

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

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

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

Administration: City Manager Valentine, City Attorney Currier, IT Manager Brunk, Assistant City Planner Campbell, Police Chief Clemence, Planning Director Ecker, Public Services Manager Filipski, Director of Finance/Treasurer Gerber, Assistant to the City Manager Haines, Building Official Johnson, Deputy Treasurer Klobucar, City Clerk Mynsberge, City Engineer O'Meara, Museum Director Pielack, Director of Public Services Wood

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

County Commissioner Goodman Taub, representing both Oakland County and Birmingham Youth Assistance (BYA) honored Commissioner DeWeese as BYA Champion of the Year for his photography work on behalf of the organization.

Museum Director Pielack presented the opportunity for people with a connection to Birmingham to participate in a crowd-sourced exhibit to honor the Bicentennial of Birmingham. Submission forms for information, stories, photos and artifacts are available online and at the Birmingham Museum.

Mayor Harris congratulated Commissioner DeWeese who is one of 40 people worldwide appointed to the World Para Athletics International Officials Panel for the next four years. With this distinction, Commissioner DeWeese will serve with top para athletic officials in the world and oversee all major para-athletic competitions worldwide.

Mayor Harris announced:

- The Santa House will be open for visitors on select days through December 24th in the pavilion area in Shain Park. And you can enjoy the beauty of downtown Birmingham aglow for the holidays on a quaint carriage ride through town. The complimentary

carriages are first-come first-served; carriages load at the corner of Henrietta & Merrill near Shain Park. Visit www.enjoybirmingham.com for the Santa House and carriage ride schedules.

- The City of Birmingham has scheduled a public review period for all interested parties to review the draft 2018 Parks and Recreation Master Plan for the City of Birmingham, Oakland County, Michigan which will be available for review and comment for 30 days beginning Monday, December 4, 2017 at the following locations during regular business hours: Birmingham Municipal Building, Birmingham Department of Public Services, Birmingham Ice Arena, and Birmingham Baldwin Public Library. The draft plan is also available for review on the following website: bhamgov.org/ParksRecPlan.
- City offices will be closed on Friday, December 22nd, Friday, December 29th, 2017 and Monday, January 1st, 2018. The locked dropbox may be used for all payments during that time, and can be accessed in the Municipal Building parking lot (entrance on Henrietta).

12-327-17 APPOINTMENT TO THE HISTORIC DISTRICT COMMISSION

Adam Charles, currently an alternate member of the Historic District Commission, was present and was interviewed by the Commission.

MOTION: Motion by Commissioner Boutros:

To appoint Adam Charles to the Historic District Commission as a regular member to serve the remainder of a three-year term to expire September 25, 2018.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

12-328-17 APPOINTMENT OF COMMISSION MEMBER TO THE BIRMINGHAM YOUTH ASSISTANCE GENERAL CITIZENS COMMITTEE

City Manager Valentine referenced the November 21, 2017 letter from Jill Fill, Birmingham Youth Assistance (BYA) Co-Chair, and Shelley Goodman Taub, BYA Co-Chair, respectfully requesting the Birmingham City Commission appoint one of its members to serve as a liaison member on the BYA General Citizens Committee. He noted the BYA Board has reviewed the City of Birmingham Board of Ethics Advisory Opinion 2016-03 regarding relationships for commission appointments to outside agencies.

City Manager Valentine confirmed for Commissioner Hoff that the position is a non-voting member of the BYA, can report back to the commission and can vote as a City Commissioner.

MOTION: Motion by Commissioner DeWeese:

To appoint Commissioner Boutros as a liaison member of the Birmingham Youth Assistance General Citizens Committee.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

The City Clerk administered the Oath of Office to the appointees.

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.

12-329-17 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Mayor Pro Tem Bordman: Item A, City Commission Minutes of December 4, 2017
- Commissioner Hoff: Item F, Cape Seal Price Extension
Item G, Permeable Paver Installation

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Sherman:
To approve the Consent Agenda, with Items A, F and G removed.

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

- B. Approval of warrant list, including Automated Clearing House payments, dated 12/6/17 in the amount of \$393,575.66.
- C. Resolution setting Monday, January 22, 2018 at 7:30 PM for a public hearing to consider an application for a Special Land Use Permit Amendment and Final Site Plan for First Presbyterian Church at 1669 W. Maple.
- D. Resolution authorizing the IT department to purchase the Traps Anti-Virus subscription renewal from CDWG. The purchase price not to exceed \$6,864.00. Funds are available in the IT Computer Software fund account # 636-228.000-742.0000.
- E. Resolution authorizing the IT department to purchase the Security subscription renewal for the Palo Alto Firewall from Amerinet. The purchase price not to exceed \$12,857.60. Funds are available in the IT Network Upgrade fund account # 636-228.000-973.0400.

