* Parking Assessment Formula memo dated March 20, 2001 attached hereto as **Exhibit 2**. On January 10, 1983, the City Commission held a public hearing to discuss the necessity of the Peabody Structure. The City assessor indicated that the new assessment district for the parking structure would include the addition of 2 new properties, including the “new office building located at Maple and Chester and the City-owned property located adjacent to the Park Street structure” *See* City Commission Proceedings, January 10, 1983 attached hereto as **Exhibit 3**. In 1982, the Peabody Structure assessment roll was adopted with these changes, but failed to include the Property. During this change in the assessment roll, our client’s property was overlooked and inadvertently excluded from the PAD, despite meeting the criteria for inclusion, i.e. being within the CBD District and approximately 600 feet proximity.

It should further be noted that as recently as 2016, the City has allowed neighboring Property owners to be added to the PAD. In 2016, the City of Birmingham allowed the property located at 369-397 N. Old Woodward Ave. to be rezoned to D-4, and added to the PAD as a part of the construction of the Brookside Terrace Condominium project. *See* City of Birmingham Advisory Parking Committee meeting minutes from January 20, 2016.

IV. PAD IRREGULARITY

a. The Property Should Have Been Added To The PAD In 1982.

In the instant case, it is clear there was an irregularity. The intent of the assessment district is to assess those businesses/properties that benefit from the parking structures in the downtown district area. Over the years parcels have been added to the PAD that were not located in the

original assessment district, but were added because they were located near existing parking structures in Birmingham (i.e. corner of Chester and Maple and across Woodward from the Lot 5 structure). The City Commission should have included the Property in its addition to the assessment roll in 1982, but inadvertently failed to do so.

The Property is located on the same block as the property at 325 South Woodward, which was in the PAD district. The intent of the original assessment district dating back to 1955 was to assess those businesses immediately surrounding (within 600 feet). In 1965 the City decided to no longer use the 600 radius and instead assess the entire CBD. The Property was not included in the original CBD because, in 1965, the Property was vacant land. The building on the Property was not built until 1968. The Property is roughly 600 feet south of the Peabody structure, which was approved in 1982. Based on its close proximity to the Peabody structure, commercial/business nature of the property, and original intent of the assessment district to tax surrounding businesses to a parking lot or structure, the Property should have been added to the assessment district in 1982. Upon information and belief, the City of Birmingham inadvertently overlooked the Property because the Birmingham Place condominium building was built in 1981, which provided on-site parking and is located in-between the Property and the Peabody structure. The City likely did not look any further south that the Birmingham Place and overlooked the Property. There can be no doubt that this location is a business that should have been included in the PAD during the 1982 amendments.

b. The Property Is Located In The CBD And Therefore Should Have Been Automatically Included In The PAD.

The Property is the only building located in the Downtown Birmingham Overlay District that is zoned D-4 and located outside of the Parking Assessment District. *See* Parking Assessment Map attached hereto as **Exhibit 4**. Dating back to 1965, the PAD included all properties located in the CBD. The Downtown Birmingham Overlay District was created in 1996 and replaced the CBD. Section 1-2 of the Birmingham Ordinance states,

“Central Business District. When the words "Central Business District" are used in this Code, *it shall mean those areas included within the Downtown Birmingham Overlay District as described in Article Three: Overlay Districts, 3.02 Section D* of the Birmingham Zoning Ordinance.”

(Emphasis added)

The Property is located in the Downtown Birmingham Overlay District/CBD, thus, it should have been automatically included in the PAD in 1996.

V. HARM TO THE PROPERTY

By not being included in the PAD, the Property is unfairly prejudiced and subject to different standards than all of the other similarly situated D-4 properties in the City. As such, the

Property is uniquely damaged as it cannot be fully developed with the permitted uses under the D4 zoning classification. By way of example, the Property was previously utilized as a Mountain King restaurant along with a bank. If our client attempted to re-activate these exact same uses today – it could not, as without being in the PAD, there would be insufficient off street parking.

Among the purposes of the Birmingham Downtown Overlay District are the following:

- A. Encourage a form of development that will achieve the physical qualities necessary to maintain and enhance the economic vitality of Downtown Birmingham and to maintain the desired character of the City of Birmingham as stated in the Downtown Birmingham 2016 Plan;
- B. Encourage the renovation of buildings; ensure that new buildings are compatible with their context and the desired character of the city; ensure that all uses relate to the pedestrian; and, ensure that retail be safeguarded along specific street frontages.

See Section 3.01

The full range of uses in the D4 Zone are not possible on the Property without inclusion in the PAD as there is insufficient on site parking. The exclusion, albeit inadvertent, of the Property from the PAD in 1982 has prejudiced the future use and development of the Property and thwarted its ability to be economically viable. No harm will arise from correction of this irregularity, whereas the failure to correct it will permanently prejudice the Property. Moreover, it will preclude the ability of the Property to serve the intended purposes of the Downtown Overlay District.

VI. CONCLUSION

In conclusion, the City has authority under Section 94-13 to correct the 1982 irregularity and add the Property into the PAD – even though the PAD has been fully paid for. It is simply not fair to arbitrarily exclude this one D4 Property from the PAD. The correction of the irregularity and inclusion of the Property in the PAD will allow the Property to be developed in the same manner and pursuant to the same rules as all other D4 properties in the Downtown Overlay District, that is, with the benefits provided by being a part of the PAD. Moreover, inclusion in the PAD would allow greater flexibility in the retail uses at the corner of S. Old Woodward and Hazel all to the benefit of the Property, the City and the Downtown Overlay District purposes.



c/o Mary M. Kucharek
February 23, 2022
Page 7

Regards,

DYKEMA GOSSETT PLLC

A handwritten signature in blue ink, appearing to be "S. Estey", with a long horizontal line extending to the right.

Stephen R. Estey

Enclosures

EXHIBIT 1

BIRMINGHAM CITY COMMISSION PROCEEDINGS
May 26, 1965

Minutes of a special meeting of the Birmingham City Commission held Wednesday, May 26, 1965, at 8:00 p.m. in the Birmingham Community House.

Mayor Page welcomed those in the audience, thanking them for their interest in attending, and introduced Mayor Potter of Royal Oak.

Present: - Mayor Page
Commissioners Breck, Burgum, Clippert,
McNamee

Absent: - Commissioners Ingraham and Roberts (arrived
at 8:10 p.m.)

-633½-65-

Mayor Page stated the purpose of the meeting was to discuss with the property owners various methods whereby a parking structure might be financed by the Auto Parking System, to provide more adequate parking for people who shop and work in Birmingham. Two basic methods for providing the funds would be discussed, the first being an assessment against benefited property and the other an increase in parking rates.

Mr. Kenning, City Manager, reviewed the background of the proposed structure on Lot #5, as contained in a letter sent to all Central Business District property owners. Following are excerpts from the letter:

"PROPOSED PARKING STRUCTURE

"On March 8, 1965, the City Commission authorized the firm of O'Dell, Hewlett and Luckenbach to prepare plans for the construction of a parking structure on Parking Lot #5. There would be space provided for approximately 566 cars in the new structure. This would result in a net gain to the parking system of approximately 370 spaces. There would remain surface parking in the lot for approximately 200 cars.

"Entrance to the lot would be from the north end of Bates and off of Woodward. The lot would be attendant operated and would provide for validated parking. Initially, parking on the lot and the first deck of the structure would be for short term users; the upper decks would be for leased parking.

"The structure would be owned and operated by the Auto Parking System and would cost a total of approximately \$1,174,800.

"AUTO PARKING SYSTEM

"The Auto Parking System was established by Ordinance No. 465 in 1954 to provide for off-street parking facilities in the City of Birmingham. The ordinance authorized the issuance of revenue bonds to pay the cost of the facilities. All monies collected from street meters and parking lots are pledged to pay off the bonds. Formerly, street meter

collections went into the General Fund of the City. General funds are not appropriated for parking facilities except for City of Birmingham properties within a parking district which are assessed for their share under the special assessment formula.

"The following facts pertain to the financial condition of the system on June 1, 1965.

"A. Approximate net outstanding debt	\$547,000
"B. Existing annual bond principal and interest obligations	66,000
"C. Annual net income	107,000
"D. Improvement reserves	40,000

"In addition to the above assets, there would be a return to the fund of approximately \$60,000 at the time the special assessment district for the parking lot bounded by Bates, Merrill, Henrietta and Townsend (Parking Lot #7) is confirmed and completed. More than offsetting this return, is the possible expense for the expansion of surface parking on the lot located between Ferndale and Park north of Hamilton (Lot #2) which, based on the present assessment formula for surface parking lots, would obligate the system to a payment of approximately \$180,000.

"At the present time the City provides parking spaces for approximately 1,225 cars within municipally operated lots and 533 cars on metered street parking spaces. There has been a growth of 1,000 additional car spaces during the last 10 years on an average of 100 cars per year."

Commissioner Roberts arrived during the discussion at 8:10 p.m.

In addition, Mr. Kenning stated the Commission had considered private financing during prior discussion, but had determined that method would not be feasible for Birmingham. A private operation would provide less control, there would be legal involvements and fees would have to be sufficient to cover tax costs. Because of these and other facts, the Commission had felt it would be more equitable for the City to finance through public funds rather than by private development. Consultants were engaged to advise the Commission, and this meeting was the result of their findings and recommendations.

Using the demonstration board and artists drawings, Mr. Harris, of O'Dell, Hewlett and Luckenbach, indicated the location and appearance of the proposed parking structure. The building would be of brick and pre-cast concrete, 192 ft. x 206 ft., five stories in height, designed for future expansion, of ramp deck type and open on four sides, giving natural light and air. There would be three stairways and two elevators, but the location of existing entrances and exits to the lot would not be appreciably changed. Mr. Harris estimated the cost to be approximately \$979,000 for this particular phase, other costs to be in addition.

Mr. Hagstrom, City Assessor, discussed the formula to be used if the structure is financed through special assessment. He pointed out the provision in the law giving municipalities the authority to do so, providing only the benefited property is assessed. It was recalled the formula established during creation of Parking Lot #1, using the basis of a 600 ft. radius, had been used for all succeeding lots, but that it is proposed to include the entire Central Business District for the parking structure, making the distance factor range from 1-10. Merchandising factors range from 5-50 and building use factors range from 0-5; these being merely refinements to be used in producing equity in the formula. Mr. Hagstrom further stated the merchandising factors and building use factors have high range value but apply against 10% of the total assessment and the major factor is land area times distance and land frontage times distance.

Mr. Purkiss, Director of Finance, spoke with reference to possible methods of financing the proposed structure. He pointed out the favorable financial condition of the existing parking lot system, due mainly to the development of downtown Birmingham, making it possible to consider such a project at this time. He estimated the cost of the structure to be approximately \$1,175,000.

Mr. Purkiss submitted a detailed comparison of possible financing at present rates with a 40% assessment to benefited property on a five-payment basis, and increased rates without assessment to benefited property, as follows:

TABLE I
COMPARISON OF POSSIBLE FINANCING
AT PRESENT RATES OR AT INCREASED RATES

		Present Rates 40% Assessment 5 Payments	Increased Rates No Assessment
1st Program	Existing Debt	547,000	547,000
	Cost of 1st Structure	1,174,800	1,174,800
	Less: Assmts. Received	94,000	---
	Total Debt	1,627,800	1,721,800
	ANNUAL INCOME REQUIRED	130,000	198,000
	Annual Surplus (Incl. Above)	23,053	84,878
	Debt at End of 1st 5 years	1,422,241	1,504,359
	Cast at End of 1st 5 years:		
	Surplus & Interest Accrued	124,486	458,305
	From SAD & Interest Accrued	451,200	---
	NET DEBT	846,555	1,046,054
2nd Program	Cost of 2nd Structure	1,174,800	1,174,800
	Less: Assmts. Received	94,000	---
	Total Debt	1,927,355	2,220,854
	ANNUAL INCOME REQUIRED	160,000	243,000
	Annual Surplus. (Incl. above)	33,373	97,090

		Present Rates 40% Assessment 5 Payments	Increased Rates No Assessment
2nd Program (cont.)	Debt at End of 2nd 5 years	1,683,973	1,940,388
	Cash at End of 2nd 5 years:		
	Surplus & Interest Accrued	180,214	524,286
	From SAD & Interest Accrued	451,200	---
	NET DEBT	1,052,559	1,416,102
3rd Program	Cost of 3rd Structure	1,174,800	1,174,800
	Less: Assmts. Received	94,000	---
	Total Debt	2,133,359	2,590,902
	ANNUAL INCOME REQUIRED	170,834	255,333
	Annual Surplus (Incl. above)	30,673	85,111
	Debt at End of 3rd 5 years	1,863,959	2,263,721
	Cash at End of 3rd 5 years:		
	Surplus & Interest Accrued	165,634	459,599
	From SAD & Interest Accrued	451,200	---
	NET DEBT	1,247,125	1,804,122

TABLE II

RATES AND INCOME

		PRESENT RATES 40% S.A.D.		INCREASED RATES NO. S.A.D.	
SOURCE	Rate	Annual Income	Rate	Annual Income	
<u>Existing</u>					
30 Minute Meters	5¢ 1/2 Hour	4,300	5¢ 1/2 Hour	4,300	
1 Hour Meters	5¢ Hour	36,400	5¢ 1/2 Hour	56,400	
2 Hour Meters	5¢ Hour	34,000	5¢ 1/2 Hour	52,000	
4 Hour Meters	5¢ Hour	12,000	5¢ Hour	12,000	
12 Hour Meters	2 1/2¢ Hour	27,000	5¢ Hour	49,000	
Sub-total		113,700		173,700	
Lot #5:					
Lessees	\$7.50 Month	12,100	\$12.00 Month	19,300	
Transients:	5¢ 1/2 Hour)		15¢ 1st Hour)		
)	32,980	10¢ Add'l		
			Hour)	44,980	
	50¢ Maximum)		75¢ Maximum)		
Sub-total		45,080		64,280	
Gross Sub-total		158,780		237,980	
<u>Additional</u>					
Additional facilities Lot #5		30,000		50,000	
TOTAL GROSS		188,780		287,980*	
Operating Expense		58,780		58,780	
NET INCOME		130,000		229,200	
Required Income		130,000		198,000	
*Total if all suggested sources of additional income are included.					

Mr. Purkiss noted further that for the past ten years the City has provided an average of 100 additional spaces per year. All present indications are that we would, for some time in the future, continue to require approximately this rate of increase. Therefore, it is imperative that financing be set up to provide for continued development. Attention was also called to the fact that it would be possible to provide a compromise between the two suggested programs whereby rates on all-day parking would be increased as proposed without affecting the short-term parking and a 20% assessment rather than a 40% assessment.

At this time, Mr. Hagstrom, City Assessor, indicated typical assessments on the demonstration board. He pointed out the six existing districts wherein some property owners have benefited in several instances, due to their location, and indicated the new district will relieve congestion in all other lots, involving the entire Central Business District.

Mayor Page welcomed former Mayor Charles W. Renfrew, who had been invited to attend the meeting because of his vast experience in the field of finance and background regarding the existing parking system in Birmingham.

Mayor Page announced the meeting was open to the public for discussion at this point. Consensus of opinion in the audience appeared to be a recognition of the importance of providing adequate and convenient parking. Opinions were divided as to how this might be achieved.

Mr. Glenn Emery inquired whether churches would be required to pay a full assessment. Mr. Hagstrom advised they would be assessed 1/3 of the normal amount. Mr. Emery spoke of the formula as related to Shain Park and was advised the benefit of any special assessment is to the land.

Mr. John Moss inquired regarding future structures on existing lots and was advised Lots #1 and #2 are considered to be most practical at this time; however, present figures do not include Parking Lot #7. Mr. Moss favored additional parking but suggested the advisability of making a re-evaluation of present needs, paying particular attention to use of lots during peak periods. He also indicated the hope a plan might be worked out to lower the special assessment rate.

Mr. Herb Ring inquired with reference to Lot #6 and was advised it is not within the boundaries of the Central Business District and therefore not assessed at the same rate. He was advised further the Municipal Building and Shain Park are included in the proposed district. Mr. Ring was of the opinion that the long-term parker should pay an increased rate, if the City should determine to finance the structure through rate increases.

Mr. Donald Cummings recognized the need for additional parking but suggested the parking system share a larger portion of the cost. He was not opposed to business property being assessed for surface lots, but was of the opinion the

parking system should pay for any structure. He suggested the entire community is in partnership with the business community and felt general obligation bonds might be the answer.

Mayor Page assured the audience of the Commission's concern with the size of many of the assessments, but pointed out that Birmingham is in competition with shopping centers where there is no charge for parking and it is imperative to supply attractive and convenient access to the shops.

Mr. Paul Kurth inquired as to the manner Ann Arbor financed its structure parking and was advised by Mr. Purkiss it was partly on a revenue basis and the balance by the University.

Mr. Renfrew stated he was in accord with surface lots being financed through a special assessment procedure but was in favor of the Parking System bearing the total cost of any structures on those lots.

Mr. Chudick inquired concerning all-day parking, commenting that many persons leave their car to take the bus in to Detroit. He was informed that the number of all-day parking spaces would be reduced in some of the surface lots, upon construction of the structure on Lot #5.

Mr. Manley Bailey favored increased parking facilities but was of the opinion assessments should be reduced for the property owner, if possible. He favored increased rates.

Mr. Jack Maynard favored following the established procedure in creating surface lots, but felt the parking system should bear the expense of any structures through revenue.

Commissioner Roberts spoke of the urgent necessity of providing a good place to shop and park and was of the opinion the Parking System should carry the basic load or expense.

Mr. Wilbur Mason, speaking for Jacobson's, indicated a desire to keep parking rates as low as possible, favoring a special assessment procedure in financing the structure. He commented on the large volume of parking validations authorized by Jacobson's during the period of a year, and stated it was their opinion the average shopper does not wish to be concerned with having to return to her car to deposit money in the parking meter.

Mr. Ray Peck suggested the entire community share the expense. Mr. Hagstrom explained it would be impossible due to the difference in the manner in which private and personal property are assessed; private property being assessed on both the value of the house and land and personal property being valued by land use only.

Mr. Hagstrom pointed out the fact that it is more costly to the business which is required to provide its own parking than to the one in the Central Business District, where the cost is shared with others.

*
~~In reply to a question from Commissioner Breck, Mr. Hagstrom advised that city-owned property located within the assessment district is assessed - that the Municipal Building and Shain Park have been assessed previously and are included in the present district.~~

Mr. Butler, speaking for Demery's, favored increased parking rates, opposing special assessment at this time.

Mr. Walker of Grinnell's was opposed to increased rates.

Mr. Smith, representing the Birmingham Chamber of Commerce, spoke of the excellent business Birmingham shopkeepers have enjoyed during the past year, with a 30% increase over 1964, and urged the Commission to make every effort to continue to provide sufficient parking.

Mayor Page thanked everyone attending the meeting for their interest and comments.

Moved by Commissioner Burgum that the meeting adjourn.

Meeting declared adjourned at 10:15 p.m.


Beth Cole

Deputy Clerk.

In reply to a question from Commissioner Breck, Mr. Hagstrom advised that City-owned property (the Municipal Building, Shain Park and the Library) is included in the proposed assessment district for Lot #7, but that Shain Park has not been assessed for any other parking lot.
Res. #713-65 June 14, 1965

Exhibit 2

March 20, 2001

TO: Thomas M. Markus, City Manager
FROM: Sherry A. Lee, City Assessor 
RE: PARKING ASSESSMENT FORMULA

Last month, the Commission directed that the cancellation provision of the deferred assessment component in the parking assessment formula (City Ordinance Section 94-15(3)) be revisited to determine whether or not it was equitable, in view of the way in which the central business and parking districts have been developed since the mid-1980s.

Background

With increased commercial and retail activity, growth in traffic volume, as well as the inadequacy of surface lots to meet the demand for automobile parking in the central part of the city, the first of an eventual five municipal parking structures was constructed in 1966. Predicated on the fact that the availability of parking benefited properties in the Central Business District (CBD), the original parking assessment formula, which was designed in the early 1950s, provided that 40% of the cost of constructing parking structures was to be borne by property owners in the parking district as a special assessment and 60% was funded by the City's automobile parking system (APS). The parking assessment formula provided for equitable assessments, primarily, because the formula used various distance, size and location factors, which weighted the assessment heavily toward potential benefit. Further, of the special assessment district (SAD) share, the formula gave a very significant (90%) weighting to land size and a very small (10%) weighting to existing building size. The theory under which this formula was derived was that substantial future development would take place in the CBD during the 1950's, 60's and 70's and that equity would be best served by assessing for parking based upon future potential development. Vacant land, therefore, was weighted heavily.

In 1982, the City Commission directed that the parking assessment formula be studied to determine whether or not it continued to provide equitable special assessments in view of the way in which the Central Business District had developed over the past several decades. Presumably, the study was conducted in preparation for development of the Peabody parking structure. A committee of three Commission members was formed to work with the Assessor in reviewing the procedure. After several meetings, many of which included representatives from the Chamber of Commerce and other City officials, the Committee determined that the assessment formula should be revised.

After studying current parking needs, uses, costs and projected future demand, the Committee determined that the assessment formula should be changed to place additional emphasis upon existing buildings and less emphasis upon land which is not built upon and creates no current parking demand. The primary reason for this decision was that the CBD had been substantially developed relative to the development that existed twenty years prior. Also, due to the fact that there existed at the time a Floor Area Ratio (FAR) limitation of 2.0 in the

CBD, substantial future development that does not provide some of its own parking was not foreseen. FAR is the gross floor area of a building, exclusive of the basement, divided by the area of the lot it is constructed on.

The goal sought by the Committee was to develop a formula that would assess properties that create a great deal of parking demand at higher levels than those properties that create very little parking demand. Properties such as parking lots, green space or unused vacant land would be assessed at the lowest rates. The new formula should shift the weighting from potential use to current use, while still maintaining distance, size and location factors that further provide an assessment based upon benefit.

There was also a desire to include a provision in the formula that would allow for a future payment to become due should an underutilized property that has a low assessment be developed at some future time. This would not only create an awareness of how further development creates parking demand but would provide a mechanism to fund the cost of such parking. Such a mechanism was deemed to be equitable since the property being developed has benefited from the existing parking system. This is true because the parking system has helped to stimulate the need for the proposed development through the maintenance of a viable CBD.

Current Parking Assessment Formula

20/20
The parking assessment formula was revised to a fifty-fifty allocation between land and building. Rather, of the total SAD share, the current formula gives a 50% weighting to land size and a 50% weighting to existing building size. This recognizes the fact that the CBD has become substantially more developed over time. It also recognizes the fact that, while buildings create parking demand, vacant land benefits from a viable parking system through increased market values. Further, although 40% of the project cost is levied as a special assessment against each property in the district, the City's parking system funds 36% of the cost. However, with the future payment or deferred assessment feature of the formula, 24% of the cost is advanced by the parking system, but is to be repaid in part or in full at some time in the future by owners of underutilized property in the district upon further development.

As with the original formula, the current parking assessment formula has within each weighting category (i.e. Land Frontage, Land Area, Building Area) several factors that are used to determine the benefits each particular piece of property receives from a given parking project. As outlined in Attachment "A", these factors are as follows:

- a. Distance Factor: This factor is determined by a property's distance from the proposed parking facility. The theory is simply that the further a property is located from the facility, the less it benefits from that facility. This factor is weighted from 1 to 10 and was not changed from the existing formula.
- b. Merchandising Factor: This factor is a location factor determined by the property's distance from the Maple-Woodward intersection. The theory is that the closer a property is located to the center of the CBD, the more it benefits from the parking system. This factor was reduced in weight from 5-50 to 1-3 because it was felt to be of somewhat less significance than in the past.

- c. **Parking Demand Factor:** This factor only relates to the building portion of the overall assessment. A factor from 1 to 5 is computed based upon the actual parking demand created by a particular building. The parking demand is calculated based upon the guidelines in the zoning ordinance. The theory behind this factor is that the greater demand a building creates, the more it benefits from the parking system.

This factor replaces the Building Use Factor, which attempted to do the same thing as the Parking Demand Factor, but in a more subjective manner.

Deferred Parking Assessment

The deferred assessment component of the formula is a relatively progressive concept. The deferred assessment stems from the desire to lessen the special assessment burden on currently underutilized property while maintaining an appropriate future burden that becomes due upon future development.

To concur with FAR reductions made in the Zoning Ordinance, the FAR for parking assessment districts was changed from 2.0 to 1.0 in 1989. Therefore, under the formula, each property with a FAR of less than 1.0 would have a deferred assessment computed based upon the difference between 1.0 and its current FAR. This assessment would be calculated in the same manner as the primary assessment and would approximate what the additional primary assessment would be if the building were built to its maximum potential at the time of assessment. It is called a "deferred" assessment because it would only become due if and when the existing site was to be further developed.

Under the formula the deferred assessment would be payable in full at the time a building permit was pulled to further develop the site so as to increase the floor area by five percent or more or increase the floor area ratio to 1.0. A property owner would have the option, however, to pay his deferred assessment in advance at the time the primary assessment was due. By electing this option, the owner could have his deferred assessment financed over the same period as the primary assessment if he felt further development of his site were imminent and did not wish to deal with a lump sum payment at some later date. A final feature of the deferred assessment, added in 1985, is that it would be canceled at the time of development if the building constructed or enlarged were residential or primarily residential in character. A primarily residential building is defined as any building with two or more stories in which the first floor or any portion thereof is occupied by a commercial or business use and all additional stories are utilized for residential purposes.

