I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE
   Patty Bordman, Mayor

II. ROLL CALL
    J. Cherilynn Mynsberge, City Clerk

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

   Announcements:
   • On Thursday, March 14 at 7:00 PM, the jointly sponsored Spring Lecture Series of the
     Birmingham Museum and Baldwin Public Library returns with the theme, Birmingham, Then
     and Now. The first presentation focuses on Jacobson’s Department store and its importance
     to Birmingham, presented by author and department store historian, Bruce Kopytek.

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.

   A. Resolution approving the City Commission meeting minutes of February 25, 2019.
   B. Resolution approving the warrant list, including Automated Clearing House payments,
      dated February 27, 2019 in the amount of $432,990.79.
   C. Resolution approving the warrant list, including Automated Clearing House payments,
      dated March 6, 2019 in the amount of $5,738,194.11.
   D. Resolution approving a Special Event permit as requested by the LUNGevity Foundation
      for the 2019 Breathe Deep Michigan 5K Walk & Fun Run to End Lung Cancer event on
      Saturday, June 1, 2019, 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.
   E. Resolution approving a Special Event permit as requested by the City of Birmingham
      Department of Public Services for the 2019 In the Park Concert series in Shain Park on
      the dates presented, 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.
   F. Resolution awarding the 2019 Concrete Sidewalk Repair Program, Contract #6-19 (SW)
      to Italia Construction, Inc., in the amount of $546,927.45, to be charged to the various
      accounts as detailed in the report, contingent upon execution of the agreement and
      meeting all insurance requirements. Further, approving an amendment to the 2018-
      2019 fiscal year budget.
G. Resolution authorizing the 2019 Sidewalk Repair Program, and directing the Engineering Department to notify the owners of properties on the attached list(s) of the City's intention to replace sidewalks to their properties.

H. Resolution approving an extension of the 2018 Sidewalk Trip Elimination Program, Contract #6-18(SW) for the 2019 sidewalk program repair area, at 2018 contract prices, to Precision Concrete, Inc., in the amount of $133,356.00, contingent upon submittal of the necessary bonds and insurance certificate. All costs shall be charged to account number 101-444.001-981.0100.

I. Resolution awarding the 2019 Quarton Lake Subdivision Reconstruction Phase 1 Project, Contract #1-19(P) to DiPonio Contracting, Inc., in the amount of $2,124,010, to be charged to the Sewer Fund, account number 590-536.001-981.0100; the Water Fund, account number 591-537.004-981.0100; and the Local Streets Fund, account number 203-449.001-981.0100, contingent upon execution of the agreement and meeting all insurance requirements, and further approving the appropriation and amendment to the fiscal year 2018-2019 Local Street Fund budget.

J. Resolution setting Monday, April 8, 2019 at 7:30 PM for a Public Hearing to consider necessity for the installation of water and sewer laterals within the Quarton Lake Reconstruction project area. Further, if necessity is declared, setting Monday, April 22, 2019 at 7:30 PM for a Public Hearing to consider confirming the roll for the installation of water and sewer laterals within the Quarton Lake Reconstruction project area.

K. Resolution approving the purchase of one (1) 2019 Elgin Pelican from Bell Equipment Company through the State of Michigan cooperative purchasing agreement #071B7700091 in the amount of $208,233.20 from account #641-441.006.971.0100.

L. Resolution approving the purchase of one (1) 2019 Ford F-350 chassis from Gorno Ford of Woodhaven, MI, through the MiDeal Cooperative Purchasing Agreement #071B1300005 totaling $32,649.00 from account #641-441.006.971.0100; further, approving the purchase and installation of a hydraulic dump body from Truck and Trailer Specialties, Inc., through the Rochester Hills Cooperative Purchasing Contract #RFP-RH-13-030 totaling $18,925.00 from account #641-441.006.971.0100, for a total combined expenditure of $51,574.00.

M. Resolution approving the purchase of holiday lights from Wintergreen Corporation for a total cost not to exceed $22,425.00. Funds are available from the General Fund-Community Activities Operating Supplies account #101-441.004-729.0000 and Property Maintenance Operating Supplies account #101-441.003-729.0000 for this purchase.

N. Resolution authorizing the City Manager to sign the new contract with Applied Imaging for printer maintenance and supplies with a monthly cost of $1,348.16 plus per page overages as necessary, total yearly cost of $16,183.20. Funds are available in the IT Computer Maintenance fund account # 636-228.000-933.0600.

O. Resolution authorizing the City Manager to sign the additional backup services contract with All Covered for an additional monthly cost of $841.00 for a total additional yearly cost of $10,200.00 Funds for the remainder of this year are available in the IT Computer Maintenance fund account # 636-228.000-933.0600.

P. Resolution adopting the 2018 Amended Michigan Mutual Aid Box Alarm Association Agreement and the 2018 Amended Inter-Local Agreement. Further, authorizing the Mayor to sign the agreements on behalf of the City.
Q. Resolution approving an addendum of the public services contract with NEXT for the purpose of expending remaining program year 2017-2018 Community Development Block Grant funds for the Minor Home Repair Program administered by NEXT through June 30, 2019; and further, authorizing the Mayor to sign the amendment on behalf of the City.

R. Resolution confirming the City Manager's authorization for the emergency expenditure regarding the power outage at the Peabody parking garage to cover expenses associated with providing a temporary power supply and replacing the main distribution panel board and current transformer cabinet totaling $20,524.80 to be paid from the Parking Fund account #585-538.004-930.0200, pursuant to Sec. 2-286 of the City Code.

S. Resolution authorizing the IT department to purchase the License and support renewal for the ArcGIS software from ESRI Inc. Total cost not to exceed $8950.00. Funds are available in the GIS fund account #636-228.000-973.0500.

<table>
<thead>
<tr>
<th>V. UNFINISHED BUSINESS</th>
<th>None</th>
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<tr>
<th>VI. NEW BUSINESS</th>
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<tbody>
<tr>
<td>A. Public hearing to consider the rezoning of 469 - 479 S. Old Woodward from B3/D4 to B3/D5.</td>
</tr>
<tr>
<td>1. Resolution approving the rezoning of 469 - 479 S. Old Woodward from B3/D4 to B3/D5;</td>
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<tr>
<td><strong>OR</strong></td>
</tr>
<tr>
<td>Resolution denying the rezoning of 469 - 479 S. Old Woodward from B3/D4 to B3/D5;</td>
</tr>
<tr>
<td><strong>OR</strong></td>
</tr>
<tr>
<td>Resolution postponing the hearing on the rezoning of 469 - 479 S. Old Woodward from B3/D4 to B3/D5 until ________, 2019;</td>
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<tr>
<td><strong>AND / OR</strong></td>
</tr>
<tr>
<td>Resolution directing the Advisory Parking Committee to review the properties at 469 - 479 S. Old Woodward for inclusion into the Parking Assessment District and to provide a recommendation to the City Commission.</td>
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</table>

B. Public Hearing to consider creating a Special Assessment District within the Oak Grove Addition Plat and Assessor's Plat No. 21 - Park Street Streetscape.

| 1. Resolution declaring necessity to create a Special Assessment District for the installation of standard streetscape and lighting within the following districts: |
| **“Oak Grove Addition Plat”** |
| Lots 37, 38 & 39 except for that portion taken for Oakland Avenue and Woodward Avenue rights-of-way, and |
| **“Assessor’s Plat No. 21”** |
| Lot 42 except for that portion taken for Woodward Avenue right-of-way, lot 43 except for that portion taken for Park Street right-of-way, lot 44 except for that portion taken for the Park Street right-of-way and rear alley, lots 70 thru 76 except for that portion taken for Woodward Avenue right-of-way. |
| **AND** |
| 2. Resolution setting Monday, March 25, 2019 at 7:30 PM for a Public Hearing to consider confirming the roll for the Park Street Streetscape & Street Light Enhancement. |
C. Resolution approving the installations of “Yield” signs at the following locations:
   1. Henley at Abbey
   2. Henley at Oxford
   3. Henley at Warwick
   4. Henley at Tottenham
   5. Tottenham at Warwick
   And the installation of a “Stop” sign at:
   1. Oakdale at Rivenoak

D. Resolution to meet in closed session pursuant to the Open Meetings Act, Section 8(h) to consider material exempt from discussion or disclosure by state or federal statute, and Section 8(e) to review pending litigation in the matter of Darakjian v City of Birmingham.

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

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

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

X. REPORTS

A. Commissioner Reports
   1. The City Commission will appoint two regular members to the Architectural Review Committee on April 8, 2019.

B. Commissioner Comments

C. Advisory Boards, Committees, Commissions’ Reports and Agendas

D. Legislation

E. City Staff
   1. Parking Utilization Report, submitted by Assistant City Manager Gunter

XI. ADJOURN

INFORMATION ONLY

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

Aviso: Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).
I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE
Mayor Patty Bordman called the meeting to order at 7:30 PM.

II. ROLL CALL
ROLL CALL: Present: Mayor Bordman
Mayor Pro Tem Boutros
Commissioner DeWeese
Commissioner Harris
Commissioner Hoff
Commissioner Nickita

Absent: Commissioner Sherman

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, Police Chief Clemence, Planning Director Ecker, Finance Director Gerber, Building Official Johnson, Library Director Koschik, City Engineer O'Meara, City Clerk Mynsberge, Birmingham Shopping District Executive Director Tighe

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

02-041-19 ANNOUNCEMENTS
Mayor Bordman announced:

- Registration for Ice Skating Lessons at the Birmingham Ice Sports Arena will take place on Wednesday, February 27, from 5:00 until 7:00 pm and again on Saturday, March 2, from 10:00 am until 1:00 pm. For more information visit www.bhamgov.org and navigate to the Ice Arena page.

- Wendy Carriveau, Stroke Coordinator at Beaumont Hospital in Royal Oak, will share tips for stroke prevention on Tuesday, March 5 at 7:00 p.m. The event will take place in the lower level meeting room at the Baldwin Public Library.

- The Friends of the Baldwin Public Library are now collecting gently used handbags, purses, totes, and wallets for their Books, Bags, and Bagels sale on Sunday, March 24 from 1-4:00 p.m. All proceeds from the sale will support the Friends of the Baldwin Public Library in their ongoing efforts to support programs, services, and the annual summer reading program at the Baldwin Public Library.

- Celebration of Commissioner DeWeese’s birthday.
02-042-19 RECOGNITION OF 2018 STUDENT REPRESENTATIVES TO CITY BOARDS AND COMMITTEES

Mayor Bordman recognized the following eleven student representatives for their service in 2018 on Birmingham boards and committees:

Planning Board
- Madison Daminato  Seaholm High School
- Sam Fogel  Seaholm High School
- Ellie McElroy  Seaholm High School

Parks & Recreation Board
- Jakob Sayer  Seaholm High School
- CeCe Cousins  Seaholm High School

Museum Board
- Joy Tenjeras  Groves High School

Public Arts Board
- Cole Wolhfiel  Seaholm High School
- Amelia Berry  Seaholm High School

Advisory Parking Committee
- Ajnay Yaple  International Academy

Historic District Commission and Design Review Board
- Ava Wells  Seaholm High School
- Grace Donati  Seaholm High School

02-043-19 APPOINTMENT OF STUDENTS AS NON-VOTING MEMBER FOR CALENDAR YEAR 2019

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Boutros:
To thank the students who served on City boards and committees in 2018 and to appoint the following students as non-voting members for calendar year 2019:

Planning Board: John Utley  Seaholm High School
- Sophia Trimble  Seaholm High School

Parks & Recreation Board: John Butcher  Seaholm High School

Museum Board: Meredith Weddell  Seaholm High School

Multi-Modal Transportation Board: Bennett Pompi  Seaholm High School
- Chris Capone  Seaholm High School

Historic District Commission and Design Review Board: Klea Ahmet  Seaholm High School

VOTE: Yeas, 6
- Nays, 0

City Clerk Mynsberge administered the oath of office to the Student Board Representatives.
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.

02-044-19 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Hoff; On Street Valet Services Program Vendor Recommendation

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner Harris:
To approve the Consent Agenda, with the exception of Item K.

ROLL CALL VOTE: Ayes: Mayor Bordman
Mayor Pro Tem Boutros
Commissioner DeWeese
Commissioner Harris
Commissioner Hoff
Commissioner Nickita

Nays: None

A. Resolution approving the City Commission meeting minutes of February 11, 2019.

B. Resolution approving the warrant list, including Automated Clearing House payments, dated February 13, 2019 in the amount of $3,281,975.47.

C. Resolution approving the warrant list, including Automated Clearing House payments, dated February 20, 2019 in the amount of $572,646.86.

D. Resolution approving a special event permit as requested by the Birmingham Shopping District to hold the 2019 Movie Nights on Fridays, June 14, July 12, and August 23, 2019, with rain dates scheduled on Saturdays, June 15, July 13, and August 24, 2019. Approval is 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.

E. Resolution approving a request from the Birmingham Shopping District to hold the 2019 Day on the Town special event on Saturday, July 27, 2019 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.

F. Resolution approving a request from the Birmingham Shopping District to hold the 2019 Birmingham Cruise special event, with the expanded footprint, on Saturday, August 17, 2019 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.

G. Resolution approving a special event permit as requested by the Birmingham Shopping District to hold the 2019 Santa House beginning the week-end of November 30, 2019 through December 24, 2019 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 a special event permit as requested by the Birmingham Shopping
District to hold the 2019 Winter Markt Friday, December 6 – Sunday, December 8, 2019
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.

I. Resolution approving Attachment 2 to the Uniform Video Service Local Franchise
Agreement with Comcast, effective April 27, 2015 through April 26, 2025, accepting the
name change of the entity holding the cable franchise from Comcast of Colorado/
Florida/Michigan/New Mexico/Pennsylvania/Washington, LLC to Comcast of Florida/
Michigan/New Mexico/Pennsylvania/Washington, LLC, effective January 2, 2019, and
authorizing the Mayor and City Clerk to execute same on behalf of the City.

J. Resolution approving the 2019 annual flower purchase from Croswell Greenhouse Inc. in
the amount not to exceed $17,812.85. Funds are available from the General Fund –
Property Maintenance – Operating Supplies account #101-441.003-729.0000.

L. Resolution that the City Commission shall meet on Monday, March 25, 2019 at 7:30
P.M., for the purpose of conducting a public hearing of necessity for the creation of a
special assessment district to reconstruct the pavement, update street lighting, and add
dumpster screens and wayfinding signs for the Pierce St. Alley, from Pierce St. to E.
Merrill St.;

AND

If necessity is determined on March 25, setting a public hearing on April 8, 2019, at 7:30
P.M. to review the assessments and to confirm the roll.

M. Resolution approving the Title VI Non-Discrimination Plan update incorporating the
change of Title VI Coordinator designation to Benjamin I. Myers, Human Resources
Manager. Further, authorizing the Mayor and City Manager to sign the appropriate
sections of the plan.

N. Resolution approving the agreement with Saber Window Cleaning DBA Transparent
Window Cleaning in the amount not to exceed $48,360.00 to perform window cleaning
services to the City of Birmingham facilities and charge these services to the respective
department accounts; and directing the Mayor and City Clerk to sign the agreement on
behalf of the City.

O Resolution approving an agreement with Mechanical Design & Installation, LLC. in the
amount not to exceed $226,318.00 from the City Hall and Grounds Capital Improvement
Account #401-265-001-977-0000 to perform the New Boilers and Controls Upgrade for
City Hall; and directing the Mayor and City Clerk to sign the agreement on behalf of the
City.

02-045-19 ON STREET VALET SERVICES PROGRAM VENDOR RECOMMENDATION
(ITEM K)

Assistant City Manager Gunter clarified:

● ‘Week 1’ as referred to in the report fell in the middle of August 2018 when the Old
Woodward construction concluded. Following that week was the demonstration period,
concluding at the end of 2018.
• Valet services park cars in reserved areas in the City’s parking garages.
• There have been a few complaints about perceived underutilization of the reserved valet spaces in the morning. Around 10:30 a.m. as the lunch and shopping crowd starts coming in the spaces are utilized by valet services. Once the process was explained to the concerned parties, they understood the need to reserve the spaces.
• Lunch time is peak use time.
• There are four on-street metered spaces reserved in front of the Rivage Day Spa for valet operations. There are three spaces on Hamilton.
• Beyond the reserved spaces for the operation of the valet stands, it is not a City-approved practice to park cars on the street in metered spaces. Whenever there is a concern about valet parking on the street, Assistant City Manager Gunter addresses it immediately.
• Assistant City Manager Gunter provided the Commission with corrected copies of the contract stating the term begins March 1, 2019 and concludes February 28, 2020, with options to renew one year at a time.
• The City will be more heavily advertising the available valet services if it becomes a permanent program.
• The money paid by individuals using the valet services goes to In-House Valet.

Steve Ferich of In-House Valet explained:
• If a car is very occasionally parked in the street by valet services, it is because a valet patron has indicated they were running a five-minute or less errand nearby, such as withdrawing money from a bank.
• In-House Valet provides private valet services at the Townsend Hotel, the Community House for special events, Cameron’s, Forest Grill and 220 Merrill.
• He is mindful of the City’s intent to be pedestrian friendly, and is confident in his ability to manage valet services in a way that is supportive of that goal.
• Valet services are provided 10 a.m. to 6 p.m. All-day service is merited because there is frequent use throughout the day.
• He is aware of upcoming construction and will be working with Assistant City Manager Gunter to accommodate those changes.
• The location of the two valet stands are working very well.
• There is no valet stand on Maple St. because Birmingham Police have determined it would not be a safe location.

Commissioner Hoff said she would like to see valet use numbers from after the holidays in order to get a sense of more routine use.

**MOTION:** Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:
To approve the agreement with In-House Valet, Inc. for City sponsored on street valet services in the amount of $78,000 from account #585-538-001-811.0000, and further directing the Mayor to sign the agreement on behalf of the City.

VOTE: Yeas, 6
Nays, 0

Commissioner Hoff said she would like to monitor the progress of the valet stands to make sure they are being used.
Assistant City Manager Gunter said she could add the weekly usage numbers to the parking utilization report moving forward.

City Manager Valentine noted:
- This is part of a larger strategy to make valet services an integral part of Birmingham, especially in light of the upcoming major construction projects in the City. The goal is to have people know there will be valet parking when they come to visit Birmingham.
- Valet services provide a convenience to people visiting and working in Birmingham. This allows a higher turnover of visitors to Birmingham.

Mayor Pro Tem Boutros said he has heard a lot of positive feedback regarding the provision of valet services. He also encouraged Mr. Ferich to stay in touch with the BSD for the purpose of publicizing valet services. Mr. Ferich confirmed that Assistant City Manager Gunter and BSD Director Tighe are frequently in touch with him and working to publicize the valet services.

Assistant City Manager Gunter confirmed for Commissioner Harris the renewal options are held by the City, not the contractor, and the same price would remain in effect for the second year should the City choose to renew the contract.

V. UNFINISHED BUSINESS

None.

VI. NEW BUSINESS

02-046-19 BALDWIN LIBRARY PHASE 2 REQUEST FOR PROPOSALS (RFP)
Library Director Koschik presented the request for authorization to issue the RFP.

Comments/Clarification
Library Director Koschik said:
- The $2.4 million figure includes money for furniture, fixtures, equipment and landscaping. The RFP being issued, however, is for construction and landscaping. The Library will be issuing a separate RFP for furniture, fixtures, and equipment.
- Building Official Johnson will be the Construction Manager on the project.
- The ADA ramp will be available during construction and there will be something to protect the ramp during construction.
- The restrooms on the main floor will be out of commission for 6-8 weeks during this phase of construction. Patrons will still have access to bathrooms on the second floor or in the basement.
- Programming will be somewhat curtailed during this period, but the Community House has volunteered to provide the Library with space for programming. The Library intends to offer programs off-site.

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Boutros:
To authorize the issuance of the Request for Proposals included with the Library Director’s February 19th memo for the renovation of the Youth Room section of the Baldwin Public Library.

VOTE: 
Yeas, 6
Nays, 0
Commissioner Nickita recused himself from discussing and voting on 220 Merrill and Toast due to business relationships with the owners of both establishments.

City Clerk Mynsberge presented the item.

Commissioner Hoff thanked staff for the clarity of the submitted reports.

Comments/Clarification
Planning Director Ecker explained:
- Elie's Mediterranean filled out their liquor license application incorrectly in regards to numbers, but upon the Planning Department on-site review it was clear that Elie's was actually in compliance

City Clerk Mynsberge confirmed:
- Rojo and Sidecar share an owner and together owe the City $16,325 in taxes and water bills. The owner entered into a payment plan with the City for the water bills on February 25, 2019 by paying a portion and agreeing to continue making regular payments on the debt. The outstanding taxes for both establishments remain unpaid.

Mayor Bordman invited Stephen Simon, owner of Rojo and Sidecar, to speak to the Commission.

Mr. Simon explained both Rojo and Sidecar were purchased in bankruptcy court in June 2018. There are current talks with the City and Oakland County as to whether the July 2018 taxes are due from the current or previous owner. In addition, the company's accountant has indicated that the assets purchased were only about $20,000, which would free the business from owing taxes.

City Attorney Currier said with respect to the delinquent taxes he was unsure because he was not familiar with the bankruptcy filing. He could not say whether that was a matter the bankruptcy court was taking into consideration, but that it would have some priority with respect to payment in the bankruptcy court. If the priority stays as-is, eventually the property will go to tax sale.

Commissioner Harris suggested setting a March 25, 2019 public hearing date to encourage a speedy resolution of the matter on the part of the previous owner and Mr. Simon.

Mayor Bordman concurred and advised Mr. Simon that the tax liability may fall to him if he intends to keep the restaurants. She said this was not legal advice, but that it seemed to her that if the previous owner were mandated to pay by the court that Mr. Simon would be reimbursed.

Commissioner DeWeese said Toast has been slow in addressing issues with the City, including the fact that Toast is in violation of its Special Land Use Permit (SLUP) because it is not currently operating in the evenings.
Planning Director Ecker explained:
- Toast had been subject to code enforcement for not providing dinner hours as per their SLUP. The owners then came to a pre-application meeting with the Planning Department to discuss either providing dinner hours or applying for a SLUP amendment.
- Toast ultimately submitted an application and attendant fee for a SLUP amendment earlier in the day on February 25, 2019, hoping not to provide regular dinner hours but to provide evening space for cooking classes and other activities instead.
- Toast would not likely receive a public hearing regarding their application with the Planning Board before the end of April 2019.

Toast representative Tony Minicilli came forward to address the Commission. He explained:
- Toast's hours were changed in October 2018, and they were unaware their SLUP was contingent on having dinner hours. He said that he believed Toast was the only restaurant that had a SLUP requiring evening hours.
- When Toast was made aware that they were in violation of their SLUP, Toast was advised to re-apply.
- He is the Director of Operations, and neither he nor the current owner were part of the SLUP process when it was originally granted to Toast by Birmingham. Toast was originally owned by married couple Thom and Regan Bloom, and they since divorced with Regan retaining ownership of the restaurant along with investors.

Mayor Bordman stated:
- SLUPs require any change in ownership be reviewed by the City Commission.
- Since Toast did not submit their change in ownership for review to the City Commission, the restaurant has now made the City aware of an additional violation of their SLUP.
- Given the major problems with the operation of the restaurant, she recommended setting a public hearing for Toast on March 25, 2019.

Commissioner Hoff noted there were several restaurants with discrepancies between the number of seats allowed and the number of seats the Planning Department found upon inspection. She added that as of the submission of the information to the City Commission, many of those discrepancies had not been resolved. She asked Mayor Bordman if the Commission could speak with representatives from the establishments in violation present this evening to see whether the discrepancies have since been resolved.

Mayor Bordman concurred, suggested reviewing the discrepancies one establishment at a time, and asked whether a representative from Bella Piatti was present.

Nino Cutraro introduced himself as the owner of Bella Piatti.

Mayor Bordman asked Mr. Cutraro why he had not responded to contact from the City regarding the issue with the number of seats in Bella Piatti.

Mr. Cutraro said he never saw any communication from the City regarding the matter.

Mayor Bordman invited Planning Director Ecker to confirm that attempts to contact Bella Piatti had occurred.
Planning Director Ecker confirmed that both a letter and an email were sent, and that City Planner Nicholas Dupuis also stopped by Bella Piatti in person.

Mr. Cutraro then said he did have the letter.

In response to Mayor Bordman’s question, Planning Director Ecker explained Bella Piatti had been approved for 52 indoor seats plus 10 at the bar. Bella Piatti is in violation because at last inspection by the Planning Department the restaurant had 63 indoor seats plus 11 at the bar.

Mr. Cutraro said he eliminated two tables and the extra seat at the bar, and offered to show the Commission a photo as proof.

Addressing Mr. Cutraro and other establishment representatives, Mayor Bordman stated that the liquor licenses granted by the Commission are valuable to both the establishments and to Birmingham. She continued:

- Liquor licenses are one of the drivers to bring in guests to Birmingham.
- The Commission takes these liquor licenses very seriously, which includes the SLUPs the establishments agree to.
- Discovering that at least eight establishments in Birmingham have violated the allowable number of seats has been very disappointing.
- The Commission would be putting pressure on these establishments to come into compliance by setting public hearings to determine whether or not the City will object to the renewal of liquor licenses for the establishments currently in violation.

Commissioner Hoff noted that seat discrepancies are easy fixes. She suggested that the establishments come into compliance and then contact the Planning Department to set up an inspection for the purpose of confirming their compliance. Then, at the public hearing, the Planning Department can provide confirmation that each establishment is in compliance and the matter can be resolved more expeditiously.

Mayor Bordman commented that because these discrepancies are such an easy fix, these issues should have been resolved far in advance of tonight’s meeting.

Planning Director Ecker clarified not all bistros have an allowance of 65 indoor seats and 10 at the bar. She explained seating allowances vary according to a number of different factors. She also confirmed that any bistros with over 65 indoor seats are indeed in violation.

Commissioner Nickita asked for clear data on the seating discrepancies, Class C license holders, and Bistro license holders for the March 25, 2019 so the Commission can best see where the discrepancies are. Mayor Bordman agreed and requested as much information as possible.

Commissioner Nickita said the fundamental question is what was agreed to as part of each establishment’s Special Land Use Permit, and where each establishment is in violation.

Mr. Cutraro told the Commission is that he is currently in compliance. He asked whether he was allowed 52 people or 52 chairs.
Planning Director Ecker clarified that Bella Piatti is permitted 52 chairs. In addition, people are allowed to stand in a small bar area which was marked on the plans when they were approved. This means there could be 52 indoor seats, ten people seated at the bar, and three or four additional people standing in the defined bar area.

Mayor Bordman then went through each establishment listed as non-compliant in terms of seats as of the City’s last inspection. If Planning Director Ecker confirmed non-compliance for a given establishment, Mayor Bordman asked that representatives plan to attend a public hearing on March 25, 2019.

Planning Director Ecker confirmed Bella Piatti, La Strada, Luxe, Mad Hatter, Salvatore Scallopini, Townhouse, Bistro Joe’s, Forest Grill and Tallulah were non-compliant as of their last inspections by the City.

Planning Director Ecker confirmed Adachi is still non-compliant because they have not pulled permits for two A-frame signs on their sidewalk.

John Henke, Adachi representative, said the Adachi owners would be in on February 28, 2019 to pull permits for the two A-frame signs.

Planning Director Ecker stated that Cameron’s Steakhouse may have a code violation vis-a-vis some unscreened dumpsters with contested ownership.

Planning Director Ecker confirmed Fleming’s has a sign without a permit, that 220 Merrill has an outdoor propane storage unit which is a violation, and outdoor tables and chairs are being stored on the outdoor platform at Rojo which is a violation.

Mayor Bordman stated the City’s ordinances promote the most appealing atmosphere in the City’s establishments, and that compliance with the ordinances benefits both the establishments and the City.

Commissioner Nickita agreed with Mayor Bordman’s point, adding that the bistro ordinance was formulated specifically to allow a different kind of establishment to have a liquor license without having to acquire a Class C license. In order to allow this, however, the parameters for a bistro license must be tightly monitored and tightly adhered to. This ensures that the legal relationships between various establishments and the City are fair and accomplishing what they were designed to do.

Mayor Bordman asked for public comment.

Mr. Henke suggested that establishments that come into compliance regarding seat discrepancies before March 25, 2019 could possibly be left off the public hearing list for that meeting.

Mayor Bordman said that any establishments non-compliant as of this meeting would have a public hearing set for March 25, 2019. If the establishment comes into compliance before then, then the public hearing will be expedited for the establishment.
MOTION: Motion by Commissioner Hoff, seconded by Commissioner Harris:
To approve the renewal for the 2019 licensing period, of all Class B, Class C, and microbrewery liquor licenses for which a current year application was received, except for the license(s) held by the following establishments for which a public hearing has been set:

220 Merrill Restaurant
Adachi restaurant Group LLC
Bella Piatti
Bistro Joe’s
Cameron’s Steakhouse
Fleming’s Prime Steakhouse
Forest Grill 2, LLC
La Strada Caffe, LLC
Luxe Bar & Grill
Mad Hatter Bistro (Tea Parlor, Inc.)
Rojo Mexican Bistro
Salvatore Scallopini
Sidecar Slider Bar
Tallulah Wine Bar & Bistro
Toast Birmingham, LLC
Townhouse Kitchen and Bar, LLC

VOTE: Yeas, 6
Nays, 0

220 Merrill Restaurant
MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:
To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of 220 Merrill Restaurant pursuant to Sec. 10-40 (3)a of the Birmingham Code of Ordinances:

Licensee’s maintenance of a nuisance upon or in connection with the licensed premises, including existing violations of building, electrical, mechanical, plumbing, zoning, health, fire or other applicable regulatory codes, specifically an outdoor propane display which is not allowed in the B-4 Zoning District;

Further, to direct the City Manager to notify the owners/operators of 220 Merrill Restaurant, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 5
Nays, 0
Recused, 1 (Nickita)
Adachi Restaurant Group LLC

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Hoff:
To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of Adachi Restaurant Group LLC pursuant to Sec. 10-40 (3)a of the Birmingham Code of Ordinances:

Licensee’s maintenance of a nuisance upon or in connection with the licensed premises, including existing violations of building, electrical, mechanical, plumbing, zoning, health, fire or other applicable regulatory codes, specifically an outdoor A-frame sidewalk sign without a permit;

Further, to direct the City Manager to notify the owners/operators of Adachi Restaurant Group LLC, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE:  Yeas, 6
       Nays, 0

Bella Piatti

MOTION: Motion by Commissioner Harris, seconded by Commissioner DeWeese:
To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of Bella Piatti pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of Bella Piatti, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE:  Yeas, 6
       Nays, 0

Bistro Joe's

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner DeWeese:
To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for
consumption of intoxicating liquor on the premises currently held by the owners/operators of **Bistro Joe’s** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee’s failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Bistro Joe’s**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE:  Yeas, 6  
Nays, 0

**Cameron’s Steakhouse**

**MOTION:**  Motion by Commissioner Harris, seconded by Commissioner Hoff:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Cameron’s Steakhouse** pursuant to Sec. 10-40 (3)c of the Birmingham Code of Ordinances:

Licensee’s maintenance of a nuisance upon or in connection with the licensed premises, including failure to maintain the grounds and exterior of the licensed premises, including litter, debris, or refuse blowing or being deposited upon adjoining premises, specifically unscreened waste receptacles.

Further, to direct the City Manager to notify the owners/operators of **Cameron’s Steakhouse**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE:  Yeas, 6  
Nays, 0

**Fleming’s Prime Steakhouse**

**MOTION:**  Motion by Mayor Pro Tem Boutros, seconded by Commissioner DeWeese:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Fleming’s Prime Steakhouse** pursuant to Sec. 10-40 (3)a of the Birmingham Code of Ordinances:

Licensee’s maintenance of a nuisance upon or in connection with the licensed premises, including existing violations of building, electrical, mechanical, plumbing, zoning, health,
fire or other applicable regulatory codes, specifically an outdoor sidewalk sign without a permit;

Further, to direct the City Manager to notify the owners/operators of Fleming's Prime Steakhouse, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas,  6
Nays,  0

Forest Grill 2, LLC
MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Nickita:
To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of Forest Grill 2, LLC pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of Forest Grill 2, LLC, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas,  6
Nays,  0

La Strada Caffe, LLC
MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Harris:
To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of La Strada Caffe, LLC pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of La Strada Caffe, LLC, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person
at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
Nays, 0

**Luxe Bar & Grill**

**MOTION:** Motion by Commissioner Harris, seconded by Commissioner DeWeese:
To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Luxe Bar & Grill** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Luxe Bar & Grill**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
Nays, 0

**Mad Hatter Bistro**

**MOTION:** Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:
To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Mad Hatter Bistro** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Mad Hatter Bistro**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
Nays, 0
Rojo Mexican Bistro

MOTION: Motion by Commissioner Harris, seconded by Mayor Pro Tem Boutros:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of Rojo Mexican Bistro pursuant to Sec. 10-40 of the Birmingham Code of Ordinances:

Sec. 10-40 (3)c: Licensee's maintenance of a nuisance upon or in connection with the licensed premises, including failure to maintain the grounds and exterior of the licensed premises, including litter, debris, or refuse blowing or being deposited upon adjoining premises, specifically outdoor dining chairs stored on dining platform in front of restaurant, which is not allowed. Chairs and tables must be stored indoors between November 16 and March 31; and

Sec. 10-40 (7) Licensee's failure to timely pay its taxes or other monies due the city, specifically personal property taxes.

Further, to direct the City Manager to notify the owners/operators of Rojo Mexican Bistro, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
Nays, 0

Salvatore Scallopini

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Boutros:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of Salvatore Scallopini pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of Salvatore Scallopini, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: Yeas, 6
Nays, 0
**Sidecar Slider Bar**

**MOTION:** Motion by Commissioner DeWeese, seconded by Commissioner Nickita:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Sidecar Slider Bar** pursuant to Sec. 10-40 (7) of the Birmingham Code of Ordinances:

Licensee’s failure to timely pay its taxes or other monies due the city, specifically personal property taxes.

Further, to direct the City Manager to notify the owners/operators of **Sidecar Slider Bar**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

**VOTE:** Yeas, 6

Nays, 0

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**Tallulah Wine Bar & Bistro**

**MOTION:** Motion by Mayor Pro Tem Boutros, seconded by Commissioner Hoff:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Tallulah Wine Bar & Bistro** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of **Tallulah Wine Bar & Bistro**, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

**VOTE:** Yeas, 6

Nays, 0

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**Toast Birmingham, LLC**

**MOTION:** Motion by Commissioner DeWeese, seconded by Commissioner Hoff:

To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of **Toast Birmingham, LLC** pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:
Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans, and the hours of operation are in non-compliance with the Special Land Use Permit (SLUP), and a SLUP amendment is required for a change in ownership;

Further, to direct the City Manager to notify the owners/operators of Toast Birmingham, LLC, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: 
Yeas, 6
Nays, 0
Recused, 1 (Nickita)

Townhouse Kitchen and Bar, LLC

MOTION: Motion by Commissioner Nickita, seconded by Mayor Pro Tem Boutros:
To set a public hearing for 7:30 PM on Monday, March 25, 2019 in Room 205 of the Birmingham Municipal Building, 151 Martin, Birmingham, MI 48009, to consider whether to file an objection with the Michigan Liquor Control Commission to the renewal of the license for consumption of intoxicating liquor on the premises currently held by the owners/operators of Townhouse Kitchen and Bar, LLC pursuant to Sec. 10-40 (5) of the Birmingham Code of Ordinances:

Licensee's failure to comply with the terms of its liquor license or any conditions imposed by the city commission or the liquor control commission at the time of issuance or transfer of the license, specifically the number of seats in the restaurant is in non-compliance with the site plans;

Further, to direct the City Manager to notify the owners/operators of Townhouse Kitchen and Bar, LLC, in writing, that they may submit any written material for consideration by the City Commission prior to the date of the public hearing or at the hearing, that the licensee may appear in person at the hearing or be represented by counsel and that the licensee may present witnesses or written evidence at the hearing.

VOTE: 
Yeas, 6
Nays, 0

02-048-19 KENNING PARK BALLFIELD CONSTRUCTION AWARD
Commissioner Harris told the Commission that he volunteers with the Birmingham Little League. The City Manager and City Attorney advised Commissioner Harris that his volunteering is not grounds for recusal. Commissioner Harris stated he just wanted to disclose the relationship.

There were no objections to Commissioner Harris’ participation.

DPS Director Wood presented the item.
Comments/Clarification

DPS Director Wood clarified:

- WCI Contractors, Inc. will remove the backstop and the outfield fence in order to adjust Field 4 for the new season. The two fields on the east edge will be reconstructed, and Field 4 will not be in play during construction. The cost being discussed tonight is for the reconstruction on Fields 2 and 3 and for any incidental changes adjacent fields will require during this process.
- All fields will be in play until June 17, 2019. After that Field 1 will remain in play, Fields 2 and 3 will be reconstructed, and Field 4 will be shifted by about 20 feet to be ready in time for the 2020 Season.
- In July 2018, the City received a single bid for this project for $794,000. When the project was re-bid, all four bids were in the $700,000 range.
- The neighborhood group adjacent to the most southerly field was not enthusiastic about the original master plan for the park.

City Manager Valentine explained the most southerly field shown on the concept plan would have required significant tree removal and significant fill-in since the field was in a low-lying area. As a result the concept plan was further refined.

Commissioner Nickita said the concept plan should have been updated to reflect a similar level of detail to the original concept plan. He continued that Birmingham does not implement plans incrementally, and as such a new concept drawing should be provided to indicate all the intended changes to the fields.

Commissioner DeWeese noted that the two fields to be reconstructed remain where they are, and that the new plan does not seem to be a significant deviation from the master plan.

Commissioner Harris agreed with Commissioner DeWeese, saying the only significant change from the 2014 Plan is the choice not to reconstruct the southernmost field for the reasons explained by City Manager Valentine. Once Fields 2 and 3 are complete, the City will have an opportunity to bring Fields 1 and 4 into compliance with the master plan, meaning there is little significant deviation from the original plans.

Commissioner Hoff said it strikes her as a significant deviation because the fields will now be taking up all the space that was originally designated as open space within the park.

City Manager Valentine clarified that the original plan is a concept plan, which will be revised as the process of implementation moves forward. The concept plan works within the confines of what had already been established for the play area, pavilion, picnic area, or the walking path. Only the paths between the fields are likely to be different in any meaningful way.

Jim O’Neill of Birmingham Little League said that the four fields in largely the same positions were agreed upon a year ago. He advised that nothing significant has changed from that agreement.

Tyler Sprague from Johnson Hill Land Ethics Studio stated this is a high-level planning look at the fields and the park. He explained that Fields 2 and 3 are in the same positions they were in as part of the master plan, with their orientations slightly shifted.
DPS Director Wood indicated she is also committed to integrating the concept plan into the current plan as much as possible. She suggested that after construction the City could ask Johnson Hill to hone in on all aspects of the master plan that should be implemented. If the large field is shifted, the City would not include an outfield fence in order to create more open field space.

Mayor Bordman noted the southern corner could also be used for recreational activities, as there would not be a baseball field there. She agreed that many of the neighbors had been unhappy with the original master plan, with their concerns going beyond the possibility of a field in the southern corner of the park. At the same time, she also agreed with Commissioner Nickita’s point that there was insufficient information regarding any aspects of the park beyond the baseball fields on the current sketch.

Mr. Sprague explained the plans involve the paths, concrete pads for the dugouts, concrete pads for the bleachers, accessible design, and additional tree plantings.

Mayor Bordman replied her concern was none of those elements were represented on the new sketch.

Mr. O’Neill stated that the Birmingham Little League is sharing in $315,000 of the costs, and they are just as committed as the Commission to the creation of a beautiful park. He said these updates have to happen this year, however, so everyone will have to work together to get the information required immediately.

DPS Director Wood said she was unsure if the prospective contractor has seen the master plan documents for the park, but that she imagines they have.

Commissioner Harris stated the contractor can be told that to the full extent possible the construction should adhere to the master plan, stating there was nothing preventing the City from doing that.

Commissioner Nickita said the planning process should have an entire concept plan for the park, with subsequent implementation of the first phase of construction. He asserted it should be clear how all the elements are intended to fit together before the work is commenced, and that is not currently how these plans are proceeding. He noted a number of differences between the master plan and the concept plan being presented tonight, including landscape issues, tree placement, the parking lot between the park and the ice arena, and no representation of the tennis court, dumpsters, or parking. The City had already worked to address those issues and none of them were represented in the concept plan that was brought forth. He stated that good planning entails a full plan for the project at the outset, which he would like to see developed for this project.

City Manager Valentine stated that updating the concept plan would not accomplish having a more complete plan for the park, since a concept plan still does not include any of the on-the-ground details that may arise once the contractor is actually on-site. In order to have a detailed plan with all the elements integrated, it would be better to do a complete engineered plan of the site.
City Manager Valentine confirmed for Mayor Pro Tem Boutros that if this item is not approved tonight, a contractor may not be able to meet the City’s timeline for the project which would mean the project may not get done this year.

Mayor Pro Tem Boutros suggested the most appropriate way to look at the project is that it is following the master plan, since all of the elements included in the master plan will still be possible to incorporate after the reconstruction of the fields. Trying to integrate everything at once into the plan would require too long a delay on the project, and while he agrees the City should not carry out projects in a piecemeal manner, he does not believe that is occurring.

Commissioner Harris agreed. He added that this plan is completely aligned with the City’s planning goals and allows for all aspects of the park’s master plan to be implemented at a later date. He also noted that Birmingham Little League is willing to pay 43% of the costs of these updates and that opportunity may be lost if the City starts this process from scratch.

Commissioner Nickita stated that planning fundamentals dictate knowing how the second phase of a project will occur as the first phase begins. The fact that the second phase of the project is not clear at this juncture is inappropriate. He suggested the contractor should be able to combine all the elements to create a more complete concept plan in a timely manner.

Commissioner DeWeese said that the updates being proposed would take the whole year because there would be significant community involvement after the redrawing.

**MOTION:** Motion by Commissioner DeWeese, seconded by Commissioner Harris:
To award the Kenning Park Ball Field Construction to WCI Contractors, Inc., in the amount not to exceed $737,000, to be funded from account 401-751.001-981.0100 and further; approving the appropriation and amendment to the fiscal year 2018-2019 General Fund and Capital Projects Fund budgets as follows. In addition, to authorize the Mayor and the City Clerk to sign the Agreement on behalf of the City upon receipt of required insurances.

**General Fund**

Revenues:

- 101-000.000-400.0000 Draw from Fund Balance $422,000
- Total Revenue $422,000

Expenditures:

- 101-999.000-999.4010 Transfers Out - Capital Projects Fund $422,000
- Total Expenditures $422,000

**Capital Projects Fund**

Revenues:

- 401-751.001-676.0001 Contributions from Other Sources $12,000
- 401-751.001.699.0101 Transfers In - General Fund $422,000
- Total Revenue $434,000

Expenditures:

- 401-751.001-981.0100 Public Improvements $434,000
- Total Expenditures $434,000
Commissioner Hoff said that while Commissioner Nickita raised very valid points, these changes should have been made much earlier in the process. She suggested that stopping the project post-bidding is not the appropriate time to create a more complete concept plan, especially given the substantial community investment. She suggested that this could be used as a lesson for planning future projects.

VOTE: Yeas, 5
Nays, 1 (Nickita)

02-049-19 PRIVATE TRENCH MAINTENANCE POLICY AND ORDINANCE
City Engineer O'Meara presented the item.

Comments/Clarification
City Engineer O'Meara explained:
- The expected additional costs for this process would be about $500. He said he verified the estimate with the City’s geotechnical consultant.
- The City is trying to incentivize more expedient maintenance by waiving the inspection fee, which will give the City less to do in the future. Since the City will be saving later in resources and time, the incentive should not be a prohibitive cost. The Engineering Department will be monitoring the process, however, to make sure the City does not lose money.
- This ordinance change will be advertised so that property owners, excavators and builders are all made aware.
- Property owners would have to pay for private geotechnical inspectors, but those prices are usually built into the prices an excavator charges.

Commissioner DeWeese suggested the Engineering Department publicize the ordinance change during the permitting process in order to make all parties aware of the incentive.

MOTION: Motion by Mayor Pro Tem Boutros, seconded by Commissioner DeWeese:
To amend Chapter 98, Streets, Sidewalks and Other Public Places, Article 02, Streets, Section 28, with the revisions presented at the meeting and the correction of “homeowner” to “owner” in Sec. 98-28(e)(1), to revise the inspection requirements during backfill of trenches after water and sewer repairs have been made. (Ordinance No. 2308 is available in the City Clerk’s Office.)

VOTE: Yeas, 6
Nays, 0

02-050-19 ORDINANCE AMENDMENTS REGARDING FIREWORKS
Police Chief Clemence presented the item.

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Boutros:
To replace Part II of the City Code, Chapter 74 Offenses, Article VI Offenses Against Public Safety, Division 1 – Generally. Section 74-194 with a revised Sec. 74-194 Use of Consumer Fireworks Prohibited, and authorizing the Mayor and City Clerk to sign the ordinance on behalf of the City. (Ordinance No. 2309 is available in the City Clerk’s Office.)
VOTE: Yeas, 6
Nays, 0

**02-051-19 RESOLUTION TO MEET IN CLOSED SESSION PURSUANT TO SECTION 8(E) OF THE OPEN MEETINGS ACT**

**MOTION:** Motion by Commissioner DeWeese, seconded by Commissioner Harris:
To adjourn to closed session to review pending litigation in the matter of Darakjian v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275.

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

**ROLL CALL VOTE:**

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<td>Mayor Bordman</td>
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<td>Commissioner Hoff</td>
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<table>
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City Manager Valentine announced no action is anticipated following the closed session.

### VII. REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda were addressed earlier in the meeting.

### VIII. COMMUNICATIONS

None

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

None

### X. REPORTS

**02-052-19 COMMISSIONER COMMENTS**

Commissioner Hoff asked the other Commissioners if they would be interested in having background materials provided electronically instead of printed.

Commissioner DeWeese said he preferred to receive all materials as part of a single packet.

City Manager advised the Commission that if the Commissioners want variations in their agenda materials, staff should be provided with a policy in order to maintain consistency and standards.

City Clerk Mynsberge said this method would also leave more opportunity for error.
Mayor Bordman said that the Commission should leave the agenda preparations as-is.

Commissioner DeWeese said that there would need to be a conversation about which documents would be considered background and would be provided electronically.

02-053-19 CITY STAFF
City Manager Valentine announced that Oakland County Treasurer Meisner had been in attendance for part of the meeting, and wanted to let the public know that the delinquent property tax foreclosure deadline is April 1, 2019. If any Birmingham residents have concerns about possible foreclosure, they should contact the City Treasurer’s Office at (248) 858-0611.

The Oakland County Treasurer’s Office is also offering a financial boot-camp for entrepreneurs, and more information about this program can be found at the City Clerk’s Office and on the City’s website.

XI. ADJOURN
Mayor Bordman adjourned the meeting to closed session at 10:41 p.m.

Mayor Bordman reconvened the regular meeting at 11:23 p.m. and, there being no further business, adjourned the meeting at 11:23 p.m.

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**Subtotal Paper Check** $140,879.58
# City of Birmingham
## Warrant List Dated 02/27/2019

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**SUBTOTAL ACH TRANSACTION** $292,111.21

**GRAND TOTAL** $432,990.79

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All bills, invoices and other evidences of claim have been audited and approved for payment.

Mark Gerber  
Finance Director/ Treasurer

*Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.*
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**SUBTOTAL PAPER CHECK**  
$432,983.45

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All bills, invoices and other evidences of claim have been audited and approved for payment.

Mark Gerber  
Finance Director/ Treasurer

*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.
DATE: March 6, 2019

TO: Joseph A. Valentine, City Manager

FROM: J. Cherilynn Mynsberge, City Clerk

SUBJECT: Special Event Application
Breathe Deep Michigan Walk & Fun Run to End Lung Cancer

INTRODUCTION:
The LUNGevity Foundation has submitted a Special Event application to hold the 2019 Breathe Deep Michigan Walk & Fun Run to End Lung Cancer on Saturday, June 1, 2019. The event is from 9:00 a.m. until 12:00 p.m. and will begin and end in Booth Park.

BACKGROUND:
Prior to application submission, the Police Department reviewed the proposed event details for street closures and the need for safety personnel and approved the details. DPS, Planning, Building, Police, and Fire also indicated their approval. SP+ Parking has been notified of the event for planning purposes.

Engineering noted the intersection of Chesterfield & Raynale, which is along what has been the traditional 5K route for this event, will be under construction this spring and summer for the Quarton Lake Project. Accordingly the LUNGevity Foundation has revised the route for this year’s event. They have removed the 5K loop altogether, and will have the 5K participants run the 1-mile loop 3 times. The 1-mile loop begins at Booth Park, heads west on Harmon, north on Lakeside, east on Oak, and south on Woodland back to Harmon. This route avoids the construction at Chesterfield & Raynale.

The Police and Engineering Departments have reviewed the revised plan and indicated their approval.

The following events occur in Birmingham at the end of May and in June, and do not pose a conflict for this event:

- **Memorial Day Service** May 27 Shain Park
- **Farmers Market** Sundays May and June Parking Lot #6
- **Parkinson’s Walk** June 8 Seaholm High School
- **Movies in Booth Park** June 14 Booth Park
- **In the Park concerts** June 14, 19, 26 Shain Park
- **Yoga in the Park** June 22 Shain Park

LEGAL REVIEW:
n/a
FISCAL IMPACT:

n/a

SUMMARY

The City Commission is being asked to approve a special event permit for the 2019 Breathe Deep Michigan 5K Walk & Fun Run to End Lung Cancer event to be held Saturday, June 1, 2019 from 9:00 a.m. until 12 p.m. with set-up to begin at 7:00 a.m. and tear down to conclude at 2:00 p.m.

ATTACHMENTS:

1. Special Event application
2. Notification letter with map of event area distributed to residents/businesses within 300 feet of the event area on February 21, 2019. Notification addresses are on file in the Clerk’s Office
3. Certificate of Insurance
4. Department Approval page with comments and estimated costs

SUGGESTED RESOLUTION:

To approve a Special Event permit as requested by the LUNGevity Foundation for the 2019 Breathe Deep Michigan 5K Walk & Fun Run to End Lung Cancer event on Saturday, June 1, 2019, 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.
CITY OF BIRMINGHAM
APPLICATION FOR SPECIAL EVENT PERMIT
PARKS AND PUBLIC SPACES

IMPORTANT: EVENTS UTILIZING CITY SIDEWALKS AND/OR STREETS MUST MEET
WITH POLICE DEPARTMENT SPECIAL EVENT OFFICER TO REVIEW PROPOSED
EVENT DETAILS PRIOR TO SUBMITTING APPLICATION.

Police Department acknowledgement: ___________________________

I. EVENT DETAILS
- Incomplete applications will not be accepted.
- Changes in this information must be submitted to the City Clerk, in writing, at
  least three weeks prior to the event

FEES: FIRST TIME EVENT: $200.00
      ANNUAL APPLICATION FEE: $165.00

(Please print clearly or type)

Date of Application January 9, 2019

Name of Event Breathe Deep Michigan Walk & Fun Run To End Lung Cancer

Detailed Description of Event (attach additional sheet if necessary)
Breathe Deep Michigan is an annual 5K walk and fun run that raises awareness and funds for
lung cancer research, education, and programs. Proceeds benefit LUNGevity Foundation.

Location Booth Park

Date(s) of Event June 1, 2019 Hours of Event 9 a.m. - 12 p.m.
Date(s) of Set-up June 1, 2019 Hours of Set-up 7 a.m. - 9 a.m.
NOTE: No set-up to begin before 7:00 AM, per City ordinance.
Date(s) of Tear-down June 1, 2019 Hours of Tear-down 12 p.m. - 1 p.m.

Organization Sponsoring Event LUNGevity Foundation
Organization Address 228 S. Wabash Ave., Suite 700, Chicago, IL 60604
Organzation Phone 312-407-6100
Contact Person Katie Ginda, Manager of Grassroots Events
Contact Phone 240-801-5581
Contact Email KGinda@LUNGevity.org
II. **EVENT INFORMATION**

1. Organization Type: Non-profit organization
   (city, non-profit, community group, etc.)

2. Additional Sponsors or Participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.) Additional sponsors include National Breathe Deep sponsors Genentech and AbbVie. Numerous other national, regional, and local companies will be solicited for support.

3. Is the event a fundraiser? **YES** [ ] **NO** [ ]
   List beneficiary: LUNGevity Foundation
   List expected income: $100,000
   Attach information about the beneficiary.

4. First time event in Birmingham? **YES** [ ] **NO** [x]
   If no, describe: Breathe Deep Michigan was started in 2012.

5. Total number of people expected to attend per day: **400**

6. The event will be held on the following City property: (Please list)
   - [ ] Street(s)
   - [x] Sidewalk(s) 5K walk & fun run through surrounding neighborhood.
   - [x] Park(s) Booth Park for check-in/registration, refreshments, activities, walk kickoff and speaking program

7. Will street closures be required? **YES** [ ] **NO** [x]
   (Police Department acknowledgement prior to submission of application is required) (initial here)

8. What parking arrangements will be necessary to accommodate attendance? Public parking
9. Will staff be provided to assist with safety, security and maintenance?  YES ☐ NO X
If yes, please provide number of staff to be provided and any specialized training received.
Describe Apx. 32 LUNGevity staff and volunteers will help with event set-up, breakdown,__________
registration, and walk/run route. All volunteers are trained by experienced LUNGevity staff.

10. Will the event require safety personnel (police, fire, paramedics)?  YES ☐ NO X
(Police Department acknowledgement prior to submission of application is required.) (initial here) 
Describe ________________________________

11. Will alcoholic beverages be served?  YES ☐ NO X
If yes, additional approval by the City Commission is required, as well as the Michigan Liquor Control Commission.

12. Will music be provided?  YES X NO ☐
   _____ Live  X  Amplification  _____ Recorded  _____ Loudspeakers
   Time music will begin 9 a.m._____________________
   Time music will end 12 p.m._____________________
   Location of live band, DJ, loudspeakers, equipment must be shown on the layout map.

13. Will there be signage in the area of the event?  YES X NO ☐
   Number of signs/banners  30
   Size of signs/banners  Signs - 18"x24", banners - 2'x4' and 3'x6'
   Submit a photo/drawing of the sign(s).  A sign permit is required.

14. Will food/beverages/merchandise be sold?  YES ☐ NO X
   • Peddler/vendor permits must be submitted to the Clerk’s Office, at least two weeks prior to the event.
   • You must obtain approval from the Oakland County Health Department for all food/beverage sales/donations. Contact ehclerk@oakgov.com or 248-535-9612 to obtain Health Department approval.
   • There is a $50.00 application fee for all vendors and peddlers, in addition to the $10.00 daily fee, per location.
LIST OF VENDORS/PEDDLERS
(attach additional sheet if necessary)

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III. **EVENT LAYOUT**

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area.

1. Will the event require the use of any of the following municipal equipment? *(show location of each on map)*

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<td>$6.00 each includes 1 bag.</td>
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<td></td>
<td>For additional bags, the cost is $3.50 per case.</td>
<td></td>
</tr>
<tr>
<td>Dumpsters</td>
<td></td>
<td>$350.00/per dumpster per day.</td>
<td></td>
</tr>
<tr>
<td>Utilities (electric)</td>
<td></td>
<td>Varies</td>
<td>Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Charges according to final requirements of event.</td>
</tr>
<tr>
<td>Water/Fire Hydrant</td>
<td></td>
<td>$224.75/per hydrant.</td>
<td>Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Includes the use of 5,000 gallons of water. Any additional water usage will be billed.</td>
<td></td>
</tr>
<tr>
<td>Audio System</td>
<td></td>
<td>$200.00 per day</td>
<td>Must meet with City representative.</td>
</tr>
<tr>
<td>Meter Bags / Traffic Cones / Barricades</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Will the following be constructed or located in the area of the event? **YES** **NO** *(show location of each on map)*

**(note: stakes are not allowed.**

<table>
<thead>
<tr>
<th>TYPE</th>
<th>QUANTITY</th>
<th>SIZE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tents/Canopies/Awnings</td>
<td>1</td>
<td>20'x20'</td>
</tr>
<tr>
<td>(A permit is required for tents over 120 sq ft)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portable Toilets</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Rides</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Displays</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vendors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temporary Structure (must attach a photo)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (describe)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SIGNATURE OF APPLICANT REQUIRED

EVENT NAME Breathe Deep Michigan Walk & Fun Run to End Lung Cancer
EVENT DATE Saturday, June 1, 2019

The Birmingham City Commission shall have sole and complete discretion in deciding whether to issue a permit. Nothing contained in the City Code shall be construed to require the City Commission to issue a permit to an applicant and no applicant shall have any interest or right to receive a permit merely because the applicant has received a permit in the past.

As the authorized agent of the sponsoring organization, I hereby agree that this organization shall abide by all conditions and restrictions specific to this special event as determined by the City administration and will comply with all local, state and federal rules, regulations and laws.

[Signature]
January 9, 2019

---

**IV. SAMPLE LETTER TO NOTIFY ANY AFFECTED PROPERTY/BUSINESS OWNERS**

- Organizer must notify all potentially affected residential property and business owners of the date and time this application will be considered by the City Commission. *(Sample letter attached to this application.)*

- Attach a copy of the proposed letter to this application. The letter will be reviewed and approved by the Clerk's Office. The letter must be distributed at least two weeks prior to the Commission meeting.

- A copy of the letter and the distribution list must be submitted to the Clerk's Office at least two weeks prior to the Commission meeting.

- If street closures are necessary, a map must be included with the letter to the affected property/business owners.
February 21, 2019

BIRMINGHAM, MI 48009

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City Commission will consider our request so that an opportunity exists for comments prior to this approval.

EVENT INFORMATION
NAME OF EVENT: Breathe Deep Michigan Walk & Fun Run to End Lung Cancer
LOCATION: Booth Park
DATE OF EVENT: Saturday, June 1, 2019
HOURS OF EVENT: 9AM–12PM

BRIEF DESCRIPTION OF EVENT: Breathe Deep Michigan is a 5K walk and fun run to raise awareness and funds for lung cancer research, education, and support. Proceeds benefit LUNGevity Foundation.

DATE OF SET-UP: June 1, 2019  HOURS OF SET-UP: 7–9AM
DATE OF TEAR-DOWN: June 1, 2019  HOURS OF TEAR-DOWN: 12-1PM

DATE OF CITY COMMISSION MEETING: March 11, 2019

The City Commission meets in room 205 of the Municipal Building at 151 Martin at 7:30PM. A complete copy of the application to hold this special event is available for your review at the City Clerk’s Office (248-530-1880). Log on to www.bhamgov.org/events for a complete list of special events.

EVENT ORGANIZER: LUNGevity Foundation
ADDRESS: 228 S. Wabash, Suite 700, Chicago, IL 60604
PHONE: 312-407-6100
FOR QUESTIONS ON DAY OF EVENT, CONTACT: Katie Ginda, Development Manager, KGinda@Lungevity.org or 312-515-5218
HOLD-HARMLESS AGREEMENT

To the fullest extent permitted by law, the LUNGevity Foundation and any entity or person for whom the LUNGevity Foundation is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this activity/event. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of the City of Birmingham, its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

[Signature]
Applicant's signature

[Date]
January 9, 2019
Date
CERTIFICATE OF LIABILITY INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed.
If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

INSURER(S) AFFORDING COVERAGE

| NAIC # | INSURER A: | Wesco Insurance Company
|        | INSURER B: | Hartford
|        | INSURER C: | QBE Insurance
|        | INSURER D: |
|        | INSURER E: |
|        | INSURER F: |

CERTIFICATE NUMBER: WPP1595388

OVERAGES

<table>
<thead>
<tr>
<th>TYPE OF INSURANCE</th>
<th>ADDL SUBR</th>
<th>POLICY NUMBER</th>
<th>POLICY EFF (MM/DD/YYYY)</th>
<th>POLICY EXP (MM/DD/YYYY)</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>X COMMERICAL GENERAL LIABILITY</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CLAIMS-MADE</td>
<td>X OCCUR</td>
<td>WPP1595388</td>
<td>03/01/2018</td>
<td>03/01/2019</td>
<td>EACH OCCURRENCE $ 1,000,000</td>
</tr>
<tr>
<td>DAMAGE TO RENTED PREMISES (EA occurrence) $ 1,000,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MED EXP</td>
<td>Any one person</td>
<td>$ 20,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PERSONAL &amp; ADV INJURY $ 1,000,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GENERAL AGGREGATE $ 3,000,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PRODUCTS - COMPOP AGG $ 3,000,000</td>
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<tr>
<td>Emp Ben. $ 1,000,000</td>
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<td></td>
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<tr>
<td>AUTOMOBILE LIABILITY</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>OWNED AUTOS ONLY X SCHEDULED AUTOS</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>X HIRD. AUTOS ONLY</td>
<td>NON-OWNED AUTOS ONLY</td>
<td>WPP1595388</td>
<td>03/01/2018</td>
<td>03/01/2019</td>
<td>COMBINED SINGLE LIMIT (EA accident) $ 1,000,000</td>
</tr>
<tr>
<td>BODILY INJURY (Per person)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BODILY INJURY (Per accident)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PROPERTY DAMAGE (Per accident)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UMBRELLA LIABILITY</td>
<td>OCCUR</td>
<td>WUM1595399</td>
<td>03/01/2018</td>
<td>03/01/2019</td>
<td>EACH OCCURRENCE</td>
</tr>
<tr>
<td>EXCESS LIAB</td>
<td>CLAIMS-MADE</td>
<td></td>
<td></td>
<td></td>
<td>AGGREGATE</td>
</tr>
<tr>
<td>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED</td>
<td>N/A</td>
<td>83 WEC BV5230</td>
<td>05/20/2018</td>
<td>05/20/2019</td>
<td>E.L. EACH ACCIDENT</td>
</tr>
<tr>
<td>E.L. DISEASE - EA EMPLOYEE</td>
<td>$ 1,000,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E.L. DISEASE - POLICY LIMIT</td>
<td>$ 1,000,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accident/Volunteer</td>
<td>PHH500019</td>
<td>10/01/2018</td>
<td>10/01/2019</td>
<td>Excess Med $ 25,000</td>
<td></td>
</tr>
</tbody>
</table>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

PLEASE SEE NOTES

CERTIFICATE HOLDER

City of Birmingham
Booth Park
Old Woodward and Harmon
Birmingham, MI 48009

CANCELATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Susan [Signature]

ACORD 25 (2016/03) © 1988-2015 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD
The City of Birmingham including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members including employees and volunteers thereof is an additional insured with respect to General Liability when required by written contract or agreement, but solely with respect to that organization's liability arising out of the named insured’s operations or premises owned by the named insured.

