

BIRMINGHAM CITY COMMISSION MINUTES
SEPTEMBER 21, 2015
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Stuart Lee Sherman, Mayor, called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL: Present,	Mayor Sherman Commissioner Dilgard Mayor Pro Tem Hoff Commissioner McDaniel Commissioner Moore Commissioner Nickita (arrived at 7:32 PM) Commissioner Rinschler
Absent,	None

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, DPS Director Wood, HR Manager Taylor, City Planner Ecker, Planner Baka, City Engineer O'Meara, Deputy Police Chief Clemence, PSD Director Heiney, Special Event Coordinator Rondello, Fire Chief Connaughton, Finance Director Gerber

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

09-199-15 APPOINTMENT TO THE ADVISORY PARKING COMMITTEE

MOTION: Motion by Rinschler:

To appoint Anne Honhart, 197 E. Frank, to the Advisory Parking Committee as a resident member to serve a three-year term to expire September 4, 2018.

MOTION: Motion by McDaniel

To appoint Algirdas Vaitas, 620 North Old Woodward, to the Advisory Parking Committee as a small retail member to serve a three-year term to expire September 4, 2018.

VOTE ON NOMINATION OF HONHART:

Yeas, 7
Absent, None

VOTE ON NOMINATION OF VAITAS:

Yeas, 7
Absent, None

09-200-15 **APPOINTMENT TO THE
HISTORIC DISTRICT COMMISSION & DESIGN REVIEW BOARD**

MOTION: Motion by Dilgard:
To appoint John Henke, 724 S. Bates to the Historic District Commission & Design Review Board to serve a three-year term to expire September 25, 2018.

MOTION: Motion by Rinschler:
To appoint Mark Coir, 411 South Old Woodward, #1025 to the Historic District Commission & Design Review Board to serve a three-year term to expire September 25, 2018.

MOTION: Motion by Moore:
To appoint Thomas Trapnell, 660 Smith to the Historic District Commission & Design Review Board to serve a three-year term to expire September 25, 2018.

VOTE ON NOMINATION OF HENKE:
 Yeas, 7
 Absent, None

VOTE ON NOMINATION OF COIR:
 Yeas, 7
 Absent, None

VOTE ON NOMINATION OF TRAPNELL:
 Yeas, 7
 Absent, None

09-201-15 **APPOINTMENT TO THE
MUSEUM BOARD**

MOTION: Motion by McDaniel:
To appoint Caitlin Rosso, 355 Columbia, to the Museum Board to serve the remainder of a three-year term to expire July 5, 2017.

VOTE: Yeas, 7
 Absent, None

The Clerk administered the oath to the appointed board members.

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

09-202-15 **APPROVAL OF CONSENT AGENDA**

The following item was removed from the consent agenda:

- Item N (West Maple Road three lane striping trial contract) by Commissioner Hoff

MOTION: Motion by Rinschler, seconded by McDaniel:
To approve the consent agenda as follows:

- A. Approval of City Commission minutes of September 10, 2015.
- B. Approval of warrant list, including Automated Clearing House payments, of September 9, 2015 in the amount of \$390,446.68.
- C. Approval of warrant list, including Automated Clearing House payments, of September 16, 2015 in the amount of \$3,459,778.86.
- D. Resolution authorizing the City Manager to cast a vote, on the City's behalf, for the two incumbent members of the Michigan Municipal League Liability and Property Pool Board of Directors for three year terms, beginning January 1, 2016.
- E. Resolution awarding the 2015-2016 Public Services contract totaling \$9,400 for Yard Services and Senior Outreach Services to NEXT, (formerly BASCC) under the Community Development Block Grant Program; and further, authorizing the Mayor to sign the contract on behalf of the City.
- F. Resolution accepting the resignation of Rachel Loughrin as an Alternate Member of the Zoning Board of Appeals, thanking her for her service, and directing the Clerk to begin the process of appointment to the Zoning Board of Appeals.
- G. Resolution approving a request submitted by Ascension of Christ Lutheran Church to place a Nativity scene in Shain Park from November 27, 2015 to December 31, 2015, contingent upon compliance with all permit and insurance requirements and payment of all fees, and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
- H. Resolution approving the transfer of the current Title VI Coordinator designation from Joseph A. Valentine, Assistant City Manager/HR Director, to Yvonne Taylor, HR Manager. Further, adopting the updated City of Birmingham Title VI plan and authorizing the Mayor and City Manager to sign the appropriate sections of the plan.
- I. Resolution approving the Telecommunications Right-of-Way METRO Act Safe Harbor Application and Safe Harbor Bilateral Permit submitted by 123NET, Inc., and authorizing the Mayor to sign the permit on behalf of the City.
- J. Resolution approving the application and permit submitted by Clear Rate Communications, Inc. Telecommunications Right-of-Way METRO Act Safe Harbor Application and Safe Harbor Bilateral Permit submitted by Clear Rate Communications, Inc., and authorizing the Mayor to sign the permit on behalf of the City.
- K. Resolution approving a three-year service agreement with American Vending as described in Attachment A to commence September, 2015 and terminates August 31, 2018. Further, authorizing the Mayor and Clerk to sign the agreement on behalf of the City upon receipt of all required insurances.
- L. Resolution approving the contract for Crestview Park Lawn Repair project to Homefield Turf and Athletic, Inc. in the amount not to exceed \$9,400.00 from the Capital Projects Fund, account #401-751.001-981.0100. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of all required insurances.
- M. Resolution approving the street light agreement between the City of Birmingham and DTE Energy regarding the installation of street lights at 401-499 S. Eton Rd. Further, directing the Mayor to sign the agreement on behalf of the City. All costs relative to this agreement will be charged to the adjacent owner.
- O. Resolution approving the federal funds in the amount of \$12,344.00 for the 2015 Emergency Management Performance Grant period of 10/1/2014 to 9/30/2015. Further, directing the Mayor to sign the agreement on behalf of the City.

P. Resolution accepting the petition submitted by Mr. Dan Miarka requesting the paving of Villa Ave. from S. Adams Rd to Columbia Ave., and setting a Public Hearing of necessity for the improvement proposed herein on Monday, November 9, 2015, at 7:30 P.M. If necessity is determined, setting a Public Hearing to review the assessments and confirm the roll on November 23, 2015, at 7:30 P.M.