Impact of the Parking Assessment Formula

In 1982, it was believed that the use of the special assessment formula, as revised, would have three major impacts:

1. **Equity:** The formula would provide for greater equity among property owners because it is more directly connected to present benefits and future benefits are not paid for until they are realized.

2. The burden of the primary assessment (generally forty percent of total project cost would be substantially shifted from vacant and underutilized properties, which create very little parking demand to developed properties, which create the lion's share of the parking demand.
3. More revenues for the parking system will be raised through the deferred assessments which will be collected in addition to the primary forty percent share.

Considerations

The current special assessment formula, as revised in 1982, was implemented with the construction of the Peabody/Brownell parking structure in 1984 and, as subsequently amended, with the construction of the Chester Street structure in 1989.

Special Assessment Roll No. 701 Peabody Parking Structure was confirmed on May 2, 1983 [REDACTED]; Special Assessment Roll No. 729 Chester Street was confirmed on March 20, 1989 [REDACTED]

Any deferred assessment not confirmed within twenty years from the date on which the special assessment roll was confirmed, shall no longer be considered a potential assessment against a lot. Therefore, unconfirmed deferred assessments in the Peabody parking district are not valid after May 2, 2003 and those in the Chester Street district are no longer valid after March 20, 2009.

Timeline Summary

Date	Event/Activity
11-24-82	Revised parking assessment formula recommended to Commission.
04-04-83	City biennial election held; Peabody pkg. structure bonding proposal and Charter amendment approved by voters; repealed Chapt. 10 and added Chapt. 12, special assessments for off-street parking.
04-11-83	Special assessment ordinance approved by Commission; enabled hearing to be scheduled to confirm Peabody special assessment roll.
05-02-83	Peabody SAD No. 701 ratified and confirmed by Commission; provided For both primary assessments on all parcels and deferred assessments on Certain parcels in the district.
08-05-85	Ordinance No. 1308 approved by Commission to cancel deferred Assessments for primarily residential developments in parking districts.
08-12-85	Deferred assessments confirmed by Commission in Peabody district for 344 and 350 N. Old Woodward and 280 Daines.
01-10-86	Recommendation from Planning and Histeric District Committee to change FAR from 2.0 to 1.0.
03-13-89	Ordinance Amendment adopted; FAR for parking districts changed From 2.0 to 1.0 to concur with its reduction in zoning ordinance.
03-20-89	Chester SAD No. 729 ratified and confirmed by Commission; provided For both primary assessments on all parcels and deferred assessments on Certain parcels in the district.
07-18-94	New (current) Birmingham City Code adopted.
03-24-97	Ordinance No. 1637 approved by Commission to clarify special Assessment procedures.
10-18-99	Deferred assessments confirmed for Townsend Hotel in Peabody and Chester parking districts.
01-22-01	Deferred assessments confirmed for 470, 322 and 200 N. Old Woodward In Peabody and Chester parking districts.
02-12-01	Deferred assessments confirmed for 400 Hamilton and canceled for 111 Willits and 134 Pierce in Peabody and Chester parking districts.

Attachment "A"

Original Formula

Land Frontage	
Overall weight	45%
Factors:	
Distance	1-10
Merchandising	5-50

Land Area	
Overall weight	45%
Factors:	
Distance	1-10
Merchandising	5-50

Building Area	
Overall weight	10%
Factors:	
Distance	1-10
Merchandising	5-50
Building Use	1-5

Typical Project Cost Allocation:

SAD Share	40%
Parking System Share	60%
Total Cost	100%

Current Formula

Land Frontage	
Overall weight	25%
Factors:	
Distance	1-10
Merchandising	1-3

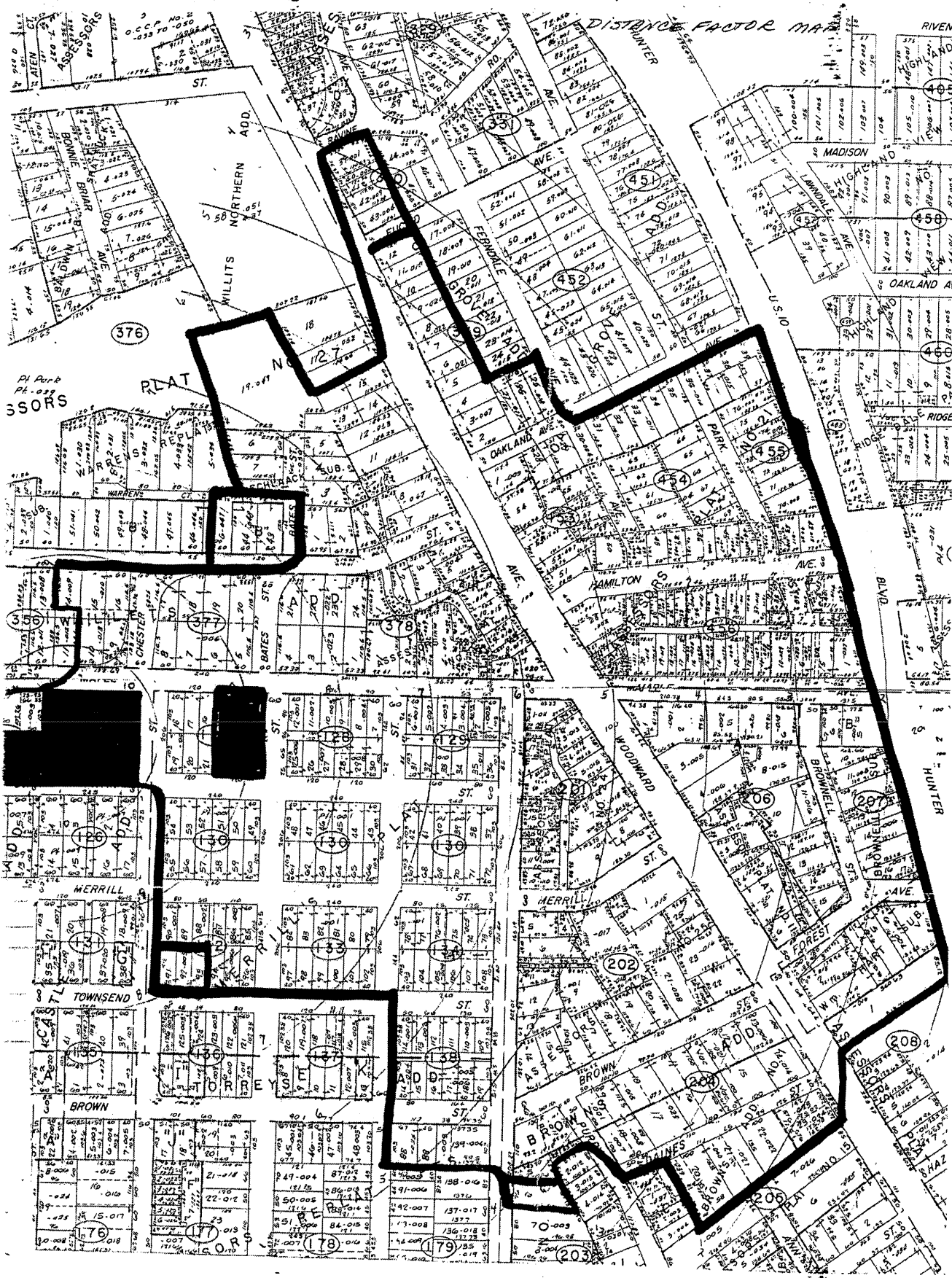
Land Area	
Overall weight	25%
Factors:	
Distance	1-10
Merchandising	1-3

Building Area	
Overall weight	50%
Factors:	
Distance	1-10
Merchandising	1-3
Parking Demand	1-5

Typical Project Cost Allocation:

Primary SAD Share	40%
Deferred SAD Share	24%*
Parking System Share	36%
Total Cost	100%

*The Deferred SAD Share would be advanced by the Parking System to be repaid in part or in full at some time in the future.



PARKING STRUCTURE SPECIAL ASSESSMENT FORMULA

	18-25-375.007 322 Ndd Warrle	19-25-458-012 884 (400) Hometon
Land Frontage	150	50
Land Area	18,000	5,350
Present Demand Factor (total square footage including basement)	2,767	1,528
Floor Area Ratio (total square footage)	9.11	837
Potential Additional Building Area (land area less Floor Area Ratio)	35,089	4,513
Potential Parking Demand Factor (see attached formula)	2	1
Parking Demand Factor (see attached formula)	1	1
Distance Factor (see map)	5	3
Merchandising Factor (see map)	2	3
Special Use Factor (see notes)	1	1
Land Front Factor (Land Frontage x Distance Factor x Merchandising Factor)	1,500	450
Land Area Factor (Land Area x Distance Factor x Merchandising Factor)	180,000	48,150
Existing Building Factor (Building Area x Distance Factor x Merchandising Factor)	27,670	13,752
Potential Building Factor (additional Building Factor x Distance Factor x Merchandising Factor)	350,890	40,617
Current Special Assessment (see formula)	48,625	2,632
Deferred Special Assessment (see formula)	4,884	565

PARKING DEMAND FACTOR

Zoning Requirements for Parking

Retail/Office	1 space/each 300 square feet
Medical/Office	1 space/each 150 square feet
Service	1 space/each 550 square feet
Restaurant	1 space/each 75 square feet

Parking Demand Factor	No. of Spaces
1	0 - 79
2	80 - 158
3	159 - 237
4	238 - 316
5	317 - 345

Formula for Determining Above Factor

Present Demand Factor (Gross Building Area) divided by Zoning Requirements equals Number of Parking Spaces.

Formula for Potential Parking Demand Factor

Present Demand Factor plus Potential Additional Building Area divided by Zoning Requirement equals Number of Spaces if fully developed.

Calculation for Parcel

	Parking Demand Factor	÷	Zoning Requirement	=	No. of Space
322 N. OLD WOOD	2,767		300		9
384 HAMILTON	1,528		150		10

Deferred Calculation:

	Parking Demand Factor	+	Potential Additional Building Area	÷	Zoning Requirement	=	No. Spaces
322 N. OLD WOOD	2,767		35089		300		126
384 HAMILTON	1,528		4513		150		40

Special Use Factor

The special use factor is used for properties that have, primarily, weekend and evening use of the structures, for example, churches and the Community House.

This factor is applied to the land only and is calculated at $1/3$ of the land frontage factor. All other parcels are calculated at 1.0 times the land frontage factor.

CURRENT SPECIAL ASSESSMENT CALCULATION FORMULA

Calculate the total of all parcels in each of the three columns labeled Land Front Factor, Land Area Factor and Existing Building Factor.

Distribution of total cost

25% Land Factor
25% Land Area Factor
50% Existing Building Factor

$\$1,586,828$ Total Cost of Special Assessment District
 $\times .25$
 $396,707$ Land Frontage Factor
 $\% 134,249^* = \underline{2.95501}$
 $1,586,828$ Total Cost of Special Assessment District
 $\times .25$
 $396,707$ Land Area Factor
 $\% 17,194,465^* = \underline{.02307}$
 $\$1,586,828$ Total Cost of Special Assessment District
 $\times .50$
 $793,414$ Existing Building Factor
 $\% 56,998,909^* = \underline{.01392}$

Formula for Calculating Unit Cost

25% of total S.A.D. Cost divided by Total of Land Frontage Column equals Unit Cost times Individual Parcel Land Frontage Factor equals 25% of current assessment.

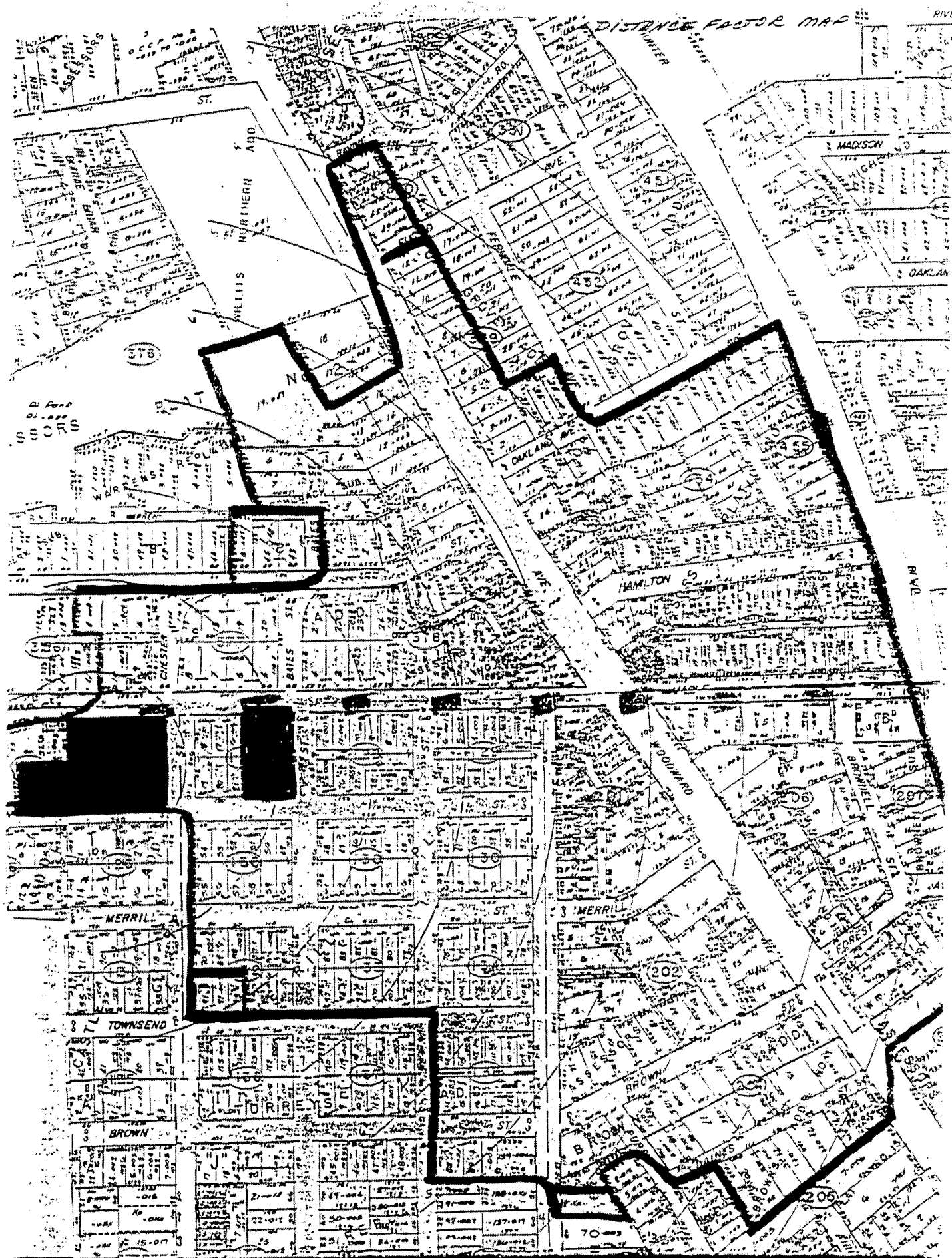
Each of the three columns are calculated in the same fashion using the appropriate totals and factors; the Building area using 50% in place of the 25% figure.

322 N. OLD WOODWARD

$11,500 \times 2.95501 = 4,432.52$
 $180,000 \times .02307 = 4,152.60$
 $27,670 \times .01392 = 385.17$
 $350,890 \times .01392 = 4,884.39$
 PRIMARY ASSESSMENT
 DEFERRED ASSESSMENT

384 (400) HAMILTON

$450 \times 2.95501 = 1,329.76$
 $48,150 \times .02307 = 1,110.82$
 $13,752 \times .01392 = 191.43$
 $40,617 \times .01392 = 565.39$
 PRIMARY ASSESSMENT
 DEFERRED ASSESSMENT





Original Formula

Land Frontage	
Overall weight	45%
Factors:	
Distance	1-10
Merchandising	5-50

Land Area	
Overall weight	45%
Factors:	
Distance	1-10
Merchandising	5-50

Building Area	
Overall weight	10%
Factors:	
Distance	1-10
Merchandising	5-50
Building Use	1-5

Typical Project Cost Allocation:

SAD Share	40%
Parking System Share	60%
Total Cost	100%

Current Formula

Land Frontage	
Overall weight	25%
Factors:	
Distance	1-10
Merchandising	1-3

Land Area	
Overall weight	25%
Factors:	
Distance	1-10
Merchandising	1-3

Building Area	
Overall weight	50%
Factors:	
Distance	1-10
Merchandising	1-3
Parking Demand	1-5

Typical Project Cost Allocation:

Primary SAD Share	40%
Deferred SAD Share	24%*
Parking System Share	36%
Total Cost	100%

*The Deferred SAD Share would be advanced by the Parking System to be repaid in part or in full at some time in the future.

From: Sherry Lee
To: Paul O'Meara
Date: 1/11/02 4:53PM
Subject: Re: Fwd: PA district question

Predicated on the fact that the availability of parking benefited properties in the CBD, the parking assessment district formula provides that 40% of the cost of constructing parking structures is to borne by property owners in the parking district as a speical assessment and 36% is funded by the parking system. However, with the future payment or deferred feature of the district assessment formula, 24% of the cost is advanced by the parking system, but is to be repaid in part or in full at some time in the future by owners of underutilized property (property developed to a FAR less than 1.0) in the district upon future development. Of the total SAD share, the parking assessment formula gives a 50% weighting to land size and a 50% weighting to existing building size. The formula has within each weighting category several factors that are used to determine the benefits each property receives from a given parking project. Rather, consideration is given to distance from the parking facility, from the Maple-Woodward intersection and the demand for parking created by the building and its use. A final feature of the deferred assessment feature, added in 1985, is that it would be cancelled at the time of development if the building is primarily residential in character.

>>> Paul O'Meara 01/11/02 01:43PM >>>

I received the attached email from Jill Bahm. Although I have worked here over 10 years, I have never built a parking structure. The knowledge I have about the parking assessment from a mechanics point of view is just what I have picked up through word of mouth. I am wondering if in your short time here, you have gleaned any knowledge that could assist me. I don't want to write a report based on my understanding if the City Code says something different.

Please let me know if you can assist. Thanks.

CC: Jill Bahm

From: Jill Bahm
To: Paul O'Meara
Date: 1/11/02 12:41PM
Subject: PA district question

Paul, could you please put together for the Planning Board a short summary of how the parking assessment district works? Maybe include a couple examples so they can get a good handle on the issue. Let me know if you are or are not able to get me something by Thursday, Jan. 31 for the Feb. PB workshop session.
Thanks in advance for your help!

CC: Patti McCullough

Exhibit 3

PEABODY

CITY OF BIRMINGHAM
MICHIGAN

CITY COMMISSION PROCEEDINGS

JANUARY 10, 1983

Minutes of a Regular Meeting of the Birmingham City Commission held Monday, January 10, 1983, at 8:23 P.M., in the Commission Room in the Municipal Building.

Present: Mayor Hockman, Commissioners Appleford, Jensen, Jeske, Kain, Miller and Sights

Absent: None

Administration:

City Manager - Robert S. Kenning
City Clerk - Phyllis Armour
City Attorney - Dean Beier
Assistant to City Manager - Steven Schwartz
Director of Finance - James Purkiss, Jr.
City Assessor/Treasurer - Kelly Sweeney
City Planner - Bonnie Cook
City Engineer - William Killeen
Superintendent of Parks & Recreation - D. Middlewood
Chief of Police - Edward Ostin
Chief of Fire - Gary Whitener

8:24

01-35-83: APPROVAL OF MINUTES - CITY COMMISSION
MEETING - JANUARY 4, 1983 - AS CIRCULATED ✓

MOTION: Motion by Sights, supported by Jeske:
To approve the Minutes of the City Commission Meeting held January 4, 1983, as circulated.

VOTE: Yeas, 7 Nays, None

8:25

01-36-83: PUBLIC HEARING ON NECESSITY - BROWNELL
STREET PARKING STRUCTURE - SPECIAL
ASSESSMENT DISTRICT NO. 701

Mayor Hockman announced that this was the date and time, as advertised, for a public hearing to consider any objections to the construction of certain improvements described herein, and to the creation of a special assessment district to defray the cost of construction of an improvement to be hereafter known as

BROWNELL STREET PARKING STRUCTURE,
consisting of the construction of a parking structure on the City owned parking lot located at the northwest corner of the Brown-Brownell intersection, and providing space for approximately 493 cars.

The City Assessor displayed a map outlining the proposed special assessment district for the proposed parking structure which has been used in the past for all parking structures. Two additional properties have been included in the assessment district - the new office building located at Maple and Chester and the City-owned property adjacent to the Park Street structure which was sold to the Thomas Development Company, but subsequently returned to the City. Lot 6 of Assessor's Plat No. 6, which is the Pierce Street Medical Building parking lot, south of the Pierce Street Structure, has been deleted for the reason that including it in the assessment district would preclude the requirement to provide parking if the property is developed in the future.

The City Assessor further explained that unless a property is located extremely close to the structure the property owner is assessed a minimal amount in that indirect benefits accrue to those properties located at a distance from the structure.

MOTION: Motion by Miller, supported by Jeske:
To declare necessity in Special Assessment District No. 701, the Brownell Street Parking Structure; to direct the City Assessor to prepare the Assessment Roll, with the deletion of Lot 6, Assessor's Plat No. 6, for the following properties:

Assessor's Plat No. 6
Lots 1 and 5
Assessor's Plat No. 11
Lots 1 through 6 inclusive
Assessor's Plat No. 13
Lot 1
Assessor's Plat No. 19
Lots 1 through 10 inclusive
Brown's Addition
Lots 8 through 13 inclusive
Brown's Addition No. 1
Lots 14 through 18 inclusive
Lots 20 through 23 inclusive
Brownell Subdivision
Lots 10 through 16 inclusive
Assessor's Replat of Brownell Sub.
and part of Hunters Eastern Addition
Lots 1 through 11 inclusive
Assessor's Plat No. 21
Lots 1 through 76 inclusive
William Hart Subdivision
Lots 1 through 7 inclusive
Assessor's Plat No. 24
Lots 1 through 18 inclusive
Hunter's Eastern Addition
Lots 5 through 7 inclusive
Merrill's Plat
Lots 1 through 90 inclusive
Lots 94 through 114 inclusive
Assessor's Plat No. 27
Lots 1 through 10 inclusive
Oak Grove Addition
Lots 1 through 12 inclusive
Lots 25 through 29 inclusive
except the north 40' of Lots
25, 26 and 27
Lots 31 through 39 inclusive
Assessor's Plat No. 29
Lots 39 through 43 inclusive
Assessor's Plat No. 25
Lots 1 through 25 inclusive
Torrey's Addition
Lots 14 through 19 inclusive

Assessor's Replat of Torrey's,
Hood's and Smith Addition
Lots 88, 89 and 139

Willet's Addition
Lots 1 through 10 inclusive
Lots 14 through 24 inclusive

VOTE: Yeas, 7 Nays, None

Sheldon Gordon, Property Manager of 280 North Woodward, asked how assessments are determined.

The City Assessor explained that property owners will be assessed 40 percent of the project cost. The factors involved in the formula are size of property frontage, square footage of land, the size of the building and its density, the location of the property with respect to the improvement, the location of the property with respect to the Central Business District and the parking demand which the building creates. The assessment formula attributes a large percentage to building characteristics, and less to land. There is a feature in the formula for underdeveloped properties whereby a current assessment is computed and a future assessment, which will come due when the property is developed, is also computed.

8:39

01-37-83: IRWIN I. COHN RE: BROWNELL PARKING
STRUCTURE

Communication dated December 22, 1982, received from Irwin I. Cohn, an attorney representing Lot 14 and part of Lot 15, Assessor's Plat No. 24, recommending that the assessment for the Brownell Street Parking Structure be spread on all commercial property in the Central Business District.

8:39

01-38-83: MICHAEL THOMAS RE: BROWNELL PARKING
STRUCTURE

Communication dated December 27, 1982, received from Michael Thomas, objecting to being included in the assessment district for the proposed Brownell Street Parking Structure.

8:39

01-39-83: LYNN E. ARFT - REQUEST SPECIAL LAND USE
PERMIT - 720 SOUTH ADAMS ROAD

MOTION: Motion by Jeske, supported by Jensen:
To receive communication dated January 6, 1983, from Lynn E. Arft, requesting a 90-day Special Land Use Permit to sell flowers at 720 South Adams Road; to refer to the Administration for report.

VOTE: Yeas, 7 Nays, None

Commissioner Jeske commented that there have been problems with persons who shop at Mr. Arft's business establishment parking in other business parking lots, and requested that the Administration do some research on the demand for parking created by the sale of flowers at this location.

MOTION: Motion by Sights, supported by Jeske:
To set February 14, 1983, at 8:00 P.M., as the date and time for a Public Hearing to consider Mr. Arft's request for a 90-day Special Land Use Permit to sell flowers at 720 South Adams Road.

