

**CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JUNE 27, 2018**

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**CITY OF BIRMINGHAM
REGULAR MEETING OF THE PLANNING BOARD
WEDNESDAY, JUNE 27, 2018**
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 27, 2018. Chairman Scott Clein convened the meeting at 7:30 p.m.

Present: Chairman Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Janelle Whipple-Boyce; Alternate Board Members Jason Emerine, Nasseem Ramin

Absent: Board Members Daniel Share, Bryan Williams; Student Representatives Madison Dominato, Sam Fogel, Ellie McElroy

Administration: Matthew Baka, Sr. Planner
Jana Ecker, Planning Director
Carole Salutes, Recording Secretary

06-108-18

APPROVAL OF THE MINUTES OF THE REGULAR PLANNING BOARD MEETING OF JUNE 13, 2018

Mr. Jeffares made a correction:

Page 8 - Fourth paragraph from the bottom insert after "of," "office use for business to business."

Motion by Mr. Koseck

Seconded by Mr. Boyle to approve the Minutes of the Regular Planning Board Meeting of June 13, 2018.

Motion carried, 7-0.

VOICE VOTE

Yeas: Koseck, Boyle, Clein, Jeffares, Ramin, Whipple-Boyce

Nays: None

Abstain: Emerine

Absent: Share, Williams

06-109-18

CHAIRPERSON'S COMMENTS (none)

06-110-18

APPROVAL OF THE AGENDA (no change)

06-111-18

**SPECIAL LAND USE PERMIT ("SLUP") AMENDMENT
REVISED FINAL SITE PLAN AND DESIGN REVIEW**

1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit ("SLUP") Amendment to allow the addition of a dance floor to the previously approved restaurant

Mr., Baka recalled that this application has already been approved by the Planning Board and the applicant is coming back for one change. On May 14th, 2018, the applicant went before the City Commission and indicated that they were also proposing to move tables to clear a dance area when needed. The City Commission determined that a dancing area was not in the original scope or shown on the plans; therefore it must be re-reviewed by the Planning Board.

The applicant has submitted a SLUP Amendment application with associated site plans depicting the location and size of a dancing area proposed in their dining room. The dance floor measures 10 ft. by 38 ft. and is located in front of the raised booth seating area.

At 7:32 p.m., there were no comments from the audience on the proposal.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend APPROVAL to the City Commission of the Final Site Plan and SLUP Amendment for 260 N. Old Woodward Ave., The Morrie, to add a dance floor to the previously approved plans with the condition that the applicant comply with Chapter 50, Noise, Division 4.

Motion carried, 7-0.

There were no comments from the public on the motion at 7:35 p.m.

VOICE VOTE

Yeas: Whipple-Boyce, Koseck, Boyle, Clein, Emerine, Jeffares, Ramin

Nays: None

Absent: Share, Williams

06-112-18

2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot

Mr. Baka advised the subject property, located in the Rail District, is a 0.77 acre site currently containing a single-story commercial building and a parking lot. The applicant is proposing to renovate the existing building to allow for three tenant spaces consisting of retail, fitness and potentially storage uses. The existing parking lot is proposed to be expanded, while the landscaping and streetscape will also be improved. The building is proposed to receive new

paint, awnings, lighting and architectural detail. Also, the applicant would like to screen the loading space with arborvitae.

The applicant engaged in a pre-application discussion with the Planning Board on May 23, 2018. At that time the applicant described the plan to beautify and fill the current building to bring the site back into function while the property owners work on a plan to redevelop the entire property in the future. Planning Board members asked the owners to provide active first-floor uses to activate the street, as well as add glazing and architectural details to break the monotony of the existing blank walls.

The submitted site plan shows a new electrical transformer adjacent to the dumpster enclosure at the southeast corner of the property that is screened with arborvitae. The applicant has noted that DTE has been contacted regarding the transformer location and that DTE approval will be acquired in regards to the location. The applicant must still submit a signed letter from DTE approving the location of all electrical transformers.