ROLL CALL VOTE: Yeas, Commissioner Dilgard
 Mayor Pro Tem Hoff
 Commissioner McDaniel
 Commissioner Moore
 Commissioner Nickita
 Commissioner Rinschler
 Mayor Sherman
 Nays, None
 Absent, None
 Abstentions, 1, Moore (from Item E – member of the NEXT Board)

The Commission agreed to consider Item N, West Maple Road three lane striping trial contract, at this time.

**09-203-15 WEST MAPLE ROAD
 THREE LANE STRIPING TRIAL CONTRACT**

In response to a question by Mayor Pro Tem Hoff regarding the street signs, Deputy Chief Clemence explained that new directional signs will include language such as “road narrowing” to give motorist the chance to understand what they are about to enter into. The old signs, including the posts, will be used where applicable in order to save money.

MOTION: Motion by Hoff, seconded by Rinschler:
 To award the West Maple Road three lane striping trial contract to R.S. Contracting, Inc. in the amount of \$16,226.60; further to authorize this expenditure to Major Streets Traffic Controls Contract Lane Painting account #202-303.001-937.0200; and further approving the appropriations and budget amendment as follows:

Major Street Fund		
Revenues:		
Draw from Fund Balance	#202-000.000-400.0000	\$16,226.60
Expenditures:		
Traffics Controls Contract		
Lane Painting	#202-303.001-937.0200	\$16,226.60

VOTE: Yeas, 7
 Nays, None
 Absent, None

V. UNFINISHED BUSINESS

**09-204-15 CONTINUED PUBLIC HEARING TO CONSIDER
 ZONING ORDINANCE AMENDMENTS
 TRANSITIONAL ZONING**

Mayor Sherman reopened the Public Hearing to consider amendments to Chapter 126, Zoning, of the Code of the City of Birmingham at 7:44 PM.

Planner Baka explained the recent revision to TZ1 requested by the City Commission prohibits garage doors on the front elevation. Commissioner Rinschler pointed out the previous discussion to eliminate all non-residential uses from TZ1. City Manager Valentine noted that any modifications to TZ1 could be addressed tonight.

Mr. Baka explained that TZ1 allows for attached single-family or multi-family two-story residential and provides transition from low density commercial to single family homes. He noted the maximum height is thirty-five feet with a two-story minimum and three-story maximum.

Commissioner McDaniel questioned why other properties on Oakland Street were removed from the original proposal. Mr. Baka explained that it was based on the objections from the homeowners as the current residents did not want their properties rezoned. Commissioner Rinschler pointed out that the rezoning is not about what is there currently, but what could be there in the future.

Mayor Pro Tem Hoff commented that the setback in TZ1 is required to have a front patio or porch which is very limiting with the five foot setback. She questioned why one-story is not allowed. Planner Ecker explained that two-stories will allow for more square footage and it is intended to be a buffer from the downtown to residential.

Commissioner Rinschler suggested that post office, social security office, school, nursing center, and church be removed from the list of uses so it is only residential use. He noted that the City is trying to create a buffer so there are no businesses abutting residential. He suggested a future Commission review the residential standards. Commissioners Dilgard and McDaniel agreed.

Ms. Ecker commented on the front setback requirement. She noted that the development standards include a waiver which would allow the Planning Board to move the setback further if a larger patio or terrace is desired.

Commissioner Nickita commented on the additional uses in TZ1. He noted that this is a zoning designation which is essentially residentially focused allowing for multi-family. He stated that those uses which stand out to be residential are independent senior living and independent hospice which are aligned with multi-family residential uses. The Commission discussed the intensity of each use including assisted living.

Mayor Sherman summarized the discussion from the Public Hearing at the previous meeting. He explained that the three ordinances were presented to the Commission – TZ1 which is strictly residential; TZ2 which is residential, but allows for some commercial; and TZ3 which does allow for residential, but is more commercial in nature. At the hearing, people were comfortable with the language in TZ2 and TZ3. There were concerns and questions with TZ1 and the Commission requested staff make revisions to TZ1. The Commission then discussed the parcels that were proposed to be rezoned into the TZ2 and TZ3 categories. Discussion was not held regarding the TZ1 parcels at that time.

Commissioner Nickita suggested that in considering the commercial permitted uses and the Special Land Use Permit (SLUP) uses that several uses would be better served with a SLUP such as convenience store, drug store, and hardware store. Commissioners Rinschler and Hoff agreed.

Commissioner Rinschler noted the trouble with defining uses. He questioned why not let all the uses require SLUP's. Commissioner McDaniel suggested developing standards to evaluate SLUP's. Commissioner Nickita noted that it is not a one size fits all.

Mayor Sherman summarized the discussion that TZ1 would be restricted to solely residential; in TZ2 residential would be allowed, but any commercial uses would require a SLUP; in TZ3 would remain as drafted.

Bill Finnicum, 404 Bates, stated that having zero to five foot setbacks is unpractical. He suggested that the biggest danger is losing the character and rhythm of the streets.

Michael Murphy, 1950 Bradford, stated that the suggestion to require a SLUP is an acceptable compromise.

In response to a question from Commissioner Moore regarding parking, Ms. Ecker explained that commercial entities must provide for their own parking on-site if they are not in the parking assessment district. On-street parking can only be counted if the property is located in the triangle district.

Reed Benet, 271 Euclid, stated that changing the zoning from single family residential to protect single family residential is illogical.

Ms. Ecker confirmed for David Crisp, 1965 Bradford, that the parcels on 14 Mile would not be able to count the on-street parking unless they came through a separate application process and tried to get approval of the City Commission.

A resident at 1895 Bradford stated that the more uses which are subject to a SLUP would decrease the predictability of the neighborhood in the future and the value of the zoning effort.

Benjamin Gill, 520 Park, stated that the height of the buildings should be controlled by the neighborhood.

Irving Tobocman, 439 Greenwood, questioned the restriction on the depth of a porch relative to the setback on the street.

David Kolar, commercial real estate broker, expressed concern with the unintended consequences of making everything a SLUP. He noted that a SLUP is a high barrier of entry for small businesses. He suggested defining the appropriate uses in the TZ1, TZ2, and TZ3 districts.

Erik Morganroth, 631 Ann, expressed support of the idea of limitations and commented that the SLUP is most appropriate.