Event: Breathe Deep Michigan Walk/Run on June 1, 2019 from 6AM-2PM with 400 participants.
<table>
<thead>
<tr>
<th>DEPARTMENT</th>
<th>APPROVED</th>
<th>COMMENTS</th>
<th>PERMITS REQUIRED</th>
<th>ESTIMATED COSTS</th>
<th>ACTUAL COSTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLANNING</td>
<td>BC</td>
<td>No Cost No Comment</td>
<td>(Must be obtained directly from individual departments)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>MJ M</td>
<td>All tents over 120 sqft. Require a permit. No other building department involvement.</td>
<td></td>
<td>Permit fees</td>
<td></td>
</tr>
</tbody>
</table>
| FIRE                | JMC      | 1. No Smoking in any tents or canopy. Signs to be posted.  
2. All tents and Canopies must be flame resistant with certificate on site.  
3. No open flame or devices emitting flame, fire or heat in any tents. Cooking devices shall not be permitted within 20 feet of the tents.  
4. Tents and Canopies must be properly anchored for the weather conditions, no stakes allowed.  
5. Clear Fire Department access of 12 foot aisles must be maintained, no tents, canopies or other obstructions in the access aisle unless approved by the Fire Department |                                      | $45                          |
6. Pre-event site inspection required.
7. A prescheduled inspection is required for food vendors through the Bldg. dept. prior to opening.
8. All food vendors are required to have an approved 5lbs. multi-purpose (ABC) fire extinguisher on site and accessible.
9. Cords, hoses, etc. shall be matted to prevent trip hazards.
10. Exits must be clearly marked in tents/structures with an occupant load over 50 people.
11. Paramedics will respond from the fire station as needed. Dial 911 for fire/rescue/medical emergencies.
13. Do Not obstruct fire hydrants or fire sprinkler connections on buildings.
14. Provide protective barriers between hot surfaces and the public.
15. All cooking hood systems that capture grease laden vapors must have an approved suppression system and a K fire extinguisher in addition to the ABC Extinguisher.
16. Suppression systems shall be inspected, tested, and properly tagged prior to the event. All Sprinkler heads shall be of the 155 degree Quick Response type unless serving an area of high heat and approved by the Fire Marshal. The suppression system
shall have a continuous water supply as well as a secondary back up supply. Activation of the suppression system will shut down the ride and cause illumination of the exits.

<table>
<thead>
<tr>
<th>POLICE</th>
<th>SG</th>
<th>APPROVED WITH REVISED ROUTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>101-000.000.634.0003</td>
<td></td>
<td>Must have sufficient volunteers to assist participates at intersections. Participants must obey all traffic control and remain on the sidewalk. On duty officers will provide extra patrol</td>
</tr>
<tr>
<td>248.530.1870</td>
<td></td>
<td>$0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PUBLIC SERVICES</th>
<th>Carrie Laird</th>
<th>To cover for trash clean up and trash receptacles if needed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>101-000.000.634.0002</td>
<td></td>
<td>$50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ENGINEERING</th>
<th>A.F.</th>
<th>APPROVED WITH REVISED ROUTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>101-000.000.634.0002</td>
<td></td>
<td>The intersection of Chesterfield &amp; Raynale will be under construction this Spring &amp; Summer (City’s 2019 Quarton Lake Project). The applicant should consider an alternate route (possibly Fairfax) as we cannot guarantee the condition of the above-referenced intersection. It should also be noted that Lot # 6 on N. Old Woodward (Farmer Market Lot) will be under construction at this time as well. This could affect the availability of parking in the area.</td>
</tr>
<tr>
<td>248.530.1839</td>
<td></td>
<td>None</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INSURANCE</th>
<th>CA</th>
<th>Hold Harmless agreement in file; Certificate of Insurance due by 5/15/19.</th>
</tr>
</thead>
<tbody>
<tr>
<td>248.530.1807</td>
<td></td>
<td>None</td>
</tr>
</tbody>
</table>

| CLERK | | Applications for vendors license must be submitted no later |
| --- | | $165 pd |

<table>
<thead>
<tr>
<th>SP+ PARKING</th>
<th></th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>CLERK</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>TOTAL DEPOSIT REQUIRED</td>
</tr>
<tr>
<td>---------------</td>
<td>---------------</td>
<td>------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**FOR CLERK’S OFFICE USE**

Deposit paid ____________

Actual Cost ____________

Due/Refund ____________

Rev. 3/6/19
h:\shared\special events\- general information\approval page.doc
DATE: March 4, 2019

TO: Joseph A. Valentine, City Manager

FROM: J. Cherilynn Mynsberge, City Clerk

SUBJECT: 2019 In the Park concerts

INTRODUCTION:
The Department of Public Services submitted a Special Event application to hold the 2019 In the Park Concert series in Shain Park on the following dates. All concerts are held between 7 PM – 9 PM, unless noted otherwise.

- Friday, June 14 (BBCC Teen concert)
- Wednesday, June 19
- Wednesday, June 26
- Wednesday, July 3
- Sunday, July 7  Time to be determined
- Wednesday, July 10 12 PM-2 PM
- Wednesday, July 10
- Wednesday, July 17
- Wednesday, July 24
- Wednesday, July 31
- Wednesday, August 7
- Wednesday, August 14 12 PM-2PM
- Wednesday, August 14

Set-up for the event is scheduled for the day of the concert, with tear down to begin the day after the concert.

BACKGROUND:
The Police Department has reviewed the proposed event details prior to submission for street closures and the need for safety personnel and has approved the details. DPS, Planning, Building, Police, Fire, and Engineering have indicated their approval. SP+ Parking has been notified of the event for planning purposes.

The following events occur in June, July and August in Birmingham, and do not pose a conflict for this event:

Farmers Market: Sundays, Lot 6
Lungevity Foundation Breathe Deep 5K: June 1, Booth Park
Parkinson Foundation 5K: June 8, Seaholm HS & neighborhood
Movie in Booth Park: June 14, July 12, August 23, Booth Park
Yoga in the Park: June 22, Shain Park
Birmingham Cruise: August 19, Downtown area

LEGAL REVIEW:
n/a
FISCAL IMPACT:
  n/a

SUMMARY
The City Commission is being asked to approve a special event permit for the 2019 In the Park Concert series to be held on the dates noted above, with set-up to begin on the day of the concert and tear-down will take place the day after the concerts.

ATTACHMENTS:
1. Special Event application
2. Notification letter with map of event area distributed to residents/businesses within 300 feet of the event area on February _____, 2019. Notification addresses are on file in the Clerk's Office.
3. City of Birmingham Certificate of Insurance
4. Department Approval page with comments and estimated costs

SUGGESTED RESOLUTION:
To approve a request from the City of Birmingham Department of Public Services for a special event permit to hold the 2019 In the Park Concert series in Shain Park on the dates as presented, 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.
CITY OF BIRMINGHAM
APPLICATION FOR SPECIAL EVENT PERMIT
PARKS AND PUBLIC SPACES

IMPORTANT: EVENTS UTILIZING CITY SIDEWALKS AND/OR STREETS MUST MEET WITH POLICE DEPARTMENT SPECIAL EVENT OFFICER TO REVIEW PROPOSED EVENT DETAILS PRIOR TO SUBMITTING APPLICATION.

Police Department acknowledgement: [Signature]

I. EVENT DETAILS
• Incomplete applications will not be accepted.
• Changes in this information must be submitted to the City Clerk, in writing, at least three weeks prior to the event.

FEES:
FIRST TIME EVENT: $200.00
ANNUAL APPLICATION FEE: $165.00

(Please print clearly or type)

Date of Application: February 11, 2019

Name of Event: 2019 City of Birmingham In The Park Concert Series

Detailed Description of Event (attach additional sheet if necessary): Summer Concert Series sponsored by the City of Birmingham. The concerts will be held: 6/14, 6/19, 6/26, 7/3, 7/7, 7/10, 7/17, 7/24, 7/31, 8/7, 8/14, 2019. The US Jazz Ambassadors will perform on 7/7. 7/10 & 8/14; in addition to the evening concerts there will be an afternoon concert (12-2pm).

Location: Shain Park (Thomas M. Markus Pavilion)

Date(s) of Event: See Above
Hours of Event: See Above
Date(s) of Set-up: Day of Concert
Hours of Set-up: Day of Concert
Date(s) of Tear-down: Day After Concert
Hours of Tear-down: Day After Concert

NOTE: No set-up to begin before 7:00 AM, per City ordinance.

Organization Sponsoring Event: City of Birmingham Department of Public Services

Organization Address: 851 South Eton, Birmingham, MI 48009

Organization Phone: 248-530-1642

Contact Person: Connie Folk, Recreation Coordinator

Contact Phone: 248-530-1642

Contact Email: Cfolk@bhamgov.org
II. EVENT INFORMATION

1. Organization Type: City of Birmingham
   (city, non-profit, community group, etc.)

2. Additional Sponsors or Participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.) TBD

3. Is the event a fundraiser? YES ☐ NO ☐
   List beneficiary ________________________________
   List expected income ________________________________
   Attach information about the beneficiary.

4. First time event in Birmingham? YES ☐ NO ☑
   If no, describe City of Birmingham Summer Concert Series has been occurring for many years.

5. Total number of people expected to attend per day: 500 (approximate)

6. The event will be held on the following City property: (Please list)
   ☐ Street(s) ________________________________
   ☐ Sidewalk(s) ________________________________
   ☑ Park(s) Shain Park (Thomas M. Markas Pavilion) ________________________________

7. Will street closures be required? YES ☐ NO ☑
   (Police Department acknowledgement prior to submission of application is required) (initial here) ________________________________

8. What parking arrangements will be necessary to accommodate attendance? City of Birmingham parking structures, street parking.
9. Will staff be provided to assist with safety, security and maintenance?  YES □ NO □
   If yes, please provide number of staff to be provided and any specialized training received.
   Describe City of Birmingham Representative will be present for each concert.

10. Will the event require safety personnel (police, fire, paramedics)?  YES □ NO □
    (Police Department acknowledgement prior to submission of application is required.) (initial here)
    Describe

11. Will alcoholic beverages be served?  YES □ NO □
    If yes, additional approval by the City Commission is required, as well as the Michigan Liquor Control Commission.

12. Will music be provided?  YES □ NO □
    XXXX Live XXXX Amplification XXXX Recorded XXXX Loudspeakers
    Time music will begin afternoon:12pm/evening:7pm
    Time music will end afternoon:2pm/evening:9pm
    Location of live band, DJ, loudspeakers, equipment must be shown on the layout map.

13. Will there be signage in the area of the event?  YES □ NO □
    Number of signs/banners Sponsor Banner
    Size of signs/banners 48" x 90"
    Submit a photo/drawing of the sign(s).  A sign permit is required.

14. Will food/beverages/merchandise be sold?  YES □ NO □
   - Peddler/vendor permits must be submitted to the Clerk’s Office, at least two weeks prior to the event.
   - You must obtain approval from the Oakland County Health Department for all food/beverage sales/donations. Contact ehclerk@oakgov.com or 248-535-9612 to obtain Health Department approval.
   - There is a $50.00 application fee for all vendors and peddlers, in addition to the $10.00 daily fee, per location.
<table>
<thead>
<tr>
<th>VENDOR NAME</th>
<th>GOODS TO BE SOLD</th>
<th>WATER HOOK-UP REQUIRED?</th>
<th>ELECTRIC REQUIRED?</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### III. EVENT LAYOUT

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area

1. Will the event require the use of any of the following municipal equipment? *(show location of each on map)*

<table>
<thead>
<tr>
<th>EQUIPMENT</th>
<th>QUANTITY</th>
<th>COST</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Picnic Tables</td>
<td>6 for $500.00</td>
<td>A request for more than six tables will be evaluated based on availability.</td>
<td></td>
</tr>
<tr>
<td>Trash Receptacles</td>
<td>$6.00 each includes 1 bag. For additional bags, the cost is $32/per case.</td>
<td>Trash box placement and removal of trash is the responsibility of the event. Additional cost could occur if DPS is to perform this work.</td>
<td></td>
</tr>
<tr>
<td>Dumpsters</td>
<td>$350.00/per dumpster per day.</td>
<td>Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.</td>
<td></td>
</tr>
<tr>
<td>Utilities (electric)</td>
<td># of vendors requiring utilities</td>
<td>Varies</td>
<td>Charges according to final requirements of event.</td>
</tr>
<tr>
<td>Water/Fire Hydrant</td>
<td>$224.75/per hydrant. Includes the use of 5,000 gallons of water. Any additional water usage will be billed.</td>
<td>Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.</td>
<td></td>
</tr>
<tr>
<td>Audio System</td>
<td>$200.00 per day</td>
<td>Must meet with City representative.</td>
<td></td>
</tr>
<tr>
<td>Meter Bags / Traffic Cones / Barricades</td>
<td># to be determined by the Police Department.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Will the following be constructed or located in the area of the event? **YES**  **NO** *(show location of each on map)*  **NOTE:** Stakes are not allowed.

<table>
<thead>
<tr>
<th>TYPE</th>
<th>QUANTITY</th>
<th>SIZE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tents/Canopies/Awnings</td>
<td></td>
<td>(A permit is required for tents over 120 sq ft)</td>
</tr>
<tr>
<td>Portable Toilets</td>
<td>2</td>
<td>standard/handicap</td>
</tr>
<tr>
<td>Rides</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Displays</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vendors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temporary Structure (must attach a photo)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (describe)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SIGNATURE OF APPLICANT REQUIRED

EVENT NAME City of Birmingham In The Park Concert Series
EVENT DATE 6/14, 6/19, 6/26, 7/3, 7/7, 7/10, 7/17, 7/24, 7/31, 8/7, 8/14, 2019.

The Birmingham City Commission shall have sole and complete discretion in deciding whether to issue a permit. Nothing contained in the City Code shall be construed to require the City Commission to issue a permit to an applicant and no applicant shall have any interest or right to receive a permit merely because the applicant has received a permit in the past.

As the authorized agent of the sponsoring organization, I hereby agree that this organization shall abide by all conditions and restrictions specific to this special event as determined by the City administration and will comply with all local, state and federal rules, regulations and laws.

---

Connie J. Folk

Signature

Date

2/5/2018

---

IV. SAMPLE LETTER TO NOTIFY ANY AFFECTED PROPERTY/BUSINESS OWNERS

- Organizer must notify all potentially affected residential property and business owners of the date and time this application will be considered by the City Commission.  *(Sample letter attached to this application.)*

- Attach a copy of the proposed letter to this application. The letter will be reviewed and approved by the Clerk’s Office. The letter must be distributed at least two weeks prior to the Commission meeting.

- A copy of the letter and the distribution list must be submitted to the Clerk’s Office at least two weeks prior to the Commission meeting.

- If street closures are necessary, a map must be included with the letter to the affected property/business owners.
SAMPLE NOTIFICATION LETTER

SPECIAL EVENT REQUEST NOTIFICATION LETTER

DATE: February 7, 2019

TO: Residential Property or Business Owner
     Address

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City commission will consider our request so that an opportunity exists for comments prior to this approval.

EVENT INFORMATION
NAME OF EVENT: City of Birmingham In The Park Summer Concerts

LOCATION: Shain Park (Thomas M. Markus Pavilion)

DATE(S) OF EVENT See below HOURS OF EVENT afternoon 12pm-2pm/evening 7pm-9pm

BRIEF DESCRIPTION OF EVENT/ACTIVITY: Summer Concert Series held on 6/14, 6/19, 6/26, 7/3, 7/7, 7/10, 7/17, 7/24, 7/31, 8/7, 8/14, 2019.

DATE(S) OF SET-UP Day of Concert HOURS OF SET-UP Day of Concert
DATE(S) OF TEAR-DOWN After Concert HOURS OF TEAR-DOWN After Concert

DATE OF CITY COMMISSION MEETING: Monday, March 11, 2019

The City commission meets in room 205 of the Municipal Building at 151 Martin at 7:30PM. A complete copy of the application to hold this special event is available for your review at the City Clerk’s Office (248/530-1880). Log on to www.bhamgov.org/events for a complete list of special events.

EVENT ORGANIZER: City of Birmingham Department of Public Services

ADDRESS: 851 South Eton, Birmingham, MI 48009

PHONE: 248-530-1642/248-530-1643

FOR QUESTIONS ON DAY OF EVENT, CONTACT: Connie Folk, 248-530-1642

A map showing street closures must be attached.
The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City Commission will consider our request so that an opportunity exists for comments prior to this approval.

NAME OF EVENT: In The Park Summer Concerts
LOCATION: Shain Park (Thomas M. Markus Pavilion)
DATES/TIMES: BBCC YAB's Teen Summer Concert, Friday, 6/14/19, 7pm-9pm
Wednesday afternoon: (7/10, 8/14, 2019) 12:00 pm - 2:00 pm
Wednesday evenings: (6/19, 6/26, 7/3, 7/7, 7/10, 7/17, 7/24, 7/31, 8/7, 8/14, 2019) 7:00 pm - 9:00 pm

DATE/TIME OF CITY COMMISSION MEETING:
Monday, March 11, 2019 at 7:30 PM

The City Commission meets in room 205 of the Municipal Building at 151 Martin. A complete copy of the application to hold this special event is available for your review at the City Clerk's office (248/530.1880).

EVENT ORGANIZER: City of Birmingham, DPS
851 South Eton, Birmingham, MI 48009
City Contact Person: Connie Folk, 248.530.1642, Cfolk@bhamgov.org
TO BUILDING MANAGERS CONTAINING MORE THAN ONE UNIT:
PLEASE POST THIS NOTICE AT THE MAIN ENTRANCE TO YOUR BUILDING.
RENEWAL CERTIFICATE

IN CONSIDERATION FOR PREMIUM PAID, AND SUBJECT TO ALL OF THE TERMS OF THE EXPIRING COVERAGE DOCUMENT AND ANY ENDORSEMENTS ATTACHED HERETO, WE AGREE TO RENEW YOUR COVERAGES AS STATED IN THIS CERTIFICATE. THESE COVERAGES ARE PROVIDED IN ACCORDANCE WITH THE INTERGOVERNMENTAL CONTRACT WHICH FORMS THE LEGAL BASIS FOR THE OPERATION OF THE POOL.

Contract Number: MML001444017

Renewal of Number: MML001444016

Pool Member: City of Birmingham

Mailing Address: 151 Martin St., PO Box 3001
                Birmingham, MI 48012-3001

Coverage Period
From: 7/1/2018
To: 7/1/2019
(12:01 A.M. Standard time at your mailing address shown above)

<table>
<thead>
<tr>
<th>Liability Coverage Parts</th>
<th>Limit of Liability</th>
<th>Deductible</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal General Liability Coverage</td>
<td>$10,000,000</td>
<td>$125,000</td>
</tr>
<tr>
<td>Public Officials Liability Coverage</td>
<td>$10,000,000</td>
<td>$125,000</td>
</tr>
<tr>
<td>Law Enforcement Liability Coverage</td>
<td>$10,000,000</td>
<td>$125,000</td>
</tr>
<tr>
<td>Employee Benefit Liability Coverage</td>
<td>$1,000,000</td>
<td>$125,000</td>
</tr>
<tr>
<td>Automobile Liability Coverage</td>
<td>$10,000,000</td>
<td>$125,000</td>
</tr>
<tr>
<td>Comprehensive and Collision Coverage</td>
<td>Per Schedule</td>
<td>Per Schedule</td>
</tr>
<tr>
<td>Combined Liability Policy Limit</td>
<td>$10,000,000</td>
<td></td>
</tr>
<tr>
<td>Cyber Liability and Data Breach Response Coverage (CYB001444017)</td>
<td>Per Declarations</td>
<td>Per Declarations</td>
</tr>
</tbody>
</table>

The Combined Liability Policy Limit is the most we will pay regardless of the number of Coverage Parts under which coverage may be sought.

COVERAGE UNDER THIS CONTRACT IS:

☒ As amended by revised schedule(s) attached.
☒ As amended by endorsement(s): ADD: MMP101 (01/11), MML23 (07/11), MML24 [04/09], MML24 [04/09], MML235 [01/14], MML307 [12/16], MML310 [07/18]

BY: [Signature]

DATE: 6/1/2018

(Authorized Representative)
**DEPARTMENT APPROVALS**

**EVENT NAME** IN THE PARK CONCERTS

**LICENSE NUMBER #19-00011480**

**COMMISSION HEARING DATE:** MARCH 11, 2019

**DATE OF EVENT:** (WEEKLY) JUNE 14- AUG 14, 2019

**NOTE TO STAFF:** Please submit approval by **FEB 13, 2019**

<table>
<thead>
<tr>
<th>DEPARTMENT</th>
<th>APPROVED</th>
<th>COMMENTS</th>
<th>PERMITS REQUIRED (Must be obtained directly from individual departments)</th>
<th>ESTIMATED COSTS (Must be paid two weeks prior to the event. License will not be issued if unpaid.)</th>
<th>ACTUAL COSTS (Event will be invoiced by the Clerk's office after the event)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLANNING</td>
<td>BC</td>
<td>No Cost No Comment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BUILDING</td>
<td>MJ M</td>
<td>No building department involvement.</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>FIRE</td>
<td>J MC</td>
<td>No FD concerns.</td>
<td></td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>POLICE</td>
<td>SG</td>
<td>On duty personnel to provide extra patrol. 3 meter bags and two officers assigned for the Battle of the Bands.</td>
<td></td>
<td>$300</td>
<td></td>
</tr>
<tr>
<td>PUBLIC SERVICES</td>
<td>CF</td>
<td>Includes set-up and take down for concerts. And (1) staff member at each concert.</td>
<td></td>
<td>$3,000</td>
<td></td>
</tr>
<tr>
<td>ENGINEERING</td>
<td>A.F.</td>
<td>No Comments – No Engineering Involvement</td>
<td></td>
<td>None</td>
<td>$0</td>
</tr>
<tr>
<td>SP+ PARKING</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$0</td>
</tr>
<tr>
<td>INSURANCE</td>
<td>CA</td>
<td>APPROVED</td>
<td>NONE</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>-----------</td>
<td>----</td>
<td>----------</td>
<td>------</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CLERK</strong></td>
<td>101-000.000-614.0000</td>
<td>248.530.1803</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notification letters mailed by applicant on 2/7/19. Notification addresses on file in the Clerk’s Office. Evidence of required insurance must be on file with the Clerk’s Office no later than N/A.</td>
<td></td>
<td></td>
<td>Applications for vendors license must be submitted no later than 2 weeks prior to concert.</td>
<td></td>
<td>$165</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>TOTAL DEPOSIT REQUIRED</td>
<td>$3,465.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>ACTUAL COST</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**FOR CLERK’S OFFICE USE**

Deposit paid ____________
Actual Cost ____________
Due/Refund_____________

Rev. 3/4/19
h:\shared\special events\- general information\approval page.doc
MEMORANDUM

(Date)

TO: Joseph A. Valentine, City Manager

FROM: Austin W. Fletcher, Assistant City Engineer

SUBJECT: 2019 Concrete Sidewalk Repair Program – Contract 6-19 (SW) Contract Award

INTRODUCTION:

This project is a continuation of the City’s annual sidewalk repair program. This year’s sidewalk replacement program focuses on Area 2 (south of Maple Road and east of Adam Road / Woodward Avenue) and the southwest quarter of the Central Business District, as shown on the attached maps.

BACKGROUND:

On April 22, 2019, the Engineering Department opened bids on the above referenced project. A summary of the bid results is attached.

Six (6) companies submitted bids for this project. The low bidder was Italia Construction, Inc., of Washington Township, with their bid of $546,927.45. The Engineer’s estimate was $610,000. Italia Construction was hired by the City for both the 2017 and 2018 Concrete Sidewalk Repair Programs. They have proved themselves capable of completing the work, and are very flexible as the work has needed to be added to or modified. The same management team is planned for this year, and we are confident that they are qualified to perform satisfactorily on this contract.

This contract also includes a large number of scattered concrete repairs throughout the city, some of which include:

1. Sidewalk, curb, and/or pavement repairs where sewer and/or water services have been installed (to new buildings) or upgraded;

2. Repairs where excavation to repair water main breaks have damaged driveways, sidewalk, curb, and/or pavement;

3. A small amount of concrete slab replacement on both major and local streets where the existing slabs are fractured;

4. Curb replacement that are damaged or are deteriorating.
A map showing the locations of the scattered concrete repairs is attached for your information.

Other work of interest added to the job for this year includes:

1. Handicap ramps on streets planned for cape sealing, to be reimbursed as part of the proposed special assessment district (see attached map of specific locations);
2. Four (4) sculpture pads for future art including one for the Library;
3. W. Maple Road and Chesterfield Pocket Park (see attached plan).

LEGAL REVIEW:

The Engineering Department follows the Standard Format used for all contracts as required by the City Attorney’s Office.

FISCAL IMPACT:

The estimated distribution of costs for this project will be assigned as follows:

<table>
<thead>
<tr>
<th>Account Description</th>
<th>Code</th>
<th>Project Code</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Sidewalk</td>
<td>101-444</td>
<td>981.0100</td>
<td>$ 276,998.95</td>
</tr>
<tr>
<td>Major Street Fund</td>
<td>202-449</td>
<td>981.0100</td>
<td>$ 58,968.75</td>
</tr>
<tr>
<td>Local Streets Fund</td>
<td>203-449</td>
<td>981.0100</td>
<td>$ 26,265.25</td>
</tr>
<tr>
<td>Local Streets (Cape Seal Program)</td>
<td>203-449</td>
<td>937.0400</td>
<td>$ 35,040.75</td>
</tr>
<tr>
<td>Sewer Fund</td>
<td>590-536</td>
<td>811.0000</td>
<td>$ 42,140.50</td>
</tr>
<tr>
<td>Water Main Fund</td>
<td>591-537</td>
<td>811.0000</td>
<td>$ 19,832.25</td>
</tr>
<tr>
<td>Water Service Fund</td>
<td>591-537</td>
<td>811.0000</td>
<td>$ 41,326.00</td>
</tr>
<tr>
<td>Alley Maintenance</td>
<td>101-444</td>
<td>981.0001</td>
<td>$ 46,355.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>101-444</strong></td>
<td><strong>981.0100</strong></td>
<td><strong>$ 546,927.45</strong></td>
</tr>
</tbody>
</table>

A budget amendment will be required as the bid amount for alley maintenance exceeds the budgeted amount for this account and has been included in the suggested resolution.

SUMMARY:

It is recommended that the 2019 Concrete Sidewalk Repair Program be awarded to Italia Construction, Inc. of Washington Township, MI in the amount of $546,927.45. All costs to be charged to the various accounts as detailed in the report.

ATTACHMENTS:

- Bid Summary (1 page) – February 22, 2019
- Program Area 2 Map (1 page)
- Downtown Area 1D Map (1 page)
- Scattered Repair Map (1 page)
- Cape Seal Ramps Map (1 page)
- Sculpture Pads Map (1 page)
- W. Maple Road & Chesterfield Avenue Pocket Park Plan (1 sheet)
SUGGESTED RESOLUTION:

To award the 2019 Concrete Sidewalk Repair Program, Contract #6-19 (SW) to Italia Construction, Inc., in the amount of $546,927.45, to be charged to the various accounts as detailed in the report, contingent upon execution of the agreement and meeting all insurance requirements. Further, to approve an amendment to the 2018-2019 fiscal year budget as follows:

**General Fund**

<table>
<thead>
<tr>
<th>Revenues:</th>
<th>Draw from Fund Balance</th>
<th>$46,360</th>
</tr>
</thead>
<tbody>
<tr>
<td>101-000.000.400.0000</td>
<td>Total Revenue</td>
<td>$46,360</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenditures:</th>
<th>Public Improvements – Alleys</th>
<th>$46,360</th>
</tr>
</thead>
<tbody>
<tr>
<td>101-444.002-981.0100</td>
<td>Total Expenditures</td>
<td>$46,360</td>
</tr>
<tr>
<td>Company Name</td>
<td>Addendums</td>
<td>5% Bid Security</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Italia Construction</td>
<td>Bond</td>
<td>$546,927.45</td>
</tr>
<tr>
<td>Luigi &amp; Son</td>
<td>Line of credit</td>
<td>$613,955.00</td>
</tr>
<tr>
<td>Merlo Construction</td>
<td>Bond</td>
<td>$614,078.50</td>
</tr>
<tr>
<td>JB Contractors</td>
<td>Bond</td>
<td>$619,765.00</td>
</tr>
<tr>
<td>Lacardia Concrete Construction</td>
<td>Bond</td>
<td>$770,772.50</td>
</tr>
<tr>
<td>Birmingham Sealcoat</td>
<td>Bond</td>
<td>$795,600.00</td>
</tr>
</tbody>
</table>

* Corrected by the Engineer
Disclaimer: The information provided by this program has been compiled from recorded deeds, plats, taxmaps, surveys, and other public records and data. It is not a legally recorded map or survey.

The data provided herein may be inaccurate or out of date and any person or entity who relies on said information for any purpose whatsoever does so solely at his or her own risk.

Data Sources: Oakland County GIS Utility, City of Birmingham
Disclaimer: The information provided by this program has been compiled from recorded deeds, plats, taxmaps, surveys, and other public records and data. It is not a legally recorded map or survey. The data provided hereon may be inaccurate or out of date and any person or entity who relies on said information for any purpose whatsoever does so at his or her own risk.

Data Sources: Oakland County GIS Utility, City of Birmingham
City of Birmingham
Contract # 6-19 (SW)

Sculpture Pads (4) - Plans to be Provided
POCKET PARK CONCEPT

- Proposed relocated traffic signal strain pole and control cabinet
- 8' dia concrete sculpture/art pad
- City standard benches [2]
- 6" wide x 4" ht x 11' r.
  (inside radius) exposed aggregate conc curb
- Existing honey locust tree to remain
- Exposed aggregate concrete pavement
- Approximate location of fire department approach
- Maintain lawn area so as to not impair visibility
- Proposed re-striped cross-walk, typical
DATE: March 1, 2019

TO: Joseph A. Valentine, City Manager

FROM: Austin W. Fletcher, Assistant City Engineer

SUBJECT: 2019 Concrete Sidewalk Repair Program
Public Notification – Sidewalk Sections 1D & Area 2

INTRODUCTION:

The Engineering Department has completed its survey for the 2019 Sidewalk Program. Generally, one large residential area and one quadrant of the Central Business District (Area 1) is inspected and repaired. The designated project area to be replaced this year is the portion of the City south of Maple Road, east of Adams/Woodward and the southwest quadrant of the CBD as shown on the attached maps.

BACKGROUND:

A map of the survey area, sample notices to property owners, and a listing of affected addresses are attached. Responsibility for payment is as outlined in the City Code. Work charged to residential owners tends to fall in three (3) categories:

1. Sidewalks crossing driveways;
2. Sidewalks lifted due to an adjacent tree growing on private property;
3. Sidewalks clearly damaged by activities on the private property, such as construction.

Downtown properties share a higher percentage of the cost burden, and are typically charged for:

1. All pavements beyond the main sidewalk path (measured five to seven feet away from the property line).
2. Sidewalks composed of special pavements, such as exposed aggregate or brick pavers;
3. Maintenance of special pavements, such as clear sealant installation, or repair of caulked joints.

Prices for the main items of work will be based on the cost the City is being charged, plus a 15% administration fee. The sample letters for this year program are attached.
LEGAL REVIEW:

In accordance with City Policy, once the above-referenced project is authorized, the Engineering Department must advertise these addresses in the local press, and send letters of notification to all parties that will be charged.

FISCAL IMPACT:

It is estimated that approximately $60,000 in revenue will be generated to help offset the total cost of this project.

SUMMARY:

It is recommended that the Commission authorize the 2019 Sidewalk Repair Program, and to direct the Engineering Department to notify the owners of properties on the attached list of the City’s intention to replace sidewalks adjacent to their properties.

ATTACHMENTS:

- Program Area 2 Map (1 page)
- Downtown Area 1D Map (1 page)
- Resident Sidewalk Notice (2018)
- Commercial Sidewalk Notice (2018)
- Area 2 Billing List
- Section 1D Billing List

SUGGESTED RESOLUTION:

To authorize the 2019 Sidewalk Repair Program, and to direct the Engineering Department to notify the owners of properties on the attached list(s) of the City’s intention to replace sidewalks to their properties.
Disclaimer: The information provided by this program has been compiled from recorded deeds, plats, taxmaps, surveys, and other public records and data. It is not a legally recorded map or survey. The data provided herein may be inaccurate or out of date and any person or entity who relies on said information for any purpose whatsoever does so at his or her own risk.

Data Sources: Oakland County GIS Utility, City of Birmingham.
Disclaimer: The information provided by this program has been compiled from recorded deeds, plats, taxmaps, surveys, and other public records and data. It is not a legally recorded map or survey. The data provided hereon may be inaccurate or out of date and any person or entity who relies on said information for any purpose whatsoever does so at his or her own risk.

Data Sources: Oakland County GIS Utility, City of Birmingham
SIDEWALK NOTICE

This notice is intended for the property owner. If you are not the owner, we appreciate your assistance in getting this information to them. Thank you for your assistance.

The City Commission has determined the necessity for the replacement of certain sidewalks at the above noted address. Chapter 98 of the Birmingham City Code requires that the property owner be notified of the City’s intention to make this improvement.

If a property owner is liable, either in whole or in part, for the construction or replacement of a sidewalk, the owner may construct or replace the sidewalk at his/her own expense. In that event, the City Clerk shall be notified accordingly by the owner within ten (10) days of the receipt of this notice, and such construction or replacement shall be completed in accordance with the specifications of the City of Birmingham within sixty (60) days of the receipt of this notice. All such sidewalk work shall be conducted only after issuance of a permit from the Engineering Department.

Sidewalks to be replaced have been designated with either pink or white paint. The white paint indicates the owner’s responsibility, and the pink paint indicates the City’s responsibility. In some cases it may be necessary to replace an additional section or two of sidewalk beyond those designated with paint.

The City is generally responsible for the replacement of deteriorated sidewalks and for sidewalks damaged by City trees, City staff, or its contractors. Property owners will not be responsible for sidewalks damaged by utility work. Otherwise, property owners are responsible for damaged sidewalks, including sidewalks damaged at driveways and by owners’ trees. Where sidewalk is replaced due to damage by a tree growing partly on public right-of-way and partly on private property, the cost of such replacement will be borne equally (50%-50%) by the City and the abutting property owner. In commercial areas, property owners are responsible for all brick and exposed aggregate sidewalk repairs, as well as pavement closer to the street in the case of extra wide sidewalks (over six feet wide).

The City will engage a contractor for sidewalk construction. In the event the property owner does not construct or replace the owner responsibility sidewalk within the above specified time limit, the City will proceed to have the sidewalk replaced by its contractor and bill the property owner for the cost of the owner responsibility work.

A contract for this work was recently bid and will be completed by the lowest priced responsible bidder, under the direction of the City of Birmingham. The cost to adjacent owners is expected to be approximately $6.24 per square foot for 4” walk, and $7.39 per square foot for 6” walk (used across driveways). The prices obtained by the City of Birmingham tend to be competitive to that which an individual property owner could obtain.

You will receive a second notice via hand carried flyer indicating when the contractor is planning to begin repairs in your area. For additional information, please call the Engineering Department at 248-530-1850.
SIDEWALK NOTICE

This notice is intended for the property owner. If you are not the owner, we appreciate your assistance in getting this information to them. Thank you for your assistance.

Please disregard the similar letter sent to you recently. That was not the correct letter, and did not contain the information that pertains to your property. We apologize for the inconvenience.

The City Commission has determined the necessity for the replacement of certain sidewalks at the above noted address. Chapter 98 of the Birmingham City Code requires that the property owner be notified of the City’s intention to make this improvement.

If a property owner is liable, either in whole or in part, for the construction or replacement of a sidewalk, the owner may construct or replace the sidewalk at his/her own expense. In that event, the City Clerk shall be notified accordingly by the owner within ten (10) days and such construction or replacement shall be completed in accordance with the specifications of the City of Birmingham within sixty (60) days of the receipt of this notice. All such sidewalk work shall be conducted only after issuance of a permit from the Engineering Department.

The City is generally responsible for the replacement of deteriorated sidewalks and for sidewalks damaged by City trees, City staff, or its contractors. Property owners will not be responsible for sidewalks damaged by utility work. Otherwise, property owners are responsible for damaged sidewalks, including sidewalks damaged at driveways. Property owners are responsible for all brick sidewalk repairs, exposed aggregate sidewalk repairs, as well as pavement closer to the street in the case of extra wide sidewalks (over six feet wide). The City will also be power washing and sealing all exposed aggregate sidewalks located within the southwest quadrant of the downtown, to extend the life of the pavement.

The City has engaged a contractor for sidewalk construction. In the event the property owner does not construct or replace the owner responsibility sidewalk within the above specified time limit, the City will proceed to have the sidewalk replaced by its contractor and bill the property owner for the cost of the owner responsibility work.

A contract for this work was recently bid and will be completed by the lowest priced responsible bidder under the direction of the City of Birmingham. Some of the approximate costs to adjacent owners are listed below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>4” Sidewalk Removal &amp; Replacement</td>
<td>$6.24/sq.ft.</td>
</tr>
<tr>
<td>6” Sidewalk Removal &amp; Replacement</td>
<td>$7.39/sq.ft.</td>
</tr>
<tr>
<td>4” Exposed Agg. Sidewalk Removal &amp; Replacement</td>
<td>$14.95/sq.ft.</td>
</tr>
<tr>
<td>Reset Brick or Granite Pavers</td>
<td>$23.00/sq.ft.</td>
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<tr>
<td>Grout or Caulk Joint Repair</td>
<td>$3.45/ft.</td>
</tr>
<tr>
<td>Cleaning and Sealing of Exposed Aggregate Sidewalk</td>
<td>$1.04/sq.ft.</td>
</tr>
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The prices obtained by the City of Birmingham tend to be very competitive to that which an individual property owner could obtain. You will receive another notice indicating when the contractor is planning to begin repairs in your area. For additional information, please call the Engineering Department at 248-530-1850.
SIDEWALK AREA 2
2019 OWNER BILLING LIST

ADDRESS:

Banbury
  1693
  1827

Bennaville
  1520

Bowers
  1573

Chapin
  1475

Croft
  1787

S. Eton
  645
  1622

E. 14 Mile
  1705-1727

Haynes
  1822

Hazel
  1915
  1824

Humphrey
  1363
  1375
  1555

Melton
  1391

Sheffield
  1563
Villa
1842

Woodward
33200
33202
33278
33300
33400
33502
33524
Parcel Number - 08-19-25-101-006

Yosemite
1671
1812
SIDEWALK AREA 1D
2019 OWNER BILLING LIST

ADDRESS:

Henrietta
  155
  111

Martin
  151
  240
  260
  320

Pierce
  180
  480

S. Bates
  155
  380

S. Chester
  180

Townsend
  100
  101
  103
  107
  161
  163
  167
  189
  191

W. Merril
  175
  189
  300
DATE: March 1, 2019

TO: Joseph A. Valentine, City Manager

FROM: Paul T. O’Meara, City Engineer

SUBJECT: Sidewalk Trip Elimination Services
Contract #6-18(SW)
Contract Extension

INTRODUCTION:
Last year, the Engineering Dept. developed an original Request for Proposals (RFP) called Sidewalk Trip Elimination Services, Contract #6-18(SW). The RFP did not specify the actual method to be used to eliminate sidewalk trip hazards, while meeting certain criteria. The only bid received for the RFP was from a firm called Precision Concrete, Inc. The award memo from 2018 that describes in detail the RFP structure, as well as the work process offered by the successful bidder is attached to this report. Precision Concrete has offered to extend the contract another year at 2018 unit prices (letter attached).

BACKGROUND:
The work area included in the 2018 program was known as Area #8. A relatively small quantity of work was measured in the program area, and a total of $48,000 was authorized. Once the work was actually underway, the Engineering Dept. determined that additional trip hazards needed to be worked on than what had been measured. Skipping them would not have been appropriate, since the City was clearly working extensively in the area. Other hazards outside of the program area were also added to the contract. Additional funds were approved later by the City Commission, for a total 2018 program cost of $82,174.

Precision Concrete mobilized to Birmingham the first week of July, and were able to complete the expanded project scope within the short time of 2.5 weeks. The crews worked quickly, and caused little disruption to the residents and pedestrians in the immediate area. The amount of work that was accomplished relative to the amount of time the Engineering Dept. had to spend overseeing the work made the process a major success. Not only did it reduce the disruption to the neighborhood, it also reduced the size and value of the traditional concrete replacement program.

Given this success, the Engineering Dept. inspected the next sidewalk program area (Area #2) with the intention of having both a traditional concrete replacement program, supplemented with a sawcutting program. The program area #2 will focus on the southeast corner of the City (south of Maple Rd., and east of either Adams Rd. or Woodward Ave.). The criteria established states that any trip hazard measuring between ½ inch and 1½ inch vertical discrepancy between joints should be corrected using the sawcutting method. Inspection results determined that a larger quantity of the existing trip hazards would fall under the sawcutting method. We are pleased that Precision
Concrete is offering to return to Birmingham at 2018 prices, and fully expect that if other bids were solicited for this work, no other similar proposals for this patented process would be received.

LEGAL REVIEW:
The offer to extend the contract terms has been reviewed and approved by the City Attorney’s office. The contractor has been apprised of the work area and quantity, and understands that new performance and payment bonds will have to be provided, as well as updated proof of insurance. Further, the contractor understands that the new work area must be completed no later than November 2, 2019.

FISCAL IMPACT:
Based on current estimates, it is estimated that the value of the work, charged at the 2018 contract price of $12.00 per foot equals $133,356.00. This quantity represents over 2,500 separate work locations. If this work was paid for using traditional sidewalk remove and replace methods, the value of this work would be approximately double, representing a savings to the City of over $130,000, not counting reduce staff time.

The cost of this work will be charged to the General Sidewalk Fund, account number 101-444.001-981.0100.

SUMMARY
It is recommended that the City Commission authorize the extension of Contract #6-19(SW), 2018 Trip Hazard Elimination Program, to Precision Concrete, Inc., for the 2019 contract year, at a total cost of $133,356.00.

ATTACHMENTS:
• Offer of contract extension from Precision Concrete, Inc.
• Summary of estimated quantity of 2019 work area by street address.
• Map of 2019 Work Area.
• RFP Award memo for Contract #6-18(SW).
• Contract #6-18(SW) Request for Proposals
• Contract #6-18(SW) Bid from Precision Concrete, Inc.

SUGGESTED RESOLUTION:
To approve an extension of the 2018 Sidewalk Trip Elimination Program, Contact #6-18(SW) for the 2019 sidewalk program repair area, at 2018 contract prices, to Precision Concrete, Inc., in the amount of $133,356.00, contingent upon submittal of the necessary bonds and insurance certificate. All costs shall be charged to account number 101-444.001-981.0100.
February 28, 2019

City of Birmingham
attn: Paul O'Meara, City Engineer
151 Martin St
Birmingham, MI 48012

Subject: Contract Extension for **SIDEWALK TRIP ELIMINATION SERVICES - CONTRACT #6-18(SW)**

Paul,

We appreciate the opportunity to submit this Contract Extension to the City of Birmingham. Please accept this letter as confirmation of our intent to honor the 2018 Bid Rates on sidewalk trip elimination services, as awarded to us in 2018 on Contract #6-18(SW) (rate and unit of measure; $12.00 per Linear-Foot).

We will provide updated proof of insurance (ACORD), the required performance bond, and payment bond in preparation for the 2019 project. Let us know if any additional information is required. We appreciate your ongoing consideration and the opportunity to provide our service for the City of Birmingham.

**Cost and Scope**

Based on the 2018 contract, PCC will bill for this project in 2019 at the rate of $12.00 per Linear-Foot.

The scope of the sidewalk trip hazards has not changed. Trips are defined as a differential in the walkway of 0.5" high and less than or equal to 1.5" high. Trip hazards will be eliminated leaving a maximum running slope (ramp) of 1:12 as permitted to meet ADA requirements wherever possible. The work will be performed on City sidewalks as designated by City Engineering.

**Sole Source Status**

The technology that Precision Concrete Cutting uses to remove trip hazards has been developed and patented by Precision Concrete Cutting based in Provo, UT. Precision Concrete, Inc. is the only company authorized to use the patented equipment and method for removing sidewalk trip hazards as described by the following patent numbers:

- U.S. Patent No. 6,827,074
- U.S. Patent No. 6,896,604
- U.S. Patent No. 7,000,606
- U.S. Patent No. 7,143,760
- U.S. Patent No. 7,201,644
- U.S. Patent No. 7,402,095

These patent numbers and the Precision Concrete Cutting (PCC) licensing agreement make Precision Concrete, Inc. a sole source for trip hazard removal in Michigan using this technology.

Precision Concrete Cutting looks forward to continuing work with Birmingham to deliver a proactive and cost-effective sidewalk maintenance program to help with the efforts of ADA compliance and reduce liabilities associated with sidewalk trip hazards.

Mark A. Bonkowski, President

Ben Johnson, Business Manager, SE Michigan

Precision Concrete, Inc. (Precision Concrete Cutting)
1896 Goldeneye Drive
Holland MI 49424

(616) 403-1140 Phone
(616) 582-5951 Fax
<table>
<thead>
<tr>
<th>Street Name</th>
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</thead>
<tbody>
<tr>
<td>Adams</td>
<td>199</td>
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<td>Banbury</td>
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<tr>
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<td>Cole</td>
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<td><strong>Total</strong></td>
<td><strong>10,656</strong></td>
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Disclaimer: The information provided by this program has been compiled from recorded deeds, plats, taxmaps, surveys, and other public records and data. It is not a legally recorded map or survey.

The data provided herein may be inaccurate or out of date and any person or entity who relies on said information for any purpose whatsoever does so at his or her own risk.

Data Sources: Oakland County GIS Utility, City of Birmingham
As you know, each year the Engineering Dept. inspects all public sidewalks in a designated section of the City, documenting all defects that could be considered a trip hazard. A larger “residential” section of the City is inspected on a seven year rotating cycle, and a smaller “commercial” section of the Central Business District is inspected on a four year rotating cycle. Once a list of defects has been prepared, the City then issues a concrete repair program contract. The contract involves hiring a concrete contractor that can address several needs throughout the City such as:

1. Removing and replacing defective sections of sidewalk.
2. Removing and replacing defective concrete road sections, primarily repairing the road from utility trench damage, as well as other damages such as water main breaks.

More recently, the concrete contract has also addressed other needs, such as:

1. Construction of special projects, such as those recommended by the Multi-Modal Transportation Board.
2. Installation of handicap ramps needed to keep the cape seal program in compliance with the Americans with Disabilities Act (ADA).
3. Improved maintenance of the streetscape in the Central Business District, such as installing clear sealer on exposed aggregate sidewalks, or replacing caulk in joints.

As various new processes and equipment becomes available, the Engineering Dept. has attempted to simplify the construction process by varying the requirements for smaller, simpler defects. Most notable are those conditions where the sidewalk is not cracked, but has been heaved relative to the sidewalk next to it, causing a trip hazard. Instead of removing and replacing the concrete, a process that involves several steps, newer equipment allows other potentially simpler means to do this work. Other methods include grinding off the concrete surface that is now too high, sawing it off with a horizontal saw, or pushing the lower section up by pumping grout underneath it. Understanding that concrete grinding is the most common method currently being used to remove the surface of concrete, starting in 2015, we added a new pay item to our contracts requiring that the concrete contractor reduce the amount of concrete being removed, and instead fixing simpler defects through concrete grinding.

While there has been a cost advantage to this initiative, overall we have seen mixed results, depending on the contractor. Concrete contractors are typically not set up to conduct this type...
of work, as it is not in their area of expertise. Achieving the consistent level of quality on the finished product that we need has been difficult. In the 2017 concrete contract, the contractor attempted to complete the concrete grinding portion of the contract using recently bought equipment. The quality of the results was not acceptable, and we had to ask them to stop. Having been introduced to a contractor that specializes in the area of horizontal sawing such defects using a patented system, a free demonstration was set up. The specialty contractor is known as Precision Concrete Cutting, Inc. Both the City and the concrete contractor were very impressed with the results, and they were able to be hired as a subcontractor to get the “grinding” portion of the work done to specs, at no additional cost to the City. Further, the work, which involved over 900 individual locations, was done remarkably quick (in less than three weeks).

As a result of these impressive results, staff considered the feasibility of bidding a separate contract for sawcutting services. However, we understand that the system that Precision Concrete Cutting has developed is patented, and that there would be no other contractors that compete specifically with their system. Knowing that there are other ways to address trip hazards other than sawing, such as grinding, raising sidewalk by pumping grout, or simply removing and replacing the concrete, we strove to create a bidding document that would be more open to any methodology. To achieve this, rather than issuing a traditional contract document that narrowed the scope of potential methods, a Request for Proposals (RFP) document was prepared. The RFP was identified as “Sidewalk Trip Elimination Services, Contract #6-18(SW).” In this document, the desired scope of work was clarified, but the method used to achieve the results was left open to any that bidders may suggest. The document reserved the right of the City to choose the methodology that the City deemed to be best, considering not only total cost, but quality of product, disruption to the adjacent property owners, and staff time required to monitor the work.

The area selected for the focus of this contract is known as Sidewalk Area 8, the same area that was inspected for traditional sidewalk repairs, or specifically, the area north of Maple Rd., and east of Adams Rd. In this area, about 715 locations were identified as being good candidates for this work, adding up to a total of 4,000 linear feet.

The RFP was advertised using the Michigan Intergovernmental Trade Network (MITN), the statewide bidding program being used by the majority of public agencies and contractors to disseminate information about construction bids. Bids were opened on April 24, 2018. A summary of the bid results is attached.

Only one bid was received from this solicitation, that being Precision Concrete Cutting, of Holland, MI, with their bid of $48,000. Having not bid a project of this nature before, and not knowing what work would be authorized, an Engineer’s estimate was not established. However, the unit rate of $12 per foot is within the expected cost range for this type of work. Having worked with Precision Concrete Cutting as a subcontractor, and knowing that the process they use not only saves money, but greatly reduces staff time and neighborhood disruption, we are excited to hire this company directly for this type of work. If the City attempted to repair over 700 trip hazards using conventional concrete replacement, the cost would be approximately double, meaning that the City is saving about $50,000 just in contract costs. Additional savings in staff time and effort will also be realized.
A suggested resolution follows. Given the funds already authorized for the traditional sidewalk program is using the majority of the current funding available in this account, a budget amendment for this account will be required as included below in the suggested resolution.

SUGGESTED RESOLUTION:

To award the 2018 Sidewalk Trip Hazard Elimination Program, Contract #6-18(SW) to Precision Concrete, Inc., in the amount of $48,000.00, to be charged to the Sidewalk Fund, account number 101-444.001-981.0100, contingent upon execution of the agreement and meeting all insurance requirements. Further, to approve an amendment to the 2017-18 Fiscal Year Budget as follows:

\[
\text{Sidewalk Fund} \\
\text{Revenues:} \\
\text{Draw from Fund Balance #101-000.000-400.0000} & \quad \text{\$48,000} \\
\text{Total Revenue Adjustments} & \quad \text{\$48,000} \\
\hline
\text{Expenditures:} \\
\text{Public Improvements #101-444.001-981.0100} & \quad \text{\$48,000} \\
\text{Total Expenditure Adjustments} & \quad \text{\$48,000}
\]
REQUEST FOR PROPOSALS
For TRIP ELIMINATION SERVICES

Sealed proposals endorsed “SIDEWALK TRIP ELIMINATION SERVICES — CONTRACT #6-18(SW)”, will be received at the Office of the City Clerk, 151 Martin Street, PO Box 3001, Birmingham, Michigan, 48012; until April 24, 2018 after which time bids will be publicly opened and read.

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified contractors to provide services to eliminate sidewalk trip hazards in the locations as specified herein and/or by the City Engineer. This work must be performed as specified in accordance with the specifications contained in the Request For Proposals (RFP).

The RFP, including the Specifications, may be obtained online from the Michigan Inter-governmental Trade Network at http://www.mitn.info or at the City of Birmingham, 151 Martin St., Birmingham, Michigan, ATTENTION: Paul, O'Meara, City Engineer.

The acceptance of any proposal made pursuant to this invitation shall not be binding upon the City until an agreement has been executed.

Submitted to MITN: April 5, 2018
Deadline for Submissions: April 24, 2018 by 4:00 PM Eastern Standard Time
Contact Person: Paul O’Meara
P.O. Box 3001, 151 Martin Street
Birmingham, MI 48012-3001
Phone: 248.530.1836
Email: pomeara@bhamgov.org
# REQUEST FOR PROPOSALS

For PARKING CONSULTANT SERVICES

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INTRODUCTION

For purposes of this request for proposals the City of Birmingham will hereby be referred to as “City” and the private firm will hereby be referred to as “Contractor.” References to the “sidewalk system” shall generally refer to the City’s public sidewalk system, and more specifically the trip elimination district, as outlined in the attached map under Attachment “E.”

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified firms to provide services to improve the City’s sidewalk system, including the review and elimination of trip hazards due to vertical joint displacements greater than 0.5” and less than 1.5”, in the most clean and efficient manner, with the least impact to vehicular and pedestrian traffic. Displacements encountered that are greater than 1.5” will be repaired under traditional concrete sidewalk replacement methods, and are not considered a part of this contract.

The determination of the award of this contract will not be made solely based on the lowest cost bid. Each bidder is required to prepare written details of the procedures used to repair vertical joint displacements of the sidewalk system greater than 0.5” (trip hazards) and less than 1.5”, including but not limited to listing its: Certifications, processes, schedule, cleanup methods, recycling, road/sidewalk closure requirements, and cost. References from other similar customers, such as municipalities, are most relevant, and shall be submitted for consultation. The City shall pay for the contractor’s services per the attached bid proposal.

Pricing, cleanliness, speed, and accuracy, with minimal impacts to vehicular and pedestrian traffic will all be reviewed during the bid evaluation process. Minimal impact upon the adjacent property and existing landscaping will also be considered.

This work must be performed as specified accordance with the specifications outlined by the Scope of Work contained in this Request For Proposals (RFP).

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

It is anticipated the selection of a firm will be completed by May 7, 2018 or sooner. An Agreement for services will be required with the selected Contractor. A copy of the Agreement is contained herein for reference. The City shall have the right to negotiate final payment terms, expectations, and specifications with the successful Contractor prior to the final signing of said Agreement. Contract services will commence upon execution of the service agreement by the City. All work referenced within this Agreement shall be satisfactorily
REQUEST FOR PROPOSALS (RFP)
The purpose of this RFP is to request sealed bid proposals from qualified parties presenting their qualifications, capabilities and costs to provide sidewalk trip hazard elimination of the City’s sidewalk system in the area as designated in the RFP.

INVITATION TO SUBMIT A PROPOSAL
Proposals shall be submitted no later than April 24, 2018 by 2:00 PM Eastern Standard Time to:

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

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

INSTRUCTIONS TO BIDDERS
1. Any and all forms requesting information from the bidder must be completed on the attached forms contained herein (see Contractor’s Responsibilities). If more than one bid is submitted, a separate bid proposal form must be used for each.

2. Any request for clarification of this RFP shall be made in writing and delivered to: Paul O’Meara, City Engineer at pomeara@bhamgov.org. Such request for clarification shall be delivered, in writing, no later than 5 days prior to the deadline for submissions.

3. All proposals must be submitted following the RFP format as stated in this document and shall be subject to all requirements of this document including the instruction to respondents and general information sections. All proposals must be regular in every respect and no interlineations, excisions, or special conditions shall be made or included in the RFP format by the respondent.

4. Each respondent shall review the Scope of Work and include in his or her proposal the following items:
   a. Technical specifications of his or her processes and methods to correct vertical sidewalk joint deficiencies;
   b. Ability to access sidewalk work areas without driving equipment on adjacent lawns;
   c. Cleanup process;
d. Vehicular and pedestrian traffic maintenance practices;
e. Work schedules/timeframes to complete work;
f. Cost details to complete the work, including unit pricing per foot of sidewalk joint trip hazard elimination;
g. Written statement and photographs as to the condition that the walking surface will be left in upon completion of the proposed treatment;
h. Any other pertinent information to be used in the City's bid evaluation.

5. The contract will be awarded by the City of Birmingham to the most responsive and responsible bidder based upon the City’s determination of the evaluation of the value of its processes in combination with lowest price and the contract will require the completion of the work pursuant to these documents.

6. Each respondent shall include in his or her proposal, in the format requested, the cost of performing the work. Municipalities are exempt from Michigan State Sales and Federal Excise taxes. Do not include such taxes in the proposal figure. The City will furnish the successful company with tax exemption information when requested.

7. Each respondent shall include in their proposal the following information: Firm name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of their proposal.

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

1. Ability to provide services as outlined.
2. Related experience with similar projects, Contractor background, and personnel qualifications.
3. Quality of the response to this RFP including a demonstrated understanding of the enclosed scope of work and the City’s sidewalk system.
4. Overall Costs.
5. Processes/Methods of completing the work.
6. Cleanup process.
7. Details of impacts to vehicular and pedestrian traffic.
8. Details of work schedule and efficiency of completing the work.
9. Details of condition of walking surface upon completion.
10. Statement of understanding that if concrete is inadvertently damaged during process, such as an unexpected fracture, then the Contractor shall become responsible for traditional concrete removal and replacement.
11. Statement clarifying if there are any existing sidewalk conditions that would represent a special situation that would result in the Contractor refusing to perform the trip elimination hazard treatment, and if so, what conditions would be applicable. (Note that the City will not suggest this treatment on any fractured concrete slabs.)

12. Statement of understanding that the elimination of all existing trip hazards as specified within the Contract shall be completed no later than November 2, 2018, or the Contractor shall be fined an amount of $200 per calendar day until such trip hazards are successfully removed.

13. Other pertinent information provided by the Contractor.


TERMS AND CONDITIONS

1. The City reserves the right to reject any or all proposals received, waive informalities, or accept any proposal, in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Contractor if the successful Contractor does not execute a contract within ten (10) days after the award of the proposal.

2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.

3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.

4. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.

5. The cost of preparing and submitting a proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.

6. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.

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

**CONTRACTOR’S RESPONSIBILITIES**

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

1. Complete and sign all forms requested for completion within this RFP.
   a. Bidder’s Agreement (Attachment B - p. 16)
   b. Cost Proposal (Attachment C - p. 17)
   c. Iran Sanctions Act Vendor Certification Form (Attachment D - p. 18)
   d. Agreement (p. 10 – only if selected by the City).

2. Provide a description of completed projects that demonstrate the firm’s ability to complete projects of similar scope, size, and purpose, and in a timely manner, and within budget.

3. Provide a written plan detailing the anticipated timeline for completion of the tasks set forth in the Scope of Work (p. 9).

4. Provide a description of the firm, including resumes and professional qualifications of the principals involved in administering the project.

5. Provide a list of sub-contractors and their qualifications, if applicable.

6. Provide three (3) client references from past projects, include current phone numbers. At least two (2) of the client references should be for similar projects.

7. Provide a project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline. Contractor shall be aware that all trip elimination hazard work shall be 100% complete within the designated work area no later than October 12, 2018.

**CITY RESPONSIBILITY**

1. The City will provide a designated representative to work with the Contractor to coordinate both the City’s and Contractor’s efforts and to inspect and verify any work performed by the Contractor.

**SETTLEMENT OF DISPUTES**

The successful bidder agrees to certain dispute resolution avenues/limitations. Please refer to paragraph 17 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.
INSURANCE
The successful bidder is required to procure and maintain certain types of insurances. Please refer to paragraph 12 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

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

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

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

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

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

This section shall constitute the Scope of Work and the Contractor shall perform the following services in accordance with the requirements as defined and noted herein:

1. **Project Coordination & Management:** The Contractor shall attend a pre-construction meeting with the City staff prior to starting work to review the work plan, procedure, and any concerns that either party may have. The Contractor shall coordinate with designated City staff regarding schedule, deliverables and the scope of work. The Contractor shall provide a list of personnel to work on the project prior to commencement of work, including field supervisors and technicians. The designated field supervisor shall be always present during work operations.

2. **Emergency Contacts/Safety Plan:** Prior to commencement of the work, the Contractor shall submit a list of emergency contacts and safety plan to the City Engineer.