The applicant is proposing to expand and rework the existing parking lot to a 38 space lot containing both additional landscaping and two ADA parking spaces. The parking requirement for the three tenants is 12 spaces.

Design Review

The applicant is proposing new renovations that include new paint, awnings, lighting and architectural details including new windows and doors along the north and west elevations. Eight new door/window installations with dark bronze metal frames are proposed along the north and west elevations. Four open-ended canvas awnings are also proposed over the new window/door installations. The doors, windows and awnings help to break up the vast blank space that currently exists on the walls.

Article 4, section 4.90 of the Zoning Ordinance requires buildings in the MX Zoning District to provide a minimum of 70% glazing on any ground floor façade that faces a street or parking area.

Signage: The applicant has indicated that the northern portion of the wall on the west elevation will be a potential location for tenant signage. The applicant is also proposing to place their address sign on the parking lot screen wall in front of the building. The applicant must submit all signage details to the Planning Dept. for approval, including specifications on any wall signs, canopy signs or address signs. The applicant has now submitted material samples of each newly proposed material (including new glass, awning fabric, patio pavers) to complete the Design Review.

In response to Mr. Koseck, Ms. Ecker explained the City is in the process of figuring out the street lighting in the Rail District. DTE has installed three different types of lights with three different types of globes, along with different fixtures throughout the Rail District and none of them are correct since the first installation at Armstrong White on E. Lincoln. Basically the negotiations with DTE to correct the problem are down to cost right now.

Mr. Boyle noticed that the plans do not show a safe pedestrian zone through the parking lot. Further, Mr. Boyle noted on the west facade of the building there are grey awnings with small windows underneath; but no windows on the large section that is adjacent to the patio.

Mr. Koseck pointed out that the plans show the driveway bisects the sidewalk. Mr. Baka replied that the Engineering Dept. has stated that the sidewalk must maintain its current configuration by placing it through the driveway approach.

Mr. Baka agreed with Mr. Emerine that clarification is needed because the applicant is required to have six trees in the parking lot and ten are shown in the site plan.

Mr. Jason Krieger, Krieger Klatt Architects, was present with Mr. Tom Lasky and Mr. Andy Petcoff from the ownership, along with Mr. Brian Kowalski, the project architect. Mr. Krieger said the site plan is correct regarding the trees. The windows on the west elevation are up high because a fitness center is proposed and they tried to maintain as much wall space as possible for them. They are trying to add more fenestrations and glass. Windows have been added on the southwest corner of the building. On the north elevation the windows have been lowered down to the ground to create more of a storefront feel.

Their proposal is to basically clean up the building, paint it, improve it, and then occupy it. They will comply with City standards for lights, trash cans, and benches. With regard to the parking lot, they hope to keep as much as they can and add on to it in compliance with City engineering standards. Personally, he would rather see more screening closer to Cole St., behind the retaining wall, and not right at the loading area where it might get hit. Then, just leave the loading zone as a striped area. Mr. Koseck agreed, because typically there is no truck parked in the loading space. He suggested that Mr. Krieger could work with staff to shift the arborvitae to the north where it wouldn't be hit. Additionally, Mr. Koseck thought it would be nice to have some planter boxes in the patio area just to soften it. Mr. Krieger agreed that the patio should be broken up a little with some greenery.

Mr. Krieger explained that tenant to the north is a cabinet shop and the south tenant space is vacant.

Responding to Mr. Boyle, Mr. Krieger said did not see a problem with putting in a pedestrian safety path through the parking lot to the entrance of the center. However they might lose one parking space.

No one from the public cared to comment on the proposal at 8:01 p.m.