VOTE: Yeas, 7 Nays, None

8:51

02-227-83: CITY OF MOUNT CLEMENS RE: QUARTERLY
MEETING - BEAUTIFICATION COUNCIL OF
SOUTHEASTERN MICHIGAN - MARCH 17, 1983

Communication received from the City of Mount Clemens re:
Quarterly Meeting of the Beautification Council of South-
eastern Michigan to be held March 17, 1983, at the Mount
Clemens Community Center.

8:51

02-228-83: MEETING OPEN TO THE PUBLIC

Margaret Wiebrecht, 1714 Torry, commented on the condition
of the sod in the berm area on the Henrietta side of
Shain Park.

The City Manager explained that it was originally planned
to seed the Henrietta berm area and to sod the other three
berm areas. The Henrietta area was prepared for seeding,
but it was found, when the sod was delivered, that there
was enough to also sod the Henrietta area. Because the area
had been excavated for seeding, the base is not as good
as that in the other areas.

Robin Keenan, 1471 Ruffner, requested an explanation of the
new dog license fees.

The City Clerk explained that the fees are \$7.50 for un-
altered dogs, \$5.00 for altered dogs, and \$15.00 for all
dogs licensed after March 1.

8:56

02-229-83: NORTHBOUND BUS STOP - 411 SOUTH
WOODWARD AVENUE

MOTION: Motion by Kain, supported by Miller:

To receive the report of the Chief of Police and the City
Manager re: Northbound Bus Stop - 411 South Woodward
Avenue; to authorize the Administration to move the bus
stop from its present location to a location directly in
front of the waiting area in the Birmingham Place building
(Location No. 2, as outlined in the report).

VOTE: Yeas, 5 Nays, None Absent, Appleford, Jeske

9:10

02-230-83: BID AWARD - METHOXYCHLOR ELM SPRAY
MOTION: Motion by Kain, supported by Sights:

To receive the report of the Superintendent of the Depart-
ment of Parks and Recreation and the City Manager, recom-
mending that the bid for purchase of methoxychlor elm
spray be awarded to the low bidder, Michlin Diazo Products
Corporation, Detroit, in the amount of \$8,260.00; to concur
in the recommendation as submitted.

VOTE: Yeas, 5 Nays, None Absent, Appleford, Jeske

9:10

02-231-83: GENERAL OBLIGATION PARKING BOND
PROPOSITION - ADOPT RESOLUTION

MOTION: Motion by Miller, supported by Sights:

To receive the report of the Director of Finance and the
City Manager re: General Obligation Parking Bond Pro-
position; to adopt the following resolution:

WHEREAS, the City Commission determines that it is necessary for the public health, safety and welfare of the City to construct and equip a parking structure, containing approximately 490 parking spaces, on Brownell Street at Brown Street, together with all necessary appurtenances and attachments thereto (the "Structure"), as hereinafter set forth in this Resolution, and

WHEREAS, the total cost of the Structure, together with the cost of certain land acquired for the Structure and all legal fees, financing costs and capitalized interest during the construction, has been presently estimated to be approximately Three Million Six Hundred Eighty Thousand Dollars (\$3,680,000) in the aggregate, and

WHEREAS, the City Commission has determined that a portion of the aforesaid costs should be financed by the issuance of general obligation bonds of the City in the amount of not to exceed \$2,700,000 (the "Bonds"), if the issuance is approved by the electors of the City, the remainder of said costs to be paid from moneys available from the City's Parking System and from special assessments to be levied.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Commission of the City of Birmingham does hereby determine that the construction and equipping of the aforesaid Structure is necessary for the public health, safety and welfare of the City and does hereby approve the aforesaid stated estimate of cost of the construction and equipping of the Structure.
2. The period of usefulness of the aforesaid Structure is hereby estimated to be not less than forty (40) years.
3. At the City annual election which is scheduled in the City on Monday, April 4, 1983, between the hours of 7:00 o'clock a.m. and 8:00 o'clock p.m., there shall be submitted to vote of the qualified electors of said City the proposition of borrowing Two Million Seven Hundred Thousand Dollars (\$2,700,000) and issuing said general obligation bonds.
4. The proposition to be submitted at said election shall be stated on a separate ballot, or as a separate proposition on voting machines, in substantially the following form:

Parking Structure
General Obligation Bond Proposition

Shall the City of Birmingham, County of Oakland, Michigan, borrow a principal amount not to exceed Two Million Seven Hundred Thousand Dollars (\$2,700,000) and issue its general obligation unlimited tax bonds therefor, for the purpose of paying part of the costs of constructing and equipping a parking structure to be located on Brownell Street at Brown Street, together with all necessary appurtenances and attachments?

5. The City Clerk shall cause notice of last day for registration to be published at least twice in the Birmingham Eccentric, a newspaper of general circulation in the City, prior to the last day for receiving registrations, the first publication to be not less than ten (10) full days prior to said last day for receiving registrations.

6. The notice of registration shall include the Parking Structure General Obligation Bond Proposition set forth in paragraph 4 hereinabove.

7. The City Clerk shall cause notice of the submission of said proposition to be published as a part of the notice of said regular annual election at least twice before the date of the election in the Birmingham Eccentric, a newspaper of general circulation in the City, the first publication to be not less than ten (10) full days prior to the date of said election.

8. The notice of the submission of the said proposition shall be published as a part of the notice of election for said City annual election in substantially the following form:

Parking Structure
General Obligation Bond Proposition

Shall the City of Birmingham, County of Oakland, Michigan, borrow a principal amount not to exceed Two Million Seven Hundred Thousand Dollars (\$2,700,000) and issue its general obligation unlimited tax bonds therefor, for the purpose of paying part of the costs of constructing and equipping a parking structure to be located on Brownell Street at Brown Street, together with all necessary appurtenances and attachments?

The above bonds will be payable in not to exceed thirty (30) annual installments, with interest on the unpaid balance at rates to be fixed by the City Commission at the time of sale, which in no event may exceed 18% per annum.

THE CITY COMMISSION EXPECTS TO PAY PRINCIPAL AND INTEREST ON THE GENERAL OBLIGATION BONDS FROM REVENUES OF THE PARKING SYSTEM OF THE CITY AND FROM CERTAIN SPECIAL ASSESSMENTS TO BE IMPOSED ON PROPERTY BENEFITTING FROM THE PARKING STRUCTURE. HOWEVER, TO THE EXTENT NECESSARY, THE PRINCIPAL AND INTEREST OF SAID GENERAL OBLIGATION BONDS WILL BE PAID FROM THE GENERAL FUNDS OF THE CITY, AND, TO THE EXTENT NECESSARY, THE CITY WILL BE REQUIRED TO LEVY SUFFICIENT AD VALOREM TAXES FOR THE PAYMENT THEREOF UPON ALL TAXABLE PROPERTY IN THE CITY WITHOUT LIMITATION AS TO RATE OR AMOUNT.

9. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

VOTE: Yeas, 5 Nays, None Absent, Appleford, Jeske

9:15

02-232-83: PROPOSED BROWNELL STREET PARKING STRUCTURE
Report received from the Director of Finance and the City Manager re: Proposed Brownell Street Parking Structure.

9:11

EXHIBIT 4








-  D4 Parking Assessment Buildings
-  D4 Zoning District
-  Parking Assessment Buildings
-  Building Footprints
-  Parking Assessment District

EXHIBIT B



Dykema Gossett PLLC

39577 Woodward Avenue
Suite 300

Bloomfield Hills, MI 48304

WWW.DYKEMA.COM

Tel: (248) 203-0700

Fax: (248) 203-0763

Stephen R. Estey

Direct Dial: (248) 203-0538

Direct Fax: (855) 232-1793

Email: SEstey@dykema.com

March 7, 2022

Via Federal Express

City of Birmingham
c/o Mary M. Kucharek
151 Martin Street
Birmingham, MI 48009

**Re: Supplement to February 23, 2022 Letter Regarding Parking Assessment District
Irregularity for the Property Located at 479 S. Old Woodward Avenue**

Dear Ms. Kucharek:

As you are aware, we represent the owner of the combined lots of 469-479 S. Old Woodward Avenue ("Owner"), now known as 479 S. Old Woodward Avenue (the "Property"). We previously sent you a letter dated February 23, 2022 that explained the irregularity in the Parking Assessment District ("PAD") within the City of Birmingham, which resulted in the Property being inadvertently not included in the PAD. The Owner has requested a correction of the irregularity and inclusion of the Property in the PAD. Owner is aware that there is a formula to calculate the total amount that should have been assessed to the Property and the Owner is prepared and willing to pay the one-time assessment fee, as calculated by the City upon inclusion in the PAD.¹

Regards,

Dykema Gossett PLLC

Stephen R. Estey

¹ There is prior precedent for such one-time assessment fee. This has been used by the City of Birmingham in the past when properties are added to the PAD. For example, 369-397 N Old Woodward Ave paid a one-time assessment fee of \$29,682 in 2016.

EXHIBIT C

City of Birmingham
Advisory Parking Committee
Regular Meeting

Held Remotely Via Zoom And Telephone Access
Wednesday, October 6, 2021

Minutes

These are the minutes of the Advisory Parking Committee ("APC") regular meeting held on Wednesday, October 6, 2021. The meeting was called to order at 7:33 a.m. by Vice-Chair Astrein.

1. Rollcall

Present: Vice-Chair Richard Astrein
Aaron Black
Lisa Krueger
Judith Paskiewicz
Lisa Silverman

Absent: Chair Al Vaitas
Steven Kalczynski
Sarshar Nasserian
Mary-Claire Petcoff
Jennifer Yert

Administration: Scott Grewe, Operations Commander
Ryan Weingartz, Parking Manager
Mike Albrecht, Police Commander
Laura Eichenhorn, City Transcriptionist

SP+: Catherine Burch

2. Introductions

Ops. Cmdr. Grewe welcomed Ryan Weingartz. Mr. Weingartz introduced himself and said he was glad to be joining the City.

3. Review of the Agenda

4. Approval Of Minutes: Meeting Of September 1, 2021

Dr. Silverman stated that under Meeting Open to the Public for items not on the Agenda "on Woodward between Maple and Brown or Chester" should be changed to "downtown".

With Mr. Black and Dr. Paskiewicz abstaining due to their absences from the September 1, 2021 meeting and with Chair Vaitas, Mr. Kalczynski, Ms. Petcoff and Ms. Yert absent from the present meeting the APC did not have a quorum for a vote on the minutes.

CT Eichenhorn stated the September 1, 2021 minutes should be returned for approval along with the October 6, 2021 minutes at the November 3, 2021 APC meeting.

5. Request to be included the Parking Assessment District (469-479 South Old Woodward)

Ops. Cmdr. Grewe presented the item. He noted that City Staff stated at the City Commission's October 4, 2021 workshop that the Parking Assessment District (PAD) was expired. Consequently, businesses could no longer be entered into the PAD. He also noted that his report recommended the request be denied even before it became clear that the PAD no longer existed.

Duraid Markus, owner, and Gayle MacGregor, attorney, spoke on behalf of the request.

Mr. Markus explained he would have to build four levels of parking underground in order to provide sufficient parking for the mixed uses that would be present on-site, which he said would be prohibitive. He requested the APC recommend that 469 - 479 S. Old Woodward be entered into the PAD, even though it no longer exists, to indicate to the City Commission that the APC would endorse some sort of dispensation of the parking requirements for said development.

Ms. MacGregor noted this request was submitted in December 2020 and had been put on hold until presently because of the City's ongoing discussions regarding the PAD. Consequently both she and Mr. Markus asked the APC to avoid tabling the conversation and to make either a positive or negative recommendation during the present discussion.

Mr. Black asked if the City might be able to provide clearer guidance regarding the PAD in a month if the item were tabled to the November 2021 APC meeting.

Ops. Cmdr. Grewe said it was unlikely that the issues surrounding the PAD would be sufficiently clarified in the intervening month.

A number of different points were raised by individual APC members, including:

- That this matter might be a zoning issue and therefore outside of the APC's purview altogether;
- That the zoning requirements for this parcel require mixed use but that there were not sufficient ways for the applicant to meet the parking requirements without the use of public parking;
- That the applicant was requesting a waiver of the parking requirements for a parcel in the S. Old Woodward area, where a number of parking spaces are likely to be removed during the S. Old Woodward project, which would cause an increase in parking demand in the area; and,
- That the APC could not vote to recommend one way or the other regarding the PAD since it seemed to no longer exist.

After APC discussion, Dr. Silverman moved to deny the request to include 469 - 479 S. Old Woodward in the PAD. The motion failed for lack of a second.

Ms. Krueger moved to approve the request to include 469 - 479 S. Old Woodward in the PAD. The motion failed for lack of a second.

Dr. Silverman and Vice-Chair Astrein both expressed discomfort in having to take action on this item with a number of APC members absent.

Vice-Chair Astrein said it was unfair to the applicant that they had been waiting since December 2020.

Motion by Dr. Paskiewicz

Seconded by Dr. Silverman to neither approve or deny the application to the PAD because it no longer exists. The APC requested that the City Commission return the issue to the AOC with other options to consider for the parking requirements of the applicant.

Ms. MacGregor said recommending that the request return to the APC was equivalent to making no recommendation. She reiterated her request that the APC either vote to maintain or relieve the parking requirements.

Motion failed, 2-3.

ROLL CALL VOTE

Yeas: Paskiewicz, Silverman

Nays: Astrein, Black, Krueger

Dr. Silverman motioned to recommend that the applicants not be relieved of the existing on-site parking requirements. The motion failed for lack of a second.

Ops. Cmdr. Grewe said the Vice-Chair could reasonably conclude the discussion by noting that the APC could not come to a consensus on this matter. He said that should provide the applicant with enough information to pursue next steps.

Ms. MacGregor thanked Ops. Cmdr. Grewe for his work on the item.

Vice-Chair Astrein noted that even if the APC had been able to recommend admission to the PAD the City Commission would be the final decisor.

6. Signage Update at Pierce, Park and Peabody Structures

Ops. Cmdr. Grewe summarized the item.

Motion by Dr. Silverman

Seconded by Mr. Black to approve the replacement of parking signs on all of the structures except Chester using Option F.

Ms. Krueger recommended that Option F be used but with the garage name larger than 'Parking' so that users more easily remember where they parked.

Motion carried, 5-0.

VOICE VOTE

Yeas: Paskiewicz, Silverman, Astrein, Black, Krueger

Nays: None

7. Meeting Open to the Public for items not on the Agenda

Vice-Chair Astrein stated that APC member attendance is critical and noted that increased APC member attendance may have allowed the APC to settle the matter of 469 - 479 S. Old Woodward.

8. Miscellaneous Communications
 - a. Construction Update
9. Next Meeting: Wednesday, November 3, 2021
10. Adjournment

No further business being evident, the meeting adjourned at 8:54 a.m.

Operations Commander Scott Grewe



MEMORANDUM

City Manager's Office

DATE: May 4, 2022

TO: Thomas M. Markus, City Manager

FROM: Jana L. Ecker, Assistant City Manager

SUBJECT: Resolution Regarding Highland Park's Water and Sewer Debts

INTRODUCTION:

The Great Lakes Water Authority ("GLWA") indirectly provides sewer and water services to the City of Birmingham and many other municipalities. Payment for sewer services is coordinated through Oakland County. Birmingham is located in two drainage districts, the George W. Kuhn Drain Drainage District and the Evergreen-Farmington Sanitary Drain Drainage District, and thus pays sewer charges for each district. Payment is made to Oakland County and passed along to the GLWA. The City of Birmingham is one of twelve member communities that receives water services and pays for the services through the Southeastern Oakland County Water Authority ("SOCWA"), which in turn receives water services from GLWA. The City of Highland Park is also a member community of GLWA, but has not provided full payment for water or sewer services, for which delinquency the other member communities have been charged.

BACKGROUND:

In 2012, the State of Michigan made a determination that Highland Park's water treatment plant was creating a public health risk to its residents, and requested the Detroit Water and Sewer District ('DWSD'), the predecessor of GLWA, to provide temporary emergency water services to the City of Highland Park. On November 12, 2012, the State of Michigan advised that repairs to Highland Park's water treatment plan would be completed within three or four days. Neither the State of Michigan nor the City of Highland Park repaired the water treatment plant in Highland Park to correct the public health risk to residents' water supply and it remains closed to date.

Since 2012, the DWSD and then the GLWA have continued to provide water and sewer services to Highland Park based on the temporary arrangement. By the end of FY 23, Highland Park will have accumulated approximately \$60,977,600 in arrears for the provision of water and sewer services. Highland Park has only made payments for 1% of the arrears owed. As a result, Highland Park's arrears for water and sewer services have been charged back to the City of

Birmingham and other GLWA member communities. This process will continue unless and until the State of Michigan funds all needed repairs to Highland Park's water treatment plan as planned in 2012 and/or approves a long term infrastructure plan to meet the future water and sewer needs in Highland Park. The current collection process will also continue until the State of Michigan and the legislature approve a plan that outlines the collection process for delinquent water and sewer charges that does not require the payment of such delinquent charges by other member communities. The State of Michigan must step in and address Highland Park's outstanding debt that will continue to accrue. The City of Birmingham has no direct relationship with GLWA, and thus has no standing to sue GLWA to recover the funds the City has paid towards Highland Park's outstanding debt to GLWA. The City could sue SOCWA and/or the Water Resource Commissioner, but doing so would not correct the situation or stop the accumulation of debt, and would certainly significantly increase service rates. The City could sue the municipality accumulating the delinquent debt, but collecting on any judgement would be unlikely. Without intervention by the State of Michigan, the City of Birmingham and other communities will continue to shoulder the burden of any delinquent debt.

LEGAL REVIEW:

The draft resolution has been reviewed by the City Attorney, who has no concerns over form or content.

FISCAL IMPACT:

The City of Birmingham will have paid approximately \$776,185 (through the end of FY22) towards the City of Highland Park's arrears to the GLWA since 2012. Based on Highland Park's debt accumulation estimates, this total will increase to approximately \$874,585 by the end of FY 23. As noted in the resolution, the City is seeking reimbursement from the State of Michigan for all funds paid to date for Highland Park's arrears for water and sewer services.

PUBLIC COMMUNICATIONS:

None to date.

SUMMARY:

The City Commission may wish to make the following requests as included in the attached resolution:

1. The City of Birmingham requests that the State of Michigan commence the necessary repairs to Highland Park's water treatment plan to correct the public health risk to residents' water supply and establish a reasonable timeframe for completion;
2. The City of Birmingham requests that the State of Michigan approve a long term plan to meet the current and future water and sewer needs in Highland Park;
3. The City of Birmingham requests that the State of Michigan and the legislature approve a plan that outlines the collection process for delinquent water and sewer charges that remain unpaid by a member community at the end of each fiscal year that does not require the payment of such delinquent charges by other member communities;

4. The City of Birmingham requests that the GLWA cease and desist from charging the City of Birmingham for any portion of the City of Highland Park's outstanding debt to GLWA for water and sewer services; and
5. The City of Birmingham requests reimbursement from the State of Michigan for all funds paid towards the City of Highland Park's outstanding debt to GLWA for water and sewer services since 2012.

ATTACHMENTS:

- Draft Resolution
- Letter to Oakland County Water Resources Commissioner's customer communities dated April 13, 2022
- Letter to Southeastern Oakland County Water Authority Board of Trustees dated April 7, 2022

SUGGESTED COMMISSION ACTION:

Make a motion adopting a Resolution in Opposition to GLWA Member Communities Paying for the City of Highland Park's GLWA Debt, and to direct the City Manager to forward copies of the approved resolution to Governor Whitmer, our State legislators and to the Great Lakes Water Authority.

**RESOLUTION IN OPPOSITION TO GLWA MEMBER COMMUNITIES PAYING FOR THE
CITY OF HIGHLAND PARK'S GLWA DEBT**

WHEREAS the City of Birmingham receives water and sewer services indirectly from the Great Lakes Water Authority ("GLWA"), (previously known as the Detroit Water and Sewage Department ("DWSD")) and is a paying member community of the GLWA;

WHEREAS the State of Michigan has had, and continues to have, a direct role in requiring the GLWA to provide water services to the City of Highland Park, given that the State requested DWSD in 2012 to provide temporary emergency water services to the City of Highland Park based on the State's determination that Highland Park's water treatment plant was creating a public health risk to its residents;

WHEREAS on November 12, 2012 the State of Michigan advised that repairs to Highland Park's water treatment plan would be completed in 3 – 4 days;

WHEREAS neither the State of Michigan or the City of Highland Park repaired the water treatment plant in Highland Park to correct the public health risk to residents' water supply and it remains shuttered to this day;

WHEREAS the City of Highland Park has continued to receive "temporary" emergency water services since 2012 from DWSD, and then GLWA, and has paid less than 1% of the water services charges accrued by the City of Highland Park since that time;

WHEREAS the City of Highland Park has thus accumulated \$54,233,700 in debt to the GLWA for both water and sewer services used on an emergency basis since 2012;

WHEREAS of the \$54,233,700 debt that the City of Highland Park has accumulated since 2012, \$19,882,700 (36%) of these arrears has been allocated to the paying member communities of the GLWA system;

WHEREAS of the \$60,977,600 debt that will be accumulated by the end of 2023, a total of \$874,585 will be allocated to the City of Birmingham (through the end of FY23) for this debt; and

WHEREAS the City of Birmingham has paid approximately \$776,185 (through the end of FY22) towards the City of Highland Park's arrears to the GLWA since 2012;

WHEREAS the City of Birmingham has indirectly paid GLWA on a regular basis for our water and sewer services in a timely manner as required of member communities;

NOW, THEREFORE, BE IT RESOLVED, the City Commission makes the following formal requests:

1. The City of Birmingham requests that the State of Michigan commence the necessary repairs to Highland Park's water treatment plan to correct the public health risk to residents' water supply and establish a reasonable timeframe for completion;
2. The City of Birmingham requests that the State of Michigan approve a long term plan to meet the current and future water and sewer needs in Highland Park;
3. The City of Birmingham requests that the State of Michigan and the legislature approve a plan that outlines the collection process for delinquent water and sewer charges that remain unpaid by a member community at the end of each fiscal year that does not require the payment of such delinquent charges by other member communities;
4. The City of Birmingham requests that the State of Michigan and the GLWA cease and desist from indirectly charging the City of Birmingham for any portion of the City of Highland Park's outstanding debt to GLWA for water and sewer services; and
5. The City of Birmingham requests reimbursement from the State of Michigan for all funds paid towards the City of Highland Park's outstanding debt to GLWA for water and sewer services since 2012.

I, Alexandra Bingham, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on May 9, 2022.

Alexandra Bingham, City Clerk



April 13, 2022

Re: Highland Park's Water and Sewer Debt

Dear Customer Communities:

I have talked with many of the leaders and stakeholders from the customer communities I represent and above all, they want to know two things when it comes to discussions about the water and sewer debt Highland Park owes to the Great Lakes Water Authority (GLWA). First, they want to know how much of that debt will be assessed against their municipality to make up for the shortfall. Second, they want to know my position on this obviously complex issue. With this letter, I intend to answer both questions.

It has been reported that municipalities in Wayne and Macomb counties have begun withholding a portion of their GLWA water bills related to the Highland Park matter. Instead, they are putting money in an escrow account pending a resolution of the contentious litigation between the regional water authority and Highland Park. I do not support that approach. I believe that path won't be particularly effective because costs are passed on during the rate-setting process. As I was quoted recently in The Detroit News, it's not like we can take the water back from Highland Park. It just means there's less money to spend on operations and maintenance and capital projects.

The attached tables provide a breakdown of the percentages each municipality pays in relationship to their share in the Clinton-Oakland Sewage Disposal System, the Evergreen-Farmington Sanitary Drain Drainage District, and the George W. Kuhn Drain Drainage District. In addition to the municipalities included in those three tables, there are other cities and townships, which are not included in the tables. are listed separately along with their assessments for the both the current year and Fiscal Year 2023.

Sincerely,

Jim Nash



TABLE 2. Evergreen-Farmington Sanitary Drain Drainage District

	<i>2023 Flow Allocation %</i>	<i>Total Highland Park Bad Debt Estimate</i>	<i>Portion of 2023 Sewer Charges for Highland Park Bad Debt</i>	<i>New Total Highland Park Bad Debt Estimate</i>
	<i>Estimated Amount Per Customer</i>			
<i>Auburn Hills</i>	0.757%	\$41,000	\$6,000	\$47,000
<i>Beverly Hills</i>	4.435%	\$240,000	\$32,000	\$272,000
<i>Bingham Farms</i>	0.574%	\$31,000	\$4,000	\$35,000
<i>Birmingham</i>	7.360%	\$398,000	\$53,000	\$451,000
<i>Bloomfield Hills</i>	2.436%	\$132,000	\$18,000	\$150,000
<i>Bloomfield Township</i>	17.345%	\$939,000	\$126,000	\$1,065,000
<i>Franklin</i>	0.518%	\$28,000	\$4,000	\$32,000
<i>Lathrup Village</i>	2.072%	\$112,000	\$15,000	\$127,000
<i>Southfield</i>	18.936%	\$1,025,000	\$138,000	\$1,163,000
<i>Troy</i>	4.207%	\$228,000	\$31,000	\$259,000
<i>Farmington</i>	0.780%	\$42,000	\$6,000	\$48,000
<i>Farmington Hills</i>	23.447%	\$1,269,000	\$170,000	\$1,439,000
<i>Keego Harbor</i>	0.834%	\$45,000	\$6,000	\$51,000
<i>Orchard Lake Village</i>	0.896%	\$49,000	\$7,000	\$56,000
<i>West Bloomfield Township</i>	12.620%	\$683,000	\$92,000	\$775,000
<i>Acacia Park RTB</i>	0.825%	\$45,000	\$6,000	\$51,000
<i>Birmingham RTB</i>	0.850%	\$46,000	\$6,000	\$52,000
<i>Bloomfield RTB</i>	1.108%	\$60,000	\$8,000	\$68,000
<i>Total</i>	100.000%	\$5,413,000	\$728,000	\$6,141,000

- The purpose of this table is to provide a general estimate of the total paid by each WRC customer community toward the Highland Park Bad Debt based on the current share allocations. It does not reflect the actual amount paid by each individual customer as the shares and amounts paid have changed each year. The estimate is being provided in response to requests from the customer communities to better understand the magnitude of the amount.
- The estimated amount per customer was determined as follows:

$$\begin{aligned}
 & \text{EFSD HP Bad Debt from GLWA} \times \\
 & \text{Community \% share of EFSD for 2023} \\
 & = \text{Estimated Amount per Customer}
 \end{aligned}$$

- Upon repayment of the Highland Park Debt, the funds are expected to be retained by GLWA to offset increasing operation and capital cost. Customers should not expect a refund check in the future.