3. **Perform Repairs:** The Contractor shall remove vertical displacements of 0.5 inches to 1.5 inches, all inclusive, on existing sidewalk joints, using methods acceptable to the City that comply with current ADA specifications, under the following conditions:

   a. Concrete panel/slab must be free of chipped, cracked, scaled or spalled concrete, and is not less than half of its standard thickness.
   b. Displacement repair shall not be performed on vertical displacements greater than 1.5 inches unless otherwise approved by the City.
   c. The work area shall be confined to the area of the City defined as being north of Maple Rd., located between Adams Rd. and Coolidge Hwy., clarified on the map herein attached. The sidewalks within the subject work area boundary has been inspected, and the total number of locations is currently estimated at 361 individual locations. Most are on local streets, but some exist on major roads such as Maple Rd. No extra payment shall be provided to the Contractor for extra costs that may be incurred for performing these services on major roads. If the process employed by the Contractor requires blocking a lane of traffic for safety, all such additional costs shall be included in the proposal, and all such work shall be performed on Saturdays only.
   d. Displacement repair shall be at an existing joint or score cut of sidewalk that has not been previously repaired.
   e. Displacement repair shall not leave ridges, holes, grooves, cuts, stray marks, or otherwise deface panels, and shall not require filling of any material that deteriorates or breaks apart over time.
   f. Any damage to adjacent areas, including but not limited to lawns, trees, landscape, adjacent panels/slabs/bricks, walls, buildings, etc., caused by the work, shall be at the Contractor’s expense.
g. Displacement repair shall not cause displacement, separation or movement of adjacent undamaged panels.

h. Slab removal/replacement is prohibited.

i. Grinding, chipping, pulverization or other destructive methods that damages or defaces panels are prohibited.

j. Displacement repair must meet American Disabilities Act (ADA) requirements in terms of slope and coefficient of friction. Repaired surface slopes shall not exceed 1/12 and shall have essentially the same or slightly rougher texture as the undamaged portion of adjacent panels.

k. Displacement repair must be neat, smooth and uniform in appearance and leave zero point of vertical differential between slabs over the full width of the raised sidewalk to eliminate the trip hazard. Any panels inspected that do not meet these criteria afterward shall be repaired as required, at the Contractor's expense.

4. Equipment & Cleanup: The City reserves the right to inspect and approve or reject the Contractor's equipment and processes used in performing the repairs including cleanup of the work area, and as part of the work, the Contractor shall be responsible for the following:

   a. Any cutting equipment used shall be of the type that is able to cut flush to ground and/or working at any angle to perform the work in tight working spaces, around obstacles, along buildings, walls or fences, etc., without causing damage to the adjacent work areas or panels.

   b. Clean up of the repair area and disposing or recycling of debris and dust generated from the repair shall be performed immediately after repair, in the cleanest manner to minimize spreading of dust. Blowing of debris and dust shall be prohibited, and operations shall maintain a safe environment for the public and adjacent work areas at all times.

   c. In no way shall operations cause the creation of wet/slippery surfaces or a mix of dust, debris and water (slurry) from the repairs and cleanup. Also, the Contractor shall submit a work plan to address mitigation of runoff caused by rain, irrigation, or other unexpected water sources during repair operations, prior to construction.

   d. All disposal shall be performed in accordance with applicable laws. Submit disposal manifest records to City.

   e. The Contractor shall endeavor to not damage any private property, such as landscape features, shrubs, trees, or irrigation equipment. Any damage noted shall be repaired to the City's and adjacent owner's expectations.

5. Traffic Maintenance/Storage: Vehicular and pedestrian traffic must be maintained at all times in a safe manner. The Contractor shall submit a plan to maintain access to roads, sidewalks and driveways to the City prior to construction. Also, equipment storage and contractor parking shall be in designated areas as approved by the City. Work on private property shall not
be permitted without written permission from the landowner. The Contractor shall not have access to storage in the right-of-way, other than to park road legal vehicles in designated areas, with the understanding that such storage shall be moved on a regular basis, and not left in the same area on a routine basis.

6. **Schedule:** Generally, the work shall begin in accordance with this Contract. Contractor shall submit a schedule to complete the work to the City prior to construction. Contractor shall schedule daily operations to minimize disruption to the public, in accordance with this RFP.

7. **Daily Work Items/Invoicing/Additional Services:** The Contractor shall log all work completed on a daily basis. Quantities shall be agreed upon with the City’s Field Inspector on a daily basis. A monthly invoice shall be submitted for the work that details quantities by day, per location, expressed in inch-feet of displaced joints repaired. Any work outside of the area of scope of work shall not be performed without written authorization from the City.

8. **Work Coordination Clause:** The Contractor shall be responsible for coordinating completion of the work with others performing construction that may be ongoing within the project limits, including but not limited to utility companies, home builders, or other City contracts, etc.

9. **Bonds:** The selected Contractor shall supply a Payment Bond and Performance Bond to the City using the forms included in Appendix F, valued at the value of the Contract.

10. **Payment for Services:** As referenced in Appendix C, the Contractor shall be paid for services based on a price per linear foot of trip hazard eliminated. For example, if a five foot wide sidewalk is lifted such that work is needed across its full width, the Contractor shall be paid for five linear feet. If a sidewalk is lifted on an angle such that only three of the five feet is lifted to the point that it meets the criteria, then the Contractor shall work on the three feet needing repair, and be paid for a total of three feet at that location. The Contractor shall also indicate the number of work days that will be needed to complete the work, assuming each work day that the Contractor is on site, Monday through Saturday, as needing some supervision and interaction on the part of the City staff. The work shall be based on the assumption that there are 361 work locations throughout the subject work area. Adjustments up or down shall be modified by a percentage up or down, and the number of work days shall be modified by the same percentage. If the Contractor works more days than that estimated, the Contractor shall be charged $360 per work day. If the Contractor works less days that that estimated, and successfully completes the Contract, then they shall be paid a bonus of $360 per work day.

11. This section and referenced documents shall constitute the Scope of Work for this project and as such all requirements must be met.
ATTACHMENT A - AGREEMENT
For SIDEWALK TRIP HAZARD ELIMINATION SERVICES

This AGREEMENT, made this _______day of ____________, 2018, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and _____________, Inc., having its principal office at _____________________ (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham has heretofore advertised for bids for the procurement and performance of services required to perform sidewalk repair services to eliminate sidewalk trip hazards of the City’s sidewalk system and provide associated mapping deliverables of the repairs, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to perform sidewalk repair services to eliminate sidewalk trip hazards of the City's sidewalk system.

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

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform sidewalk repair services to eliminate sidewalk trip hazards of the City’s sidewalk system and the Contractor’s cost proposal dated ________________, 2018 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.

2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed ________________, as set forth in the Contractor’s ____________, 2018 cost proposal.

3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.
4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor’s role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers’ compensation or any other employer contributions on behalf of the City.

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

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

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

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.
10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor’s employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers’ Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than $3,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $3,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be Additional Insureds: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.
E. **Pollution Liability Insurance**: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than $1,000,000, per occurrence preferred, but claims made accepted.

F. **Owners Contractors Protective Liability**: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than $3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be "Name Insured" on said coverage. Thirty (30) days Notice of Cancellation shall apply to this policy.

G. **Cancellation Notice**: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.

H. **Proof of Insurance Coverage**: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
4) Two (2) copies of Certificate of Insurance for Pollution Liability Insurance;
5) If so requested, Certified Copies of all policies mentioned above will be furnished.

I. **Coverage Expiration**: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

J. **Maintaining Insurance**: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend,
pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

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

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

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham
Attn: Paul O’Meara
151 Martin Street
Birmingham, MI 48009
248.530.1836

CONTRACTOR
(Insert Contractor Information)

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

18. **FAIR PROCUREMENT OPPORTUNITY:** Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

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

WITNESSES:

_______________________________  CONTRACTOR

By:_____________________________

Its:

_______________________________  CITY OF BIRMINGHAM

By:_____________________________

Andrew Harris
   Its: Mayor

_______________________________

By:_____________________________

Cherilynn Mynsberge
   Its: City Clerk

Approved:

________________________________
Paul O'Meara, City Engineer
   (Approved as to substance)

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

________________________________
Timothy J. Currier, City Attorney
   (Approved as to form)

Joseph A. Valentine, City Manager
   (Approved as to substance)
ATTACHMENT B - BIDDER’S AGREEMENT
For SIDEWALK TRIP HAZARD ELIMINATION SERVICES

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

PREPARED BY (Print Name) DATE

AUTHORIZED SIGNATURE

Title E-MAIL ADDRESS

COMPANY

ADDRESS PHONE

NAME OF PARENT COMPANY PHONE

ADDRESS
ATTACHMENT C - COST PROPOSAL
For SIDEWALK TRIP HAZARD ELIMINATION SERVICES

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be priced as follows:

*Attach technical specifications for all proposed materials as outlined in the Contractor’s Responsibilities section of the RFP (p. 6)*

*Additional Bid Item section is available for Contractor if pricing structure is not suited to cover all costs to be considered in Bid. Note that deviating from basic price structure may make proposal more difficult to compare to others.*

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<tr>
<th>COST PROPOSAL</th>
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<tr>
<td>ITEM</td>
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<tr>
<td>PRICE PER FOOT (BASED ON TOTAL OF 4000 L.FT.)</td>
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<tr>
<td>WORK DAYS</td>
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<tr>
<td>ADDITIONAL BID ITEMS</td>
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<td>GRANDTOTAL AMOUNT</td>
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</table>

Firm Name___________________________________________________________

Authorized signature_________________________________________ Date______________
Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an “Iran Linked Business”, as defined by the Act.

By completing this form, the Vendor certifies that it is not an “Iran Linked Business”, as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

PREPARED BY (Print Name)                    DATE

AUTHORIZED SIGNATURE                                  E-MAIL ADDRESS

TITLE

COMPANY

ADDRESS                    PHONE

NAME OF PARENT COMPANY            PHONE

ADDRESS

TAXPAYER I.D.#
ATTACHMENT F
REQUIRED BONDS
2018 CONCRETE SIDEWALK REPAIR PROGRAM - CONTRACT #2-18(SW)

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned

_________________________________________________________ as Principal,
and ________________________________________________________________________ as Sureties,
are hereby held and firmly bound unto the CITY OF BIRMINGHAM, MICHIGAN in the sum of
_____________________________________________ Dollars ($____________________), in lawful
money of the United States, for the payment of which we hereby jointly and severally bind ourselves, our
heirs, executors, administrators, successors and assigns this ___________ day of
_______________________, 20_____.

WHEREAS, the above bounded Principal has entered into a certain written contract with
the above named City of Birmingham, Michigan dated ______ day of ______________, 20_____ for the
construction of __________________________________
___________________________________________________________________________
__________________________________________________________________________,
which contract is hereby referred to and made a part hereof as fully and to the same extent as if the same
were entirely written herein,

AND THE SAID SURETY, for value received, hereby stipulates and agrees that no
change, extension of time, alteration or addition to the terms of the contract or to the work to be
performed thereunder of the specifications accompanying the same shall in anywise affects its obligations
on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition
to the terms of the contract, or to the work or to the specifications.

NOW, THEREFORE, the condition of the above obligation is such that if the Principal
shall fully perform the annexed contract according to the terms thereof, or as such terms may be changed
or modified by mutual agreement, and shall guarantee all work furnished against all defects and incidental
damage to other property for a period of one (1) year following final acceptance of the work, then this
obligation shall be void, otherwise the same shall remain in full force and effect.
This Bond is provided in compliance with and subject to the provisions of Act 213 of the Public Acts of Michigan for 1963, as amended by Act 351 of the Public Acts of Michigan for 1972, also known as MCL §129.201 et. seq.

WITNESSED:

_____________________________________        _____________________________________

_____________________________________        _____________________________________

_____________________________________

_____________________________________

_____________________________________

Principal
2018 CONCRETE SIDEWALK REPAIR PROGRAM – CONTRACT #2-18(SW)

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____________________
___________________________________ of the _____________________________________
hereinafter called the “Principal” and _______________________________________________
_____________________________ hereinafter called the “Surety”, are held and firmly bound unto those
persons known as “Claimants”, as defined in MCL §129.206(6) supplying labor or materials to the
Principal or his subcontractors and the prosecution of the work provided for in a certain Contract by and
between the City of Birmingham and the Principal in the sum of
_______________________________________________________________________ Dollars
($_____________________), in lawful money of the United States, for the payment whereof, we bid
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally this
__________________ day of   _________________________, A.D., 20___.

WHEREAS, the above named Principal has entered into a Contract with the CITY OF
BIRMINGHAM, MICHIGAN dated the ________ day of ___________________, A.D., 20____,
wherein said principal has covenanted and agreed as follows, to wit:

To furnish all the labor and materials ___________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

and,

WHEREAS, this Bond is given in compliance with and subject to the provisions of Act
Michigan for 1972, also known as MCL §129.201 et seq.

NOW, THEREFORE, the condition of the above obligation is such that if all persons or
claimants as defined in Public Act 213 of 1963 supplying labor or materials to the principal contractor or
his subcontractors in the prosecution of the work provided for in the contract are paid, the obligation of
this Bond shall be void; otherwise, it shall be in full force and effect.
WITNESSED:

_____________________________________

_____________________________________

Principal

_____________________________________

Surety
April 24, 2018

City of Birmingham
Attn: Paul O’Meara, City Engineer
151 Martin Street
Birmingham, MI 48012-3001

Phone: 248.530.1836   Email: pomeara@bhamgov.org

Subject: SIDEWALK TRIP ELIMINATION SERVICES – CONTRACT #6-18(SW)
RFP response for City of Birmingham, DUE April 24, 2018 by 2pm

Paul,

We appreciate the opportunity to submit our Request for Proposal (RFP) response (Proposal) to the City of Birmingham, MI (City). This cover letter is being provided to augment the required RFP response documents and aid the City Engineering Department in making a decision to award the project. The enclosed response to “Contractor Responsibilities” and the following attachments make this RFP response packet complete:

1a) Bidder’s Agreement (Attachment B), 1b) Cost Proposal (Attachment C), and 1c) Iran Sanctions Act Vendor Certification Form (Attachment D)

Precision Concrete, Inc (Precision Concrete Cutting)

Precision Concrete Cutting (PCC) has been removing trip hazards from uneven sidewalks and other concrete walkways across the nation for over 20 years. As the industry leader in technology and price, PCC can reduce liability associated with uneven sidewalk and help meet ADA compliance with a method more effective and less expensive than alternatives. PCC utilizes its patented tools and processes that it has developed and refined for trip hazard removal. Not only is trip hazard removal the specialty of PCC... it’s the only thing we do. Precision Concrete, Inc. is the locally licensed business unit serving Michigan and Indiana that leverages the proven tools, process, and training to provide this service.

The Advantage

The Precision Concrete Cutting (PCC) service removes the entire trip hazard from side to side on the entire sidewalk while other methods of repair often leave a portion of the trip hazard. Not only can PCC reach the edges of every sidewalk, we can remove trip hazards from virtually any angle and at any location. Trip hazards caused by cracked concrete or located in hard-to-reach places such as in gutters or adjacent to a wall, post, or railing will be eliminated without any damage to nearby impediments. There is no other process of trip hazard removal available with the quality, flexibility, and diversity as that of PCC.
Quality

The Precision Concrete Cutting (PCC) process involves the measurement of every sidewalk trip hazard identified. PCC inspects the sidewalks and takes specific measurements to identify and log each trip hazard size and location. These measurements are used to determine the size of repair that is required, and to guarantee that the repair is made to dimensional specifications.

The PCC finished repair is aesthetically pleasing, smooth, and of superior quality compared to alternatives. It does not leave grooves in the surface of the concrete, it is not uneven, and is left with an acceptable coefficient of friction to not create slip hazards.

Environmental & Community Friendly

The Precision Concrete Cutting (PCC) process does not require heavy equipment in the work area. The PCC equipment is small and maneuvered about by individual employees. No damage is created to buildings, landscaping, irrigation systems, or the surrounding environment. Complete cleanup of the work area is performed and dust abatement systems minimize dust. All materials removed are properly recycled.

PCC utilizes a patented dust collection system to keep dust to a minimum while performing its work. This is a great benefit over other repair processes that leave the area covered in concrete dust or slurry. PCC also cleans up the removed concrete and debris created while performing the repairs and disposes (for recycle) of it as part of the service. Being a complete solution, no follow-on tasks are required of City staff. Sidewalks remain open with only minor disruption while PCC moves thru an area performing the trip hazard removals.

As a member of the U.S. Green Building Council (USGBC) we are proud of the fact that we reduce the impact to landfills and the environment as a result of our service. For example, removing and replacing just 50 sidewalk panels would result in approximately 60,000 lbs of concrete being removed (your average 5’ x 5’ panel weighs about 1,200 lbs). Using Precision Concrete Cutting, sidewalk trip hazard removal can be accomplished by removing about 400 lbs of concrete that will be recycled. No heavy equipment or hauling is required. Also, there is no damage to trees or adjoining landscape with Precision Concrete Cutting.

PCC will deploy a well-marked light-duty truck/van and full logo trailer used to mobilize up to three (3) full sets of cutting equipment and technicians. Safety cones are placed wherever the truck/van and trailer park and they are placed on the sidewalks in front of and behind the technician area to assure pedestrian safety during cutting. All PCC staff (including project managers) wear high-visibility safety vests whenever they are outside their vehicle and in the right-of-way.
Contractor’s Responsibilities (including Scope. Items in blue are pulled from the RFP)

Precision Concrete Cutting (PCC) will perform the work listed in the City of Birmingham 2018 CONCRETE SIDEWALK REPAIR PROGRAM CONTRACT #6-18 (SW) by removing sidewalk trip hazards on walkways in the locations identified by the City. Based on data provided by the City on April 5, 2018, there are approximately 361 locations that comprises about 4,000 linear feet (LF) of cutting.

The sidewalk trip hazards are defined as differentials in the walkway of 0.5" up to (including) 1.5" high. Trip hazards will be eliminated leaving a maximum running slope (ramp) of 1:12 as required by the City to meet ADA requirements. The work area shall be confined to the area of the City defined as being north of Maple Rd., located between Adams Rd. and Coolidge Hwy., clarified on the Map below (page 6).

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

1. Complete and sign all forms requested for completion within this RFP.
   a. Bidder's Agreement (Attachment B - p. 16) see Attachment B
   b. Cost Proposal (Attachment C - p. 17) see Attachment C
   c. Iran Sanctions Act Vendor Certification Form (Attachment D - p. 18) see Attachment D
   d. Agreement (p. 10 – only if selected by the City). n/a for RFP

2. Provide a description of completed projects that demonstrate the firm’s ability to complete projects of similar scope, size, and purpose, and in a timely manner, and within budget.

   Not only is trip hazard removal the specialty of PCC... it's the only thing we do. PCC completed over 150 projects (82 of which were municipal/public services projects) in Michigan and Indiana in 2017 of similar scope. Every 2017 project was completed on-time and within budget. There are no disputes, change orders, or claims of any type pending including bonds open between PCC and any insured. PCC also completed its fifth consecutive year of zero lost-time accidents.

3. Provide a written plan detailing the anticipated timeline for completion of the tasks set forth in the Scope of Work (p. 9).

   PCC will conduct a pre-construction planning meeting with the City designated contact(s) using a PCC Project Manager to establish priorities, a high-level schedule for each job site, review risks/constraints, and safety plans. The Project Manager will assure schedule, scope, and budget objectives are attained for the project. The PCC Delivery Manager will assure quality and safety objectives are attained during the onsite work phase of the project.

   The overall timeline from “Project Award” to “Project Closure” is anticipated to be May 7 thru June 8, 2018. The anticipated timeline to “Perform Repairs” is May 22 thru June 4 in which there are 10 working days for construction (excludes 5/26 thru 5/28 Memorial Day Weekend / Holiday and provides up to 3 rain days without impact to completion date). This timeline is based on the assumption that there are 361 work locations throughout the subject work area as identified by the City. Adjustments up or down for the task “Perform Repairs” shall be modified by a percentage up or down, and the number of work days shall be modified by the same percentage if the City changes the quantities of work locations and linear feet.

   See item 7 below for the requested detail timeline for completion of the tasks with earliest start and finish dates identified for the City.

   The following gives written details of the tasks to be performed in response to the City Scope of Work;

   a) PCC will provide the necessary Project Coordination & Management. PCC will attend a pre-construction meeting with the City staff prior to starting work to review the work plan, procedure, and any concerns that either party may have. PCC will coordinate with designated City staff regarding schedule, deliverables, and the scope of work. PCC will provide a list of personnel to work on the project prior to commencement of work, including field supervisors and technicians. The designated field supervisor will always be present during work operations in the field.

   b) PCC will provide an Emergency Contacts/Safety Plan to the City Engineer.

   c) PCC will Perform Repairs by removing vertical displacements of 0.5 inches to 1.5 inches, all inclusive, on existing sidewalk joints as marked by the City. Work will be performed based on the SCOPE OF WORK as outlined by the City in the April 5, 2018 RFP. The planned work area is currently defined as being north of Maple Rd, located between Adams Rd and Coolidge Hwy (see Map below for illustration of the work area). PCC does *not* plan to block any traffic lanes during the project. Repairs will be done to meet the American Disabilities Act (ADA) requirements in terms of
slope and coefficient of friction. Repairs will be neat, smooth, and uniform in appearance and leave zero point of vertical differential between slabs over the full width of the raised sidewalk to eliminate the trip hazard.

d) Equipment & Cleanup. PCC will use cutting equipment that is able to cut flush to ground and/or working at any angle to perform the work in tight working spaces, around obstacles, along buildings, walls or fences, etc., without causing damage to the adjacent work areas or panels. PCC will immediately clean up the repair area by collecting for recycle the debris generated from the repair and minimize dust during the operation to maintain a safe environment for the public and adjacent work areas at all times. PCC uses a dry cut process with special HEPA rated vacuums to collect dust and small debris during the trip hazard removal operation. No water is used during the cutting process nor is the operation performed in rain or other wet conditions that may produce slurry. Therefore, the work plan for PCC eliminates the need to address slurry or run-off as no slurry is generated during the repair or during cleanup. All debris will be disposed in accordance with applicable laws as needed at a qualified concrete recycle center. PCC will provide proof, upon request, that all debris is being recycled in a proper and environmentally safe manner.

e) Traffic Maintenance/Storage. Vehicular and pedestrian traffic will be maintained at all times in a safe manner. PCC will maintain access to roads, sidewalks and driveways during construction. No storage in the right-of-way or special parking needs are anticipated for this project. If needed, PCC will follow utilize designated areas for parking as approved by the City.

f) PCC will Schedule the work in accordance with this Contract. Contractor shall submit a schedule to complete the work to the City prior to construction. PCC will schedule daily operations and inspections to minimize disruption to the public, in accordance with this RFP.

g) Daily Work Items/Invoicing/Additional Services. PCC will log all work completed on a daily basis. Quantities shall be agreed upon with the City’s Field Inspector on a daily basis. At minimum, a monthly invoice will be submitted for the work that details quantities by day, per location, expressed in lineal feet (and inch-feet) of displaced joints repaired. Any work outside of the area of scope of work will not be performed without written authorization from the City.

h) Work Coordination. PCC will be responsible for coordinating completion of the work with others performing construction that may be ongoing within the project limits, including but not limited to utility companies, home builders, or other City contracts, etc.

j) PCC will acquire the necessary Bonds as/if required by the City once the proposal has been accepted. PCC is anticipating to supply a Payment Bond and Performance Bond to the City using the forms included in RFP Appendix F, valued at the value of the Contract.

k) Payment for Services. As referenced in Appendix C, PCC expects be paid for services based on a price per linear foot of trip hazard eliminated. PCC had indicated the number of work days (10) that will be needed to complete the work, assuming each work day that the Contractor is on site, Monday through Saturday, as needing some supervision and interaction on the part of the City staff.

4. Provide a description of the firm, including resumes and professional qualifications of the principals involved in administering the project.

Precision Concrete Cutting (PCC) utilizes its patented tools and processes that it has developed and refined for trip hazard removal. There are numerous PCC owned and franchised locations across the country performing this work in their respective geography’s. Precision Concrete, Inc. (DBA Precision Concrete Cutting (or PCC)) is the locally licensed business serving all of Michigan and Indiana that leverages the proven tools, process, and training to provide this service. Ownership of Precision Concrete, Inc. is shared by Mark and Bonnie Bonkowski. The principals and professional management team related to this proposal and the administration of the potential project consists of the following full-time employees;

a) Mark Bonkowski, President. Founder and owner since 2008. Current roles include business development, project/program compliance, sales management, finance, business planning, and staffing. Project Management Professional plus college educations from Ferris State University (Engineering) and Davenport University (Business).

b) Bonnie Bonkowski, CFO. Owner and employed since 2008. Roles include accounting, compliance, payroll, human resources, and office administration.
c) Ben Johnson, Program Manager. Employed full-time since 2017. Roles include project management, fleet management, field surveying, operations/resource planning. College education from Ferris State University.
d) Sarah Temple, Project Coordinator. Employed full-time since 2015. Roles include data collection, project planning support, mapping documents, invoicing, and customer support.
f) Technicians, Employed on average 3+ years. All are minimum of OSHA-10 certified.

5. Provide a list of sub-contractors and their qualifications, if applicable.
   Not applicable. PCC does not utilize any sub-contractors for this type of work. All human resources are employees of PCC.

6. Provide three (3) client references from past projects, include current phone numbers. At least two (2) of the client references should be for similar projects.

   6.1) City of Ann Arbor
       Brian Slizewski, Project Mgt / Engineering
       BSlezewski@a2gov.org
       phone: (734) 794-6410

   6.2) City of Lansing
       Mitch Whisler, Engineering
       mwisler@lansingmi.gov
       phone: (517) 483-4249

   6.3) City of Lapeer
       Pam Reid, Director of Public Works
       preid@ci.lapeer.mi.us
       phone: (810) 664-4711

7. Provide a project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline. Contractor shall be aware that all trip elimination hazard work shall be 100% complete within the designated work area no later than October 12, 2018.

Timeline (project Gannt Chart) of project assuming 5/8/2018 project award (earliest finish 6/8/2018);

CONCRETE SIDEWALK REPAIR PROGRAM CONTRACT #6-18 [SW]
MAP: Proposed 2018 work area as provided by the City of Birmingham.
**Sole Source Status**

The technology that Precision Concrete Cutting uses to remove trip hazards has been developed and patented by Precision Concrete Cutting based in Provo, UT. Precision Concrete Cutting and its local branches are the only companies authorized to use the patented equipment and method for removing sidewalk trip hazards as described by the following patent numbers:

- U.S. Patent No. 6,827,074
- U.S. Patent No. 6,896,604
- U.S. Patent No. 7,000,606
- U.S. Patent No. 7,143,760
- U.S. Patent No. 7,201,644
- U.S. Patent No. 7,402,095

These patent numbers and the Precision Concrete Cutting (PCC) licensing agreement make Precision Concrete, Inc. a sole source for trip hazard removal in Michigan using this technology.

**Invoicing**

A Precision Concrete Cutting (PCC) invoice will be issued for work completed at the conclusion of the project. Payment terms are net 30 days from the date work is completed unless contract states otherwise. PCC will not charge the City any additional fees for mobilization, setup, cleanup, or travel / expenses. All such fees are included in the proposed unit price.

An itemized invoice listing the location of each trip hazard resolved will be listed and can be provided in hard copy or soft copy as required by the City. This itemized list provides the City with a completely auditable summary of the work performed by PCC. It is also a document that can support the fact that your organization has a proactive sidewalk maintenance program in place.

**Summary**

Precision Concrete Cutting is very interested in working with the City to deliver a proactive and cost-effective sidewalk maintenance program to help with the efforts of ADA compliance and reduce liabilities associated with sidewalk trip hazards. Our goal is to develop a long term relationship in which we can help the City achieve its annual sidewalk maintenance objectives.

**Thank you for your consideration.**

Mark Bonkowski (President)
Precision Concrete, Inc.
1896 Goldeneye Drive
Holland MI 49424
Mbonkowski@PCCMich.com
(616) 403-1140 Office
(616) 582-5951 Fax

Ben Johnson (Project Manager)
Precision Concrete, Inc.
1896 Goldeneye Drive
Holland MI 49424
BJohnson@PCCMich.com
(616) 402-3980 Cell
(616) 582-5951 Fax
ATTACHMENT B - BIDDER’S AGREEMENT
For SIDEWALK TRIP HAZARD ELIMINATION SERVICES

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

Mark A. Bonkowski

PREPARED BY (Print Name) April 24, 2018
DATE

AUTHORIZED SIGNATURE

President mbonkowski@pccmich.com
Title E-MAIL ADDRESS

Precision Concrete, Inc.
COMPANY

1896 Goldeneye Dr., Holland, MI 49424 (616) 403-1140
ADDRESS PHONE

N/A
NAME OF PARENT COMPANY PHONE

ADDRESS
ATTACHMENT C - COST PROPOSAL
For SIDEWALK TRIP HAZARD ELIMINATION SERVICES

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be priced as follows:

Attach technical specifications for all proposed materials as outlined in the Contractor’s Responsibilities section of the RFP (p. 6)

Additional Bid Item section is available for Contractor if pricing structure is not suited to cover all costs to be considered in Bid. Note that deviating from basic price structure may make proposal more difficult to compare to others.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>BID AMOUNT</th>
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<tbody>
<tr>
<td>PRICE PER FOOT (BASED ON TOTAL OF 4000 L.FT.</td>
<td>$ 12.00</td>
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<tr>
<td>WORK DAYS</td>
<td>10 DAYS</td>
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<table>
<thead>
<tr>
<th>ADDITIONAL BID ITEMS</th>
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<td>$</td>
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<td>$</td>
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<tr>
<th>GRAND TOTAL AMOUNT</th>
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<tr>
<td>$ 48,000.00</td>
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</table>

Firm Name Precision Concrete, Inc.

Authorized signature ___________________________ Date 4/24/2018
## ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM

For PARKING CONSULTANT SERVICES

Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

<table>
<thead>
<tr>
<th>Mark A. Bonkowski</th>
<th>04/24/2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>PREPARED BY (Print Name)</td>
<td>DATE</td>
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</table>

mbonkowski@pccmich.com

<table>
<thead>
<tr>
<th>AUTHORIZED SIGNATURE</th>
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<tr>
<th>E-MAIL ADDRESS</th>
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<table>
<thead>
<tr>
<th>President</th>
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<table>
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<tr>
<th>TITLE</th>
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<tr>
<th>Precision Concrete, Inc.</th>
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<th>COMPANY</th>
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<table>
<thead>
<tr>
<th>1896 Goldeneye Dr., Holland, MI 49424</th>
<th>(616) 403-1140</th>
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<table>
<thead>
<tr>
<th>ADDRESS</th>
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<th>NAME OF PARENT COMPANY</th>
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<tr>
<th>TAXPAYER I.D.#</th>
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</table>
DATE: March 1, 2019

TO: Joseph A. Valentine, City Manager

FROM: Theresa C. Bridges, Assistant City Engineer

SUBJECT: 2019 Quarton Lake Subdivision Reconstruction Phase 1
Contract #1-19 (P)

INTRODUCTION:

The above-referenced project is this year’s local street paving project. Not only does the project address serious deficiencies in the sewer capacity and condition of the pavement surface in this area, it completes part 1 of a 2 part plan to direct a large amount of storm water from the combined sewer system to the Rouge River, in accordance with the Backyard Sewer and Water Master Plan. Having received, reviewed, and tabulated the contractors’ bids, the Engineering Department is recommending award to DiPonio Contracting in the amount of $2,124,010.

BACKGROUND:

The 2019 Quarton Lake Subdivision Reconstruction Phase 1 Project will include new storm sewer with a storm water treatment unit, water main replacement, water and sanitary services replacement, and new concrete pavement at their current widths on the following streets:

N. Glenhurst Dr. – Oak to Raynale;
Raynale St. - N. Glenhurst to Chesterfield;
Kenwood Court;
Brookwood St. - N. Glenhurst and Raynale.

(The westerly 220 ft. of Kenwood Ct. is being completely rehabilitated. The easterly section, which was built in 1991, will be resurfaced only with new asphalt.)

Bids were opened for the project on March 1, 2019. Six (6) bids were received, as listed on the attached summary. The low bidder was DiPonio Contracting, with their bid of $2,124,010. The engineer’s estimate was $2,300,000.

DiPonio Contracting has completed several projects for the City in the past. Based on the performance of previous projects, we are confident that they are fully qualified to do this type of work.

As is required for all of the City’s construction projects, DiPonio Contracting has submitted a 5% bid security with their bid which will be forfeited if they do not provide the signed...
contracts, bonds and insurance required by the contract following the award by the City Commission.

In accordance with recently modified rules from the Michigan Dept. of Environmental Quality (MDEQ) requiring the complete removal of lead water services from the water main to the water meter, this project includes work that addresses these requirements. Two homes within the project area are known to have lead water services. Both homeowners have consented to the City entering the home to replace the lead water service to the water meter. Per the MDEQ, the City is not allowed to charge the homeowner for this work. Based on contract prices received, the cost of this work from the water main to the water meter is estimated at $10,900.

LEGAL REVIEW:

The Engineering Department follows the Standard Format used for all contracts as required by the City Attorney’s Office.

FISCAL IMPACT:

The cost of the project will be charged to the following accounts:

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<thead>
<tr>
<th>Fund</th>
<th>Account Number</th>
<th>Project Amount</th>
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<tr>
<td>Sewer Fund</td>
<td>590-536.001-981.0100</td>
<td>$623,935.00</td>
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<tr>
<td>Water Fund</td>
<td>591-537.004-981.0100</td>
<td>$496,885.00</td>
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<tr>
<td>Local Streets Fund</td>
<td>203-449.001-981.0100</td>
<td>$1,003,190.00</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>$2,124,010.00</td>
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</tbody>
</table>

SUMMARY:

It is recommended that the 2019 Quarton Lake Subdivision Reconstruction Phase 1 Project, Contract #1-19(P) be awarded to DiPonio Contracting, Inc. of Shelby Township, Michigan in the amount of $2,124,010, to be charged to the various accounts as detailed in the report. A small budget amendment to the Local Street Fund is also required for this project, as contained in the suggested resolution below.

ATTACHMENTS:

- Bid Summary (1 page) – March 1, 2019
- Plans (34 sheets)

SUGGESTED RESOLUTION:

To award the 2019 Quarton Lake Subdivision Reconstruction Phase 1 Project, Contract #1-19(P) to DiPonio Contracting, Inc., in the amount of $2,124,010, to be charged to the Sewer Fund, account number 590-536.001-981.0100; the Water Fund, account number 591-537.004-981.0100; and the Local Streets Fund, account number 203-449.001-981.0100, contingent upon execution of the agreement and meeting all insurance requirements, and further to approve the appropriation and amendment to the fiscal year 2018-2019 Local Street Fund budget as follows:
### Local Streets Fund

**Revenues:**
- 203-000.000-400.0000 Draw from Fund Balance $18,190
- **Total Revenue** $18,190

**Expenditures:**
- 203-449.001-981.0100 Capital Outlay – Engineering and Construction of Roads $18,190
- **Total Expenditures** $18,190
<table>
<thead>
<tr>
<th>Company Name</th>
<th>Addendums</th>
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<th>Base Bid</th>
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<td>DiPoinio</td>
<td>No.1</td>
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<td>$2,124,010.00</td>
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<tr>
<td>FDM</td>
<td>No.1</td>
<td>Bond</td>
<td>$2,493,118.00</td>
</tr>
<tr>
<td>Iafrate</td>
<td>No.1</td>
<td>Bond</td>
<td>$2,583,499.25</td>
</tr>
<tr>
<td>Pamar</td>
<td>No.1</td>
<td>Bond</td>
<td>$2,831,024.25</td>
</tr>
<tr>
<td>Verdeterre</td>
<td>No.1</td>
<td>Bond</td>
<td>$2,678,815.75</td>
</tr>
<tr>
<td>V.I.L.</td>
<td>No.1</td>
<td>Bond</td>
<td>$2,311,480.00</td>
</tr>
</tbody>
</table>
MATCHLINE 4+00

EX. 21" STORM SEWER @ 0.52%  
(MH 32A - MH 31A)

EX. 12' - 21" COMBINED SEWER @ 0.20%  
(MH 31A - STUB)

EX. 18" COMBINED SEWER @ 0.42%  
(MH 32 - MH 31)

EX. 301' - 18" COMBINED SEWER @ 0.14%  
(MH 31 - MH 30)

EX. 354' - 12" COMBINED SEWER @ 1.24%  
(MH 30 - MH 29)

SCALE: 1" = 20' / 1" = 2'

Know what's below
Call before you dig.

A Walkable Community

02-12-19  CITY REVIEW
02-12-19  CITY REVIEW
02-14-19  BIDS

ENGINEERING DEPARTMENT
151 Martin Street
Birmingham, MI 48012

NOWAK & FRAYS ENGINEERS
46777 Woodward Ave.
Pontiac, MI 48342-5032
Tel. (248) 332-7931
Fax. (248) 332-8257

ENGINEERS
Civil Engineers
Land Surveyors
Land Planners

CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS
THE LOCATIONS AND ELEVATIONS OF SOME OF THE EXISTING UNDERGROUND UTILITIES AS SHOWN ON THE SURVEY DRAWING WERE OBTAINED FROM MUNICIPAL AND UTILITY COMPANY RECORDS AND MAPS. THEREFORE, NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.
MATCHLINE 3+00
MATCHLINE 5+75

EX. 312' - 12" COMBINED SEWER @ 0.28%
(MH 15 - MH 14)

307x1948
1133x1167

THE LOCATIONS AND ELEVATIONS OF SOME OF THE EXISTING UNDERGROUND UTILITIES AS SHOWN ON THE SURVEY DRAWING WERE OBTAINED FROM MUNICIPAL AND UTILITY COMPANY RECORDS AND MAPS. THEREFORE, NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.
The locations and elevations of some of the existing underground utilities as shown on the survey drawing were obtained from municipal and utility company records and maps. Therefore, no guarantee is either expressed or implied as to the completeness or accuracy thereof. The contractor shall be responsible for determining the exact utility locations and elevations prior to the start of construction.
TREE INFORMATION

<table>
<thead>
<tr>
<th>Tree #</th>
<th>Botanical Name</th>
<th>Common Name</th>
<th>Dia.</th>
<th>Condition</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>32</td>
<td>Good</td>
<td>Minor epicormic branching</td>
</tr>
<tr>
<td>2</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>33</td>
<td>Good</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>34</td>
<td>Fair</td>
<td>Thin crown, minor dieback</td>
</tr>
<tr>
<td>4</td>
<td>Pyrus calleryana</td>
<td>Bradford Pear</td>
<td>7</td>
<td>Fair</td>
<td>Leaf spot</td>
</tr>
<tr>
<td>5</td>
<td>Pyrus calleryana</td>
<td>Bradford Pear</td>
<td>2</td>
<td>Good</td>
<td>Minor leaf spot</td>
</tr>
<tr>
<td>6</td>
<td>Pyrus calleryana</td>
<td>Bradford Pear</td>
<td>3</td>
<td>Good</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>31</td>
<td>Poor</td>
<td>Mechanical rood damage, lost leader, dieback, epicormic branching</td>
</tr>
<tr>
<td>8</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>30</td>
<td>Good</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Quercus alba</td>
<td>White Oak</td>
<td>47</td>
<td>Good</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>30</td>
<td>Good</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>26</td>
<td>Poor</td>
<td>Girdling roots, mechanical damage, plotch, epicormic branching</td>
</tr>
<tr>
<td>12</td>
<td>Picea pungens</td>
<td>Colorado Blue Spruce</td>
<td>16</td>
<td>Good</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Populus nigra</td>
<td>London Plane Tree</td>
<td>'Italica'</td>
<td>Good</td>
<td></td>
</tr>
</tbody>
</table>

Table: Address, Width @ Walk, Length of Apron, Width @ Curb, Area (SY)
**Grading Plan**

Glenhurst  
Sta. 8+00 to P.O.E.

**SCALE:**

1" = 20' / 1" = 2'

**Know what's below**

**Call before you dig.**

**UTILITY NOTE**

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**Tree Information**

<table>
<thead>
<tr>
<th>Tree #</th>
<th>Botanical Name</th>
<th>Common Name</th>
<th>Dia.</th>
<th>Condition</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>106</td>
<td>Acer platanoides</td>
<td>Norway Maple</td>
<td>16</td>
<td>Fair</td>
<td>Lost leader, dieback</td>
</tr>
<tr>
<td>107</td>
<td>Picea pungens</td>
<td>Colorado Blue Spruce</td>
<td>18</td>
<td>Poor</td>
<td>Competition, dieback</td>
</tr>
<tr>
<td>108</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>36</td>
<td>Fair</td>
<td>Epicormic branching</td>
</tr>
<tr>
<td>110</td>
<td>Acer platanoides</td>
<td>Norway Maple</td>
<td>32</td>
<td>Fair</td>
<td>Minor canopy dieback, girdling roots, mechanical damage</td>
</tr>
<tr>
<td>111</td>
<td>Acer saccharum</td>
<td>Sugar Maple</td>
<td>24</td>
<td>Fair</td>
<td>Leader trimmed, girdling roots, minor mechanical damage</td>
</tr>
<tr>
<td>112</td>
<td>Acer saccharum</td>
<td>Sugar Maple</td>
<td>21</td>
<td>Fair</td>
<td>Minor dieback, mechanical damage on roots, girdling roots</td>
</tr>
<tr>
<td>113</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>29</td>
<td>Fair</td>
<td>Girdling roots, mechanical damage, minor epicormic branching</td>
</tr>
<tr>
<td>114</td>
<td>Malus spp.</td>
<td>Crabapple spp.</td>
<td>2</td>
<td>Good</td>
<td></td>
</tr>
<tr>
<td>115</td>
<td>Acer saccharum</td>
<td>Sugar Maple</td>
<td>24</td>
<td>Fair</td>
<td>Girdling roots, mechanical damage</td>
</tr>
<tr>
<td>116</td>
<td>Amelanchier spp.</td>
<td>Serviceberry spp.</td>
<td>1</td>
<td>Good</td>
<td></td>
</tr>
<tr>
<td>119</td>
<td>Acer saccharum</td>
<td>Sugar Maple</td>
<td>25</td>
<td>Poor</td>
<td>Major trunk canker, girdling roots, mechanical damage</td>
</tr>
<tr>
<td>174</td>
<td>Acer rubrum</td>
<td>Red Maple</td>
<td>4</td>
<td>Good</td>
<td>(Tar spot)</td>
</tr>
<tr>
<td>175</td>
<td>Picea pungens</td>
<td>Colorado Blue Spruce</td>
<td>13</td>
<td>Poor</td>
<td>Suppression, dieback</td>
</tr>
<tr>
<td>176</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>51</td>
<td>Good</td>
<td>Minor girdling roots</td>
</tr>
<tr>
<td>178</td>
<td>Acer rubrum</td>
<td>Red Maple</td>
<td>5</td>
<td>Good</td>
<td></td>
</tr>
<tr>
<td>179</td>
<td>Betula alleghaniensis</td>
<td>Yellow Birch</td>
<td>10</td>
<td>Good</td>
<td></td>
</tr>
<tr>
<td>180</td>
<td>Acer saccharum</td>
<td>Sugar Maple</td>
<td>27</td>
<td>Good</td>
<td>Minor mechanical damage on roots</td>
</tr>
<tr>
<td>181</td>
<td>Acer saccharinum</td>
<td>Silver Maple</td>
<td>41</td>
<td>Good</td>
<td></td>
</tr>
</tbody>
</table>

**ADDRESS**

**WIDTH @ WALK**

**LENGTH OF APRON**

**WIDTH @ CURB**

**AREA (SY)**

**DRIVEWAY SCHEDULE**

**CURB DROP**

**2.4'**

**2.4'**

**2.9'**

**5.3'**

**1.5''**

**1.5''**
No text content available for this page.
ADDRESS | WIDTH @ WALK | LENGTH OF APRON | WIDTH @ CURB | AREA (SY)
--- | --- | --- | --- | ---
1090 | 7.0' | 25.23 | 35.2' | 3.5"
1120 | 11.3' | 16.6' | 10.6' | 1.5"
1131 | 7.5' | 11.4' | 17.4' | 6.1'
Intersection Grading Details - Glenhurst Dr.

Utility Note:
The locations and elevations of some of the existing underground utilities as shown on the survey drawing were obtained from municipal and utility company records and maps. Therefore, no guarantee is either expressed or implied as to the completeness or accuracy thereof. The contractor shall be responsible for determining the exact utility locations and elevations prior to the start of construction.
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Know what's below
Call before you dig.
PROPOSED CROWN CONCRETE PAVING SECTION

PROPOSED CROWN CONCRETE PAVING SECTION

PROPOSED MILL & FILL ASPHALT PAVING SECTION

PROPOSED SUPER ELEVATED CONCRETE PAVING SECTION
MEMORANDUM

DATE: March 4, 2019
TO: Joseph A. Valentine, City Manager
FROM: Paul T. O’Meara, City Engineer
SUBJECT: Quarton Lake Subdivision Reconstruction – Phase 1
        Water & Sewer Lateral Special Assessment District

INTRODUCTION:
On March 1, the Engineering Dept. opened bids for Contract #1-19(P), which will reconstruct the water, sewer, and pavement on several street segments within the Quarton Lake Subdivision. In accordance with the City’s policy, it is our intention to replace all water service laterals that are less than 1 inch diameter, as well as any sewer service laterals that are older than 50 years. The replacement of laterals is considered an improvement to the benefitting property owners, the cost of which may be special assessed. The City Commission will be asked to consider the creation of a special assessment district to defray the cost of these improvements.

BACKGROUND:
Contract #1-19(P) will renew the water and sewer systems on sections of N. Glenhurst Dr., Raynale St., Brookwood, and Kenwood Ct. As recommended under separate cover, it is anticipated that this construction contract will be awarded to DiPonio Contracting, Inc., with their low bid of $2,124,010. In the past, the City has compared the low bidder’s price for this work item with the other bidders, to ensure the price of this work, which will be assessed, reflects the actual value of the work. A list of the water and sewer lateral bid prices for all the bidders follows below:

<table>
<thead>
<tr>
<th>CONTRACTOR</th>
<th>BID PRICE (PER FOOT) SEWER</th>
<th>BID PRICE (PER FOOT) WATER</th>
</tr>
</thead>
<tbody>
<tr>
<td>DiPonio Contracting, Inc.</td>
<td>$70.00</td>
<td>$55.00</td>
</tr>
<tr>
<td>V.I.L. Construction, Inc.</td>
<td>$75.00</td>
<td>$33.00</td>
</tr>
<tr>
<td>FDM Contracting, Inc.</td>
<td>$80.00</td>
<td>$65.00</td>
</tr>
<tr>
<td>Angelo Iafrate Construction Co., Inc.</td>
<td>$45.00</td>
<td>$22.00</td>
</tr>
<tr>
<td>Verdeterre Contracting, Inc.</td>
<td>$100.00</td>
<td>$58.50</td>
</tr>
<tr>
<td>Pamar Enterprises, Inc.</td>
<td>$51.00</td>
<td>$45.00</td>
</tr>
<tr>
<td>Average Price Per Foot</td>
<td>$70.17</td>
<td>$46.42</td>
</tr>
</tbody>
</table>

Per the table, the low bidder’s per foot price for a sewer lateral is very close to the average bid, while the water price per foot is $8.58 higher than average. Interestingly, due to the tendency toward larger water services in this area, only two homes need a new water service replacement for a size upgrade. The average cost to a homeowner obtaining just a new sewer service is $1,860. Only one homeowner will receive both a new...
sewer and water lateral at a total estimated cost of $3,340. Considering the cost of this type of work with a private contractor is typically approaching $10,000, we feel that these costs are very reasonable, and add value to each property well in excess of the amount being charged.

LEGAL REVIEW:
The suggested special assessment district is consistent with the City Charter, and past precedence. No legal review is required.

New this year is the impact of the new Lead & Copper Rule being enforced by the Michigan Dept. of Environmental Quality (MDEQ). The new rule requires that the City replace all lead water services encountered on this project from the water main to the water meter in the house. Our records indicate that there are two such homes that will require a lead water service replacement within the project area. The City Attorney’s office helped develop forms for our office to use when requesting permission to enter private property. The City has discussed the issue with both homeowners, and both have signed releases authorizing the work. Based on the prices bid, the cost of this work is estimated to total $10,900.

One of the main concerns that water system agencies have expressed relative to the new rule is the requirement that the system cannot charge the owner of the property directly for these improvements. There are questions about the constitutionality of this requirement. Several agencies have combined together to file a lawsuit against the MDEQ asking for relief. The suit is currently awaiting a hearing to be scheduled. So as to not be in violation of the rule, the Engineering Dept. is prepared to replace these services as required by the current rule.

FISCAL IMPACT:
Similar to previous special assessment districts of this type, the City is charging 100% of the cost charged by the contractor for the sewer and water service installations to the benefitting property owners. There will be collateral expenses involved in this program, such as sidewalk restoration and extra inspection time spent overseeing this work. However, the City benefits in the long run by reduced cutting and patching of the new street pavement for many years to come.

As referenced in the section above, the two homes that have lead water services to be replaced are not being charged for the planned water service lateral replacement improvement, in accordance with requirements as stated by the MDEQ.

SUMMARY
It is recommended that the City Commission set a public hearing date of April 8, 2019 for a hearing of necessity to consider the creation of a special assessment district to defray the cost of sewer and water service laterals on Contract #1-19(P), at the unit rates of $70.00 per foot for sewer lateral replacement, and $55.00 per foot for water lateral replacement. Further, should the assessment district be approved, to set a public hearing date of April 22, 2019 to confirm the special assessment roll.

ATTACHMENTS:
- Map of proposed district.
- Proposed special assessment roll (sections of 4 streets).
SUGGESTED RESOLUTION:

RESOLVED, that the City Commission shall meet on Monday, April 8, 2019, at 7:30 P.M., for the purpose of conducting a public hearing of necessity for the installation of water and sewer laterals within the Quarton Lake Reconstruction project area. Be it further

RESOLVED, that the City Commission shall meet on Monday, April 22, 2019, at 7:30 P.M. for the purpose of conducting a public hearing to confirm the roll for the installation of water and sewer laterals within the Quarton Lake Reconstruction project area.
### SEWER & WATER LATERAL CHART

2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

<table>
<thead>
<tr>
<th>Material</th>
<th>Unit</th>
<th>Cost Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sewer, 6” PVC</td>
<td>LF</td>
<td>$70.00</td>
</tr>
<tr>
<td>Water, 1”</td>
<td>LF</td>
<td>$55.00</td>
</tr>
</tbody>
</table>

#### N. Glenhurst - Oak to Raynale

**WEST SIDE**

<table>
<thead>
<tr>
<th>Address</th>
<th>Street</th>
<th>Type of Pipe</th>
<th>Date</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Water</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>917</td>
<td>N. Glenhurst</td>
<td>6” PVC</td>
<td>2002</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1” Lead</td>
<td>N*</td>
<td>34</td>
<td>$0*</td>
<td>$0</td>
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<tr>
<td>945</td>
<td>N. Glenhurst</td>
<td>Unknown</td>
<td>---</td>
<td>Y</td>
<td>15</td>
<td>$1,050</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,050</td>
</tr>
<tr>
<td>967</td>
<td>N. Glenhurst</td>
<td>6” O.B.</td>
<td>1953</td>
<td>Y</td>
<td>23</td>
<td>$1,610</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,610</td>
</tr>
<tr>
<td>991</td>
<td>N. Glenhurst</td>
<td>Unknown</td>
<td>---</td>
<td>Y</td>
<td>30</td>
<td>$2,100</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$2,100</td>
</tr>
<tr>
<td>1011</td>
<td>N. Glenhurst</td>
<td>6” O.B.</td>
<td>1948</td>
<td>Y</td>
<td>15</td>
<td>$1,750</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,750</td>
</tr>
<tr>
<td>1025</td>
<td>N. Glenhurst</td>
<td>6” PVC</td>
<td>2016</td>
<td>N</td>
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<td>$0</td>
<td>1” COPPER</td>
<td>N</td>
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<td>$0</td>
<td>$0</td>
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<tr>
<td>1043</td>
<td>N. Glenhurst</td>
<td>6” O.B.</td>
<td>1950</td>
<td>Y</td>
<td>14</td>
<td>$980</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$980</td>
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<tr>
<td>1087</td>
<td>N. Glenhurst</td>
<td>6” O.B.</td>
<td>1950</td>
<td>Y</td>
<td>15</td>
<td>$1,050</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,050</td>
</tr>
<tr>
<td>1099</td>
<td>N. Glenhurst</td>
<td>On Raynale</td>
<td>1947</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**EAST SIDE**

<table>
<thead>
<tr>
<th>Address</th>
<th>Street</th>
<th>Type of Pipe</th>
<th>Date</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Water</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>920</td>
<td>N. Glenhurst</td>
<td>On Oak St.</td>
<td>2012</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>3/4” COPPER</td>
<td>Y</td>
<td>20</td>
<td>$1,100</td>
<td>$1,100</td>
</tr>
<tr>
<td>940</td>
<td>N. Glenhurst</td>
<td>6” PVC</td>
<td>2012</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>966</td>
<td>N. Glenhurst</td>
<td>6” O.B.</td>
<td>1952</td>
<td>Y</td>
<td>32</td>
<td>$2,240</td>
<td>3/4” COPPER</td>
<td>Y</td>
<td>20</td>
<td>$1,100</td>
<td>$3,340</td>
</tr>
<tr>
<td>986</td>
<td>N. Glenhurst</td>
<td>Unknown</td>
<td>---</td>
<td>Y</td>
<td>23</td>
<td>$1,610</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,610</td>
</tr>
<tr>
<td>1010</td>
<td>N. Glenhurst</td>
<td>6” PVC</td>
<td>2011</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1030</td>
<td>N. Glenhurst</td>
<td>Unknown</td>
<td>---</td>
<td>Y</td>
<td>33</td>
<td>$2,310</td>
<td>1” COPPER</td>
<td>N</td>
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<tr>
<td>1044</td>
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<td>---</td>
<td>Y</td>
<td>35</td>
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<td>1” COPPER</td>
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<td>$0</td>
<td>$2,450</td>
</tr>
<tr>
<td>1060</td>
<td>N. Glenhurst</td>
<td>4” HDPE</td>
<td>2014</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1” Lead</td>
<td>N*</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1076</td>
<td>N. Glenhurst</td>
<td>Unknown</td>
<td>1941</td>
<td>Y</td>
<td>37</td>
<td>$2,590</td>
<td>1” COPPER</td>
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<td>0</td>
<td>$0</td>
<td>$2,590</td>
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<tr>
<td>1090</td>
<td>N. Glenhurst</td>
<td>Unknown</td>
<td>---</td>
<td>Y</td>
<td>20</td>
<td>$1,400</td>
<td>1” COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,400</td>
</tr>
</tbody>
</table>

**Total Cost:**

**WEST SIDE**

$8,540

**EAST SIDE**

$12,600

**Total Cost:**

$14,800

**RATIOS:**

12 out of 20  
60% 
2 out of 20  
10%  

* CITY WILL PAY FOR LEAD SERVICE REPLACEMENT
2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

<table>
<thead>
<tr>
<th>Material</th>
<th>Unit</th>
<th>Cost Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sewer Service, 6&quot; PVC</td>
<td>LF</td>
<td>$ 70.00</td>
</tr>
<tr>
<td>Water Service Connection, 1&quot;</td>
<td>LF</td>
<td>$ 55.00</td>
</tr>
</tbody>
</table>

### Raynale - N. Glenhurst to Chesterfield

**NORTH SIDE**

<table>
<thead>
<tr>
<th>Address</th>
<th>Street</th>
<th>Type of Pipe</th>
<th>Date</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Water</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1120</td>
<td>N. Glenhurst</td>
<td>(On Glenhurst)</td>
<td>1951</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>(On Glenhurst)</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1131</td>
<td>Lyonhurst</td>
<td>(On Lyonhurst)</td>
<td>---</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>(On Lyonhurst)</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1120</td>
<td>Lyonhurst</td>
<td>6&quot; O.B.</td>
<td>1949</td>
<td>Y</td>
<td>35</td>
<td>$2,450</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$2,450</td>
</tr>
<tr>
<td>1115</td>
<td>Brookwood</td>
<td>(On Brookwood)</td>
<td>---</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>(On Brookwood)</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1122</td>
<td>Brookwood</td>
<td>(On Brookwood)</td>
<td>1946</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>(On Brookwood)</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1125</td>
<td>Chesterfield</td>
<td>(On Chesterfield)</td>
<td>2016</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>(On Chesterfield)</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**SOUTH SIDE**

<table>
<thead>
<tr>
<th>Address</th>
<th>Street</th>
<th>Type of Pipe</th>
<th>Date</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Water</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1973</td>
<td>Raynale</td>
<td>6&quot; O.B.</td>
<td>1959</td>
<td>Y</td>
<td>22</td>
<td>$1,540</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,540</td>
</tr>
<tr>
<td>1935</td>
<td>Raynale</td>
<td>6&quot; O.B.</td>
<td>1959</td>
<td>Y</td>
<td>22</td>
<td>$1,540</td>
<td>1&quot; COPPER</td>
<td>N</td>
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<td>$0</td>
<td>$1,540</td>
</tr>
<tr>
<td>1851</td>
<td>Raynale</td>
<td>6&quot; O.B.</td>
<td>1959</td>
<td>Y</td>
<td>20</td>
<td>$1,400</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,400</td>
</tr>
<tr>
<td>1787</td>
<td>Raynale</td>
<td>6&quot; PVC</td>
<td>2016</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1&quot; PLASTIC</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1097</td>
<td>Chesterfield</td>
<td>(On Chesterfield)</td>
<td>1953</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>(On Chesterfield)</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

$2,450  $0  $2,450

$4,480  $0  $4,480

**RATIOS:**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>N. Glenhurst to Chesterfield</td>
<td>4 out of 11</td>
<td>36%</td>
</tr>
<tr>
<td></td>
<td>0 out of 11</td>
<td>0%</td>
</tr>
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</table>
### Material Breakdown

<table>
<thead>
<tr>
<th>Material</th>
<th>Unit</th>
<th>Cost Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sewer Service, 6&quot; PVC</td>
<td>LF</td>
<td>$70.00</td>
</tr>
<tr>
<td>Water Service Connection, 1&quot;</td>
<td>LF</td>
<td>$55.00</td>
</tr>
</tbody>
</table>

### Brookwood - N. Glenhurst to Raynale

#### NORTH/WEST SIDE

<table>
<thead>
<tr>
<th>Address</th>
<th>Street</th>
<th>Type of Pipe</th>
<th>Date</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Water</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>911</td>
<td>Brookwood</td>
<td>4&quot; PVC</td>
<td>1999</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1-1/2&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>921</td>
<td>Brookwood</td>
<td>4&quot; PVC</td>
<td>1999</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1-1/2&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>977</td>
<td>Brookwood</td>
<td>Unknown</td>
<td>1939</td>
<td>Y</td>
<td>20</td>
<td>$1,400</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,400</td>
</tr>
<tr>
<td>1001</td>
<td>Brookwood</td>
<td>6&quot; Cast Iron</td>
<td>1940</td>
<td>Y</td>
<td>17</td>
<td>$1,190</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,190</td>
</tr>
<tr>
<td>1069</td>
<td>Brookwood</td>
<td>Unknown</td>
<td>1939</td>
<td>Y</td>
<td>19</td>
<td>$1,330</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,330</td>
</tr>
</tbody>
</table>

#### SOUTH/EAST SIDE

<table>
<thead>
<tr>
<th>Address</th>
<th>Street</th>
<th>Type of Pipe</th>
<th>Date</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Water</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>900</td>
<td>Brookwood</td>
<td>Unknown</td>
<td>1939</td>
<td>Y</td>
<td>33</td>
<td>$2,310</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$2,310</td>
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<tr>
<td>952</td>
<td>Brookwood</td>
<td>6&quot; PVC</td>
<td>2009</td>
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<td>0</td>
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<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>998</td>
<td>Brookwood</td>
<td>4&quot; CROCK</td>
<td>1944</td>
<td>Y</td>
<td>34</td>
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<td>1-1/2&quot; COPPER</td>
<td>N</td>
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<td>$0</td>
<td>$2,380</td>
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<tr>
<td>1004</td>
<td>Brookwood</td>
<td>6&quot; Unknown</td>
<td>1941</td>
<td>Y</td>
<td>44</td>
<td>$3,080</td>
<td>2&quot; COPPER</td>
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<td>$3,080</td>
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<tr>
<td>1020</td>
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<td>---</td>
<td>Y</td>
<td>44</td>
<td>$3,080</td>
<td>1&quot; COPPER</td>
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<td>0</td>
<td>$0</td>
<td>$3,080</td>
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<tr>
<td>1084</td>
<td>Brookwood</td>
<td>4&quot; O.B.</td>
<td>1950</td>
<td>Y</td>
<td>27</td>
<td>$1,890</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,890</td>
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</table>

**Total Cost:**
- **NORTH/WEST SIDE:** $3,920
- **SOUTH/EAST SIDE:** $12,740

**RATIOS:**
- 8 out of 11
- 73%
- 0 out of 11
- 0%
2019 Quarton Lake Sub. Reconstruction Phase 1 Contract #1-19(P)

<table>
<thead>
<tr>
<th>Material</th>
<th>Unit</th>
<th>Cost Per Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sewer Service, 6&quot; PVC</td>
<td>LF</td>
<td>$70.00</td>
</tr>
<tr>
<td>Water Service Connection, 1&quot;</td>
<td>LF</td>
<td>$55.00</td>
</tr>
</tbody>
</table>

Kenwood Ct. - N. Glenhurst to cul-de-sac

**NORTH SIDE**

<table>
<thead>
<tr>
<th>Address</th>
<th>Street</th>
<th>Type of Pipe</th>
<th>Date</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Water Type</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1906</td>
<td>Kenwood</td>
<td>6&quot; CLAY</td>
<td>1940</td>
<td>Y</td>
<td>30</td>
<td>$2,100</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$2,100</td>
</tr>
<tr>
<td>1888</td>
<td>Kenwood</td>
<td>6&quot; O.B.</td>
<td>1961</td>
<td>Y</td>
<td>25</td>
<td>$1,750</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,750</td>
</tr>
<tr>
<td>1886</td>
<td>Kenwood</td>
<td>6&quot; PVC</td>
<td>1991</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1-1/2&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

**SOUTH SIDE**

<table>
<thead>
<tr>
<th>Address</th>
<th>Street</th>
<th>Type of Pipe</th>
<th>Date</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Water Type</th>
<th>SAD?</th>
<th>Estd Feet</th>
<th>Estd Cost</th>
<th>Total Cost</th>
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</thead>
<tbody>
<tr>
<td>1901</td>
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<td>25</td>
<td>$1,750</td>
<td>1&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$1,750</td>
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<tr>
<td>1895</td>
<td>Kenwood</td>
<td>PVC</td>
<td>1991</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1-1/2&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1885</td>
<td>Kenwood</td>
<td>PVC</td>
<td>1991</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1-1/2&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
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<tr>
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<td>Kenwood</td>
<td>PVC</td>
<td>1991</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>1-1/2&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1791</td>
<td>Kenwood</td>
<td>PVC</td>
<td>1991</td>
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<td>0</td>
<td>$0</td>
<td>1-1/2&quot; COPPER</td>
<td>N</td>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

RATIOS: 3 out of 8 38% 0 out of 8 0%
DATE: February 26, 2019

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services
Aaron J. Filipski, Public Services Manager

SUBJECT: Vehicle #11 Replacement

INTRODUCTION:
Vehicle #11 is a 2008 Elgin “Pelican” street sweeper, which has been in service since 2009. Due to its age and condition, the Department of Public Services recommends the purchase of a replacement for this critical equipment.