Motion by Mr. Jeffares

Seconded by Mr. Koseck to recommend APPROVAL of the Final Site Plan and Design Review for 2010 Cole St. subject to the following conditions:

- 1. Applicant submit a signed letter from DTE approving the location of all electrical transformers;**
- 2. Applicant install City standard bike racks, benches and trash receptacles as required in the Rail District;**
- 3. Applicant submit all signage details to the Planning Division for approval, including specifications on any wall signs, canopy signs or address signs;**
- 4. Applicant add pedestrian striping on the west side of the building leading to the west entrance of the building.**
- 5. Applicant move the arborvitae screening to the north with Administrative Approval from the Planning Dept.**
- 6. Applicant comply with the requests of all City Departments.**

At 8:05 p.m. there were no comments on the motion from members of the audience.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jeffares, Koseck, Boyle, Emerine, Klein, Ramin, Whipple-Boyce

Nays: None

Absent: Share, Williams

06-113-18

REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Request to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein said that judging from all of the letters that have been received related to this project, it is very clear that the residents of Birmingham Place oppose the rezoning. All of the letters will be added to the record.

Ms. Ecker explained the applicant for 469-479 S. Old Woodward is requesting that the Planning Board hold a public hearing to consider the rezoning of the property from B-3 (Office Residential) and D-4 (Downtown Overlay) to B-3 (Office Residential) and D-5 (Downtown Overlay). The applicant is seeking the rezoning to allow for the construction of a nine-story mixed-use building with three levels of underground parking in between the Birmingham Place and the 555 Building. The maximum height allowed in the D-4 Zoning District is 4-5 stories. In the D-5 Zoning District, developers may build as high, but no higher than the adjacent buildings which are located in the D-5 Zone. The 0.423 acre subject site spans Hazel St. from S. Old Woodward Ave. to Woodward Ave. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Restaurant and Talmer Bank). The applicant is proposing to demolish the present buildings for the construction of a ten-story mixed-use building.

The applicant has noted that when the zoning was changed down to one or two floors in the 1970s, the 555 Building and Birmingham Place were designated to a legal non-conforming use because their height was not allowable. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay that raised the height up to a maximum of five stories Downtown. In 2017, a new D-5 Zone was created to bring the 555 Building, the Merrillwood Building and Birmingham Place into a legal conforming status. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D-5 currently.

Ms. Ecker went through the three items that the applicant must demonstrate for the rezoning of a property and the applicant's reasons as to how they feel they have met them.

Ms. Ecker then went through the planning analysis based on the evidence provided by the application. Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents, current zoning and recent development trends in the area, the Planning Dept. finds that the applicant meets the established ordinance requirements to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay District for the purpose of building as high, but no higher than, the building to the north, Birmingham Place.

Answering Mr. Boyle, Ms. Ecker said the Master Plan which dates back to 1980 did not give specific height requirements like the 2016 Plan recommended. Under the 2016 Plan the recommended height in the Downtown was a maximum of five stories. The 555 Building submitted an application to the City and to the Planning Board to consider creating a new category that would make them a legal and conforming building that would allow them to receive financing to renovate the building and bring it up to current standards in the marketplace. The D-5 Ordinance was crafted by the Planning Board as a result of that application and included the other two buildings in a similar situation.

Mr. Rick Rattner, Attorney, Williams, Williams, Rattner & Plunkett, PC, emphasized that in the D-5 going above five stories subjects the property to a Special Land Use Permit ("SLUP") which is different than just building as of right. Secondly, in 2016 Andres Duany commented favorably on the 555 Building and on Birmingham Place.

He presented a PowerPoint that went to four issues that have to do with rezoning:

- Rezoning Amendment - Sec. 7.02 (B) (2) (b) (i)-(iii) requires that as part of an application for rezoning, the petitioner should address certain issues to be considered by the Planning Board and the City Commission.
- Sec. 7.02 (B) (2) (b) (i) - An Explanation of Why the Rezoning is Necessary for the Preservation and Enjoyment of the Rights and Usage Commonly Associated with Property Ownership. Without the ability to go higher with a new building than the zoning allows, the applicant will not have the required area within which to locate a mix of uses that would commonly be associated with the design of a modern, mixed-use building.
- Sec. 7.02 (B) (2) (b) (ii) - An explanation of Why the Existing Zoning Classification is No Longer Appropriate. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. Given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-4 Zone is no longer appropriate.
- Sec. 7.02 (B) (2) (b) (iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the S, Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Plan.