Mr. Baka discussed the parcels proposed in TZ1. He noted the proposal increases the number of units currently permitted at 404 Park from two to four, increase the number of units currently permitted on the parcel at Willits and Chester from two units to a maximum of five, and set the number of units currently permitted on the post office parcel from no limit to one unit for every 3,000 square feet. He discussed the lot area and setbacks.

Mr. Baka confirmed for Mayor Pro Tem Hoff that if the post office moved, a single family residential would be permitted.

Commissioner Rinschler expressed concern that only one lot was included in the 404 Park area. He suggested either extend it to the other parcels on Oakland Street or direct the Planning Board to reopen the hearing to redo the process including all three parcels.

Commissioner Moore stated that there is still a strong potential of economic viability to having those remain single family residential. The purpose of the ordinance is not to invade or lessen a neighborhood, but to enhance the neighborhood by protecting it and ensuring it will be contextual and there are building standards. Commissioner McDaniel agreed.

Commissioner Dilgard stated that the Planning Board was correct with the proposed zoning on 404 Park.

Mayor Sherman pointed out that Commission Nickita recused himself from 404 Park as he was involved with a project with someone who has an interest in 404 Park.

Mayor Sherman agreed with Commissioner Rinschler and noted that the zoning that is suggested does not make a lot of sense.

The following individuals spoke regarding 404 Park:

- Debra Frankovich expressed concern with sectioning out one double lot as it appears to support one property owners best interest.
- Tom Ryan, representing the Host's who are the property owners just north of 404 Park, commented that to single out one parcel is not appropriate.
- Benjamin Gill, 525 Park, expressed opposition to the rezoning of this parcel.
- Bill Finnicum, 404 Bates, commented that the rezoning will only benefit the property owner and will harm the adjacent property owner.
- Chuck DiMaggio, with Burton Katzman Development, explained the history of the property and noted that the Planning Board has spent thirty months studying 404 Park and the other transitional properties.
- Brad Host, 416 Park, stated that the residents are not interested in being rezoned.
- Kathryn Gaines, 343 Ferndale, agreed that Oakland is the buffer. She questioned what four units on that corner bring to the neighborhood that two could not.
- Bev McCotter, 287 Oakland, stated that she does not want the development of this lot into four units.
- Jim Mirro, 737 Arlington, stated that Oakland is the buffer and stated that the parcel should not be rezoned as proposed.
- Ann Stallkamp, 333 Ferndale, stated that she is against the TZ1 rezoning on Park and stated that 404 Park should be taken off the list.

- David Bloom questioned the number of units which would be allowed on the Bowers property.
- Reed Benet, 271 Euclid, commented that it is illogical that this has gone on for three years.
- Chuck DiMaggio, with Burton Katzman Development, noted that they want to do something that benefits the community and provide the proper transition and lead in to the downtown and is compatibility with the neighborhood.
- Tom Ryan, representing the Host's who are the property owners just north of 404 Park, commented that this is not a transition zone and there are ways to put more than one unit on the parcel.

The Mayor closed the Public Hearing at 9:21 PM.

MOTION: Motion by Rinschler, seconded by Dilgard:

To adopt the ordinances amending Chapter 126, Zoning, of the Code of the City of Birmingham as suggested with the following modifications: to modify TZ1 with the changes presented plus the elimination of all non-residential uses; to modify TZ2 that all commercial uses require a SLUP, and TZ3 would remain as proposed: **(TZ2 RESCINDED)**

- TO ADD ARTICLE 02 DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, SECTION 2.41, TZ1 (TRANSITION ZONE) DISTRICT TO CREATE A DISTRICT INTENT AND LIST PERMITTED AND SPECIAL USES IN THIS ZONE DISTRICT;
- TO ADD ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.42, TZ1 (TRANSITION ZONE) DISTRICT TO CREATE DEVELOPMENT STANDARDS IN THIS ZONE DISTRICT;
- TO ADD ARTICLE 02 DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, SECTION 2.43, TZ2 (TRANSITION ZONE) DISTRICT TO CREATE A DISTRICT INTENT AND LIST PERMITTED AND SPECIAL USES IN THIS ZONE DISTRICT;
- TO ADD ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.44, TZ2 (TRANSITION ZONE) DISTRICT TO CREATE DEVELOPMENT STANDARDS IN THIS ZONE DISTRICT;
- TO ADD ARTICLE 02 DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, SECTION 2.45, TZ3 (TRANSITION ZONE) DISTRICT TO CREATE A DISTRICT INTENT AND LIST PERMITTED AND SPECIAL USES IN THIS ZONE DISTRICT;
- TO ADD ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.46, TZ3 (TRANSITION ZONE) DISTRICT TO CREATE DEVELOPMENT STANDARDS IN THIS ZONE DISTRICT;
- TO ADD ARTICLE 4, SECTION 4.53, PARKING STANDARDS, PK-09, TO CREATE PARKING STANDARDS FOR TZ1, TZ2 AND TZ3 ZONE DISTRICTS;
- TO ADD ARTICLE 4, SECTION 4.58, SCREENING STANDARDS, SC-06, TO CREATE SCREENING STANDARDS FOR TZ1, TZ2 AND TZ3 ZONE DISTRICTS;
- TO ADD ARTICLE 4, SECTION 4.62, SETBACK STANDARDS, SB-05, TO CREATE SETBACK STANDARDS FOR TZ1 ZONE DISTRICTS;
- TO ADD ARTICLE 4, SECTION 4.63, SETBACK STANDARDS, SB-06, TO CREATE SETBACK STANDARDS FOR TZ2 AND TZ3 ZONE DISTRICTS;

- TO ADD ARTICLE 4, SECTION 4.69, STREETScape STANDARDS, ST-01, TO CREATE STREETScape STANDARDS FOR TZ1, TZ2 AND TZ3 ZONE DISTRICTS;
- TO ADD ARTICLE 4, SECTION 4.77, STRUCTURE STANDARDS, SS – 09, TO CREATE STRUCTURE STANDARDS FOR THE TZ1 ZONE DISTRICT;
- TO ADD ARTICLE 4, SECTION 4.78, STRUCTURE STANDARDS, SS – 10, TO CREATE STRUCTURE STANDARDS FOR TZ2 AND TZ3 ZONE DISTRICTS;
- TO ADD ARTICLE 5, SECTION 5.14, TRANSITION ZONE 1, TO CREATE USE SPECIFIC STANDARDS FOR THE TZ1 ZONE DISTRICT;
- TO ADD ARTICLE 5, SECTION 5.15, TRANSITION ZONES 2 AND 3, TO CREATE USE SPECIFIC STANDARDS FOR THE TZ2 AND TZ3 ZONE DISTRICTS;

Commissioner Moore commented that an important part of this package is the building standards for the transitional areas where commercial abuts residential. Requiring SLUP's in the TZ2 district will be more cumbersome for the small proprietor. There may be some unintended consequences.