TABLE 3. George W. Kuhn Drain Drainage District

	2023 Sewage Allocation %	2023 Storm Allocation %	Total Highland Park Bad Debt Estimate	Portion of 2023 Sewer Charges for Highland Park Bad Debt	New Total Highland Park Bad Debt Estimate
<i>Estimated Amount Per Customer</i>					
City of Berkley	4.128%	6.4895%	\$415,000	\$50,000	\$465,000
Village of Beverly Hills	0.274%	0.8369%	\$44,000	\$5,000	\$49,000
City of Birmingham	3.061%	4.8837%	\$311,000	\$38,000	\$349,000
City of Clawson	3.036%	5.9262%	\$352,000	\$43,000	\$395,000
City of Ferndale	5.650%	10.2885%	\$625,000	\$76,000	\$701,000
City of Hazel Park	4.077%	2.2554%	\$240,000	\$29,000	\$269,000
City of Huntington Woods	1.890%	2.4671%	\$169,000	\$20,000	\$189,000
City of Madison Heights	9.236%	6.5410%	\$603,000	\$73,000	\$676,000
City of Oak Park	7.638%	13.6383%	\$834,000	\$101,000	\$935,000
City of Pleasant Ridge	0.888%	1.3390%	\$87,000	\$10,000	\$97,000
City of Royal Oak	18.886%	29.7028%	\$1,899,000	\$229,000	\$2,128,000
Royal Oak Twp	0.908%	1.2775%	\$85,000	\$10,000	\$95,000
City of Southfield	6.494%	7.7156%	\$551,000	\$67,000	\$618,000
City of Troy	32.596%	2.4799%	\$1,286,000	\$155,000	\$1,441,000
Detroit Zoological Park	1.097%	0.3364%	\$54,000	\$6,000	\$60,000
County of Oakland	0.000%	1.5274%	\$62,000	\$8,000	\$70,000
Rackham Golf Course	0.141%	0.1913%	\$13,000	\$2,000	\$15,000
State Of Michigan	0.000%	2.1035%	\$86,000	\$10,000	\$96,000
<i>Total</i>	100.000%	100.0000%	\$7,716,000	\$932,000	\$8,648,000

- The purpose of this table is to provide a general estimate of the total paid by each WRC customer community toward the Highland Park Bad Debt based on the current share allocations. It does not reflect the actual amount paid by each individual customer as the shares and amounts paid have changed each year. The estimate is being provided in response to requests from the customer communities to better understand the magnitude of the amount.
- The estimated amount per customer was determined as follows:

$$\begin{aligned}
 & \text{GWK HP Bad Debt from GLWA} \times \\
 & \text{Community \% share of GWK for 2023} \\
 & = \text{Estimated Amount per Customer}
 \end{aligned}$$

- Upon repayment of the Highland Park Debt, the funds are expected to be retained by GLWA to offset increasing operation and capital cost. Customers should not expect a refund check in the future.

April 7, 2022

Board of Trustees
Southeastern Oakland County Water Authority

Subject: GLWA and Highland Park

Board Members:

This report is intended to update the Board on the issues regarding Highland Park and GLWA that have been discussed at recent Board meetings.

Wayne County Circuit Court Case

Mr. Davis attended the virtual hearing in late March on the motions that were filed by both parties to this case. The judge indicated that he would rule on the motions before April 12, 2022. As of the date of this letter, those rulings have not been made. Mr. Davis will report on the status of the motion rulings at the April 13 Board meeting.

Both Macomb and Oakland Counties have indicated an interest in working with SOCWA on the issues identified in this case. We have told both counties that we are going to review the motion decisions with the SOCWA Board before taking any additional action.

SOCWA Letter to Governor Whitmer

The letter to Governor Whitmer that was reviewed at the March Board meeting was submitted to the Governor by SOCWA.

The letters that GLWA provided to all of their customers in early March that identified each customer's share of the Highland Park bad debt resulted in significant discussion in the customer communities, some of which received extensive press coverage. The Wayne County communities represented by both the Downriver Community Conference and the Conference of Western Wayne and at least four Macomb County communities have indicated that they will be escrowing the portion of their payments to GLWA that are attributable to Highland Park's unpaid invoices. Mr. Davis is researching whether this course of action is allowable under the SOCWA's water contract with GLWA. GLWA has not indicated what action they will take regarding the customers making escrow payments. GLWA is optimistic that the public furor will result in some state action.

Community Letters to Governor Whitmer

At the March Board meeting, I was requested to provide additional information to the communities regarding the GLWA/Highland Park dispute. A one-page summary is attached for your review.

Respectfully submitted,

Jeffrey A. McKeen, P.E.
General Manager

Suggested Resolution: "That the Board encourages each member and customer community to send a letter to Governor Whitmer regarding the unpaid Highland Park water bills."

HIGHLAND PARK UNPAID WATER BILLS

Highland Park has not paid its water bill to the Great Lakes Water Authority (GLWA) since 2013. As a result, GLWA has included a charge in its water rates to recover Highland Park's bad debt from all of their other water customers. For SOCWA, the total cost paid to GLWA due to Highland Park's bad debt are estimated to be approximately \$738,300 between 2012 and the end of the 2021/22 fiscal year. SOCWA recovered this money from its member and customer communities through higher water rates. An estimate of the amount of money recovered from each community is attached.

In order to exert political pressure on the State of Michigan to resolve this matter, GLWA has requested that their customers send letters to Governor Whitmer encouraging her to resolve this matter using state resources. SOCWA sent such a letter to Governor Whitmer, which is attached. SOCWA is encouraging each of its member and customer communities to send a similar letter to Governor Whitmer.

It is important to note that the information below applies only to Highland Park's unpaid water bills. The unpaid sewer bills are a significantly more complicated, long-standing issue that has a much larger financial impact.

Highland Park built its own water treatment plant in the early 1900s and operated it until November 2012. In November of 2012, the MDEQ had concerns with the quality of the water being produced by the Highland Park plant. MDEQ requested that the Detroit Water and Sewer Department (DWSD) supply water to Highland Park through a series of existing interconnects on an emergency basis for several days while Highland Park conducted some maintenance on their plant. This maintenance does not appear to have been completed. The Highland Park plant has not operated since late 2012.

DWSD agreed to the MDEQ's emergency request to provide water to Highland Park. No provision was established for payment to DWSD for the water provided. DWSD began billing Highland Park in late 2012. Highland Park made one payment of \$65,652 in 2012/13 and has not paid any of the water bills since then. As of November 30, 2021, the total water bill owed by Highland Park is \$10.3 million.

In 2016, when GLWA was established, GLWA took over the responsibility for Highland Park's unpaid water bills. GLWA's formation documents state that all water customers are responsible for paying any bad debt incurred by GLWA's wholesale water customers. Since the formation of GLWA in 2016, the water rates for all GLWA customers have always included a charge to recover the bad debt associated with Highland Park's unpaid water bills.

The dispute between GLWA and Highland Park can be simply summarized as GLWA believes that Highland Park has only paid about 1% of their outstanding water bills. Highland Park believes that they have overpaid GLWA for sewer service and that those overpayments should be applied to their outstanding water bills. The parties are involved in ongoing litigation in various court venues. Even if GLWA is successful in the various legal proceedings, it is questionable whether Highland Park can pay the resulting judgements. It is our hope that sending letters to Governor Whitmer will encourage the State to resolve this issue.

If you need any additional information on this issue, please contact Jeff McKeen, SOCWA General Manager at jmckeens@socwa.org.

DISTRIBUTION of HIGHLAND PARK BAD DEBT EXPENSE

<u>Community</u>	<u>%</u>	<u>Amount</u>
Berkley	3.9%	\$28,794
Beverly Hills	3.2%	\$23,626
Bingham Farms	0.9%	\$6,645
Birmingham	9.1%	\$67,185
Bloomfield Hills	4.6%	\$33,962
Bloomfield Twp.	19.3%	\$142,492
Clawson	2.8%	\$20,672
Huntington Woods	1.8%	\$13,289
Lathrup Village	1.5%	\$11,075
Pleasant Ridge	0.9%	\$6,645
Royal Oak	18.6%	\$137,324
Southfield	33.4%	\$246,592
 TOTAL	 100.0%	 \$738,300



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

March 11, 2022

Governor Gretchen Whitmer
P.O. Box 30013
Lansing, Michigan 48909

Re: State of Michigan Assistance Regarding Highland Park's Nonpayment of Water Charges

Dear Governor Whitmer:

The Southeastern Oakland County Water Authority (SOCWA) buys water from Great Lakes Water Authority (GLWA) and distributes that water to the 250,000 residents of the SOCWA member communities, listed above, and to the residents of Bloomfield Hills and Bloomfield Twp. The rates that SOCWA pays GLWA are higher than they should be due to Highland Park not paying GLWA for the water service being provided to Highland Park. We are writing you to request your assistance in resolving this situation.

SOCWA has been concerned about Highland Park's nonpayment for their water service for many years. I have attached a letter SOCWA sent to Governor Snyder in May of 2016 that basically makes the same requests we are making of you in 2022. SOCWA received no response to our letter to Governor Snyder.

The state of Michigan has a direct role in the city of Detroit, and now GLWA, providing water service to Highland Park. The state of Michigan requested the Detroit Water & Sewerage Department (DWSD) provide emergency water service to Highland Park because the state of Michigan determined the city's water treatment plant was creating a public health risk to its residents. On November 12, 2012, the state of Michigan represented the repairs to the water treatment plant were to be completed in 3-4 days. Neither the state of Michigan nor Highland Park repaired the water treatment plant, and it remains closed to this date. DWSD was required by the state of Michigan to provide water service to Highland Park, yet no mechanism was established to provide payment, by either the state of Michigan or Highland Park, to DWSD for that service.

Highland Park has paid less than 1% of the water services charges from DWSD and GLWA since 2012. When Highland Park does not pay, the costs are borne by the other customer communities that receive GLWA water service. By the end of the current fiscal year, Highland Park's water services arrearages will exceed \$11,374,300 if no payment is made.

Of the \$11,374,300 in unpaid Highland Park water service arrearages that have been allocated to GLWA's customers, SOCWA's share is \$738,300. For FY 2023 charges, the SOCWA communities have been allocated \$81,400 for Highland Park's anticipated nonpayment. By the end of FY 2023, SOCWA will have paid an additional \$800,000+ to GLWA because Highland Park refuses to pay their invoices for water service. SOCWA believes that the state of Michigan is completely responsible for creating this situation and that the state of Michigan should be responsible for resolving this situation. Specifically, SOCWA request the following, which are the same requests SOCWA made of Governor Snyder in 2016:

1. Immediately reimburse GLWA for the unpaid Highland Park water service invoices since November 2012.
2. Support GLWA's ongoing litigation against Highland Park for non-payment of invoices for sewer service. While SOCWA is not a customer of GLWA for sewer service, our residents have also had to pay higher costs to GLWA that result from Highland Park not paying their sewer service invoices.
3. Provide leadership to Highland Park so that they can establish a sustainable billing and collections operation within Highland Park so that this situation does not simply reappear in the future.

SOCWA looks forward to your involvement in this situation that is almost ten years in the making.

Please contact me or Suzanne Coffey, GLWA's Interim Chief Executive Officer, if you need any additional information regarding this dispute and how it can be resolved by the state of Michigan.

Respectfully submitted,



Jeffrey A. McKeen, P.E.
General Manager



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

May 11, 2016

The Honorable
Governor Rick Snyder
State of Michigan
P.O. Box 30013
Lansing, MI 48909

Regarding: City of Highland Park

Dear Governor Snyder,

We are writing this letter in support of the GLWA Board's April 13, 2016 memorandum to you regarding the City of Highland Park. The Southeastern Oakland County Water Authority is the largest water customer of the Great Lakes Water Authority (GLWA). As an authority that represents the Oakland County communities listed on this letterhead, we store and distribute water to over 245,000 customers. In the daily conduct of our business, we work closely with GLWA leadership to ensure that we can deliver highest quality, lowest cost service to our customers.

Regarding the Highland Park situation outlined by GLWA, we similarly request your office take leadership within state government to accomplish the following:

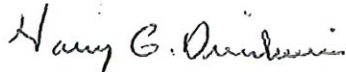
1. Immediately reimburse GLWA for the water provided to Highland Park since FY2013.
2. Support GLWA's ongoing litigation against Highland Park for non-payment of sewer services. As indicated in the GLWA's letter, a judgement was rendered in favor of GLWA for \$19 million based on the delinquent accounts receivable at the time of the judgement, but is now under appeal by Highland Park. The delinquent accounts receivable as of March 31, 2016 has since grown to \$30 million for water and sewer services.
3. Provide top leadership support within MDEQ to fund and manage the establishment of a sustainable billing and collections operation within Highland Park.

As you know, there are many citizens in our communities who struggle to pay their water and sewer bills and asking them to absorb Highland Park's debts into their water and sewer charges is simply unjust and unfair. Clearly the state needs to create a path for Highland Park to

manage their city's financial obligations without further burdening the region.

Thank you for your attention to this matter.

Respectfully submitted,
SOCWA Board of Trustees



Harry Drinkwine
Board Chair, Clawson



Greg Rassel
Board Vice Chair, Royal Oak



Derrick Schuller
Berkley



Chris Wilson
Beverly Hills



Dorothy Warren
Bingham Farms



Paul O'Meara
Birmingham



Jay Mader
Huntington Woods



Matt Baumgarten
Lathrup Village



Scott Pietrzak
Pleasant Ridge



Leigh Schultz
Southfield



Robert Walsh
Southfield Twp.

MEMORANDUM

DATE: May 9, 2022

TO: Thomas M. Markus, City Manager and City Commission

FROM: Mary M. Kucharek

SUBJECT: Charter Amendment to Chapter IV of the Birmingham City Charter

INTRODUCTION:

At the long range planning meeting earlier this year, the City Attorney's office presented the need for a Charter amendment regarding the election process to bring it in line with state law.

BACKGROUND:

The City Charter, Chapter IV. – REGISTRATIONS, NOMINATIONS AND ELECTIONS was amended April 3, 1967, November 2, 1999 and November 8, 2011. It requires that a candidate to be nominated for City election must have a petition signed by not less than twenty-five (25) nor more than fifty (50) qualified electors. State law now requires that a petition shall not be signed by less than forty (40) and no more than one hundred (100) qualified electors. Therefore, it is necessary to change the City's Charter in order to be compliant with state law elections processes.

LEGAL REVIEW:

The City has drafted a Resolution for this Charter amendment. Charter amendments have to be conducted in a very specific manner, and before the Commission is a Resolution ready to meet the requirements of state law for revision of Charters. Legally, changes to a Charter can occur in two (2) ways, either by revision or amendment. A revision would change the entire Charter, which is not necessary in this case. We simply need an amendment to correct the City's Charter so that it is now state compliant with the state's election laws. Amendments, like this one, will allow the general plan to continue with correction to detail.

An amendment to the City Charter must be approved by two-thirds (2/3) of the Commission. This Resolution, if approved by the Commission tonight, will then be sent to the Governor by way of the Attorney General's Office. There is a division within the Attorney General's Office that handles Charter amendments. If the Attorney General's Office approves of this proposed Resolution and Charter amendment, it is then sent to the Governor for approval. If the Governor approves this Resolution, then it is placed on the November general ballot. If it is denied by the Governor, it is sent back to us for proposed or directed changes. This amendment to the Resolution is very specific and the ballot proposals are very limited both in words and the notice requirements.

You will find in the Charter amendment at paragraph 2, the specific language proposed is called a purpose statement which is the paragraph that will be approved or denied by the Governor. Once this is on the November ballot, a majority of the voters must pass this proposed change in order for the amendment to go forward. There are plenty of opportunities for postings of this Charter amendment so that the electors are aware of what is being proposed.

You will also see that this Resolution outlines the requirements for the City Clerk to act and to send this Resolution to both the Governor and the Attorney General.

FISCAL IMPACT:

There will be no financial impact to the City.

PUBLIC COMMUNICATIONS:

This Charter amendment is appearing in tonight's packet. It will be noticed and placed on the November ballot and published as required.

SUMMARY:

It is requested of the City Commission to approve the Resolution to allow amendment to Chapter IV. – REGISTRATIONS, NOMINATIONS AND ELECTIONS of the Birmingham City Charter changing the number of persons necessary on a nominating petition in order to be in line with state law.

ATTACHMENTS:

Proposed Resolution for Charter amendment to Chapter IV. – REGISTRATIONS, NOMINATIONS AND ELECTIONS.

SUGGESTED COMMISSION ACTION:

To make a motion adopting a Resolution to amend the City of Birmingham Charter, Chapter IV. – REGISTRATIONS, NOMINATIONS AND ELECTIONS as provided, and to direct the Mayor's signature for approval and the Clerk to proceed as dictated by state law.

RESOLUTION

CITY OF BIRMINGHAM, MICHIGAN

AMENDMENT TO CHAPTER IV, CITY OF BIRMINGHAM CHARTER

Minutes of a regular Commission meeting of the City of Birmingham, County of Oakland, State of Michigan, held at the City Hall on May 9, 2022.

The following preamble and resolution were offered by _____ and seconded by _____.

To approve a Charter amendment to Chapter IV. – Registrations, Nominations and Elections, Section 4. – [Signatures necessary.] for submission to the Governor and Attorney General for subsequent placement on the November 8, 2022 ballot:

BE IT RESOLVED, by the City Commission of the City of Birmingham, Michigan, as follows:

1. The Commission, by at least a three-fifths vote of its members, pursuant to the authority granted by Act 279 of the Public Acts of 1909, as amended, proposes that Chapter IV. – Registrations, Nominations and Elections, Section 4. [Signatures necessary.] of the Charter of the City of Birmingham be amended to read as follows:

CHAPTER IV. – REGISTRATIONS, NOMINATIONS AND ELECTIONS

Section 4. [Signatures necessary.]

No person shall be deemed to be nominated as a candidate for any office unless a petition therefore, signed by not less than forty (40) nor more than one hundred (100) qualified electors, shall be filed with the City Clerk on or before four o'clock p.m. on the twelfth Tuesday prior to the odd-year election.

Provisions of the existing Chapter IV. - REGISTRATIONS, NOMINATIONS AND ELECTIONS, Section 4. – [Signatures necessary.] of the Charter of the City of Birmingham to be deleted and repealed by such proposal above. The current Chapter IV. - REGISTRATIONS, NOMINATIONS AND ELECTIONS, Section 4. – [Signatures necessary.] reads as follows:

Section 4. [Signatures necessary.]

No person shall be deemed to be nominated as a candidate for any office unless a petition therefore, signed by not less than twenty-five nor more than fifty qualified electors, shall be filed with the city clerk on or before four o'clock p.m. on the twelfth Tuesday prior to the odd-year election.

(Amend. of 4-3-67; Amend. of 11-2-99; Amend. of 11-8-11)

2. Proposed amendment to Chapter VI. – REGISTRATIONS, NOMINATIONS AND ELECTIONS, Section 4. – [Signatures necessary.] of the City of Birmingham Charter which requires that no person shall be nominated as a candidate for office unless a petition is signed by not less than twenty-five (25) nor more than fifty (50) qualified electors. The proposed amendment that a petition shall not be signed by less than forty (40) and no more than one hundred (100) qualified electors, which would be reflective of the current state law.

Shall the proposed Amendment be adopted? Yes: _____ No: _____

3. The City Clerk shall transmit a copy of the proposed Charter amendment to the Governor of the State of Michigan for her approval, and transmit a copy of the purpose of the proposed Charter amendment to the Attorney General of the State of Michigan for approval, as required by law.

4. The proposed Charter amendment shall be submitted to the qualified electors of the City of Birmingham at the general election to be held in the City of Birmingham on the 8th day of November, 2022, and the City Clerk is directed to give notice of the election and notice of registration in a manner prescribed by law and to do all things and to provide all supplies necessary to submit such Charter amendment to a vote of the electors as required by law.

5. The proposed Charter amendment shall be published in full together with the existing Charter provision as part of the notice of election or once in a local newspaper not less than ten (10) days before election day.

ROLL CALL VOTE:

AYES: _____

NAYS: _____

PRESENT: _____

ABSENT: _____

ABSTENTIONS: _____

CERTIFICATION

I, Alexandria D. Bingham, being the duly appointed and qualified Clerk of the City of Birmingham, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of Resolution, the original of which is on file in my office, adopted by the City of Birmingham Commission at a regular meeting held on May 9, 2022.

Alexandria D. Bingham, City Clerk

and

Therese Longe, Mayor

MEMORANDUM

DATE: May 9, 2022

TO: Thomas M. Markus, City Manager and City Commission

FROM: Mary M. Kucharek

SUBJECT: Charter Amendment to Chapter VI of the Birmingham City Charter

INTRODUCTION:

At the long range planning meeting earlier this year, the City Attorney's office presented the need for a few Charter amendments that will allow for efficient administration and bring the spending ability of the administration in line with today's economics.

BACKGROUND:

The City Charter, Chapter VI. – CONTRACTS was amended April 6, 1987. It requires that any contract for goods or services or professional services in excess of Six Thousand Dollars (\$6,000.00) must be put out for RFP, competitive bidding, and Commission review and approval. Six Thousand Dollars (\$6,000.00) in 1987, as the Commission is well aware, is far different than Six Thousand Dollars (\$6,000.00) today. The City staff and City Manager believe that it would be far more efficient for the administration to be able to enter into contracts for goods and services with a far higher threshold and more relevant in today's economy.

The City Attorney's office conducted a survey of approximately twenty-five (25) different communities throughout the State of Michigan to determine the threshold for approval of its legislative body. Most in line with the City of Birmingham is the City of Ann Arbor, Michigan which also has a far higher ceiling for the need to bring matters for purchase and contract before its governing body.

After discussions with the City Manager, it has been determined that the City of Birmingham would also benefit with efficiency for its administration if the threshold for the City's contract approval by City Commission were also raised to Seventy-five Thousand Dollars (\$75,000.00) as our neighbor, Ann Arbor.

LEGAL REVIEW:

The City has drafted a Resolution for a Charter amendment. Charter amendments have to be conducted in a very specific manner, and before the Commission is a Resolution ready to meet the requirements of state law for revision of Charters. Legally, changes to a Charter can occur in two (2) ways, either by revision or amendment. A revision would change the entire Charter, which is not necessary in this case. We simply need an amendment to allow for the

efficient productivity of the City. Amendments, like this one, will allow the general plan to continue with correction to detail, in this case, the dollar amount needed for approval from the City Commission in order for any expenditure of money.

An amendment to the City Charter must be approved by two-thirds (2/3) of the Commission. This Resolution, if approved by the Commission tonight, will then be sent to the Governor by way of the Attorney General's Office. There is a division within the Attorney General's Office that handles Charter amendments. If the Attorney General's Office approves of this proposed Resolution and Charter amendment, it is then sent to the Governor for approval. If the Governor approves this Resolution, then it is placed on the November general ballot. If it is denied by the Governor, it is sent back to us for proposed or directed changes. The amendment to the Resolution is very specific and the ballot proposals are very limited both in words and the notice requirements.

You will find in the Charter amendment at paragraph 2, the specific language proposed is called a purpose statement which is the paragraph that will be approved or denied by the Governor. Once this is on the November ballot, a majority of the voters must pass this proposed change in order for the amendment to go forward. There are plenty of opportunities for postings of this Charter amendment so that the electors are aware of what is being proposed.

You will also see that this Resolution outlines the requirements for the City Clerk to act and to send this Resolution to both the Governor and the Attorney General.

FISCAL IMPACT:

The fiscal impact from this amendment should be a significant improvement in workflow efficiency which will result in cost savings to the City.

PUBLIC COMMUNICATIONS:

This Charter amendment is appearing in tonight's packet. It will be noticed and placed on the November ballot and published as required.

SUMMARY:

It is requested of the City Commission to approve the Resolution to allow amendment to Chapter VI. – CONTRACTS of the Birmingham City Charter raising the ceiling for approval by the City Commission and the RFP process from Six Thousand Dollars (\$6,000.00) to Seventy-five Thousand Dollars (\$75,000.00).