Mr. Rattner concluded by asking the Planning Board to favorably recommend that they are able to use their property and preserve their rights of usage, fit into the streetscape, fit the Master Plan and fit all elements of this Ordinance because they meet every single one of them.

At 8:45 p.m. the Chairman opened the meeting to public comments.

Ms. Susan Friedlander, 1564 Henrietta, attorney for Birmingham Place Residential Condominium Association, made the following points:

- The City created the D-5 District for a singular and special purpose which was to bring several buildings into conforming status.
- The proposed building is not sandwiched between the 10-story Birmingham Place and the 15-story 555 Building - there is Hazel, a 50 ft. right-of-way that provides a proper transition between buildings. There is not even a height difference, because the building that is immediately adjacent to Hazel is 77 ft. tall. So if this proposed building went up to 80 ft, which it is allowed to do under D-4 it would be very consistent with the building right across the street. There would be a perfect transition. It would only be 34 ft. shorter than Birmingham Place.

- If the proposed building is zoned D-5, what about the building on the north, the Powerhouse Building, Jax Car Wash or the Varsity Building. Why shouldn't they get the D-5 Zoning as well?
- There is a process that must be followed so that property is not rezoned on an ad hoc and an arbitrary basis.

Mr. Tom Lasky, 2006 Cole, spoke in support of the rezoning request. This is the face of new Birmingham and will be done responsibly.

Mr. Mike Humphrey, who lives in Birmingham Place, said there is nothing in the record that shows that the D-5 Overlay was created to do anything other than to make the three tall existing buildings legal and conforming. The developer bought the property knowing how it was zoned; but now they say that they cannot develop a four or five-story mixed-use building there. If the City is going to change the Master Plan, go for it, but do it with professional study and community involvement; not a piece at a time.

Mr. David Nykian, 40700 Woodward Ave., said he represents some of the owners in the Birmingham Place Condominium. He believes the facts lead to the conclusion that the D-4 Zoning is actually clearly appropriate for this property:

- The D-5 District was created just to address the non-conformities of three buildings. So the City has already made the decision in the past as to what zoning is appropriate for this site.
- Nothing about the property has changed since then that should cause the City to alter its conclusion about what the appropriate height is.
- The height of the 555 Building on the north is 77 ft. So if the subject site were developed today under D-4, it could be taller than the 555 Building.
- Breaking up the building heights would provide more of an architectural character to the City than one monolithic height across the entire street.
- There is nothing under the D-4 Zoning classification that that would prohibit the developer from developing a mixed-use development.
- The only things that would change by amending the classification from D-4 to D-5 are the height of the building and the profit margin of the developer.

Mr. Mickey Schwartz, 411 Old Woodward Ave., stated that infill has nothing to do with height equality. So he thinks the developer has to have a better excuse for building a 10-story building. The small town feeling is what is unique about Birmingham. Deny the rezoning request.

Dr. Cynthia Neil, a resident of Birmingham Place, said she was deeply offended by the petitioner's statement that the development would not adversely affect the residents. From her balcony she would be able to bounce a tennis ball against the wall of the proposed building.

Mr. Chris Jonna, C&P Real Estate Group, spoke in support of the project. The applicant builds nothing but first-class buildings. Increasing the zoning classification will be a tremendous benefit to Downtown Birmingham by bringing in more people to the area.

Mr. Lewis Rockind, a resident of Birmingham Place, emphasized that the zoning has to be contemplated in the context of what is intended to be developed. As a resident of Birmingham Place he is looking at the detrimental effect on the surrounding properties of increased vehicle and pedestrian traffic.