VOTE: Yeas, 7
 Nays, None
 Absent, None

MOTION: Motion by Rinschler, seconded by Dilgard:
 To amend Chapter 126, Zoning, of the Code of the City of Birmingham, Article 4, all Sections noted below, to apply to each Section to the newly created TZ1, TZ2, and/or TZ3 Zone Districts as indicated: **(TZ2 RESCINDED)**

Ordinance Section Name	Section Number	Applicable Zone to be Added
Accessory Structures Standards (AS)	4.02	TZ1, TZ2, TZ3 TZ1
	4.03	TZ1, TZ2, TZ3
	4.04	
Essential Services Standards (ES)	4.09	TZ1, TZ2, TZ3
Fence Standards (FN)	4.10	TZ1, TZ2, TZ3 TZ1
	4.11	
Floodplain Standards (FP)	4.13	TZ1, TZ2, TZ3
Height Standards (HT)	4.16	TZ1, TZ2, TZ3 TZ1,
	4.18	TZ2, TZ3
Landscaping Standards (LA)	4.20	TZ1, TZ2, TZ3
Lighting Standards (LT)	4.21	TZ1, TZ2, TZ3 TZ1,
	4.22	TZ2, TZ3
Loading Standards (LD)	4.24	TZ1, TZ2, TZ3
Open Space Standards (OS)	4.30	TZ1, TZ2, TZ3
Outdoor Dining Standards (OD)	4.44	TZ2, TZ3

Parking Standards (PK)	4.45	TZ1, TZ2, TZ3
	4.46	TZ1, TZ2, TZ3
	4.47	TZ1, TZ2, TZ3
Screening Standards (SC)	4.53	TZ1, TZ2, TZ3
Setback Standards (SB)	4.58	TZ1, TZ2, TZ3
Structure Standards (SS)	4.69	TZ1, TZ2, TZ3
Temporary Use Standards (TU)	4.77	TZ1, TZ2, TZ3
Utility Standards (UT)	4.81	TZ2, TZ3
Vision Clearance Standards (VC)	4.82	TZ1, TZ2, TZ3
Window Standards (WN)	4.83	TZ2, TZ3

VOTE: Yeas, 7
 Nays, None
 Absent, None

MOTION: Motion by Hoff, seconded by Nickita:
To amend Article 9, Definitions, Section 9.02 to add definitions for boutique, parking, social club, tobacconist, indoor recreation facility, and specialty food store.

VOTE: Yeas, 7
 Nays, None
 Absent, None

In response to a question from Commissioner Nickita, City Manager Valentine explained that there was a question on the current use of the property at 412 & 420 East Frank zoned R3. Staff has determined that the property appears to be in violation of the zoning ordinance with regard to the current use. It is currently under investigation as the current zoning is residential and the current use appears to be commercial. He noted that it is an enforcement issue.

City Attorney Currier stated that the Commission action on the rezoning is independent of the violation. He stated that staff has not had access to the property as of yet.

Commissioner Nickita stated that the current use may have an effect on how the Commission views the property. Commissioner Rinschler responded that the current use has no bearing on the future zoning.

MOTION: Motion by Hoff, seconded by McDaniel:
To approve the rezoning of 412 & 420 E. Frank, Parcel # 1936253003, Birmingham MI. from B1-Neighborhood Business, B2B-General Business, R3-Single-Family Residential to TZ2 – Mixed Use to allow commercial and Residential uses which are compatible with adjacent Single-Family Residential uses.

Mr. Baka explained for Patty Shayne that the property would be commercial or residential zone.

Erik Morganroth, 631 Ann, questioned why R3 would not be zoned TZ1 as it is a corner buffer lot.

Eric Wolfe, 393 Frank, stated that rezoning is not necessary on these parcels.

Nirav Doshi, 659 Ann, stated that the R3 should not be converted to TZ2. It should stay residential.

The Commission discussed the possibility of removing R3 out of the motion. Mayor Pro Tem Hoff suggested amending the motion to remove R3. There was no second.

Commissioner McDaniel suggested referring this back to the Planning Board to consider what has been proposed. Mr. Baka noted that the property owner requested to be in the study so they could consolidate the parcels under a single zone. Commissioner Nickita concurred that this should be reconsidered at the Planning Board level.

Mayor Pro Tem Hoff withdrew the motion.

MOTION WITHDRAWN

MOTION: Motion by Nickita, seconded by Rinschler:
To send this item back to the Planning Board with direction based on the conversation tonight.

VOTE: Yeas, 7
Nays, None
Absent, None

MOTION: Motion by McDaniel, seconded by Nickita:
To approve the rezoning of 151 N. Eton, Birmingham MI from B-1 Neighborhood Business to TZ2 - Mixed Use to allow Commercial and Residential uses which are compatible with adjacent Single-Family Residential uses. (RESCINDED)

Dorothy Conrad stated that the Pembroke neighborhood does not object.

David Kolar stated that he was in favor of TZ2, until the SLUP requirement was added tonight which he objects. He stated that an identified number of basic uses is needed as these are small units.