12-330-17 SERVICE AGREEMENT EXTENSION WITH HIGHWAY MAINTENANCE AND CONSTRUCTION, INC. FOR CAPE SEAL MAINTENANCE SERVICES RELATED TO THE 2018 SUMMER CAPE SEAL PROGRAM (ITEM F)

Public Services Manager Filipski confirmed for Commissioner Hoff that approximately eight streets are planned for cape sealing in the Quarton Lake area in 2018. He continued that informational letters were sent to every household affected by the improvements, and a community meeting on the project is planned for February.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To approve the service agreement extension with Highway Maintenance & Construction, Inc. for cape seal maintenance services related to the 2018 summer cape seal program – contingent

upon the results of the related public hearing of necessity and confirmation of the special assessment roll – in amounts not to exceed the per-unit pricing as submitted and as follows: single chip seal \$1.70/sq. yd., double-chip seal \$3.13/sq. yd., slurry seal \$2.61/sq. yd., street preparation \$395/ton, and manhole adjustment \$550/each; further, directing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of proper insurances.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

12-331-17 AGREEMENT WITH AGROSCAPING, INC. FOR THE PURCHASE AND INSTALLATION OF PERMEABLE PAVERS (ITEM G)

Public Services Manager Filipski confirmed for Commissioner Hoff that:

- No sidewalks will be covered by the permeable pavers, only the grass areas.
- The permeable pavers are not a trip hazard because they will be level with the sidewalk.
- The tiles distribute the weight of a vehicle tire evenly, thus preventing the rutting that sometimes currently occurs when vehicles roll over the sod in the intersection.
- This would be the first installation of these permeable pavers in Birmingham.

Commissioner DeWeese stated that he has seen this in practice in other municipalities to good results.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Bordman:
To approve the service agreement with Agroscaping, Inc. of Swartz Creek, MI for the purchase and installation of permeable pavers at the intersection of Lincoln and Pierce streets in an amount not to exceed \$8250.00 from the Local Streets Fund, Contract Maintenance account #203-449.003-937.0400.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

12-332-17 APPROVAL OF CITY COMMISSION MEETING MINUTES OF DECEMBER 4, 2017 (ITEM A)

Mayor Pro Tem Bordman asked City Clerk Mynsberge to review the crosswalk discussion within the Commissioner Comments section and then to return the minutes to the Commission.

Commissioner Hoff requested that the name of the President of the Bloomfield Birmingham Chamber of Commerce be corrected to Mr. Bauman.

V. UNFINISHED BUSINESS

None.

VI. NEW BUSINESS

12-333-17 PUBLIC HEARING TO CONSIDER A SPECIAL LAND USE PERMIT AMENDMENT AND FINAL SITE PLAN FOR 210 S. OLD WOODWARD - VINOTECCA

Mayor Harris opened the public hearing at 7:54 p.m.

From Planning Director Ecker's report to City Manager Valentine dated December 5, 2017:

The subject business is located at 210 S. Old Woodward Avenue in the southern portion of The Plaza at Birmingham building, just south of Merrill Street. The applicant is the current owner of the restaurant on site, The Bird and the Bread, and intends to change the name and concept of the current restaurant into Vinoteca, which will serve wine in conjunction with a European food focus. According to Section 6 Article 6.02(A)(5) of the Zoning Ordinance, existing and new establishments with alcoholic beverage sales shall obtain a Special Land Use Permit upon change in ownership or name of establishment.

The parcel is Zoned B-4, Business Residential and D-4 in the Downtown Overlay District. The applicant is proposing new signage and minor remodeling for the interior that includes the construction of a stage for low key entertainment. The applicant will be operating with the existing Class C liquor license controlled by the property owner which is currently in use by The Bird and the Bread.

The Planning Board met on November 8th, 2017, conducted a public hearing to discuss the Final Site Plan and Special Land Use Permit Review for 210 S. Old Woodward, and voted unanimously to recommend approval of the Special Land Use Permit and Final Site Plan with the following conditions:

1. The applicant obtains approval from the Historic District Commission; and
2. The proposed isinglass is not considered a part of the Final Site Plan and SLUP approval.

The Historic District Commission met on November 15, 2017 and conducted a public hearing to discuss the Final Site Plan and Special Land Use Permit Review for 210 S. Old Woodward. The Historic District Commission approved the proposed changes with the exception of the isinglass enclosure, however they did note that it would be reasonable to put up isinglass or similar material during the construction phase next door to prevent dust and debris from affecting the site.

As The Bird and the Bread (Vinoteca) currently holds an entertainment permit, live entertainment is permitted within the establishment. However, given previous concerns raised by the City Commission regarding the use of DJs and other types of entertainment, the draft SLUP resolution contains additional entertainment provisions that the City Commission may wish to consider adopting.

City Planner Ecker verified for:

- Commission Nickita that the outdoor dining area would be adjacent to a pedestrian walk, not adjacent to a building.
- Commissioner Hoff that the outdoor area would continue to be used in warm weather as it is now, not all year.