BACKGROUND:
This vehicle is used to sweep city streets on a near daily basis, including during winter months. Of all the department’s equipment, vehicle #11 ranks among the highest in annual usage, averaging 800 hours. The following table illustrates its replacement evaluation score for special duty equipment:

<table>
<thead>
<tr>
<th>FACTOR</th>
<th>DESCRIPTION</th>
<th>POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>1 point each year of age</td>
<td>10</td>
</tr>
<tr>
<td>Miles/Hours</td>
<td>1 point each 5,000 miles of usage</td>
<td>4.5</td>
</tr>
<tr>
<td>Type of Service</td>
<td>Type 4 – Extreme duties in adverse atmosphere (dust, salt, water, dirt, mud)</td>
<td>4</td>
</tr>
<tr>
<td>Reliability</td>
<td>Level 4 – In shop more than 2 times in 3 month period, 1 or more breakdowns/road calls in same period</td>
<td>4</td>
</tr>
<tr>
<td>M &amp; R Costs</td>
<td>Level 3 – Maintenance costs are 41-60% of replacement costs</td>
<td>3</td>
</tr>
<tr>
<td>Condition</td>
<td>Level 3 – Minor body damage, rust, weak operating system</td>
<td>3</td>
</tr>
<tr>
<td><strong>TOTAL POINTS</strong></td>
<td><strong>28+, POOR – Needs priority replacement</strong></td>
<td><strong>28.5</strong></td>
</tr>
</tbody>
</table>

Replacement equipment is available from Bell Equipment, Co. through the State of Michigan MiDeal cooperative purchasing contract #071B7700091.

LEGAL REVIEW:
No legal review is required for this item.

FISCAL IMPACT:
This vehicle was identified in the 2018-19 vehicle replacement schedule, as included in the current budget. Funds for this purchase, totaling $208,233.20, are available from the Auto Equipment Fund. This total includes a $12,500 trade-in value offered by the vendor. Per the terms of the quote, the city may pursue a higher resale value for the old equipment by other means up to the time of delivery. The department will attempt to sell this equipment on the Michigan Intergovernmental Trade Network (MITN) with a reserve of $12,500 in advance of delivery; otherwise it will be traded to Bell Equipment as quoted.
SUMMARY:
Due to its age and condition, the Department of Public Services recommends replacement of vehicle #11 – a 2008 Elgin “Pelican” sweeper at a cost of $208,233.20, with funds from the Auto Equipment Fund. The old vehicle will either be sold at auction or traded to the vendor for $12,500, whichever is greater.

ATTACHMENTS:
This report contains no attachments.

SUGGESTED RESOLUTION:
To approve the purchase of one (1) 2019 Elgin Pelican from Bell Equipment Company through the State of Michigan cooperative purchasing agreement #071B7700091 in the amount of $208,233.20 from account #641-441.006.971.0100.
MEMORANDUM
Department of Public Services

DATE: February 26, 2019

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services
Aaron J. Filipski, Public Services Manager

SUBJECT: Vehicle #114 Replacement

INTRODUCTION:
Vehicle #114 is a 2003 Chevy C4500 medium-duty dump truck used for a variety of departmental tasks, including landscape maintenance. The vehicle was damaged as the result of a collision and a subsequent insurance claim evaluation determined the vehicle was a total loss. The Department of Public Services recommends replacing this vehicle.

BACKGROUND:
On October 29, 2018, another vehicle failed to recognize vehicle #114 parked in municipal parking lot #6 and reversed into it. The collision resulted in significant damage to the vehicle’s front end. As noted, the city’s insurance carrier assessed the vehicle to be a total loss, with an estimated value of $12,500. An equivalent replacement chassis is available through Gorno Ford of Woodhaven, MI; the purchase and installation of the dump body is available through Truck and Trailer Specialties of Dutton, MI. Both are available through cooperative purchasing contracts.

LEGAL REVIEW:
This purchase recommendation does not require legal review.

FISCAL IMPACT:
The total expenditure for chassis purchase and dump body installation is $51,574. Funds are available in the Auto Equipment Fund. This item was not listed in the 18-19 budget, but was under consideration for inclusion in the 19-20 vehicle replacement schedule due to its age and condition before the damage occurred. At the time of this drafting, the insurance claim was in the process of being finalized; costs associated with this purchase will be partially offset upon payment from the city’s insurance carrier.

SUMMARY:
The Department of Public Services recommends replacing vehicle #114 as the result of collision damage.

ATTACHMENTS:
This report contains no attachments.

SUGGESTED RESOLUTION:
To approve the purchase of one (1) 2019 Ford F-350 chassis from Gorno Ford of Woodhaven, MI, through the MiDeal Cooperative Purchasing Agreement #071B1300005 totaling $32,649.00
from account #641-441.006.971.0100; further, to approve the purchase and installation of a hydraulic dump body from Truck and Trailer Specialties, Inc., through the Rochester Hills Cooperative Purchasing Contract #RFP-RH-13-030 totaling $18,925.00 from account #641-441.006.971.0100, for a total combined expenditure of $51,574.00.
DATE: February 22, 2019

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Holiday Lights 2019 Purchase

INTRODUCTION:
The Department of Public Services (DPS) has anticipated (and budgeted accordingly) ordering holiday lights each year in February/March instead of July/August for the 2019-2020 holiday season based on better pricing at this time of year.

BACKGROUND:
The City uses LED lights to decorate all of the street trees in Downtown Birmingham, including Maple, Old Woodward, Pierce, Hamilton, Henrietta, Martin, Merrill, Brown, Peabody, and Adams. The holiday decorating program also includes City Properties such as City Hall, the Department of Public Services, the Library, parking structures and Shain Park using LED lights. Prior to 2010, the same locations were decorated with incandescent lights. LED holiday lights consume 75 percent less energy than their incandescent counterparts.

The Birmingham Shopping District (BSD) participates in the holiday lighting program by budgeting for a portion of the decorated trees. The BSD endorses the purchase of “warm white” LED lights based on recommendations from merchant meetings and the BSD Maintenance Committee. It should be noted, a percentage of this purchase will be reimbursed by the BSD for material and installation services.

While LED lights are more expensive, they last longer and we are able to decorate trees in approximately 1/3 of the town every year with new lights. Our program is typically as follows: We decorate 1 of 3 sections of town with new lights. We will leave this section of trees decorated for a maximum of 3 years with LED lights, only removing the lights directly around the trunk of the tree after the holidays. We do this to save money on labor and time during the holiday season. We start the decorating process beginning about mid-September, adding new lights to the section of town in need of complete decoration. After this section is complete, the crews visit the other areas of town with existing lights in the canopy, add lights from storage to the trunks (removed from the previous year) and power them up, troubleshooting problems, checking for outages or damage and replacing lights accordingly.
The City decorates approximately 400 trees every year for the holiday season. With an average of 25 strands per tree and 70 lights per strand, Birmingham has over 700,000 lights for the holidays!

We purchase new lights for Shain Park every season. When Shain lights have been through one season, the following season they are typically used to make repairs to other decorated trees downtown, most often the 3rd year lights. Last year was the 3rd year for the following areas: North Old Woodward between Oakland/Willits and Oak, Hamilton ROW between Old Woodward and Park, the corner of Peabody and Brown, and Merrill Street from Pierce to Chester. Therefore, this purchase includes lights for Shain Park and the above referenced areas. See attached map of lights schedule.

Sealed bids were opened on Wednesday, February 20, 2019 for the cost of 2500 sets of LED (light-emitting diode) lights to supply the City’s holiday decorating program. Three bidders responded. The result of the sealed bids follows in the table below.

<table>
<thead>
<tr>
<th>Company</th>
<th>Bid Price</th>
<th>Substitutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wintergreen Corporation</td>
<td>$22,425.00</td>
<td>NO</td>
</tr>
<tr>
<td>Holiday Lights &amp; Magic, Inc.</td>
<td>$32,515.78</td>
<td>NO</td>
</tr>
<tr>
<td>Visionary Sound Productions</td>
<td>$39,175.00</td>
<td>YES</td>
</tr>
</tbody>
</table>

LEGAL REVIEW:
There has been no legal review of this annual purchase over the years.

FISCAL IMPACT:
This purchase was included in the 2018-2019 approved budget. Funds for this purchase have been budgeted in the General Fund-Community Activities Operating Supplies account #101-441.004.729.0000 and the General Fund- Property Maintenance Operating Supplies account #101-441.003-729.0000. The Birmingham Shopping District (BSD) reimburses the City for a portion of the lights including the labor to install the lights.

SUMMARY:
The Department of Public Services recommends awarding the Holiday Lights 2019 purchase to the lowest qualified bidder, Wintergreen Corporation. Their proposal is for the specified LED commercial grade products. We have purchased lights from Wintergreen Corporation, formally Christmas Lights, Etc., for several years and have been completely satisfied with the product. There are other considerations such as the delivery timeline, the color variation in the “warm white” range that varies from manufacturer to manufacturer and great customer service in providing replacement strands free of charge if found to be not working.

In August of 2018, the City purchased 2500 sets of the same lights for a total purchase price of $23,250, which equals $9.30 per set. In 2017, the City purchased 2500 sets of lights for a total purchase price of $23,350.00, which equals $9.34 per set. This “early bird” March purchase totaling $22,425 equals $8.97 per set.
ATTACHMENTS:
Attached is the Bidder’s Agreement, Cost Proposal, Delivery Date, and Iran Sanctions Act Vendor Certification Form. A map of the holiday lights schedule is also attached. A signed Agreement and Insurances have not been required documents as part of the purchase of only holiday lights or supplies.

SUGGESTED RESOLUTION:
To approve the purchase of holiday lights from Wintergreen Corporation for a total cost not to exceed $22,425.00. Funds are available from the General Fund-Community Activities Operating Supplies account #101-441.004-729.0000 and Property Maintenance Operating Supplies account #101-441.003-729.000 for this purchase.
Red=18-19 : Green=19-20 : Blue=20-21
ATTACHMENT A - BIDDER'S AGREEMENT
HOLIDAY LIGHTS 2019

In submitting this proposal, as herein described, the supplier agrees that:

1. They have carefully examined the specifications and terms of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

Michael Streb 2/15/2019
PREPARED BY (Print Name)

DIRECTOR OF SALES 2/15/2019
TITLE

M Streb
AUTHORIZED SIGNATURE

MStreb@wintergreencorp.com
E-MAIL ADDRESS

WINTERGREEN CORP.
COMPANY

205 CVNL Dr. Alpharetta, GA 30005
ADDRESS

WINTERGREEN CORP. 678-775-5039
NAME OF PARENT COMPANY PHONE

205 CVNL Dr. Alpharetta, GA 30005
ADDRESS
ATTACHMENT B - COST PROPOSAL
HOLIDAY LIGHTS 2019

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QUANTITY</th>
<th>BID AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>LED 5 mm warm white, 70 count lights per set, full wave, full rectified, warm white bulbs, Steady, not twinkle. 1 piece construction, non-silicone husk, UL Listed. 4&quot; spacing. Lead length 6&quot;, tail length 6&quot;. 22 AWG wire (green). String length no less than 23 feet. All sets delivered no later than June 30, 2019.</td>
<td>2500 SETS</td>
<td>$8.97</td>
</tr>
<tr>
<td>Other (Attach Detailed Description)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delivery (If additional)</td>
<td>INCLUDE</td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Firm Name: Wintergreen Corp.

Authorized signature:

Date: 2/15/2019
In order for the bid to be considered valid, the delivery date attachment must be completed.

DELIVERY DATE BY JUNE 30, 2019

☐ Our company can meet the required delivery date for all sets of June 30, 2019. **IN STOCK 18,000 SETS.**

☐ Our company cannot meet the required delivery date for all sets of June 30, 2019.

Reason/Alternate date(s): **IN STOCK - CAN SHIP AT ONCE 13,000 SETS**
ATTACHMENT C
IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM
For HOLIDAY LIGHTS 2019

Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

<table>
<thead>
<tr>
<th>Michael Streis</th>
<th>2/15/2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>PREPARED BY</td>
<td>DATE</td>
</tr>
<tr>
<td>(Print Name)</td>
<td></td>
</tr>
<tr>
<td>Director of Sales</td>
<td>2/15/2019</td>
</tr>
<tr>
<td>TITLE</td>
<td>DATE</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>MFSi</th>
<th>MFSi @ WINTERGREENCORP.COM</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUTHORIZED SIGNATURE</td>
<td>E-MAIL ADDRESS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>WINTERGREEN CORP.</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPANY</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>705 CUNIE DR. ALPHARETTA, GA 30005</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDRESS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>WINTERGREEN CORP.</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME OF PARENT COMPANY</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>705 CUNIE DR. ALPHARETTA, GA 30005</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDRESS</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>58-2529180</th>
</tr>
</thead>
<tbody>
<tr>
<td>TAXPAYER I.D.#</td>
</tr>
</tbody>
</table>
DATE: 3/11/2019

TO: Joseph A. Valentine, City Manager

FROM: Eric Brunk, It Manager

SUBJECT: Applied Imaging Print management contract

INTRODUCTION:
Applied imaging has been our provider for printer repair and support for over 6 Years. They cover almost all of the printers owned by the city and manage toner requests and printer repairs in a timely manner. The IT department reviewed this contract with Applied Imaging and have requested an adjustment in the contract to save the City some money in overage charges based on our current printer usage.

BACKGROUND:
When initially instated the Applied Imaging contract covered up to 81,612 black and white pages printed and 9,996 color pages per quarter. With extra pages printed over that amount being billed as an overage.
Applied Imaging has reviewed our print usage over the last nine months and our average Black and white printing has been 50,885 pages while our average full color printing has been an average of 14,931 pages causing an overage in charges.

They propose to adjust the contract reducing the quarterly average to 51,000 Black and White pages while increasing the quarterly average of the color prints to 15,000 pages. During the evaluated time our average quarterly bill was $4745.64. The new contract would bring our average quarterly bill to $4045.80 saving the City $699.84 a quarter.

This contract like our previous contract will be billed in monthly installments. The monthly cost $1348.60 a month plus $0.0253 per Black and White page overage and $0.1837 per color page overage.

The new contract also includes a new service that they are offering, – any printer under contract that is less than 7 years old and cannot be repaired will be replaced by Applied Imaging.

The contract includes:
17,000 Black and White pages per month
5,000 Color pages per month
All Maintenance, service, parts, labor and toner for printers under contract.
4 hour average response time on service.
Hot Swap devices for printers that need lengthy repair.
All devices under 7 years old that are deemed irreparable by Applied Imaging shall be replace by a like model by Applied Imaging.
LEGAL REVIEW:
The Contract has been sent to the City attorney to review legality of the contract.

FISCAL IMPACT:
This amount is already in my budget for this year and we are looking forward to the quarterly savings in this budgeted item.

SUMMARY
In summary the IT department would like the City to enter into an adjusted contract with Applied Imaging for 17,000 black and white pages and 5,000 color pages per month.

ATTACHMENTS:
Applied Imaging Contract is attached for review.

SUGGESTED RESOLUTION:
Authorize the City Manager to sign the new contract with Applied Imaging for printer maintenance and supplies with a monthly cost of $1,348.16 plus per page overages as necessary, total yearly cost of $16,183.20. Funds are available in the IT Computer Maintenance fund account # 636-228.000-933.0600.
PrintSmart

For:

City of Birmingham

By:

APPLIED IMAGING
This PrintSmart Agreement with all Attachments, Schedules and Addenda shall be collectively referred to as this “Agreement”.

**Between**

(herein referred to as “Customer”)

Name

With its principal place of business at:

Address

And

With its principal place of business at: 5555 Glenwood Hills Pkwy, Grand Rapids, MI 49512

**Services**

Applied Imaging will provide Customer a Print Management service as described in Attachment A, “Scope of Services” for all equipment and OEM accessories herein referred to as “the Equipment” and locations as listed in Schedule A.

Applied Imaging will provide on-site support, as described in Attachment A.

Additional Services may be added to this agreement with the consent of Customer and Applied Imaging, added by Addendum and signed by both parties.

**Print Management Fee**

Customer shall pay a monthly Print Management fee to Applied Imaging.

Monthly Base Amount (B&W): $430.10

Monthly Base Amount (Color): $918.50

B&W Images Included/Mo: 17,000

Color Images Included/Mo: 5,000

Cost per Page (CPP) for B&W: $0.0253

Cost Per Page (CPP) for Color: $0.1837

B&W Overage per Page: $0.0253

Color Overage per Page: $0.1837

**Term of Agreement**

This Agreement shall have a 36-month term for performance, unless terminated or extended as provided herein.

This Agreement shall commence immediately upon approval of Agreement by both parties at which point, Applied Imaging shall commence the Implementation Procedure as described in Addendum A, “Scope of Services”.

**Key Contact Information**

Name: ____________________________  Title: ____________________________

Phone#: ____________________________  Email: ____________________________

**Terms and Conditions**

Both parties agree to the terms and conditions set forth herein. Customer acknowledges that it has read the terms and conditions as set forth under Standard Terms and Conditions. _______ (Initial)

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

By: ____________________________  By: ____________________________

Name: ____________________________  Name: Jerry Fournier

Title: ____________________________  Title: Print Smart Specialist

Date: ____________________________  Date: 2/28/19
Standard Terms and Conditions

1. General Scope of Coverage
This Agreement covers both the labor, parts and supplies for adjustments, repairs and replacement of parts as necessitated by normal use of the equipment except as hereinafter provided. Damage to the equipment or its parts arising out of misuse, abuse, negligence, or causes beyond Applied Imaging’s control are not covered. Applied Imaging may terminate this agreement in the event equipment is modified, altered or serviced by personnel other than those employed by Applied Imaging or without consent of Applied Imaging.

2. Availability
On-site hours are from 8:00am to 5:00pm Monday through Friday excluding Applied Imaging Holidays.

3. Addition of Equipment
Customer is required to immediately notify Applied Imaging upon installation of any additional equipment at Customer’s site capable of using Applied Imaging supplied toner cartridges. Upon installation, such equipment shall automatically be covered by this Agreement and shall be considered the Equipment for all purposes under this agreement.

4. Extensions
This Agreement will automatically renew annually unless terminated with written notice as described in paragraph 5.

5. Agreement Termination
This Agreement may be terminated, with or without cause, by Applied Imaging with no less than 30 days prior written notice. Customer may terminate this Agreement, with or without cause, upon thirty (30) days written notice. However, should Customer terminate this Agreement prior to the end of its term, without cause, Customer shall:
   a) Permit Applied Imaging to remove any Applied Imaging owned supplies covered under this Agreement
   b) Pay all charges due and owing to Applied Imaging through the date of removal of such supplies
   c) Pay Applied Imaging of the sum of remaining payments and any averages used in that period

6. Non-Performance
In the event that Applied Imaging does not perform the services to the Customer’s satisfaction, Customer shall inform Applied Imaging in writing and Applied Imaging shall have a period of thirty (30) days to correct any deficiencies in performance. Should Applied Imaging still be unable to correct the problem, the Customer shall have the option to terminating this Agreement without incurring any penalty including Liquidated Damages. In the event of termination for non-performance Customer shall:
   a) Permit Applied Imaging to remove any Applied Imaging owned equipment and supplies covered under this Agreement
   b) Pay all charges due and owing to Applied Imaging through the date of removal of such equipment and/or supplies

7. Confidentiality
Applied Imaging recognizes that it must conduct its activities in a manner designed to protect any information concerning its affiliates or Customers (such information herein referred to collectively as the “Information”) from improper use or disclosure. Applied Imaging agrees to treat Customer’s Information on a confidential basis. Applied Imaging further agrees that it will not disclose any Customer Information, without Customer’s prior written consent, to any person, firm or corporation except (1) to authorized Customer representatives or (2) to employees of Applied Imaging who have performed the services contemplated hereunder. Applied Imaging agrees upon request to have its employees execute written undertakings to comply with the confidentiality requirements set forth under this paragraph.

8. Insurance
Applied Imaging shall at all times during the term of this Agreement maintain, at its cost, customary levels of the following types of insurance: general liability, workers’ compensation liability and, if appropriate to the services rendered, automobile liability (including bodily injury and property damage).

9. Indemnification
Customer shall indemnify and hold Applied Imaging harmless from any claim, demand, liability, and cause of action or damage for actual or alleged infringement of any intellectual property rights or copyrights arising from the performance of services under this Agreement. Customer agrees to defend Applied Imaging at Customer’s sole expense, against all suit, action or proceeding in which Applied Imaging is made a defendant for actual or alleged infringement of any intellectual property rights. Other than as provided above, each party agrees to hold harmless, defend and indemnify the other party against any liability, demand, claim or cause of action for personal injury or property damage due to or arising out of the acts of that party, its agents and employees. However, each party shall have no obligation to hold harmless, defend or indemnify the other from or for liability arising from the other’s own intentional or negligent acts. In no event shall Applied Imaging be liable to Customer for consequential or indirect damages due to Applied Imaging’s non-performance, any breach of this Agreement, or any act of Applied Imaging or its employees or agents.

See attached Addendum incorporated herein by reference.

10. Miscellaneous
This Agreement supersedes all prior discussions or understandings between the parties. This Agreement cannot be changed or terminated orally. No modification of this Agreement shall be binding unless signed by the party against whom it sought to be enforced. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement shall still be construed as valid and enforceable. Renewal of this agreement is subject to price and provision changes without notification and is subject to annual increases. Supply shipping charges are not included in this agreement.

No waiver shall be deemed to be made by any party of any of its rights hereunder unless, the same shall be in writing signed by the waiving party and any waiver shall be a waiver only with respect to the specific instance involved and shall be in no way impair the rights or obligations of any party in any respect at any other time.

11. Assignability
The Customer may not assign its interest in or delegate its duties under this Agreement.

12. Breach or Default
If the Customer does not pay all charges for services as provided hereunder, promptly when due: (1) Applied Imaging may (a) refuse to provide service or supplies for the Equipment or (b) furnish service and supplies on a C.O.D. “Per Call” basis at published rates and (2) the Customer agrees to pay Applied Imaging costs and expenses of collection including the reasonable attorney’s fee permitted by law in addition to all other rights and remedies available to Applied Imaging.

13. Device End of Life
End of Life is defined as but not limited to total engine life of the device and/or five years past manufacturer discontinue date. Engine life is defined as thirty-six months multiplied by the maximum recommended monthly volume as determined by the manufacturer. If a device exceeds either one of these

PrintSmart Revised Agreement 01-02-19
1/21/2019
criteria, Applied Imaging is not responsible for providing service or supply to said device(s). The customer will be notified 30 days prior to the discontinuation of service or supplies.

14. Coverage
Applied Imaging allows for coverage of ten percent above manufacturers' average allotted coverage for mono and color toners. Should the allowance exceed this, Applied Imaging reserves the right to charge back the difference. Production devices are exempt.

15. Like for Like Device Swaps
Applied Imaging defines like for like device swaps as a device in the same segment and with the same functionalities. Applied Imaging will swap out any device that meets this criteria, and replace said devices with HP, Ricoh or Kyocera manufactured devices.

Addendum A
Scope of Services
Print Management Agreement

1. Management Team
Applied Imaging will assign a Print Management Team consisting of a Team Leader, Primary Hardware Technician, Primary Network Support Technician and a Primary Billing/Administrative Representative. All correspondence beyond reporting of hardware failures should be directed to Service Dispatch at 877-509-0770.

2. Implementation
Upon approval of this Agreement by both parties, Applied Imaging may complete an inspection of the Equipment to be serviced under this Agreement. Following inspection, an Applied Imaging identification tag will be attached to the Equipment.

3. PrintSmart Services
PrintSmart Services are inclusive of but not limited to the following:

a) Hardware Support Services
- **Total Quality Call**- Your primary Applied Imaging technician, under the guidelines of the Standard Terms and Conditions, will act proactively as they follow a standard procedure for addressing hardware failures involving resolution of the immediate failure followed by a completion of a multi-point check list replacing high mortality parts as needed.
- **Preventative Maintenance**- Applied Imaging will perform all necessary preventative maintenance including all required maintenance kits on the Equipment as set by the manufacturer's guidelines as well as preventative maintenance deemed necessary by the Applied Imaging Service Department.
- **Supplies**- Supplies excluding paper will be included. All supplies will be OEM compatible unless noted in this agreement. Supplies will be shipped per customer request but limited to a quantity required based on prints generated under this agreement.
- **Response Time**- Applied Imaging will respond to service calls placed to the Customer Support Center (electronic or voice mail) within an average of four (4) hours of call placement. Response times for calls received outside of normal business hours will be measured from the start of business the following day.
- **Remote Support**- Applied Imaging may remotely monitor and support the Equipment for more timely and accurate resolution of problems.
- **Service Loans**- If we cannot repair your printer in your office we will provide a free loaner (excluding service/supplies) until your printer is repaired.
- **Replacement Guarantee**- If any printer under this agreement is deemed unrepairable we'll replace it on a like for like basis at no charge to you provided the unit is less than seven (7) years old from date of introduction. This does not include any devices that are multifunction or have document feeders on them.

b) Network Support
- **Solution Group**- Applied Imaging's Solutions Group will be available to provide support for application specific printing challenges. Following a needs analysis, the Solutions Group, if necessary, will provide a "Scope of Work" estimate for your approval.

c) Contract Management
- **Quarterly Business Review**- Applied Imaging will meet with you as much as once per quarter to review Applied Imaging's performance and Equipment performance.
- **Asset Management**- the Applied Imaging Support Center will maintain an accurate inventory of all Equipment and associated print volumes. Applied Imaging will proactively offer solutions that would improve the conditions of the Agreement including, but not limited to, reallocation of resources for improved performance, cost reduction initiatives and recommendations for any new technology.

4. Escalation
Applied Imaging uses an operating system designed to automatically monitor and alert your Print Management team when response times, equipment performance and technician performance fall below Applied Imaging's standards. Following such alerts, measures will be taken to correct any deficiencies.
# Certificate of Liability Insurance

**Title:** Certificate of Liability Insurance

**Date:** 1/21/2019

**Producer:** Lighthouse Insurance Group, Inc.

**Insured:** Applied Imaging Systems Inc, DBA: 6 Lowery

**Coverage:**

<table>
<thead>
<tr>
<th>Coverage Type</th>
<th>Description</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability</td>
<td>Claims-Made Occur</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Umbrella Liability</td>
<td>Occur</td>
<td>$15,000,000</td>
</tr>
<tr>
<td>Workers' Compensation and Employers' Liability</td>
<td></td>
<td>$500,000</td>
</tr>
<tr>
<td>Physical Damage</td>
<td></td>
<td>$100 / $500</td>
</tr>
</tbody>
</table>

**Certificate Holder:** City of Birmingham

**Cancellation:**

**Authorized Representative:** Justin Steere/JSTEER

**Notes:**

- The City of Birmingham including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members are listed as Additional Insured in accordance with the attached endorsements. Coverage shall be primary and non-contributory in accordance with the attached endorsements. 30-day Notice of Cancellation applies for The City of Birmingham.

**ACORD 25 (2014/01)** The ACORD name and logo are registered marks of ACORD

**INS025 (2014/01)**
SUMMARY OF COVERAGE (including index)

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary. Refer to the actual endorsement (Pages 3-through-8) for changes affecting your insurance protection.

DESCRIPTION

- Additional Insureds - Primary and Non-Contributory Provision
- Blanket Additional Insureds - As Required By Contract
- Broad Form Vendors Coverage
- Damage To Premises Rented To You (Including Fire, Lightning or Explosion)
- Electronic Data Liability ($100,000)
- Employee Definition Amended
- Employees As Insureds Modified
- Employer's Liability Exclusion Amended (Not applicable in New York)
- Incidental Malpractice Exclusion modified
- Knowledge of Occurrence, Claim, Suit or Loss
- Liberalization Clause
- Mental Anguish Amendment (Not applicable to New York)
- Newly Formed or Acquired Organizations
- Non-Accumulation Of Limits (Not applicable in New York or Wisconsin)
- Non-Owned Aircraft
- Non-Owned Watercraft (under 60 feet)
- Not-for-profit Members - as additional insureds
- Personal And Advertising Injury - Discrimination Amendment (Not applicable in New York)
- Products Amendment (Medical Payments)
- Supplementary Payments Amended - Bail Bonds ($5,000) and Loss of Earnings ($1,000)
- Unintentional Failure to Disclose Hazards
- Waiver of Transfer of Rights of Recovery (subrogation)
- When Two or More Coverage Parts of this Policy Apply to a Loss
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The SECTIONS of the Commercial General Liability Coverage Form identified in this endorsement will be amended as shown below. However, if (a) two or more Coverage Parts of this policy, or (b) two or more forms or endorsements within the same Coverage Part apply to a loss, only the broadest coverage of this policy will apply, unless specifically stated otherwise within the particular amendment covering that loss.

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

COVERAGES - Amendments
SECTION I - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

EXCLUSIONS
Employer's Liability Amendment
(This provision is not applicable in the State of New York).

The following is added to Exclusion e. Employer’s Liability under COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions:

This exclusion also does not apply to any "temporary worker".

Non-Owned Aircraft, Auto or Watercraft

A. Paragraph (2) of Exclusion g. Aircraft, Auto or Watercraft under COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is deleted in its entirety and replaced with the following:

(2) A watercraft you do not own that is:
(a) Less than 26 feet long and not being used to carry persons or property for a charge; or
(b) At least 26 feet, but less than 60 feet long, and not being used to carry persons or property for a charge. Any person is an insured who uses or is responsible for the use of such watercraft with your expressed or implied consent. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to Condition 4. Other Insurance, b. Excess Insurance under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS.

B. The following is added to Exclusion g. Aircraft, Auto or Watercraft under COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions:

This exclusion does not apply to:

(6) Any aircraft, not owned or operated by any insured, which is hired, chartered or loaned with a paid crew. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to Condition 4. Other Insurance, b. Excess Insurance under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS.

Damage To Premises Rented to You

A. The last paragraph of Paragraph 2. Exclusions under COVERAGE A BODILY INJURY AND PROPERTY DAMAGE is deleted in its entirety and replaced with the following:

Exclusions c. through n. do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in SECTION III - LIMITS OF INSURANCE.
B. Paragraph 6. under SECTION III - LIMITS OF INSURANCE is deleted in its entirety and replaced with the following:

6. Subject to Paragraph 5. above, the most we will pay under COVERAGE A for damages because of “property damage” to any one premises, while rented to you, or in the case of damage caused by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner, for all such damage caused by fire, lightning or explosion proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of the three, is the amount shown in the Declarations for the Damage To Premises Rented To You Limit.

C. Paragraph a. of Definition 9. “Insured contract” under SECTION V - DEFINITIONS is deleted in its entirety and replaced with the following:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with the permission of the owner is not an “insured contract”.

Electronic Data Liability

A. Exclusion p. Access or Disclosure Of Confidential Or Personal Information And Date-related Liability under COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is deleted in its entirety and replaced by the following:

p. Access or Disclosure Of Confidential Or Personal Information And Date-related Liability

Damages arising out of:

(1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information or any other type of nonpublic information; or

(2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

B. The following paragraph is added to SECTION III - LIMITS OF INSURANCE:

Subject to 5. above, the most we will pay under COVERAGE A for “property damage” because of all loss of “electronic data” arising out of any one occurrence is a sub-limit of $100,000.

SECTION I - COVERAGE C MEDICAL PAYMENTS EXCLUSIONS

Any Insured Amendment

Exclusion a. Any Insured under COVERAGE C MEDICAL PAYMENTS, 2. Exclusions is deleted in its entirety and replaced with the following:

a. Any Insured

To any insured.

This exclusion does not apply to:

(1) “Not-for-profit members”;

(2) “Golfing facility” members who are not paid a fee, salary, or other compensation; or

(3) “Volunteer workers”.

This exclusion exception does not apply if COVERAGE C MEDICAL PAYMENTS is excluded by another endorsement to this Coverage Part.

Product Amendment

Exclusion f. Products-Completed Operations Hazard under COVERAGE C MEDICAL PAYMENTS, 2. Exclusions is deleted in its entirety and replaced with the following:

f. Products-Completed Operations Hazard

Included within the “products-completed operations hazard”.

This exclusion does not apply to “your products” sold for use or consumption on your premises, while such products are still on your premises.

This exclusion exception, does not apply if COVERAGE C MEDICAL PAYMENTS is excluded by another endorsement to this Coverage Part.

SECTION I - SUPPLEMENTARY PAYMENTS - COVERSAGES A AND B

Expenses For Bail Bonds And Loss Of Earnings

A. Subparagraph 1.b. under SUPPLEMENTARY PAYMENTS - COVERSAGES A AND B is deleted in its entirety and replaced with the following:

b. Up to $5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
B. Subparagraph 1.d. under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B is deleted in its entirety and replaced with the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $1,000 a day because of time off from work.

SECTION II - WHO IS AN INSURED - Amendments

Not-for-Profit Organization Members

The following paragraph is added to SECTION II - WHO IS AN INSURED:

If you are an organization other than a partnership, joint venture, or a limited liability company, and you are a not-for-profit organization, the following are included as additional insureds:

1. Your officials;
2. Your trustees;
3. Your members;
4. Your board members;
5. Your commission members;
6. Your agency members;
7. Your insurance managers;
8. Your elective or appointed officers; and
9. Your "not-for-profit members".

However only with respect to their liability for your activities or activities they perform on your behalf.

Employees As Insureds Modified

A. Subparagraph 2.a.(1)(a) under SECTION II - WHO IS AN INSURED does not apply to "bodily injury" to a "temporary worker" caused by a co-"employee" who is not a "temporary worker".

B. Subparagraph 2.a.(2) under SECTION II - WHO IS AN INSURED does not apply to "property damage" to the property of a "temporary worker" or "volunteer worker" caused by a co-"employee" who is not a "temporary worker" or "volunteer worker".

C. Subparagraph 2.a.(1)(d) under SECTION II - WHO IS AN INSURED does not apply to "bodily injury" caused by cardio-pulmonary resuscitation or first aid services administered by a co-"employee".

With respect to this provision only, Subparagraph (1) of Exclusion 2. e. Employer's Liability under SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY does not apply.

Newly Formed Or Acquired Organizations

A. Subparagraph 3.a. under SECTION II - WHO IS AN INSURED is deleted in its entirety and replaced with the following:

a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier. However, COVERAGE A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

B. The following paragraph is added to SECTION II - WHO IS AN INSURED, Paragraph 3:

If you are engaged in the business of construction of dwellings three stories or less in height, or other buildings three stories or less in height and less than 25,000 square feet in area, you will also be an insured with respect to "your work" only, for the period of time described above, for your liability arising out of the conduct of any partnership or joint venture of which you are or were a member, even if that partnership or joint venture is not shown as a Named Insured. However, this provision only applies if you maintain or maintained an interest of at least fifty percent in that partnership or joint venture for the period of that partnership or joint venture.

This provision does not apply to any partnership or joint venture that has been dissolved or otherwise ceased to function for more than thirty-six months.

With respect to the insurance provided by this provision, Newly Formed or Acquired Organizations, the following is added to SECTION IV - COMMERCIAL GENERAL LIABILITY, Paragraph 4. Other Insurance, Subparagraph b. Excess Insurance:

The insurance provided by this provision, Newly Formed or Acquired Organizations, is excess over any other insurance available to the insured, whether primary, excess, contingent or on any other basis.

(All other provisions of this section remain unchanged).
Blanket Additional Insureds - As Required By Contract

A. Subject to the Primary and Non-Contributory provision set forth in this endorsement, SECTION II - WHO IS AN INSURED is amended to include as an additional insured any person or organization whom you have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your ongoing operations, "your product", or premises owned or used by you;

With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:
"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services by or for you, including:

a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or failure to render, any professional architectural, engineering or surveying services.

2. Your maintenance, operation or use of equipment, other than aircraft, "auto" or watercraft, rented or leased to you by such person or organization. A person or organization's status as an additional insured under this endorsement ends when their contract, or agreement with you for such rented or leased equipment ends. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the rental agreement or equipment lease expires.

The provisions of this coverage extension do not apply unless the written contract or written agreement has been executed (executed means signed by the named insured) or written permit issued prior to the "bodily injury" or "property damage" or "personal and advertising injury".

Broad Form Vendors Coverage

Subject to the Primary and Non-Contributory provision set forth in this endorsement, SECTION II - WHO IS AN INSURED is amended to include as an additional insured any person or organization (referred to below as vendor) whom you have agreed in a written contract or written agreement to add as an additional insured on your policy. Such person or organization is an additional insured only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, however the insurance afforded the vendor does not apply to:

a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement; however this exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

b. Any express warranty unauthorized by you;

c. Any physical or chemical change in the product made intentionally by the vendor;

d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackage in the original container;

e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product; or

f. Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part of ingredient of any other thing or substance by or for the vendor; however this insurance does not apply to any insured person or organization, from who you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

The provisions of this coverage extension do not apply unless the written contract or written agreement has been executed (executed means signed by the named insured) prior to the "bodily injury" or "property damage".
Incidental Malpractice
Subparagraph 2.a.(1)(d) under SECTION II - WHO IS AN INSURED is deleted in its entirety and replaced with the following:

(d) Arising out of his or her providing or failing to provide professional health care services. This does not apply to nurses, emergency medical technicians or paramedics if you are not in the business or occupation of providing any such professional services.

This provision does not apply if you are a Social Service or Senior Living risk.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS - Amendments

Knowledge Of Occurrence, Claim, Suit Or Loss
The following is added to Paragraph 2. Duties in the Event of Occurrence, Offense, Claim or Suit under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

The requirements under this paragraph do not apply until after the "occurrence" or offense is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An "executive officer" or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company; or
5. Your elected or appointed officials, officers, members, trustees, board members, commission members, agency members, or your administrator or your insurance manager if you are an organization other than a partnership, joint venture, or limited liability company.

Primary and Non-Contributory Provision
The following is added to Paragraph 4. Other Insurance, b. Excess Insurance under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

This insurance shall be excess with respect to any person or organization included as an additional insured under this policy, any other insurance that person or organization has shall be primary with respect to this insurance, unless:

1. The additional insured is a Named Insured under such other insurance;
2. You have agreed in a written contract, written agreement or written permit to include that additional insured on your General Liability policy on a primary and/or non-contributory basis; and
3. The written contract or written agreement has been executed (executed means signed by the named insured) or written permit issued prior to the "bodily injury" or "property damage" or "personal and advertising injury".

Unintentional Failure To Disclose Hazards
The following is added to Paragraph 6. Representations under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

However, if you should unintentionally fail to disclose any existing hazards in your representations to us at the inception date of the policy, or during the policy period in connection with any additional hazards, we shall not deny coverage under this Coverage Part based upon such failure to disclose hazards.

Waiver Of Transfer Of Rights Of Recovery
The following is added to Paragraph 8. Transfer of Rights Of Recovery Against Others To Us under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

We will waive any right of recovery we may have against a person or organization because of payments we make for "bodily injury" or "property damage" arising out of your ongoing operations or "your work" done under a written contract or written agreement and included in the "products-completed operations hazard", if:

1. You have agreed to waive any right of recovery against that person or organization in a written contract or written agreement;
2. Such person or organization is an additional insured on your policy; or
3. You have assumed the liability of that person or organization in that same contract, and it is an "insured contract".

The section above only applies to that person or organization identified above, and only if the "bodily injury" or "property damage" occurs subsequent to the execution of the written contract or written agreement.

Liberalization
The following condition is added to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

If we revise this Coverage Part to provide more coverage without additional premium charge, subject to our filed company rules, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

Non-Accumulation Of Limits
(This provision is not Applicable in the state of New York or Wisconsin).

The following condition is added to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

If you have other insurance provided by us or one of our affiliates that will respond to a claim or "suit" also covered under this coverage, the maximum limit of insurance under all collectible insurance shall not exceed the highest applicable limit under any one of the other coverage part(s), form(s) or policy(ies).
SECTION V - DEFINITIONS

Discrimination

(This provision does not apply in New York).

A. The following is added to Definition 14. "Personal and advertising injury":

"Personal and advertising injury" also means "discrimination" that results in injury to the feelings or reputation of a natural person, however only if such "discrimination" or humiliation is:

1. Not done by or at the direction of:
   a. The insured; or
   b. Anyone considered an insured under SECTION II - WHO IS AN INSURED;

2. Not done intentionally to cause harm to another person.

3. Not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.

4. Not arising out of any "advertisement" by the insured.

B. The following definition is added to SECTION V - DEFINITIONS:

"Discrimination" means:

a. Any act or conduct that would be considered discrimination under any applicable federal, state, or local statute, ordinance or law;

b. Any act or conduct that results in disparate treatment of, or has disparate impact on, a person, because of that person's race, religion, gender, sexual orientation, age, disability or physical impairment; or

c. Any act or conduct characterized or interpreted as discrimination by a person based on that person's race, religion, gender, sexual orientation, age, disability or physical impairment.

It does not include acts or conduct characterized or interpreted as sexual intimidation or sexual harassment, or intimidation or harassment based on a person's gender.

Electronic Data

The following definition is added to SECTION V - DEFINITIONS:

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cell, data processing devices or any other media which are used with electronically controlled equipment.

For the purpose of the Electronic Data Liability coverage provided by this endorsement, Definition 17. "Property damage" is deleted in its entirety and replaced by the following:

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For the purpose of the Electronic Data Liability coverage provided by this endorsement, "electronic data" is not tangible property.

Employee Amendment

Definition 5. "Employee" under SECTION V - DEFINITIONS is deleted in its entirety and replaced by the following:

5. "Employee" includes a "leased worker", or a "temporary worker". If you are a School, "Employee" also includes a student teacher.

Golfing Facility

The following definition is added to SECTION V - DEFINITIONS:

"Golfing facility" means a golf course, golf club, driving range, or miniature golf course.

Mental Anguish Amendment

(This provision does not apply in New York).

Definition 3. "Bodily injury" under SECTION V - DEFINITIONS is deleted in its entirety and replaced with the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. This includes mental anguish resulting from any bodily injury, sickness or disease sustained by a person. (In New York, mental anguish has been determined to be "bodily injury").

Not-for-profit Member

The following definition is added to SECTION V - DEFINITIONS:

"Not-for-profit member" means a person who is a member of a not-for-profit organization, including clubs and churches, who receives no financial or other compensation.
ElitePac®  
Commercial Automobile Extension

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Business Auto Coverage Form apply unless modified by the endorsement.

AMENDMENTS TO SECTION II - LIABILITY COVERAGE

If this policy provides Auto Liability coverage for Owned Autos, the following extensions are applicable accordingly:

NEWLY ACQUIRED OR FORMED ORGANIZATIONS
The following is added to SECTION II, A.1. - Who Is An Insured:

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no similar insurance available to that organization. However:

1. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

2. Coverage does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization.

No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

LIMITED LIABILITY COMPANIES
The following is added to SECTION II, A.1. - Who Is An Insured:

If you are a limited liability company, your members and managers are "insureds" while using a covered "auto" you don't own, hire or borrow during the course of their duties for you.

EMPLOYEES AS INSUREDs

If this policy provides Auto Liability coverage for Non-Owned Autos, the following is added to SECTION II, A.1. - Who Is An Insured:

Any "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name with your permission, while performing duties related to the conduct of your business.

BLANKET ADDITIONAL INSUREDS
The following is added to SECTION II, A.1. - Who Is An Insured:

Any person or organization with whom you agreed in a written contract, written agreement or written permit to add as an additional "insured" on your policy is an additional "insured". Such person or organization is an additional "insured" only with respect to your ownership, maintenance or use of a covered "auto". This coverage shall be primary and non-contributory with respect to the additional "insured". This provision only applies if:

1. It is required in the written contract, written agreement or written permit identified in this section;

2. It is permitted by law; and

3. The written contract or written agreement has been executed or written permit issued prior to the "bodily injury" or "property damage".

EXPENSES FOR BAIL BONDS AND LOSS OF EARNINGS

Paragraphs (2) and (4) of SECTION II, A.2.a. - Supplementary Payments are deleted in their entirety and replaced with the following:

(2) Up to the Limit of Insurance shown on the ElitePac Schedule for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" covered under this policy. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the "insured" at our request. This includes actual loss of earnings because of time off from work, which we will pay up to the Limit of Insurance shown on the ElitePac Schedule.
EMPLOYEE INDEMNIFICATION AND EMPLOYER'S LIABILITY AMENDMENT

The following is added to SECTION II, B.4. - Exclusions:

This exclusion does not apply to a "volunteer worker" who is not entitled to workers compensation, disability or unemployment compensation benefits.

FELLOW EMPLOYEE COVERAGE

The Fellow Employee Exclusion, SECTION II, B.5. - is deleted in its entirety.

CARE, CUSTODY OR CONTROL AMENDMENT

The following is added to SECTION II, B.6. - Exclusions:

This exclusion does not apply to property owned by anyone other than an "insured", subject to the following:

1. The most we will pay under this exception for any one accident is the Limit of Insurance stated in the ElitePac Schedule; and

2. A per accident deductible as stated in the ElitePac Schedule applies to this exception.

AMENDMENTS TO SECTION III - PHYSICAL DAMAGE COVERAGE

If this policy provides Comprehensive, Specified Causes of Loss or Collision coverage, the following extensions are applicable for those "autos" for which Comprehensive, Specified Causes of Loss or Collision coverage is purchased:

TOWING AND LABOR

SECTION III, A.2. - Towing is deleted in its entirety and replaced with the following:

We will pay all reasonable towing and labor costs up to the maximum Limit of Insurance shown on the ElitePac Schedule per tow each time a covered "Private Passenger Auto", "Social Service Van or Bus" or "Light Truck" is disabled and up to the maximum Limit of Insurance per tow each time a covered "Medium Truck", "Heavy Truck" or "Extra Heavy Truck" is disabled.

For labor charges to be eligible for reimbursement the labor must be performed at the place of disabling.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

GLASS BREAKAGE DEDUCTIBLE

The following is added to SECTION III, A.3. - Glass Breakage - Hitting A Bird Or Animal - Falling Objects or Missiles:

If damaged glass is repaired rather than replaced, no deductible will apply for such repair. This extension does not apply to Emergency Services Organizations and Governmental Entities.

ADDITIONAL TRANSPORTATION EXPENSES

SECTION III, A.4.a. - Transportation Expenses is deleted in its entirety and replaced with the following:

We will pay up to the maximum Limit of Insurance shown on the ElitePac Schedule for temporary transportation expenses that you incur because of any "loss" to a covered "auto", but only if the covered "auto" carries the coverages and meets the requirements described in 1. or 2. below:

1. We will pay temporary transportation expenses for total theft of a covered "auto". We will only pay for such expenses incurred during the period beginning 24 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

2. For "loss" other than total theft of a covered "auto" under Comprehensive or Specified Causes of Loss Coverage, or for any "loss" under Collision Coverage to a covered "auto", we will only pay for those temporary transportation expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the number of days reasonably required to repair or replace the covered "auto" or 30 days.

Paragraph 2. of this extension does not apply while there are spare or reserve "autos" available to you for your operations.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

HIRED AUTO PHYSICAL DAMAGE COVERAGE

The following is added to SECTION III, A.4. - Coverage Extensions:

Physical Damage coverage is hereby extended to apply to Physical Damage "loss" to "autos" leased, hired, rented or borrowed without a driver. We will provide coverage equal to the broadest coverage available to any covered "auto" shown in the Declarations. But, the most we will pay for "loss" to each "auto" under this coverage extension is the lesser of:

1. The Limit of Insurance stated in the ElitePac Schedule; or

2. The actual cash value of the damaged or stolen property as of the time of the "loss"; or

3. The actual cost of repairing or replacing the damaged or stolen property with other property of like kind and quality. A part is of like kind and quality when it is of equal or better condition than the pre-accident part. We will use the original equipment from the manufacturer when:
(a) The operational safety of the vehicle might otherwise be impaired;
(b) Reasonable and diligent efforts to locate the appropriate rebuilt, aftermarket or used part have been unsuccessful; or
(c) A new original equipment part of like kind and quality is available and will result in the lowest overall repair cost.

For each leased, hired, rented or borrowed "auto" our obligation to pay "losses" will be reduced by a deductible equal to the highest deductible applicable to any owned "auto" for that coverage. No deductible will be applied to "losses" caused by fire or lightning.

SECTION IV, B.5. Other Insurance Condition, Paragraph 5.b. is deleted in its entirely and replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

1. Any covered "auto" you lease, hire, rent, or borrow; and
2. Any covered "auto" hired or rented by your "employee" under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

HIRE AUTO LOSS OF USE COVERAGE
The following is added to SECTION III, A.4. - Coverage Extensions:

We will pay expenses for which you are legally responsible to pay up to the Limit of Insurance shown on the ElitePac Schedule per "accident" for loss of use of a leased, hired, rented or borrowed "auto" if it results from an "accident".

This coverage extension does not apply to Emergency Services Organizations, Governmental Entities, and Schools.

AUTO LOAN/LEASE GAP COVERAGE (Not Applicable in New York)
The following is added to SECTION III, A.4. - Coverage Extensions:

In the event of a total "loss" to a covered "auto" we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the Physical Damage Coverage Section of the policy; and
2. Any:
   a. Overdue lease/loan payments at the time of "loss";
   b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear, high mileage or similar charges;
   c. Security deposits not refunded by the lessor or financial institution;
   d. Costs for extended warranties, credit life, health, accident, or disability insurance purchased with the loan or lease; and
   e. Carry-over balances from previous leases or loans.

You are responsible for the deductible applicable to the "loss" for the covered "auto".

This extension only applies if the lessor or financial institution is an additional "insured" under this Coverage Form.

PERSONAL EFFECTS
The following is added to SECTION III, A.4. - Coverage Extensions:

If this policy provides Comprehensive Coverage for a covered "auto" you own and that covered "auto" is stolen, we will pay up to the Limit of Insurance shown on the ElitePac Schedule, without application of a deductible, for lost personal effects that were in the covered "auto" at the time of theft. Personal effects do not include jewelry, tools, money, or securities. This coverage is excess over any other collectible insurance.

AIRBAG COVERAGE
The following is added to SECTION III, B.3.a. - Exclusions:

Mechanical breakdown does not include the accidental discharge of an airbag.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

EXPANDED AUDIO, VISUAL, AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III, B.4. - Exclusions
This exclusion does not apply to the following:

1. Global positioning systems;
2. "Telematic devices"; or
3. Electronic equipment that reproduces, receives or transmits visual or data signals and accessories used with such equipment, provided such equipment is:
   a. Permanently installed in or upon the covered "auto" at the time of the "loss";
   b. Removable from a housing unit that is permanently installed in the covered "auto" at the time of the "loss";

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c. Designed to be solely operated by use of power from the "auto's" electrical system; or
d. Designed to be used solely in or upon the covered "auto".

For each covered "loss" to such equipment, a deductible of $50 shall apply, unless the deductible otherwise applicable to such equipment is less than $50, at which point the lower deductible, if any, will apply.

**COMPREHENSIVE DEDUCTIBLE - LOCATION TRACKING DEVICE**

The following is added to **SECTION III, D. - Deductible:**

Any Comprehensive Coverage Deductible shown in the Declarations will be reduced by 50% for any "loss" caused by theft if the covered "auto" is equipped with a location tracking device and that device was the sole method used to recover the "auto".

**PHYSICAL DAMAGE LIMIT OF INSURANCE**

**SECTION III, C. - Limit Of Insurance** is deleted in its entirety and replaced with the following:

The most we will pay for a "loss" in any one "accident" is the lesser of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

**AMENDMENTS TO SECTION IV - BUSINESS AUTO CONDITIONS**

**DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The following is added to **SECTION IV, A.2.a. - Duties In The Event Of Accident, Claim, Suit Or Loss:**

The notice requirements for reporting "accident" claim, "suit" or "loss" information to us, including provisions related to the subsequent investigation of such "accident", claim, "suit" or "loss" do not apply until the "accident", claim, "suit" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An executive officer or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company;

5. Your elected or appointed officials, trustees, board members or your insurance manager, if you are an organization other than a partnership, joint venture or limited liability company.

But, this section does not amend the provisions relating to notification of police or protection or examination of the property that was subject to the "loss".

**WAIVER OF SUBROGATION**

**SECTION IV, A.5. - Transfer Of Rights Of Recovery Against Others To Us** is deleted in its entirety and replaced with the following:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" resulting from the ownership, maintenance or use of a covered "auto" but only when you have assumed liability for such "bodily injury" or "property damage" in an "insured contract". In all other circumstances, if a person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us.

**MULTIPLE DEDUCTIBLES**

The following is added to **SECTION IV, A. - Loss Conditions:**

If a "loss" from one event involves two or more covered "autos" and coverage under Comprehensive or Specified Causes of Loss applies, only the highest applicable deductible will be applied.

**CONCEALMENT, MISREPRESENTATION OR FRAUD**

The following is added to **SECTION IV, B.2. - Concealment, Misrepresentation Or Fraud:**

If you should unintentionally fail to disclose any existing hazards in your representations to us prior to the inception date of the policy or during the policy period in connection with any newly discovered hazards, we will not deny coverage under this Coverage Form based upon such failure.

**POLICY PERIOD, COVERAGE TERRITORY**

**SECTION IV, B.7. - Policy Period, Coverage Territory** is deleted in its entirety and replaced with the following:

Under this Coverage Form, we cover "accidents" and "losses" occurring:

a. During the policy period shown in the Declarations; and
b. Within the "Coverage Territory".

We also cover "loss" to or "accidents" involving a covered "auto" while being transported between any of these places.
TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US - DEDUCTIBLES
The following is added to SECTION IV, B.8. - Two Or More Coverage Forms Or Policies Issued By Us:
If a "loss" covered under this Coverage Form also involves a "loss" to other property resulting from the same "accident" that is covered under this policy or another policy issued by us or any member company of ours, only the highest applicable deductible will be applied.

AMENDMENTS TO SECTION V - DEFINITIONS

BODILY INJURY INCLUDING MENTAL ANGUISH (Not Applicable In New York)
The definition of bodily injury is deleted in its entirety and replaced by the following:
"Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death resulting from any of these. "Bodily injury" includes mental anguish resulting from bodily injury, sickness or disease sustained by a person.

ADDITIONS TO SECTION V - DEFINITIONS

COVERAGE TERRITORY
"Coverage Territory" means:

1. The United States of America (including its territories and possessions), Canada and Puerto Rico; and
2. Anywhere in the world, except for any country or jurisdiction that is subject to trade or other economic sanction or embargo by the United States of America, if a covered "auto" is leased, hired, rented, or borrowed without a driver for a period of 30 days or less, and the insured's responsibility to pay "damages" is determined in a "suit" on the merits in and under the substantive law of the United States of America (including its territories and possessions), Puerto Rico, or Canada, or in a settlement we agree to.

If we are prevented by law, or otherwise, from defending the "insured" in a "suit" brought in a location described in Paragraph 2. above, the insured will conduct a defense of that "suit". We will reimburse the "insured" for the reasonable and necessary expenses incurred for the defense of any such "suit" seeking damages to which this insurance applies, and that we would have paid had we been able to exercise our right and duty to defend.

EXTRA HEAVY TRUCK
"Extra Heavy Truck" means a truck with a gross vehicle weight rating of 45,001 pounds or more.

HEAVY TRUCK
"Heavy Truck" means a truck with a gross vehicle weight rating of 20,001 pounds to 45,000 pounds.

LIGHT TRUCK
"Light Truck" means a truck with a gross vehicle weight rating of 10,000 pounds or less.

MEDIUM TRUCK
"Medium Truck" means a truck with a gross vehicle weight rating of 10,001 pounds to 20,000 pounds.

PRIVATE PASSENGER AUTO
"Private Passenger Auto" means a four-wheel "auto" of the private passenger or station wagon type. A pickup, panel truck or van not used for business is included within the definition of a "private passenger auto".

SOCIAL SERVICE VAN OR BUS
"Social Service Van or Bus" means a van or bus used by a government entity, civic, charitable or social service organization to provide transportation to clients incidental to the social services sponsored by the organization, including special trips and outings.

TELEMATIC DEVICE
"Telematic Device" includes devices designed for the collection and dissemination of data for the purpose of monitoring vehicle and/or driver performance. This includes Global Positioning System technology, wireless safety communications and automatic driving assistance systems, all integrated with computers and mobile communications technology in automotive navigation systems.

VOLUNTEER WORKER
"Volunteer worker" means a person who performs business duties for you, for no financial or other compensation.
ElitePac®
Commercial Automobile Extension

COMMERICAL AUTO
CA 78 16 01 16

SCHEDULE OF COVERAGE EXTENSIONS AND LIMITS OF INSURANCE

This ElitePac Schedule is a summary of additional coverages, coverage modifications and corresponding Limits of Insurance that supplements the Business Auto Coverage Form. No coverage is provided by this summary. Refer to the actual endorsement for changes affecting your insurance protection.

| DESCRIPTION | |
| AMENDMENTS TO SECTION II - LIABILITY COVERAGE | |
| Newly Acquired Or Formed Organizations | Coverage Extension |
| Limited Liability Companies | Coverage Extension |
| Employees As Insureds | Coverage Extension |
| Blanket Additional Insureds | Coverage Extension |
| Expenses For Bail Bonds And Loss Of Earnings | |
| Bail Bonds | $3,000 Per "Accident" |
| Loss Of Earnings | $1,000 Per Day |
| Employee Indemnification and Employer's Liability Amendment | Coverage Extension |
| Fellow Employee Coverage | Coverage Extension |
| Care, Custody Or Control Amendment | $1,000 per "Accident"; $500 Deductible Per "Accident" |

<p>| AMENDMENTS TO SECTION III - PHYSICAL DAMAGE COVERAGE | |
| Towing And Labor | Coverage Extension |
| Private Passenger Auto, Social Service Van or Bus, Light Truck | $75 Per Tow |
| Medium, Heavy and Extra Heavy Trucks | $150 Per Tow |
| Glass Breakage Deductible | Coverage Extension |
| Additional Transportation Expenses | $60 per day up to a maximum of $1,800 |
| Hired Auto Physical Damage Coverage | $75,000 per &quot;loss&quot; |
| Hired Auto Loss of Use Coverage | $750 Per &quot;Accident&quot; |
| Auto Loan/Lease Gap Coverage (Not Available in New York) | Coverage Extension |
| Personal Effects | $500 Per &quot;Accident&quot; |
| Airbag Coverage | Coverage Extension |
| Expanded Audio, Visual, And Data Electronic Equipment Coverage | Coverage Extension |
| Comprehensive Deductible - Location Tracking Device | Coverage Extension |
| Physical Damage Limit Of Insurance | Coverage Extension |</p>
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<tr>
<th>DESCRIPTION</th>
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<td>Concealment, Misrepresentation Or Fraud</td>
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<td>AMENDMENTS TO SECTION V - DEFINITIONS</td>
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<td>Coverage Territory</td>
<td>Broadened Definition</td>
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</table>
ADDENDUM
Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party’s claim exceeds $1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator’s and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL §600.5001 et seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

9. To the fullest extent permitted by law, the CONSULTANT and any entity or person for whom the CONSULTANT is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on their behalf against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from the CITY, its elected and appointed officials, employees, volunteers or others working on their behalf, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arise out of the acts, errors or omissions of the CONSULTANT including its employees and agents, in the performance of this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of its elected or appointed officials, employees, volunteers or others working on behalf of the CITY.

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

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

A. Workers’ Compensation Insurance: CONSULTANT shall procure and maintain during the life of this Agreement, Workers’ Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
B. **Commercial General Liability Insurance**: CONSULTANT shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than $1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

C. **Motor Vehicle Liability Insurance**: CONSULTANT shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. **Additional Insured**: The Commercial General Liability and Motor Vehicle Liability, as described above, shall include an endorsement stating the following shall be **Additional Insureds**: The City of Birmingham including all elected and appointed officials, all employees, all boards, commissions and/or authorities and board members. This coverage shall be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance required from CONSULTANT under this Section.

E. **Professional Liability Insurance**: If Professional Liability Insurance is available, Professional Liability Insurance with limits of not less than $2,000,000 per claim if CONSULTANT will provide service that are customarily subject to this type of coverage.

F. **Cancellation Notice**: Workers' Compensation Insurance, Commercial General Liability Insurance, Professional Liability Insurance and Motor Vehicle Liability Insurance as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Director of Finance, City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012.

G. **Proof of Insurance Coverage**: CONSULTANT shall provide the CITY at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City, as listed below.

1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;

3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;

4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;

H. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, CONSULTANT shall deliver renewal certificates and/or policies to the City at least (10) days prior to the expiration date.
Approved:

Eric Brunk, IT Manager  
(Approved as to substance)

Timothy J. Currier, City Attorney  
(Approved as to form)

Mark Gerber, Director of Finance  
(Approved as to financial obligation)
DATE: 03/11/2019

TO: Joseph A. Valentine, City Manager

FROM: Eric Brunk

SUBJECT: Backup Solution Modification

INTRODUCTION:
February of this year the Watchguard server managed by the police department had a
catastrophic failure and all of the data was lost. Due to the nature of the data on this
server the IT department suggested that it be added to the disaster recovery backup
rotation and a quote was requested from our backup solution provider for the cost of
increasing our backup environment to include the Watchguard server and its data.