VOTE: Yeas, 7
Nays, None
Absent, None

MOTION: Motion by Hoff, seconded by McDaniel:
To approve the rezoning of 2483 W. Maple Rd. Birmingham MI. from B1- Neighborhood Business to TZ2 - Mixed Use to allow Commercial and Residential uses which are compatible with adjacent Single-Family Residential uses. (RESCINDED)

VOTE: Yeas, 7

Nays, None
Absent, None

MOTION: Motion by Dilgard, seconded by McDaniel:

To approve the rezoning of 1712, 1728, 1732, 1740, 1744, 1794 & 1821 W. Maple Rd. Birmingham, MI. from B1-Neighborhood Business, P-Parking, O1-Office to TZ2 - Mixed Use to allow Commercial and Residential uses which are compatible with adjacent Single-Family Residential uses. (RESCINDED)

VOTE: Yeas, 7
Nays, None
Absent, None

MOTION: Motion by Nickita, seconded by Dilgard:

To approve the rezoning of 880 W. Fourteen Mile Rd., 1875, 1890 & 1950 Southfield Rd. Birmingham, MI. from B1-Neighborhood Business and O1-Office to TZ2 - Mixed Use to allow Commercial and Residential uses which are compatible with adjacent Single-Family Residential uses. (RESCINDED)

VOTE: Yeas, 7
Nays, None
Absent, None

MOTION: Motion by Nickita, seconded by Hoff:

To approve the rezoning of 100, 124, 130 & 152, W. Fourteen Mile Rd. & 101 E. Fourteen Mile Rd., Birmingham, MI. from B1-Neighborhood Business, P-Parking, and R5-Multi-Family Residential to TZ2 - Mixed Use to allow Commercial and Residential uses which are compatible with adjacent Single-Family Residential uses. (RESCINDED)

VOTE: Yeas, 7
Nays, None
Absent, None

MOTION: Motion by McDaniel, seconded by Moore:

To approve the rezoning of 1775, 1803, 1915, 1971, 1999, 2055, 2075 & 2151 Fourteen Mile Rd., Parcel # 2031455006, Birmingham, MI. from O1-Office to TZ2-Mixed Use to allow Commercial and Residential uses which are compatible with adjacent Single-Family Residential uses. (NO VOTE TAKEN)

Commissioner Moore stated that he will oppose this item. He stated that he approves the concept, but thinks the timing is wrong due to future changes to Woodward Avenue.

Dorothy Conrad noted that the current uses along 14 Mile Road are offices. There is no benefit to the neighborhood by changing the zoning to allow commercial uses with a SLUP.

David Kolar stated his objection and noted that the property owners should be notified that every use now requires a SLUP. It is a big change for a property owner.

City Attorney Currier stated the addition of the SLUP requirement is an additional restriction which was not part of the original notice to the property owners. He noted that this could be an issue for those not aware that the SLUP requirement was added tonight. In response to a question from the Commission, Mr. Currier confirmed that renotification to the property owners would be needed and the ordinance to add the SLUP restriction would have to go back to the Planning Board.

MOTION: Motion by Nickita, seconded by Hoff:
To rescind the motions regarding TZ2 for review of the Planning Board.

VOTE: Yeas, 7
Nays, None
Absent, None

Mr. Valentine explained that TZ2 will be sent back to the Planning Board to hold a public hearing to incorporate the proposed language to include the SLUP restriction for commercial uses, and then back to the City Commission.

MOTION: Motion by Hoff, seconded by McDaniel:
To rescind the adoption of the TZ2 ordinance and all housekeeping pertaining to TZ2, but not TZ1 or TZ3, and refer TZ2 to the Planning Board per the discussion and to have the Planning Board take into consideration the discussion from the City Commission and from the public to arrive at a conclusion.

Commissioner Dilgard stated that he does not agree with the direction that everything has to be a SLUP. If it is sent back to the Planning Board, he suggested a SLUP be required for properties 1500 square feet or greater rather than just a blanket SLUP regardless the size of the property.

Commissioner McDaniel agreed and expressed concern that a 1500 square foot store would have to pay high fees for the approvals.

VOTE: Yeas, 7
Nays, None
Absent, None

MOTION: Motion by Hoff, seconded by Nickita:
To approve the rezoning of 36801, 36823 & 36877 Woodward, Parcel #'s 1925101001, 1925101006, 1925101007, 1925101008, 1925101009, Birmingham MI from O1- Office & P-Parking to TZ3 - Mixed Use to allow Commercial and Residential uses which are compatible with adjacent Single-Family Residential uses.

VOTE: Yeas, 7
Nays, None
Absent, None

MOTION: Motion by Nickita, seconded by McDaniel:
To approve the rezoning of 1221 Bowers & 1225 Bowers Birmingham, MI from O1- Office/ P -

Parking to TZ1 - Attached Single-Family to allow Attached Single-Family, Multi-Family Residential uses which are compatible with adjacent Single-Family Residential uses.

VOTE: Yeas, 7
Nays, None
Absent, None

MOTION: Motion by Dilgard, seconded by Hoff:
To approve the rezoning of 400 W. Maple Birmingham, MI from O1 Office to TZ3 Mixed Use to allow Commercial and Residential uses which are compatible with adjacent Single-Family Residential uses.

VOTE: Yeas, 7
Nays, None
Absent, None

MOTION: Motion by Nickita, seconded by Dilgard:
To approve the rezoning of 191 N. Chester Rd. Birmingham, MI. from R-2 Single-Family Residential to TZ1 - Attached Single-Family to allow Attached Single-Family and Multi-Family Residential uses which are compatible with adjacent Single-Family Residential uses.

VOTE: Yeas, 7
Nays, None
Absent, None

Mr. Currier noted that a protest petition was received on 404 Park which requires a $\frac{3}{4}$ vote of the elected Commission. Mayor Sherman noted that six votes are needed and Commissioner Nickita has recused himself from this item.

MOTION: Motion by Dilgard, seconded by Moore:
To approve the rezoning of Parcel # 1925451021, Known as 404 Park Street, Birmingham, MI. from R-2 Single-Family Residential to TZ1 - Attached Single-Family to allow attached Single-Family and Multi-Family Residential which are compatible with adjacent Single-Family Residential uses.

Commissioner Rinschler stated that if a buffer zone is being created, it should include properties further down Oakland. He stated that he considers rental properties as commercial development.

Mayor Pro Tem Hoff stated that she will not support the motion. She noted that the plans look good, however she has heard from residents who are very unhappy about this.

Mayor Sherman noted that he will not support the motion. If a buffer zone is going to be created, it should be the entire side of the street. He noted that Oakland is an entranceway into the City. Eventually, there may be that transition, but now is not the time.

VOTE: Yeas, 3 (Dilgard, McDaniel, Moore)
Nays, 3 (Hoff, Rinschler, Sherman)

Absent, None
Recusal, 1 (Nickita)

Commissioner Rinschler and Commissioner Dilgard agreed that this should be referred back to the Planning Board based on the discussion.

VI. NEW BUSINESS

09-205-15 PUBLIC HEARING TO CONSIDER THE RENEWAL OF THE SPECIAL ASSESSMENT DISTRICT FOR THE PRINCIPAL SHOPPING DISTRICT

Mayor Sherman opened the Public Hearing to consider the renewal of the special assessment for the Birmingham Principal Shopping District (PSD) at 10:25 PM.