City Attorney Currier clarified for Mayor Harris that the current entertainment permit allows music but not dancing.

Ms. Jonna, co-applicant, stated that Vinoteca will be a bit more upscale than The Bird and the Bread, more tapas-oriented, and that the Elm Room will continue operations in the back.

City Manager Valentine explained to Ms. Jonna that new language was added to the SLUP's entertainment endorsement on the liquor license due to previous concerns regarding entertainment licenses within the City. He continued that the new language will be citywide and provides guidelines on entertainment, including the type and timing permitted.

Mayor Harris explained to Ms. Jonna that the proposed amendment being added to her entertainment endorsement requires no disc jockey entertainment after 7 p.m. any day of the week.

Ms. Jonna replied that prohibiting DJs after 7 p.m. would be very detrimental to business because:

- The banquet facility in the back needs to offer DJ services to guests that extend beyond 7 p.m. in order to function.
- Even if private events were excluded from the amendment, it would still be prohibitively limiting in the front-of-house.
- This prohibition would only be included in new SLUPs, which would put some businesses at a severe disadvantage relative to others.
- Ending at 7 p.m. would not reflect contemporary practices.
- Music has been an integral part of The Bird and the Bread, and now Vinoteca, from their respective beginnings.

She continued that The Bird and the Bread has operated music-oriented evenings for years with only positive results.

Ms. Jonna explained to Commissioner Hoff that:

- The signage would glow slightly red at night.
- Changing The Bird and the Bread over to Vinoteca allows Vintage LLC. to operate two similar-in-concept establishments, the other being Vinology in Ann Arbor, as opposed to two different-concept establishments. Vinology has been in operation for ten years.
- Co-applicant Dave Eifrid is Ms. Jonna's husband.
- The live-music focus will be mostly trios playing "laid-back and sophisticated" jazz and blues.
- The Bird and the Bread's operation in Birmingham has been entirely without incident, and Vinoteca will continue in the same manner.
- Vinoteca diversifies options available to individuals looking to spend an evening out in Birmingham.
- Since Birmingham is not a late-night market, Vinoteca's likely closing hours would be between 1 a.m. and 2 a.m. on weekends.
- While during the summer there may be short lunch service, within the first year Vinoteca will focus on dinner and brunch. They may later expand their lunch service.

Ms. Jonna compared Vinology and Vinoteca for Commissioner DeWeese, explaining that:

- Vinology mostly draws women in the 25 to 55 age range while Vinoteca is estimated to draw women ages 30 to 55.
- Vinology has 7500 sq. ft. with seating on two levels while Vinoteca will have a more intimate dining area.

- Vinology is world cuisine while Vinoteca will be European-focused.

Ms. Jonna described The Bird and the Bread's salsa night for Commissioner Sherman:

- Some tables are cleared from the front on Sunday nights;
- A DJ spins Latin music, with accompaniment from a live percussionist;
- There is a \$20 cover which includes a drink or tapas;
- The age range of the Commission reflects the average age range of the attendees; and
- The evening concludes at 9 p.m.

There being no further comments, Mayor Harris closed the public hearing at 8:18 p.m.

City Manager Valentine clarified for:

- Commissioner Hoff that the prohibition of DJs after 7 p.m. would be the template for entertainment endorsement licenses going forward, but would not apply to live music.
- Commissioner DeWeese that if a SLUP is violated, the Commission can:
 - Set a public hearing;
 - Request the applicant attend; and,
 - Formulate a Commission response to the SLUP violation post-hearing.
- Commissioner DeWeese that the proposed 7 p.m. end can be modified by the Commission.

City Attorney Currier also responded to Commissioner DeWeese, saying that the Commission can also call upon the Alcoholic Liquors section of the City's Code of Ordinances which includes processes for enforcement, licensing, denying a license or revoking a license for establishments. He continued that the City can pull a SLUP, reference a contractual violation, and revoke or prevent renewal of a liquor license in order to address issues with establishments.

Commissioner Sherman explained that:

- The new DJ rules were created after issues with South and Blue Martini.
- Some restrictions are necessary, but 7 p.m. is too early a cutoff time.
- Some other options might be cover charges, ending valet service at midnight, or allowing private parties to go later.
- The Commission can craft something that addresses the concerns of the restaurateurs while also protecting the interests of the community.

Commissioner Nickita stated that:

- The Commission seeks balance;
- The Commission changed SLUPs and relevant ordinances after the previous incidents with Birmingham establishments; and,
- The SLUP should be made specific enough that the Commission can act easily when necessary.

Ms. Jonna told Mayor Pro Tem Bordman that a midnight cutoff could work if it excluded private events. Ms. Jonna then reiterated that her businesses have already been negatively affected by the disapproval of their isinglass proposal, and that if the SLUP modifications only apply to businesses moving forward, many businesses will end up being at an unfair disadvantage relative to previously licensed businesses.