BACKGROUND:
In November of 2017 the city renewed its contract with All Covered for disaster recovery
backup services replacing our expired backup solution with new equipment. At that time
we reviewed the server list and the only servers put on new contract were the servers
already being backed up previously by All Covered. All other servers in the environment
were either non critical servers (duplicate Domain Controllers, network appliances, and
monitoring servers) or were stated as having their own backup solution (external drive
connected / data duplication). With the catastrophic failure and loss of data on the
Watchguard server the IT department determined that the backup solution implemented
for that server was not adequate.
The IT department contacted All Covered to get a quote for the addition of one server
and 2TB of data to our existing disaster recovery – backup rotation. The Cost is as
follows:
Initial setup fee for server and modification of the backup rotation – $850.00
Additional monthly cost for 1 server and 2 TB data – $841.00
The backup of the watchguard server will start April 1.

FISCAL IMPACT:
The amount needed to add one server and its data to our existing contract exists in the
current budget. The amount going forward has been added to next year’s budget
request.

SUMMARY
In summary the IT department would like to add the Watchguard server to our existing
disaster recovery solution at an additional monthly cost of 841.00

ATTACHMENTS:
Contract adjustment to include the Watchguard server in our backup rotation is attached

SUGGESTED RESOLUTION:
Authorize the City Manager to sign the additional backup services contract with All Covered for an additional monthly cost of $841.00 for a total additional yearly cost of $10,200.00. Funds for the remainder of this year are available in the IT Computer Maintenance fund account # 636-228.000-933.0600
Schedule of Services for

City of Birmingham (Police Department)

Proposal Ref: 11375955

March 1, 2019

Pricing is valid for 15 days from the date of this document. Confidential. Not to be distributed to third parties.
Schedule of Services for All Covered Care

Effective Date: 5/1/2019

The following services will be added

Effective Date: May 1, 2019

Supported Location: 1: 151 Martin Street, Birmingham MI 48012

Unified Management for the following environment
Client Owned Servers:
• Physical, hosting virtual servers: 1
• Virtual Servers: 1
including:
• Asset inventory;
• Virus and Malware Protection;
• Windows Patching;
• Remote 24 x 7 server monitoring;
• Server incident remote remediation.

All Covered Backup
• All Covered Business Continuity for Servers - Hybrid: 1, with 2TB of storage to be protected
• Total cloud backup space contracted: None
• 1 Year Rental of 10TB Axcient Devices with 11 concurrent recovery spin ups: 1
• Rental devices returned before the end of the rental agreement will be billed for the remaining balance of the rental terms.
• Client is responsible for all shipping fees for Backup devices.
• Additional fees may apply for major data restores.

• See www.allcovered.com/terms for additional terms of use for All Covered Server Backup.
  If contract is terminated all data is removed from storage

Additional Monthly Fee of: $841
Total One-Time Setup Fee of: $850
All prices are exclusive of any applicable sales or use taxes, and shipping costs.
Additional charges may apply for the recovery of devices from virus infections if Client fails to follow All Covered's reasonable security recommendations.

Additional Fee Details:

• Monthly support fee for each additional server: $114
  - The support fee for additions may change if the supported environment changes significantly.
• $83 monthly for every additional 0.5TB of Server Backup - Hybrid storage capacity. Additional backup devices may be required.
  • $40 monthly for additional servers to be protected with Server Backup - Hybrid

Client agrees to purchase the additional services designated above subject to the terms and conditions of the existing Schedule of Services

Client: City of Birmingham
Signature:

Name:
Title:
Date:

All Covered, a division of Konica Minolta Business Solutions U.S.A., Inc.
Signature: [Signature]

Name: Mike Zyczynski
Title: Managing Director
Date: 03-01-19
INTRODUCTION:
The Birmingham Fire Department is a member of OAKWAY, which is a mutual aid agreement between other full-time, career fire departments in Oakland County. The Inter-local agreement describes requirements for OAKWAY departments to become members of this mutual aid pact. The Mutual Aid Box Alarm Association Agreement (MI-MABAS) is a larger mutual pact that the State of Michigan requires all communities to adopt. MI-MABAS agreement includes communities that are part of OAKWAY and other additional communities in the area for larger scale incidents.

BACKGROUND:
1) The OAKWAY mutual aid agreement (Inter-Local agreement) was formed in the early 1980s. The OAKWAY departments consist of 11 communities, 2 of which just joined in 2019. The original 9 cities are as follows: Birmingham, Royal Oak, Southfield, Madison Heights, Ferndale, Waterford Regional (which includes Pontiac), West Bloomfield, and Bloomfield Township. This month, Farmington Hills and Rochester Hills joined OAKWAY as well. The OAKWAY departments train monthly in areas of hazardous material response, technical rescue, firefighting, and emergency medicine. Daily, the mutual aid departments assist each other in fire and medical response.

2) The Michigan Mutual Aid Box Alarm Association Agreement (MI-MABAS) is a state wide agreement that each community must adopt. The fire departments have a MABAS card on file at each of their dispatch centers and also with Oakland County emergency dispatch center. In case of a large scale fire, medical emergency, or special response emergency, the community where the incident is occurring can activate this MI-MABAS agreement. This activation would be for a 2nd, 3rd, 4th, or 5th alarm which will bring in additional resources from communities that are part of OAKWAY and communities outside of OAKWAY to assist in a large scale emergency.

LEGAL REVIEW:
A legal review was conducted and no legal issues exist.

FISCAL IMPACT:
N/A
SUMMARY:
These new agreements are amended versions of the original agreements. The Inter-Local OAKWAY agreement added language requiring fire departments that are part of OAKWAY to perform emergency medical transporting capabilities in order to apply for joining. Another change made was that if the agreement was ever terminated, all parties would divide any debt or surplus of funds. The original Michigan Mutual Aid Box Alarm Association Agreement was never formally adopted previous to the amended version attached to this memo.

ATTACHMENTS:
- Amended Inter-Local Agreement
- Original Signed Inter-Local Agreement
- Amended Michigan Mutual Aid Box Alarm Association Agreement

SUGGESTED RESOLUTION:
To adopt the 2018 Amended Michigan Mutual Aid Box Alarm Association Agreement and the 2018 Amended Inter-Local Agreement. Further, to authorize the Mayor to sign the agreements on behalf of the City.
BIRMINGHAM CITY COMMISSION
REGULAR MEETING, APRIL 23, 2012
RESOLUTION # 04-107-12

Present: Mayor Nickita, Commissioners Dilgard, McDaniel, Moore, Rinschler, and Sherman
Absent: Commissioner Hoff

MOTION: Motion by Sherman, seconded by Rinschler:
To approve the consent agenda as follows:
G. Resolution authorizing the Mayor and City Clerk to sign and adopt the Oakway Interlocal Agreement creating the Oakway Mutual Aid Association. Also, funding annual Association dues using account line item numbers 101.336-000.955.0300 ($2,000) and 101.337-000.955.0300 ($3,000).

VOTE: Yeas, 6
Nays, None
Absent, 1 (Hoff)

I, Laura M. Broski, City Clerk of the City of Birmingham, do hereby certify that the above is a true and correct copy of a resolution adopted by the Birmingham City Commission at their regular meeting of April 23, 2012.

Laura M. Broski
City Clerk
April 6, 2012

Michael Metz, Fire Chief
City of Birmingham
572 S. Adams
Birmingham, MI 48012-3001

Re: Review of Oakway Mutual Aid Association Interlocal Agreement

Dear Chief Metz:

Pursuant to your request, I have reviewed the Interlocal Agreement creating the Oakway Mutual Aid Association. I also reviewed the Association’s Bylaws, which you sent to me for my review. It is my opinion that the Agreement complies with the Urban Cooperation Act, found at MCL §124.501 et seq. and there are no legal impediments to the City signing same.

If you have any questions, please feel free to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Michael P. Salhaney

Michael P. Salhaney

MPS/jc
Cc: Joseph Valentine, Assistant City Manager
INTERLOCAL AGREEMENT

BETWEEN

PARTICIPATING POLITICAL SUBDIVISIONS AS SIGNATORIES TO THIS INTERLOCAL AGREEMENT

CREATING THE

OAKWAY MUTUAL AID ASSOCIATION

A Michigan Public Body Corporate

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into by the City of Birmingham, with the other political subdivisions that approve and sign this Agreement, referred to in this Agreement individually as a "Party" and collectively as "Parties".

RECITALS:

WHEREAS, each Party has the power, privilege and authority to maintain and operate a fire department providing fire protection, fire suppression, emergency medical services, technical rescue, hazardous incident response, and other emergency response services ("Fire Services"), and provides such Fire Services by a paid, professional Fire Department;

WHEREAS, Fire Services can further be improved by cooperation between political subdivisions during times of public emergency, conflagration, serious threat to public safety, or disaster ("Incidents");

WHEREAS, the Michigan Constitution of 1963, Article 7, § 28, and the Urban Cooperation Act of 1967, Act No. 7 of the Public Acts of 1967, Ex. Sess., being MCL 124.501 et seq. (the "Act"), permit a political subdivision to exercise jointly with any other political subdivision any power, privilege or authority which such political subdivisions share in common and which each might exercise separately;

WHEREAS, the Parties desire to enter into this Agreement pursuant to the Act, to further improve Fire Services;

WHEREAS, the Parties have determined that the improved Fire Services provided for by this Agreement should be provided for by the creation of the OAKWAY Mutual Aid Association, as a separate legal entity and as a non-profit public body corporate (the "Association"), pursuant to the Act;
WHEREAS, each Party to this Agreement has withdrawn from or was never a party to the Oakland County Mutual Aid Association and Interlocal Agreement that established that Association; and

WHEREAS, each Party has the authority to execute this Agreement pursuant to resolution of its governing body; and

WHEREAS, each Party desires to commit personnel and equipment to another Party upon the request of another Party as provided in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, undertakings, understandings and agreements set forth in this Agreement, it is hereby agreed as follows:

ARTICLE I
DEFINITIONS AND EXHIBITS

Section 1.01. Definitions. The following words and expressions, as used in this Agreement, whenever initially capitalized, whether used in the singular or plural, possessive or non-possessive, either within or without quotation marks, shall be defined and interpreted as follows:

(a) “Agreement” means this Agreement creating the OAKWAY Mutual Aid Association.

(b) “Mutual Aid Box Alarm System” (“MABAS”) means a definite and prearranged plan whereby response and assistance is provided to a Requesting Party by an Assisting Party in accordance with the system established and maintained by the Association Board.

(c) Association means the OAKWAY Mutual Aid Association created and established by this Agreement and “Association Board” means the Board of the Association.

(d) “Bylaws” means the OAKWAY MUTUAL AID ASSOCIATION BYLAWS containing the rules and procedures for the operation of the Association that are attached as Exhibit A and as may be amended by the Association Board as provided therein.

(e) “Days” means calendar days.
(f) “Effective Date” means the date on which this Agreement signed by at least two (2) Parties has been filed with the Secretary of State and Oakland County Clerk, which shall not be until after the requirements in Section 7.03 have been satisfied.

(g) “Fire Apparatus” means vehicles and equipment of a Party used in performing Fire Services.

(h) “Fire Chief” means the chief of a Party’s Fire Department or a Party’s director of public safety.

(i) “Fire Department” means the operating department of a Party with responsibility for and control of that Party’s Fire Apparatus and Fire Fighters.

(j) “Fire Fighters” means personnel qualified and trained in providing Fire Services.

(k) “Fire Services” means providing fire protection, fire suppression, emergency medical services, hazardous incident response, technical rescue and such other services as may be provided by a Fire Department.

(l) “Fiscal Year” means January 1 to December 31.

(m) “Hazardous Materials (HAZMAT) Team” means a team which includes Fire Fighters qualified and trained in hazardous materials incidents.

(n) “Technical Rescue Team” means a team that includes Fire Fighters who have been trained to respond to rope, trench, confined space, building collapse and other technical rescue emergencies.

(o) “Incident” means a public emergency, conflagration, serious threat to public safety or disaster.

(p) “Party” means a political subdivision that has approved and signed this Agreement before the Effective Date, and if such approval and signature was after the Effective Date, that has been approved for membership in the Association as provided in the Bylaws. For purposes of Article V, the term “Party” means the political subdivision and its elected and appointed officials, board members, fire department and public safety personnel, volunteers, employees, agents, sub-contractors and other related staff.

(q) “State” means the State of Michigan.
Section 1.02. Agreement Exhibits. The Exhibits listed below are attached hereto and incorporated into this Agreement. Any amendments that are properly adopted by the Association Board shall also become a part of this Agreement and be identified by reference to the same Exhibit letter followed by the date the amendment becomes effective, (month/date/year.)

(a) Exhibit A - The OAKWAY Mutual Aid Association Bylaws.

ARTICLE II
ESTABLISHMENT OF THE ASSOCIATION

Section 2.01. Establishment and Legal Status of the Association. The Parties hereby establish the OAKWAY Mutual Aid Association as a separate legal entity and public body corporate that may sue and be sued in its own name pursuant to the Act and this Agreement.

Section 2.02. Name of Association. The name of the Association is “OAKWAY Mutual Aid Association”, and is referred to in this Agreement as the “Association.”

Section 2.03. Federal Tax Status. The Parties intend that the Association shall be exempt from federal income tax under Section 115(1) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any future tax code.

Section 2.04. State and Local Tax Status. The parties intend that the Association shall be exempt from all State and local taxation including, but not limited to, sales, use, income, single business, and property taxes under the applicable provisions of the laws of the State.

Section 2.05. Title to Association Property. Property may be acquired by, conveyed to, possessed, and owned by the Association as a separate legal entity in its own name or in the name of one (1) or more of the Parties, as agreed in writing by the Parties.

Section 2.06. Principal Office. The principal office of the Association (“Principal Office”) shall be at a location determined by the Association Board.

ARTICLE III
PURPOSES

Section 3.01. General Purpose. The general purpose of the Association is for the joint exercise of the shared and essential governmental power, privilege or authority of the Parties set forth in this Agreement in order to provide for the mutual protection of
persons and property without regard to boundary lines between the Parties during Incidents as provided in this Agreement and the Bylaws.

Section 3.02. Primary and Secondary Activities. In exercising this shared power, the primary activities of the Association shall be facilitating the cooperative efforts of the Parties in providing Fire Apparatus and Fire Fighters for Fire Services. Secondary activities may include facilitating cooperative efforts of the Parties in planning, developing standard operating procedures for the Association, preparedness, exercising and training for major emergency incidents, and other ways in which the provision of Fire Services may be improved through the exercise of the shared powers under this Agreement or the Bylaws.

ARTICLE IV
SHARED POWERS

Section 4.01. Shared Powers of the Association. In carrying out the purpose as set forth in Article III of this Agreement, the Association shall have and exercise the powers as specified elsewhere in this Agreement and the Bylaws. In addition and provided that it has appropriate liability and property insurance, pursuant to Section 7 of the Act, MCL 124.507(2), the Association, by unanimous vote of the total Association Board membership, is authorized in its own name to:

(a) Make and enter into contracts.

(b) Employ agencies or employees.

(c) Acquire, construct, manage, maintain, or operate buildings, works or improvements.

(d) Acquire, hold, or dispose of property.

(e) Incur debts, liabilities, or obligations without obligating any Party.

(f) Cooperate with a public agency or entity created by a public agency.

(g) Make loans from gifts, grants, assistance funds, or bequests to the Association.

(h) Form other entities necessary to further the purpose of this Agreement.

(i) Borrow money and issue bonds or notes in the Association’s name for local public improvements subject to the limitations and requirements in the Act.
ARTICLE V

RESERVATION OF RIGHTS, INSURANCE AND LIABILITY ASSURANCES

Section 5.01. No Waiver of Governmental Immunity. All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules, and all pensions, relief, disability, worker’s compensation and other benefits which apply to the activity of a Party when performing functions within its territorial limits, shall apply to the same degree and extent to the performance of such functions extraterritorially under the provision of this Agreement. No provision of this Agreement is intended, nor shall any provision of this Agreement be construed, as a waiver by any Party of any governmental immunity as provided by the Act or otherwise under law.

Section 5.02. Independent Contractor. The Parties agree that at all times and for all purposes under the terms of this Agreement each Party’s relationship to any other Party shall be that of an independent contractor. No liability, right or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement. Personnel dispatched to aid a Party are entitled to receive benefits and/or compensation to which they are otherwise entitled under applicable workers compensation, pension, or federal laws.

Section 5.03. Liability. Each Party will be solely responsible for the acts of its own employees, agents, and subcontractors, the costs associated with those acts and the defense of those acts. A Party shall not be responsible for any liability or costs associated with the acts or the defense of acts by Parties outside of their political jurisdictions. It is agreed that none of the Parties shall be liable for failure to respond for any reason to any request for Fire Services or for leaving the scene of an Incident with proper notice after responding to a request for service.

Section 5.04. Insurance. Insurance covering the activities of the Association will be obtained, if possible and feasible. However, it is recognized that such insurance may be financially untenable or non-existent. Therefore, each Party shall be responsible for insuring its activities as they relate to the Association. The Association may choose to require each Party to provide Certificates of Insurance or Self-Insurance demonstrating the Party’s proper coverage and limits. In the event any Party has a lapse in proper insurance coverage, as determined by the Association Board, the Party may be suspended from participation in the Association.
ARTICLE VI
DURATION, WITHDRAWAL, AND TERMINATION OF INTERLOCAL AGREEMENT

Section 6.01. Duration. The existence of the Association commences on the Effective Date and continues until terminated in accordance with Section 6.03.

Section 6.02. Withdrawal by a Party. Any Party may withdraw, at any time, from this Agreement for any reason, or for no reason at all, upon thirty (30) days written notice to the Association President and Secretary. The withdrawal of any Party shall not terminate or have any effect upon the provisions of this Agreement so long as the Association remains composed of at least two (2) Parties. Parties withdrawing from the Association and subsequently requesting a mutual aid resource from an Association member may be subject to reasonable fees for that resource according to a fee schedule established, and periodically reviewed and updated, by the Association Board.

Section 6.03. Termination. This Agreement shall continue until terminated by the first to occur of the following:

(a) The Association consists of less than two (2) Parties; or

(b) A unanimous vote of termination by the total membership of the Association Board.

Section 6.04. Disposition upon Termination. As soon as possible after termination of this Agreement, the Association shall wind up its affairs as follows:

(a) All of the Association’s debts, liabilities, and obligations to its creditors and all expenses incurred in connection with the termination of the Association and distribution of its assets shall be paid first, with any deficiency in the Association’s assets to pay all of those amounts to be shared equally by the then remaining Parties.

(b) Assets that were transferred to the Association by a Party that remains in the Association at the time of termination shall be returned to that Party.

(c) Any remaining assets shall be distributed equally to the remaining Parties.
ARTICLE VII
ASSOCIATION BOARD

Section 7.01. Association Board Composition. The governing body of each Party shall appoint one (1) individual from its Fire Department to serve as a member of the Association Board, who shall serve at the pleasure of the governing body of the appointing Party. In the absence of a specific appointment by a Party’s governing body, its Fire Chief is hereby declared to be its appointed representative on the Association Board.

Section 7.02. Association Board Authority. The Association Board shall have the powers of the Association specified in this Agreement, including adopting and amending the Bylaws, and exercising authority as provided in the rules and procedures in those Bylaws. The Association Board shall elect a President, Vice-President, Secretary, and Treasurer and such other officers as it deems necessary from the membership. The Association Board shall elect a member and an alternate to serve as the voting representative on the Michigan MABAS Executive Board. The Association Board Officers shall serve without compensation. The Association Board may establish committees as it deems necessary.

Section 7.03. Association Bylaws. At its first meeting, to occur within 6 months after this Agreement has been approved and signed by at least two (2) Parties, the Association Board shall adopt the Association Bylaws attached hereto as Exhibit A, without modification. Immediately following that action, this Agreement shall be effective subject to its filing with the Secretary of State and Oakland County Clerk. After initial adoption, the Association Board may approve amendments of the Bylaws upon a unanimous vote of the total Board membership, with any such amendment to not be effective for a period of at least sixty (60) days following approval of the amendment.

ARTICLE VIII
FIRE SERVICES

Section 8.01. Requests for Fire Services. The Fire Chief, the ranking officer on duty, or other officer as designated by the Fire Chief of a Party, shall have the right to initiate requests for Fire Services at such times as deemed to be in the best interests of that Party to do so. Response of mutual aid resources to such requests shall be in accordance with the Mutual Aid Box Alarm System in place at the time of the request. Nothing within this Agreement shall prohibit a Party from activating other existing mutual aid agreements.
Section 8.02. Response to Request for Fire Services. Upon a Fire Department’s receipt of a request from another Party for Fire Services, the Fire Chief, the ranking officer on duty or other officer as designated by the Fire Chief shall have the right to commit the requested Fire Fighters, Fire Apparatus and other personnel of the Fire Department to the requesting Party. A Party shall provide Fire Services to any other Party upon request provided that the assisting Party shall have the right to maintain the operational capability of their own jurisdiction. An authorized representative of a Party which has withheld or refused to provide requested assistance under this Agreement shall immediately notify the requesting Party, and shall submit a written explanation for the refusal to the Association Board and requesting Party within ten (10) days of the refusal. A Party responding to a request for Fire Services shall not be required to maintain Fire Fighters or Fire Apparatus within the boundaries of the requesting Party for a period longer than is necessary or until such time the Responding Party needs its resources to maintain the operational capacity of its own jurisdiction. Additional response guidelines may be established by the Association Board in the MABAS or amended Bylaws.

Section 8.03. Dispute Resolution and Recourse Regarding Mutual Aid Requests. In the interest of fostering a fair and sustainable mutual aid arrangement between the Parties, the following methods of dispute resolution shall be available to the Parties:

(a) If a Party believes their resources have been requested by another Party on multiple occasions in abuse of the intent of this Agreement, or if a Party believes the refusal to respond to a request was unreasonable, it may file a complaint with the Association Board for resolution under subsection (b), below.

(b) Without waiving the rights, powers, privileges and authority of individual Parties to address issues at the direction and discretion of their governing body, upon receipt of a complaint under (a), above, the Association Board, shall appoint a panel of three Association Board members that will investigate the complaint and make recommendations for resolution, and the Association Board shall thereafter determine the resolution of the complaint. For purposes of considering such complaints, the Association representatives of the complaining Party and the Party that is the subject of the complaint, shall not participate in and shall abstain from any vote concerning the complaint, but shall be given an opportunity to submit statements and materials to the Association Board for its consideration. The determination of the Association Board shall not be at the same meeting at which the panel’s recommendation concerning the complaint is first discussed. An unreasonable refusal of service may constitute grounds for removal from the Association, as determined by the Association Board. An abuse of the intent of this Agreement may constitute grounds for cost
recovery or removal from the Association, as determined by the Association Board.

Section 8.04. Mutual Aid Box Alarm System. All Parties shall utilize the Mutual Aid Box Alarm System as established by the Association Board.

Section 8.05. Incident Management System. Command, control and coordination at an Incident shall be conducted in accordance with the National Incident Management System (NIMS). The Fire Chief, the ranking officer on duty or other officer of the requesting Party shall be the officer in charge of the Incident. All Fire Fighters, other personnel and Fire Apparatus of the responding Party shall be under the command and control of the highest commanding officer of the responding Party. All directives and orders by the officer in charge of operations at the Incident regarding Fire Fighters, other personnel and Fire Apparatus shall be directed to the highest ranking officer of the responding Party.

Section 8.06. Obligations to Non-Parties. This Agreement shall not release any Party from any agreements such Party may have with any other individual or legal entity relating to Fire Services who is not a Party to this Agreement. This Agreement shall not preclude, supersede or negate the activation or the fulfillment of the terms of any other local, regional or state mutual aid or reciprocal aid compacts or agreements.

ARTICLE IX
ADMISSION AND REMOVAL OF PARTIES

Section 9.01. Admission. A political subdivision may become a Party after the Effective Date upon approval by a two-thirds (2/3rds) vote of the total Association Board membership.

Section 9.02. Removal. A Party may be removed for cause from the Association upon a two-thirds (2/3rds) vote of the total Association Board membership.

Section 9.03. Active Members. The Association Board shall maintain a current list of Parties after the Effective Date, to include any new Party as approved by the Board.

ARTICLE X
FINANCES

Section 10.01 Dues, Fees and Assessments. The annual dues for the first full or partial Fiscal Year of the Association shall be as specified in the Bylaws that are
attached as Exhibit A. Thereafter, the Association Board shall determine the amount of
the annual dues, and other fees and assessments to each Party under the process and
procedure in the Bylaws. Approval of any increase in the annual dues or other fee or
assessment shall require an affirmative unanimous vote of the total membership of the
Association Board as of the date of the vote, and such an approval shall not be effective
until sixty (60) days after the date of Association Board approval, unless a longer period
of time is designated in the motion. No Association Board member shall vote in favor of
a dues increase or new or increased fee or assessment unless payment of that amount
by the Party being represented is covered by an approved budget appropriation.

Section 10.02 Response Reimbursement. Except as otherwise provided herein, no
charges will be imposed or charged by a Responding Party to this agreement for
assistance rendered to a Requesting Party under the terms of this agreement unless
that assistance is requested to and does continue for a period of more than eight (8)
hours. If assistance provided under this agreement is requested to and does continue
for more than eight (8) hours, the Responding Party may submit to the Requesting
Party an itemized bill for the actual cost of any assistance provided after the initial eight
(8) hour period, including salaries, overtime, materials and supplies and other
necessary expenses; and the Requesting Party will reimburse the Responding Party for
that amount within thirty (30) days of submission of the itemized bill for services.
Consumable costs may be imposed as the situation on scene may dictate and as agreed
by the parties. Nothing in the provision shall preclude any Party to this Agreement from
collecting all fees for assistance and response from responsible third parties. The
Responding Party may, in some circumstances, waive all or part of the charges.

SECTION XI
PRIOR AGREEMENTS

Section 11.01 Prior Agreements. This Agreement, when signed by the governing
bodies of participating Municipalities, shall supersede the following Agreements made
for fire services aid, including the Oakway Mutual Aid Agreement, the Oakland County
Mutual Aid Association Interlocal Agreement, and the following agreements specific to
the individual Party Indicated:

No additional agreements for the City of Birmingham are included.

SECTION XII
MISCELLANEOUS

Section 12.01 Entire Agreement. This Agreement sets forth the entire
agreement between the Parties. The language of this Agreement shall be construed as
a whole according to its fair meaning and not construed strictly for or against any party.
The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement.

Section 12.02. Severability of Provisions. If a Court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, then that provision shall be deemed severed from this Agreement. The remainder of this Agreement shall remain in full force.

Section 12.03. Governing Law/Consent to Jurisdiction and Venue. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret or decide any claim arising under this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan.

Section 12.04. Captions. The captions, headings, and titles in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.

Section 12.05. Terminology. All terms and words used in this Agreement, regardless of the numbers or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

Section 12.06. Recitals. The Recitals shall be considered an integral part of this Agreement.

Section 12.07. Amendment. The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement and approval of the governing bodies of all Parties. Removal or withdrawal of a Party shall not require an amendment. Amendments to this Agreement shall be filed with the Secretary of State, with the Clerk of each county of the State where a Party is located, and any other governmental agency, office and official required by law.

Section 12.08. Compliance with Law. The Association shall comply with all federal and State laws, rules, regulations, and orders applicable to this Agreement.

Section 12.09. No Third Party Beneficiaries. Except as expressly provided herein, this Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right of indemnification (i.e., contractual, legal, equitable, or by implication) right of subrogation as to any Party’s rights in this Agreement, or any other right of any kind in favor of any individual or legal entity.
Section 12.10. **Counterpart Signatures.** This Agreement may be signed in counterpart. The counterparts taken together shall constitute one (1) agreement.

Section 12.11. **Permits and Licenses.** Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations for its employees and/or agents necessary to perform all its obligations under this Agreement. Upon request, a Party shall furnish copies of any permit, license, certificate or governmental authorization to the requesting party.

Section 12.12. **No Implied Waiver.** Absent a written waiver, no fact, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

Section 12.13. **Notices.** Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid to the person appointed to the governing body by the governing body of the participating agency.

**IN WITNESS WHEREOF,** this Agreement is executed by the Parties on the dates hereafter set forth on the individual signature pages for each Party.

**WITNESSESS:**

BY: [Signature]

Mark Nickita

ITS: Mayor

DATE: 4-23-12
WITNESSESS:

BY: [Signature]
    Laura Broski

ITS: City Clerk

DATE: 4.23.12

APPROVED:

[Signature]
Timothy J. Currier, City Attorney
(Approved as to form)

[Signature]
B. Sharon Ostin, Director of Finance
(Approved as to financial obligation)

[Signature]
Michael P. Metz, Fire Chief
(Approved as to substance)

[Signature]
Robert J. Bruner, Jr., City Manager
(Approved as to substance)
AMENDED INTERLOCAL AGREEMENT

BETWEEN

PARTICIPATING POLITICAL SUBDIVISIONS AS SIGNATORIES TO THIS INTERLOCAL AGREEMENT

CREATING THE

OAKWAY MUTUAL AID ASSOCIATION AND
MUTUAL AID BOX ALARM SYSTEM DIVISION 3202

A Michigan Public Body Corporate

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT is entered into by __________________________ and the other political subdivisions that approve and sign this Agreement referred to in this Agreement as “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, each Party has the power, privilege, and authority to maintain and operate a fire department providing fire protection, fire suppression, transporting emergency medical services, technical rescue services, hazardous incident response and other emergency response services (“Fire Services”) and provides such Fire Services as a paid, career Fire Department; and

WHEREAS, Fire Services can further be improved by cooperation between political subdivisions during times of public emergency, conflagration, or disaster (“Incidents”); and

WHEREAS, the Michigan Constitution of 1963, Article 7, § 28 and the Urban Cooperation Act of 1967, Act No. 7 of the Public Acts of 1967, Ex. Sess., being MCL 124.501 et seq. of the Michigan Compiled Laws (the “Act”), permit a political subdivision to exercise jointly with any other political subdivision any power, privilege, or authority which such political subdivisions share in common and which each might exercise separately; and

WHEREAS, the Parties desire to enter into an interlocal agreement, pursuant to the Act, to further improve Fire Services; and

WHEREAS, as a result of entering into an interlocal agreement to further improve Fire Services, the Parties are creating the Oakway Mutual Aid Association and Mutual Aid Box Alarm System Division 3202 (“MABAS 3202”), as a separate legal entity and a public body corporate (the “Association”) pursuant to the Act; and

WHEREAS, each Party has the authority to execute this Agreement pursuant to a resolution of its governing body; and
WHEREAS, each Party desires to commit personnel and equipment to another Party upon request of another Party as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, undertakings, understandings, and agreements set forth in this Agreement, and the background facts presented above, it is hereby agreed as follows:

ARTICLE I
DEFINITIONS

The Parties agree that the following words and expressions, as used in this Agreement, whenever initially capitalized, whether used in the singular or plural, possessive or non-possessive, either within or without quotation marks, shall be defined and interpreted as follows:

Section 1.01. Agreement. “Agreement” means this Agreement creating the Oakway Mutual aid Association and Mutual Aid Box Alarm System 3202.

Section 102. Association Board. “Association Board” means the board of the Association created by this Agreement.

Section 1.03. Bylaws. “Bylaws” means such rules and procedures for the operation of the Association as established by the Association Board and as may from time to time be amended by the Association Board.

Section 1.04. Days. “Days” means calendar days.

Section 1.05. Fire Apparatus. “Fire Apparatus” means vehicles and equipment of a Party used in performing Fire Services.

Section 1.06. Fire Chief. “Fire Chief” means the chief of a Fire Department, or Executive Officer of Fire Operations within a public safety department.

Section 1.07. Fire Department. “Fire Department” means the operating fire department of a Party.

Section 1.08. Fire Fighters. “Fire Fighters” means personnel qualified and trained in providing Fire Services.

Section 1.09. Fire Services. “Fire Services” means providing fire protection, fire suppression, transporting emergency medical services, special operations, and such other services as may be set forth in the Bylaws for an Incident.

Section 1.10. Fiscal Year. “Fiscal Year” means the fiscal year of the Association starting on January 1 and ending on December 31st of each year.
Section 1.11. **Incident.** “Incident” means a public emergency, conflagration, or disaster.

Section 1.12. **Member.** “Member” means the Fire Chief appointed by a Party to serve on the Association Board.

Section 1.13. **Mutual Aid Box Alarm System.** “Mutual Aid Box Alarm System,” or “MABAS,” means a definite and prearranged plan whereby response and assistance is provided to a requesting Party by an assisting Party in accordance with the system established and maintained by MABAS members.


Section 1.15. **Party.** “Party” means a political subdivision which is a signatory to this Agreement.

Section 1.16. **Standard Operating Guideline.** Standard Operating Guideline “SOG” means such rules and procedures for the operation of the Association as established by the Association Board and as may from time to time be amended by the Association Board.

Section 1.17. **State.** “State” means the State of Michigan.

**ARTICLE II**

**ESTABLISHMENT OF THE ASSOCIATION**

Section 2.01. **Establishment and Legal Status of the Association.** The Parties intend and agree that MABAS 320 is established as a separate legal entity and public body corporate pursuant to the Act and this Agreement.

Section 2.02. **Name of Association.** The name of the Association is “Oakway Mutual Aid Association and Mutual Aid Box Alarm System Division 320” (“MABAS 320”).

Section 2.03. **Federal Tax Status.** The Parties intend that the Association shall be exempt from federal income tax under Section 115(1) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any future tax code.

Section 2.04. **State and Local Tax Status.** The parties intend that the Association shall be exempt from all State and local taxation including, but not limited to, sales, use, income, single business, and property taxes under the applicable provisions of the laws of the State.

Section 2.05. **Title to Association Property.** All property is owned by the Association as a separate legal entity. The Association may hold any of its property in its own name or in the name of one (1) or more nominees, as determined by the Parties.
Section 2.06.  **Compliance with Law.** The Association shall comply with all federal and State laws, rules, regulations, and orders applicable to this Agreement.

Section 2.07.  **Principal Office.** The principal office of the Association (“Principal Office”) shall be at such locations determined by the Association Board.

**ARTICLE III**
**PURPOSE**

Section 3.01.  **Purpose.** The purpose of the Association shall include joint exercise of the shared and essential governmental power, privilege, or authority of the Parties for the mutual protection of persons and property without regard to boundary lines between the Parties during incidents as provided in this Agreement.

Section 3.02.  **Major Activities.** The major activities of the Association in the exercise of this shared power shall be the cooperative efforts of the Parties in lending personnel and equipment for Fire Services. Additional activities include facilitating cooperative efforts of the Parties in planning, preparedness, exercise and training for Incidents.

**ARTICLE IV**
**SHARED POWERS**

Section 4.01.  **Shared Powers of the Association.** In carrying out the purpose as set forth in Article III of this Agreement, the Association is authorized to perform the following, either independently or with any individual or legal entity, subject to the limitations contained in this Agreement:

(a).  Sue and be sued;

(b).  Make, execute, and deliver contracts, conveyances, and other instruments that are necessary or convenient;

(c).  Make and amend bylaws;

(d).  Solicit and accept gifts, grants, loans, and other aids from any individual or legal entity or to participate in any other way in any federal, State, or local government program;

(e).  Procure insurance against any loss in connection with the Association’s property or activities;

(f).  Engage personnel as is necessary and engage the services of private consultants, managers, counsel, auditors, and others for rendering professional management and technical assistance and advice;
(g). Charge, impose, and collect fees and charges in connection with any transactions or services as approved by the Association Board;

(h). To the extent allowed by law, indemnify and procure insurance indemnifying any members of the Association Board, officers, or employees for personal loss or accountability from liability asserted by any individual or legal entity for any acts or omissions of the Association;

(i). Borrow money and incur debts, liabilities, or obligations. The debts, liabilities, or obligations of the Association shall not constitute debts, liabilities, or obligations of any Party; and

(j). Exercise any and all other necessary and proper powers to effectuate the purposes and intent of this Agreement.

ARTICLE V
ADDITIONAL POWERS; LIMITATION ON POWERS; NO WAIVER OF GOVERNMENTAL IMMUNITY

Section 5.01. Additional Powers. In addition to the powers set forth in Article IV of this Agreement, the Association is authorized to:

(a). Form and own other legal entities to further the purposes of this Agreement; and

(b). Cooperate with a political subdivision, an instrumentality of that political subdivision, or other legal or administrative entity created under the Act.

Section 5.02. Limitation of Powers. The Association may not:

(a). Levy any type of tax; or

(b). Incur debts, liabilities, or obligations that constitute debts, liabilities, or obligations of any Party.

Section 5.03. No Waiver of Governmental Immunity. The Parties agree that no provision of the Agreement is intended, nor shall any provision be construed, as a waiver by any Party of any governmental immunity provided by law.

ARTICLE VI
DURATION, WITHDRAWAL, AND TERMINATION OF INTERLOCAL AGREEMENT

Section 6.01. Duration. The existence of the Association commences on January 1, 2019, or as soon thereafter as this Agreement is filed under the Act with at least two
Parties as signatories (“Effective Date”), and continues until terminated in accordance with Section 6.03.

Section 6.02. **Withdrawal by a Party.** Any Party may withdraw from the Agreement at any time upon thirty (30) Days notice to the Association. The withdrawal of any Party shall not terminate nor have any effect upon the provisions of the Agreement so long as the Association remains composed of at least two (2) Parties.

Section 6.03. **Termination.** This Agreement shall continue until terminated by the first to occur of the following:

(a) The Association consists of less than two (2) Parties; or

(b) Unanimous vote of termination by the Association Board.

Section 6.04. **Disposition upon Termination.** As soon as possible after termination of this Agreement, the Association shall wind up its affairs as follows:

(a) All of the Association’s debts, liabilities, and obligations to its creditors and all expenses incurred in connection with the termination of the Association and distribution of its assets shall be paid first.

(b) Assets that were transferred to the Association by any Party that remain with the Association at the time of termination shall be returned to that Party.

(b) The remaining assets, if any, shall be distributed to the Parties on an equitable basis as determined by the Association Board.

(c) All of the Association’s records shall be maintained by any Member possessing Association records as set forth in the Association’s Bylaws, whether in hard copy or electronic format, and for a period of two (2) years after termination of this Agreement, or longer if required by law.

**ARTICLE VII**

**ASSOCIATION BOARD**

Section 7.01. **Association Board Composition.** The governing body of each Party shall appoint one (1) Member to the Association Board who shall serve at the pleasure of the governing body of the appointing Party. In the absence of a specific appointment by a Party’s governing body, its Fire Chief shall be its appointed representative.

Section 7.02. **Association Board Authority.** The Association Board shall exercise the powers of the Association. The Association Board shall elect a President, Vice-President, Secretary, and Treasurer, and such other officers as it deems necessary, from the
membership, and the duties of the officers may be set forth in the Bylaws. The Association may combine the elected offices of Secretary and Treasurer. The Association Board shall select a Member and an alternate to serve as the voting representative on the Michigan MABAS Executive Board. The Association Board shall select a Member to serve as Plans Coordinator. The Association Board may establish committees as it deems necessary.

Section 7.03. Meetings. The Association Board shall hold at least one (1) annual meeting at the place, date, and time as the Association Board shall determine. Additional meetings shall take place as provided in the Bylaws. Meetings shall comply with the Open Meetings Act and the Bylaws.

Section 7.04. Quorum and Voting. Members constituting a majority of the Association Board shall be required to constitute a quorum for the transaction of business and a majority vote at a meeting at which a quorum is present shall be necessary for the transaction of business. Presence in person shall be required for both quorum and voting. In the event that an Association Member cannot attend the meeting, a pre-identified proxy can attend and vote in the Association Member’s stead, as stated in the Bylaws.

Section 7.05. Fiduciary Duty. The Members of the Association Board are under a fiduciary duty to conduct the activities and affairs of the Association in the best interests of the Association, including the safekeeping and use of all Association monies and assets for the benefit of the Association. The Members of the Association Board shall discharge this duty in good faith with the care an ordinarily prudent individual in a like position would exercise under similar circumstances.

Section 7.06. Compensation. The Members of the Association Board shall receive no compensation for the performance of their duties, but each Member shall be reimbursed for the reasonable expenses of its Member in carrying out those duties. Each Party shall appoint its Fire Chief to represent its municipality as a member of the Association Board.

ARTICLE VIII
PARTY CONTRIBUTION

Section 8.01. Fire Fighters. Each Party shall make available without cost to the Association or any other Party such Fire Fighters as set forth in the Bylaws who will actively participate in Incidents if assistance is requested. These Fire Fighters shall remain at all times employees of the Party providing them and shall continue to be solely in that Party’s benefit system including wages, pension, seniority, sick leave, vacation, health and welfare, longevity, and other benefits, if applicable.

Section 8.02. Fire Apparatus. Each Party shall make available without cost to the Association or any other Party such Fire Apparatus as set forth in the Bylaws.
ARTICLE IX
FIRE SERVICES

Section 9.01. Requests for Fire Services. A Party’s Fire Chief, the ranking officer on duty, or other officer as designated by the Fire Chief, shall have the right to initiate requests for Fire Services at such times as deemed to be in the best interests of the Party to do so. When initiating requests for Fire Services, each Fire Department shall use MI-MABAS box cards.

Section 9.02. Response to Request for Fire Services. Upon a Fire Department’s receipt of a request from another Party for Fire Services, the Fire Chief, the ranking officer on duty, or other officer as designated by the Fire Chief shall have the right to commit the requested Fire Fighters, other personnel, and Fire Apparatus to the assistance of the requesting Party. A Party shall provide Fire Services to any other Party upon request provided that the Fire Fighters and Fire Apparatus of the requested Party are not already engaged in providing Fire Services within the geographic boundaries of the requested Party, or elsewhere, in a manner precluding the extension of Fire Services to the requesting Party. A Party shall always have the right to maintain the operational capacity of its own jurisdiction. A Party which has withheld or refused or provide requested assistance under this Agreement shall immediately notify the requesting Party, and if requested, shall submit a written explanation for the refusal to the Association Board and requesting Party within ten (10) days of the refusal.

A Party responding to a request for Fire Services shall not be required to maintain Fire Fighters or Fire Apparatus within the boundaries of the Party requesting Fire Services for a period longer than is necessary. Additional response guidelines may be established by the Association Board or by the Bylaws.

Section 9.03. Mutual Aid Box Alarm System. Response of mutual aid resources shall be in accordance with the Mutual Aid Box Alarm System in place at the time of the request. This Agreement replaces and supersedes any and all mutual aid box alarm system agreements by and between the Parties to this Agreement, except for the Michigan Mutual Aid Box Alarm System Agreement.

Section 9.04. Incident Management System. Command, control, and coordination at the Incident shall be based on a nationally recognized Incident Management System, as set forth in writing by a Party to the Association. The Fire Chief, the ranking officer on duty, or other officer of the requesting Party shall be the officer in charge of the operations at the Incident. All Fire Fighters, other personnel, and Fire Apparatus of a responding Party shall be under the command and control of the highest commanding officer of the responding Party. All directives and orders by the officer in charge of operations at the Incident regarding Fire Fighters, other personnel, and Fire Apparatus shall be directed to the highest ranking officer attached to the responding Party.
Section 9.05. **Obligations to non-Parties.** This Agreement shall not release any Party from any other obligations or agreements such Party may have with any individual or legal entity relating to Fire Services that is not a Party to this Agreement.

**ARTICLE X**

**ADMISSION AND REMOVAL OF PARTIES**

Section 10.01. **Admission.** After the Effective Date, additional municipalities may become a Party to this Agreement with the approval by resolution adopted by that municipality’s legislative body and upon two thirds (2/3rds) approval of the Members of the Association Board present at the meeting when the vote is taken. A new Party shall submit a signed copy of this Agreement to the Association Board and its appointment of a Member to the Association Board shall be effective upon filing the Agreement as set forth in the Act.

Section 10.02. **Removal.** A Party may be removed from the Association upon a two thirds (2/3rd) vote of the Members of the Association Board present at the meeting when the vote is taken.

**ARTICLE XI**

**BOOKS AND REPORTS**

Section 11.01. **Accrual Basis.** The Association shall maintain its books of account on an accrual basis of accounting.

Section 11.02. **Financial Statements and Reports.** The Association shall cause financial statements (i.e. balance sheet, statement of revenue and expenses, statement of cash flows, and statement tracking changes in fund balance) to be prepared at least annually at Association expense. A copy of the various financial statements shall be provided to each Party.

**ARTICLE XII**

**FINANCES**

Section 12.01. **Assessment.** The Association Board shall determine dues, fees, and assessments to be contributed by each Party, the amount of which and payment procedure shall be set forth in the Bylaws.

**ARTICLE XIII**

**MISCELLANEOUS**

Section 13.01. **Liability.** Each Party will be solely responsible for the acts of its own employees, agents, and subcontractors, the costs associated with those acts, and the defense of those acts. No liability, right, or benefit arising out of any employer/employee
relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement. The Parties shall not be responsible for any liability or costs associated with the acts, or the defense of the acts, of Parties outside of their political jurisdictions, but will make personnel available for any legal process upon request of a Party defending a claim relating to services provided pursuant to this Agreement. It is agreed that none of the Parties shall be liable for failure to respond for any reason to any request for Fire Services or for leaving the scene of an Incident with proper notice, or without significant notice in the case of an emergency, after responding to a request for service.

Section 13.02. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them in any way related to the subject matter hereof. It is further understood and agreed that the terms and conditions herein are contractual and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter hereof, except as expressly stated herein.

Section 13.03. **Severability of Provisions.** If any provision of this Agreement, or its application to any person or circumstance, is invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances is not affected but will be enforced to the extent permitted by law.

Section 13.04. **Governing Law.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced, and governed under the laws of the State of Michigan without regard to the doctrines of conflict of laws. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

Section 13.05. **Captions.** The captions, headings, and titles in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.

Section 13.06. **Terminology.** All terms and words used in this Agreement, regardless of the numbers or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

Section 13.07. **Cross-References.** References in this Agreement to any Article include all Sections, subsections, and paragraphs in the Article; references in this Agreement to any Section include all subsections and paragraphs in the Section.

Section 13.08. **Jurisdiction and Venue.** In the event of any disputes between the Parties over the meaning, interpretation, or implementation of the terms, covenants, or conditions of this Agreement, the matter under dispute, unless resolved between the Parties, or unless an alternative is agreed upon by the Parties, shall be submitted to the courts of the State of Michigan, with original jurisdiction and venue vested in the Oakland County Circuit Court.
Section 13.09. **Recitals.** The Recitals shall be considered an integral part of this Agreement.

Section 13.10. **No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right of indemnification (i.e., contractual, legal, equitable, or by implication), right of subrogation as to any Party’s rights in this Agreement, or any other right of any kind in favor of any individual or legal entity.

Section 13.11. **Amendment.** The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement of the Parties.

Section 13.12. **Counterpart Signatures.** This Agreement may be signed in counterpart. The counterparts taken together shall constitute one (1) Agreement.

By their signatures, the undersigned represent that they are duly authorized to sign this Agreement on behalf of, and to bind, their respective municipalities, and the municipalities listed hereafter shall constitute the membership of the Association upon their respective execution of this Agreement:

[Individual Municipal Signature Pages Follow]
COMMUNITY: City of Birmingham

Address: ______________________________________

____________________________________

WITNESSES:

____________________________________    BY: _______________________________

____________________________________    ITS: _______________________________

DATE: _______________________________

____________________________________    BY: _______________________________

____________________________________    ITS: _______________________________

DATE: _______________________________
COMMUNITY: Bloomfield Township

Address: ________________________________

______________________________

WITNESSES:

______________________________ BY: ________________________________

______________________________ ITS: ________________________________

DATE: ________________________________

______________________________ BY: ________________________________

______________________________ ITS: ________________________________

DATE: ________________________________
COMMUNITY: City of Ferndale

Address: ______________________________

______________________________

______________________________

WITNESSES:

______________________________
BY: ________________________________
ITS: ________________________________
DATE: ________________________________

______________________________
BY: ________________________________
ITS: ________________________________
DATE: ________________________________

______________________________

______________________________
COMMUNITY: City of Madison Heights

Address: ______________________________

______________________________

WITNESSES:

________________________________
BY: ________________________________

ITS: ______________________________
DATE: ______________________________

________________________________
BY: ________________________________

ITS: ______________________________
DATE: ______________________________
COMMUNITY: City of Rochester Hills

Address:

____________________________

____________________________

WITNESSES:

____________________________
BY: _____________________________

ITS: ____________________________
DATE: __________________________

____________________________
BY: _____________________________

ITS: ____________________________
DATE: __________________________

____________________________
COMMUNITY: City of Southfield

Address: ________________________________

____________________________

____________________________

____________________________

WITNESSES:

__________________________________ BY: ______________________

__________________________________ ITS: _______________________ DATE: ____________________

__________________________________ BY: ______________________

__________________________________ ITS: _______________________ DATE: ____________________

__________________________________
COMMUNITY: Waterford Township

Address: ______________________________

______________________________

WITNESSES:

______________________________
BY: ______________________________
ITS: _____________________________
DATE: ___________________________

______________________________
BY: ______________________________
ITS: _____________________________
DATE: ___________________________

______________________________
COMMUNITY: West Bloomfield Township

Address: ________________________________

______________________________

______________________________

WITNESSES:

__________________________________

BY: ________________________________

ITS: ________________________________

DATE: ________________________________

__________________________________

BY: ________________________________

ITS: ________________________________

DATE: ________________________________

__________________________________

BY: ________________________________

ITS: ________________________________

DATE: ________________________________
AMENDED MICHIGAN MUTUAL AID BOX ALARM SYSTEM ASSOCIATION AGREEMENT

Effective Date: ________________

BETWEEN

PARTICIPATING POLITICAL SUBDIVISIONS AS SIGNATORIES TO THIS INTERLOCAL AGREEMENT

This Agreement is entered into between the participating units of local government “Parties” that execute this Agreement and adopt its terms and conditions as provided by law. This Agreement supersedes any and all prior Agreements and amendments to the Michigan Mutual Aid Box Alarm System Association Agreement.

WHEREAS, the Constitution of the State of Michigan, 1963, Article VII, Section 28, authorizes units of local government to contract as provided by law; and,

WHEREAS, the Urban Cooperation Act, of 1967, 1967 PA 7, MCL 124.501, et seq., provides that any political subdivision of Michigan or of another state may enter into interlocal agreements for joint exercise of power, privilege, or authority that agencies share in common and might each exercise separately; and,

WHEREAS, the Parties have determined that it is in their best interests to enter into this Agreement to secure to each the benefits of mutual aid in fire protection, suppression, rescue and emergency medical assistance, hazardous materials control, technical rescue and/or other emergency support for an Emergency, Disaster, or other Serious Threat to Public Health and Safety; and,

WHEREAS, the Parties have determined that it is in their best interests to form an association to provide for communications procedures, training, and other functions to further the provision of said protection of life and property during an Emergency, Disaster, or other Serious Threat to Public Health and Safety; and
WHEREAS, the Constitution and people of the State of Michigan have long recognized the value of cooperation by and among the state and its political subdivisions;
NOW, THEREFORE, the Parties agree as follows:

SECTION ONE

Purpose

It is recognized and acknowledged that in certain situations, such as natural disasters and man-made catastrophes, no political subdivision possesses all the necessary resources to cope with every possible Emergency, Disaster or Serious Threat to Public Safety, and an effective, efficient response can be best achieved by leveraging collective resources from other political subdivisions. Further, it is acknowledged that coordination of mutual aid through the Michigan Mutual Aid Box Alarm System Association (MI-MABAS) is most effective for best practices and efficient provision of mutual aid.

SECTION TWO

Definitions

The Parties agree that the following words and expressions, as used in this Agreement, whenever initially capitalized, whether used in the singular or plural, possessive or non-possessive, either within or without quotation marks, shall be defined and interpreted as follows:

A. “Agreement” means the MI-MABAS Agreement.

B. “Michigan Mutual Aid Box Alarm System” (“MABAS”) means a definite and prearranged plan whereby response and assistance is provided to a
Requesting Party by an Assisting Party in accordance with the system established and maintained by MI-MABAS Members;

C. “Party” means a political subdivision which has entered into this Agreement as a signatory;

D. “Requesting Party” means any Party requesting assistance under this agreement;

E. “Assisting Party” means any Party furnishing equipment, personnel, and/or services to a Requesting Party under this agreement;

F. “Emergency” means an occurrence or condition in a Party’s jurisdiction which results in a situation of such magnitude and/or consequence that it cannot be adequately handled by the Requesting Party and such that a Requesting Party determines the necessity of requesting aid;

G. “Disaster” means an occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or human-made cause, including fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, or similar occurrences resulting from terrorist activities, riots, or civil disorders;

H. “Serious Threats to Public Health and Safety” means other threats or incidents such as those described as Disasters, of sufficient magnitude that the necessary public safety response threatens to overwhelm local resources and requires mutual aid or other assistance;
I. “Division” means the geographically associated Parties which have been grouped for operational efficiency and representation of those Parties;

J. “Training” means the regular scheduled practice of emergency procedures during non-emergency drills to implement the necessary joint operations of MI-MABAS;

K. “Executive Board” means the governing body of MI-MABAS composed of Division representatives.

L. “Effective Date” means the date on which the Agreement is first filed with the Department of State, the Office of the Great Seal, and each county where Parties are located.

M. “Special Operations Teams” means MI-MABAS recognized teams of personnel with the requisite training and skill for Hazardous Materials Response, Technical Rescue Response (including Strike Teams and Michigan Task Force 1) and Incident Management Teams.

SECTION THREE

Establishment of the Association, the Divisions and Executive Board of MI-MABAS

A. Establishment of the Association

1. The Parties intend and agree that MI-MABAS is established as separate legal entity and public body corporate pursuant to the Michigan Urban Cooperation Act of 1967, 1967 PA, MCL 124.505(c) and this Agreement.

2. Name of MI-MABAS. The formal name of the Association is “Michigan Mutual Aid Box Alarm System Association”.

3. Federal Tax Status. The Parties intend that MI-MABAS and all Divisions shall be exempt from federal income tax under Section 115(1) of the Internal Revenue Code of 1986, as amended, or corresponding provisions of any future tax code.

4. State and Local Tax Status. The parties intend that the MI-MABAS and all Divisions shall be exempt from all State and local taxation including, but not limited to, sales, use, income, single business, and property taxes under the applicable provisions of the laws of the State.

5. Title to MI-MABAS Property. All property is owned by MI-MABAS as a separate legal entity. MI-MABAS may hold any of its property in its own name or in the name of one (1) or more of the Parties or Divisions, as determined by the Parties.

6. Principal Office. The principal office of the Association (“Principal Office”) shall be at such locations determined by the MI-MABAS Executive Board.

B. Establishment of the Executive Board.

An Executive Board shall be established to consider, adopt, and amend needed rules, procedures, by-laws and any other matters deemed necessary by the Parties. The Executive Board shall consist of a member elected from each Division of MI-MABAS who shall serve as the voting representative of said Division of MI-MABAS matters, and may appoint a designee from his or her Division to serve temporarily in his or her stead. Such designee shall have all rights and privileges attendant to a representative of the Division. A President and Vice President shall be elected from the representatives of the
Parties and shall serve without compensation. The President and other officers shall coordinate the activities of the MI-MABAS Association.

SECTION FOUR

Duties of the Executive Board

The Executive Board shall meet regularly to conduct business and to consider and publish the rules, procedures, and bylaws of the MI-MABAS Association, which shall govern the Executive Board meetings and such other relevant matters as the Executive Board shall deem necessary.

SECTION FIVE

Rules and Procedures

Rules, procedures, and bylaws of the MI-MABAS Association shall be established by the Member Units via the Executive Board as deemed necessary for the purpose of administrative functions, the exchange of information, and the common welfare of the MI-MABAS.

SECTION SIX

Authority and Action to Effect Mutual Aid

A. The Parties hereby authorize and direct their respective Fire Chief or his or her designee to take necessary and proper action to render and/or request mutual aid from the other Parties in accordance with the policies and procedure established and maintained by the MI-MABAS Association.
B. Upon a Fire Department’s receipt of a request from another Party for Fire Services, the Fire Chief, the ranking officer on duty, or other officer as designated by the Fire Chief shall have the right to commit the requested Firefighters, other personnel, and Fire Apparatus to the assistance of the requesting Party. The aid rendered shall be to the extent of available personnel and equipment not required for adequate protection of the territorial limits of the Responding Party. The judgment of the Fire Chief, or his or her designee, of the Responding Party shall be final as to the personnel and equipment available to render aid.

C. An authorized representative of the Party which has withheld or refused to provide requested assistance under this Agreement shall immediately notify the Requesting Party, and shall submit an explanation for the refusal.

SECTION SEVEN

Jurisdiction Over Personnel and Equipment

Personnel dispatched to aid a party pursuant to this Agreement shall at all times remain employees of the Assisting Party, and are entitled to receive benefits and/or compensation to which they are otherwise entitled to under the Michigan Workers’ Disability Compensation Act of 1969, any pension law, or any act of Congress. Personnel dispatched intrastate to assist a party pursuant to this Agreement continue to enjoy all powers, duties, rights, privileges, and immunities as provided by Michigan Law. When Parties are dispatched pursuant to the Emergency Management Assistance Compact (EMAC), the Parties shall adhere to all provisions of the EMAC. Personnel rendering aid shall report for direction and assignment at the scene of the emergency to the Incident Commander of the Requesting Party.
SECTION EIGHT

Compensation for Aid

Equipment, personnel, and/or services provided pursuant to this Agreement, absent a state or federal declaration of emergency or disaster, excluding resources for Special Operations Teams, shall be at no charge to the Requesting Party for the first eight hours. Any expenses recoverable from third parties shall be equitably distributed among Responding Parties. Requests for a response from any MI-MABAS Special Operations Team may require full and complete reimbursement to the responding Team for all expenses, including but not limited to, expenses for equipment, personnel, management and administration and all other services provided at an incident. The Executive Board shall adopt fee schedules that establish rates for Special Operations Team responses. Nothing herein shall operate to bar any recovery of funds from any state or federal agency under any existing statues. The Parties reserve the right to waive any charges to a Requesting Party.

SECTION NINE

Insurance

Each Party shall procure and maintain, at its sole and exclusive expense, insurance coverage, including comprehensive liability, personal injury, property damage, worker’s compensation, and, if applicable, emergency medical service professional liability, with minimum limits of $1,000,000 auto and $1,000,000 combined single limit general liability and professional liability. The obligations of the Section may be satisfied by a Party’s membership in a self-insurance pool, a self-insurance plan, or arrangement with an insurance provider approved by the state of jurisdiction. The
Executive Board may require that copies or other evidence of compliance with the provisions of this Section be provided by the Parties to the Executive Board.

SECTION TEN

Liability

Each Party will be solely responsible for the acts of its own employees, agents, and subcontractors, the costs associated with those acts, and the defense of those acts. The Parties shall not be responsible for any liability or costs associated with those acts and the defense of those acts for Parties outside of their political jurisdictions. It is agreed that none of the Parties shall be liable for failure to respond for any reason to any request for Fire Services or for leaving the scene of an Incident with proper notice after responding to a request for service.
SECTION ELEVEN

No Waiver of Governmental Immunity

All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules, and all pensions, relief, disability, worker’s compensation and other benefits which apply to the activity of Parties, officers, agency, or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies, shall apply to the same degree and extent to the performance of such functions and duties of such Parties, officers, agents, or employees extraterritorially under the provision of this Agreement. No provision of the Agreement is intended, nor shall any provision of this Agreement be construed, as a waiver by any Party of any governmental immunity as provided by the Act or otherwise under law.

SECTION TWELVE

Term

A. The existence of MI-MABAS commences on the Effective Date and continues until terminated in accordance with this Section.

B. Any Party may withdraw, at any time, from this Agreement for any reason, or for no reason at all, upon thirty (30) days written notice to the Association. The withdrawal of any Party shall not terminate or have any effect upon the provisions of this Agreement so long as the MI-MABAS remains composed of at least two (2) Parties. Parties withdrawing from MI-MABAS and subsequently requesting a mutual aid resource from a MI-MABAS member may be subject to reasonable fees for that resource according to the fee schedule established, and periodically reviewed and updated, by the Executive Board.
C. This Agreement shall continue until terminated by the first to occur of the following:

(i) The Association consists of less than two (2) Parties; or,

(ii) A unanimous vote of termination by the total membership of the Executive Board.

SECTION THIRTEEN

Miscellaneous

A. Entire Agreement. This Agreement sets forth the entire agreement between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not construed strictly for or against any party. The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement.

B. Severability of Provisions. If a Court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, then that provision shall be deemed severed from this Agreement. The remainder of this Agreement shall remain in full force.

C. Governing Law/Consent to Jurisdiction and Venue. This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced, and governed under the laws of the State of Michigan.

D. Captions. The captions, headings, and titles in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.
E. **Terminology.** All terms and words used in this Agreement, regardless of the numbers or gender in which they are used, are deemed to include any other number and any other gender as the context may require.

F. **Recitals.** The Recitals shall be considered an integral part of this Agreement.

G. **Amendment.** The Agreement may be amended or an alternative form of the Agreement adopted only upon written agreement and approval of the governing bodies of all Parties. Amendments to this Agreement shall be filed with the Department of State, the Office of the Great Seal, each county of the State where a Party is located, and any other governmental agency, office, and official required by law. The undersigned unit of local government or public agency hereby adopts, subscribes, and approves this Agreement to which this signature page will be attached, and agrees to be a party and be bound by the terms.

H. **Compliance with Law.** The Association shall comply with all federal and State laws, rules, regulations, and orders applicable to this Agreement.

I. **No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement does not create, by implication or otherwise, any direct or indirect obligation, duty, promise, benefit, right of indemnification (i.e., contractual, legal, equitable, or by implication) right of subrogation as to any Party’s rights in this Agreement, or any other right of any kind in favor of any individual or legal entity.

J. **Counterpart Signatures.** This Agreement may be signed in counterpart. The counterparts taken together shall constitute one (1) agreement.