PSD Director Heiney explained that the renewal of the special assessment is not scheduled to be increased. He explained the efforts of the PSD related to business recruitment, special events, beautification and marketing of the downtown. He noted that the PSD is about to launch a new brand.

Commissioner Nickita commented on the exceptional job done by the PSD director, staff, and merchants. The Commission agreed. Commissioner Rinschler noted that it is important to note that the business community funds those special events.

Bill Seklar, CEO of the Community House, expressed that the Community House is fully supportive of the PSD.

Mayor Sherman closed the Public Hearing at 10:33 PM.

MOTION: Motion by Nickita, seconded by Rinschler:
To declare necessity to establish the Birmingham Principal Shopping District for 2015-16, 2016-17, and 2017-18:

WHEREAS, the Birmingham City Commission by Resolution No: 09-205-15, in accordance with the provisions of the Birmingham City Code, provided for a public hearing today, September 21, 2015, to meet and consider any objections to the public improvements contemplated for the Principal Shopping District, and any objections to defraying the cost thereof by special assessment; and

WHEREAS, notice of the public hearing was given pursuant to Chapter 94 of the Birmingham City Code, to each owner or party-in-interest of property to be assessed; and

WHEREAS, at said hearing, all those owners or parties-in-interest or their representatives have been given an opportunity to be heard and to state their objections, if any; and

WHEREAS, the Birmingham City Commission is of the opinion that making the contemplated public improvements and defraying the cost thereof by special assessment is necessary, expedient and advisable; and

WHEREAS, the Birmingham City Commission has decided that it is in the best interest of the City to establish continuing financing for the public improvements for a period of three fiscal years; and

WHEREAS, the Principal Shopping District Board has recommended for properties identified in Downtown Birmingham PSD Assessment Area map (Exhibit A) that the City Commission establish an assessment for all properties included in District 1 and District 1A; and

WHEREAS, City Code and State Law require that the rate for the maximum capped properties be tied to the Inflation Rate Multiplier (formerly known as the Consumer Price Index), as reported October 31 of the prior year; and

WHEREAS, the Principal Shopping District Board has requested the following rates:

YEAR	District 1		District 1A		Max. / Property
	1 st Story	2 nd Story	1 st Story	2 nd Story	
2015-16 (Current fiscal year)	\$.494 (49.4 cents/sq. ft)	\$.196 (19.6 cents/sq. ft.)	\$.247 (24.7 cents/sq. ft.)	\$.096 (9.6 cents/ sq. ft.)	\$15,362
2016-17 (Next Fiscal year)	\$.494 (49.4 cents/sq. ft)	\$.196 (19.6 cents/sq. ft.)	\$.247 (24.7 cents/sq. ft.)	\$.096 (9.6 cents/ sq. ft.)	\$__TBD__**
2017-18	\$.494 (49.4 cents/sq. ft)	\$.196 (19.6 cents/sq. ft.)	\$.247 (24.7 cents/sq. ft.)	\$.096 (9.6 cents/ sq. ft.)	\$__TBD__**

* Rate will be held at 08-09 levels for all three years. **Subsequent increases to the max/property will be tied to the Detroit Consumer Price Index (MCL 125.985(4)).

NOW, THEREFORE BE IT RESOLVED that the Birmingham City Commission determines there is a necessity to make public improvements including the financing of marketing, advertising, promotions, economic development, maintenance, and operation of the Principal Shopping District; and

IT IS FURTHER RESOLVED that the Birmingham City Commission determine a special assessment district shall be established for the purpose of making the public improvements and defraying the entire cost thereof. The special assessment district includes the properties in the existing Principal Shopping District assessment rolls (Exhibit B) within the Downtown Birmingham PSD Assessment Area map (Exhibit A), subject to further modification by the City Assessor as presented at the hearing of confirmation.

IT IS FURTHER RESOLVED that the assessment shall be established for 2015-16, 2016-17, 2017-18.

IT IS FURTHER RESOLVED that the city manager or designee is directed to prepare special assessment rolls each year beginning with 2015-16, which shall describe all parcels of land to be specifically assessed, adjust for physical improvements to the structure, and reflect the names of the owners thereof, if known, and the total amount to be assessed against each parcel of land included in District 1 and District 1A for one year at a time.

However, the square foot area of all privately owned parking decks located in any district where the properties are subject to this special assessment shall not be assessed. Property owners except as provided hereafter, who are exempt from ad valorem taxes shall pay forty percent (40%) of the appropriate rate from their district. Property owners

who are religious organizations and federal, state and local government entities, whose properties are exempt from ad valorem taxes, shall be exempt from this special assessment.

IT IS FURTHER RESOLVED that all vacant land parcels have been included in this public hearing of necessity. In the event that vacant parcels become improved during the term of this special assessment district, additional public hearings of confirmation to amend the roll shall be held, and affected property owners shall be notified that they will be assessed as all other like properties in the district.

IT IS FURTHER RESOLVED that in the event that improved parcels in the Principal Shopping District change their building area during the term of this special assessment district, additional public hearings of confirmation to amend the roll shall be held and affected property owners shall be notified of the increase or decrease in the assessment amount resulting from the change in building area.

IT IS FURTHER RESOLVED that the city manager or designee shall sign and certify said assessment roll in accordance with the requirements of Chapter 94 of the Birmingham City Code.

IT IS FURTHER RESOLVED that when the city manager or designee completes the special assessment roll, it shall be filed with the City Clerk for presentation to the Birmingham City Commission for review in a public hearing of confirmation.

VOTE: Yeas, 7
 Nays, None
 Absent, None

Geoffrey Hockman, PSD Board Member, noted that the success of the PSD would not be possible without the support of the City Commission and the City. It has been a partnership and collaboration. On behalf of the PSD Board and merchants, he thanked the Commission for their support.

**09-206-15 PUBLIC HEARING TO CONSIDER SPECIAL LAND USE PERMIT
 FOR MITCHELL'S FISH MARKET, 117 WILLITS**

Deputy Chief Clemence explained that RHG Fish Market was purchased by Mitchell's Entertainment Inc. The proposed resolution must be corrected to reflect the name change from RHG Fish Market to Mitchell's Entertainment, Inc.