Commissioner Boutros stated that:

- Birmingham does not want nightclubs.
- Issues tend to arise after 1 a.m. or 1:30 a.m, not midnight.
- If Vinoteca will be like Vinology in Ann Arbor, he does not see any problem with Vinoteca. He believes Vinology has worked very well.
- The Commission needs to be mindful of creating language within SLUPs that allows them to deal with potential problems going forward, even if Vinoteca is unlikely to pose a problem.
- The cutoff for DJs should be extended to 1 a.m., with the exception of private parties in the banquet facility.

Commissioner DeWeese said:

- He would like to see the DJ cutoff time be midnight for the front of house, and 1 a.m. for the banquet facility.
- The Commission possesses much better tools for immediate response to incidents than it has in the past.
- This should not be passed until the wording is crafted by the City Attorney and staff.
- The cutoff time could be extended after a track record is established, and the applicant has a good history with the City.
- He would be willing to show more leniency and support for the applicant due to the good history.

Commissioner Sherman observed a seeming Commission consensus around a front-of-house DJ end-time of midnight, and a private party end-time of 1 a.m.

Mayor Harris stated that while it is good to protect the City's safety interests, it is unfair to impose stringent requirements on an applicant with a stellar track-record.

Commissioner Hoff said that if the music is managed well, she sees no problem.

Commissioner Nickita said that:

- There is a difference between private parties and marketed, recurring events. The latter is more of a concern.
- The SLUP should clearly specify what a violation entails.

Mayor Harris:

- Agreed with Commissioner Nickita that the Commission needs room to act.
- Continued that the Commission's ability to revoke a SLUP found not to be in the public's interest is sufficient.
- Finished that he does not believe the amendment should get more specific, and asked City Attorney Currier for input.

City Attorney Currier called the Commission's attention to the first "Be it further resolved..." section of the proposed resolution, and suggested the following edits:

- Paragraph #1 should read "Vinoteca shall be permitted to provide entertainment in those areas of the premises open to the general public, in accordance with their entertainment permit issued by the MLCC except that no disc jockey entertainment shall be permitted after ___ on any day of the week."

- Paragraph #2 should read "Vinoteca shall be permitted to provide entertainment for private parties in areas of the premises not open to the general public, in accordance with their entertainment permit issued by the MLCC except that no disc jockey entertainment shall be permitted after ___ on any day of the week.
- Paragraph #3, which begins "Vinoteca shall abide by all provisions of the Birmingham City Code," is fine as is.
- Paragraph #4 should read "The Special Land Use Permit may be cancelled by the City Commission upon finding that the continued use is not in the public interest, including but not limited to a violation of the Special Land Use Permit, the contract, the Birmingham City Code, or State Law."

Commissioner Boutros stated that he does not see a need to impose a time limit since the fourth paragraph sufficiently addresses the Commission's concerns.

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Harris:

To approve the Special Land Use Permit Amendment for 210 S. Old Woodward with the following changes to the numbered sub-sections of the 13th paragraph of the formal Resolution:

- Section #1 to read "Vinoteca shall be permitted to provide entertainment in those areas of the premises open to the general public, in accordance with their entertainment permit used issued by the MLCC except that no disc jockey entertainment shall be permitted after 12 a.m. on any day of the week.
- Section #2 to read "Vinoteca shall be permitted to provide entertainment for private parties in areas of the premises not open to the general public, in accordance with their entertainment permit used issued by the MLCC except that no disc jockey entertainment shall be permitted after 2 a.m. on any day of the week.
- Section #3 "Vinoteca shall abide by all provisions of the Birmingham City Code," remains as proposed.
- Section #4 to read "The Special Land Use Permit may be cancelled by the City Commission upon finding that the continued use is not in the public interest, including but not limited to a violation of the Special Land Use Permit, the contract, the Birmingham City Code, or State Law."

Commissioners Sherman and Hoff stated they would like to see City Attorney Currier's changes in writing.

Mayor Pro Tem Bordman supported Commissioner Sherman's request for a definition of "private party" in the SLUP agreement.

Commissioner Hoff echoed Commissioner Nickita's support for more specific language within the SLUP regarding conditions under which the Commission can revoke the SLUP.

City Attorney Currier stated the Commission can re-open the public hearing for the purpose of continuing it to the January 8, 2018 meeting.

Commissioner Nickita reiterated the need for specific criteria within the SLUP that clarify when a violation has occurred, both for the benefit of the City and the business in question.