K. **Permits and Licenses.** Each Party shall be responsible for obtaining and maintaining, throughout the term of this Agreement, all licenses, permits, certificates, and governmental authorizations for its employees and/or agents
necessary to perform all its obligations under this Agreement. Upon request, a Party shall furnish copies of any permit, license, certificate or governmental authorization to the requesting party.

L. **No Implied Waiver.** Absent a written waiver, no fact, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

M. **Notices.** Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid to the person appointed to the governing board by the governing body of the participating agency.

____________________________________
Political Entity

____________________________________
Chief Executive Official

____________________________________
Date
INTRODUCTION:
The City needs to extend the contract with NEXT to provide minor home repair services under the City’s 2017-2018 Community Development Block Grant so the remaining funds can be spent through June 30, 2019.

BACKGROUND:
The City previously entered into an agreement with NEXT for the 2017-2018 Community Development Block Grant (CDBG) program year. Under the CDBG program, the contract provides for Yard Services, Senior Outreach Services, and Minor Home Repair to resident homeowners administered by NEXT for the City.

At this time, there is an unexpended balance of $4,258.18 in Community Development Block Grant Funds for Minor Home Repair. In order to provide for continued expenditures of these funds, the Department of Community and Economic Development at Oakland County has advised the City that our current contract with NEXT which expired on December 31, 2018 must be extended. Therefore, it is recommended that the City Commission approve the amendment to extend the contract with NEXT through June 30, 2019.

LEGAL REVIEW:
The City attorney has reviewed the addendum to the contract and no issues were noted.

FISCAL IMPACT:
No amendments are necessary at this time.

SUMMARY:
It is recommended that the City Commission approve the addendum to the contract and have the Mayor sign it on behalf of the City.

ATTACHMENTS:
- Addendum to the contract
SUGGESTED RESOLUTION:
To approve an addendum of the public services contract with NEXT for the purpose of expending remaining program year 2017-2018 Community Development Block Grant funds for the Minor Home Repair Program administered by NEXT through June 30, 2019; and further, to authorize the Mayor to sign the amendment on behalf of the City.
ADDENDUM TO COMMUNITY DEVELOPMENT BLOCK GRANT
PUBLIC SERVICE CONTRACT
FOR YARD SERVICES, SENIOR OUTREACH SERVICES, AND
MINOR HOME REPAIR PROGRAM AGREEMENT
FOR PROGRAM YEAR 2017-2018

THIS AGREEMENT, made as of this ___ day of ____________, 2019, by and
between the City of Birmingham and NEXT provides as follows:

WHEREAS, the City and NEXT entered into a Yard Services, Senior Outreach
Services, and Minor Home Repair Program Contract on February 21, 2018 for the
Community Development Block Grant program year 2017-2018 to provide for Yard
Services, Senior Outreach Services, and Minor Home Repair to resident homeowners of
the City of Birmingham;

WHEREAS, the Contract provided that NEXT would administer these services
for the City until December 31, 2018 in the funding amounts as follows: $6,017 for yard
services, $3,300 for senior services, and $19,434 (original $37,268 amended 3/28/18) for
minor home repair;

WHEREAS, the City and NEXT desire to extend this Contract through June 30,
2019 for purposes of expending remaining 2017-2018 Community Development Block
Grant Funds.

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

1. The parties agree to further extend the Contract until June 30, 2019.

2. All other terms of the original and amended contract that do not conflict
with this Agreement shall remain in full force and in effect throughout the
term of this extension.

CITY OF BIRMINGHAM

Patricia Bordman, Mayor

Date

NEXT

Cris Braun, Executive Director

Date
DATE: March 1, 2019

TO: Joseph A. Valentine, City Manager

FROM: Tiffany J. Gunter, Assistant City Manager

SUBJECT: Emergency Repairs at the Peabody Parking Garage

On February 6, 2019 a DTE transformer was blown at approximately 11 pm in the area near the Peabody parking garage. This action resulted in a loss of all power to the Peabody structure. DTE spent most of the evening hours in an attempt to recover power, when they communicated to our maintenance supervisor that the issue was with the City. Staff engaged an electrician to investigate and learned that the Peabody garage had blown fuses, a severely damaged electrical distribution panel, and the current transformer cabinet was in need of replacement.

While waiting for parts for these repairs to be made, the City contracted with Shoreview Electric to provide generator power to the structure daily until the power was restored fully on February 18, 2019.

The following table provides a breakdown of the related costs to address this emergency and ensure safe conditions for the users in the structure:

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lee and Associates</td>
<td>$7,338.00</td>
</tr>
<tr>
<td>Shoreview Electric</td>
<td>$13,186.80</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$20,524.80</strong></td>
</tr>
</tbody>
</table>

SUGGESTED RESOLUTION:

To confirm the City Manager’s authorization for the emergency expenditure regarding the power outage at the Peabody parking garage to cover expenses associated with providing a temporary power supply and replacing the main distribution panel board and current transformer cabinet totaling $20,524.80 to be paid from the Parking Fund account #585-538.004-930.0200, pursuant to Sec. 2-286 of the City Code.
DATE: 03/11/2019

TO: Joseph A. Valentine, City Manager

FROM: Eric Brunk, IT Manager

SUBJECT: ESRI Software License renewal

Introduction:
Licensing and maintenance for our Esri ArcGIS software is setup on a yearly renewal. Our current software license and maintenance is up for renewal.

Background:
The City of Birmingham has ArcGIS server and desktop software in community development purchased from ESRI, Inc. for the purpose of mapping and tracking city infrastructure and resources.
We currently have 3 licenses of server, 5 licenses of Desktop and 7 licenses of Arcpad that need to be renewed.

Fiscal Impact:
Total expense for the renewal is $8950.00 and is a budgeted item.

Summary:
The IT department would like authorization to renew our ArcGIS software and support at a total cost of 8950.00

Attachments:
The quote from ESRI for the license and support renewal.

Suggested Resolution:
Authorize the IT department to purchase the License and support renewal for the ArcGIS software from ESRI Inc. Total cost not to exceed $8950.00. Funds are available in the GIS fund account # 636-228.000-973.0500
Subject: Renewal Quotation

Date: 02/04/2019
To: Eric Brunk
Organization: City of Birmingham
Information Technology Dept
Fax #: 248-530-12855301885 Phone #: 248-530-1885

From: Taylor Smith
Fax #: 909-307-3031 Phone #: 909-793-2853 Ext. 3929
Email: taylorsmith@esri.com

Number of pages transmitted (including this cover sheet): 5
Quotation #25880352 Document Date: 12/06/2018

Please find the attached quotation for your forthcoming term. Keeping your term current may entitle you to exclusive benefits, and if you choose to discontinue your coverage, you will become ineligible for these valuable benefits and services.

If your quote is regarding software maintenance renewal, visit the following website for details regarding the maintenance program benefits at your licensing level:

All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your coverage at a later date.

Please note: Certain programs and license types may have varying benefits. Complimentary User Conference registrations, software support, and software and data updates are not included in all programs.

Customers who have multiple copies of certain Esri licenses may have the option of supporting some of their licenses with secondary maintenance.

For information about the terms of use for Esri products as well as purchase order terms and conditions, please visit:

If you have any questions or need additional information, please contact Customer Service at 888-377-4575 option 5.
### Item Information

<table>
<thead>
<tr>
<th>Item</th>
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### Quotation Details

- **City of Birmingham**
- **Information Technology Dept**
- **PO Box 3001**
- **P.O. Box 3001**
- **Birmingham MI 48012-3001**
- **Attn: Eric Brunk**
- **Customer Number: 151933**

For questions regarding this document, please contact Customer Service at 888-377-4575.

### Quotation Is Valid

Quotation is valid for 90 days from document date.

Any estimated sales and/or use tax has been calculated as of the date of this quotation and is merely provided as a convenience for your organization’s budgetary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state taxes directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

**Issued By:** Taylor Smith  
**Ext:** 3929

To expedite your order, please reference your customer number and this quotation number on your purchase order.
### Quotation

**Date:** 12/06/2018  
**Quotation Number:** 25880352  
**Contract Number:** 318946

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ArcGIS for Server Workgroup Standard Up to Two Cores Migrated Maintenance  
Start Date: 03/07/2019  
End Date: 03/06/2020

| Item Subtotal | 8,950.00 |
| Estimated Tax | 0.00     |
| Total USD     | 8,950.00 |

**DUNS/CEC:** 06-313-4175  
**CAGE:** 0AMS3
IF YOU WOULD LIKE TO RECEIVE AN INVOICE FOR THIS MAINTENANCE QUOTE YOU MAY DO ONE OF THE FOLLOWING:

- RESPOND TO THIS EMAIL WITH YOUR AUTHORIZATION TO INVOICE
- SIGN BELOW AND FAX TO 909-307-3083
- FAX OR EMAIL YOUR PURCHASE ORDER TO 909-307-3083/Service@esri.com

REQUESTS VIA EMAIL OR SIGNED QUOTE INDICATE THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION AND THAT YOUR ORGANIZATION DOES NOT REQUIRE A PURCHASE ORDER.

If there are any changes required to your quotation please respond to this email and indicate any changes in your invoice authorization.

If you choose to discontinue your support, you will become ineligible for support benefits and services. All maintenance fees from the date of discontinuation will be due and payable if you decide to reactivate your support coverage at a later date.

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at http://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri’s standard terms and conditions found at http://assets.esri.com/content/dam/esrisites/media/legal/ma-full/pdf apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri’s GSA Federal Supply Schedule. Supplemental terms and conditions found at http://www.esri.com/en-us/legal/terms/state-supplemental apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri’s offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.
In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

By signing below, you are authorizing Esri to issue a software support invoice in the amount of USD______________ plus sales tax, if applicable.

Please check one of the following:

_____ I agree to pay any applicable sales tax.

_____ I am tax exempt. Please contact me if Esri does not have my current exempt information on file.

_______________________________ ________________
Signature of Authorized Representative     Date

_______________________________ ________________
Name (Please Print)            Title
# NOTICE OF PUBLIC HEARING

**BIRMINGHAM CITY COMMISSION**

## PROPOSED REZONING

| Meeting - Date, Time, Location: | Monday, March 11, 2019 7:30 PM  
Municipal Building, 151 Martin  
Birmingham, MI  48009 |
| City Staff Contact: | Jana Ecker, 248.530.1841  
jecker@bhamgov.org |
| Notice: | Publish: February 17, 2019  
Mailed to all property owners within 300 feet of subject address. |
| Approved minutes may be reviewed at: | City Clerk’s Office |

Should you have any statement regarding the above, you are invited to attend the meeting or present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk’s Office at (248) 530-1880 (voice) or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.
DATE: March 4, 2019

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public hearing to consider the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5

INTRODUCTION:
The owner of the above-captioned properties applied for rezoning from B3/D4 to B3/D5 to allow them to proceed with site plan review approval to demolish the existing one story Mountain King and Talmer Bank buildings, and construct a new 9 story hotel on the two properties.

BACKGROUND:
On June 27, 2018, the Planning Board conducted a public hearing to consider the requested rezoning of the properties located at 469 – 479 S. Old Woodward, currently the site of the former Mountain King restaurant and Talmer Bank. After much discussion, the Planning Board voted to recommend denial of the proposed rezoning to the City Commission.

The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing at the City Commission that was previously set to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance states:

If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing.

Accordingly, section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.
On September 12, 2018, the Planning Board considered the applicant’s request for a rehearing based on new information. After much discussion, the Planning Board voted to postpone consideration of the public hearing until October 10, 2018, pending receipt of a legal opinion of counsel in writing as to whether the proposed properties are eligible to be rezoned to the D5 category.

On October 10, 2018, the Planning Board again considered the applicant’s request for a rehearing, and after further discussion, voted to grant a rehearing based on the substantial change in the evidence that was presented to the Board on June 27, 2018. However, the Planning Board further voted to conduct the public rehearing of the rezoning on November 14, 2018.

On both November 14, 2018 and again on December 12, 2018, the applicant requested postponement of the rehearing to allow additional time for the developer and property owner to meet with the adjacent property owners. Thus, the matter was ultimately postponed until the January 23, 2019 meeting of the Planning Board.

On January 23, 2019, the Planning Board conducted a public rehearing to consider the requested rezoning of the properties. After much discussion, the Planning Board voted 4-3 in favor of recommending approval of the proposed rezoning to the City Commission and adopted the findings of fact contained in the staff report dated November 8, 2018.

On February 11, 2019, the City Commission set a public hearing for March 11, 2019 to consider the proposed rezoning for the properties located at 469 – 479 S. Old Woodward.

LEGAL REVIEW:
No legal review is required.

FISCAL IMPACT:
There is no fiscal impact for this agenda item.

SUMMARY:
The City Commission is set to conduct a public hearing to consider the requested rezoning of the properties located at 469 – 479 S. Old Woodward from B3/D4 to B3/D5.

In the alternative, the City Commission could also consider approving the placement of the properties at 469 – 479 S. Old Woodward into the Parking Assessment District, and charging the required assessment fee. This would eliminate the onsite parking requirements for all retail and commercial uses, although parking for any proposed residential units would still be required on site.

ATTACHMENTS:
Please find attached the following documents for your review:

- Rezoning application and supporting documents submitted by applicant
- Letter from the City Attorney dated September 11, 2018 and October 1, 2018
- Staff reports prepared for the Planning Board
- All relevant City Commission and Planning Board meeting minutes
- All letters and petitions received for and against the proposed rezoning
SUGGESTED RESOLUTION:
To APPROVE the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5;

OR

To DENY the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5;

OR

To POSTPONE the hearing on the rezoning of 469 – 479 S. Old Woodward from B3/D4 to B3/D5 to __________, 2019;

AND / OR

To direct the Advisory Parking Committee to review the properties at 469 – 479 S. Old Woodward for inclusion into the Parking Assessment District, and to provide a recommendation to the City Commission.
APPLICATION & SUPPORTING DOCUMENTS FROM APPLICANT

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:
The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:
   Change premises described as:

   479 South Old Woodward Avenue

   No. __________________________ Street __________________________

   Tax ID #: 19-36-208-012; see documents for more information

   _____________________________________________ from its present zoning

   classification of ___________________________ to ___________________________.

   A sealed land survey showing location, size of lot and placement of building (if any) on
   the lot to scale must be attached.

   Statements and reason for request or other data have a direct hearing on the request.

2. Change premises described as:

   _____________________________________________

   No. __________________________ Street __________________________

   Legal Description _____________________________________________ from its present zoning

   classification of ___________________________ to ___________________________.

   A sealed land survey showing location, size of lot and placement of building (if any) on
   the lot to scale must be attached.

   Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: [Signature]

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Partners, LLC

Address and Telephone Number: 251 East Merrill Street, Suite 205

Birmingham, Michigan 48009
APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: ____________________________________ Received By: ____________________________________

Resolution No. __________________________________ Approved/Denied ________________________________

Application Fee: $1,500.00 Receipt Number ________________________________

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.
ZONING MAP OR ORDINANCE AMENDMENT PROCEDURE

Procedure to be followed on all applications for Zoning Map or Ordinance amendments.

1. Preliminary discussion with the Community Development Director or City Planner.

2. Formal application to City Commission with the following information:
   a) Change requested
   b) Signature and name of persons requesting change
   c) Reasons for requested change

3. City Commission will refer request to the Planning Board for recommendation and final report.

4. Planning Board will hold a public hearing prior to which a notice will be published in an official paper or a paper of general circulation not less than fifteen (15) days prior to the hearing.

5. At the conclusion of a public hearing, the Planning Board will forward a recommendation of the Zoning Map or Ordinance amendment request. The City Commission may, by ordinance, change the Zoning Map or Ordinance only after the Planning Board had held at least one (1) public hearing regarding the proposed amendment and has reported to the City Commission thereon. The City Commission may hold additional public hearings as it deems necessary.

6. Upon the presentation of protest petition meeting the requirements listed below, an amendment to the Zoning Map or Ordinance which is the object of the petition shall be passed only by a three-fourths (3/4) vote of the City Commission. The protest petition shall be presented to the City Commission before final action on the amendment, and shall be signed by one (1) of the following:
   a) The owners of at least twenty percent (20%) of the area of land included in the proposed change.
   b) The owners of at least twenty percent (20%) of the area of the land included within an area extending outward one hundred (100) feet from any point on the boundary of the land included in the proposed change.

   For the purpose of calculating the twenty percent (20%) requirement, publicly-owned land shall be excluded.

7. The City Commission will then take action on the application upon review of the Planning Board’s recommendation and approved minutes of the Public Hearing.

8. Following adoption of a Zoning Map or Ordinance change by the City Commission, one (1) notice of adoption shall be published in the newspaper of general circulation in the City within fifteen (15) days after adoption.
APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

TO THE CITY COMMISSION:
The undersigned hereby makes application to the City Commission to:

1. Zoning Map Change:

   Change premises described as:

   469 South Old Woodward Avenue
   ____________ No. __________________________ Street
   Tax ID #: 19-36-208-011; see documents for more information
   __________________________ Legal Description
   __________________________ from its present zoning classification of B3/D4 to B3/D5.

   A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

   Statements and reason for request or other data have a direct bearing on the request.

2. Change premises described as:

   __________________________ No. __________________________ Street:
   __________________________ Legal Description
   __________________________ from its present zoning classification of __________________________ to __________________________.

   A sealed land survey showing location, size of lot and placement of building (if any) on the lot to scale must be attached.

   Statements and reasons for request or other data have a direct bearing on the request.

Signature of Applicant: __________________________

Print Name: Christopher J. Longe

Name of Owner: Birmingham Tower Partners, LLC

Address and Telephone Number: 251 East Merrill Street, Suite 205

Birmingham, Michigan 48009
APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

Date Received: __________________________ Received By: __________________________

Resolution No. __________________________ Approved/Denied __________________________

Application Fee: $1,500.00 Receipt Number __________________________

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.
May 17, 2018

City of Birmingham
City Commission
151 Martin St.
Birmingham, MI 48009

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI (“Subject Property”) in the D5 Downtown Birmingham Overlay District Zone (“Application”)

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner (“Property Owner”) of 469 and 479 S. Old Woodward (“Property”) as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the D-3 Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

Executive Summary

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a “missing tooth.”

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.
The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970’s after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street’s architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan (“2016 Plan”) and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the D-3 Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to “…guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan (“Birmingham Plan”), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.
Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 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. Please consider the following comments with respect to these issues.

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

Rezoning of the Subject Property is necessary to preserve the Applicant’s enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing D-3 zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an “infill” rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the
existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the D-3 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 of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

**Conclusion**

The Applicant respectfully requests that the City Commission rezone the Subject Property from the D-3 to the D-5 Zone as discussed in this letter.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

[Signature]

Richard D. Rattner

RDR/eme
City of Birmingham  
City Commission  
151 Martin St.  
Birmingham, MI 48009  

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI (“Subject Property”) in the D5 Downtown Birmingham Overlay District Zone (“Application”)  

Dear Members of the Planning Board and City Commission:  

Please accept this letter from the property owner (“Property Owner”) of 469 and 479 S. Old Woodward (“Property”) as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the D-4 Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.  

Executive Summary  

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a “missing tooth.”  

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.  

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.
The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970’s after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street’s architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan (“2016 Plan”) and amended the Zoning Ordinance to include the Downtown Birmingham Overly District. The Subject Property is located in the D-4 Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to “...guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan ("Birmingham Plan"), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.
Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

**Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)**

The Zoning Ordinance at Sec. 7.02 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. Please consider the following comments with respect to these issues.

**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**

Rezoning of the Subject Property is necessary to preserve the Applicant’s enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

**Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate**

The existing D-4 zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an “infill” rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the
existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, 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 of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-4 Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Conclusion

The Applicant respectfully requests that the City Commission rezone the Subject Property from the D-4 to the D-5 Zone as discussed in this letter.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

Richard D. Rattner

RDR/cmc
Parcel "A" Legal Description:

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

South part of lot 7 of ASSSESSORS Plat No. 13, City of Birmingham, according to the plat thereon, as recorded in Liber 34 of Plat, Page 19, Oakland County Records, described as beginning at Southwest corner Lot 7, thence Northerly on said Lot 7 40.26 feet, thence Eastward 58.0 feet, thence Northerly at right angle 14.48 feet, thence Eastward 40.26 feet, thence Northerly at right angle 58.0 feet, thence Southward along said Lot 7 58.0 feet, thence Westward 40.26 feet, thence Southward along said Lot 7 40.26 feet to point of beginning.

Parcel "A" Surveyor's Notes:

- Overhead wires run through the subject parcel and cross the property lines as shown; no easement provided.
- Walk runs through the subject parcel and cross the property lines as shown.
- Property line matches existing exterior walls and interior party walls on the north side of the subject parcel.
- Parking on the subject parcel is accessible in the existing building, no access available at the time of the survey.
- The current zoning classification was not provided by the client, see Item 4(b) to take into the minimum standard detail requirements for ALTA/ACSM land title surveys are as follows:

Parcel "A" Schedule of Exceptions:

- Detects, fees, encumbrances, adverse claims or other matters, if any present, that appearing in the public records or otherwise subsequent to the effective date hereof; and prior to the date the proposed use of record the deed or mortgage title survey performed by this Committee.
- Standard exceptions set forth in italics.
- "Two or more assessors or one or more buildings as a fire or due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due to due todue to due to due to
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MARKUS MANAGEMENT GROUP, LLC
251 EAST MERRILL STREET, SUITE #205
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DESCRIPTION

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MARCH 6, 2017

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ORIGINAL ISSUE DATE:
MARCH 6, 2017
PEA JOB NO. 2017-093
SCALE: NONE
DRAWING NUMBER:

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PB

OLD WOODWARD AVENUE AT HAZEL STREET
CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN, 48009

NOTES AND DETAILS
SOUTH OLD WOODWARD

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DATE CHK No. BY
MARCH 6, 2017

NOT FOR CONSTRUCTION
August 13, 2018

City of Birmingham
City Commission
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker

Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward, Birmingham, MI ("Subject Property") in the D5 Downtown Birmingham Overlay District Zone ("Application")

Dear Members of the City Commission, Planning Board and Ms. Ecker:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Request for Re-Hearing of the Property Owner’s rezoning Application to rezone the Subject Property from the D-4 Overlay Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

The information set forth in this letter supplements the information set forth in the Application and the undersigned’s letter of May 17, 2018. Please recall that the subject Property is a former single-story restaurant building and drive-through bank that sits between two existing D-5 zoned buildings in the City. The Property is in the B-3 Office-Residential Zone and the D-4 Overlay Zone.

Summary

The Application was considered by the Planning Board at its meeting on June 27, 2018 and the Planning Board denied the Application. The Applicant requests that the Planning Board rehear the Application due to consideration of new information not reviewed and to correct certain factual inaccuracies or errors in the record that quite likely prevented the Planning Board from affording this Application a full and fair hearing. Without such a full consideration of all of these new and pertinent factors, the Board will be in the position of recommending denial of a petition without the opportunity of hearing all of the important issues related to the intent, purpose and consequences of such a zone, and without the advantage of putting those issues in perspective when considering a zoning ordinance that is a crucial part of the Birmingham Downtown Overlay District plan.
The D-5 ordinance is one of the most carefully drafted ordinances produced by the City. It is the subject of over two years of study and research. Multiple alternative drafts were proposed by the City Planning Department over the years, and every section has been fully discussed and vetted by the City Commission and the Planning Board. This D-5 ordinance was recognized as being an integral part of the Downtown Birmingham Overlay District by the City. When the ordinance was passed it was heralded as not only solving existing problems but it fit into the fabric of the Overlay District’s plan to encourage mixed use buildings in the Downtown Overlay (especially in the South Old Woodward area) so that our city can maintain a vibrant, pedestrian friendly attractive live, work and entertainment district. It was enacted as part of the City’s modern plan to create a sustainable, vibrant downtown.

To mischaracterize this ordinance as a mere correction of nonconformity for three buildings is not only erroneous, but does disservice to the hard work done by the City Commission, Planning Board and Administration. Most importantly, such an analysis does not comply with the spirit, intent and vision exhibited in theory and practice in the Downtown Birmingham Overlay District. Said simply, such an interpretation ignores and discredits all of the good faith hard work that went into the creation of not only the Ordinance, but the master plan process for the future of our growing and vibrant downtown.

The Property is not within the Parking Assessment District, Contrary to Information Presented in the Board’s Packet

This Property is not within the parking assessment district. This is a serious flaw in any zoning analysis and must be corrected in order for the public record of the Board’s action and recommendation on the Application to properly reflect the realities of this matter. Correcting this fact leads to new information about the Property and the plan for development of the Property that is central to the question of rezoning pursuant to the Zoning Enabling Act. The Board has not had an opportunity to review this new information in the first instance. The new information significantly changes the analysis of rezoning under Article 7.02B2b and 7.02B5 of the Zoning Ordinance.

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District (Parking Assessment District Map is enclosed for your reference at Exhibit A), it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4.46 of the Zoning Ordinance (Off-Street Parking Spaces Required).

The Planning Department’s Memorandum submitted to the Planning Board, dated May 18, 2018, regarding the Community Impact Statement of the Property’s redevelopment, erroneously provides, “The subject Property is in the Parking Assessment District.” And not only is the subject Property not in the Parking Assessment District, contrary to what was reported to the Planning Board, but we understand that this Property is the only D-4 zoned property in the
City not included in the Parking Assessment District.

**Zoning Analysis – Revisited**

Whether or not the Property is within the Parking Assessment District makes a significant difference in terms of the analysis under Sec. 7.02(B)(2)(b)(i-iii), Zoning Amendments. Section 7.02(B) requires the Applicant to provide certain explanations about the rezoning to be considered by the Planning Board and the City Commission. Please consider the following new information regarding the effects of the Parking Assessment District on this analysis, which was not reviewed by the Board.

- **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**

  The issue of location outside of the Parking Assessment District provides new information about the necessity of rezoning the Property to preserve the Applicant’s enjoyment of rights associated with ownership. Because of the size and narrow corner configuration of the Property, it will not support street-level retail, residential, and the required parking for those uses. The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. The 2016 Plan promotes mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses.

- **Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate**

  The Applicant provided information that the current zoning was no longer appropriate at the June 27, 2108 meeting. However, the Board inadvertently coalesced around a discussion and conclusion that the Applicant had not shown that a “D-4 building would not work” at the site (Mr. Koseck and Ms. Whipple-Boyce at hearing time 2:20:15). But this is not the requirement set forth in the ordinance. Further, the Board denied discussion about the development plan for the Property, until after the Applicant obtained rezoning. The Board applied a standard of proof that is not part of the ordinance, but rather more aptly applies to considering whether the rezoning depended on whether the Applicant can use the property as zoned. This is not the standard under the ordinance. Such a standard is often heard in a discussion of whether the property has been inversely condemned by the application of the ordinance. It is unfair to hold the applicant to a
standard that requires proof that the property cannot be used as zoned rather than the "appropriateness" of current zoning. When properly analyzed in the context of the Master Plan, which is the standard of the Birmingham ordinances, it is appropriate for the subject Property to share the same zoning classification as its immediate neighbors. As will be demonstrated in the next paragraph, the Property is incapable of supporting a structure built to current D-4 or B-3 zoning requirements.

The Property consists of two lots -- 469 and 479 -- which front Old Woodward and Woodward Avenue. The lots are in the “retail/red-line district” and under current zoning, each lot is severely restricted.

469 S. Old Woodward

The 469 lot width narrows as it extends east and has approximately 21 feet of Woodward Avenue frontage. The site has an existing 1 story, 2,900 square feet building, formerly used as a restaurant. Should this parcel be re-used, its only use (by necessity) would need to be a ‘nonconforming’ restaurant, since any change in use without a parking assessment district designation would require it to provide onsite parking for the new intended uses. However, since the restaurant has been closed for more than six months, it would not be eligible to continue as a nonconforming use!

Given the parcel’s narrow configuration, the only onsite parking that could be provided to satisfy the ordinance is two (2) spaces off of Woodward Avenue. Only two onsite parking spaces would limit the building footprint to approximately 300 to 600 square feet, depending on the permitted use. There is no practically feasible way to provide greater parking spaces.

479 S. Old Woodward

The 479 parcel has 211 feet of frontage on Hazel and approximately 40 feet of frontage on Old Woodward. This lot expands as it extends east to approximately 66 feet of Woodward Avenue frontage. The lot has an existing one-story, 11,826 square foot enclosure of which a small portion is a finished bank building. The balance is dedicated to a drive-thru lane for a drive-thru bank. Should this parcel be re-used, its only use (by necessity) must be a ‘nonconforming’ drive-thru bank since any change in use under the Ordinance would trigger onsite parking requirements for the new intended use. Also, drive-thru banks are specifically prohibited in the downtown Birmingham Overly District. See ordinance at Article 3(4)(C)(2)(b): “The following uses are prohibited...Drive-in facilities or any commercial use that encourages patrons to remain in their automobiles while receiving goods or services.”

Given lot 479’s configuration, the only onsite parking that would be practically feasible is approximately 13 spaces to be entered off of Woodward Avenue or Hazel. Thirteen onsite parking spaces would limit the building footprint to not more than from 1,950 square feet to
approximately 3,900 square feet, depending on the permitted use. It is possible for a new building to be multiple stories and this may allow for greater area on the ground floor for parking spaces. At most with a 2200 square foot ground floor, 27 parking spaces could be fit to the site. However, the building would be limited to approximately two stories and would not be contextual to the neighborhood. In essence, the lot would be converted partially to a surface parking lot.

**Combined Lots**

Seemingly, the combination of the two parcels would create greater opportunity to develop a project conforming to the Master Plan and the 2016 Downtown Plan goals for the B3/D4 zoning. Unfortunately, the combined parcel cannot meet the Master Plan and 2016 Downtown Plan goals of mixed uses and first floor retail without both onsite parking and underground parking. The Ordinance mandates main level retail (20’ minimum in depth) on Old Woodward. Of course, onsite parking must be provided for any additional uses. This forces redevelopment toward uses with minimal parking requirements, such as hotels, which is what the Applicant proposes. As stated elsewhere in this letter, there are serious difficulties with building an underground garage within the D-4 design parameters that is deeper than two levels. Clearly, the current zoning unfairly forces the owner into an unreasonable position when considering the parcel’s potential use and its place in the Downtown Overly District. Consequently, any such garage is limited to approximately 60 parking spaces.

To discuss these difficulties in a vacuum is not the intention of the Zoning Enabling Act. The Act at MCL 125.3203 provides that zoning must be determined according to a plan. Here, the Applicant attempted to explain to the Board that the site plan is impacted by the fact that the Property is not within the Parking Assessment District. Unfortunately, the Board refused to consider any site plan and its conformance to the 2016 Plan, putting such review off until the Applicant obtained rezoning. This placed the Applicant in a double-bind. He could not demonstrate the inappropriateness of current zoning without an analysis of how the Parking Assessment District, or lack thereof, affects the site plan design. Had the Applicant been allowed to at least discuss a site plan design in relation to the rezoning analysis, he would have demonstrated that there is no feasible option to develop the Property within the current zoning classifications outside of the Parking Assessment District. This would have been a valuable discussion of new information that should have at least been heard by the Planning Board.

**Mischaracterization that the D-5 Ordinance was Passed Only to Make Three Properties Conforming**

Two attorneys from the same law firm, as representatives of the residents of Birmingham Place, each separately addressed the Board during the June 27th hearing. The main thrust of their argument to the Board was that the only reason the D-5 Zone was added to the ordinance was in order to correct the non-conformity of the 555 Building, Merrill Wood and Birmingham
Place. They argued that the new Zone did not apply to any other properties. This assertion ignores the very careful hard work of the City Commission, the Planning Board, and the Administration. This claim is also clearly contrary to the history of the D-5 ordinances and to its plain language.

The history of the Planning Board’s consideration of the D-5 Zone was outlined in detail by Ms. Ecker at the June 27th meeting. The Planning Board studied and considered the revisions to the ordinance for the South Old Woodward area for two years prior to adopting the D-5 Zone. In the Planning Department’s Memorandum to the Planning Board, dated September 22, 2016, submitted to the Board for its September 28, 2016 study session, Ms. Ecker wrote: “The consensus of the Board was to allow additional height for new buildings in the D-5 zone district to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP.”

During the June 27, 2018 hearing, Chairman Clein expressed (at time 2:10:25 of the hearing video), that during consideration of the new D-5 Zone, the Board considered the entire southern area of Downtown and positively did discuss the subject Property for potential property rezoning. However, the Board did not include the Property initially because no applicant or interested owner had come forward at that time. Mr. Jeffares also reiterated the same point (at time 1:48:30 of the hearing video). Ms. Ecker clearly stated (at video time 2:09:00) that the new D-5 Zone is a zoning classification that is not limited to the three non-conforming buildings (555 Building, Merrill Wood and Birmingham Place).

Despite clear evidence to the contrary, the mischaracterizations assumed in this hearing were espoused by Ms. Whipple-Boyce who indicated that she understood the D-5 Zone only applied to the three properties, and was not available for the Applicant’s Property. These misrepresentations had a direct bearing on consideration of the Applicant’s explanation of why the rezoning will not be detrimental to surrounding properties.

Sec. 7.02(B)(2)(b)(iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties

Both the adjacent and abutting properties are in the D-5 Zone. These misrepresentations that the D-5 is closed to other buildings led the Board to bypass the Applicant’s D-5 site plan design. Instead the Board envisioned the abutment of a D-5 structure next to the Birmingham Place and the impact of such on the Birmingham Place residents. However, it is clear that when these neighboring properties were rezoned to D-5, the Planning Board anticipated that eventually the owner of the subject Property would apply to be rezoned for the reasons stated in this letter. The idea that an ordinance is created for only a few buildings, when the ordinance itself states otherwise, is unsupportable and unreasonable. Rezoning the subject Property to a D-5 Zone will be putting this parcel on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be
developed as an attractive part of the South Old Woodward gateway and, most importantly, bring that area into compliance with the spirit and intent of the 2016 Master Plan. Many of the condominium owners from Birmingham Place who spoke out against the rezoning, as did their attorneys, will lose their views to the south even with a development compliant with current zoning. Please see the attached depiction of the D-4 height overlaid against the Birmingham Place (Exhibit B). However, the Board seemed to acknowledge the mootness of the alleged detriment to Birmingham Place given the potential impact of a conforming D-4 structure, and yet at least one member, Ms. Whipple-Boyce, still maintained that the D-5 Zone was intended to correct the non-conformance of only three properties.

The Board Failed to Make Required Findings of Fact under Ordinance Sec. 7.02(B)(5)

In making its decision on June 27th, the Board denied the Application based on Ordinance Sec. 7.02(B)(2)(b) and the required explanations imposed on the Applicant. As a result of its misunderstanding of the analysis required by the Zoning Amendments section of the Ordinance, the Board committed error in basing its decision on Sec. 7.02(B)(2)(b) rather than on the findings of fact required by Sec. 7.02(B)(5). Section 7.02(B)(5)(a-e) lists five findings the Board must make regarding the Application when making its recommendation to the City Commission. Without these findings by the Planning Board, the recommendation to the City Commission does not give the commission sufficient information to understand why this rezoning Application was denied.

- **Sec. 7.02(B)(5)(a) - The objectives of the City’s then current master plan and the City’s 2016 Plan.**

  The Board made no findings of fact with respect to the objectives of the City’s current master plan and the City’s 2016 Plan. A simple motion to deny a recommendation of rezoning was made “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.” (See Exhibit C, June 27, 2018 meeting minutes, at p.10).

  The Applicant, however, in its May 17, 2018 letter to the Board, submitted significant information relating to the conformance of D-4 to D-5 rezoning of the Property with the goals of the 2016 Master Plan to promote mixed uses and consistency in architectural details and massing to neighboring structures.

- **Sec. 7.02(B)(5)(b) - Existing uses of the property within the general area of the property in question.**

  The Board made no finding of fact with respect to uses of property within the area of the Property, although the Board acknowledged the D-5 zone to the immediate north and south of the Property. And as stated above, the Board coalesced around the conclusion that the Applicant had not “shown a D-4 building could not work.”
In his May 17, 2018 supplemental letter to the Board, the Applicant explained the proposed mix-use of the development as retail, hotel and residential, all uses consistent with surrounding properties.

- **Sec. 7.02(B)(5)(c) - Zoning classification of the property within the general area of the property in question.**

  The Board acknowledged that the entire southern area of Birmingham has been studied for change in zoning possibly to a gateway district due to the established heights of the iconic 555 Building and the Birmingham Place Building. The Board acknowledged the recent rezoning of the abutting and adjacent properties to the D-5 Zone and the current zoning classifications of nearby properties. The Board did not make any findings that addressed the fact that the subject Property is not only located in the area of the D-5 zone, but actually is situated between two D-5 zoned parcels. The adjacent and abutting properties are zoned D-5.

- **Sec. 7.02(B)(5)(d) - The suitability of the property in question to the uses permitted under the existing zoning classification.**

  The Board made no findings of fact regarding the suitability of the Property in question to the uses under the existing zoning classification. The Board’s discussion centered on the height of the proposed development under the D-5 versus the D-4. There was no finding or discussion of suitability to permitted uses. The Applicant directs the Board’s attention here because the Property sits outside of the Parking Assessment District. The Board failed to engage with this fact and its implications on the Applicant’s site plan, which has a significant negative impact on the Applicant’s ability to use the Property within the uses promoted by the 2016 Plan. Again, without a factual finding, the Board concluded that the Applicant had not proven that a D-4 building would not work at the Property (June 27, 2018 hearing video, Chairman Clein, starting at video time 2:10:25).

- **Sec. 7.02(B)(5)(e) - The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.**

  There was little discussion of the trend of development in the general area, other than the discussion of the historical development of the 555 Building and Birmingham Place prior to their down-zoning in later amendments to the Ordinance. Again, the Board acknowledged the recent changes in zoning to the 555 Building and Birmingham Place, as well as a mention of a zoning variance obtained for the development of the Pearl property. However, the Board did not make a finding of fact regarding the trend of development and its relationship to its decision to deny the Applicant’s request.
Conclusion

Applicant respectfully requests that this matter be referred back to the Planning Board to allow full consideration of the following:

- Report of the Planning Department concluding that the Petitioner had satisfied all of the ordinance requirements of Sec. 7.02(B(5)(a-e). No contrary findings of fact were made by the Planning Board.

- The Property is the only D-4 property in the City not in the Parking Assessment District. The report in the Planning Department’s packet to the Planning Board with regard to the CIS mistakenly stated that the Property was in the Parking Assessment District. This new fact is crucial to an accurate analysis of the rezoning request.

- The purpose of the D-5 ordinance was mischaracterized as merely an ordinance to correct only three buildings in the City. The ordinance clearly states otherwise, and there was much discussion during the years of meetings about the area of the City that should be considered for the D-5 zone.

- The standard used for the discussion of rezoning the Property was not a requirement of the zoning ordinance. An applicant must present facts that support the ordinances in Sec. 7.02(B)(5)(a-e) as well as Sec. 7.02(B)(2)(b)(i-iii). None of those ordinance sections requires the Applicant show that the Property cannot be used as zoned, contrary to what was discussed in the public hearing.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

RDR/gsm
CITY OF BIRMINGHAM
PLANNING BOARD ACTION ITEMS
OF WEDNESDAY, JUNE 27, 2018

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<td>1. 260 N. Old Woodward Ave., The Morrie - Application for Special Land Use Permit (&quot;SLUP&quot;) Amendment to allow the addition of a dance floor to the previously approved restaurant</td>
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<td>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.</td>
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<td>Motion carried, 7-0.</td>
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<td>2. 2010 Cole St. (currently vacant) - Application for Final Site Plan and Design Review to renovate the existing building and expand the parking lot</td>
<td>3</td>
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<td>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.</td>
<td>5</td>
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<td>Motion carried, 7-0.</td>
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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 | 5 |
### Birmingham Planning Board Proceedings
**June 27, 2018**

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<td><strong>Motion by Mr. Boyle</strong>&lt;br&gt;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.</td>
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<td>Motion failed, 2-5.</td>
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<td><strong>Motion by Ms. Whipple-Boyce</strong>&lt;br&gt;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.</td>
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<td>Motion carried, 5-2.</td>
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<td>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</td>
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<td><strong>Motion by Mr. Boyle</strong>&lt;br&gt;Seconded by Ms. Whipple-Boyce to postpone this application to August 22, 2018 following the consideration of this rezoning application at the City Commission.</td>
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<td>Motion carried, 7-0.</td>
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Approved by Birmingham Planning Board.
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

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

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
Yea: Whipple-Boyce, Koseck, Boyle, Clein. Emerine, Jeffares, Ramin
Nay: 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 Klein 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 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, Whipple-Boyce
Absent: Share, Williams

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**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

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**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
1. Cannot redevelop either site with the same use or building size and provide adequate parking.

2. Cannot redevelop either site with a single-story building (required to meet the ‘Downtown Birmingham Overlay Ordinance’).

3. Combined sites have 3 separate frontages that are required to meet the ‘Downtown Birmingham Overlay Ordinance’.
**Comments**

1. Provides 1,400 square feet of 2 story mixed-use building with surface parking.

2. Leaves 5,750 sf of undeveloped property.
Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

479
South Old Woodward
(2 Stories on Old Woodward/Hazel w/surface Parking)

Comments
1. Provides 2 story frontage (retail) on South Old Woodward
2. Provides 1 story office partially on Hazel
3. Surface parking occupies all of Woodward Avenue and most of Hazel

Use and Parking Data

<table>
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<th>2 Story Building</th>
<th>Total Required</th>
<th>Total Provided</th>
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<tr>
<td></td>
<td>22 Spaces</td>
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</table>

- 800 sf x 2 = 1,600 sf Retail (1st & 2nd) / 300 = 5.3 Spaces
- 2,500 sf Office (1st) / 150 = 16.7 Spaces

Total Required
Total Provided
Comments
1. Provides 2 story/single-use (retail) on south Old Woodward
2. Provides 2 story/single-use (retail) partially on Hazel
3. Surface parking occupies most of Woodward Avenue
Comments

1. Provides 2 story/mixed-use (retail/office) on South Old Woodward

2. Surface parking on both Hazel and Woodward Avenue (2 curb cuts)
Project M1
Markus Management Group LLC
469 + 479 South Old Woodward Avenue
Birmingham, MI 48009

469 & 479
South Old Woodward
(20’ Liner @ Frontages & Bi-Level Parking)

Use and Parking Data
- 3 Story Building
  - 5,500 sf Retail (1st) / 300 = 18.3 Spaces
  - 5,500 sf Office (2nd) / 150 = 36.4 Spaces
  - 8 Residences (3rd) x 1.5 = 12 Spaces

Total Required
67 Spaces

Total Provided
70 Spaces

Comments
1. Provides 3 story building/mixed-use building on all 3 frontages
2. Provides a ‘ramp over ramp’ hybrid internal parking w/2 curb cuts
3. Provides 8 residences
1. Provides 5 story building/mixed-use building on all 3 frontages

2. Provides internal parking ramp on 1st, 2nd and 3rd floors

3. Provides parking on entire 4th floor

4. Provides a 20’ liner on 1st, 2nd and 3rd floors

5. Provides 5 residential units on 5th floor
Over the past several months, the applicant has submitted written documentation and evidence in support of applicant’s application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant’s request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department’s analysis and findings under the City Ordinance regarding the applicant’s request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant’s proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City’s master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant’s proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant’s property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.
- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.
LETTERS FROM CITY ATTORNEY

September 11, 2018

Ms. Jana Ecker, Planning Director

City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Rezoning Application Before the Planning Board

Dear Ms. Ecker:

This letter is in response to your request to clarify the procedure by which applications for rezoning and determinations of rezoning are made. The Zoning Ordinance states in Section 7.02 B.2. Application for Rezoning, as follows:


1. Persons Entitled to Seek Rezoning. Only a person who has a fee interest in a piece of property, or a contractual interest which may become a fee interest in a piece of property, may seek an amendment in the zoning classification of that property under this section.

2. Application for Rezoning.

a. An application for an amendment to change the zoning classification of a particular property must be filed with the Building Official on such forms and accompanied by such fees as may be specified by the City Commission. The application and any supporting documentation shall be forwarded by the City Building Department to the Planning Board for study and recommendation.

b. Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

i. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.

ii. An explanation of why the existing zoning classification is no longer appropriate.

iii. An explanation of why the proposed rezoning will not be detrimental to surrounding properties.

b. Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. The plot plan shall be drawn to a scale of not less than one inch equals 50 feet for a property of less than 3 acres and one inch equals 100
feet for property of 3 acres or more in size. Information required on plot plans shall be as follows:

i. Applicant’s name, address and telephone number.
ii. Scale, north point, and dates of submission and revisions.
iii. Zoning classification of petitioner’s parcel and all abutting parcels.
iv. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
v. Existing use of the property.
vi. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
vii. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
viii. All existing easements.
ix. Location of existing sanitary systems and/or septic systems.
x. Location and size of existing water mains, well sites and building service.
xi. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans.

If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply, and, furthermore, why the items are not applicable.”

The foregoing is the information that is to be provided by the applicant to provide the materials to assist the Planning Board in making its findings of fact. It does not set the criteria by which findings of fact or recommendations should be made. Those are set forth in Section 7.02 B.5, which reads as follows:

“5. Findings of Fact and Recommendation of the Planning Board. The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:
a. The objectives of the City’s then current master plan and the City’s 2016 Plan.
b. Existing uses of property within in the general area of the property in question.
c. Zoning classification of property within the general area of property in question.
d. The suitability of the property in question to the uses permitted under the existing zoning classification.
e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

The foregoing Section 7.02 B.5. sets forth the criteria upon which the Planning Board makes written findings of fact. Thereafter, the findings of fact, together with its recommendations, are sent to the City Commission to determine possible rezoning of the subject property.

* * * * * *

I have also been asked to outline the procedure for the Board to consider a petition by the applicant for rehearing of the rezoning application. The instant case involves 469-479 South Old Woodward. The first matter the Planning Board should consider is whether they will grant the rehearing of this matter to the applicant. If they believe there is not sufficient information to grant a rehearing, it could be denied at that time and no rehearing will be granted.

Second, if the Planning Board believes a rehearing should be granted, then a ruling granting the rehearing should be entered, followed by a rehearing on the substance of the matter before the Board. At such time, the Planning Board can take into account such additional information that is submitted by the applicant or by any person opposing the application. This will create an additional record upon which the Planning Board will then make its findings of fact and recommendation pursuant to 7.02 B.5.

A rehearing does not automatically grant the request of the applicant, nor does it automatically deny it. The Planning Board is free to make whatever decision it deems appropriate based on the material and the facts placed before it by the applicant and those in opposition.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc
October 1, 2018

Ms. Jana L. Ecker and  
Planning Board Members  

City of Birmingham  
151 Martin Street, P.O. Box 3001  
Birmingham, MI 48012  

Re: Parking Assessment District–469-479 S. Old Woodward  

Dear Members of the Board:  

The Board has asked if we have any information as to why the above properties were not included in the Parking Assessment District when they were first created and any explanation as to the City’s reasoning at that time. We do not have any files or documents that can assist you in this regard.  

If you have any additional questions, please do not hesitate to contact me.  

Very truly yours,  

BEIER HOWLETT, P.C.  

Timothy J. Currier  

TJC/jc
October 1, 2018

Ms. Jana L. Ecker and  
Planning Board Members  
City of Birmingham  
151 Martin Street, P.O. Box 3001  
Birmingham, MI 48012

Re: Legal Opinion Regarding Rezoning Application for 469-479 S. Old Woodward

Dear Members of the Board:

The Board has requested a legal opinion in connection with the following question:

Is the owner of the property located 469-479 S. Old Woodward (currently zoned D4 in the Downtown Overlay District) legally permitted to apply for rezoning to the newly created D5 zone district in the Downtown Overlay District?

ANSWER: YES.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

TJC/je

Timothy J. Currier
On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing at the City Commission that was previously set to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance states:

If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing.

Accordingly, section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

Please find attached the applicant’s letter that outlines the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018, and requests a rehearing of the rezoning request.
On September 12, 2018, the applicant appeared before the Planning Board and outlined the substantial change in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

Please find attached two letters from the City Attorney, one addressing the eligibility of the subject site to be rezoned to the D-5 category, and one addressing Parking Assessment District records regarding the creation of the district.

On October 10, 2018, the applicant appealed to the Planning Board for a rehearing based on new facts or evidence. After much discussion, the Board made a motion finding that there were substantial changes from the evidence previously presented at the rezoning hearing on June 27, 2018, and thus voted to grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward. The rehearing was scheduled for November 14, 2018.

As the Planning Board accepted that the applicant has proven a substantial change in the evidence and that a rehearing should occur, all of the previous application documents, plans and reports are provided for your review and consideration. An updated staff report is also attached for your review.

At the Planning Board meeting on November 14, 2018, the applicant requested postponement of the rehearing to December 12, 2018.

At the Planning Board meeting on December 12, 2018, the applicant requested further postponement of the rehearing to January 27, 2019 to allow additional time to meet with the neighbors and attempt to reach an agreement on the proposed development.

The only new document that is being provided at this time is a memo from the applicant dated January 18, 2019 summarizing previous documents submitted and discussed at Planning Board meetings. This document is attached immediately following this memo and minutes.
Over the past several months, the applicant has submitted written documentation and evidence in support of applicant’s application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant’s request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department’s analysis and findings under the City Ordinance regarding the applicant’s request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).
- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).
- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.
- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.
- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.
- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant’s proposal will add consistency to the streetscape in mass and architectural detail.
- Section 7.02(B)(5)(a) -- The objectives of the City's master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.
- Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant’s proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.
- Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.
- Section 7.02(B)(5)(d) – The applicant’s property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.
- Section 7.02(B)(5)(e) -- The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.
- Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.
MEMORANDUM
Planning Division

DATE: November 8, 2018
TO: Planning Board
FROM: Jana Ecker, Planning Director
SUBJECT: Rezoning Request for 469-479 S. Old Woodward – Project M1

The applicant for 469-479 S. Old Woodward (Parcel Numbers 1936208011 and 1936208012 respectively) requested 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 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 Street from S. Old Woodward to Woodward. The site currently contains two vacant single-story commercial buildings (formerly Mountain King Chinese Restaurant and First Place Bank). The applicant is proposing to demolish the present buildings for the construction of a nine-story mixed use building with three levels of underground parking.

On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

On September 12, 2018, the applicant appeared before the Planning Board requesting a rehearing on the rezoning of 469 – 479 S. Old Woodward and outlined the substantial changes in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

On October 10, 2018, the Planning Board continued discussion and deliberations on the question of whether a rehearing should be held based on new facts or evidence. After much discussion, the Board made a motion finding that there were substantial changes from the evidence previously presented at the rezoning hearing on June 27, 2018, and thus voted to grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward. The rehearing was scheduled for November 14, 2018.
**History of Property**

Information gathered by PM Environmental for a Phase 1 Environmental Site Assessment on the property history revealed that 469 S. Old Woodward was home to various occupants since around 1937, including many auto sales companies and most recently the First Place Bank, which closed in 2014. The one story commercial building has since been vacant. 479 S. Old Woodward has been home to a few restaurants, most recently Mountain King (1998-2014). Similarly, the one story commercial building has also been vacant since its last tenant in 2014.

The applicant has noted that historically, Birmingham’s buildings zoning permitted the height of the 555 building and the Birmingham Place in the late 1960’s and early 1970’s. When the zoning was changed in the 1970’s, the two buildings were designated to a legal nonconforming use. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay. In 2016, a new D5 zone was created. The properties known as the 555 Building, the Merrillwood Building and Birmingham Place were then rezoned to the new D5 zoning classification. The subject property is located between Birmingham Place and the 555 Building, both of which are zoned D5 currently.

**Requirements for Rezoning**

The requirements for a request for the rezoning of a property are set forth in Article 07, section 7.02 of the Zoning Ordinance as follows:

Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

1. **An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.**

   **Applicant response:**
   - Rezoning of the subject property is necessary to preserve the applicants enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed use building. Furthermore, the D-5 Ordinance, at Section 3.04-4-b, anticipates that the subject property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

2. **An explanation of why the existing zoning classification is no longer appropriate**

   **Applicant response:**
• The existing D-3 zoning classification is no longer appropriate for the subject property. The subject property is surrounded by the Birmingham Place, a 10-story building on the north side and the 555 Buildings, a 15-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an “infill” rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the subject property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the subject property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the subject property sandwiched between two properties in the D-5 Zone, the D-3 Zone is no longer appropriate.

3. An explanation of why the proposed rezoning will not be detrimental to the surrounding properties.

Applicant response:

• The proposed rezoning of the subject property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south are already in the D-5 zone. When these neighboring properties were rezoned the Planning Board anticipated that eventually the subject property also may be rezoned for the reasons stated in this letter. Placing the subject property in the D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

Article 7, section 7.02 of the Zoning Ordinance further states:

Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. (See attached)

Information required on plot plans shall be as follows:

1. Applicant’s name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner’s parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

A land survey was provided by the applicant and submitted to the Planning Board (see attached).

Article 7 section 7.02 of the Zoning Ordinance further states:

The Planning Board shall hold at least one public hearing on each application for amendment at such time and place as shall be established by the Planning Board.

The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:
   a. The objectives of the City’s then current master plan and the City’s 2016 plan.
   b. Existing uses of property within in the general area of the property in question.
   c. Zoning classification of property within the general area of the property in question.
   d. The suitability of the property in question to the uses permitted under the existing zoning classification.
   e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Planning Division Analysis & Findings

In accordance with Article 7 of the Zoning Ordinance, the Planning Board is required to conduct a public hearing on an application for rezoning, and to make a recommendation on the rezoning to the City Commission.

Article 7, section 7.0(B)(5) of the Zoning Ordinance states:

The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:
   a. The objectives of the City’s then current master plan and the City’s 2016 Plan.
   b. Existing uses of property within in the general area of the property in question.
   c. Zoning classification of property within the general area of the property in question.
   d. The suitability of the property in question to the uses permitted under the existing zoning classification.
   e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Accordingly, the Planning Division has reviewed the evidence presented with respect to the matters listed in Article 7, section 7.0(B)(5) of the Zoning Ordinance as noted below.
A. The objectives of the City’s then current master plan and the City’s 2016 Plan

Section 1.04 of the Birmingham Zoning Ordinance states: the purpose of the Zoning Ordinance is to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Future Land Use Plan and the Downtown Birmingham 2016 Plan. A review of both plans reveals that the proposal to rezone the subject property to the D-5 Zoning District meets the spirit and intent of the ordinance. The 2016 Plan recommends specific building heights and massing that appropriately defines the public street and are harmonious with existing buildings. The 2016 further requires first floor retail along Old Woodward and encourages a mix of uses within buildings to support an active live, work and play environment for downtown. A proposed building under the D5 would allow for mixed uses and a scale that will match the adjacent buildings, meanwhile supporting the improvement of the streetscape along S. Old Woodward, Hazel and Woodward by building to the frontage line as required by the 2016 Plan.

The 2016 Plan also recommends that the City should encourage future buildings to front Woodward to project a positive image of the City and to hold Woodward areas to the same standards of quality and design as the best areas of Birmingham. The proposed building will project a strong image of the City towards Woodward with consistent architectural details and similar massing to the adjacent buildings.

B. Existing uses of property within the general area of the property in question

As mentioned above, the Birmingham Place and 555 Buildings are located to the north and south of the subject site, respectively. Both buildings contain a mix of retail, commercial and residential uses. The subject property is located on Woodward Avenue, which has a 200’ wide right of way. The southbound lanes of Woodward lie directly east of the property, and South Old Woodward lies to the west. Across Woodward to the east is the Audi dealership, and across S. Old Woodward to the west is a commercial center with both retail and commercial uses, including a drugstore, a drycleaners and a clothing store.

The following chart summarizes the land uses and zoning districts adjacent to and in the vicinity of the subject site.

<table>
<thead>
<tr>
<th>Existing Land Use</th>
<th>North</th>
<th>South</th>
<th>East</th>
<th>West</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Zoning</td>
<td>B-3, Office Residential</td>
<td>B-3, Office Residential</td>
<td>B-2, General Business</td>
<td>B-2B, General Business</td>
</tr>
<tr>
<td>Overlay Zoning</td>
<td>D-5</td>
<td>D-5</td>
<td>MU-5</td>
<td>D-2</td>
</tr>
<tr>
<td></td>
<td>Retail/ Commercial / Residential</td>
<td>Retail/ Commercial / Residential</td>
<td>Retail / Commercial/ Parking</td>
<td>Commercial/ Parking</td>
</tr>
</tbody>
</table>

C. Zoning classification of property within the general area of the property in question.

The properties immediately north and south of the subject site are zoned B3 and D5, which allow a mix of residential, retail and commercial uses, and buildings over 5 stories in height up to a maximum height of 180’. The property to the east across Woodward Avenue is
zoned MU5 which also allows a mix of residential, retail and commercial uses and allows buildings up to 6 stories and 78’ in height. The property to the west across S. Old Woodward is zoned B2-B and D2, also allowing a mix of residential, retail and commercial uses and buildings up to 3 stories and 56’ in height.

D. The suitability of the property in question to the uses permitted under the existing zoning classification.

Under the current zoning, all of the same uses are permitted as those under the D5 zoning classification. However, given the size of the parcel and the fact that the property is not located in the Parking Assessment District, the applicant argues that they would be unable to develop an appropriately designed five story mixed use building under the current zoning. In addition, even if the property were developed to include a five story or less building under the current zoning of D4, the building would be completely inconsistent and dominated by the height of the adjacent Birmingham Place and 555 Buildings.

E. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

In the immediate Southern Woodward Gateway area, there have been no new buildings recently constructed, however, the 555 Building was recently renovated extensively. Three existing buildings were rezoned in 2017 to D5 under the Downtown Overlay (Merrillwood Building, the 555 Building and Birmingham Place) to permit buildings over 5 stories in height (up to 180’) so long as they are compatible with adjacent buildings. There have been no new buildings constructed under the D-5 Overlay zoning classification.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements in Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district for the purpose of building as high, but no higher than, adjacent buildings. Given the recommendations of the 2016 Plan, the existing mix of uses in the immediate area and given the size and quality of the building, the proposal to rezone to D5 for the purpose of building to nine stories is appropriate and compatible with both the zoning and height of properties within the general area. In addition, a rezoning to D5 is consistent with recent zoning changes from D4 to D5 for adjacent properties within the Downtown Overlay district.

**Departmental Reports**

1. **Engineering Division** – The Engineering Department has no concerns with the rezoning application at this time.

2. **Department of Public Services** – The Department of Public Services has no concerns at this time.

3. **Fire Department** – The Fire Department has no concerns with the rezoning at this time.

4. **Police Department** – The Police Department has no concerns with the rezoning application.

5. **Building Department** – No comments were provided from the Building Department on the rezoning application.
Sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission. Should additional information be presented at the public hearing not contained within this staff report, the Planning Board should add any findings related to such information to the motion language provided below.

**Suggested Action:**

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board adopts the findings of fact contained in the staff report dated November 8, 2018 and recommends **APPROVAL** to the City Commission for the rezoning of 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay.

OR

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends **DENIAL** to the City Commission of the applicant’s request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. _______________________________________________________________________
2. _______________________________________________________________________
3. _______________________________________________________________________

OR

Motion to recommend **POSTPONEMENT** of the applicant’s request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay, pending receipt and review of the following information:

1. _______________________________________________________________________
2. _______________________________________________________________________
3. _______________________________________________________________________

On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing at the City Commission that was previously set to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance states:

If the City Commission denies the application, no application shall be reheard for at least one year, unless there have been substantial changes in the facts, evidence, and/or conditions demonstrated by the applicant. The determination of whether there have been such changes shall be made by the Planning Board at the time the application is submitted for processing.

Accordingly, section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

Please find attached the applicant’s letter that outlines the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018, and requests a rehearing of the rezoning request.
On September 12, 2018, the applicant appeared before the Planning Board and outlined the substantial change in the evidence that was previously presented to the board. In addition, an attorney speaking in opposition to the rezoning request also raised new information that had not been previously presented or discussed by the board. Board members had additional questions as to why the subject parcel was not put into the Parking Assessment District when the district was created, and whether or not the owner of the subject property is permitted to apply for rezoning to the new D5 zoning classification in the Downtown Birmingham Overlay District. After much discussion, the Planning Board voted to postpone consideration of the public hearing to October 10, 2018 with the condition that the Board receive the legal opinion of counsel to the City of Birmingham in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

Please find attached two letters from the City Attorney, one addressing the eligibility of the subject site to be rezoned to the D-5 category, and one addressing Parking Assessment District records regarding the creation of the district.

Should the Planning Board accept that the applicant has proven a substantial change in the evidence and a rehearing should occur, all of the previous application documents, plans and reports are also provided for your review and consideration.

Suggested Action:

1. **Sample Motion Language on Request for Rehearing:**

   The Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grant a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

   OR

   The Planning Board finds that there have not been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus denies a rehearing of the rezoning request for 469 – 479 S. Old Woodward.

2. **Sample Motion Language on Rezoning Request if Rehearing is Granted:**

   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 from D-4 to D-5 in the Downtown Overlay.

   OR

   Motion to recommend **DENIAL** to the City Commission of the applicant’s request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:
1.  

2.  

3.  

OR

Motion to recommend **POSTPONEMENT** of the applicant’s request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay, pending review and approval of the following:

1.  

2.  

3.  
DATE:   September 7, 2018
TO:   Planning Board
FROM:  Jana L. Ecker, Planning Director
SUBJECT:  Request for Rehearing of Rezoning Request for 469 – 479 S. Old Woodward

On June 27, 2018, the Planning Board reviewed a rezoning request 469 – 479 S. Old Woodward (former Mountain King and Talmer Bank sites) to rezone the site from B3/D4 to B3/D5. This request was made pursuant to Article 7, section 7.02, of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward.

The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing at the City Commission that was previously set to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

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Please find attached the applicant’s letter that outlines the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018, and requests a rehearing of the rezoning request. Should the Planning Board accept that the applicant has proven a
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**2. Sample Motion Language on Rezoning Request if Rehearing is Granted:**

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of 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay.