Deputy Chief Clemence confirmed for Mayor Pro Tem Hoff that Cameron's and Mitchell's operate under one license. He stated that the second license is an escrowed license. Cameron's and Mitchell's will have two separate licenses with the same owners on each license. The Palladium is on the current license and will be removed. He noted that this applies to Item C.

Deputy Chief Clemence noted that in Item D, the resolution states that there are two co-licensees on the escrowed license, which is not accurate. RHG Fish Market is the sole licensee of that license. He noted that Palladium 3 is not on that license.

Mayor Sherman opened the Public Hearing to consider approving the Final Site Plan and Special Land Use Permit – Mitchell's Fish Market, 117 Willits, at 10:40 PM.

Planning Director Ecker explained that no changes are proposed to the layout, name, and signage.

The Mayor closed the Public Hearing at 10:41 PM.

MOTION: Motion by Rinschler, seconded by Nickita:
To approve the Final Site Plan and Special Land Use Permit for Mitchell's Fish Market at 117 Willits to approve the transfer in ownership of the existing liquor license from the current owners, Palladium Restaurant III, LLC and RHG Fish Market Inc. to Willits Co- License LLC and Mitchell's Entertainment, Inc.:

WHEREAS, Mitchell's Fish Market filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a restaurant with alcoholic beverage sales for on-premise consumption under 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 Willits between N. Old Woodward and Bates Street;

WHEREAS, The land is zoned B-4 and D-4, and is located within the Downtown Birmingham Overlay District, which permits restaurants with alcoholic beverage sales 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, No site plan or design changes are proposed to the existing Mitchell's Fish Market at 117 Willits;

WHEREAS, The owner of Mitchell's Fish Market, Palladium Restaurant III, LLC and RHG Fish Market Inc. is now requesting approval of the Birmingham City Commission to allow the transfer in ownership of the liquor license from Palladium Restaurant III, LLC and RHG Fish Market Inc. to Willits Co-License LLC and Mitchell's Entertainment, Inc.;

WHEREAS, The Birmingham City Commission has reviewed Mitchell's Fish Market 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 Mitchell's Fish Market application for a Special Land Use Permit authorizing the operation of a establishment with alcoholic beverage sales (on-premise consumption) at 117 Willits Avenue 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. Mitchell's Fish Market 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; and
3. Mitchell's Fish Market enter into a contract with the City outlining the details of the proposed restaurant.

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, Mitchell's Fish Market 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 Mitchell's Fish Market to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**09-207-15 LIQUOR LICENSE TRANSFER OF OWNERSHIP
 115-117 WILLITS**

MOTION: Motion by Rinschler, seconded by McDaniel:
 To approve the liquor license transfer of ownership of Class C License and SDM Liquor Licenses, BID # 110557, with Sunday Sales permit (AM and PM), New Official permit (Food), and (1) Additional Bar Permit for a Total of (2) Bars from Palladium Restaurant III, LLC and Mitchell's Entertainment, Inc. to Willits Co-License, LLC and Mitchell's Entertainment, Inc. located at 115-117 Willits, Birmingham, MI.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**09-208-15 PUBLIC HEARING TO CONSIDER SPECIAL LAND USE PERMIT
 CAMERON'S STEAKHOUSE, 115 WILLITS**

Mayor Sherman opened the Public Hearing to consider approving the Final Site Plan and Special Land Use Permit – Cameron's Steakhouse, 115 Willits, at 10:41 PM.

Planning Director Ecker explained that no changes are proposed to the layout, name, and signage. She noted that the change to the resolution is to remove Palladium Restaurant III, LLC as the current owner is only RHG Fish Market.

The Mayor closed the Public Hearing at 10:42 PM.

MOTION: Motion by Rinschler, seconded by Dilgard:
 To approve the Final Site Plan and Special Land Use Permit for Cameron's Steakhouse at 115 Willits to approve the transfer in ownership of the existing liquor license from the current owner, RHG Fish Market Inc. to Willits Co-License LLC and Mitchell's Entertainment, Inc.:

WHEREAS, Cameron's Steakhouse filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a restaurant with alcoholic beverage sales for on-premise consumption under 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 Willits between N. Old Woodward and Bates Street;

WHEREAS, The land is zoned B-4 and D-4, and is located within the Downtown Birmingham Overlay District, which permits restaurants with alcoholic beverage sales 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, No site plan or design changes are proposed to the existing Cameron's Steakhouse at 115 Willits;

WHEREAS, The owner of Cameron's Steakhouse and RHG Fish Market Inc. is now requesting approval of the Birmingham City Commission to allow the transfer in ownership of the liquor license from RHG Fish Market Inc. to Willits Co-License LLC and Mitchell's Entertainment, Inc.;

WHEREAS, The Birmingham City Commission has reviewed Cameron's Steakhouse 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 Cameron's Steakhouse application for a Special Land Use Permit authorizing the operation of a establishment with alcoholic beverage sales (on-premise consumption) at 115 Willits Avenue 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. Cameron's Steakhouse 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; and
3. Cameron's Steakhouse enter into a contract with the City outlining the details of the proposed restaurant.

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, Cameron's Steakhouse 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 Cameron's Steakhouse to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7
Nays, None
Absent, None

**09-209-15 LIQUOR LICENSE TRANSFER OF OWNERSHIP
115 WILLITS**

MOTION: Motion by Rinschler, seconded by Hoff:
To approve the liquor license transfer of ownership of Class C and SDM Liquor Licenses with Sunday Sales Permit (AM and PM) and Catering Permit from RHG Fish Market, Inc. to Willits Co-License, LLC and Mitchell's Entertainment, Inc. located at 115 Willits, Birmingham, Michigan (Request I.D. No. 801993). Furthermore, pursuant to Birmingham City Ordinance, authorizing the city clerk to complete the Local Approval Notice at the request of Willits Co-License, LLC transferring ownership of Class C and SDM Liquor Licenses with Sunday Sales Permit (AM and PM) and Catering Permit from RHG Fish Market, Inc. to Willits Co-License, LLC and Mitchell's Entertainment, Inc. located at 115 Willits, Birmingham, Michigan (Request I.D. No. 801993)

VOTE: Yeas, 7
Nays, None
Absent, None

**09-210-15 PUBLIC HEARING TO CONSIDER SPECIAL LAND USE PERMIT
LA STRADA CAFFE, 243 EAST MERRILL**

Mayor Sherman opened the Public Hearing to consider approving the Final Site Plan and Special Land Use Permit – La Strada Caffe, 243 E. Merrill, at 10:43 PM.