VOTE: Yeas, 0
 Nays, 7
 Absent, 0

Mayor Harris reopened the public hearing at 9:04 p.m.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Bordman:
To continue until January 8, 2018 the public hearing for a Special Land Use Permit Amendment and Final Site Plan for 210 S. Old Woodward – Vinotecca, with direction to staff to revise the Special Land Use Permit Amendment incorporating:

1. The following changes to the numbered sub-sections of the 13th paragraph of the formal Resolution:

- Section #1 to read “Vinotecca shall be permitted to provide entertainment in those areas of the premises open to the general public, in accordance with their entertainment permit used issued by the MLCC except that no disc jockey entertainment shall be permitted after 12 a.m. on any day of the week.
- Section #2 to read “Vinotecca shall be permitted to provide entertainment for private parties in areas of the premises not open to the general public, in accordance with their entertainment permit used issued by the MLCC except that no disc jockey entertainment shall be permitted after 2 a.m. on any day of the week.
- Section #3 “Vinotecca shall abide by all provisions of the Birmingham City Code,” remains as proposed.
- Section #4 to read “The Special Land Use Permit may be cancelled by the City Commission upon finding that the continued use is not in the public interest, including but not limited to a violation of the Special Land Use Permit, the contract, the Birmingham City Code, or State Law.”

2. A definition of “private party” within the SLUP Agreement.
3. An agreement on the times disc jockey entertainment should conclude.

City Attorney Currier confirmed for Ms. Jonna that the more specific a SLUP gets, the more difficult it is for the City to act on concerns with a business.

Ms. Jonna stated she would like to see the Commission finish the SLUP Amendment tonight, because delaying work on Vinotecca for a month will have negative financial results for the business. She continued that Vinotecca is amenable to the SLUP Amendment changes proposed by City Attorney Currier this evening.

Kelly Allen, attorney, asked the Commission to confirm that they wanted a definition of “private party”, and a consensus on the times. She continued that the language needs clarification, and that the MLCC has a definition of “private party”, which is “paid for by the host”.

Mayor Harris replied to Ms. Allen that staff should address the definition of “private party” and the entertainment hours to be included in the SLUP.

Commissioner Nickita said the Commission would prefer to conclude the issue tonight, but needs to be clear on what the City is agreeing to in a legal document.

Commissioner DeWeese stated that it is important for the Commission to get the SLUP language correct since it will be referred to as precedent going forward.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

12-334-17 PUBLIC HEARING TO CONSIDER A SPECIAL LAND USE PERMIT AMENDMENT AND FINAL SITE PLAN FOR 220 RESTAURANT AT 220 E. MERRILL

Commissioner Nickita recused himself due to a current business association with members of the applicant team. Commissioner Sherman recused himself based on a conversation with the City Attorney.

Commissioner Hoff observed that this issue is very similar to the previous one regarding Vinoteca.

Mayor Pro Tem Bordman stated she would still like to hear the presentation from Planning Director Ecker.

Commissioner DeWeese said that he would like to hear the presentation, but believes the Commission should continue the public hearing until January 8, 2018 to answer in the interim any questions that arise.

From Planning Director Ecker's report to City Manager Valentine dated December 5, 2017:

The subject property at 220 E. Merrill is located in the B4 Business Residential zone district. The B4 zone lists food and drink establishments as a permitted use requiring a Special Land Use Permit (SLUP). The applicant was approved for a SLUP by the City Commission on March 10, 2014.

The applicant is now requesting an amendment to the existing SLUP to allow them to utilize the lower level of the building, formerly known as "Edison's" for special events, private parties, and the public as an extension to 220 Restaurant on the first floor. The applicant has indicated that the proposed lower level of 220 Restaurant will offer a food menu (the same as that offered on the main floor of the existing restaurant) and will host low-key entertainment, such as jazz music and piano music, in the space. Business hours would be the same as those of the main restaurant. The existing 220 Restaurant currently holds an entertainment permit from the Michigan Liquor Control Commission. According to the Michigan Liquor Control Code, Administrative Rules and Related Laws, Article 436.1915, Section 916:

An on-premises licensee shall not allow monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing on the licensed premises unless the licensee has applied for and been granted

an entertainment permit by the commission. Issuance of an entertainment permit under this subsection does not allow topless activity on the licensed premises.

As 220 Restaurant currently holds an entertainment permit, the low-key live entertainment proposed would be permitted within the establishment. However, given previous concerns raised by the City Commission regarding the use of DJ's and other types of entertainment, the draft SLUP resolution contains additional entertainment provisions that the City Commission may wish to consider adopting.

The applicant appeared before the Planning Board on November 8, 2017 and received a recommendation for approval. As there are no exterior changes proposed to the historic structure they are not required to obtain approval from the Historic District Commission.

The City Commission set a public hearing date for December 11, 2017 to consider an application for a Special Land Use Permit ("SLUP") Amendment and Final Site Plan for 220 Restaurant at 220 E. Merrill.

Zaid Elia, applicant, clarified for:

- Commissioner Hoff that:
 - There is ingress/egress on the east and west sides of the property, and an entrance from the main level via elevator on the west side of the property.
 - Food will be served at the bar.
 - 220 Restaurant entertainment plans entail live entertainment, private parties and DJs at different times.
- Commissioner Boutros that zero structural changes are being proposed.
- Mayor Pro Tem Bordman that patrons come in through the side door.
- Commissioner DeWeese that 220 Restaurant would like DJs to be permitted after 7 p.m.