OR

Motion to recommend **DENIAL** to the City Commission of the applicant’s request for the rezoning
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1. ____________________________________________
2. ____________________________________________
3. ____________________________________________

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Motion to recommend **POSTPONEMENT** of the applicant’s request for the rezoning of the
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The applicant has noted that historically, Birmingham’s buildings were zoned for the height of the 555 building and the Birmingham Place in the late 1960's and early 1970's. When the zoning was changed in the 1970’s, the two buildings were designated to a legal nonconforming use. Ultimately, the zoning was changed to D-4 in 1996 by the adoption of the 2016 Plan and the Downtown Overlay. In 2016, a new D5 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 D5 currently.

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   **Applicant response:**
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Applicant response:

- The proposed rezoning of the subject property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south are already in the D-5 zone. When these neighboring properties were rezoned the Planning Board anticipated that eventually the subject property also may be rezoned for the reasons stated in this letter. Placing the subject property in the D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

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a. The objectives of the City’s then current master plan and the City’s 2016 plan.
b. Existing uses of property within in the general area of the property in question.
c. Zoning classification of property within the general area of the property in question.
d. The suitability of the property in question to the uses permitted under the existing zoning classification.
e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Planning Division Analysis

A. The objectives of the City’s then current master plan and the City’s 2016 Plan

Section 1.04 of the Birmingham Zoning Ordinance states: the purpose of the Zoning Ordinance is to guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Future Land Use Plan and the Downtown Birmingham 2016 Plan. A review of both plans reveals that the proposal to rezone the subject property to the D-5 Zoning District meets the spirit and intent of the ordinance. The 2016 Plan recommends specific building heights and massing that appropriately defines the public street. The proposed building allows for mixed uses and a scale that will seamlessly match the adjacent buildings, meanwhile supporting the improvement of the streetscape along S. Old Woodward, Hazel and Woodward by building to the frontage line.

The 2016 Plan also recommends that the City should encourage future buildings to front Woodward to project a positive image of the City and to hold Woodward areas to the same standards of quality and design as the best areas of Birmingham. The proposed building will project a strong image of the City towards Woodward with consistent architectural details and similar massing to the adjacent buildings.

B. Existing uses of property within the general area of the property in question

As mentioned above, the Birmingham Place and 555 Buildings are located to the north and south of the subject site, respectively. The property is located on Woodward Avenue, which has a 200’ wide right of way. The southbound lanes of Woodward lie directly east of the property, and South Old Woodward lies to the west. Across Woodward to the east is the Audi dealership, and across S. Old Woodward to the West is the long commercial building with a CVS and other businesses.

The following chart summarizes the land uses and zoning districts adjacent to and in the vicinity of the subject site.
<table>
<thead>
<tr>
<th>Existing Land Use</th>
<th>Retail/Commercial</th>
<th>Retail/Commercial</th>
<th>Commercial/Parking</th>
<th>Commercial/Parking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing Zoning</td>
<td>B-3, Office</td>
<td>B-3, Office</td>
<td>B-2, General</td>
<td>B-2B, General</td>
</tr>
<tr>
<td></td>
<td>Residential</td>
<td>Residential</td>
<td>Business</td>
<td>Business</td>
</tr>
<tr>
<td>Overlay Zoning</td>
<td>D-5</td>
<td>D-5</td>
<td>MU-5</td>
<td>D-2</td>
</tr>
</tbody>
</table>

C. **Zoning classification of property within the general area of the property in question.**

The properties immediately north and south of the subject site are zoned B3 and D5, which allow a mix of residential, retail and commercial uses, and buildings over 5 stories in height up to a maximum height of 180’. The property to the east across Woodward Avenue is zoned MU5 which also allows a mix of residential, retail and commercial uses and allows buildings up to 6 stories and 78’ in height. The property to the west across S. Old Woodward is zoned B2-B and D2, also allowing a mix of residential, retail and commercial uses and buildings up to 3 stories and 56’ in height.

D. **The suitability of the property in question to the uses permitted under the existing zoning classification.**

Under the current zoning, all of the same uses are permitted as those under the D5 zoning classification. However, under the current zoning of D4, the building would be capped at a height of 5 stories and thus be dwarfed by the adjacent Birmingham Place and 555 Buildings.

E. **The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.**

In the immediate Southern Woodward Gateway area, there have been no new buildings recently constructed, however, the 555 Building was renovated extensively. Three existing buildings were rezoned in 2017 to D5 under the Downtown Overlay (Merrillwood Building, the 555 Building and Birmingham Place) to permit buildings over 5 stories in height (up to 180’) so long as they are compatible with adjacent buildings. There have been no new buildings constructed under the D-5 Overlay Zoning classification.

**Departmental Reports**

1. **Engineering Division** – The Engineering Department has no concerns with the rezoning application at this time.

2. **Department of Public Services** – The Department of Public Services has no concerns at this time.

3. **Fire Department** – The Fire Department has no concerns with the rezoning at this time.

4. **Police Department** – The Police Department has no concerns with the rezoning application.
5. **Building Department** – No comments were provided from the Building Department on the rezoning application.

**Planning Department Findings**

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established 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, adjacent buildings. Given the recommendations of the 2016 Plan, the existing mix of uses in the immediate area and given the size and quality of the building, the proposal to rezone for the purpose of building to nine stories is appropriate and compatible in the area. The following sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

**Sample Motion Language**

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 from D-4 to D-5 in the Downtown Overlay.

OR

Motion to recommend **DENIAL** to the City Commission of the applicant’s request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay for the following reasons:

1. __________________________________________________________________________
2. __________________________________________________________________________
3. __________________________________________________________________________

OR

Motion to recommend **POSTPONEMENT** of the applicant’s request for the rezoning of the property at 469 - 479 S. Old Woodward from D-4 to D-5 in the Downtown Overlay, pending review and approval of the following:

1. __________________________________________________________________________
2. __________________________________________________________________________
3. __________________________________________________________________________
02-29-17: PUBLIC HEARING TO CONSIDER AMENDMENTS TO CHAPTER 126, ZONING, TO CREATE NEW D5 ZONE

Mayor Nickita opened the Public Hearing at 10:22 PM.

City Planner Ecker explained the history of this zoning ordinance amendment request by the owners of the 555 Building. The amendment would allow buildings to be considered either legal and conforming, or legal non-conforming, but have the ability to add on in some way. The amendments have to do with height, number of stories, and setbacks. The Planning Board looked at several options. The Board came up with a fairly simple method, by changing Section 6.02 to allow all buildings to be improved in some way if they are non-conforming, or to consider the creation of a D5 zone, defined as over five stories. The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit. The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay.

City Planner Ecker explained for Commissioner Boutros that the 555 site has room where a new building could be constructed.

City Planner Ecker explained that none of the three buildings can be any higher or add any extra stories under the ordinance amendment.

Mayor Pro Tem Harris asked about maintenance and repair under the current ordinance.

City Planner Ecker said an interpretation is required in every case currently. Under the ordinance amendment, maintenance and repair would be permitted.

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space.

City Planner Ecker said they could not, because the properties next door would not have the D5 zoning classification.

Commissioner Hoff asked how the determination is made as to an enlargement and an addition.

City Planner Ecker said the enlargements or extensions are an absolute right if the regular overlay standards are met. If it is an addition or new construction which would exceed the D4 requirements, it can be done with a Special Land Use Permit.
Mr. Rick Rattner addressed the Commission and said with the ordinance amendment, the 555 Building would be in compliance allowing the owners to move forward to make the changes and renovations to keep it an iconic building.

Mayor Nickita closed the Public Hearing at 10:40 PM.

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

To amend Chapter 126, Zoning, Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district, and Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To approve the rezoning of the following properties:

(a) 555 S. Old Woodward (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;
(b) 411 S. Old Woodward (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and
(c) 225 E. Merrill (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.

City Planner Ecker confirmed for Commissioner Hoff that the ordinance amendment would allow the 555 Building to build an addition as tall as it is only with a Special Land Use Permit approved by the Commission. She added that a new building to the south could be built that meets the D4 standards as of right. The setbacks will basically be the same.

**VOTE:** Yeas, 7  
Nays, 0  
Absent, None
ORDINANCE NO.________

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 03, DOWNTOWN BIRMINGHAM OVERLAY DISTRICT, SECTION 3.04, TO CREATE A NEW D5 ZONE AND TO ESTABLISH DEVELOPMENT STANDARDS FOR THIS DISTRICT.

Article 03 shall be amended as follows:

Section 3.04 Specific Standards

A. Building Height, Overlay: The various elements of building height shall be determined as follows for the various zones designated on the Regulating Plan:

1. D2 Zone (two or three stories):
   a. Eave line for sloped roofs shall be no more than 34 feet.
   b. Peak or ridge of any sloped roof shall be no more than 46 feet as measured to the average grade.
   c. Maximum overall height including the mechanical and other equipment shall be no more than 56 feet.
   d. A third story is permitted if it is used only for residential.
   e. All buildings in D2 Zone containing a third story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
   f. A third story shall continue in a different plane, beginning at the eave line, not greater than 45 degrees measured to the horizontal or setback 10 feet from any building facade.
   g. All buildings constructed in the D2 Zone must have a minimum eave height of 20 feet.

2. D3 Zone (three or four stories):
   a. Eave line for sloped roofs shall be no more than 46 feet.
   b. Peak or ridge of any sloped roof shall be no more than 58 feet as measured to the average grade.
   c. Maximum overall height including the mechanical and other equipment shall be no more than 68 feet.
   d. A fourth story is permitted if it is used only for residential.
   e. All buildings in D3 Zone containing a fourth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
f. The fourth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or setback 10 feet from any building facade.
g. All buildings constructed in a D3 Zone must contain a minimum of 2 stories and must have a minimum eave height of 20 feet.

3. D4 Zone (four or five stories):
   a. Eave line shall be no more than 58 feet.
   b. Peak or ridge of any sloped roof shall be no more than 70 feet as measured to the average grade.
   c. Maximum overall height including mechanical and other equipment shall be no more than 80 feet.
   d. The fifth story is permitted if it is used only for residential.
   e. All buildings containing a fifth story should be designed harmoniously with adjacent structures in terms of mass, scale and proportion, to the best extent possible.
   f. The fifth story shall continue in a different plane, beginning at the eave line, no greater than 45 degrees measured to the horizontal or set back 10 feet from any building facade.
   g. All buildings constructed in the D4 Zone must contain a minimum of 2 stories and must have a minimum eave height of 20 feet.

4. D5 Zone (over 5 stories)
   a. All existing buildings located in the D5 Zone on November 1, 2016 are deemed legal, conforming buildings with regards to setbacks, number of stories and height.
   b. All existing buildings located in this zone district on November 1, 2016 may be extended or enlarged only if the property owner elects to develop the extended or enlarged portion of the building under the provisions of the Downtown Overlay and the extension or enlargement meets all of the requirements of the Downtown Birmingham Overlay District and the D4 Zone.
   c. New buildings constructed or additions to existing buildings in the D5 Zone must meet the requirements of the Downtown Birmingham Overlay District and the D4 Zone, except that the height of any addition and new construction in the D-5 Zone may be over the maximum building height up to, but not exceeding, the height of an existing building in the D-5 to which they are immediately adjacent or abutting if the property owner agrees to the construction of the building under the provisions of a Special Land Use Permit.

4.5 C and P Zones: Downtown Birmingham Overlay District building height shall comply with the underlying height restrictions listed in each two-page layout in Article 2 of the Zoning Ordinance, but may be negotiated by the Planning Board.

5.6. Stories at sidewalk level shall be a minimum of 10 feet in height from finished floor to finished ceiling. The Planning Board may reduce this standard for renovations to existing buildings that do not meet this standard.
6.7. A transition line shall be provided between the first and second stories. The transition shall be detailed to facilitate an awning.

7.8. The maximum width of all dormers per street elevation on buildings may not exceed 33% of the width of the roof plane on the street elevation on which they are located.

B. Building placement. Buildings and their elements shall be placed on lots as follows:

1. Front building facades at the first story shall be located at the frontage line, except the Planning Board may adjust the required front yard to the average front setback of any abutting building.

2. In the absence of a building facade, a screenwall shall be built along the frontage line and aligned with the adjacent building facade. Screenwalls shall be between 2.5 and 3.5 feet in height and made of brick, stone or other masonry material matching the building. Upon approval by the Planning Board, screenwalls may be a continuous, maintained evergreen hedge or metal fencing. Screenwalls may have openings a maximum of 25 feet to allow vehicular and pedestrian access.

3. Side setbacks shall not be required.

4. A minimum of 10 foot rear yard setback shall be provided from the midpoint of the alley, except that the Planning Board may allow this setback to be reduced or eliminated. In the absence of an alley, the rear setback shall be equal to that of an adjacent, preexisting building.

5. First-floor awnings may encroach upon the frontage line and public sidewalk, but must avoid the street trees; provide at least 8 feet of clearance above the sidewalk; and be set back a minimum of 2 feet from the road curb.

6. Upper-floor awnings shall be permitted only on vertically proportioned windows, provided that the awning is only the width of the window, encroaches upon the frontage line no more than 3 feet, and is not used as a backlit sign.

7. Loading docks and service areas shall be permitted only within rear yards. Doors for access to interior loading docks and service areas shall not face a public street.

8. All buildings shall have their principal pedestrian entrance on a frontage line.

ORDAINED this ______ day of __________, 2017 to become effective 7 days after publication.

____________________________
Mark Nickita, Mayor

____________________________
Cheryl Arft, City Clerk
June 22, 2018

Jana Ecker, Planning Director
City of Birmingham (MI)
151 Martin St.
P.O. Box 3001
Birmingham, MI 48012-3001

Dear Jana:

I am following up on our communications in regards to residents at 411 S. Old Woodward known as Birmingham Place and their concerns with fire protection. The proposed project at 469-479 S. Old Woodward is potentially going to be a nine story building, built very close to the South side of Birmingham Place. Their concern is the fire department's ability to fight a fire at Birmingham Place if the proposed project does not allow aerial operations on the South side of the building.

Though we would not deploy our aerial truck for operations on the South side of the building, we do have access from both the East and West sides of the building. Our aerial truck has an extended 100' ladder which would reach approximately six to seven stories based on the distance the aerial is positioned, due to this most high rise fires are fought from the inside of a high rise building. The Birmingham Place has a fire pump to increase pressure to upper floors, fire suppression sprinklers that when activated would extinguish a fire or contain the spread of the fire, standpipes at each floor allowing firefighters to connect hose lines to fight a fire and a fire alarm which would alert residents of the building. The exterior of the building is of a material that is non-combustible and smoke alarms throughout the building. Our officers and firefighters are well trained to aggressively attack a fire in a high rise building. There should be no concerns that the proposed project would hinder fire operations in the Birmingham Place.

I hope this letter will help ease the concerns of our residents as the Planning Board and other stakeholders discuss the proposal and the future of the site. Please let me know if I can assist you in any other way.

Sincerely,

John M. Connaughton, Fire Chief
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City Planner Ecker said they could not, because the properties next door would not have the D5 zoning classification.

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Mr. Rick Rattner addressed the Commission and said with the ordinance amendment, the 555 Building would be in compliance allowing the owners to move forward to make the changes and renovations to keep it an iconic building.
MOTION: Motion by DeWeese, seconded by Boutros:

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City Planner Ecker confirmed for Commissioner Hoff that the ordinance amendment would allow the 555 Building to build an addition as tall as it is only with a Special Land Use Permit approved by the Commission. She added that a new building to the south could be built that meets the D4 standards as of right. The setbacks will basically be the same.

VOTE: Yeas, 7
Nays, 0
Absent, None
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?

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 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, Whipple-Boyce
Absent: Share, Williams
8-221-18 CANCEL PUBLIC HEARING – 469–479 S. OLD WOODWARD – REZONING
City Manager Valentine reported the applicant wishes to go back to Planning Board.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To cancel the public hearing to consider approval of the rezoning of 469–479 S. Old Woodward
from B3/D4 to B3/D5 and to refer the matter back to the Planning Board.

VOTE: Yeas, 7
Nays, 0
Absent, 0

The Commission decided to further discuss during Commissioner Comments:
- How much information needs to be provided to the Commission upon the cancellation of
  a public hearing; and,
- How to supply Commissioners with previously submitted background information for
  agenda items.
REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank)
Request to reconsider application in light of new information to be presented to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein recalled that on June 27, 2018, the Planning Board reviewed a rezoning request for 469 – 479 S. Old Woodward Ave. (former Mountain King and Talmer Bank sites) to rezone from B-3/D-4 to B-3/D-5. This request was made pursuant to Article 7, section 7.02 of the Zoning Code. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward Ave. The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

On August 13, 2018, the applicant submitted a letter requesting that the City postpone the public hearing that was previously set at the City Commission to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, the City Commission cancelled the public hearing and the matter was sent back to the Planning Board for reconsideration.

Therefore, the Board's next step is to enter into a discussion of whether or not the application for 469-479 S. Old Woodward Ave. should receive a re-hearing. If they decide that there is substantial new evidence or new facts under section 7.02 (6) to warrant a re-hearing, the Board will at that point decide on the next steps.

Motion by Mr. Williams
Seconded by Mr. Koseck to include the following correspondence into the official record:
• Letter dated September 11, 2018 from Susan K. Friedlaender, Attorney with Friedlaender, Nykanen, Rogowski, PLC;
• Letter dated September 10, 2018 from B. Geiger, Unit 623, 411 S. Old Woodward Ave;
• Letter dated September 11, 2018 from Timothy J. Currier, Beier Howlett, City Attorney, dealing with the process of rezoning application before the Planning Board.

Motion carried, 7-0.

VOICE VOTE
Yeas: Williams, Koseck, Boyle, Clein, Emerine, Jeffares, Whipple-Boyce
Nays: None
Absent: Share

Mr. Williams pointed out the Planning Board has opinions of opposing counsel dealing with the issue as to whether the D-5 Ordinance can in fact apply to the two properties in question (former Mountain King and Talmer Bank sites). That is a legal question for the City Attorney to decide.
The second issue is whether the two parcels are or are not in the Parking Assessment District. It is important to know from the City’s standpoint why this property is or is not in the Parking Assessment District based on the records of the City at the time the Parking Assessment District was created. Further, if they are in the Parking Assessment District, then the analogies to the other five-story buildings in the City in Downtown which are in the Parking Assessment District and don't have to provide on-site parking is relevant. If they are not in the Parking Assessment District and the applicant is required to provide on-site parking, then that is a different conclusion. He wants the opinion of the City Attorney before proceeding because if the conclusion is that the properties are not eligible for D-5 zoning then having a hearing is a waste of time.

Mr. Williams further noted that Ms. Friedlaender’s letter questions what the City Commission intended by approving the D-5 category. He would like the opinion of the City Attorney on that narrow question and whether these two parcels are eligible to be rezoned into the D-5 category based on all the evidence to date.

Chairman Clein thought the question before the Board is whether there will be a rehearing; or since they are all present, whether they feel they have enough information to have that conversation tonight on the very narrow basis of whether there is new information that wasn’t brought up at the original hearing.

Mr. Rick Rattner, Attorney, 380 N. Old Woodward Ave., was present to represent the applicant. They believe this site not only is eligible for D-5 Zoning, but they also think that they have new information. Further, they accept that the site is not in the Parking Assessment District. They feel they have enough information to go forward at this time and also believe their position relative to the eligibility and the new information is solid.

Ms. Ecker recommended that the Board should stick to the first question of whether there is new information that wasn’t considered before that is brought forward now and thus warrant a re-hearing.

Mr. Williams pointed out that the CIS contained a reference that this particular property is in the Parking Assessment District. So, the information from the City that was provided at the time of the hearing was incorrect. Therefore, the record needs to be corrected. He didn’t think the Board should start down that road until they receive Mr. Currier's opinion.

Mr. Rattner indicated they have no objection, if that is what the Board decides.

Chairman Clein opened up public comment at 8:15 p.m.

Ms. Susan Friedlaender, Attorney representing Birmingham Place Residential Condominium Assoc., corrected that the applicant actually mentioned during the hearing that they are not in the Parking Assessment District and that is one reason they were asking for the rezoning, and one reason why they needed to be rezoned because they cannot meet the needs of a hotel in four stories.

Mr. Michael Schwartz, 411 S. Old Woodward Ave., Birmingham Place asked the Board to consider once they have a legal opinion, if it is that the process should move forward. Possibly decide that in October and then have the hearing for the project itself at future meeting.

Motion by Mr. Williams
Seconded by Ms. Whipple-Boyce to postpone consideration of the public hearing which was scheduled for tonight to October 10, 2018 with the condition that the Board receive
the legal opinion of counsel to the City of Birmingham submitted to the Planning Board in writing as to whether the proposed site (former Mountain King and Talmer Bank) is eligible to be rezoned to the D-5 category.

There were no public comments on the motion at 8:15 p.m.

**Motion carried, 7-0.**

**VOICE VOTE**
Yeas: Williams, Whipple-Boyce, Boyle, Clein, Emerine, Jeffares, Koseck
Nays: None
Absent: Share
REZONING APPLICATION

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank)
Request to reconsider application in light of new information to be presented to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building

Chairman Clein recalled that on June 27, 2018, the Planning Board reviewed a rezoning request for 469 – 479 S. Old Woodward Ave. (former Mountain King and Talmer Bank sites) to rezone from B-3/D-4 to B-3/D-5. After much discussion, the Planning Board voted to recommend denial of the rezoning request to the City Commission for 469 – 479 S. Old Woodward Ave. The City Commission then set a public hearing date for August 13, 2018 to review the rezoning request.

Prior to the City Commission taking any action the applicant submitted a letter requesting that the City postpone the public hearing that was previously set at the City Commission to allow the applicant to present new information to the Planning Board for their review and consideration. Accordingly, on August 13 the City Commission cancelled the public hearing and sent the matter back to the Planning Board for reconsideration.

Section 7.02(6) of the Zoning Ordinance allows a rehearing on a rezoning request where there is a substantial change in the evidence that was previously presented even after the City Commission has issued a denial of the request. In this case, the City Commission did not hear the request, and thus did not issue an approval or denial. They did however send the matter back to the Planning Board to determine if there has been a substantial change in the evidence, and if so, to conduct a rehearing on the rezoning request previously considered.

On September 12, the Planning Board decided to postpone consideration. They were looking for additional information from the City Attorney as to 1) whether the applicant has the right to apply for rezoning under D-5; and 2) some of the facts behind the reasons why this property may or may not have been put in the PAD.

As to why this property may or may not have been put in the PAD, the City Attorney has written a letter stating there is no record from the 1960s. With regard to the legal question as to whether or not the applicant has the right to apply for rezoning to the D-5 category, the City Attorney responded they do have the legal right to apply for rezoning to this zoning classification.

Chairman Clein stated that the first thing the Board will do this evening is to discuss whether the new information being presented warrants a rehearing.

Mr. Rick Rattner, Attorney, 380 N. Old Woodward Ave., was present to represent the applicant. In a PowerPoint presentation he outlined the substantial change in the evidence that was previously presented to the Planning Board on June 27, 2018 and requested a rehearing of the rezoning request based on the following:

- There was a mistake in the CIS that was included in the packet that indicated this property is in the PAD. This property is not.
- The ordinance states pursuant to 7.02 (B) (5) (a-e) that the Planning Board should make findings of fact. There was no presentation of a finding of fact as it was presented to the City Commission.
The D-5 Zone was enacted and at that time, three buildings were rezoned to D5, but the ordinance itself is clear and unambiguous. It provides language that indicates there are going to be different buildings put into the D-5 Zone.

The fact that the property sits outside of the PAD should be looked at because of the potential five or six types of structures that could be built under the D-4 Ordinance. That is what is new to their rezoning argument. If a mixed-use building is constructed in D-4, it must have 288 parking spaces on-site. That requires their building to be accompanied by nine underground parking levels. That is a major change in the way the Planning Board might look at this for rezoning.

Mr. Rattner hoped the Board will take this seriously and give them a chance for a rehearing based on all of this context, so that a good and fair decision can be made.

Mr. Williams received confirmation from Ms. Ecker that there are no other commercial properties which are currently zoned D-4 and allow a mix of commercial and residential uses that are not located in the PAD.

Responding to Mr. Boyle, Ms. Ecker gave a brief history of the PAD and why it was created. She named the Brookside Terrace and the old school district building as being properties that bought into the PAD after it was formed. They both abut the PAD. The City Engineer and the Finance Director figure out what the buy-in amount is and then it goes to the City Commission who makes the determination as to whether a property will be added or not.

Chairman Clein opened discussion from the public at 8:07 p.m.

Ms. Susan Friedlander, Attorney representing Birmingham Place Residential Condominium Assoc., noted that at the September 12 hearing she talked about the intent of the D-5 Ordinance and whether it was intended for rezoning for a multitude of properties that don't fit the non-conforming status. The history of the ordinance cannot be clearer. It was drafted because the 555 Building had space on its site.

Another issue is whether there has been new evidence submitted that justifies a rehearing. The only thing that was raised is that there was a mistake in the CIS report that said 469-479 S. Old Woodward Ave. is in the PAD. However, the CIS was specifically put aside at the hearing because the Planning Board was looking at rezoning and not the site plan or the CIS. It is on the record, on the video and in the minutes that the applicant said he can't build anything else because the property is not in the PAD.

Ms. Friedlander stated that in the example of what can be built, it is erroneous to say that parking must be on site if you are not in the PAD. The Zoning Ordinance clearly allows many of the mixed uses that are allowed in the D-4 District other than residential to have parking 100 ft. away. Ms. Friedlander said she is trying to wrap her head around the fact that because they are not in the PAD they want to have a use with an even greater parking need than they might be able to build under D-4. So, they haven't presented any new information.

The ordinance does not say that the Planning Board has the authority to rehear an application that it has denied when the City Commission has not heard it and denied it. It says the same application shall not be brought back within the same year unless there has been substantial change in conditions which the applicant can present to the Planning Board upon reapplication. That is not what happened here.
Ms. Friedlander stated that the City Commission speaks through its resolutions. The Commission's resolution says to cancel the public hearing to consider approval of the rezoning of 469-479 S. Old Woodward Ave. from B-3/D-4 to B-3/D-5 and refer the matter back to the Planning Board. It doesn't say to refer the matter back to the Planning for a rehearing and reconsideration of this rezoning request.

Mr. Clinton Ballard, 388 Greenwood, said he cares very much how this City is developed. He thinks this property should be zoned to D5 the same as the adjacent properties.

**Motion by Mr. Boyle**

**Seconded by Mr. Share** to receive and file a letter from Honigman Miller Schwartz and Cohn, LLP dated October 10, 2018 that says they represent the Condominiums at Birmingham Place Association.

Motion carried, 7-0.

**VOICE VOTE**

Yeas: Boyle, Share, Clein, Jeffares, Koseck, Whipple-Boyce, Williams

Nays: None

Absent: Ramin

After a brief evacuation of the building because the fire alarm sounded, the meeting reconvened.

In response to Mr. Williams, Ms. Ecker said a letter was received from the City Attorney prior to the September 12 meeting indicating what the process would be and that it is the Board's responsibility to determine if there is new information; and to make a decision on that first; and then if the determination is made there is new information, to conduct a rehearing.

Several Board members indicated they were aware that this property was not in the PAD but several others were not. Chairman Clein did not believe it was ever discussed.

Ms. Whipple-Boyce said in all of her time on this board she can never remember seeing a rezoning application followed by a site plan for the same property on the same night. The applicant may not have touched on not being in the PAD in the first part of their presentation because they expected to be presenting that in the second part of their presentation. She finds that to be new evidence because the Board didn't give the applicant the opportunity to present their Site Plan. Therefore she leans toward voting in favor of the applicant tonight.

Mr. Koseck said he always wants to look at a proposed design along with a rezoning application. It is the applicant's job to make their case and he doesn't think there has been a change of facts to the degree that would make him have a different opinion.

Chairman Clein noted he is hard pressed to say that the news that the property is not in the PAD is a substantial change in facts, evidence, or condition. Therefore, he cannot support a rehearing.

Mr. Williams said his understanding is that the Board didn't go beyond the three properties which were non-conforming because no other properties were before them. It is clear to him that the written record of the CIS was incorrect. The record should be clear that the property is not within the PAD. Also, he doesn't think the Planning Board complied with the ordinance in its
findings. He added that it would be inappropriate to go forward with a rehearing tonight because there is a counsel of record who can't be present who said he represents a certain party that is not here. Everybody should be given an opportunity to be heard.

Mr. Share indicated his strong recollection is that when the Planning Board adopted the D-5 Zoning it was not exclusive to the three properties. It was open to other places but it was inappropriate for the Board to rezone a property without them being there to request it. Based on what he saw in the minutes and what he has heard from his colleagues, there has not been a substantial change in the evidence that would justify a rehearing.

**Motion by Mr. Share**  
Seconded by Mr. Koseck to RECOMMEND DENIAL of the applicant’s request for a rehearing the property at 469-479 S. Old Woodward Ave.

There were no public comments related to the motion at 8:55 p.m.

**Motion failed, 3-4.**

**ROLLCALL VOTE**  
Yeas: Share, Koseck, Clein  
Nays: Boyle, Jeffares, Whipple-Boyce, Williams  
Absent: Ramin

**Motion by Ms. Whipple-Boyce** that the Planning Board finds that there have been substantial changes in the evidence previously presented at the rezoning hearing on June 27, 2018, and thus grants a rehearing of the rezoning request for 469-479 S. Old Woodward Ave.

**Motion carried, 4-3.**

**ROLLCALL VOTE**  
Yeas: Jeffares, Whipple-Boyce, Boyle, Williams  
Nays: Koseck, Share, Clein  
Absent: Ramin

At 9 p.m. there were no comments from the audience.

**Motion by Mr. Williams**  
Seconded by Mr. Boyle that the re-hearing that has been approved by the Planning Board be held on Wednesday, November 14, 2018.

There was no discussion from members of the public at 9:05 p.m.

**Motion carried, 7-0.**

**VOICE VOTE**  
Yeas: Williams, Boyle, Clein, Jeffares, Koseck, Share, Whipple-Boyce  
Nays: None  
Absent: Ramin
E. **REZONING APPLICATION**

1. **469-479 S. Old Woodward Ave.** (former Mountain King and Talmer Bank)

**Rehearing of application to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed-use building** (postponed from October 10, 2018)

Mr. Rick Rattner, 380 N. Old Woodward Ave., said that after many hours of work they thought it might be helpful if they were given a chance to talk to the Birmingham Place neighbors and see if they could come to some conclusion about how they might accommodate each other. Therefore, they ask that the application be postponed to a date certain.

Mr. Clein announced that communication between parties is always something this board has strived for. Therefore, he would be willing to wait in order to allow that to happen.

Mr. Share assured that the Planning Board would not simply rubber stamp the agreement that was made, should they make one.

Mr. Koseck added that through communication there is always a better result, better planning, and happier people. So he was in favor of the request.

At 7:35 p.m. the Chairman asked for public discussion.

Ms. Susan Friedlander, who represents Birmingham Place Residential Condominium Assoc., said this is the first they are hearing about the postponement request. Her clients are upset about it because this is their fifth time in front of the Planning Board. It has gotten really expensive for them as well as time consuming. Further, they lose people every time their hearing is put off. Therefore, they want to just go ahead this evening. Additionally, she questioned why they were not notified of the postponement before tonight’s meeting.

Mr. Jason Able spoke on behalf of the Condominiums of Birmingham Place Master Assoc. He echoed Ms. Friedlander’s words. Every time this appeal is postponed less people show up.

Mr. Larry Rockind, resident of Birmingham Place, said at a minimum the applicant should be required to give some indication of what they have in mind. Also they should talk about paying the costs that the residents have incurred as a result of the delays.

Mr. Mickey Schwartz, resident of Birmingham Place, noted that in other developments like the Frank St. project the developer met with the neighborhood before submitting anything to the Planning Dept., which is the appropriate way of doing something. This has been going along for a long time and he doesn't see any grounds for further postponement. So, he asked the Board not to extend the hearing. If the hearing is extended he asked that it be for a period of six months in order to accommodate the residents who will be away for the winter.

Mr. Duraid Markus, one of the principals of the ownership of the two buildings, said he understands the concerns. He asked for a chance to show the residents of Birmingham Place
what the development would look like at five and nine stories and what he can or cannot accommodate them with. He wants to do a lot to appease their fears. It came to this late juncture because they finally finalized the plans.

Discussion clarified that tonight the Board is dealing with massing and the intensity of use.

Ms. Whipple-Boyce asked Mr. Markus if anything he is planning to discuss with the residents of Birmingham Place has to do with him not rezoning the property. Mr. Markus responded that if he can show the residents a rezoning plan that they are happy with maybe there will be less opposition.

Mr. Share explained that the Board is well aware of the intensity of the feelings of the residents of Birmingham Place. Their letters are all part of the record. Therefore, no matter how many fewer people show up for the hearing it won't influence the Board's decision.

Mr. Koseck hoped this would be a win-win and the residents would see something positive in what is being proposed by the applicant.

Mr. Jeffares said the Board has seen where something received complete opposition and they worked on it and came up with a great outcome. That is what he would like to strive for and have everybody be happy. Maybe it will work or not work, but why not give it a shot.

Mr. Emerine thought it is important that people get together and discuss this. He was in favor of postponement. Mr. Boyle said he is of the same mind. From his experience on this Board, the more conversation there is outside of this room, the better understanding there is between parties. Chairman Clein was in general agreement with those feelings.

Mr. Markus indicated that December 12th would be fine to come back.

**Motion by Mr. Boyle**

**Seconded by Mr. Koseck** that in light of the statements from the applicant that we postpone this rezoning application for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) to the Planning Board meeting scheduled for December 12, 2018.

There were two further comments from the public on the motion at 7:58 p.m.

Mr. Mickey Schwartz, resident of Birmingham Place, said tonight's hearing is about rezoning. It seemed to him they have digressed into talking about the specifics of the project that have nothing to do with rezoning. He heard Ms. Whipple-Boyce ask Mr. Markus whether or not he would request a rezoning change. However, he didn't hear him answer her question, and gave a non-responsive answer. If this is really about the rezoning then maybe they should talk about that tonight. They can always talk about the specifics of the project if the Board agrees to the rezoning request.

Ms. Tony Schwartz, resident of Birmingham Place, said this is a rezoning and why discuss a project that may not even happen if it is not approved. It is hard for her to believe that when the developer originally bought the property he did not have the intention of building to ten stories.
Motion carried, 7-0.

VOICE VOTE
Yeas: Boyle, Koseck, Clein, Jeffares, Emerine, Share, Whipple-Boyce
Nays: None
Absent: Williams
E. REZONING REQUEST

1. 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) Request to reconsider application in light of new information to be presented to rezone from B-3 and D-4 to B-3 and D-5 to allow a nine-story mixed use building (postponed from November 14, 2018, and the applicant has asked for additional postponement)

Motion by Mr. Williams
Seconded by Ms. Whipple-Boyce that the rehearing of the rezoning request for 469-479 S. Old Woodward Ave. (former Mountain King and Talmer Bank) be postponed to the regular Planning Board meeting of January 23, 2019.

Motion carried, 7-0.

There were no comments from members of the public at 7:35 p.m.

VOICE VOTE
Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Koseck, Share
Nays: None
Absent: None

Mr. Williams asked that upon republishing this material, staff note any new information on the first page.
E. REZONING REQUEST

1. 469 – 479 S. Old Woodward (former Mountain King & Talmer Bank) – Request to reconsider application in light of new information to be presented to rezone from B3 and D4 to B3 and D5 to allow a nine story mixed use building (Postponed from December 12, 2018).

Ms. Ecker identified the subject site and reviewed the history of the rezoning requests over the past year. It was noted that the building immediately to the north of 469-479 S. Old Woodward is approximately 115 feet tall, and that the tower to the south of 469-479 S. Old Woodward, attached to the 555 building, is approximately 80 feet tall. The current zoning would allow for an approximately 80 feet tall building at 469-479 S. Old Woodward.

The 2016 Plan would only allow a five-story building at the 469-479 S. Old Woodward site. D-5 zoning allows a building to go up to, but not exceed, the height of an adjacent building. D-4 zoning allows a building to have five stories if the top floor is residential. Planning Director Ecker did not believe there are any other properties zoned D-4 in the Downtown Overlay which are not also in the Parking Assessment District (PAD).

Planning Director Ecker reviewed the requirements for rezoning contained in the Zoning Ordinance and explained the findings related to these as outlined in the staff report, along with the applicant’s responses as submitted. After the review was complete, Ms. Ecker noted that based on the Planning Department’s 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 applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.”

Mr. Rick Rattner, Attorney, was present to represent the applicant. On behalf of the applicant Mr. Rattner and architect Chris Long gave a presentation first outlining the applicant’s adherence to the Zoning Ordinance requirements of Article 7, section 7.02(B)(5), similar to the Planning Department’s findings of positive rezoning qualifications of the property, and secondly showing a massing of the proposed building, zoned as D-5, at the 469-479 S. Old Woodward site.

Mr. Rattner began by saying he could not think of another situation in Birmingham where two buildings are zoned in the same way with a third building, in the middle, zoned differently. Mr. Rattner continued:

- The 469-479 S. Old Woodward site essentially creates a gap in the streetscape since it is currently one or two stories and cannot be rebuilt.
- Based on intended height, the applicant would return to the Board for a Special Land Use Permit (SLUP) which would also take into account the neighbors’ preferences.
- D-5 zoning would allow for on-site parking and the same uses as the surrounding buildings.
Mr. Longe described the 469-479 S. Old Woodward site. If the current buildings were maintained and reused for a non-conforming use the applicant would need to provide parking for 55 cars since the site is outside of the PAD. His presentation illustrated and talked through some other D-4 zoned options that would be similarly untenable for the site.

The Board was then presented with two massing models to demonstrate what the proposed building would look like if the City Commission were to grant the change in zoning to D-5.

Mr. Longe clarified that the proposed building could be stepped back from Birmingham Place to provide more open space between the two buildings if the change in zoning to D-5 is granted. He added that this idea came about as part of the ongoing discussion with the tenants of Birmingham Place.

Mr. Longe confirmed for Mr. Emerine that the top block represented on the proposed building would be a mechanical block, not an additional story to the building.

Chairperson Clein thanked Mr. Longe for the massing diagrams, stating they were helpful.

Mr. Rattner told Mr. Share that the applicant is coming before the Board instead of the Board of Zoning Appeals because the applicant is attempting to do a development under the current zoning ordinances of the City. Mr. Rattner added that it is unusual and unfair to maintain the site at D-4 when both buildings adjacent to the site are zoned at D-5.

Doraid Markus, one of the applicants, opined that a five-story hotel would not be as becoming of Birmingham as a nine-story hotel. He specified that in order to create an uncrowded first floor and mezzanine level and a sufficient number of rooms, the building would need the extra height.

Susan Friedlander, Attorney representing Birmingham Place Residential Condominium Association, explained that the evening’s discussion was supposed to be a rehearing since the site had originally been described incorrectly as being in the PAD. Given this, she wondered why the applicant had yet to explain this evening how the PAD was such a significant issue that the Board should consider voting differently than it had in the past. She added:

- The applicant’s assertion that they could not park onsite with a five-story building, but could park onsite with a nine-story building -- even though a nine-story building would require an increase of parking spaces -- did not compute.
- Other hotels being built in the PAD are putting two levels of parking underground.
- The applicant said they would be able to use approximately 40 spaces from the 555 building if the site was built to nine stories. Ms. Friedlander questioned why this arrangement would not work with a five-story building as well.
- During tonight’s presentation the applicant did not mention the various parking sharing arrangements available to the applicant under the ordinance. Such sharing arrangements could significantly decrease the burden of providing parking. She said addressing this issue is more of a parking variance matter than an ordinance matter.
- According to Planning Director Ecker’s report, there is no consensus on whether the City should be raising building heights in this area. If the Board and Commission determined that these three high-value buildings should have their heights raised without consulting the Master Plan for the area, then the City was not zoning according to a Plan. Michigan law requires that every City zones according to its Plan(s).
Changing building heights in the Downtown Overlay district merits a thorough community engagement process, similar to the process of changing building heights in the Triangle District. Insufficient consultation of the community on this matter could result in the impression that this zoning change was insufficiently considered and vetted. She also said the February 2017 Commission discussion on the issue reflected similar concerns from the Commissioners regarding the lack of community engagement.

A number of other properties in Birmingham could also request changes in zoning based on being next to D-5 buildings. The problem is whether these changes are being made according to the City’s 2016 and Master Plans.

The City specified in its 2016 Plan that it wanted to maintain its small town character. According to Ms. Friedlander, small towns do not usually go above three or four story buildings. While Birmingham has gone back and forth on whether it would allow taller buildings, drastic changes to building heights should be made according to the City’s Plans.

The discussion of changing this site’s zoning should occur under the auspices of the upcoming Master Planning process. Otherwise, this is similar to spot-zoning, since no land use patterns changed for the site.

David Nykanen, Attorney, said he represents some of the residential owners in the Birmingham Place Condominium Association. Noting that a hotel would require the least amount of parking on this site, Mr. Nykanen asserted that the applicant chose not to present the parking implications of that option in the current discussion so as to make the parking requirements seem more onerous than they are. He continued:

Two other sites in Birmingham are building five story hotels, demonstrating that parking a five story hotel within the City is not excessively burdensome.

In addition to the potential parking agreement with the 555 building, other options are available to the applicant for parking a five story hotel on this site.

The applicant’s statements this evening demonstrated that this rezoning request is necessary for the preservation and enjoyment of the rights of usage commonly associated with the property. Mr. Abel described ‘necessary’ as the critical word, since it is not necessary to develop a nine story hotel on this property. A five story building could be developed on this site with many different uses. The problem is that the applicant is requesting a change in the zoning to access a use that is not permitted in the five story setting. While Mr. Abel acknowledged
this to be an understandable preference on the part of the applicant, he asserted that it would not be a 'necessary' change. Additionally, the applicant's contention that they would make more money with a taller building or would not be able to provide enough parking with a shorter building could be used by any developer in any zoning environment, making their argument so broad as to fall outside the need for a specific and 'necessary' zoning change.

- Regarding 7.02(B)(2)(b)(ii), the zoning of D-4 is not inappropriate for the current land use. The issue is, rather, that the applicant would like to build a nine story hotel on a parcel zoned for a five story use.
- The applicant presented arguments adjacent to the Zoning Ordinance rather than addressing the Zoning Ordinance.
- Regarding 7.02(B)(2)(b)(iii), Mr. Abel said the applicant did not address the detrimental impact changing the zoning of the site to D-5 would have on the neighbors.

Carole Kozlow stated that her family has always loved Birmingham’s smaller town nature. Recalling Mr. Markus making a statement similar to 'if the City does not want large buildings, it never should have allowed the first one to be built' during the June 2018 conversation on the issue, Ms. Kozlow said she agreed. Noting that Birmingham has since changed course on large buildings, she asked that the City continue to preserve its character, rather than having to fix the problem after the fact.

Karl Sachs said he has lived in Birmingham for about 25 years and said he had been asked to convey some of his neighbors’ feelings on the potential rezoning. He continued that many of their points had already been covered by others but that he wanted to mention his neighbor Mike Humphrey’s written statement that the potential rezoning does not adhere to the Master Plan. Mr. Sachs said that this hotel would make privacy nearly impossible for the residents of Birmingham Place living on the side adjacent to the proposed site.

Michele Prentiss, Property Manager of Birmingham Place, presented the Board with a written reply to the applicant’s summary statements as included in the Board’s agenda packet for the evening. She then gave a copy to Chairperson Clein.

Chairperson Clein asked if there was a motion to receive and file the letter.

Mr. Williams asked for a copy of the letter. Chairperson Clein said he would pass along his copy for Mr. Williams to read. Mr. Williams said that without a copy for each Board member to read, he would not make a motion to receive and file the letter.

Chairperson Clein said he would acknowledge the letter, and upon receipt of the letter as an email to Planning Director Ecker the letter would be included in agenda material on the matter moving forward.

Seeing no further comments from the public, Chairperson Clein brought the discussion back to the Board. Chairperson Clein said it was time for the Board to make a decision.

Mr. Share asked if the letter had any new information, saying he did not want to make a decision if there was information the Board had not yet heard.
Ms. Friedlander told the Board that all the letter’s points had been covered in the evening’s discussion.

Mr. Share spoke first, saying that this is an unusual zoning request since it only impacts the height of the building allowed. He continued that when D-5 was implemented, the Board did not preclude other sites from seeking to be zoned D-5 in the future. From a streetscape perspective, he saw no significant difference between a five story and nine story building on the site. The proposed change does not seem ‘necessary’ as defined by 7.02(B)(2)(b)(i). It would behoove the Board to look at the zoning of the entire block from Hazel to Brown. He would not be voting in favor of rezoning unless his colleagues persuade him otherwise.

Mr. Koseck said none of the new information persuasively explained why the City Commission should approve the rezoning. He noted the 2016 Plan conclusively zoned the building at D-4. Cities tend to have buildings of varying heights, and the variety is partially what makes cities interesting, so the streetscape argument was not particularly compelling. Assuming the site was purchased with awareness of the D-4 zoning, Mr. Koseck suggested that this is not so much a zoning issue as a parking issue. He recommended the applicant apply to join the PAD or enter into some other beneficial parking arrangement. Addressing Mr. Markus’ assertion that certain hotel designs are not becoming of Birmingham, Mr. Koseck said his firm is currently building a hotel in Ann Arbor with nine-foot floor to ceiling heights, that he is confident that the result will be sufficiently upscale, and that something similar could be done in the applicant’s case. Lastly, Mr. Koseck noted the community’s consistent concerns that the rezoning would be detrimental to the neighbors. He said no new information could be provided that would change his thinking on the matter.

Mr. Williams pointed out that the City Attorney found the site eligible for D-5 zoning. He said Ms. Friedlander could pursue the matter further with the City Attorney, but that the Board is bound by the City Attorney’s opinion. The D-4 zoning for this site does not allow reasonable enjoyment of the property since all other D-4 sites in Birmingham have access to the PAD. Because this currently makes the property non-competitive, Mr. Williams said he would be in favor of rezoning.

Mr. Emerine noted the persuasive impact of the City Attorney’s opinion that this site is eligible for D-5 zoning. Adding that the developer would need to acquire a SLUP should the rezoning move forward, Mr. Emerine stated he was comfortable with the rezoning at this time.

Mr. Jeffares recalled the Board had considered rezoning the surrounding area but had decided they wanted to keep D-5 to this smaller area at the time. He expressed an equivocal opinion on the idea of zoning a building according to its neighbor’s zoning, but said that a building zoned differently between two buildings of the same zone seemed significant enough to change.

Ms. Whipple-Boyce addressed Ms. Friedlander’s contention that D-5 was in any way surreptitiously done, saying that the Board and the City Commission spent many public meetings discussing the issue in depth. Ms. Whipple-Boyce added that she affirmed the City Attorney’s findings regarding the application, and that she believed the applicant proved their case.

Chairperson Clein said he was against the rezoning at this time. He continued that the origins of D-5 zoning have no bearing on the question before the Board this evening, or if they do it is a legal question not up to the Board’s interpretation. He clarified that the Board’s directive was to
determine whether this parcel and application met the ordinance requirements for rezoning. Arguments about adjacencies were also not relevant. The applicant did not meet the burden of proof. Building heights across the downtown should not be changed without a downtown Master Plan. While Chairperson Clein said he would likely recommend the building be permitted a height increase within a planning process, neither the City’s Master or 2016 plans allow the flexibility to add four stories to this building outside of the planning process. He noted that there were a number of D-4 uses not presented that would be appropriate for this parcel. In conclusion Chairperson Clein said he was firmly in opposition to rezoning at this time, but said he would entertain any other Board member’s replies.

Mr. Jeffares said the owners of the other D-5 parcels applied for rezoning based on finances but that ironically tonight’s applicant was being chastised for doing the same thing.

Chairperson Clein begged to differ and clarified for the record that the owners of the other D-5 parcels were having to get a number of different variances for every change they wanted to make on their properties.

Mr. Jeffares asserted the other D-5 parcel owners had indeed brought up financing in their rezoning application.

Chairperson Clein disagreed, saying that D-5 zoning arose out of a directive from the City Commission asking the Board to find a way to bring the currently D-5 parcels in question into compliance.

**Motion by Mr. Williams**
*Seconded by Mr. Jeffares* that based on a review of the rezoning request by the applicant and the supporting documentation submitted by the applicant, a review of the City’s current Master Plan and the City’s current 2016 Plan, and development trends in the area, and in compliance with 7.02(B)(5)(a) - 7.02(B)(5)(e), the Planning Board adopts the findings of fact in the staff report dated November 8, 2018, and recommends approval to the City Commission for the rezoning of 469 – 479 S. Old Woodward from D-4 to D-5 in the downtown overlay.

**Motion carried, 4-3.**

ROLL CALL VOTE
Yea: Whipple-Boyce, Emerine, Jeffares, Williams
Nay: Clein, Koseck, Share
Absent: Ramin

Chairperson Clein explained that this is a recommendation to the City Commission. He explained the Commission will then take this recommendation and all attendant information, hold another public hearing of the applicant’s request and the community’s perspective, and make their determination. Chairperson Clein thanked the audience for voicing their opinions during the discussion.
VIA HAND DELIVERY

Ms. Jana Ecker, Director
City of Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 4694 79 S. Old Woodward Avenue (the “Proposed Development”)
Request to Rezone from B3/D4 to B3/D5 Filed by Christopher Long
on Behalf of Birmingham Tower Partners, LLC (the “Applicant”) Hearing Scheduled for Wednesday, May 23, 2018 (the “Hearing”)

Dear Ms. Ecker:

I request that the Hearing be rescheduled for two (2) reasons. First, I received notice of the Hearing by mail on May 8, 2018 and visited the City Planning Office on Friday, May 11, 2018 to review the application. As of that date, the Applicant had not filed the statements required under subsection 7.02 B.2.b of the Rezoning Amendments (i.e., explanations of why rezoning is necessary, of why the existing zoning classification is no longer appropriate, and of why the proposed rezoning will not be detrimental to the surrounding properties). I suggest that failure to timely file those explanations caused the notice of the Hearing not to meet the fifteen (15) day advance notification required under subsection 7.02 B.4.a.i of the Rezoning Amendments.

Second, as a Birmingham resident living adjacent to the Proposed Development, I would appreciate time to review the very extensive documents filed by the Applicant. I suggest that public input is critical on a project that seeks to permission to erect the first building greater than five (5) stories to be built in downtown Birmingham in decades, which could well set a precedent for continuing development of high rise structures in our beautiful community. Substantial additional time will be required for myself and the many other Birmingham residents who are affected by the Proposed Development to adequately review and to respond to these filings.

Please contact me at the above address, via email to mickeyschwartz@gmail.com, or at telephone numbers (248) 229-9989 or (248) 593-3155 with any questions or further requirements and in any event with the new hearing date. Thank you for your time and attention.

Yours very truly,

Michael Schwartz, MD

XC: Applicant (via email to dsmarkus@yahoo.com)
Planning Board Members (via separate emails)
Eric and Janis Sterling  
411 S. Old Woodward Avenue, Unit 615  
Birmingham, MI 48009  

June 7, 2018

Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, we have serious safety and other concerns, including:
1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. We also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Eric Sterling

Janis Sterling
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

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Yours very truly,

[Signature]

Nikole Fine
Unit #521
June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Stuart Glasier
June 8, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Gary Asker
City of Perry

Joe Perry
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

June 8, 2018

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Birmingham Planning Board
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Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Bev Ross
Edwin B. and Felicia P. Shaw  
411 South Old Woodward Ave. Unit #910  
Birmingham, Michigan 48009  

June 12 2018  

Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009  

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

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In addition, we have serious safety and other concerns, including:
1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. We also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

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5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Edwin B. Shaw
Felicia P. Shaw
Fwd: 469-479 S. Old Woodward Ave. (the "Proposed Project") Objection
1 message

Stuart Jeffares <stuartjeffares@gmail.com>
To: Jana Ecker <jecker@bhamgov.org>

Wed, Jun 13, 2018 at 9:52 PM

---------- Forwarded message ---------
From: Alice Lezotte <zareyskid@gmail.com>
Date: Sun, Jun 10, 2018, 12:53 PM
Subject: Fwd: 469-479 S. Old Woodward Ave. (the "Proposed Project") Objection
To: <stuartjeffares@gmail.com>

Sent from my iPad

Begin forwarded message:

From: Alice Lezotte <zareyskid@gmail.com>
Date: June 10, 2018 at 12:47:33 PM EDT
Subject: 469-479 S. Old Woodward Ave. (the "Proposed Project") Objection

411 S. Old Woodward. #511
Birmingham, MI. 48000
June 8, 2018
Mr. Jeffares, I am a city of Birmingham constituent. I would like to express my disapproval and opposition to the request for rezoning and to the Proposed Project itself.

The Birmingham city code has many statements to keep in mind when considering a new city project (I paraphrase):

1. Regulation and control of a project should promote the public health, safety, and general welfare of the city
2. Provide orderly growth and HARMONIOUS development
3. Secure adequate traffic circulation and "lessen" congestion on our streets
4. Ensure adequate provisions for water drainage, sanitary sewer facilities, and other health requirements
5. Achieve the maximum utility and "livability" of a project
6. Natural features must be preserved and changes should "add" to the attractiveness and "value" of the neighborhood
7. Any Proposed project should take into consideration as to the impact on adequate supply of light and air to adjacent properties and the capacity of essential public facilities, such as police and fire protection, drainage structures, municipal water, sanitary sewers, and refuse disposal

Wise decisions have been made in the past (e.g., Forefront, Bristol, etc.) in accordance with The city's 2016 Master Plan and our Building Codes.

https://mail.google.com/mail/u/0/?ui=2&ik=4033b3ab11&jsver=s35Hn3d2NPsn&cbl=gmail_fe_180614.14_p4&view=pt&search=inbox&th=163fbc828a9422&siml=163fbc828a9422&mb=1
It is my hope similar consideration will prevail and this proposal will be denied.

Maple Road and Woodward on the south east corner would be an ideal location for this proposed project.

We want to keep our "Walkable" community as safe and pleasant as possible.

Best regards,

Alice Lezotte
Fwd: Proposal for a 9 story building on S. Old Woodward, Birmingham
1 message

Stuart Jeffares <stuartjeffares@gmail.com>
To: Jana Ecker <jecker@bhamgov.org>

---------- Forwarded message ----------
From: Julie Wolfe <julie@moosejaw.com>
Date: Sun, Jun 10, 2018, 1:08 PM
Subject: Proposal for a 9 story building on S. Old Woodward, Birmingham
To: Julie Wolfe <julie@moosejaw.com>

From: Julie Wolfe

411 S. Old Woodward #1021
Birmingham, MI 48009

6/10/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009
Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

I believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept I firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. I respectfully ask that you stay the course that has been followed and has been successful for so long. More construction to this area is very disturbing and frustrating. The city has been torn up enough.

Thank you.

Julie Wolfe
411 S. Old Woodward, Suite 1012  
Birmingham, MI 48009  

June 14, 2018  

Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009  

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)  

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Yours very truly,

Catherine Brozek
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Yours very truly,

Carol Kozlow

Carol Kozlow
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009  
  
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Yours very truly,

[Signature]

Brian Rock

Birmingham Place
Unit #10
June 15, 2018

Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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[Signature]

Erin Mellett
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Vandad Raofi

and

Negar Farhi
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

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Yours very truly,

Valerie Soley
411 S. Old Woodward Ave
Unit 508
Birmingham MT
48009
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

[Signature]
June 15, 2018

411 S. Old Woodward, Suite
Birmingham, MI 48009

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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[Address]

411 S. Old Woodward

B’ham 38009

[Date]
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009  

June 15, 2018  

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Yours very truly,

Sincerely,

[Signature]

Unit 606
411 S. Old Woodward Ave
Birmingham, MI 48009
June 15, 2018

Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Yours very truly,

Ralph Boyll

Rose Boyll

06/08/18
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

June 15, 2018

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[Signature]

[Address]
411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

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Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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[Signature]

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Unit 508
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[Signature]

Alex Shoen

# 514
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Alice Legate #571
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Ted Elsholz
411 S. Old Woodward, Suite
Birmingham, MI 48009

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Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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[Signature]

#505
411 S. Old Woodward, Suite # 725
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great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

[Signature]

[Signature]
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Yours very truly,

Helen O. Kane
Owner
June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

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Yours very truly,

[Signature]

[Printed Name]

411 S. Old Woodward, Suite 529
Birmingham, MI 48009
411 S. Old Woodward, Suite
Birmingham, MI 48009

June 15, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project ”)

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Yours very truly,

Roanne M. Saliba
Birmingham Place, unit #529
Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

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Yours very truly,

Debra J. Elsholz
Birmingham, MI 48009

June 16, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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Yours very truly,

[Signature]

460 Park
June 18, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

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Yours very truly,

Susan Borman

[Signature]
6/18/2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable ‘gap’ between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

John Kello
June 19, 2018

Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

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Yours very truly,

Dana Bassipour

411 S. Old Woodward  
Birmingham, MI 48009
June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am writing, as the owner of a residential condo unit in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

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Yours very truly,

Michael Hanna
June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

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2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.

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4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Doris Hanna
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

LISA A. MARTIN
June 19, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am writing, as the owner of one or more residential condo units in Birmingham Place, to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Moüssa Hanna
Lexi Drew
152 N Old Woodward
Birmingham, MI 48009
248.220.1731

Date 6/20/2018
Birmingham City Commission & Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue
Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable ‘gap’ between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Kevin Kejbou
152 N Old Woodward
Birmingham MI 48009
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

David Hesano
First Vice President
David.hesano@cbre.com
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

[Signature]

Anthony Toma
CEO & Founder
Nine9
2653 Industrial Row Dr.
Troy, MI 48084
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: Proposed Project at 469-479 S Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable ‘gap’ between them, which can be seen from both South Old Woodward and Woodward Avenue.
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6. Adhere to the spirit and intent of both the 2016 Master Plan and the OS zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Gregg Speaks
Managing Director
CIBC Bank USA
34901 Woodward Avenue, Suite 200
Birmingham, MI 48009
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the 'Re-Zoning Request' for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Nason Kassab
35270 Woodward Ave
Birmingham, MI 48009
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete and old one-story buildings that sit between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

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6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
10. This project would continue to make the City of Birmingham the premier city to live and shop
For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Kevin Denha
40700 Woodward Ave Suite 125
Bloomfield Hills, MI 48304
June 20, 2018

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

ISHBIA & GAGLEARD, P.C.

Jeffrey A. Ishbia
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Brian Najar
Najor Companies
600 N. Old Companies, Ste 100
Birmingham, MI 48009
6/20/18

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

[Signature]

Joseph Jonna, Jonna Luxury Homes
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.
For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Scott S. Yaldo, Esq.
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Joseph P. Vicari
7096 E. 14 Mile Rd.
Warren, MI 48092
David Breedlove
85 Tradd Street
Charleston, SC. 29401

June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project referenced above. I am no longer a resident of Birmingham but maintain a condominium in Birmingham. Birmingham has been my home for most of my 70 years since my parents bought their first home on Villa in 1949. I remember visiting Pearls for a nice Chinese dinner. So, I know the area well. And while we moved from our home on Lincoln to warmer weather after retirement, Birmingham will always be home. I have watched how the character of the town has changed over the last 65 years. I was sad when the City allowed 555 to be built. I will always believe it was a mistake. We do not need another mistake.

I was encouraged when the City leaders realized they needed to protect the character and feel of the city. There was no place for skyscrapers in Birmingham. The city’s 2016 Master Plan recognized the need to control the height of new buildings in the city center. I think they have done an excellent job over the last twenty years.

I have watched in my new home, Charleston, as real estate investors have tried to come in and build one more hotel and destroy what makes Charleston attractive. It is an on-going battle. You are faced with the same economic pressures and arguments I hear in Charleston. It is just one more hotel. There are already buildings of similar height in town. The city needs more hotel rooms. It will generate more business in town. The arguments are always the same and unfortunately, so are the results. The town becomes more impersonal. Small businesses are replaced by those that cater to the transient visitors. Residents must go elsewhere to shop.

As city commissioner, you must protect what you have today and what makes Birmingham so attractive as a place to live, work and raise a family. It is unique place in southeast Michigan, beautiful neighborhoods surrounding a friendly and inviting downtown.

I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept I firmly believe is very important to
maintaining the character and long-standing plan for this beautiful city. If someone wants to build a 9 or 10 story hotel, let them go to Troy or Southfield.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population. Approving a change to the zoning will open the door for the next developer to come in and argue for a similar change. What is the argument against building a high rise on the North side of Birmingham Place? Across the street?

I cannot assess the technical implications of the proposal such as traffic, impact on city services, disruption of business during construction and impact on surrounding structures. I leave that to the Commissioners and their technical experts. The parties who purchased the reference property knew the zoning at the time. They are calculating they can change the City Commissioner’s minds. They are not concerned with the long term implications to the city but only how to maximize return on their investment. I sincerely hope their calculations are wrong. Another high rise in the southern end of town will ruin the neighborhood feel and open the door for more rezoning requests.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve what is a beautiful and people friendly city.

Yours very truly,

David Breedlove
June 20, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

RE: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

The project that has been proposed for this in-fill site should be approved because it would be appropriate for this parcel of land. If allowed to be built, the project would:

1. Be in harmony with the pattern of the neighboring buildings by filling in the noticeable ‘gap’ between them, which can be seen from both South Old Woodward and Woodward Avenue.
2. Be consistent with the building heights, uses, and character of Birmingham Place and the 555 Building.
3. Increase the walkability of this area by providing retail at the street level, and by strengthening the retail connection between Birmingham Place and the 555 Building.
4. Add foot traffic (shopper & travelers) to the south end of the city by encouraging foot traffic from the downtown to continue on the completed blocks.
5. Activate Hazel Street in perpetuity – while currently busy with construction bypass traffic, Hazel is an otherwise dormant street (which is vacated on the east side of Woodward Avenue).
6. Adhere to the spirit and intent of both the 2016 Master Plan and the D5 zoning overlay.
7. Provide the required parking onsite and not rely on street parking (as the existing restaurant and bank do).
8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Thank you for your attention herein. As always, should you have any question or require any additional information, please do not hesitate to call me directly. I remain,

Very truly yours,

THE ABRO LAW FIRM

[Signature]

GA/gja
June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members:

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

The Elia Group, LLC

Zaid D. Elia, President

124 S. Old Woodward • Suite A • Birmingham, MI 48009 • 248.645.7777 (Phone) • 248.645.7771 (Fax)
June 21, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

Jonna Construction is a builder and investor in Downtown Birmingham.