Mr. Daniel Jacob, 261 E. Maple Rd., said he is 100% in support of the project. The intended use of the property is much needed and would be a huge benefit to the City. Birmingham is changing and this project moves with the times.

Mr. Joseph Shalala, 255 S. Old Woodward Ave., spoke in support of the proposed building. It will support all of the small businesses by bringing in people such as office, residential, and hotel users. All of those things combined will help Birmingham.

Ms. Tony Schwartz, 411 Old Woodward Ave., maintained that it is the height of the building that is in question here, not its quality. Secondly, traffic is a big problem on that corner. There is a new hotel that is starting to be built on the corner of Brown and Old Woodward which will add more traffic to that corner. She understands there may be a pool deck on the top floor of the proposed building - who is going to control music and noise and parties. She lives right across on the tenth floor.

Chairman Clein advised that concerns related to traffic and noise are not part of a rezoning but would be handled under a Site Plan Review, and should this be moved forward to a rezoning the applicant would be required to obtain a Special Land Use Permit ("SLUP") which allows the City Commission to put additional restriction on the uses of the building.

Mr. Duraid Markus, one of the partners in the ownership entity for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank), said if this happened in New York, Chicago or LA there would not be a single skyscraper built. He noted that everybody who opposes this is only one contingent, and it has not been the entire City that comes in to support or not support.

It makes sense to build where the project is harmonious and fits in with the rezoning proposal. For those reasons he asked the board to consider all of the comments and make the decision to allow them to rezone the parcel.

Ms. Wilma Thelman who lives in Birmingham Place said none of them have heard why a conforming building cannot be built on that site.

Mr. Jeffares noted that things change and now Birmingham holds 21 thousand people. Secondly he recalled that the Board did discuss rezoning the subject property; however there was nobody from there to make their case so the Board just rezoned the existing buildings.

Mr. Koseck advised that D-4 Zoning allows a building to be built to 80 ft. So it will already block six floors of Birmingham Place. He did not believe the applicant's contention that they cannot make a five-story building work, He thought that a five-story could be a successful mixed-use building. In some ways it might even fit the form and the transition better and the upper three floors of Birmingham Place will not be affected.

Ms. Whipple-Boyce said when the Board established the D-5 Zoning Classification she felt it applied to three specific buildings. In her mind it had to do with bringing non-conforming buildings into conformity so that they could qualify for financing and improve their properties. Thinking about some of the other properties that could be affected down the road that are adjacent to other properties like this is an unanswered question for her. It causes her to hesitate tonight on recommending the rezoning to D-5.

Mr. Boyle made the following points:

- The Master Plan is meant to have the ability to adapt to changing circumstances. Similarly, zoning is powerful when it is able to adapt. So, change is normal; it is not frequent, but it is usual.
- He was positive about the potential impact on the City as a whole of rezoning this property.
- The potential impact of rezoning on the contiguous properties will affect a number of people. The Board is here to determine who has the weight in this particular discussion, the entire City or the adjacent neighbors.
- There are checks and balances built into the system. If the rezoning were to be approved, the community would have two elements to be brought to the table. One would be the Site Plan Review process, and secondly the height would kick in the SLUP where the Planning Board can recommend controlling modifications to the City Commission who will hold a public hearing on the proposal.
- At the end of the day he is of a mind to approve the rezoning because overall he sees the benefits for the City and for this particular area. However, he does not underestimate the cost for the immediate residents in the contiguous building.

Ms. Ramin stated one of the burdens the applicant must carry to justify rezoning is an explanation of why the existing D-4 classification is no longer appropriate.

Mr. Duraid Markus said they cannot get in a hotel concept on this little parcel so they have to go vertical by a couple of floors. He has to be honest, it is the economics. He cannot get a development off the ground. They are not in the Parking Assessment District and are therefore limited by the required parking for an office building or a restaurant.

Answering Mr. Emerine, Ms. Ecker explained that anyone on any site on any site can apply for a rezoning to any of the existing zoning classifications.