Ms. Allen suggested that entertainment end times be determined by function, not room. A private party would be paid for by the host and closed to the public.

Commissioner DeWeese replied to Ms. Allen that there needs to be a difference in the SLUP between a private party that occupies part of the space in 220 Restaurant, and one that occupies the whole space.

Ms. Allen confirmed her belief for Commissioner Boutros that the City should have discretion in determining entertainment cutoff times.

Mayor Pro Tem Bordman stated that she would like the street tree-issue resolved before January 8, 2018.

Planning Director Ecker told Commissioner Hoff that a readable set of floor plans for the Fire Department are included on paragraph 7 of the SLUP resolution.

Ms. Allen stated that she would like to see an across-the-board entertainment end time of 1 a.m.

Mr. Elia said he:

- Disagrees with Ms. Allen because he prefers no stated entertainment end-time.
- Would like to see the City Attorney have the discretion to negotiate different contracts with different operators.

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

To continue until January 8, 2018 the public hearing for a Special Land Use Permit Amendment and Final Site Plan for 220 Restaurant at 220 E. Merrill to utilize the lower level of the building as an extension of the 220 Restaurant and to direct staff and the City Attorney to consider revised language regarding entertainment end-times.

VOTE: Yeas, 5
 Nays, 0
 Absent, 0
 Recused, 2 (Nickita, Sherman)

12-335-17 BIRMINGHAM LITTLE LEAGUE DONATION AGREEMENT

From Director of Public Services Wood's report to City Manager Valentine dated December 4, 2017:

The City of Birmingham was approached by the Birmingham Little League earlier this year in February about renovating two ball fields in Kenning Park. Birmingham Little League wishes to make a donation to the City of Birmingham for the renovation and/or redesign of the two easterly Little League baseball fields (Fields 2 and 3).

In turn, the City of Birmingham prepared a Donation Agreement detailing the specifics of such a donation in the amount of \$219,000. Since such time, staff has been working with Johnson Hill Land Ethics Studio (JHLE) to determine optimal layout and estimated costs per field. Find attached a preliminary "draft" of the two field concept layout specific to fields #2 and #3 consistent with the Master Plan. The remaining park fields will continue to function under existing conditions and uses. The estimated costs to renovate the two little league fields is \$302,228. As a result, BLL previously committed to \$219,000 and they were asked to revise their contribution based on the latest cost estimates, for which they have done so in the amount of \$303,000.

If the project is awarded, after bids are received, we anticipate construction to begin after the 2018 baseball season ends and all uses of the City fields at Kenning Park concludes. Based on the proposed schedule, it is our intent to have the two renovated fields ready for play for the start of the 2019 season.

Mayor Harris disclosed he volunteers with Birmingham Little League and that Counsel advised this is not grounds for recusal. The Commission concurred.

Director of Public Services Wood explained to:

- Commissioner Hoff that the Little League is only updating two of the four fields due to funds. The updates should not have any effects on the existing fields.

- Commissioner Nickita that the field located on the southeast side of Kenning Park in the concept plan would not likely be installed due to limited space and funds.
- Commissioner DeWeese that snow would be cleared to the Park's parking lot.
- Commissioner Sherman that fields are reserved by permit applications submitted to the City.

Commissioner DeWeese was concerned that improving these fields with fences would cut into an open field proposed by the Master Plan.

City Manager Valentine clarified for:

- Commissioner DeWeese that none of the Master Plan field proposals would be affected by these changes.
- Commissioner Sherman that all of Kenning Park remains public, despite the donation from a private entity. The Little League receives the first right of refusal if it meets two criteria:
 - The service life of the field, estimated to be twenty years, must be covered by the Little League's investment; and,
 - The Little League must remain the most frequent user of the field based on permits issued.

Director of Public Services Wood stated that Kenning Park is very rarely used for soccer, even when offered to the league.

Mayor Harris opened comments to the public at 10:12 p.m.

Pat O'Neill, President of the Birmingham Little League, clarified:

- For Commissioner DeWeese that there are currently no open fields in Kenning Park.
- Only two ballfields will be renovated due to limited funds.
- Permitting the Little League first right of refusal for twenty years seems fair since all the Little League's assets are going towards this renovation.

Martha Moyer, Mark Secontine, Bryce Mulligan, Wayne Wudyka, James McNulty, Dave Palmeri, and Andy Wilkinson stated their support for the proposed Little League donation.

Mr. Wudyka added that the Birmingham Little League should be publicly recognized in some way for their donation.

Mr. McNulty added that he fears Birmingham may be losing players to municipalities with better fields.

Mr. Palmeri suggested the Commission should think of this more as a public-private partnership since the leadership of the Birmingham Little League has such longevity and is so invested in this change.

Mr. Wilkinson added that it has taken the Birmingham Little League about thirty years to accumulate the \$300,000 being offered to the City, and that the changes being proposed to the fields will aid in their maintenance.