Planner Baka explained the proposal to add a bistro license to the business that is currently under construction. He noted that the applicant is only proposing to add wine and champagne to the menu, not liquor or beer. He explained the layout which includes forty-three seats with outdoor dining on private property.

Zharko Palushaj, applicant, confirmed for Mayor Pro Tem Hoff that patrons will not be allowed to take their cocktail into the nail salon next door.

The Mayor closed the Public Hearing at 10:52 PM.

MOTION: Motion by Rinschler, seconded by Nickita:
To approve the Final Site Plan and Special Land Use Permit for 243 E. Merrill–La Strada Caffe, to allow the operation of a new bistro:

WHEREAS, La Strada Caffe 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 north side of Merrill Street between S. Old Woodward and Pierce;

WHEREAS, The land is zoned B-4 with a D-4 overlay, and is located within the Downtown Overlay District, which permits bistros with a Special Land Use Permit;

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

WHEREAS, The Planning Board on July 22, 2015 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 license agreement with the City, and to provide the required insurance. Liquor liability insurance will also be required for the service of liquor as well as an Outdoor Dining Permit;
2. The applicant provide a trash receptacle within the outdoor dining area as required by the Zoning Ordinance; and
3. The applicant must provide specifications and layout of the outdoor dining enclosure.

WHEREAS, The applicant has committed to comply with all conditions for approval as recommended by the Planning Board on July 22, 2015;

WHEREAS, The Birmingham City Commission has reviewed the La Strada Caffe 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 La Strada Caffe's application for a Special Land Use Permit authorizing the operation of a bistro at 243 E. Merrill 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. La Strada Caffe shall abide by all provisions of the Birmingham City Code;
2. The Special Land Use Permit Amendment 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 12:00 a.m.;
4. La Strada Caffe 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;
5. La Strada Caffe 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.

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 Caffe 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 Caffe to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**09-211-15 MULTI-MODAL TRANSPORTATION BOARD RECOMMENDATION
 SOUTH ETON BETWEEN VILLA AVE AND LINCOLN AVE**

The Commission agreed to postpone consideration of this item to the next meeting.

**09-212-15 NO PARKING SIGNS
 SOUTH SIDE OF COLE, EAST OF COMMERCE**

Deputy Chief Clemence explained that the Multi-Modal Transportation Board (MMTB) received a petition from the patrons and residents in the area of Commerce and Cole requesting a 24-hour no parking zone on the south side of Cole between Commerce and the dead end. He noted that there has been trouble with delivery trucks getting to and from the location.

Deputy Chief Clemence confirmed for Mayor Pro Tem Hoff that the employees are parking on the street. He noted that the businesses will have to make better use of their own on-site parking for their employees. He pointed out that there is a lot across the street that could be utilized as well.

In response to a question by Commissioner McDaniel, City Manager Valentine explained that the MMTB makes recommendations. The action to restrict parking has to be approved by the City Commission.

Commissioner Rinschler questioned the reason for the 24-hour restriction. Deputy Chief Clemence responded that many trucks with their early morning delivery are having a hard time maneuvering their trucks and block the street.

Commissioner Nickita noted that the reason for the request is due to the truck traffic. He noted that street parking is part of the general City use. He suggested there be some level of criteria or justification for these requests. He requested the MMTB be more specific about what the issue is and the reasoning behind the recommendations.

MOTION: Motion by Rinschler, seconded by Dilgard:

To approve the installation of no parking signs on the south side of Cole Street, east of Commerce at all times. Further, directing the Chief of Police and the City Clerk to sign the traffic control order on behalf of the City establishing no parking on Cole Street, east of Commerce at all times.

VOTE: Yeas, 7
 Nays, None
 Absent, None

09-213-15 PARKS AND RECREATION DONOR POLICY

The Commission agreed to postpone consideration of this item to the next meeting.

09-214-15 CERTIFICATION OF COMPLIANCE WITH THE

STATE OF MICHIGAN PUBLIC ACT 152 OF 2011

Mayor Sherman explained that Public Act 152 of 2011 requires the City to select an option regarding healthcare. He noted that in the past the City has exempted itself from the requirement.

MOTION: Motion by Rinschler, seconded by Hoff:

To authorize the City's compliance with the provisions of the State of Michigan Public Act 152 of 2011, by exercising the City's option to exempt itself from the requirements of the Act; and further, directing the Finance Director to submit the required form with the Michigan Department of Transportation.

VOTE: Yeas, 7
Nays, None
Absent, None

**09-215-15 CLOSED SESSION REQUEST
ATTORNEY/CLIENT PRIVILEGE COMMUNICATION**

MOTION: Motion by Hoff, seconded by Nickita:

To meet in closed session to discuss an attorney/client privilege communication in accordance with Section 8(h) of the Open Meetings Act.

ROLL CALL VOTE: Yeas, Mayor Pro Tem Hoff
Commissioner McDaniel
Commissioner Moore
Commissioner Nickita
Commissioner Rinschler
Commissioner Dilgard
Mayor Sherman
Nays, None
Absent, None
Abstentions, None

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

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

X. REPORTS

09-216-15 COMMISSIONER REPORTS

The Commission intends to appoint members to the Board of Zoning Appeals on October 12, 2015.

09-217-15 COMMISSIONER COMMENTS

Commissioner Rinschler suggested referring a question to the Board of Ethics regarding current versus non-current conflicts regarding recusal. He expressed concern that it is a slippery slope

if potential future conflicts or past clients are the reason for recusal. The Commission agreed to refer the question to the Board of Ethics.

Commissioner Nickita noted that the City did not win the Community Excellence Award from the Michigan Municipal League. He noted that it was a seven minute long presentation with five minutes of questions and answers. Commissioner Moore stated that this is the first time the City was selected as a finalist.

09-218-15 CITY STAFF REPORTS

The Commission received an update regarding the DNR Forestry Grant for tree planting submitted by DPS Director Wood.

The Commission received an update regarding Crestview Subdivision Backyard Water Main Abandonment submitted by City Engineer O'Meara.

The Commission recessed to closed session at 11:07 PM.
The Commission reconvened in open session at 11:18 PM.

XI. ADJOURN

The Mayor adjourned the meeting at 11:18 PM.

Laura M. Pierce
City Clerk