Chairman Clein commented that rezoning is the most difficult thing the Board has to do - balancing the rights of adjacent land owners. To Ms. Ramin's point, the burden has not been met as to why a five-story building will not work. The answer that was given was economics, which has no place in a rezoning discussion. Therefore, he is not supportive of the rezoning.

Mr. Jeffares said he cannot come up with a reason for the height of the proposed building to be lower.

Ms. Whipple-Boyce indicated she has no problem with the subject building being built as high as Birmingham Place. But she doesn't think the applicant has made the case that they deserve to be rezoned and that the current zoning classification is no longer appropriate. She was appalled to hear the applicant say they bought this property and the only thing that will work there is a ten-story hotel and it should be rezoned because that is what they want to build. Therefore she doesn't think the applicant has proved their case.

Mr. Rattner noted that maybe the best thing for them to do is to ask for postponement so they can come back with a different plan. Chairman Clein stated that for him postponing would just be kicking the can down to another meeting. Mr. Boyle said he is in favor of not accepting that proposal and actually making a motion this evening.

Motion by Mr. Boyle

Seconded by Mr. Jeffares that based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable Master Plan documents and the development trends in the area, the Planning Board

recommends APPROVAL to the City Commission for the rezoning of 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

There were no comments from the public on the motion at 10 p.m.

Motion failed, 2-5.

ROLLCALL VOTE

Yeas: Boyle, Jeffares

Nays: Clein, Koseck, Emerine, Ramin, Whipple-Boyce

Absent: Share, Williams

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to recommend DENIAL to the City Commission of the applicant's request for the rezoning of the property at 469-479 S. Old Woodward Ave. from D-4 to D-5 in the Downtown Overlay.

Motion carried, 5-2.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Koseck, Clein, Emerine, Ramin

Nays: Jeffares, Boyle

Absent: Share, Williams

06-114-18

PRELIMINARY SITE PLAN REVIEW AND COMMUNITY IMPACT STUDY ("CIS")

1. 469-479 S. Old Woodward Ave. (former Mountain King) - Application for Preliminary Site Plan and CIS to permit new construction of a nine-story mixed-use building

Motion by Mr. Boyle

Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.

There was no discussion from the public on the motion at 10:02 p.m.

Motion carried, 7-0.

VOICE VOTE

Yeas: Boyle, Whipple-Boyce, Clein, Emerine, Jeffares, Koseck, Ramin

Nays: None

Absent: Share, Williams

06-115-18

MISCELLANEOUS BUSINESS AND COMMUNICATIONS

a. Communications (none)

b. Administrative Approval Requests

- 2211 Cole, Cole II - Approval for screening of two rooftop units.
- East of Woodward Ave. and north of Bennaville, parking lot - Renovate existing parking lot to increase number of parking spots, install new screen wall per code.
- Mr. Baka brought forward a request from a resident of Crosswinds to add to their outdoor deck motorized screening that rolls up and down. It is fastened to the building and would need a permit. The neighbor put one up too. Ms. Ecker said it is a design change from what was approved for the deck and there was not a Building Permit issued. Consensus was they should come to the Planning Board for approval and that Board members should visit the site.

c. Draft Agenda for the next Regular Planning Board Meeting of July 11, 2018

- Bistro Regulations;
- Ongoing discussion of first-floor retail;
- Discussion on parking.

d. Other Business

- Ms. Ecker noted the SLUP request for 191 N. Chester was approved at the City Commission to allow the office use in the old Church of Christ Scientist Bldg.
- The Hazel, Ravines, Downtown SLUP was also approved.
- Also, the Commission established the Master Plan Selection Committee.

06-116-18

PLANNING DIVISION ACTION ITEMS

Staff report on previous requests (none)

Additional items from tonight's meeting (none)

06-117-18

ADJOURNMENT

No further business being evident, the Chairman adjourned the meeting at 10:10 p.m.

**Jana L. Ecker
Planning Director**