Mayor Harris told Mr. Wudyka that the donation agreement allows Birmingham Little League to install a memorial or a plaque on Fields #2 and #3 should they so choose.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Bordman:
To accept the Donation Agreement between the City of Birmingham and the Birmingham Little League in the amount of \$303,000 for improvements as it relates to Fields #2 and #3 at Kenning Park. Further, to authorize the City Manager to execute the Donation Agreement on behalf of the City.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

12-336-17 48TH DISTRICT COURT 2018 BUDGET

From Director of Finance/Treasurer Gerber's report to City Manager Valentine dated December 1, 2017:

Attached is the proposed 2018 budget for the 48th Judicial District Court. In total, the Court is requesting an operating budget of \$4,670,920 which represents an increase of \$116,360, or 2.55%, from the 2017 budget. Increases are proposed for all the budgeted categories except for court expenses which is proposed to remain the same as the current year.

Salaries: For 2018 salaries are proposed to increase 2% from the 2017 budget.

Benefit Expenses: This budgeted category is proposed to increase by \$29,400, or 2.64% from the 2018 budget. The increase is the result of insurance and pension contributions.

Operating Expenses: For 2018, operating expenses are proposed to increase by \$16,000, or 1.25%. This is primarily the result of an increase in postage of \$11,000 and liability insurance of \$10,000. This was partially offset by a decrease in office supplies of \$5,000

Professional Fees: Overall this budgeted category is proposed to increase by \$31,100, or 31.26, as a result of outsourcing information technology services.

Court Expenses: This category is proposed to proposed to remain the same as 2017 at \$212,000.

Equipment & Capital: Expenditures for this category are proposed to increase by \$5,000, or 4.72%, as a result of an increase in equipment rental of \$1,000 and an increase in equipment maintenance of \$4,000.

In accordance with the 1985 agreement, revenues and Court expenditures are allocated to the four control units, which include the cities of Birmingham and Bloomfield Hills and the townships of Bloomfield and West Bloomfield, in the same proportion as the number of cases arising from each unit. At the end of each calendar year following the Court's audit, an adjustment is made for the difference

between those amounts advanced based on the estimate and the actual caseload of each control unit under the agreement.

The City's percent of total projected caseload for 2017 (27.28%) is higher than 2016's actual caseload percentage (25.42%). Assuming the City funds the Court's 2018 budget at the same percentage as the projected 2017 caseload of 27.28%, the City would advance the Court \$1,274,227. No projected revenues were available from the Court for 2017 or 2018. In calendar year 2016 the City received revenues of 1,071,498 from the Court and was allocated \$1,079,148 in Court expenditures for a net cost of \$7,650.

The Court is undergoing a security assessment and multiple security improvements are being considered. Once a capital improvement program is put together with these projects, a budget amendment is expected sometime next year to address the recommendations in the security assessment.

Judge Barron explained to:

- Commissioner Hoff that three different security assessments have been performed and that the Court may be coming back to the relevant municipalities for a one-time fund request. He continued that the Court anticipates the assessment should be completed prior to the Birmingham budgeting process.
- Mayor Pro Tem Bordman that Bloomfield Township currently funds the majority of the court's budget due to caseload from the municipality.
- Commissioner DeWeese that if the court exceeds its budget, it will return to the Commission to request additional funds.

Commissioner Sherman shared concern that no estimate is provided for the security updates, especially since some of these costs are not unknown. He continued that he would like to see the court administrator work with city managers to implement budgeting best practices.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner DeWeese: To receive the 2018 proposed budget from the 48th Judicial District Court; and further, to approve the budget as submitted.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

12-337-17 PROPOSED SCULPTURE LOAN – WINDSWEPT BY GARY KULAK

Commissioner DeWeese shared his membership in the Friends of Barnum Park, and stated he does not believe it is a conflict of interest. The Commission concurred.

From Assistant City Planner Campbell's report to City Manager Valentine dated December 6, 2017:

On October 23, 2017, City Staff received an application from Gary Kulak to loan his artwork to the City for public display. The artwork titled *Windswept*, is a cardinal red steel chair that stands 8' x 6' x 27' (L x W x H) and weighs 1,200 lbs. At this time, the artist is

proposing the triangular open space formed by three pathways in Barnum Park as the location of the piece. In early October 2017, a circular concrete pad was poured at Barnum Park to accommodate rotating art sculptures. The artist has indicated that *Windswept* will be a 5 year loan.

The subject sculpture has been exhibited in Grand Rapids, MI and Knoxville, TN. The artist explains that the work signifies the human spirit as if looking through a doorway (AKA the Barnum Elementary School entry portal) into a space and space looking back at you. The work creates a positive message of pride when viewed as a gesture moving upward. Further, the work was created for this site and will serve as a guardian and spirit for the park.