ATTACHMENTS:

Proposed Resolution for Charter amendment to Chapter VI. – CONTRACTS.

SUGGESTED COMMISSION ACTION:

To make a motion adopting a Resolution to amend the City of Birmingham Charter, Chapter VI. – CONTRACTS, Sections 1., 2., and 3. as provided, and to direct the Mayor's signature for approval and the Clerk to proceed as dictated by state law.

RESOLUTION

CITY OF BIRMINGHAM, MICHIGAN

AMENDMENT TO CHAPTER VI, CITY OF BIRMINGHAM CHARTER

Minutes of a regular Commission meeting of the City of Birmingham, County of Oakland, State of Michigan, held at the City Hall on May 9, 2022.

The following preamble and resolution were offered by _____ and seconded by _____.

To approve a Charter Amendment to Chapter VI. – Contracts, Section 1, Section 2 and Section 3 for submission to the Governor and Attorney General for subsequent placement on the November 8, 2022 ballot:

BE IT RESOLVED, by the City Commission of the City of Birmingham, Michigan, as follows:

1. The Commission, by at least a three-fifths vote of its members, pursuant to the authority granted by Act 279 of the Public Acts of 1909, as amended, proposes that Chapter VI, Section 1, Section 2 and Section 3 of the Charter of the City of Birmingham be amended to read as follows:

CHAPTER VI. - CONTRACTS

Section 1. - [Specifications for bids.]

The City Commission may authorize the purchase of any materials, tools, apparatus, equipment or other goods or things, the consideration or cost of which shall exceed Seventy-five Thousand and 00/100 Dollars (\$75,000.00), from or in conjunction with any state or local governmental agency without advertising or accepting bids provided that such agency shall have first advertised and received competitive bids thereon. Otherwise no contract shall be entered into by the City for the purchase of any materials, tools, apparatus, equipment or other goods or things, the consideration or cost of which shall exceed Seventy-five Thousand and 00/100 Dollars (\$75,000.00), until specifications shall be prepared therefor and published advertisement made for sealed proposals thereon. The City shall in all cases have the right to reject any or all competitive bids, and shall not be obligated to purchase from the lowest bidder.

Section 2. - [Bids required.]

Subject to the provisions of this Charter, the City may through its departments, officers and employees, perform public works of all kinds or it may let any such work by contract. The City shall not, however, undertake or contract for the performance of any public work exceeding an estimated cost of Seventy-five Thousand and 00/100 Dollars (\$75,000.00) until it has first advertised for sealed proposals therefor; provided however, that by a vote of five (5) of the members of the commission elect, the City itself may perform work in excess of that cost without advertisement. The City shall in all cases have the right to reject any or all competitive bids, and shall not be obligated to purchase from the lowest bidder.

Section 3. - [Commission approval required.]

No public improvement costing more than Seventy-five Thousand and 00/100 Dollars (\$75,000.00) shall be contracted for or commenced until drawings, profiles and estimates for the same shall have been submitted to the Commission and approved by it; and the same or a copy thereof shall thereafter remain on file in the office of the Clerk subject to inspection of the public.

Provisions of the existing Chapter VI. - CONTRACTS, Section 1, Section 2 and Section 3 of the Charter of the City of Birmingham to be deleted and repealed by such proposal above. The current Chapter VI. – CONTRACTS, Section 1, Section 2 and Section 3, reads as follows:

CHAPTER VI. - CONTRACTS

Section 1. [Specifications for bids.]

The city commission may authorize the purchase of any materials, tools, apparatus, equipment or other goods or things, the consideration or cost of which shall exceed six thousand dollars (\$6,000.00), from or in conjunction with any state or local governmental agency without advertising or accepting bids provided that such agency shall have first advertised and received competitive bids thereon. Otherwise no contract shall be entered into by the city for the purchase of any materials, tools, apparatus, equipment or other goods or things, the consideration or cost of which shall exceed six thousand dollars (\$6,000.00), until specifications shall be prepared therefor and published advertisement made for sealed proposals thereon, provided, however, that by a vote of five (5) of the members of the commission elect, such contracts, the consideration for which shall not exceed twelve thousand dollars (\$12,000.00) may be made without advertisement. The city shall in all cases have the right to reject any or all competitive bids, and shall not be obligated to purchase from the lowest bidder.

(Amend. of 4-6-87)

Section 2. [Bids required.]

Subject to the provisions of this Charter, the city may through its departments, officers and employees, perform public works of all kinds or it may let any such work by contract. The city shall not, however, undertake or contract for the performance of any public work exceeding an estimated cost of twelve thousand dollars (\$12,000.00) until it has first advertised for sealed proposals therefor; provided however, that by a vote of five (5) of the members of the commission elect, the city itself may perform work in excess of that cost without advertisement. The city shall in all cases have the right to reject any or all competitive bids, and shall not be obligated to purchase from the lowest bidder.

(Amend. of 4-6-87)

Section 3. [Commission approval required.]

No public improvement costing more than one thousand five hundred dollars (\$1,500.00) shall be contracted for or commenced until drawings, profiles and estimates for the same shall have been submitted to the commission and approved by it; and the same or a copy thereof shall thereafter remain on file in the office of the clerk subject to inspection of the public.

(Amend. of 4-6-87)

2. Proposed amendments to Chapter VI. – CONTRACTS, Section 1, Section 2 and Section 3 of the City of Birmingham Charter which require that comparative prices be obtained for purchases and sales in excess of Six Thousand and 00/100 Dollars (\$6,000.00), require Commission approval, sealed bids, City Attorney review and verification of available funds. The proposed Amendment raises from Six Thousand and 00/100 Dollars (\$6,000.00) to Seventy-five Thousand and 00/100 Dollars (\$75,000.00) the ceiling under which comparative prices are required and raises from Six Thousand and 00/100 Dollars (\$6,000.00) to Seventy-five Thousand and 00/100 Dollars (\$75,000.00) the threshold over which purchases and sales are subject to Commission approval, competitive bidding, legal review and funding verification.

Shall the proposed Amendment be adopted? Yes: _____ No: _____

3. The City Clerk shall transmit a copy of the proposed Charter amendment to the Governor of the State of Michigan for her approval, and transmit a copy of the purpose of the proposed Charter amendment to the Attorney General of the State of Michigan for approval, as required by law.

4. The proposed Charter amendment shall be submitted to the qualified electors of the City of Birmingham at the general election to be held in the City of Birmingham on the 8th day of November, 2022, and the City Clerk is directed to give notice of the election and notice of registration in a manner prescribed by law and to do all things and to provide all supplies necessary to submit such Charter amendment to a vote of the electors as required by law.

5. The proposed Charter amendment shall be published in full together with the existing Charter provision as part of the notice of election or once in a local newspaper not less than ten (10) days before election day.

ROLL CALL VOTE:

AYES:

NAYS:

PRESENT:

ABSENT:

ABSTENTIONS:

CERTIFICATION

I, Alexandria D. Bingham, being the duly appointed and qualified Clerk of the City of Birmingham, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of Resolution, the original of which is on file in my office, adopted by the City of Birmingham Commission at a regular meeting held on May 9, 2022.

Alexandria D. Bingham, City Clerk

and

Therese Longe, Mayor



MEMORANDUM

Finance Department

DATE: May 3, 2022

TO: Thomas M. Markus, City Manager

FROM: Mark Gerber, Finance Director/Treasurer

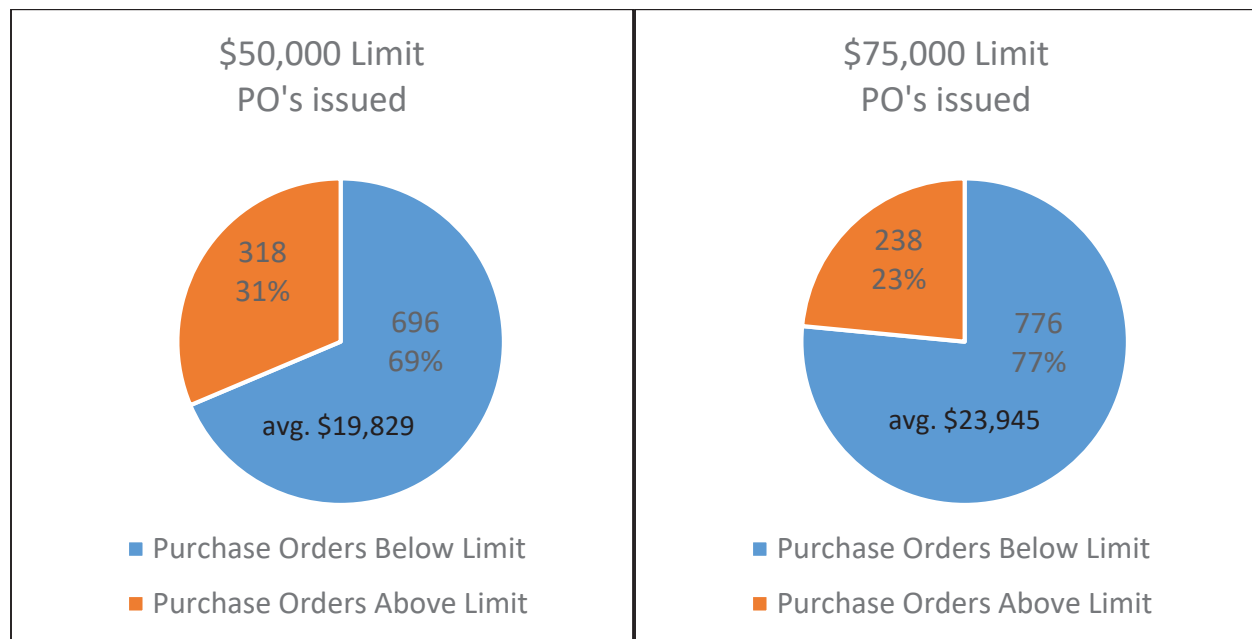
SUBJECT: Additional Support for Charter Amendment Discussion

BACKGROUND:

The City's charter states that competitive bids must be obtained for contracts for materials, tools, apparatus, equipment, and goods or things exceeding \$6,000. This section of the charter was last amended in April of 1987. City staff is requesting that a charter amendment be made to raise that limit to \$75,000.

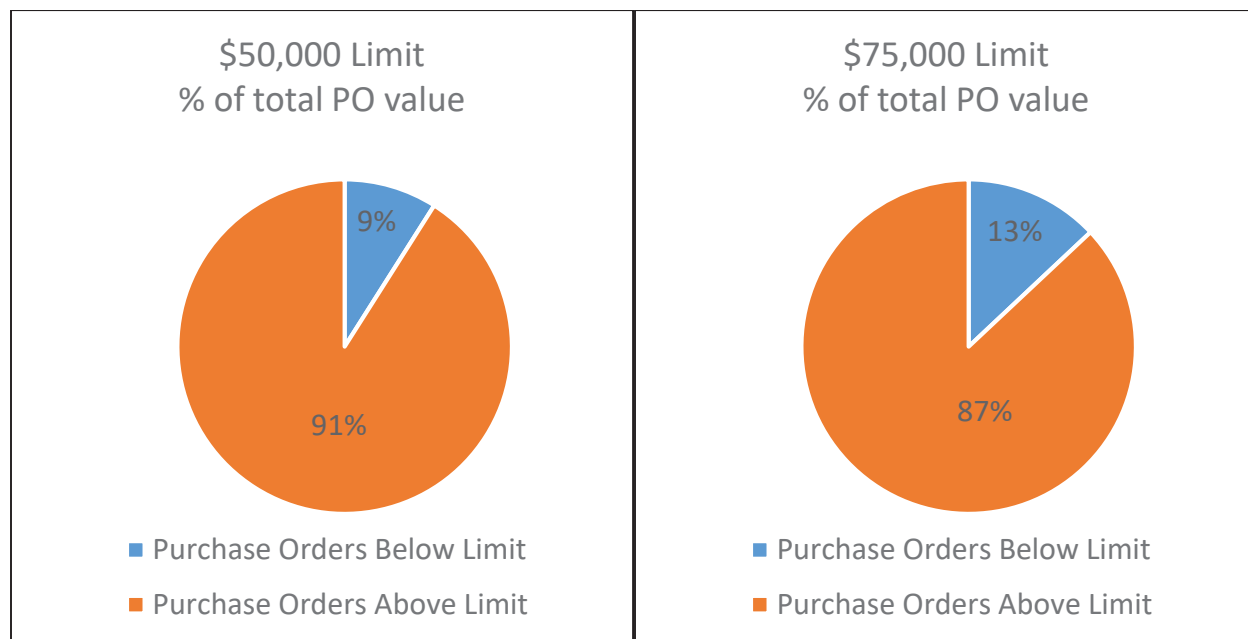
FISCAL ANALYSIS:

In reviewing purchase orders prepared by the Finance Department over the past 10 years, the City has issued 1,014 purchase orders \$6,000 or more with a total value of \$148,616,306. Below are some graphs which look at these purchase orders using a \$50,000 limit and a \$75,000 limit.



As the charts indicate, a majority of the purchase orders that are issued and approved by the City Commission are below either the \$50,000 or the \$75,000 threshold. These are the purchases that City staff would like to remove from having to get bids and City Commission approval through this charter amendment.

When looking at the total value of these purchase orders, the purchase orders that are below either threshold make up a very small percentage of the total purchase order value.



Raising the limit by either threshold would greatly reduce the number of contracts that the City Commission has to approve at its meetings, but still provide the City Commission with substantial oversight over the total value of contracts being approved.

Additionally, the City Commission has further control of city purchases by reviewing and approving the purchasing policy. The purchasing policy further defines the purchasing requirements, especially those purchases below the bid limit in the charter. For example, the policy guidelines state up to what limit department heads may purchase items without getting quotes. These guidelines would be amended if the charter amount for bids were to be approved by the City Commission and the voters. A copy of the current policy is attached to this report.

SUMMARY:

City staff recommends that the City Commission approve this charter amendment language to be put on the November 2022 ballot. This change will reduce the number of items on the City Commission agenda, yet will still provide the Commission with sufficient oversight of City expenditures.

**City of Birmingham
Purchasing Guidelines**

I. Purpose of Guidelines.

These guidelines have been prepared to provide standardized policies and procedures for the purchase of supplies and contractual services by the City. The guidelines also define the responsibilities of both the Purchasing Agent and the operating departments regarding the purchase and/or sale of goods. These guidelines are to be followed for the purchase of supplies and contractual services (as defined in the City Code, Title I, Chapter 7, Section 1.192):

Supplies -- all supplies, materials and equipment, but excluding land or any interest in land.

Contractual Services -- the rental, repair or maintenance of equipment, machinery and other City-owned property. It does not include professional, insurance, personal services or other contractual services which are in their nature unique.

II. General Policies.

- A. Comply with the City of Birmingham Charter and the City Code as it pertains to Purchasing. Specific references are:
 - 1. Charter, Chapter VI, Sections 1, 4 & 5
 - 2. Charter, Chapter II, Section 2, paragraph 2
 - 3. Charter, Chapter VII, Section 3(h)
 - 4. City Code, Title 1, Chapter 7
- B. Obtain from responsible vendors sufficiently high quality goods for the lowest possible price.
- C. Implement purchasing procedures which will facilitate the purchase of and payment for goods yet will provide sufficient internal controls.
- D. Provide departments with timely financial reports for purposes of budgetary controls. Order goods only if funds have been appropriated by City Commission.
- E. Purchase in quantity when practical in order to obtain discounts and minimize paper flow throughout the year.
- F. Purchase recycled materials when practical.

- G. Encourage competitive bidding among vendors; however, the City reserves the right to reject any or all bids or quotes and need not purchase from the lowest bidder.
- H. Issue purchase orders for all capital outlay and/or large ticket items which exceed ~~\$500~~ **\$2,500**.
- I. Orders shall not be artificially subdivided in order to avoid complying with the bidding requirements.

III. Responsibilities of the Purchasing Agent.

- A. Oversee the entire purchasing operation.
- B. Monitor the purchase of supplies and contracted services as well as the disposal of obsolete or surplus fixed assets.
- C. Place orders less than \$6,000.
- D. Assist departments with their purchasing needs and ensure that proper purchasing procedures are being followed.
- E. Examine each requisition for purchase order and each requisition for payment to ensure that requests have been properly documented and authorized, that budgeted funds are available and that the account number classification is correct.
- F. Seek competitive, sealed bids as required by the purchasing ordinance and assist departments with invitations for bids as needed.

IV. Responsibilities of Operating Departments.

- A. Be familiar with and abide by the legal requirements for Purchasing as specified in General Policies (II-1).
- B. Obtain price quotes from at least three (3) vendors when the purchase exceeds ~~\$1,000~~ **\$2,500** but is less than \$6,000, or document reason for not obtaining price quote.
- C. Obtain price quotes for purchases under ~~\$1,000~~ **\$2,500** when practical.
- D. Prepare a request for purchase order for the following:

1. Orders for non-capital items which exceed ~~\$500~~ **\$2,500**.
 2. Orders for capital outlay which exceed ~~\$500~~ **\$2,500**.
 3. Blanket orders when requested or required.
- E. Prepare a request for payment for:
1. Any items ordered directly.
 2. Any invoices received by the department for which a purchase order had not been prepared.
- F. Maintain a current bidders list and/or use the Michigan Intergovernmental Trade Network (MITN) vendor data base as the current bidders list.

V. Purchasing Policies Under \$6,000.

- A. Legal requirements.
1. Only the City Manager, Purchasing Agent or Department Heads are authorized to approve purchases from \$1 to \$6,000.
 2. Budgeted funds must be available prior to placing the order.
- B. City policy.
1. Blanket orders -- Blanket orders are to be issued as requested at the beginning of the fiscal year to those vendors from whom we purchase minor supply items repeatedly throughout the year. Blanket orders will not be encumbered against departmental budgets but will be expensed as payments are made.
 2. Orders for capital outlay -- Purchase orders are to be issued for all capital outlay items exceeding ~~\$500~~ **\$2,500**.
 3. Other orders -- Purchase orders are to be issued when required by the vendor and/or the amount of the order exceeds ~~\$500~~ **\$2,500**.
- C. Procedures.
1. Blanket orders.

- a. Upon the request of the Purchasing Agent, user department head or vendor, departments are to prepare approved requests for blanket purchase orders for approved vendors from whom they will be purchasing small repetitive items or services throughout the fiscal year and from whom items or services need to be acquired quickly in order to maintain operating efficiency. On the request, the department should list all funds and activities (e.g., 101-1008-708, 585-2518-942) which may be used under this blanket order. It is not necessary to specify the individual expenditure accounts.
- b. The estimated annual expenditure per vendor should be specified on the request for purchase.
- c. Blanket orders may not be used for any items properly chargeable to capital outlay accounts or for individual items in excess of \$100 with the exception of items bid on a per unit basis and purchased as needed, such as salt, gasoline, slag, top soil, etc.
- d. As items are received against the blanket order, the packing slip or delivery ticket should be initialed by an authorized supervisor, the proper account number should be indicated and the payment should be entered by the receiving department as a direct pay into ~~HTE~~ **BS&A** per established procedures.

2. Orders for Capital.

- a. Any order for capital outlay which exceeds ~~\$500~~ **\$2,500** but is less than \$6,000 shall be placed via purchase order.
- b. A Requisition for Purchase Order should be prepared after having obtained quotations from at least three (3) vendors and after having determined the lowest responsible bidder. In selecting the lowest responsible bidder, the Department Head should consider the standards set forth in the Purchasing Ordinance, Chapter 7, Title 1, Section 1.193 (1) (a) (vii).
- c. Purchase orders are normally issued every day ~~except on Fridays~~. Therefore, Requisitions for Purchase Orders may be entered into the system at any time by the requesting

department(s). ~~If a Purchase Order is needed on a Friday, individual arrangements should be made with the Purchasing Agent or Purchasing Clerk.~~ The receiving/department copy of the Purchase Order will be delivered to the requesting department once the Purchase Order has been prepared.

- d. Vendors will be instructed to send invoices directly to the department for which the goods are being ordered.
- e. When the order and invoice are received, the invoice should be initialed, dated and forwarded to Purchasing, with any packing slip(s) attached. The Purchase Order number should be noted on the invoice. This document gives Purchasing the authority to pay the invoice.

3. All Other Orders.

- a. Orders which are not for capital outlay and which do not exceed ~~\$500~~ **\$2,500** may be placed directly by departments without the need for a Purchase Order. Vendors should be instructed to send invoices directly to the department placing the order.
- b. Whenever practical, quotations should be obtained from at least three (3) vendors and the order placed with the lowest responsible bidder in consideration of the standards set forth in the Purchasing Ordinance Chapter 7, Title 1, Section 1.192 (1)(a)(vii).
- c. When the order and invoice have been received, the payment should be entered by the receiving department as a direct pay into HTE per established procedures.

- 4. If order forms, registration forms or other types of paperwork are to be sent to the vendor along with the payment, these items, *along with one copy of each*, should be attached to the payment's supporting documentation.

VI. Purchases Over \$6,000.

A. Legal Requirements.

- 1. All contracts for purchases which exceed \$6,000 must be approved by

City Commission after the competitive bidding process has been completed.

2. Competitive bidding need not be conducted under the following circumstances:
 - a. Competitive bidding need not be conducted for purchases greater than \$6,000 but less than \$12,000 if 5/7 of City Commission members vote to dispense with this process.
 - b. A contract may be awarded by the City Commission for the purchasing of supplies and/or contractual services without submitting the purchase through the competitive bidding process as set forth herein when there is only a sole-source for the purchase and the requesting department head has provided reasonable justification to the city manager in writing that circumstances exist that preclude obtaining competition.
3. An invitation for bids must be publicized "no less than five (5) days preceding the last day set for the receipt of ... bids."
4. The invitation must include a general description of the supplies or services to be purchased. It must also state where bid forms and specifications may be obtained, when they must be filed and when the bids will be opened.
5. Bidders shall be instructed to submit sealed bids which are clearly identified as bids on the outside of the envelope.
6. Bids are to be opened publicly at the time, place and date specified in the invitation for bids.
7. Bids are to be recorded, tabulated and available for public inspection.
8. The Purchasing Agent or Department Head shall determine and recommend the name of the lowest responsible bidder based on the criteria established in the Ordinance.

B. City Policies.

1. Competitive Bidding

a. Invitation for bids

1. Invitations for bids are to be placed in suitable trade or other publications, and/or on acceptable e-procurement systems (such as the Michigan Intergovernmental Trade Network).
2. In addition, the Purchasing Agent or Department Head may solicit sealed bids from all persons who are on the most current "bidders" list by mailing them a copy of the public advertisement so as to acquaint them with the proposed purchase.
3. Invitations for bids sent to prospective bidders on the "bidders' list" shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

b. Bid opening

1. All bids received should be time-stamped and remain unopened until the date and hour of the bid opening.

c. Selection of Lowest Responsible Bidder

1. The City is not obligated to purchase from the lowest bidder. In addition, all bids may be rejected by City Commission if deemed to be in the best interests of the City.
2. All bidders, successful and unsuccessful, are to be notified of City Commission's decision.
3. Any bid bonds received from unsuccessful bidders are to be returned in a timely manner. Any deposits for specifications are to be returned upon receipt of the specifications.

2. Award of Contract

a. Formal written contract --

1. The City Attorney's review and approval is required for all formal written contracts.

b. Purchase order --

1. Follow procedures as specified in Section V, C2.

VII. Emergency Purchases.

- A. Legal Requirements -- Normal purchasing procedures may be circumvented only in the case of an emergency; that is, when there is "an apparent threat to the public safety, health or welfare of the City or its citizens."
- B. City Policy -- Emergency purchases may be made in accordance with the ordinance at the discretion of the City Manager.

VIII. Petty Cash Purchases.

- A. Legal Requirements -- The petty cash fund maintained by the Treasurer is to be used for the purchase of incidentals and may be authorized by Department Heads.
- B. City Policy -- Petty cash is to be used for non-repetitive items not exceeding \$50.
- C. Procedures
 1. Any cash removed from the fund must be replaced by a pre-numbered petty cash voucher accompanied by a receipt or invoice from the supplier of the item or service purchased.
 2. The receipt or invoice must detail the type and amount of the expenditure. The petty cash voucher must indicate the appropriate account number to which the purchase should be charged, and indicate the department head's approval.

3. Each department that has a petty cash fund must designate one person to have custody and responsibility for the fund. This responsibility includes balancing the fund daily; requesting reimbursement of the fund; and insuring the funds are at all times in a locked and safe location.
4. To insure accountability for each petty cash fund, the fund must be balanced daily. Therefore, the sum of all unused cash and petty cash vouchers should equal the total of the respective department's petty cash total. If the actual balance is ever different from the amount that should be in the fund, the Finance Department should be contacted immediately.
5. When requesting reimbursement of petty cash funds, the appropriate petty cash vouchers, along with supporting receipt, etc., must be submitted to the Treasurer's Office. This should be done at regular intervals to avoid running the fund too low. No reimbursements will be made without the required supporting documentation.

IX. Request for Manual Checks.

A. City Policy

1. Because manual checks are issued prior to City Commission approval, they are to be used only when absolutely necessary and are subject to approval by the Finance Director.

B. Procedures

1. Prepare a written request for payment that:
 - a. Is clearly marked "MANUAL CHECK."
 - b. Indicates the date the check is needed.
 - c. Includes all necessary information, including vendor name/number, account number, and the department head (or authorized designee's) signature.
2. Attach all supporting documentation.
3. Deliver to Purchasing Agent or Purchasing Clerk.

4. The check will be prepared upon approval of the Finance Director.
5. The check will be mailed or delivered immediately upon completion.

X. Purchase of Recycled Materials.

- A. City Policy -- City Commission recommended the purchase of recycled paper whenever possible at the meeting of May 23, 1988. Further, at its meeting of May 14, 1990, the City Commission passed a resolution whereby all attempts to purchase supplies, materials and equipment with recycled materials will be incorporated and aggressively pursued.

XI. Disposal of Obsolete, Worn or Surplus Supplies. Items determined to be of surplus nature, i.e., those items deemed of no further use to the city and/or which are obsolete or worn out, shall be subject to disposal in the following manner:

- A. An item with an original value of less than ~~FIVE HUNDRED DOLLARS (\$500)~~ **\$2,500** shall be disposed of by the best and most efficient means in the judgment of the using department and the finance department, taking into account such factors as storage and handling costs and advertising.
- B. An item with an original value of ~~FIVE HUNDRED DOLLARS (\$500)~~ **\$2,500** ~~TO SIX THOUSAND DOLLARS (\$6,000)~~ **to \$6,000** shall be disposed of in one of the following methods:
 1. Sale after obtaining informal quotes.
 2. Auction.
 3. Manufacturer trade in.
 4. By the best and most efficient means in the judgment of the using department and the finance department, taking into account such factors as storage and handling costs and advertising, with the approval of the city manager.
- C. An item with an original value in excess of ~~SIX THOUSAND DOLLARS (\$6,000)~~ **\$6,000** shall be disposed of in one of the following methods:
 1. Sale after obtaining formal quotes and going through the bid procedure.

2. Auction.
3. Manufacturer trade in.
4. By the best and most efficient means in the judgment of the using department and the finance department, taking into account such factors as storage and handling costs and advertising, with the approval of the city commission.

XI. Procurement for Federally Funded Projects

- A. *City Policy – Purchases using federal grants shall conform to the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Grants as revised below.***
- B. *Methods of Procurement – The City will use one of five methods of procurement when using federal funds: Micro-Purchase; Small Purchase; Sealed Bids; Competitive Proposal; Noncompetitive Proposal (Sole Source).***
- C. *Micro-Purchase Method***
 - 1. *Purchases less than \$2,500 can be made without soliciting quotes from qualified suppliers.***
 - 2. *To the extent practicable, micro-purchases must be distributed equitably amongst qualified suppliers.***
- D. *Small Purchase Method***
 - 1. *Purchases between \$2,500 and \$6,000 requires quotations from at least 3 qualified sources.***
 - 2. *If a Department Head chooses a supplier other than the lowest cost supplier, they must document the reasons for choosing the other supplier.***
 - 3. *A purchase order must be created by the responsible department and the quotations and any other relevant***

documents attached.

E. Sealed Bids

- 1. Purchases \$6,000 or greater must use either sealed bid procurement or competitive proposal. Sealed bid is the “preferred method” for construction project funded with federal grant funds.**
- 2. Requests for bids must be publicly advertised using the MITN vendor database. Other publications that are widely distributed may be used in addition to MITN.**
- 3. The contract will be awarded to the lowest responsive and responsible bidder.**
- 4. Any or all bids may be rejected if there is a sound documented reason.**
- 5. Documentation of all the bids received and a bid table must be maintained by the responsible department for audit purposes. If the lowest bidder was not selected, the reasons for the non-selection must also be kept with the bids.**
- 6. In purchases exceeding the Simplified Acquisition Threshold (currently at \$150,000 and adjusted annually), the City must make an independent estimate of the cost of the procurement prior to receiving bids or proposals.**
- 7. The City must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed.**

F. Competitive Proposal

- 1. Purchases \$6,000 or greater when the sealed bid method is not appropriate.**
- 2. Requests for bids must be publicly advertised using the MITN vendor database. Other publications that are widely distributed may be used in addition to MITN.**
- 3. Request for Proposals must include the evaluation factors and**

their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent possible.

- 4. A written method for conducting technical evaluations of the proposals and selecting of the supplier must be prepared before the receipt of proposals.***
- 5. Documentation of the evaluation factors, the technical review, and the selection of the proposal must be maintained by the responsible department for audit purposes.***
- 6. In purchases exceeding the Simplified Acquisition Threshold (currently at \$150,000 and adjusted annually), the City must make an independent estimate of the cost of the procurement prior to receiving bids or proposals.***
- 7. The City must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed.***

G. Noncompetitive Proposals (Sole Source)

- 1. City may only use noncompetitive proposals if one or more of the following circumstances apply:***
 - a) The item is available only from one source;***
 - b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;***
 - c) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City;***

- d) *After solicitation of a number of sources, competition is determined inadequate.*
- 2. *Documentation of reason for procurement under noncompetitive proposals is crucial in preventing questioned costs. Therefore, all decisions under this procurement must be well documented and attached to a purchase order.*

H. Competition

- 1. *Policy – It shall be the policy of the City to encourage an open and competitive procurement process. This will be accomplished as follows:*
 - a) *Contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.*
 - b) *No unreasonable requirements must be placed on firms in order for them to qualify to do business.*
 - c) *No unnecessary experience or excessive bonding requirements must be included in the bids/proposals.*
 - d) *Noncompetitive contracts to consultants that are on retainer contracts will not be made.*
 - e) *Brand names will not be used in bids unless “or equal product” is included and a description of the performance or other relevant requirement of the purchase is stated.*
 - f) *State or local geographical preferences will not be included in the evaluations of bids/proposals unless specifically allowed by Federal statute.*
 - g) *Bid advertisement must be placed in enough qualified sources as to ensure maximum open and free competition.*
- I. *Use of Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms.*

1. *The City must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus firms are used when possible.*
2. *If the City's contractor is using subcontractors, the contractor must also take steps to assure that minority businesses, women's business enterprises, and labor surplus firms are used when possible.*

J. *Procurement of Recovered Materials*

1. *The City and its contractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition; where the purchase price of the item exceeds \$10,000.*

K. *Bonding Requirements*

1. *For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently set at \$150,000 and adjusted annually), the minimum bonding requirements must be followed (unless a Federal awarding agency has granted a lower amount or waiver of some of the requirements):*
 - a) *A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, other negotiable instrument accompanying a bid.*
 - b) *A performance bond on the part of the contractor for 100 percent of the contract price.*
 - c) *A payment bond on the part of the contractor for 100 percent of the contract price.*

L. *Other Contract Provisions*

1. ***Contracts for more than the Simplified Acquisition Threshold (currently set at \$150,000 and adjusted annually), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.***
2. ***Contracts in excess of \$10,000 must address termination for cause and for convenience by the City including the manner by which it will be effected and the basis for settlement.***
3. ***Contracts that meet the definition of “federally assisted construction contract” under 41 CFR Part 60, must include the equal opportunity clause provided under 41 CFR 60-1.4(b).***
4. ***When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by the City must include a provision for compliance with the Davis-Bacon Act.***
5. ***A contract award must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM).***
6. ***Contractors that apply or bid for an award of \$100,000 or more must file the Byrd Anti-Lobbying Amendment required certification.***

M. Gifts, Rebates Prohibited; Conflict of Interest Prohibited

1. ***All officials and employees of the City are prohibited from soliciting, demanding, accepting or agreeing to accept directly or indirectly, from any person to which a contract might be awarded or is awarded any gift, offer of employment, rebate, money or anything of material value whatsoever, except where given for the sole use and benefit of the city.***
2. ***The City will not enter into a contract to furnish supplies or contractual services to the City from any city official, his or her spouse, child or parent, for from any corporation, association or partnership in which any city official, his or her spouse, child or parent, has any direct or indirect interest. Ownership of less than (1%) of the stock or other equity***

interest in a corporation or unincorporated business shall not be deemed to be a disqualifying interest. Employment by a business entity shall be deemed to be a disqualifying interest only if such employment is in an administrative, managerial or executive capacity in which the employee could in any way influence the decisions of the business entity with regard to contract proposals or other transactions contemplated by this section.

- 3. Every written contract entered into by the City shall contain a provision to the effect that if subsequent to entering into the contract a city official, has or her spouse, child or parent shall become directly or indirectly interested in the contract, the City shall have the right to terminate the contract without further liability if the disqualification has not been removed with thirty (30) days after the City has given notification of the disqualifying interest.***
- 4. Violation of any part of this section will result in disciplinary action as outlined in the City's Ethics Ordinance.***

MEMORANDUM

DATE: May 9, 2022
TO: City Commission
FROM: Thomas M. Markus
SUBJECT: City Manager Selection Process

INTRODUCTION:

At the April 25, 2022 City Commission meeting, there was a Commission item for "further discussion" with regard to the City Manager selection process. A detailed memorandum was given to the City Commission on that date and is attached for your review. There are three (3) possible options for moving forward as indicated in the memo on page 2. In summation, the three (3) possible options would be:

1. Continue to work with Assistant City Manager, Ms. Jana Ecker, to prepare her for appointment as City Manager at the end of my appointment term on June 30, 2023;
2. Issue a request for proposals to hire an executive search firm to conduct a national search for a new City Manager; or,
3. Direct the present City Manager to perform a local, regional and/or national search for a new City Manager.

BACKGROUND:

On November 9, 2020, during my discussion and interview process for my current position as City Manager, the Commission advised that if hired as City Manager, "Mr. Markus should hire for open staff positions and conduct the hiring process for a replacement of City Manager." The Commission directed me to plan on training and promoting, if appropriate, the Assistant City Manager to City Manager at the end of my tenure. Accordingly, it was my intent that during my tenure I should conduct a search for an Assistant City Manager, and select an Assistant City Manager with the intent to train and groom that person to take on the role of City Manager upon the completion of my tenure. That has already occurred. As stated at the April 13, 2022 City Commission meeting, I completed a comprehensive search for Assistant City Manager candidates. As a result, Assistant City Manager Ecker was hired, and I have been fulfilling the Commission's directions to train Ms. Ecker to assume the role of City Manager at the end of my tenure.

SUMMARY:

The City Commission is currently considering options for the selection of the next City Manager, to begin on July 1, 2023. The City Commission may choose from the three (3) possible options presented on April 25, 2022. As noted above, I have hired an Assistant City Manager, and I am in the process of training and grooming the Assistant City Manager to become the next City Manager.

ATTACHMENTS:

April 13, 2022 Memo to the City Commission.

SUGGESTED COMMISSION ACTION:

Make a motion directing the current City Manager to continue to train, educate and acclimate the current Assistant City Manager in order to be able to assume the duties of the City Manager. Further, the City Commission directs the City Manager to take the necessary actions to assist the City Commission in order to effectuate option _____ in the City Manager selection process.



MEMORANDUM

City Manager's Office

DATE: April 13, 2022

TO: City Commission

FROM: Thomas M. Markus, City Manager

SUBJECT: Commission Item for Future Discussions: City Manager (CM) Selection Process

BACKGROUND:

I returned to Birmingham on January 1, 2021 as the City Manager under a 2 ½ year agreement ending at the end of June 2023.

During discussions regarding my return, the City Commission expressed the desire for me to develop a succession plan for the City Manager's office. The city placed ads and pursued recruitment opportunities to appoint a new assistant city manager. The process concluded upon the appointment of Jana Ecker to the Assistant City Manager position. Upon Jana Ecker's appointment I also added more responsibility to Melissa Fairbairn's role as Assistant to the City Manager. While I recognize that the City Commission has the authority and responsibility for the appointment of the City Manager, I have been working with both Ms. Ecker and Ms. Fairbairn to strengthen their knowledge and skills to be able to assume the respective roles of City Manager and Assistant City Manager should the City Commission decide to appoint Ms. Ecker to the City Manager role. The City Manager has the appointment authority for the Assistant City Manager position.

Not only have I attempted to mentor and coach both Ms. Ecker and Ms. Fairbairn to understand the role and function of the City Manager positions, I have engaged the Administrative staff and the department heads to give both assistants a deep dive into the operations of the various departments operations and functions. Both of the assistants have attended a number of training sessions, meetings, conferences and various City, County, and intergovernmental board and committee meetings to further their knowledge of the manager's role in all aspects of our city government. I intend to continue this indoctrination and training right up until the last day of my agreement. Not only will Ms. Ecker and Ms. Fairbairn be knowledgeable about all facets of our operations, they will also understand the numerous intergovernmental agreements we are engaged in. Obviously, the significant advantage that our assistants will have is the knowledge and understanding of the Birmingham culture. I am pleased to report that both assistants have shown significant growth in their knowledge and understanding of our operations and great enthusiasm for taking on greater responsibilities. Both assistants have proven to be quick studies in picking up the necessary understanding, skills, background and knowledge to lead the City Manager's Office and City. Further, both assistants have developed strong relationships with the departments and are forging strong working relationships with them. As noted, my efforts have been to prepare both assistants to accede to the next level should the City Commission decide to promote Ms. Ecker.

POSSIBLE OPTIONS FOR MOVING FORWARD:

1. Continue to watch Ms. Ecker's progression and at some point arrange a meeting with her to determine if she is a good fit with the City Commission for appointment to the City Manager Position. If so, the City Commission may wish to make the appointment. This could occur as soon as the end of this calendar year with an expected start date coinciding with the end of my appointment of 6-30-23. If this were to occur the decision as to the selection of the Assistant City Manager would rest solely with Ms. Ecker.
2. Issue a Request for Proposals (RFP) to an executive search firm for a National Search for Birmingham's next City Manager. Select a search firm from the respondents and enter into an agreement for the methods the commission desires to utilize in the process to find the next manager. Ms. Ecker would be invited to submit her credentials as a part of this process. Should the City Commission decide to go in this direction the City Manager should be directed to prepare the appropriate (RFP). Details of the process and timing would be included in the RFP. There are a number of individuals and firms that provide this service. The Michigan Municipal League and a few private parties provide these services in the State. As well, there are a number of National providers that might result in more out of state candidates. A ballpark cost for these services would be \$20,000 plus / minus depending on the provider and the services selected.
3. Direct the City Manager to prepare the appropriate position profile for commission approval and advertise the City Manager position in local, state and national publications. The Manager would also reach out and recruit possible candidates to consider this opportunity. Again, Ms. Ecker would be invited to submit her credentials as a part of this process. As background I have hired a significant number of employees throughout my career and worked for an executive search firm for a short time prior to coming to Birmingham.

There are likely other options for you to consider however I thought giving you some ideas may help you get your conversation started. My efforts to date have been to make both Ms. Ecker and Ms. Fairbairn completely capable to serve our City as the City Manager and Assistant City Manager. The major advantage they will have is the understanding of Birmingham's history, operations, processes, staff, elected officials, boards and commissions and most importantly our community culture. Should the Commission choose to go outside in selecting a manager you will have two exceptionally talented management staff members to support another manager. Of course, their added skills may also make them both attractive candidates for other municipal management positions.

Finally, I would point out that from my observations there has been a declining pool of quality manager candidates in searches around the country. I would estimate that we may see a pool of between 30 to 40 candidates with varying degrees of relevant experience. While Birmingham is an incredibly desirable community, I would say that the Manager's position is a challenging and complex role to fill. Finding the next City Manager is one of the most important roles of the City Commission.

From my standpoint I would like to have the manager position filled and the new manager on board before my departure whether you select an internal or external candidate. You should also note that depending on the process you select and the steps you incorporate, the process may take anywhere from 4 to 6 months. Even after you have made a selection you may need to allow

more time for an external candidate to provide notice to their current employer, time to physically relocate, spousal job relocation issues, children's school attendance issues, etc.

I will be pleased to provide additional information when the commission has the opportunity to discuss this issue.

MEMORANDUM

DATE: May 9, 2022

TO: City Commission

FROM: Mary M. Kucharek

SUBJECT: Amendment to the January 25, 2021 Amended and Restated Employment Agreement Between Thomas M. Markus and the Commission of the City of Birmingham

INTRODUCTION:

The City of Birmingham hired City Manager, Thomas M. Markus, to perform the duties of City Manager which began January 1, 2021 through June 30, 2023. Before the City Commission tonight is a request to approve an Amendment to the January 25, 2021 Amended and Restated Employment Agreement of the City Manager to increase his salary.

BACKGROUND:

The City Commission has undertaken an employment evaluation of Mr. Markus at the April 11, 2022 meeting while in closed session wherein a favorable performance evaluation was received by Mr. Markus. Before the City Commission tonight is a proposed Amended Employment Agreement whereby the City Manager would receive an increase to his salary.

At this time, the City Manager is requesting the City Commission to find it desirable to increase his salary.

As stated in paragraph 4., "Salary" of the Agreement effective January 1, 2021, the City agreed to pay Mr. Markus "a salary of One Hundred Sixty Thousand Dollars (\$160,000.00) per year and in bi-weekly increments. The City agrees to increase the Employees' 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 the base wages negotiated for that year of the City's bargaining units."

LEGAL REVIEW:

The City Attorney has drafted the Amended Employment Agreement for consideration of the City Commission this evening.

FISCAL IMPACT:

The fiscal impact on the City is that this will be an increase of Sixteen Thousand Dollars (\$16,000.00) per year.

PUBLIC COMMUNICATIONS:

The Amended Employment Agreement is part of the agenda packet for the May 9, 2022 public City Commission meeting.

SUMMARY:

The City Commission is requested to approve an Amended Employment Agreement on behalf of Mr. Markus to offer him a salary increase pursuant to his contract in the amount of Sixteen Thousand Dollars (\$16,000.00) per year.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a resolution to amend Mr. Markus' Employment Agreement increasing the annual salary.

**AMENDMENT TO THE JANUARY 25, 2021 RESTATED EMPLOYMENT AGREEMENT
BETWEEN THOMAS M. MARKUS AND THE COMMISSION OF
THE CITY OF BIRMINGHAM**

THIS AMENDED AGREEMENT made and entered into on this ____ day of _____, 2022 by and between the **CITY OF BIRMINGHAM**, a Michigan Municipal Corporation ("Employer") and **THOMAS M. MARKUS** ("Employee"), shall amend the January 25, 2021 Amended and Restated Employment Agreement between the parties effective January 1, 2022 only as to the following:

4. **Salary.** The City agrees to pay the Employee a salary of One Hundred Seventy-six Thousand Dollars (\$176,000.00) per year in bi-weekly increments effective January 1, 2022. 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.

All other terms and conditions of the Agreement executed and effective January 1, 2021 shall remain in full force and same.

IN WITNESS WHEREOF, the City of Birmingham has caused this First Amended 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.

Witnessed:

CITY OF BIRMINGHAM, a Municipal
Corporation

By: _____
Therese Longe, Mayor

By: _____
Alexandria D. Bingham, Clerk

Witnessed:

By: _____
Thomas M. Markus



NOTICE OF INTENTION TO APPOINT TO HISTORIC DISTRICT STUDY COMMITTEE

At the regular meeting of Monday, June 27, 2022, the Birmingham City Commission intends to appoint three regular members to the Historic District Study Committee to serve three-year terms to expire June 25, 2025.

The goal of the Historic District Study Committee is to conduct historical research regarding the proposed designation of historic landmarks or districts in the City of Birmingham.

A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation, although city residency is not required if an expert on the potential historic district topic is not available among city residents. The committee shall include representation of at least one member appointed from one or more duly organized local historic preservation organizations. The meetings are held by resolution of the City Commission.

Interested parties may submit an application available at the City Clerk's Office on or before noon on Wednesday, June 22, 2022. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall have a clearly demonstrated interest in or knowledge of historic preservation.	6/22/2022	6/27/2022

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



NOTICE OF INTENTION TO APPOINT TO THE BOARD OF ETHICS

At the regular meeting of Monday, June 27, 2022, the Birmingham City Commission intends to appoint one regular member to the Board of Ethics to serve a three-year term to expire June 30, 2025.

Board members are to serve as an advisory body for the purposes of interpreting the Code of Ethics. The board consists of three members who serve without compensation. The members shall be residents and have legal, administrative or other desirable qualifications.

Interested citizens may submit an application available at the City Clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, June 22, 2022. These documents will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on appointment.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall be residents and have legal, administrative or other desirable qualifications.	6/22/2022	06/27/2022

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



NOTICE OF INTENTION TO APPOINT TO THE MUSEUM BOARD

At the regular meeting of Monday, June 27, 2022, the Birmingham City Commission intends to appoint two regular members to the Museum Board to serve three-year terms to expire July 5, 2025.

Interested parties may submit an application available at the City Clerk's office on or before noon on Wednesday, June 22, 2022. These applications will appear in the public agenda for the regular meeting at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Board Duties

The Museum Board is charged with collecting, arranging, cataloguing and preserving historical material. The Board may locate and erect plaques or markers at historic sites, buildings or properties in the City of Birmingham with the consent of the owner or owners of any such property and subject to the approval of the City Commission with respect to properties that, in the opinion of the Board, have historic significance. Further, the Board shall have the power to develop, operate and maintain the Allen House as a museum and to exercise authority, control and management over the Hunter House and John West Hunter Memorial Park.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Shall be qualified electors of the city.	6/22/2022	6/27/2022

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



NOTICE OF INTENTION TO APPOINT HEARING OFFICER

At the regular meeting of Monday, June 27, 2022, the Birmingham City Commission intends to appoint the hearing officer to serve a three-year term to expire June 30, 2025. The Hearing Officer shall be responsible for hearing disputes to a fee or bill that a property owner or resident of the city shall receive pursuant to the fee collection ordinances (section 1-17).

The hearing officer and alternate shall be residents of the City of Birmingham who have legal, administrative or other desirable qualifications that will aid him or her in the performance of the duties in accordance with provisions of the applicable code. The hearing officer and the alternate hearing office shall serve without compensation.

The hearing officer or alternate shall schedule periodic meetings for hearings as needed.

Interested citizens may submit an application available at the City Clerk's office on or before noon on Wednesday, June 22, 2022. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointment.

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

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Members shall be residents of the city who have legal, administrative or other desirable qualifications that will aid him or her in the performance of the duties of the hearing officer.	6/22/2022	6/27/2022

MEMORANDUM

DATE: April 28, 2022
TO: All Boards and Committees
FROM: Mary M. Kucharek
SUBJECT: Update Concerning Open Meetings Act

This memorandum will serve as an update regarding the Open Meetings Act regarding committees and member participation.

The Open Meetings Act is a Michigan statute which basically provides that all meetings of a public body shall be open to the public and shall be held in places available to the general public. According to the Michigan Court, the intent of the Open Meetings Act is to facilitate public access and transparency to governmental decision making. The statute should be broadly interpreted, and its exemptions strictly construed. Discussions have ensued, questioning whether committees and subcommittees, which are advisory in nature, are subject to the Open Meetings Act and its regulations. In order to determine whether a meeting or situation requires regulations of the Open Meetings Act, four questions need to be asked:

1. Whether the committee or subcommittee is a public body.

According to the Open Meetings Act:

“Public body’ means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 40 of the home rule city act.”

To simplify, a public body is a group whose work and purpose is part of the process of government. A committee or a subcommittee which has been created by recommendation, resolution or direction by the legislative body (in our case the City Commission) would be a public body.

2. Whether there is a meeting of the public body.

"Meeting" is defined in the Open Meetings Act as:

"The convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy."

The inquiry is whether or not, when the group of people meet, are they working towards or rendering a decision, in order to make an advisory recommendation to the legislative body? If the group is deliberating and collectively decide a recommendation, then pursuant to the Michigan Court of Appeals, it is, in fact, a meeting.

3. Whether a decision effectuating public policy will be made.

Pursuant to the Open Meetings Act, a decision is "a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates the form of public policy." In *Schmiedicke v Clare School Board*, 1998, the Court of Appeals analyzed whether or not a committee was, in fact, making a "decision" according to the Open Meetings Act. The Court ruled it is important to determine if a recommendation is actually made. The recommendation is a delegation of authority to perform an act. "The focus of inquiry is the authority delegated to the committee not the authority it exercised." The Court of Appeals pointed out "the primary purpose of the Open Meetings Act is to ensure that public entities conduct all their decision making activities in open meetings and not simply hold open meetings

where rubber stamped decisions were previously made behind closed doors.” Therefore, when a subcommittee makes a recommendation, and if that subcommittee was not open to the public, it effectively forecloses any involvement by members of the public, and essentially means that the decision made by the subcommittee at a closed meeting is fait accompli. The definition of fait accompli means “a thing that has already happened or decided before those affected hear about it, leaving them with no option but to accept.”

4. Whether any exceptions are applicable.

Exceptions are listed in the Open Meetings Act with specificity.