It has typically been the practice to provide a "No Climbing" sign and to monitor the park, as the Department of Public Services currently does. Further, if attempts to scale the sculpture become an issue, Vaseline can be applied between 8' and 10' high on the legs to prevent climbing of the sculpture. The Police Chief deferred judgement on the issue to the Public Arts Board and City Commission.

At this time, the artist and all relevant parties on behalf of City administration have signed an Access and Maintenance Agreement for the 5-year loan.

Assistant City Planner Campbell explained to Commissioner Hoff that the cement pad in Barnum Park will remain after *Windswept* leaves, and lighting at night is not currently included in the plans.

Commissioner DeWeese pointed out that Birmingham Police can monitor the sculpture by camera if a concern arises.

Assistant City Planner Campbell confirmed for Commissioner Nickita that:

- The owner will be responsible for transporting and installing the sculpture.
- The pad can hold over 1,200 lbs. of weight.
- The pad has been reviewed for wind-loads.

Mayor Harris stated he would like to know if there have been safety issues with the sculpture in other cities.

Commissioner Sherman pointed out that the City reserves the right to remove the sculpture at any time, for any reason, according to the contract, so he is not as concerned about safety.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:

To approve the recommendations of the Public Arts Board and Parks and Recreation Board to accept a 5 year loan of the sculpture, *Windswept*, by Gary Kulak, and to approve the proposed location for installation in the triangular open space in Barnum Park;

AND

To approve the Access and Maintenance Agreement with Gary Kulak and further directing the Mayor and City Clerk to sign the agreement on behalf of the City;

Cindy Rose stated that:

- This has been a 4½ year process, and thanked Mr. Campbell, Planning Director Ecker and Mr. Valentine for helping installation occur.
- Every sculpture could be considered an attractive nuisance and that if Birmingham is committed to public art it will have to endure that risk.
- She has heard third-hand that the sculpture has not posed problems in other cities.
- A light could be added to the sculpture if need be.

VOTE: Yeas, 6
 Nays, 1 (Boutros)
 Absent, 0

12-338-17 2018 ANNUAL REVIEW OF FEE SCHEDULE

From City Clerk Mynsberge's report to City Manager Valentine dated December 5, 2017:

The fee required to be paid and the amount of any bond required to be posted, or insurance required to be carried, to obtain any license to engage in the operation, conduct or carrying on of any trade, profession, business or privilege for which a license is required by the provisions of the Birmingham City Code is set by the City Commission through the Schedule of Fees, Charges, Bonds and Insurance.

The fee schedule has been reviewed by each department to determine whether amendments are needed to cover the cost for service and processing. The following revisions are proposed.

City Clerk

The City Clerk's Office has proposed the following change:

- Remove Taxicabs (Chapter 122). State law has removed local jurisdictions from the licensing process.

Building Department

The plan review process for new homes, additions, accessory structures and impervious surfaces require site plan and drainage review in accordance with Chapter 22 of the City Code. The fees for these reviews are listed in the Community Development Dept. section of the fee schedule under the heading Site Evaluation. These fees have remained the same for several years and the Engineering Department is requesting they be increased to cover actual costs.

Site Evaluation

- New house fees are proposed to increase from \$150.00 to \$200.00 for a total increase of \$50.00 per review.
- The fee for additions, accessory structures and impervious surfaces is also proposed to increase \$25.00 from \$75.00 to \$100.00 per review. A text change is also proposed here to include impervious surfaces as mentioned in the City Code.

MOTION: Motion by Commissioner Sherman , seconded by Commissioner DeWeese:
To amend the Schedule of Fees, Charges, Bonds and Insurance, City Clerk's section, and Community Development Department section, as stated in the report.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

VII. REMOVED FROM CONSENT AGENDA

The items removed were discussed earlier in the meeting.

VIII. COMMUNICATIONS

None.

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

None.

X. REPORTS

12-339-17 COMMISSIONER COMMENTS

Mayor Pro Tem Bordman explained that in the attendance reports from City boards and committees, it is still unclear whether a 'No Meeting (NM)' designation indicates quorum was not reached, or that no meeting was ever scheduled. If no quorum was reached within the Committee, she would like to know who was available or unavailable for the meeting.

City Manager Valentine asked if there was Commission consensus. Commissioners Sherman and DeWeese suggested that in addition to the 'No Meeting' category, there be a 'Cancelled' category if needed to explain the lack of meeting, and if the meeting is 'Cancelled', then committee members' availability should be recorded as well.

Commissioner Hoff stated that public art is an asset to the City. She expressed disappointment that her favorite piece of public art, which was loaned to the City by the Hill Gallery, was sold from in front of Baldwin Library.

12-340-17 CITY STAFF REPORTS

The Commission received the Principal Shopping District Special Assessment District 870 Funding Report for Fiscal Year 2017-2018 as submitted by Deputy Treasurer Klobucar.

XI. ADJOURN

Mayor Harris adjourned the meeting at 11:07 p.m.

J. Cherilynn Mynsberge, City Clerk