The Attorney General of Michigan has created an *Open Meetings Act Handbook*. One paragraph in the handbook states, “Open Meetings Act does not apply to committees and subcommittees composed of less than a quorum of the full public body, if they are merely advisory and capable of making recommendations concerning the exercise of governmental authority.” I contacted the Attorney General’s Office and spoke with James Kelley, who is an expert regarding the Open Meetings Act. I asked him how that paragraph as written by Attorney General Frank Kelley in 1997, be true in light of the *Schmiedicke* case? Mr. Kelley advised the cited paragraph applies when an advisory committee is meeting and their purpose is to collect information, report and then make a recommendation to the governing body. They may do so without being an open meeting only if the recommendations that they give to the governing body, include all of the potential options available before they make a recommendation. As an example, if a committee is collecting information and then come before the governing body, and state, for instance, there were five (5) different choices to an issue, and then state, we believe choice number three (3) is the correct way to go, they may do so as long as they advise about all five (5) choices. In this example, there is not an “open meeting” because they did not make a

decision. However, if the members of the advisory committee discuss, weigh and determine ahead of time at their meeting before presenting to the governing body their choice of one option, and then they make a recommendation to the Commission and do not advise about all possible options, then they were making a "decision," and are, therefore, in violation of the Open Meetings Act.

Mr. Kelley believes the practice of failing to notice all committees, even those that are advisory in nature, is a "slippery slope." His recommendation is to notice each and every meeting that occurs, including every committee, subcommittee, ad hoc committee, etc.

It is my recommendation that the City simply notice every meeting. Notice is easily achieved by a simple posting notice on the City doors. The likelihood is participation is minimal to these meetings, but if they are noticed, there can never be an opportunity for an accusation or violation of the Open Meetings Act.

Furthermore, a question has been posed inquiring if a board member is unable to attend a board or a committee meeting in person, including public deliberating and voting on a particular issue, is there any law or rule of procedure that would allow the member to participate as a private citizen and make comments during public comment via Zoom?

The answer is "no." The Open Meetings Act, specifically MCL § 15.263(2) states absent members of a public body may only attend remotely due to active military duty or a disability that has been recognized by Title II of the ADA requiring a reasonable accommodation in order to actively participate in a public meeting. Therefore, when members of committees or boards are absent due to any other reason, no exception exists permitting them to attend, participate or vote remotely as a public body, board or committee member. While certainly board or committee members can watch remotely, no comment should be made virtually by appointed members, whether the comment is made during public comment or any other time. In fact, one should

only watch anonymously and not have their names advertised on Zoom. Courts have opined that any comment made by fellow board members can be influential and, therefore, part of the deliberative process of the public body which can only be accomplished in person. The purpose of the OMA is to ensure transparency of all decision making and deliberations of the public body.

While some board members may find this challenging, or feel that this impinges their First Amendment rights, the courts have deemed that you are still a member of the public legislative body and, therefore, cannot simply relinquish the duties you are sworn to uphold by simply saying you are only speaking as a private citizen.

In conclusion, I recommend that absent board members simply watch the meeting of their public board or committee, if possible. It is the best practice for all board and committee members to not speak remotely when they are absent so as to avoid a potential OMA violation, keeping in mind that an OMA violation is a criminal misdemeanor under Michigan law.



MEMORANDUM

Finance Department

DATE: April 29, 2022

TO: Thomas M. Markus, City Manager

FROM: Mark Gerber, Director of Finance/Treasurer

SUBJECT: Third Quarter Financial Reports

Background

Chapter 7, section 3(b) of the City charter requires the Director of Finance to report on the condition of the City quarterly. Quarterly reports are prepared for the first 3 quarters of the year with the annual audit serving as the 4th quarter report. Only the following funds are reported quarterly because by state law they require a budget: General Fund, Greenwood Cemetery Perpetual Care Fund, Major and Local Street Funds, Solid Waste Fund, Community Development Block Grant Fund, Law and Drug Enforcement Fund, Baldwin Public Library Fund, Principal Shopping District Fund, Brownfield Redevelopment Authority Fund, Triangle District Corridor Improvement Authority Fund, Indigent Defense Fund and the Debt Service Fund.

Overview

Attached is the second quarter 2021-2022 fiscal year financial reports. The reports compare budget to actual for the current fiscal year and the prior fiscal year for the same quarter. This allows comparisons between fiscal years as well as percentage of budget received/spent for the year. The budget categories used for each fund are the same ones approved by the Commission when they adopted the budget. Budget discussions that follow will focus on each fund individually.

At this point, 75% of the fiscal year has lapsed.

General Fund

Revenues are approximately \$1,200,000 higher than the previous year primarily as a result of an increase Taxes of approximately \$1,300,000 due to higher taxable value. In addition, Intergovernmental is approximately \$350,000 less than the prior year as a result of COVID grants received in the prior year.

Intergovernmental revenue is at 69% of budget as of March 31st because state shared revenue for the months of February and March are not received until the end of April. Charges for Services are at 67% of budget because ice arena fees were delayed due to construction. Fines and Forfeitures are at 41% of budget because the 48th District Court revenues have not returned to their pre-pandemic levels yet and the court retains the last quarter of revenues (October – December) until after their audit. Interest and Rent is at 37% of budget due to a timing difference on special assessment interest which won't be billed until the spring and low interest rates. Other Revenue is at 39% of budget due to the timing of when special assessments are billed out and that some special assessment projects are being moved to the next fiscal year.

Total current year-to-date expenditures for the General Fund are lower than the prior year by approximately \$2,300,000. Most of the difference is the result of a decrease in Engineering and Public Services of \$1,500,000, a decrease in Transfers Out of \$600,000, and a decrease in General Government of \$200,000. Engineering and Public Services decreased as a result of sidewalk construction on Maple Road in fiscal year 2020-2021. Transfers Out decreased as a result of a decrease in transfers to the Capital Project Fund in 2021-2022. General Government is lower in the current fiscal year primarily due to unfilled positions and costs associated with the election in the prior fiscal year. Engineering and Public Services is at 48% of the budget as a result of waiting on the final bill from the State regarding Maple Rd., sidewalk repairs to be done later this fiscal year, and postponing the Pierce Alley project.

Greenwood Cemetery Fund

Cemetery plot sales are approximately the same as last year. Investment income is down slightly due to a large capital gain recorded in fiscal year 2020-2021. No expenditures have been budgeted for this fiscal year.

Major Street Fund

Total revenues are approximately \$1,700,000 more than the prior year as a result of higher budgeted transfers from the General Fund. Intergovernmental revenue is at 62% as a result of February and March's road funding being received after March 31st. Interest and Rent is at 45% due to lower interest income than expected.

Overall expenditures are \$900,000 lower than the previous year as a result of the Maple Road project in fiscal year 2020-2021. Street Trees are at 82% of budget as a result of storm related damage earlier in the fiscal year. This activity will need a budget adjustment which will be presented in June.

Local Street Fund

Total revenues for the year are approximately \$700,000 lower than the prior year due to lower budgeted transfers from the General Fund. Intergovernmental revenue is at 61% as a result of February and March's road funding being received after March 31st. Interest and Rent is at 62% due to lower interest rates.

Total expenditures are approximately \$200,000 more than the prior year primarily as a result of Street Trees. Street trees are approximately \$160,000 more than the prior year and are at 93% of the budget because of storm damage earlier in the fiscal year. This activity will need a budget adjustment which will be presented in June. Construction costs are at 14% as a result of projects that will be started in the spring of 2022. Street Maintenance is approximately the same as last fiscal year and typically the activity picks up in the spring.

Solid Waste Fund

Revenues are approximately \$130,000 higher than the previous year as a result of higher property tax revenue.

Expenditures are approximately the same as the prior fiscal year.

Brownfield Redevelopment Authority Fund

Revenues are approximately \$100,000 than the prior year. This is the result of higher property tax revenue which is subject to tax capture.

Fiscal year 2021-2022 fiscal year expenditures are higher than the previous year due to the timing of payment to 2400 E. Lincoln in 2020-2021 which did not occur until the 4th quarter.

Principal Shopping District

Revenues are up a slightly due to more special event revenue.

Expenditures are approximately the same as the prior fiscal year.

Community Development Block Grant Fund

Revenues and expenditures are approximately the same as the prior fiscal year.

Triangle District Corridor Improvement Authority

The City is attempting to re-engage with the County regarding tax capture for the district. To-date no property taxes have been captured and no funds spent on this activity.

Indigent Defense Fund

This fund is new to the City and to the quarterly reporting. The Michigan Indigent Defense Commission required that the one of the control units for the 48th District Court assume financial responsibility for this program as the Court could no longer do this. The funding for this program mostly comes from the State of Michigan with a minor local share.

Law and Drug Enforcement Fund

Revenues are dependent on receipt of forfeited property proceeds as a result of prosecution of a drug case. The Other Income is the sale of equipment purchased with these funds. No expenditures have taken place through the 3rd quarter of this fiscal year.

Baldwin Library

Revenue has increased approximately \$200,000. This is the result of an increase in property tax revenue and the timing of a payment from a contract municipality.

Expenditures are approximately \$600,000 less than the prior fiscal year due to building improvements made in fiscal year 2020-2021.

Debt Service Fund

Budgeted revenues and expenditures are based on scheduled debt service payments. Expenditures are at 100% spent for the year as a result of all debt payments for the year have been completed.

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 GENERAL FUND
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	902,232	0	0%	3,246,276	0	0%
TAXES	28,293,010	28,286,843	100%	26,948,810	26,949,763	100%
LICENSES AND PERMITS	2,742,640	1,919,146	70%	2,774,960	2,020,793	73%
INTERGOVERNMENTAL	2,349,240	1,631,522	69%	2,865,630	1,975,739	69%
CHARGES FOR SERVICES	3,166,020	2,117,342	67%	2,722,020	2,033,946	75%
FINES AND FORFEITURES	1,640,750	675,518	41%	899,110	565,994	63%
INTEREST AND RENT	637,060	234,839	37%	247,690	281,210	114%
OTHER REVENUE	641,570	249,459	39%	371,730	109,554	29%
TRANSFERS IN	100,000	75,000	75%	115,000	75,000	65%
TOTAL REVENUES	<u>40,472,522</u>	<u>35,189,669</u>	<u>87%</u>	<u>40,191,226</u>	<u>34,011,999</u>	<u>85%</u>
EXPENDITURES:						
GENERAL GOVERNMENT	6,610,256	3,931,986	59%	6,156,118	4,183,309	68%
PUBLIC SAFETY	15,903,349	11,288,895	71%	15,548,352	11,351,294	73%
COMMUNITY DEVELOPMENT	3,034,851	1,926,976	63%	2,915,849	1,887,437	65%
ENGINEERING AND PUBLIC SERVICES	7,241,212	3,539,444	49%	7,612,067	5,001,991	66%
TRANSFERS OUT	<u>7,682,820</u>	<u>5,660,816</u>	<u>74%</u>	<u>7,958,840</u>	<u>6,264,103</u>	<u>79%</u>
TOTAL EXPENDITURES	<u>40,472,488</u>	<u>26,348,117</u>	<u>65%</u>	<u>40,191,226</u>	<u>28,688,134</u>	<u>71%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 GREENWOOD CEMETERY FUND
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
CHARGES FOR SERVICES	60,000	31,846	53%	60,000	37,616	63%
INTEREST AND RENT	24,500	16,037	65%	22,000	22,723	103%
TRANSFERS IN	-	-	0%	-	-	0%
TOTAL Revenues	<u>84,500</u>	<u>47,883</u>	57%	<u>82,000</u>	<u>60,339</u>	74%
EXPENDITURES:						
OTHER CONTRACTUAL SERVICE	-	-	0%	20,000	-	0%
TOTAL EXPENDITURES	<u>-</u>	<u>-</u>		<u>20,000</u>	<u>-</u>	

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 MAJOR STREETS
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	789,647	-	0%	2,916,776	-	0%
INTERGOVERNMENTAL	1,674,280	1,034,228	62%	1,641,450	925,618	56%
INTEREST AND RENT	59,580	27,039	45%	43,500	39,405	91%
OTHER REVENUE	-	1,694	0%	-	1,250	0%
TRANSFERS IN	<u>4,100,000</u>	<u>3,075,000</u>	75%	<u>2,000,000</u>	<u>1,500,000</u>	75%
 TOTAL REVENUES	 <u>6,623,507</u>	 <u>4,137,961</u>	 <u>62%</u>	 <u>6,601,726</u>	 <u>2,466,273</u>	 <u>37%</u>
EXPENDITURES:						
ADMINISTRATIVE	20,570	15,852	77%	20,900	16,588	79%
TRAFFIC CONTROLS & ENGINEERING	695,355	176,359	25%	753,968	488,158	65%
CONSTRUCTION OF ROADS & BRIDGES	4,535,522	1,288,753	28%	4,684,541	2,052,424	44%
MAINTENANCE OF ROADS & BRIDGES	595,840	171,321	29%	363,011	134,099	37%
STREET CLEANING	221,770	138,436	62%	219,590	102,647	47%
STREET TREES	292,680	240,641	82%	271,206	175,693	65%
SNOW AND ICE REMOVAL	<u>261,770</u>	<u>100,368</u>	38%	<u>288,510</u>	<u>113,188</u>	39%
 TOTAL EXPENDITURES	 <u>6,623,507</u>	 <u>2,131,730</u>	 <u>32%</u>	 <u>6,601,726</u>	 <u>3,082,797</u>	 <u>47%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 LOCAL STREETS
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	1,151,004	-	0%	(378,300)	-	0%
INTERGOVERNMENTAL	683,860	417,724	61%	670,450	376,134	56%
INTEREST AND RENT	30,600	18,838	62%	29,600	15,945	54%
OTHER REVENUE	204,730	142,145	69%	197,460	66,356	34%
TRANSFERS IN	<u>1,950,000</u>	<u>1,462,500</u>	75%	<u>3,000,000</u>	<u>2,250,000</u>	75%
 TOTAL REVENUES	 <u>4,020,194</u>	 <u>2,041,207</u>	 <u>51%</u>	 <u>3,519,210</u>	 <u>2,708,435</u>	 <u>77%</u>
EXPENDITURES:						
ADMINISTRATIVE	28,960	22,167	77%	29,520	23,053	78%
TRAFFIC CONTROLS & ENGINEERING	68,700	49,732	72%	65,300	40,932	63%
CONSTRUCTION OF ROADS & BRIDGES	2,164,241	586,415	27%	1,501,810	526,710	35%
MAINTENANCE OF ROADS & BRIDGES	714,333	289,566	41%	940,017	290,420	31%
STREET CLEANING	255,550	141,988	56%	248,300	135,403	55%
STREET TREES	614,630	572,193	93%	557,733	419,900	75%
SNOW AND ICE REMOVAL	<u>173,780</u>	<u>80,676</u>	46%	<u>176,530</u>	<u>99,535</u>	56%
 TOTAL EXPENDITURES	 <u>4,020,194</u>	 <u>1,742,737</u>	 <u>43%</u>	 <u>3,519,210</u>	 <u>1,535,953</u>	 <u>44%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 SOLID WASTE
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	(36,890)	-	0%	202,233	-	0%
TAXES	2,175,000	2,179,496	100%	2,042,500	2,046,711	100%
INTERGOVERNMENTAL	3,990	4,063	102%	4,110	3,994	97%
CHARGES FOR SERVICES	17,100	13,062	76%	17,000	13,137	77%
INTEREST AND RENT	20,000	8,744	44%	30,000	10,678	36%
OTHER REVENUE	-	1,500	0%	-	45	0%
TOTAL REVENUES	<u>2,179,200</u>	<u>2,206,865</u>	<u>101%</u>	<u>2,295,843</u>	<u>2,074,565</u>	<u>90%</u>
EXPENDITURES:						
PERSONNEL COSTS	194,850	141,983	73%	190,050	152,446	80%
SUPPLIES	28,000	1,713	6%	28,000	6,917	25%
OTHER CHARGES	1,956,350	1,418,684	73%	2,077,793	1,382,604	67%
CAPITAL OUTLAY	-	742	0%	-	-	0%
TOTAL EXPENDITURES	<u>2,179,200</u>	<u>1,563,122</u>	<u>72%</u>	<u>2,295,843</u>	<u>1,541,967</u>	<u>67%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 BROWNFIELD REDEVELOPMENT FUND
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	(2,000)	-	0%	(2,000)	-	0%
TAXES	369,000	369,787	100%	287,300	263,399	92%
CHARGES FOR SERVICES	-	-	0%	-	-	0%
INTEREST AND RENT	2,000	643	32%	2,000	1,117	56%
OTHER REVENUE	20,000	351	2%	20,000	9,227	46%
TRANSFERS IN	-	-	0%	-	-	0%
	<u>-</u>	<u>-</u>		<u>-</u>	<u>-</u>	
TOTAL REVENUES	<u>389,000</u>	<u>370,781</u>	<u>95%</u>	<u>307,300</u>	<u>273,743</u>	<u>89%</u>
EXPENDITURES	<u>389,000</u>	<u>301,147</u>	<u>77%</u>	<u>307,300</u>	<u>56,562</u>	<u>18%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 PRINCIPAL SHOPPING DISTRICT
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	74,560	-	0%	247,280	-	0%
INTERGOVERNMENTAL	-	-	0%	-	58,778	0%
CHARGES FOR SERVICES	25,000	-	0%	25,000	25,000	100%
SPECIAL ASSESSMENTS	1,054,970	959,453	91%	1,054,970	1,008,094	96%
INTEREST AND RENT	13,700	3,615	26%	13,700	6,712	49%
OTHER REVENUE	<u>100,000</u>	<u>163,822</u>	164%	<u>190,000</u>	<u>6,340</u>	3%
 TOTAL REVENUES	 <u>1,268,230</u>	 <u>1,126,890</u>	 <u>89%</u>	 <u>1,530,950</u>	 <u>1,104,924</u>	 <u>72%</u>
 EXPENDITURES	 <u>1,268,230</u>	 <u>901,179</u>	 <u>71%</u>	 <u>1,530,950</u>	 <u>911,072</u>	 <u>60%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 COMMUNITY DEVELOPMENT BLOCK GRANT
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
INTERGOVERNMENTAL REVENUE	<u>36,100</u>	<u>4,311</u>	<u>12%</u>	<u>36,387</u>	<u>4,103</u>	<u>11%</u>
EXPENDITURES	<u>36,100</u>	<u>4,311</u>	<u>12%</u>	<u>36,387</u>	<u>4,103</u>	<u>11%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	(470)	-	0%	(470)	-	0%
PROPERTY TAXES	-	-	0%	-	-	0%
INTEREST AND RENT	<u>470</u>	<u>98</u>	21%	<u>470</u>	<u>167</u>	36%
 TOTAL REVENUES	 <u>-</u>	 <u>98</u>	 <u>0%</u>	 <u>-</u>	 <u>167</u>	 <u>0%</u>
 EXPENDITURES	 <u>-</u>	 <u>-</u>	 <u>0%</u>	 <u>-</u>	 <u>-</u>	 <u>0%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 INDIGENT DEFENSE FUND
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	-	-	0%	-	-	0%
INTERGOVERNMENTAL	532,550	167,159	31%	-	-	0%
OTHER REVENUE	-	-	0%	-	-	0%
INTEREST AND RENT	-	515	0%	-	-	0%
TOTAL REVENUES	<u>532,550</u>	<u>167,674</u>	<u>31%</u>	<u>-</u>	<u>-</u>	<u>0%</u>
EXPENDITURES:						
SUPPLIES	500	-	0%	-	-	0%
OTHER CHARGES	<u>532,050</u>	<u>59,860</u>	11%	-	-	0%
TOTAL EXPENDITURES	<u>532,550</u>	<u>59,860</u>	<u>11%</u>	<u>-</u>	<u>-</u>	<u>0%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 LAW & DRUG ENFORCEMENT FUND
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	92,590	-	0%	(23,460)	-	0%
FINES & FORFEITURES	25,000	37,844	151%	25,000	32,050	128%
OTHER REVENUE	-	3,851	0%	-	-	0%
INTEREST AND RENT	<u>2,000</u>	<u>703</u>	35%	<u>1,300</u>	<u>886</u>	68%
 TOTAL REVENUES	 <u>119,590</u>	 <u>42,398</u>	 <u>35%</u>	 <u>2,840</u>	 <u>32,936</u>	 <u>1160%</u>
EXPENDITURES:						
OTHER CHARGES	2,840	-	0%	2,840	-	0%
CAPITAL OUTLAY	<u>116,750</u>	<u>-</u>	0%	<u>-</u>	<u>-</u>	0%
 TOTAL EXPENDITURES	 <u>119,590</u>	 <u>-</u>	 <u>0%</u>	 <u>2,840</u>	 <u>-</u>	 <u>0%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 BALDWIN LIBRARY
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	(571,630)	-	0%	(681,410)	-	0%
TAXES	3,663,280	3,677,403	100%	3,541,640	3,531,522	100%
INTERGOVERNMENTAL	1,065,710	703,653	66%	1,050,320	675,865	64%
CHARGES FOR SERVICES	21,400	23,510	110%	62,800	5,338	9%
INTEREST AND RENT	30,000	16,943	56%	52,000	16,690	32%
OTHER REVENUE	-	-	0%	-	-	0%
TOTAL REVENUES	<u>4,208,760</u>	<u>4,421,509</u>	<u>105%</u>	<u>4,025,350</u>	<u>4,229,415</u>	<u>105%</u>
EXPENDITURES	<u>4,208,760</u>	<u>2,783,327</u>	<u>66%</u>	<u>4,025,350</u>	<u>3,366,699</u>	<u>84%</u>

CITY OF BIRMINGHAM
 QUARTERLY BUDGET REPORT
 DEBT SERVICE FUND
 QUARTER ENDED: MARCH 31, 2022 AND MARCH 31, 2021
 % OF FISCAL YEAR COMPLETED: 75%

	2021-2022			2020-2021		
	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED	AMENDED BUDGET	YEAR-TO-DATE ACTUAL	% OF BUDGET USED
REVENUES:						
USE OF (CONTRIB. TO) FUND BALANCE	(5,500)	-	0%	(2,470)	-	0%
TAXES	1,566,100	1,565,719	100%	1,548,450	1,547,115	100%
INTERGOVERNMENTAL	3,300	5,249	159%	3,300	3,292	100%
INTEREST AND RENT	<u>3,000</u>	<u>1,591</u>	53%	<u>100</u>	<u>214</u>	214%
 TOTAL REVENUES	 <u>1,566,900</u>	 <u>1,572,559</u>	 <u>100%</u>	 <u>1,549,380</u>	 <u>1,550,621</u>	 <u>100%</u>
 EXPENDITURES	 <u>1,566,900</u>	 <u>1,566,386</u>	 <u>100%</u>	 <u>1,549,380</u>	 <u>1,548,880</u>	 <u>100%</u>



MEMORANDUM

Finance Department

DATE: April 29, 2022
TO: Thomas M. Markus, City Manager
FROM: Mark Gerber, Director of Finance/Treasurer
SUBJECT: March 2022 Investment Report

Public Act 213 of 2007 requires investment reporting on the City's general investments to be provided to the City Commission on a quarterly basis. This information is also required to be provided annually, which the City has and will continue to include within the audited financial statements.

General investments of the City are governed by state law and the City's General Investment Policy approved by the City Commission. The services of an outside investment advisor are utilized to assist the treasurer in determining which types of investments are most appropriate and permitted under the investment policy, maximize the return on the City's investments within investment policy constraints and provide for cash flow needs.

The two primary objectives for investment of City funds are the preservation of principal and liquidity to protect against losses and provide sufficient funds to enable the City to meet all operating requirements that might be reasonably anticipated. Investment activities include all City funds except the retirement and retiree health-care funds as follows:

- General Fund
- Permanent Funds
- Special Revenue Funds
- Capital Projects Fund
- Enterprise Funds
- Debt Service Funds
- Component Unit Funds
- Internal Service Funds

Overall, the City has \$93 million invested in various securities according to its general investment policy as of March 31, 2022.

The City has two pooled funds (CLASS Pool and J-Fund), which are used to meet payroll, contractor and other accounts payable needs. As indicated on the attached schedule, there is approximately \$7.2 million invested in pooled funds at the end of March. A maximum of 50% of the portfolio may be invested in pooled funds that meet state guidelines. The amount currently invested in pooled funds is 8%.

The City also holds approximately \$40.3 million, or 43%, of its investments in treasury notes and bills, which are obligations of the United States. The maximum amount of investments that may be held in government securities is 100%.

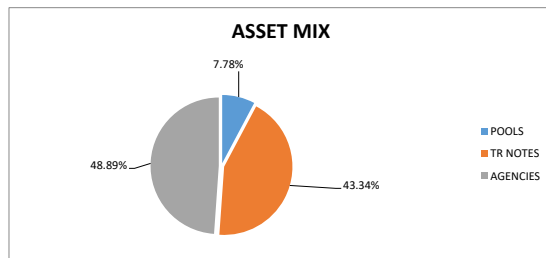
Investments in federal agencies total approximately \$45.5 million, or 49%, of the City's investments. The maximum amount of the portfolio that may be invested in federal agencies is 75%.

The Investment Policy requires that the average maturity of the portfolio may not exceed two and one-half years. The current average maturity of the portfolio is 1.55 years.

**CITY OF BIRMINGHAM
GENERAL INVESTMENT PORTFOLIO SUMMARY**

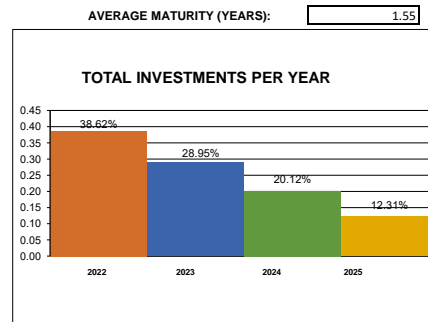
3/31/2022

YEAR	MATURITY DATE	DESCRIPTION	% YIELD	*	ISSUER	PAR VALUE	COST	CURRENT MARKET VALUE	YEARLY TOTAL	% OF TOTAL
2022	3/31/2022	CLASS POOL	0.274%	CITY	MICHIGAN CLASS	2,159,763.02	2,159,763.02	2,159,763.02		
	3/31/2022	J FUND	0.156%	CITY	COMERICA BANK	5,072,698.24	5,072,698.24	5,072,698.24		
	4/15/2022	TR NOTE	0.134%	INSIGHT	U.S.	2,000,000.00	2,065,241.08	2,001,500.00		
	6/10/2022	AGENCY	1.882%	INSIGHT	FHLB	1,500,000.00	1,510,635.00	1,509,680.55		
	6/10/2022	AGENCY	1.930%	INSIGHT	FHLB	2,000,000.00	2,011,248.00	2,001,204.45		
	6/16/2022	AGENCY	0.500%	INSIGHT	FNMA	1,000,000.00	1,000,000.00	953,120.00		
	7/15/2022	TR NOTE	0.263%	INSIGHT	U.S.	2,500,000.00	2,518,660.72	2,507,825.00		
	7/28/2022	AGENCY	0.550%	INSIGHT	FHLB	1,500,000.00	1,500,000.00	1,426,635.00		
	8/5/2022	AGENCY	1.497%	INSIGHT	FFCB	2,000,000.00	2,020,180.00	2,006,080.00		
	8/19/2022	AGENCY	0.450%	INSIGHT	FNMA	2,000,000.00	1,999,500.00	1,919,720.00		
	9/9/2022	AGENCY	1.613%	INSIGHT	FHLB	1,500,000.00	1,516,588.50	1,506,675.00		
	9/30/2022	AGENCY	0.390%	INSIGHT	FHLMC	1,500,000.00	1,499,025.00	1,415,535.00		
	10/13/2022	AGENCY	1.549%	INSIGHT	FFCB	1,500,000.00	1,502,076.00	1,501,260.00		
	10/31/2022	TR NOTE	1.854%	INSIGHT	U.S.	1,500,000.00	1,506,977.68	1,506,915.00		
	11/2/2022	AGENCY	0.320%	INSIGHT	FHLMC	1,500,000.00	1,500,000.00	1,456,095.00		
2023	11/15/2022	TR NOTE	0.124%	INSIGHT	U.S.	3,000,000.00	3,050,976.56	3,006,810.00	35,917,706.26	38.62%
	11/17/2022	FNMA	0.360%	INSIGHT	FNMA	1,000,000.00	999,800.00	960,220.00		
	12/15/2022	TR NOTE	0.133%	INSIGHT	U.S.	3,000,000.00	3,054,375.00	3,005,970.00		
	1/19/2023	AGENCY	1.617%	INSIGHT	FNMA	2,500,000.00	2,558,475.00	2,516,625.00		
	2/17/2023	AGENCY	0.192%	INSIGHT	FHLB	1,500,000.00	1,542,361.50	1,497,300.00		
	2/21/2023	AGENCY	1.491%	INSIGHT	FFCB	2,000,000.00	2,004,653.94	2,002,880.00		
	3/31/2023	TR NOTE	1.421%	INSIGHT	U.S.	1,500,000.00	1,556,430.81	1,511,370.00		
	4/15/2023	TR NOTE	0.207%	INSIGHT	U.S.	3,000,000.00	3,001,992.34	2,954,640.00		
	5/15/2023	TR NOTE	1.578%	INSIGHT	U.S.	1,500,000.00	1,509,028.46	1,498,305.00		
	6/19/2023	AGENCY	1.851%	INSIGHT	FHLMC	1,500,000.00	1,550,467.50	1,514,355.00		
	6/26/2023	AGENCY	0.233%	INSIGHT	FHLMC	1,500,000.00	1,500,705.00	1,468,965.00		
	9/8/2023	AGENCY	1.466%	INSIGHT	FHLB	2,000,000.00	2,070,800.00	2,008,200.00		
	9/12/2023	AGENCY	1.591%	INSIGHT	FNMA	1,500,000.00	1,573,410.00	1,515,990.00		
	10/31/2023	TR NOTE	1.423%	INSIGHT	U.S.	1,500,000.00	1,587,954.24	1,516,755.00		
	10/31/2023	TR NOTE	0.307%	INSIGHT	U.S.	2,000,000.00	2,054,928.58	1,984,220.00		
2024	10/31/2024	TR NOTE	2.476%	INSIGHT	U.S.	1,000,000.00	994,378.35	994,810.00	26,921,560.00	28.95%
	11/15/2023	TR NOTE	1.572%	INSIGHT	U.S.	1,500,000.00	1,570,258.93	1,513,425.00		
	11/15/2023	TR NOTE	0.320%	INSIGHT	U.S.	2,000,000.00	1,997,037.95	1,939,060.00		
	11/27/2023	AGENCY	0.202%	INSIGHT	FNMA	500,000.00	500,690.00	484,660.00		
	1/19/2024	AGENCY	0.241%	INSIGHT	FFCB	1,000,000.00	999,670.00	967,310.00		
	2/5/2024	AGENCY	1.572%	INSIGHT	FNMA	1,500,000.00	1,558,201.50	1,507,530.00		
	2/29/2024	TR NOTE	1.637%	INSIGHT	U.S.	1,750,000.00	1,785,621.10	1,744,872.50		
	4/15/2024	TR NOTE	0.434%	INSIGHT	U.S.	3,000,000.00	2,995,546.88	2,883,630.00		
	5/31/2024	TR NOTE	0.462%	INSIGHT	U.S.	1,000,000.00	1,040,823.66	992,190.00		
	6/14/2024	FHLB	0.377%	INSIGHT	U.S.	1,500,000.00	1,556,520.00	1,482,105.00		
	7/2/2024	AGENCY	1.719%	INSIGHT	FNMA	1,500,000.00	1,502,037.00	1,480,530.00		
	9/13/2024	AGENCY	1.729%	INSIGHT	FHLB	1,750,000.00	1,843,345.00	1,768,427.50		
	9/30/2024	TR NOTE	0.569%	INSIGHT	U.S.	1,500,000.00	1,541,020.65	1,465,905.00		
	10/31/2024	TR NOTE	0.465%	INSIGHT	U.S.	1,000,000.00	1,032,695.31	966,645.90		
	10/31/2024	TR NOTE	0.557%	INSIGHT	U.S.	2,000,000.00	2,057,741.08	1,962,584.10		
2025	11/15/2024	TR NOTE	0.560%	INSIGHT	U.S.	1,500,000.00	1,578,637.84	1,491,855.00	18,713,585.00	20.12%
	1/7/2025	AGENCY	0.362%	INSIGHT	FNMA	1,500,000.00	1,580,434.50	1,465,965.00		
	2/12/2025	AGENCY	0.344%	INSIGHT	FHLMC	1,500,000.00	1,575,136.50	1,459,350.00		
	2/26/2025	AGENCY	0.680%	INSIGHT	FHLB	1,000,000.00	1,000,000.00	950,220.00		
	2/28/2025	TR NOTE	0.508%	INSIGHT	U.S.	1,500,000.00	1,533,925.38	1,443,285.00		
	3/28/2025	AGENCY	1.250%	INSIGHT	FHLB	800,000.00	797,440.00	751,903.05		
	3/28/2025	AGENCY	1.460%	INSIGHT	FHLB	700,000.00	697,060.00	666,781.95		
	3/28/2025	AGENCY	0.450%	INSIGHT	FHLMC	1,500,000.00	1,500,000.00	1,411,020.00		
	3/31/2025	TR NOTE	0.669%	INSIGHT	U.S.	1,500,000.00	1,491,215.96	1,414,575.00		
	6/30/2025	AGENCY	0.750%	INSIGHT	FHLB	2,000,000.00	2,000,000.00	1,889,940.00		
						94,232,461.26	95,728,389.76	93,005,891.26	93,005,891.26	100.00%



POOLS	\$7,232,461.26	7.78%
TR NOTES	\$40,307,147.50	43.34%
AGENCIES	\$45,466,282.50	48.89%
TOTAL	\$93,005,891.26	100.00%

COMPARATIVE RETURNS			
	City Portfolio	1-Yr TR	2-Yr TR
Current Month	0.82%	0.32%	0.59%
Previous Month	0.82%	0.21%	0.44%
1 Year Ago	1.25%	0.12%	0.12%



* INSIGHT:	\$85,773,430.00	92.22%
* ASSIGNED TO CITY:	\$7,232,461.26	7.78%
	\$93,005,891.26	100.00%

copies:
Treasury
Finance Director/Treasurer
Finance
Audit
Deputy Treasurer
Cutwater Asset Management

CHARTER TOWNSHIP OF BLOOMFIELD
NOTICE OF PUBLIC HEARING
ZONING BOARD OF APPEALS

Notice is hereby given that the Zoning Board of Appeals will hold a public hearing at the Bloomfield Township Hall, 4200 Telegraph Road, on **TUESDAY, May 10, 2022 at 7:00 P.M.** to consider the following appeal:

Seeking approval for a proposed home encroaching 15 ft. into the 40 ft. Quarton Road secondary front yard setback, Section 25 Bloomfield Manor Sub Lot 10. The Code of the Charter Township of Bloomfield, Section 42-3.1, requires a minimum forty (40) ft. front yard setback in a single-family residential zone district.

(B. Bolyard, 1595 Oxford Rd., 19-25-201-004)

Described as: Section 25 Bloomfield Manor Sub Lot 10

Sidwell No: 19-25-201-004

Patricia Voelker, Director
Planning, Building and Ordinance

Complete copies of the appeals can be viewed at the Township Hall during regular business hours in the Planning, Building, and Ordinance Department, from 7:00 a.m. to 5:30 p.m., Monday through Thursday. Comments may be provided at the public hearing or by writing to: Bloomfield Township Planning, Building, and Ordinance Department, P.O. Box 489, Bloomfield Hills, MI 48303-0489 - Telephone: (248) 433-7795 - Fax: (248) 433-7729 or via email to **zba-publiccomment@bloomfieldtwp.org**

To view the meeting live, go to Comcast Channel 15 or AT&T Channel 99 or via the internet: **[Bloomfield Twp., MI – Public Meetings](#)**



To view the Zoning Board of Appeals packet posted on Documents on Demand by the end of business **Thursday, May 5th** you can use the QR code to the right.



NOTE: The Charter Township of Bloomfield will provide necessary, reasonable auxiliary aids and services at all meetings to individuals with disabilities. All such requests must be made at least five days prior to said meeting. Individuals with disabilities requiring auxiliary aids or services should contact the Bloomfield Township Planning Division by writing or calling the following: Planning Division, P.O. Box 489, Bloomfield Hills, MI 48303-0489 - Telephone: (248) 433-7795 - Fax: (248) 433-7729.

Dated: April 25, 2022

INFORMATION ONLY

Fwd: 2040 Master Plan Comments

Jana Ecker <Jecker@bhamgov.org>

Wed, May 4, 2022 at 9:44 AM

To: Alex Bingham <abingham@bhamgov.org>

Cc: Tom Markus <tmarkus@bhamgov.org>, Nicholas Dupuis <ndupuis@bhamgov.org>

FYI

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

From: **Kevin Kozlowski** <kevin.kozlowski@gmail.com>

Date: Wed, May 4, 2022 at 9:30 AM

Subject: 2040 Master Plan Comments

To: <jecker@bhamgov.org>, <ndupuis@bhamgov.org>

May 4, 2022

To the City Commission and Planning Board,

I am writing to express my disappointment with the direction the Birmingham 2040 Master Plan has taken. I was generally excited about the first draft of the plan and find the current direction, or lack thereof, depressing. This plan is an opportunity to dedicate the city to embodying its motto of walkability. There are still elements of the current draft which do this, but most of the city will see no improvements to walkability at all. Also, I am very concerned about the volume of municipal parking the current draft proposes to be constructed. I think this will hurt our walkability and be a potential financial disaster.

There are citizens of Birmingham who would enjoy a more walkable, urban lifestyle. My wife and I recently moved to Birmingham because of its walkability. While the Master Plan has some exciting new walkable developments, they are largely restricted to areas immediately adjacent to downtown, which is already the densest part of the city. As we all know, walkability goes hand-in-hand with density. It seems that many of my fellow residents are against increasing density and introducing commercial properties near residential ones. The concerns they have are valid, but are not really about density or mixed-use zoning. They are rather about more fundamental issues of noise, traffic, and property values. I believe it is possible to have the benefits of a denser urban fabric without suffering from these problems.

First, I would note that noise and traffic are closely related. I live very close to both Woodward and the Poppleton Place apartments. The noise from Woodward is a chronic frustration, while I haven't had a single issue with noise from the apartment building. In general, buildings and people aren't loud - cars are. This can be mitigated primarily by reducing speeds, which I'm pleased to see is part of the current draft of the Master Plan. As far as traffic itself is concerned, I would first say that slowing speeds would make the traffic less of a nuisance to residents and less of a safety hazard as well. Eliminating parking requirements, also discussed in the plan, would likely also discourage driving. The best way, however, to deal with traffic is to make car travel less necessary. The more trips which can be made on foot or bicycle, the fewer cars will be on the road. Adding more commercial properties close to neighborhoods and improving pedestrian and cycling infrastructure will allow residents to leave their cars at home. Reducing parking will help encourage walking and cycling.

Regarding the fear that increasing density will decrease property values, I think this is a complete canard. Anyone can go on Zillow and compare the prices of two similar homes, one close to downtown and one east of Woodward or even Adams, and immediately see that properties are more valuable when they are part of a more dense fabric. In general, people want to be where the action is - close to restaurants, theaters, libraries, parks, and shopping. Also, if a lot is upzoned or rezoned to mixed-use, its value will immediately increase simply because more options are available to the owner. For all of these reasons, I request that the future land use changes on Madison Street off of Woodward be restored to the way they were in the first draft. I live in the first house on Madison off of Woodward and would love to see some new development here that further increases our density and walkability.

I would also request that the plan remove all its calls for construction of additional municipal parking. Parking is antithetical to walkability. It reduces walkability first by encouraging driving. Every car is a nuisance to pedestrians, creating noise, air pollution, and physical threat. The more parking there is, the more cars will come, and the worse the experience of every pedestrian (and cyclist) will be. Parking reduces walkability secondly by simply taking up space. Every square foot of real estate dedicated to parking is effectively dead space to pedestrians. They are areas which could have been something useful to a human, but are instead dedicated to temporary car storage. For these reasons I was

INFORMATION ONLY

particularly dismayed to see that under “Encourage Housing in Mixed-use Districts”, the Master Plan Actions have almost nothing to do with housing at all. They are all about parking, and 4 of 7 are explicitly about adding more parking. The rest are about unbundling parking. The fact that the city is to be responsible for increasing the parking supply is particularly frustrating to me as a walker and taxpayer. The simultaneous unbundling of parking strikes me as self-defeating. As I understand it, the purpose of unbundled parking is that it creates an incentive for people to own fewer vehicles, thereby requiring less parking. Why would the city invest millions in parking garages if our goal is to discourage car ownership? If our goal is less driving and more walking, we should keep the unbundled parking, but rely on private developers to supply the parking. Let the market determine the proper quantity and price. Private garages have the added benefit of paying property taxes. If we have an acute capacity issue in the existing public garages, a price increase would free up some spots.

A final reason to not add this new parking is that it is risky. We may be on the cusp of a transportation revolution with respect to autonomous vehicles and ride-sharing. It is possible that by 2040 many people in Birmingham will not even bother to own personal vehicles. Remote work and online shopping will also accelerate this trend. My wife and I both work remotely and only own one car between the two of us. Most days it sits unused in our garage. It seems likely to me that families like mine will make up an increasing share of Birmingham residents as time goes on. The Master Plan dismisses autonomous vehicles as too distant a technology to worry about, but I disagree. If we begin work on these garages 5 years from now and fund them with 30-year bonds, we need parking to be valuable for 35 years. I don't even have faith in the value of parking for the next 18 years, and I think most of us would agree that we have no idea what the world will look like in 2050. It would be disastrous for the future of this city if we were to build tens of millions of dollars of parking only to watch demand for parking fizzle out, leaving us with empty, useless structures and a massive pile of debt. Once again, if we let the private sector build the parking, the risk is on their books, and if the need for parking evaporates, it's not our problem.

Focusing on increasing walkability and density will not only bring Birmingham closer to embodying its motto, but will have a number of other benefits as well. Land values will increase as more lots gain walkable access to amenities. More valuable properties will generate more tax revenue per lot, leading to better city services and lower per-capita taxes. More housing options will mean downsizing opportunities for seniors, and a reversal of Birmingham's decreasing population - which is particularly important with respect to BPS student enrollment and funding. I would like to see the plan do more to move the city in this direction, and to remove all recommendations to construct parking, which will move us away from it while saddling us with costly debt. The vision of Birmingham as A Walkable Community can be achieved, but only by making decisions that focus on people.

Thank you for your consideration,

Kevin Kozlowski
421 Madison St.
Birmingham, MI 48009
Kevin.Kozlowski@gmail.com

--

Jana L. Ecker

***Assistant City Manager
City of Birmingham
248-530-1811***

Important Note to Residents

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

CITY CLERK
CITY OF BIRMINGHAM
P.O. BOX 3001, 151 MARTIN STREET
BIRMINGHAM, MI 48012

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION NOTICE OF
HEARING
FOR THE ELECTRIC CUSTOMERS OF
DTE ELECTRIC COMPANY
CASE NO. U-20827**

- DTE Electric Company requests Michigan Public Service Commission's approval for reconciliation of its power supply cost recovery plan for the 12 months ended December 31, 2021.
- The information below describes how a person may participate in this case.
- You may call or write DTE Electric Company, One Energy Plaza, 570 SB, Detroit, MI 48226, (800) 477-4747, for a free copy of its application. Any person may review the documents at the offices of DTE Electric Company or on the Commission's website at: michigan.gov/mpscdockets.
- A pre-hearing will be held:

DATE/TIME: Thursday, May 12, 2022 at 9:00 AM

BEFORE: Administrative Law Judge Sharon Feldman

LOCATION: Video/Teleconferencing

PARTICIPATION: Any interested person may participate. Persons needing any assistance to participate should contact the Commission's Executive Secretary at (517) 284-8090, or by email at mpscdockets@michigan.gov in advance of the hearing.

The Michigan Public Service Commission (Commission) will hold a pre-hearing to consider DTE Electric Company's (DTE Electric) March 31, 2022 application requesting the Commission to: 1) approve DTE Electric's 2021 Power Supply Cost Recovery (PSCR) reconciliation as proposed; 2) authorize DTE Electric Company to collect its total PSCR under-recovery at year-end 2021 of \$143,398,987 including interest, from all PSCR customers via a roll-over of such under-recovery as the January 2022 starting balance for the 2022 PSCR Reconciliation; and 3) grant DTE Electric further relief as necessary and appropriate.

INFORMATION ONLY

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

Any person wishing to intervene and become a party to the case shall electronically file a petition to intervene with this Commission by May 5, 2022. (Interested persons may elect to file using the traditional paper format.) The proof of service shall indicate service upon DTE Electric Company's attorney, Jon P. Christinidis, One Energy Plaza, Detroit, MI 48226.

The prehearing is scheduled to be held remotely by video conference or teleconference. Persons filing a petition to intervene will be advised of the process to participate in the hearing.

Any person wishing to participate without intervention under Mich Admin Code, R 792.10413 (Rule 413), or file a public comment, may do so by filing a written statement in this docket. The written statement may be mailed or emailed and should reference Case No. **U-20827**. Statements may be emailed to: mpscedockets@michigan.gov. Statements may be mailed to: Executive Secretary, Michigan Public Service Commission, 7109 West Saginaw Hwy., Lansing, MI 48917. All information submitted to the Commission in this matter becomes public information, thus available on the Michigan Public Service Commission's website, and subject to disclosure. Please do not include information you wish to remain private. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Requests for adjournment must be made pursuant to Michigan Office of Administrative Hearings and Rules R 792.10422 and R 792.10432. Requests for further information on adjournment should be directed to (517) 284-8130.

For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

The Utility Consumer Representation Fund has been created for the purpose of aiding in the representation of residential utility customers in various Commission proceedings. Contact the Chairperson, Utility Consumer Participation Board, Department of Licensing and Regulatory Affairs, P.O. Box 30004, Lansing, Michigan 48909, for more information.

Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.54 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; 1982 PA 304, as amended, MCL 460.6j et seq.; and Parts 1 & 4 of the Michigan Office of Administrative Hearings and Rules, Mich. Admin Code, and R 792.10401 through R 792.10448.

STREETSBLOG

THUNDER ROAD: Car Noise Stokes Heart Attacks, Study Finds

By Eve Kessler | May 3, 2022 | [32 COMMENTS](#)



Holland Tunnel traffic inbound from New Jersey. The noise from such traffic can give you a heart attack, a study finds. Photo: Wikimedia Commons

INFORMATION ONLY





No wonder he called his big hit, “*Thunder Road*.”

All those heart-stopping car sounds — the roaring engines, blaring horns, screeching brakes and crunching metal that we must endure day and night — aren’t just a nuisance for people living in cities or near highways: They actually contribute to heart attacks, cardiovascular damage and higher rates of heart disease, according to a study of New Jersey residents by researchers at Rutgers’s Robert Wood Johnson Medical School.

So in addition to rising road deaths, cars are also killing us with their *noise*.

The [study](#) used state data to look at almost 16,000 Garden State residents hospitalized for a heart attack in 2018. It found that the heart-attack rate was 72 percent higher in areas with a lot of transportation noise (cars, but also air traffic; Attention: [Stop the Chop NYNJ](#)), with fully 5 percent of hospitalizations for heart attacks traceable to elevated transportation noise. It defined high-noise areas as those experiencing an average of more than 65 decibels — the level of a loud conversation — over the course of a day.

The ground-breaking study — which is among the first such efforts in the United States — aligns with [several European studies](#) and likely could be replicated in similarly dense, noisy urban areas.

“When people talk about pollution, they’re usually talking about particles in the air or water,” the study’s lead author, Dr. Abel Moreyra, said in a statement. “But there are other forms of pollution, and noise pollution is one of these.”

People living in noisy areas had 3,336 heart attacks per 100,000 population, compared with 1,938 heart attacks per 100,000 for those in quieter neighborhoods — meaning that traffic racket triggered about 1 in 20 New Jersey heart attacks (The Boss wasn't kidding when he called cars "suicide machines").



For a taste of the noise that Jersey drivers bring to New York, watch the video in the tweet below:

REBRANDING DRIVING
@RebrandDriving



Listen to [@BrooklynSpoke](#) regale us with this heartwarming tale of traffic, gridlock & cars and how affects people around the streets where he works. Sit back for an excerpt of "Clusterf*ck on Varick: The Case for Congestion Pricing" and bring ample tissues, you will need them!

Watch on Twitter

7:35 AM · Jul 16, 2018



[Read the full conversation on Twitter](#)

 31

 Reply

 Share this Tweet

[Read 6 replies](#)

“People intuitively know that noise from cars is unpleasant — given the choice, people prefer to live away from busy roads and few people enjoy having conversations or trying to concentrate on work as drivers lean on their horns outside — and this study does more than simply prove that their intuition is correct,” said street-safety activist Doug Gordon, who



is working on a noise-pollution project with Possible, the UK-based climate foundation. “It adds to the growing body of evidence that noise pollution generated by cars and traffic isn’t just annoying but unhealthy. It’s a reminder that *cities* aren’t loud; *cars* are loud.”



The study provides yet more evidence of the deleterious health effects of automobiles, which are destroying the planet as well as killing human beings and other animals. In New Jersey — the nation’s most densely populated state — transportation ranks as the largest source of greenhouse-gas emissions, and thus global warming, [contributing 41 percent of the total](#), according to the state Department of Environmental Protection. (In New York, [it’s the second-largest source](#), after buildings.) The [particulate matter spewed by cars causes asthma](#), another cause of premature death, which is highest in places full of highways. (Lookin’ at you, NJ Turnpike and I-80.) Not to mention that [traffic crashes are the leading cause of death for Americans under the age of 55](#) — and the leading cause of non-natural death for Americans traveling or residing abroad, the Centers for Disease Control and Prevention unhappily notes.

“As cardiologists, we are used to thinking about many traditional risk factors such as smoking, hypertension or diabetes,” Moreyra added. “This study and others suggest maybe we should start thinking about air pollution and noise pollution as additional risk factors for cardiovascular disease” because of their association with chronic stress, sleep disturbances and anxiety and depression, all of which can affect cardiovascular health.

The study did not analyze the data for demographic or socioeconomic differences or account for other health risks, suggesting further avenues for research. Moreyra said that better noise insulation for buildings, low-noise tires for vehicles, enforcement of noise laws, infrastructure such as sound walls that block road noise, and rules for air traffic, could help mitigate the effects of noise pollution.

Of course, people *could get out of their cars and take public transit* — which would help with emissions, too (though toll-addicted agencies such as the [Turnpike Authority](#) and [Port Authority of New York and New Jersey](#) have an interest in keeping Jerseyans driving).

So clearly Bruce Springsteen [had it wrong](#): it’s death, not redemption, that’s beneath that dirty hood.