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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9. Contribute to the economic vitality of the City of Birmingham.
For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Frank G. Jonna
6200 2nd Ave., Suite D-102
Detroit, MI 48202
June 21, 2018

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Very truly yours,
RANDAL TOMA & ASSOCIATES, P.C.

[Signature]

Randal S. Toma
Attorney at Law
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Jacques Van Staden - Founder & CEO  
176 S. Old Woodward Ave  
Birmingham, MI 48009
Jana,  

Could you please let the Planning Board know my thoughts on the rezoning request for the former Franklin/First Place/Talmer bank building and Chinese restaurant on Woodward/Old Woodward?  

I don't know why that property was not included in the D5 rezoning that occurred several months ago, but it should have been. Birmingham Place is nine stories, and the 555 building is 15. I can't imagine that the city would not allow something of similar height and mass to occupy the space between these two projects.  

Beyond that, I think the city ought to insist on a project that brings some vitality to Old Woodward and the side street (Hazel), which are now dead zones. Either that, or just vacate Hazel insist on a use that is advantageous to the city.  

My two cents, which are worth at least a nickel, I think.  

Cheers!  

Clint
June 25, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: Proposed Project at 469-479 S. Old Woodward Avenue

Dear City Commission and Planning Board Members,

I am writing to express my strong support for the ‘Re-Zoning Request’ for the Mixed-Use Project that is proposed for 469-479 S. Old Woodward Avenue.

The proposed project will replace two obsolete one-story buildings that are sandwiched between two high-rise, mixed-use buildings - Birmingham Place (to the north) which is 9 stories and the 555 Building (to the south) which 15 stories. The City would benefit if these one-story buildings were redeveloped in a way that matches the scale and use of these adjacent buildings.

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8. Be consistent with fundamental planning and land use principles.
9. Contribute to the economic vitality of the City of Birmingham.

For the above stated reasons and more, I respectfully request that the City Commission and Planning Board respond favorably to the re-zoning request and the proposed plans for this development.

Sincerely,

Derek Dickow
211 E Merrill St., 504
Birmingham, MI 48009
411 S. Old Woodward, Suite 631
Birmingham, MI 48009

June 26, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, I have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. I also suggest that the Proposed Project would unduly burden our city's already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the "four stack" valet service recommended by the developer's own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project's plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City's own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer's traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation ("digging half way to China," as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Dennis W. Liu
June 27, 2018

Birmingham City Commission
Birmingham Planning Board
151 Martin St
Birmingham, MI 48009

I am writing to express my strong support for the Re-Zoning request for the mixed use project being proposed for 469-479 S. Old Woodward Ave.

The proposed project will fit in nicely with its neighbors on either side, bearing in mind, each of which are 9 and 15 stories in height. With this development, rather than the present one story buildings, we will now have a building matching the scale, character and use of those buildings on either side.

Additionally, the proposed project would most certainly attract a greater amount of people to the south end of town, and no doubt also throughout the town, while adding retail shopping, thus tying into the already existing retail in the two neighboring buildings. Perhaps one of the most advantageous parts of the project, will be the alleviation of the necessity to accommodate parking on the street, as a result of the parking that will be provided on site.

This project is a win-win, and should be approved for re-zoning in the most hasty of manners, continuing Birmingham’s lead in cutting edge developments, as we continue to see the increasing competition for tenancy from our neighboring cities.

Sincerely,

Peter R. Sobelton
Birmingham City Commission  
Birmingham Planning Board  
151 Martin Street  
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

I am a resident of the City of Birmingham and am writing to express my deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. I believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest. Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

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4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

[Signature]
June 27, 2018

VIA HAND DELIVERY

John M. Connaughton, Fire Chief
572 South Adams
Birmingham, MI 48009

Re: Proposal to Rezone 469-479 S. Old Woodward Avenue

Dear Chief Connaughton:

I am writing, individually and as an officer and director of the Birmingham Place Residential Condominium Association, in response to your letter of June 22 Jana Ecker. A number of residents here discussed this matter with Joel Campbell and wish we had been sent a copy of the letter, but at least we got it as part of the agenda for tomorrow night’s Planning Board hearing.

In any event, we have some serious concerns with this situation in general and with your letter in particular, which include:

1. The proposed new building is not planned to be built “very close to the South Side of Birmingham Place” but rather is proposed to literally abut the southerly walls of Birmingham Place. This may not have a direct bearing on fire issues, but it does raise other issues and should, in any event, be stated accurately.

2. We understand that the fire equipment currently has some, albeit limited, access to Birmingham Place from Hazel Street. Your letter correctly states that you “. . . would not deploy our aerial truck for operations on the South Side of the building,” but it fails to note that the proposed building, which would be 22 feet taller than Birmingham Place, completely eliminates whatever access is currently available from Hazel Street.

3. Your letter also states “. . . we do have access from both the East and West sides of the building.” If the proposed building is built, a review of the drawings makes it clear that there would, in fact, be no fire equipment access whatsoever to most, if not all, of the residential and office units on the southerly part of Birmingham Place from the east side and only limited access to these units from the west side.
4. Current access from the west side also includes an alley running from Woodward Avenue to the rear of 469 S. Old Woodward. While this alley might well not accommodate larger fire trucks, it certainly provides some access to some equipment, which would be completely cut off by the proposed building.

5. We agree completely with the balance of the second paragraph regarding fighting "high rise" fires from within the building and also detailing the helpful fire fighting fixtures and equipment in Birmingham Place. Nevertheless, the simple fact remains that fire protection for Birmingham Place (and more importantly, the people who live and work here) will be less than it was if the proposed building is built as planned.

Our bottom line, so to speak, is that fire protection to at least the southerly portion of Birmingham Place would be reduced if the proposed building were allowed, and we have to ask you, as Fire Chief, how much increased risk for the sake of new development that hopes to maximize and increase the currently allowable building size is acceptable. The increased risk can easily be avoided by the City denying the rezoning request and maintaining the status quo. The value of adding several stories to a building pales in comparison to any increased risk to the health, safety and welfare of the Birmingham Place residents and occupants as well as the firefighters tasked with protecting the residents and occupants.

We request that you very seriously reconsider your position on this matter and advise both the Planning Board and the City Commission of the same, preferably before the meeting tonight but in any event at your first opportunity. Thank you for your time and attention.

Best regards.

Yours very truly,

Michael D. Umphrey

cc: All Birmingham Planning Board Members (via hand delivery)
    All Birmingham City Commissioners (via hand delivery)
September 11, 2018

City of Birmingham
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker

Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward
in the D5 Downtown Birmingham Overlay District Zone

Dear Members of the Planning Board and Ms. Ecker:

We are writing this letter on behalf of the Birmingham Place Residential Condominium Association. The Association opposes the rehearing and rezoning of the Applicant’s property to the D5 overlay zone for many reasons as detailed in this letter. The dispositive reason to again deny recommendation of the rezoning is because the D5 ordinance was never intended to be applied in the manner requested.

Introduction

It is first baffling to the Association that the Applicant was able to obtain a rehearing of this Board’s decision at the June 27, 2018 public hearing to deny the Applicant’s request for a tabling of its the rezoning request. The Applicant apparently was able to defy this Board’s denial of the tabling request and come back again with the exact same rezoning request. The Applicant’s latest submission not only fails to demonstrate any substantial change in facts, evidence or conditions but is also fails to show that the Planning Board made any mistake, failed to consider any relevant facts or was misled by alleged mischaracterizations regarding the clear, history, intent and purpose of the D5 Ordinance. A close examination of the Applicant’s rehearing request reveals inconsistencies, fallacies, erroneous assumptions, unsupported assertions, and mischaracterizations of the record and history of the D5 ordinance. The intention of this letter is to provide that closer examination which should leave no doubt that the Planning Board should not change its original vote to deny a positive rezoning recommendation.

There Has Been No Mischaracterization of the Intent of the D5 Ordinance and its Inapplicability to the Applicant’s Property.

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place or any Planning Board member has mischaracterized the purpose of the D5 ordinance enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final product was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. The following is a summary of the history of the D5 ordinance. However, attached as Exhibit A, is a detailed timeline with references to the relevant public records which supports the statements made in this summary.
The 555 Building proposed the first draft of the D5 ordinance as the means to renovate and expand its existing non-conforming buildings and develop a new building on the southern portion of its site. The owners could not make those changes under the City's then existing ordinances that governed the renovation and expansion of nonconforming property. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. Moreover, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was (1) to find a way to make those taller buildings legally conforming structures and (2) draft language that would allow the reasonable renovation and expansion of other commercial nonconforming buildings throughout the City. The City Commission did not direct the Planning Board to draft a new overlay ordinance that allowed any building under 5 stories to obtain greater height because located adjacent to a building that was over 5 stories. The Applicant's representations to the contrary are simply opportunistic.

The above conclusion is amply supported by a memorandum from Planning Director Jana Ecker to the Planning Board dated September 22, 2015 (sic) that was included in the City Commission's February 13, 2017 packet. The City Commission voted to approve the D5 ordinance at that February meeting. (Memorandum attached as Exhibit B)

Ecker discusses in the memorandum that the Planning Board faced a dilemma regarding how to deal with the 555 Building. While the Planning Board recognized the importance of the 555 Building, it was hesitant to create "a new classification around a specific building." (Ecker Memorandum, p. 1) The memorandum details the failed attempts to devise a way to not only address the 555 Building but also the future development of several other parcels, including parcels that did not share the height nonconformity. The Planning Board was unable to draft an ordinance regarding the future development of other parcels because "there were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached." (Ecker Memorandum, pp. 2-3) (Emphasis added) The Planning Board considered several options to allow changes to legal non-conforming commercial buildings. The Planning Board considered drafting two new overlay ordinances, one of which could be applied even to conforming property on the west side of Woodward, which would allow building heights that matched the allowable height east of Woodward in the Triangle District. (Id. at p. 5) Ecker suggested amending the B-3 ordinance to allow the same development rights that existed when the 555 Building was constructed under that ordinance. Although no consensus could be reached regarding application of the ordinance to the future development of existing properties, there was consensus with the blessing of the City

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1 The contents of the memorandum suggest that the date contains a typographical error because the timeline discussed within the memo extends to setting the December 14, 2016 public hearing.

2 The Zoning Ordinance already contained a provision that allowed the limited expansion of nonconforming residential buildings. See Section 6.02
Commission that the improvement and expansion of legal nonconforming buildings should be studied. (Id. at p. 3) The decision was made therefore only to deal with the nonconformity issue in the new D5 overlay district.

Thus, although Planning Board members correctly remember discussing additional properties in the Southern Gateway during the D5 drafting process, those discussions did not bear fruit or any action because of a lack of consensus. It was not because the Mountain King owners were not before the Board. It was because the Planning Board could not reach a consensus other than allowing valuable buildings such as the 555 Building, Birmingham Place and Merrillwood the greater right to renovate or expand without the disability of being a non-conforming property because of height and setback.

The Applicant was not prejudiced by the Planning Department’s Mistaken Statement in its Review of the Community Impact Statement and Preliminary Site Plan

The Applicant claims that this Board made its rezoning recommendation based upon the mistaken assumption that the Property is located within the Parking Assessment District (PAD) and that it allegedly was prejudiced by the asserted mistaken assumption.

First, it is true that the Planning Department’s review of the Applicant’s Community Impact Statement (CIS) and Preliminary Site Plan review erroneously stated that the Applicant’s property was within the PAD. The Planning Department’s mistake, however, did not prejudice the Planning Board’s review of the rezoning request for several reasons. First, the mistake regarding the PAD was in the Planning Department’s CIS and Preliminary Site Plan review and the Planning Board did not consider the CIS or site plan at the rezoning hearing.

Second, the Planning Board did not prevent the Applicant from explaining how the parking requirements impacted its ability to develop the land under the D4 ordinance. The record shows that the Applicant discussed the fact that the property is not in the PAD. (Video of hearing at 2:07:56) In answer to the question why the property could not be developed under the D4 overlay ordinance, the Applicant claimed that it could not develop the Property under D4 because it was not in the PAD.

Owner: “But office building, to put a . . . . I don’t have the parking for it. I’m not in the Parking Assessment District, so I’m limited by parking. I can’t put a restaurant there, because I . . . . you know . . . I, I, don’t have the parking to park it. The only thing I can really put there at the end of the day is a hotel. I mean that’s the only thing that makes it work. And again, to make it work as a hotel, I need to fit everything into this package that the hotel wants.” (emphasis added)

Third, if the Applicant believed that not being part of the PAD was crucial to its rezoning request nothing prevented the Applicant from discussing that fact when initially addressing the standards for the rezoning. The fact that the Applicant made no mention of the PAD in its initial written rezoning request belies its post hoc argument that the issue was so crucial to its request.

Moreover, if parking is the issue as the Applicant now claims that it is, the remedy is not to develop a project that has even greater parking requirements than is required under the existing ordinance. The rezoning is not necessary to meet the parking requirements when the possibility of
The Applicant Has not Demonstrated That the Applicable Parking Requirements Prevent Development Under the D4 Overlay Ordinance

The Applicant's supplemental explanation under Section 7.02(B)(2)(b)(i) of “why the rezoning is necessary for the preservation and enjoyment of the rights and usage commonly associated with property ownership” is that it cannot meet the parking requirements if developed under the D4 overlay ordinance. The Applicant asserts that it needs more vertical height for a mixed use project and to meet parking requirements. As discussed below, the Applicant has failed to support this claim. It is hard to determine whether the Applicant claims that the property cannot be used as it currently exists because of the inability to meet parking requirements or that it cannot be redeveloped physically for any purpose under the current zoning classification because of its configuration coupled with the D4/B-3 mixed use and parking requirements.

The Applicant makes the following assertions regarding parking requirements:

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District ... it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4.46 of the Zoning Ordinance (Off-Street Parking Spaces Required) Letter, p. 2

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The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. Letter, p.3

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Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses. Letter, p.3

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There are serious difficulties with building an underground
garage within the D-4 design parameters that is deeper than two levels. Consequently, any such garage is limited to approximately 60 parking spaces. Letter, p. 5

Based upon the first quote above, the Applicant appears to be stating that the property as it currently exists cannot support any or very limited off-street parking. Even if that is true, under Section 4.45 (G) 2 and 4 of the zoning ordinance, off-street parking can be provided within 100 feet of the site or via shared parking arrangements. The Applicant claimed in its CIS that it has an agreement with the 555 Building for the use of 45 parking spaces. The Applicant could also apply for parking variances. If the application of the parking provision of the zoning ordinance prevents the property from being used, the likelihood of necessary variances is extremely high.

The next four quotes appear to be referring to a redevelopment under the D4 overlay district requirements. The Applicant essentially makes the logically challenged argument that because it is outside of the PAD it needs to develop a project that requires even more parking to meet the off-street parking requirements. The Applicant’s proposed use shows a three level underground parking facility with 100 spaces and an agreement with the 555 Building for 45 more spaces. The Applicant does not explain the discrepancy between its proposed plan and its new claim that any underground garage is limited to approximately 60 parking spaces because of D4 design regulations. However, the same D4 design regulations that would apply to an underground garage in the D4 district also apply in the D5 district. The D5 zone does not provide any relief from the design issue. The Applicant, however, asserts that it could meet the parking requirements if it could construct a 9 story building but it cannot meet the parking requirements if it constructs a 5 story building. If the site can only accommodate 60 parking spaces rather than the 100 spaces that the Applicant originally represented, it defies explanation how a taller building is better able to meet even greater parking requirements. Moreover, if there is a design requirement which hampers providing more onsite parking, that is a variance and not a zoning issue.

The Applicant also does not explain whether it means that if restricted to five stories, it cannot develop its preferred 98 hotel units, 29 residential units and a first floor coffee shop/hotel lobby. The Applicant asserts that it needs more height because it cannot possibly fit mixed uses and meet parking requirements on it site if limited to 5 stories. According to its proposed plan, however, it can fit approximately 21-26 hotel rooms per floor and 13 residential units per floor. It is unclear if the Applicant is now claiming that it can only build a two level underground parking garage rather than a three level underground garage. In either case, it does not affect the above ground height of the building. The Applicant likely could develop a 5 story mixed use building with for example 70 hotel units, 13 residential units and the same size lobby/coffee shop as proposed. A 5 story development with these specifications might require 73 parking spaces for the hotel, approximately 13-16 spaces for the residential uses (depending on the number of rooms) and 12 spaces for the lobby/coffee shop. Even if the Applicant could only fit 60 spaces onsite, it

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3 The Applicant appears to have made some mistakes in its parking analysis. For example the residential parking requirement under B-3 is 1 space for a 2 room dwelling and 1.25 spaces for a dwelling that has more than 3 rooms. The Applicant claimed that it needed 1.25 spaces for 26 apartments and 1.5 spaces for 3 apartments for a total of 37 spaces. The actual requirement is 29.75 spaces for 29 units.
could provide 105 spaces with the 555 Building parking agreement for 45 spaces.

The Applicant also has not explained whether it has explored the possibility of parking variances. A good argument exists that it should not have to provide any parking spaces for the lobby/coffee shop. The users of those retail spaces will likely be hotel guests or neighboring occupants who can easily walk to the coffee shop. The coffee shop likely will not be a destination spot for the motoring public. It is also likely that the hotel would not always be at full capacity which could provide a basis for obtaining additional parking variances. The City also is in the process of reviewing parking requirements for residential uses and possibility eliminating them for a site such as the Applicant’s property.

Therefore, the answer to not being in the PAD is not to create taller buildings with higher density that requires more parking. The more reasonable solution is developing at lower densities with lower parking requirements and applying for any needed variances.

The Planning Board Appropriately Decided to Table Consideration of the CIS and Preliminary Site Plan Review

The Applicant’s second supplemental explanation under Sec. 7.02(B)(2)(b)(ii) of “why the existing zoning classification is no longer appropriate” essentially contains a confused diatribe regarding the Planning Board’s decision to table consideration of the CIS and preliminary site plan review until after the City Commission acted on the rezoning request. It also discusses the ability to develop and use the property under the existing classification, which was addressed above in this letter. The Applicant also claims under this section that the Board was misled to believe that the D5 overlay zone only applies to existing buildings taller than five stories. That issue has also been addressed earlier in this letter.

First, the Planning Board correctly voted not to review the CIS or proposed site plan until and unless the rezoning was granted. There is no legal or factual basis for the CIS and preliminary site plan review until the petitioner secures the rezoning necessary to develop the property as proposed. In fact, it is an elementary zoning and planning principle that neither a planning board or legislative body should ever consider a particularized site plan at the rezoning stage unless the rezoning is conditional or part of a planned unit development. The reason is that the municipality is supposed to be making the rezoning decision based upon whether the general zoning classification is appropriate for the property and not whether any specific proposed plan is appropriate for the property. Another reason is because once the land is rezoned, the land owner cannot be tied to any specific site plan. The owner is free to develop the land under any provision of the new zoning classification. It would have been an error if the Planning Board had recommended rezoning based upon the CIS or site plan or had been unduly influenced by the proposed use for the site in making a decision.

Second, the Applicant’s assertion that the Michigan Zoning Enabling Act, MCL 125.3101, et seq (“MZEA”) requires that rezoning decisions be made according to a site plan is inaccurate and nonsensical. The MZEA provides that a zoning ordinance must be “based on a plan designed to promote the public health, safety and general welfare...” (emphasis added) This means that the zoning ordinance itself and any amendments to it must be based - not on a site plan for the particular use of a single parcel of property - but upon a general land use plan, like the 2016 Birmingham Plan. The MZEA does not require site plans for rezoning property. It does require
site plans for the approval of special land uses and planned unit developments. A site plan ensures that property is developed consistent with ordinance requirements. The Planning Board did not prejudice the Applicant in any way by not reviewing a proposed site plan for a zoning that did not exist for the site. The rezoning of property is a legislative rather than administrative act and depends on the implementation and furtherance of general policies. It does not depend on a site plan for a single parcel of property.

**The Applicant Failed to Support that the Rezoning Will Not Be Detrimental to Surrounding Properties**

The Applicant’s supplemental explanation of why the proposed rezoning will not be detrimental to surrounding properties relies on its factually inaccurate statement that the City intended that the D5 overlay zone apply to the Applicant’s property and that the Birmingham Place owners will not be harmed by the rezoning.

First, as previously discussed, the history of the D5 zone indisputably supports that the clear intent of the D5 zone is only to apply to existing buildings taller than five stories. It should be noted here however that the Applicant’s Letter very misleadingly takes Ms. Ecker’s comment regarding new construction in the D5 zone completely out of context. All the participants in the D5 ordinance amendment process understood that the new construction provision was added for the benefit of the 555 Building. The language regarding new construction was not meant for property that had no existing height nonconformity that the D5 ordinance amendment was addressing.

Second, the Birmingham Place owners maintain their position that the proposed rezoning will be detrimental to the use and enjoyment of their property. A vast majority of the residential condominium owners, even those whose views will not be impacted, are opposed to the proposed development for many reasons that will be brought to the Board’s and Commission’s attention.

**The Board Did Not Fail to Make Required Findings of Fact or Misapply the Rezoning Standards**

The Applicant further claims that the Planning Board failed to make the required findings under Ordinance Section 7.02(B)(5). Its primary complaint is that the ordinance allegedly does not require the Planning Board to determine whether the property can be used as zoned. This is splitting hairs.

Section 7.02(B)(5) (d) of the zoning ordinance requires that the Planning Board make findings of fact regarding “[t]he suitability of the property in question to the uses permitted under the existing zoning classification.” Asking the Applicant why it cannot use the property as zoned is simply a way of determining whether the property is suitable for the uses permitted under the existing zoning ordinance.

Second, the Applicant claims that the Planning Board should have examined the appropriateness of the current zoning and not whether the Applicant could develop under this category. Again this is splitting hairs because it is the same question. The zoning may be inappropriate as applied to this site if the Applicant cannot develop or use its property under this classification. If the property can be used and the zoning classification still furthers master plan
goals and the public interest then it remains appropriate. The only difference between the D4 and D5 overlay zones is building height. The uses are the same. The Applicant's only argument that conditions changed is the rezoning of Birmingham Place and the 555 Building. However that rezoning has not changed any existing land use patterns. The rezoning recognized existing land uses that had become nonconforming because of building height policies that changed after those taller buildings were constructed. Birmingham Place is as tall now as it was when it was rezoned to D5. The rezoning merely normalized the existing heights of the affected buildings.

A community generally should preserve its master plan and existing zoning unless the zoning classification no longer furthers the master plan goals or is no longer suitable for the site because of changed conditions and development patterns. The City certainly can adopt new master plan goals but should not make sweeping changes to the City's land use plan through its zoning ordinances alone without first studying the issue of increasing building heights. The planning study is supposed to precede such zoning changes because the Zoning Enabling Act mandates that zoning be based on a plan. There has been no official study or public notice of any plan to allow more than 5 stories on the West side of Woodward. Moreover, the City weakens its master plan and its ability to defend it in court when it approves rezoning that is inconsistent with the plan. The proposed rezoning was not consistent with the 2016 Plan which reflects a policy decision to limit the height of buildings in the Downtown Overlay Zone to five stories. It is true that the City has since allowed taller buildings in the Triangle District but that new zoning was accomplished according to the Triangle District Plan. Therefore, when asked to depart from the 2016 Plan as it applies to the West side of Woodward, the City is well within its rights to require that the proponent demonstrate that the property cannot physically or viably be developed as zoned. To suggest otherwise ignores established zoning law and planning principles.

**CONCLUSION**

The Applicant has not provided any new information that should change the Planning Board's original and correct recommendation to rezone the property to the D5 overlay classification. It is beyond dispute that the D5 ordinance was meant only to apply to existing buildings over 5 stories or existing sites that contained buildings over 5 stories. The Planning Board determined when it drafted the D5 ordinance that it would not address the future development of any other parcels in the Southern Gateway. It would be unfair and a failure of process for the Planning Board to ignore that history because the public will then have been misled by the process to enact the D5 ordinance. It is customary for the City to involve the public in any study to raise building heights as it did in the Triangle District.

Moreover, the Applicant made no effort to demonstrate that the D4 ordinance is unreasonable or unworkable as applied to its property. It has not made any credible case to support the rezoning request. At the June 27, 2018 hearing, the Applicant claimed that he could only make the site work with a hotel and in order to develop a hotel "I need to fit everything into this package that the hotel wants." (emphasis added) This is the very reason why the City cannot rezone property based upon a proposed use. The issue is not what this particular hotel wants and the City cannot guarantee by rezing the property that the hotel will even go through with the development. The issue is what does the existing zoning allow and can any of the allowable uses be reasonably developed consistent with the City's land use polices as reflected in the 2016 Plan and its zoning ordinance.
The Planning Board, therefore, must recommend a denial of this opportunistic and improper rezoning request.

Very truly yours,

Susan K. Friedlaender

Susan K. Friedlaender
EXHIBIT A

TIMELINE AND SUPPORTING MATERIALS REGARDING THE EVOLUTION OF THE INTENT AND PURPOSE OF THE D5 OVERLAY ORDINANCE

INTRODUCTION

It is impossible to read through the history of the D5 ordinance and arrive at a good faith conclusion that Birmingham Place has mischaracterized the purpose of its enactment. The facts and history of the D5 ordinance, and its plain language, leave no doubt that the final and enacted draft was concerned only with existing buildings which were non-conforming due to height over 5 stories and setbacks. In fact, the only direction that the City Commission gave the Planning Board regarding the drafting of a new overlay ordinance was to find a way to allow the renovation and expansion of legal nonconforming commercial buildings. Although the Planning Board discussed several different approaches to help the 555 Building overcome its nonconforming status, which included taking a broader look at the Southern Gateway area, the Planning Board ultimately decided to deal only with three nonconforming taller buildings: The 555 Building, Birmingham Place and Merrillwood. It settled on dealing only with nonconforming commercial buildings over 5 stories because there was no consensus on how to address the development of other parcels on the West side of Woodward that did not have the height nonconformity. This is why it would be completely improper to rezone the Applicant’s property to D5. The rezoning would pose a serious question regarding whether the Planning Board properly notified the public and City Commission regarding the intent and application of the D5 ordinance.

June 10, 2015 Planning Board Study Session

In the spring of 2015 the owners of the 555 Building submitted a request to amend the zoning ordinance and create a new D5 overlay district for buildings over five stories. The owners proposed the ordinance after the building department found “that any changes to the existing legal non-conforming building would increase the nonconformity, and thus be prohibited unless numerous variances were approved.” (2015-06-10 Minutes from Planning Board Study Session)

When first presented with several different drafts of the proposed D5 ordinance, the Planning Board discussed that the proposed amendment “should be viewed not only as to how it applies to 555 S. Old Woodward Ave., but possibly to other properties as well.” Id. The reason for this cautious approach was to counter any charges of spot zoning or undue favoritism. The dilemma that emerged, however, was the valid concern about applying the ordinance to other properties without further study: (Emphasis added)¹

Mr. Koseck noted there are all kinds of non-conforming buildings in the City and he doesn’t think the goal is that they should all go away and become conforming. That is why the Board of Zoning

¹ Please note that the reason for the inconsistency of referring to the “D-5” and “D5” overlay zone throughout this letter is because while the Zoning Ordinance uses the “D5” appellation, the minutes and other writers often use “D-5” designation. This writer chooses to use the official Zoning Ordinance version.
Appeals exists. He is in favor of improvements being made to the building, but as the applicant makes enhancements he (page 7) hopes they would go further to be more in compliance with D-4, D-3, D-2, and D-1. It scares him to expand D-5 beyond the limits of this property without further study.” Id.

Chairman Clein thought of this as an opportunity to take a look at this building along with several parcels in the context of future development. If Bruce Johnson, Building Official, and Tim Currier, City Attorney, would come to a Planning Board meeting and are on board, he would be in favor of providing some relief in a unique situation; but he just doesn't want to do it capriciously. The Ordinance standards were put in place for a reason and he would be supportive of fitting them into the context of a building that obviously is not going away, in order to help make it better.

Ms. Whipple-Boyce was also in support of helping to make this Gateway building better looking. She thought also that it would be helpful to have Messrs. Johnson and Currier come to a Planning Board meeting. She could not imagine why the Planning Board could not somehow help the applicant to get their building re-skinned in some other way. Further, the ordinance proposal should not include some of the things that the board does not want to have in the City.

Ms. Lazar was in full support, as well, of trying to do something with the building. However, she didn't see how this board could whip up a new ordinance in a short period of time. It concerns her that what might be applied to this building could become applicable to some other sites which would not be appropriate. She would rather try to help the applicant get to where they need to be with this building.” Id.

July 7, 2015 Planning Board Study Session

At the next study session, the Planning Board continued discussions regarding whether to target a larger area between Hazel and Brown or limit the application of the new ordinance to the 555 Building.

Mr. Williams summed up the discussion by saying the board wants to go the conforming route and use the SLUP process to do it. Maybe the applicant won't get everything but they can probably get a substantial achievement through the combination of the new MU classification plus SLUP exceptions for what they get as of right and what they get as a bonus. Ms. Ecker noted that is consistent with what the City does in other districts and what has been approved by the City Commission. This is a methodology that gives the Planning Board flexibility. It was the consensus that staff should work on
crafting something to that effect, taking the 555 Bldg. separately so that it gets through the City Commission.

**September 9, 2015 Study Session**

At the next study session, Ms. Ecker summarized the process as follows:

The applicant is seeking to rezone the 555 S. Woodward Ave. properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09-09 Minutes, p. 9)

The Planning Board continued to ponder the scope of the work and whether it should go beyond dealing only with the 555 Building. Mr. Williams suggested creating a D5 district for the 555 Building and a D-6 District for other locations which might be nine stories. *Id.* at p. 10.

The Planning Board failed to reach a consensus or agreement with Mr. Williams suggestion.

**September 30, 2015 Planning Board Study Session**

At the next study session, the purpose of the proposed ordinance was characterized as follows:

Ms. Ecker explained that in order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal then is to seek rezoning of the 555 S. Woodward Ave. property from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2015-09-30 Minutes, pp 10-11)

The Planning Board again discussed creating two new overlay zones to address not only the nonconformity issue but also to address other property in the Southern Gateway area. The Planning Board continued to debate the expanded approach and could not reach a consensus.

Ms. Whipple-Boyce said it is important to try to help the applicant have some sort of zoning classification so they can move on with their project. However, she also does not want to see 168 ft. up and down Woodward Ave. She is not sure that looking at the whole area is even appropriate. So maybe just work with this building and give them a zoning classification. Steer the applicant toward having their building conform with the sort of downtown standards that the board hopes to have; which for example, isn't the garden level. If they want to continue to have these when they come forward with a new plan that is when they can go to the BZA. (Emphasis Added)
Mr. Share was in favor of having the applicant first exhaust their remedies. If the BZA doesn’t provide them with the relief they need and this board concludes that it is really critical, then maybe the board changes the ordinance, takes the heat for it, and tells everyone it is because they don’t want the building to fall down.

Chairman Clein said he is not hearing any clear direction so the board needs to bring this back because it is a complicated issue. (Emphasis Added)

The Owner’s attorney assured the Planning Board that providing the 555 Building with relief would not be spot zoning.

January 17, 2016 Planning Board Study Session

At the opening of the study session, Ms. Ecker recounted the history of the ordinance amendment and rezoning request. She explained that the 555 Building not only wanted to renovate the existing building but the owners also wanted to add “an addition to the south of the existing residential tower for new retail space and residential units.” (Emphasis Added)

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward Building are requesting a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District which would essentially render the existing building as a legal, conforming building that could then be renovated and expanded.” (2016-01-17 Minutes, pp 3-4)

Ms. Ecker also recounted that as of the last study session the Planning Board could not reach a consensus regarding whether to deal only with the 555 Building or look at properties along Woodward north to Brown Street:

There was no consensus on whether only the 555 S. Old Woodward Ave. property should be placed in a new overlay classification or whether this should extend north to Brown St. along Woodward Ave.

The minutes from the study session show that the Planning Board continued to debate whether to include properties other than the 555 Building in the proposed overlay district:

Mr. Share thought there are two separate questions. One relates to the 555 Building and whether or not it ought to be allowed to become conforming; separately, there is a question about general planning principles.
Mr. Boyle's opinion was there are three issues: the building itself; the corridor; and thirdly how to move forward with the details on S. Old Woodward Ave.

Mr. Williams stated the board should focus on the 555 Building and come up with a practical solution. The problem is that the building isn't right and it needs to be improved.

Ms. Whipple-Boyce said the question is whether a new zoning classification needs to be created, or can the applicant go through the variance process and achieve the same result.

Understandably, the owners of the 555 Building wanted to move forward with their request. The owners' attorney reiterated that the Owner was requesting that “the Zoning Ordinance be amended to accommodate their building; and second that the zoning map include the petitioner's property.” (Emphasis added) The attorney did not believe that accommodating the building would be spot zoning, meaning that the Planning Board did not have to concern itself with anything other than moving forward on an ordinance that would apply only to the 555 Building.

Additionally, he [Mr. Rattner, the attorney] emphasized this is certainly not spot zoning. The idea is to modify the ordinance to make a nonconforming building one that should obviously be conforming in order to allow the owner to make improvements. Mr. Rattner requested that the proposed ordinance be moved forward to a public hearing.

The Planning Board was persuaded and concluded that it needed to focus on the 555 Building and leave discussion of the corridor for another day.

Chairman Clein summarized that the board has come to the conclusion that it needs to focus on the 555 Building. The rest of the corridor is a different discussion. The board concluded that a subcommittee consisting of Ms. Ecker, Mr. Rattner, the City Attorney, and two board members could have a discussion on this in an open meeting forum. Mr. Share and Mr. Koseck volunteered to represent the Planning Board in the deliberations.

There was one public comment which shows that this member of the public understood that the Planning Board would not be making any new and sweeping changes but only be focusing on how to help the 555 Building.

Mr. Paul Reagan, 997 Purdy, said he is encouraged by the discussion. No one wants the building to deteriorate. He is glad that the Planning Board is not going beyond what was asked for, which is to restore the building. That is about how far it should go. Right now there is real competition for parking on S. Old Woodward Ave. Imagine what expanding the density of that building would do to the neighborhood. Lastly, he was shocked to
hear the petitioner had a hand in drafting ordinance language for rezoning. (Emphasis Added)

The Planning Board decided to establish a sub-committee to work on the new ordinance amendment. The sub-committee did not present its findings and proposals until September 2016. In the interim however the Planning Board obtained direction from the City Commission regarding dealing with the important issue of nonconforming commercial buildings.

June 20, 2016 Joint Session with City Commission

The Planning Board presented several land use items to the City Commission at the joint session with the understanding that if the City Commission wanted further discussion the matter would be submitted at a subsequent meeting for more formal direction to further study and address the issue. (See 2016-06-13 Memo from J.A. Valentine to City Commission.) Mr. Valentine also submitted a more detailed memo to the City Commission dated June 14, 2016 which in part described the issue of “Existing Commercial Non-Conforming Buildings” and asked the Commission whether the issue merited further discussion. (See June 14, 2016 Valentine Memo.)

The representation made to the City Commission was that the Planning Board wanted to address the 555 Building and other existing non-conforming buildings like Birmingham Place and Merrillwood. There was no representation that the Planning Board would address extending the proposed new overlay ordinance to buildings like the Applicant’s building that was not in danger of losing substantial value like the 555 Building if forced to redevelop only by losing substantial building height.

July 25, 2016 City Commission Meeting

Ms. Ecker attended the City Commission meeting to get the Commission’s formal direction on how the Planning Board should proceed on the planning issues raised at the joint meeting.

Ms. Ecker represented to the Commission that the Board was only looking for ways to deal with existing nonconforming commercial buildings and not to create a new ordinance that would allow existing sites without any height non-conformity to construct new buildings under the proposed zoning district. The ordinance was not intended to deal with new development that could conform to the existing zoning classification. Ms. Ecker stated:

if a review of all the buildings in town was done, one would find something slightly non-conforming on many of the buildings that were built, especially if they were built prior to the sixty’s when the zoning ordinance came into effect. She noted specifically buildings such as the Merrillwood Building, Birmingham Place, and the 555 building in regards to the height and bulk of the buildings. She explained that the discussion at the workshop was that there should be some regulation in the zoning ordinance that allows for some maintenance or renovation to those types of buildings when they are already nonconforming. (Minutes, p. 6)
Mayor Pro Tem Nickita stated that this was an issue that the Commission wanted to address.

He questioned if the City is looking at identifying a district or a series of buildings throughout the City. Ms. Ecker explained that this is to establish a procedure where if there was a nonconforming building in the City and whichever way it is non-conforming, it would give the owner a way to make changes to modernize that building. (Minutes, p. 6) (emphasis added)

The City Commission gave the following direction to the Planning Board:

MOTION: Motion by DeWeese, seconded by Bordman: To review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures. (Id.)

The City Commission’s specific directive relative to any new zoning category was to allow for changes to non-conforming buildings and for their renovation and maintenance. It was not to create a new overlay district that allowed any property the option to build taller than 5 stories.

**August 10, 2016 Planning Board Meeting**

Ms. Ecker briefed the Planning Board on the City Commission’s directives regarding the planning issues addressed at the joint meeting. She reported that that the Commission directed the Planning Board as follows:

3) Existing Commercial Non-Conforming Buildings - to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements considering creating a new zoning category or categories to allow for changes to nonconforming buildings for maintenance and renovation consistent with those permitted for residential buildings and structures. (Minutes, p.5)

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Ms. Ecker suggested creating a win-win situation by offering the ability to renovate or to add an addition, but the City would get something in return. Ms. Whipple-Boyce said it would be nice to have this in place ahead of time for buildings like 555 Woodward and Merrillwood. Chairman Clein thought the board could consider new zoning categories if there are specific areas that need it; but they can also consider generic language changes. Look at the non-conforming buildings first. (Id.) (Emphasis added)
September 14, 2016 Planning Board Meeting

At this meeting, the Planning Board resumed the discussion of non-conforming building regulation under the City Commission’s parameters which did not include allowing sites with buildings under 5 stories the ability to go higher than 5 stories.

Ms. Ecker, along with the attorney for the 555 Building, suggested that instead of creating a new overlay district, the Planning Board could recommend amendments to the B-3 zoning ordinance that would render not only the 555 Building but also Birmingham Place as conforming buildings.

It was during the discussion to amend the B-3 ordinance that the only reference to Mountain King is recorded in any public document concerning the D5 zoning amendment:

Ms. Ecker stated that the 555 Building, Birmingham Place and Mountain King were the only properties in the City zoned B-3 in the underlying D-4 Zone. She suggested an option that would amend the regulations for height and setback similar to what they were when the buildings were approved. Mr. Williams wanted to limit the focus on just the 555 Woodward Bldg. as he thinks it needs to be approved. (Minutes, p. 5) (Emphasis added)

Ms. Ecker noted this option would allow the applicant to have a conforming status and apply for financing to do an expansion and improvement on the building. It would allow them to do an addition to the south and come to zero setback, and to go up to match the height of the building that is there. What it would not do is force them to address the issue of the garden level or the dead zone along Woodward Ave. However, it would permit them to address that. Id.

Ecker was mistaken regarding the number of parcels zoned B-3. The Power House Gym property is also zoned B-3. Regardless, it should be clear that the only reason Ecker mentioned Mountain King was to promote the idea that changing the B-3 zoning would alleviate any concern about spot zoning and at the same time would not open the door to many other parcels being able to take advantage of the amended ordinance. However, there was no support for the B-3 amendment option.

Mr. Koseck was in favor of allowing the building to continue to be updated but that doesn't mean it should be permitted to grow. Any add-on to the south would have to meet the current Ordinance.”

***

Discussion concerned whether B-3 zoning that allows Birmingham Place and Mountain King to reach 168 ft. in height would be a hard sell to the public. The conclusion was they could not sell it on more than one piece of property. Mr. Williams proposed they go back to a previous zoning for the 555 Building that existed 45 years ago. He didn't think it should include any other
property. Because of that they would not be making a special case for this building in the form of spot zoning. The legal argument is that it would be remediing a wrong. (2016-09-14 Minutes, p. 5) (Emphasis added) (Minutes, p. 5) (Emphasis added)

September 28, 2016 Planning Board Meeting

Ms. Ecker provided background information including that at the last study session the Planning Board “resumed their discussion regarding legal nonconforming buildings.” The result was that “after much consideration” the Board directed the Planning Staff to meet with the 555 Building applicant to draft proposed ordinance language that addressed “the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of three buildings downtown.” (2016-09-28 Minutes, p. 3) ²

It is clear that by this meeting the Planning Board was only discussing a draft of the D5 overlay ordinance that gave the 555 Building, Birmingham Place and Merrillwood conforming status and nothing more. According to the minutes, the approach, with which the 555 Building applicant agreed, “was first to create a D-5 Zone, and second to recommend rezoning of one or more properties into the new D-5 category. This would allow the board to have further discussion on whether they want it to be the 555 Building property, or include the Birmingham Place and the Merrillwood Building, which are also non-conforming with regard to height.” (Id. at p. 5.)

It is also very clear that the Planning Board intended that the D5 language regarding new development in the D5 zone was for the benefit of the 555 Building owners, who expressed throughout the process that they wanted the right to use their vacant property for a new building that could be built as tall as the 555 Building. The only issue was whether building higher than 5 stories would require a special land use permit.

Chairman Clein summarized that the language would make any property that is put into the D-5 Zone legal and conforming as to height and setback. It would allow expansions as part of building maintenance. Undeveloped portions of the property could be built upon so long as it meets the D-4 Overlay standards. The south side of the 555 Building still needs to be resolved. (Id.)

Mr. Williams did not agree with limiting the south side to five stories. However, anything built above five stories would require a Special Land Use Permit ("SLUP"). Mr. Share was in favor of tying all of the expansions to a SLUP. Chairman Clein felt the D-4 controls are in place and any expansion must conform. Mr. Share thought the City should have some control over how changes get made. Mr. Koseck liked the SLUP because it allows the City to control the design to meet the spirit and intent of the D-4 Zone. Mr. Jeffares agreed. (Id.)

² As stated, the Planning Board also amended Section 6.02 so that it applied to nonconforming commercial and residential buildings.
The 555 Building owner’s Attorney responded to the discussion as follows:

Mr. Richard Rattner, Attorney, represented the applicant. He said they are almost there with allowing the 555 Building to be conforming in all respects. Secondly, the proposed expansion language is fine. Third, they would like to see the height of a new building being constructed in the D-5 Zone be up to but not exceeding the height of the building immediately adjacent or abutting it. That means the south building cannot be any higher than the 555 Building. They would like to do that without a SLUP. (Id.) (Emphasis added)

October 28, 2016 Planning Commission Meeting

At this meeting, the Planning Board set a public hearing for making a recommendation on the amendment of the D5 ordinance and the proposed rezoning of the 555 Building to the new zoning overlay district category.

First, Ms. Ecker provided a recap which reiterated that the proposed D5 classification would accomplish two goals: (1) render 555 S. Old Woodward a legal conforming structure and (2) allow a new addition at the south end of the building that could be built as tall as the adjacent structure. (2016-10-26 Minutes, p. 4)

Ms. Ecker also suggested that the Board should recommend rezoning Birmingham Place and Merrillwood to the D5 classification because they were also nonconforming in building height. The consensus was to contact the owners before including them. There was no suggestion that they contact the owner of the Mountain King property or include that property in the rezoning because the Mountain King property did not contain an existing building over 5 stories.

The decision to include Merrillwood in the rezoning further establishes that the City did not intend the D5 Overlay ordinance as part of any general development incentive for the South Woodward Gateway as the Applicant has represented to the Board. Merrillwood is not located in the South Woodward Gateway. The Planning Board included Birmingham Place and Merrillwood because the only purpose of the D5 overlay district is to provide legal conforming status to existing buildings over 5 stories.

December 14, 2016 Planning Commission Meeting

At this meeting, the Planning Board held a public hearing on the proposed D5 amendment and the rezoning of the three nonconforming buildings. Ms. Ecker explained that the Planning Board set the public hearing “with the goal of bringing several non-conforming buildings in Birmingham into compliance. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently non-conforming to be considered legal in regards to setbacks, number of stories, and height. The new
D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings.” (2016-12-14 Minutes, p. 3) (Emphasis added)3

It should be obvious that Ms. Ecker would have notified the public that the new D5 classification could be applied to any property in the City whether or not it was nonconforming in height if that was the intent of the new ordinance. The failure to notify the public of that intent is another reason why the Planning Board must again deny recommendation of the rezoning request. In fact, a resident, who was concerned about the impact on parking demand commented that he did not believe that residents really understood what was being considered. If what was being proposed was other than what has been represented as the goal of the amendment, there has been a serious breach of the public trust.

February 13, 2017 City Commission Public Hearing

At this meeting, the City Commission held a public hearing on the D5 ordinance amendment and rezoning. The planning department briefed the City Manager prior to the hearing.

In a Memorandum dated February 6, 2017 from Senior Planner Matthew Baka he reminded the City Manager that the Planning Board and City Commission discussed the issue of legal nonconforming commercial buildings at the June 2016 joint meeting.

The Memo further provides that the Planning Board held a public hearing to consider Zoning Ordinance amendments with the goal of bringing several non-conforming buildings in Birmingham into compliance. The proposed ordinance amendments would add a new D-5 classification to the Downtown Overlay Zone which would allow buildings that are currently nonconforming to be considered legal in regards to setbacks, number of stories, and height. The new D-5 zone would also allow additions or new construction in the D-5 to match the height of abutting or adjacent buildings. (Memo, p. 1.) (emphasis added)

The Memo advised only that the goal of the zoning ordinance amendment was to render several buildings legally conforming structures. The Memo would have alerted the City Manager if the intention was to allow new construction on sites that did not already contain a building greater than 5 stories.

The minutes from the February 13, 2017 public hearing show that City Planner Ecker advised the Commission that with respect to the new D5 classification and rezoning of the three buildings:

[The impact of the amendments would make the three buildings legal conforming buildings, and they would be allowed to be

3 As stated, the Planning Board also recommended amending Article 6, Nonconformances, Section 6.02 by removing the limitation that the extension or expansion of nonconforming property applied only to residential property.
extended or enlarged with a Special Land Use Permit. If a new building was constructed, it could match the height of the existing building with a Special Land Use Permit.

The new category would deal with existing buildings located in the D5 zone. This change enables applicants to obtain funding for significant renovations or improvements as a legal conforming building. The second part allows expansion with the restriction to meet the overlay. (Minutes, p. 15)

First, Ms. Ecker unmistakably represented to the City Commission that the proposed D5 ordinance would apply to taller existing buildings, like the 555 Building, Birmingham Place and Merrillwood, and allow improvements and expansions of those buildings or sites.

Second, Ms. Ecker also led the Commissioners to believe that only the 555 Building would be eligible to build a new taller building in the D5 district because of the vacant land on its site. Ecker advised Commissioner Boutros that the language regarding new construction of a building as tall as an adjacent building was inserted because “the 555 site has room where a new building could be constructed.” (Id.)

Ecker also assured Commissioner Hoff as follows:

Commissioner Hoff asked if Birmingham Place or Merrillwood could buy the adjacent structures and then build in the space. City Planner Ecker said that they could not, because the properties next door would not have the D5 zoning classification."

The clear inference is that neither Merrillwood or Birmingham Place could build new taller buildings by simply buying the next door parcels because those parcels would not have been eligible to be part of the D5 district. The 555 Building could construct a new building because its entire site would be zoned D5.

CONCLUSION

The history of the D5 overlay ordinance should clear up any misconception or unsupported assertions by the Applicant that Birmingham Place, its attorneys or any Planning Board member mischaracterized the intent and purpose of the D5 ordinance. The facts show that the only intent was to allow the renovation and expansion of existing buildings taller than 5 stories. It was also to allow the 555 Building the option to build on its vacant property that also was zoned D5. There was no intent that the City apply the ordinance to property like the Applicant’s property which can be redeveloped under the D4 ordinance and not lose any preexisting height. As a nonconforming building for reasons other than being taller than 5 stories, the Applicant can seek permission to renovate or expand its existing buildings under Article 6, Section 6.02.
DATE: September 22, 2015

TO: Planning Board Members

FROM: Jana L. Ecker, Planning Director

SUBJECT: Study Session on Legal Non-conforming Buildings

Last year, the owners of the 555 S. Old Woodward building applied to the Planning Board to amend the Zoning Ordinance to allow the renovation of the existing building, the addition of new residential units along S. Old Woodward, as well as an addition to the south of the existing residential tower for new retail space and residential units. The Building Official had previously ruled that some changes to the existing legal non-conforming building may be permitted. However, the scale and scope of the changes that the property owner sought to implement would exceed what would be permitted as maintenance and thus were not permitted in accordance with the legal non-conforming regulations contained in the Zoning Ordinance.

In order to renovate and expand the existing building, the owners of the 555 S. Old Woodward building requested a Zoning Ordinance amendment to create a new D-5: Downtown Gateway Over Five Stories zoning classification in the Downtown Birmingham Overlay District. The proposal was then to seek rezoning of the 555 S. Old Woodward properties from the existing D-4 Overlay zoning classification to the proposed D-5 Overlay zoning classification, which would essentially render the existing building at 555 S. Old Woodward as a legal, conforming building that could then be renovated and expanded in accordance with new D5 development standards.

On May 13, 2015, the Planning Board began discussing the applicant’s proposal to create a new D-5: Downtown Gateway (Over Five Stories) zoning classification in the Downtown Birmingham Overlay District. Planning Board members discussed the desire to review the proposed amendment within the spirit, vision and context of the entire downtown, and not to create a new zoning classification around a specific building. The Planning Board did, however, recognize the importance of the 555 S. Old Woodward building and the need to allow renovations and additions to improve its presence at the south end of Downtown Birmingham. Specific concerns raised regarding the existing 555 S. Old Woodward building were the unwelcome facades of the Woodward elevation, the split level concept on the S. Old Woodward elevation, and the exposed structured parking.

At subsequent Planning Board meetings on June 10th, 2015 and July 8th, 2015 the Planning Board further discussed the ways that the building could be modified and improved as a conforming structure and not through the use of variance requests. The Planning Board indicated that they would like to craft a zoning classification or overlay expansion that allows
the 555 Building to be renovated but also mirrors the development standards in the Triangle District across Woodward, which allows a maximum of 9 stories. Board members discussed taking a look at the 555 building along with several other parcels in the context of future development. It was suggested that this could be accomplished through a combination of a new zoning district and a Special Land Use Permit (SLUP) or the addition of a D6 zone as well, to differentiate permitted height north of Bowers, and south of Bowers along Woodward. The board reviewed multiple examples of similar “gateway corridor” districts in other cities (see attached), along with highlights, notes and sample ordinance language from other cities that were relevant. There were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include. No consensus was reached.

On September 9, 2016, the board reviewed a revised draft of the proposed D5 zone. Board members discussed the appropriate height for buildings along the west side of Woodward adjacent to the Triangle District. Some board members felt that the allowable height in a new D5 or D6 zone should mirror the 9 stories permitted in the Triangle District on the east side of Woodward. Other board members felt that additions should be permitted to match the height of existing non-conforming buildings. The board was unable to reach consensus on how to proceed, and requested additional information and direction from the City Attorney on potential options to provide exemptions for non-conforming buildings. The City Attorney’s response letter dated September 29, 2016 is attached for your review.

On June 20, 2016 the issue of legal non-conforming commercial buildings was discussed at a joint meeting of the City Commission and Planning Board. The 555 S. Old Woodward building, the Merrillwood Building and Birmingham Place were referenced due to their non-conformity with regards to their height and bulk, and the desire to allow improvements or changes to these buildings. While no action was taken at the joint meeting, there was consensus that the issue of the improvement or expansion of legal non-conforming buildings should be studied.

On July 25, 2016, the City Commission again discussed the issue of legal, non-conforming commercial buildings and directed the Planning Board to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures.

On September 14, 2016, the Planning Board resumed their discussion regarding legal non-conforming buildings. Specifically, the Planning Board discussed the following options to allow changes to legal non-conforming buildings for maintenance, renovation and/or expansion:

1. **Allow Maintenance and Renovation Only of Existing Legal, Non-conforming Commercial Buildings**
Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity
A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:

1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
2. The use shall not be reestablished after discontinuance for 6 months.
3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).

The amendment noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building so long as the addition meets the current zoning standards for the existing zone district. This amendment would allow both commercial and residential legal non-conforming buildings to be expanded using a consistent approach. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height only) to construct an addition. However, the addition could not be 10 stories in height to match the existing building, but could be built up to a maximum of 5 stories as currently allowed in the zone district.

2. Allow the Expansion of Existing Legal, Non-conforming Buildings To Match Existing Non-conforming Conditions

Article 6, Section 6.02 of the Zoning Ordinance could be amended as follows:

6.02 Continuance of Nonconformity
A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:

1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
2. The use shall not be reestablished after discontinuance for 6 months.
3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself increase the degree of the dimensional nonconformance, nor violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).
OR

Section 6.02 Continuance of Nonconformity

A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:

1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
2. The use shall not be reestablished after discontinuance for 6 months.
3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F). A legally nonconforming structure may expand its square footage provided that the expansion does not exceed the extent of the height and/or setback in nonconformance. All other development standards must be met in the expansion.

   a. A vertical expansion of a nonconforming building or structure which is legally nonconforming as to one or more setback requirements is a permitted expansion of that nonconformity.

   b. A horizontal expansion of a nonconforming building or structure which is legally nonconforming as to one or more height requirements is a permitted expansion of that nonconformity.

Both of the amendments noted above would allow for the maintenance, extension or enlargement of an existing legal, non-conforming building up to, but not exceeding, the existing non-conforming dimension. The first option listed above is more general in nature, and could include the expansion of any type of non-conformity (height, setbacks, FAR, density, lot coverage etc.). The second option listed above is limited to expanding only height and/or setback non-conformities. As an example, this approach would allow a 10 story legal non-conforming building in a 5 story zone district (building that is non-conforming for height or setbacks) to construct an addition up to 10 stories in height to match the existing building height and setbacks.

3. Convert Existing Legal, Non-conforming Buildings to Conforming Using a Special Land Use Permit
Another option to consider may be to convert buildings or structures in Downtown Birmingham that are legal non-conforming with regards to height into conforming buildings through the use of a Special Land Use Permit. An amendment to Article 3, Overlay Districts, or to Article 6, Nonconformances, could be proposed as follows:

**Conversion of Non-conforming Status:** A building in the Downtown Birmingham Overlay District that is a legal non-conforming building or structure with regards to height may be deemed a conforming building or structure with regards to height if the property owner agrees to specific conditions to control the future extension, enlargement or renovation of the building or structure and said conditions are approved by the City Commission under the provisions of a Special Land Use Permit.

This approach would allow for the extension or enlargement of existing legal, non-conforming buildings downtown on a case by case basis as negotiated by the City Commission. The amendment noted above would provide flexibility for different site conditions and would provide control over the parameters of future expansion based on site and neighborhood context. As an example, a 10 story legal non-conforming building in a 5 story zone district could be deemed conforming if placed under the provisions of a SLUP that establish the specific conditions for maximum extension or enlargement of the building in the future.

4. **Re-establish the Zoning District(s) in effect when Building Permits were Issued for Buildings in Excess of 5 Stories (or amend the B3 Zoning District) to render existing buildings conforming**

Another option to consider may be to re-establish the former zoning classification(s) in place in the 1970's when several buildings were legally constructed greater than 5 stories in height, and to rezone properties with non-conforming buildings with regards to height back to this classification. Thus, any extension or enlargement of an existing legal, non-conforming building so rezoned would be permitted as anticipated at the time of construction. As an example, a 10 story building constructed in 1975 under a classification that permitted 11 stories in height could be extended or enlarged up to 11 stories in height.

5. **Create a New Zoning District(s)**

Another option to consider is to create a new zoning classification(s) that would permit additional building height and rezoning certain properties to this classification, thus rendering legal non-conforming buildings or structures conforming buildings with regard to height. This approach has been discussed by the Planning Board over the past year, and amendments have been drafted to create two new classifications under the Downtown Overlay, D5 and D6, to attempt to address the non-conforming heights of several buildings downtown. The Planning Board has also discussed using this approach to address sites along the west side of Woodward to allow additional height even for existing conforming buildings along the corridor to match the height permitted on the east side of Woodward in the Triangle District. The latest version of
the draft previously discussed by the Planning Board is attached and highlighted to indicate areas noted for further discussion. As an example using this approach, an existing 10 story legal non-conforming building in a 5 story zone district could be rezoned to a new zoning classification to be created that would allow 10 story buildings as of right.

At the Planning Board meeting on September 14, 2016, board members agreed that the improvement and maintenance of existing legal, non-conforming commercial buildings should be permitted, and expansion of such buildings should also be permitted consistent with regulations for residential buildings. Board members also discussed at length the issue of several legal, non-conforming buildings in the Downtown Overlay District, and the desire to allow improvements to those buildings as well. After much discussion, the Planning Board directed Planning staff to meet with the applicant for the 555 Building to craft ordinance language that would make existing buildings downtown conforming with regards to both height and setbacks, and to allow future expansion that would comply with the standards of the D4 Overlay.

On September 28, 2016, the Planning Board discussed draft ordinance language that proposed to create a D5 zone district that would render existing buildings legal and conforming with regards to setback and height. Board members agreed that additions or renovations should be permitted to existing buildings. With regards to the construction of new buildings in the proposed D5 zone district, there was much discussion as to whether such buildings should meet the 5 story maximum height in the D4 zone district, or should be allowed to match the height of the existing adjacent buildings. The consensus of the board was to allow additional height for new buildings in the D5 to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP. At the end of the discussion, the applicant asked if the Planning Board could simply waive certain requirements in the D5 zone instead of requiring a SLUP. Staff agreed to discuss this with the City Attorney.

Since the September 28, 2016 Planning Board meeting, City staff has met with the applicant to refine the draft ordinance language. Accordingly, please find attached draft ordinance language for your review based on the Planning Board’s direction from the last meeting that addresses the improvement of commercial buildings throughout the City, and also specifically addresses the legal, non-conforming status of buildings downtown.

The applicant has also provided another version of a draft ordinance for the Planning Board’s discussion as well based on their desire to construct a new building that exceeds the height of the existing 555 building, but maintains the same number of stories. The applicant’s revised draft is also attached for your review.

Finally, City staff has reviewed the applicant’s request as to whether the Planning Board can simply waive certain requirements in the D5 zone with both the City Manager and the City Attorney. Although it was unclear as to whether there was a legal question, the City Manager directed the City Attorney to respond. The City Attorney has advised that the question of whether the Planning Board can waive specific requirements is not a legal question, but rather a
policy question. Ultimately, the City Commission has the sole authorization to pass zoning legislation, with or without waivers, so long as they remain in compliance with the Michigan Zoning Enabling Act.

Should the Planning Board wish to recommend the attached ordinance amendments, the board may also wish to consider proposing a rezoning of the 555 Building, Birmingham Place and/or the Merrillwood Building to the proposed D5 Zone (over 5 stories).

**Suggested Action:**

To set a public hearing for December 14, 2016 to consider the following amendments to Chapter 126 Zoning:

(a) Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district;

(b) Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;

AND

To set a public hearing for December 14, 2016 to consider the rezoning of the following properties:

(d) **555 S. Old Woodward** (555 Office and Residential Buildings) from D4 in the Downtown Overlay to D5 in the Downtown Overlay;

(e) **411 S. Old Woodward** (Birmingham Place) from D4 in the Downtown Overlay to D5 in the Downtown Overlay; and

(f) **225 E. Merrillwood** (Merrillwood Building) from D4 in the Downtown Overlay to D5 in the Downtown Overlay.
October 10, 2018

Mr. Timothy J. Currier
Beier Howlett, P.C.
3001 W. Big Beaver Road
Suite 200
Troy, Michigan 48084

Re: Opposition to Rezoning of Property located at 469 and 479 S. Old Woodward, Birmingham, Michigan (the “Property”)

Mr. Currier:

We attempted to reach you by phone earlier today. We are contacting you to inform you, and the others copied on this letter, that our Firm has been engaged by Condominiums at Birmingham Place Association (the “Association”) to work along with counsel for the Birmingham Place Residential Condominium Association. The Association is the so-called Master Association for the Birmingham Place development.

Please be advised that the Association opposes the application to rezone the Property to the D-5 Overlay Zone and fully supports the position of the Birmingham Place Residential Condominium Association. We understand the rezoning application is “back” on the Planning Board’s agenda for its meeting tonight. Unfortunately, we will not be available to participate in the meeting tonight, but we wanted you to be aware of our involvement and our client’s position.

As you might expect, we have recently become involved and have not had the opportunity to thoroughly review all of the extensive information and voluminous documents. However, even based on our limited review, we do not understand how (or why) this matter finds itself back before the Planning Board. In addition, even if the application is properly back before the Planning Board, we also do not see how (or why) any of the so-called “new” information or positions could possibly justify a change to the Planning Board’s previous decision.

In any case, please be aware that if the Planning Board elects to reconsider the rezoning application based on so-styled “new” information, and/or if the Planning Board changes from its previous position of recommending denial of the rezoning application, our Firm will continue forward and complete our thorough review of all of the information and will join in also
advising the Association of its legal rights and remedies along with the Residential Condominium Association’s counsel.

Thank you for your time and attention to this matter. As always, please feel free to contact me with any questions or comments.

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: [Signature]

J. Patrick Lennon

cc: Ms. Michele Prentice
    Ms. Jana L. Ecker
    Ms. Susan K. Friedlander
    Mr. Richard D. Rattner
Submitted On Behalf of Birmingham Place on 01-23-18

REZONING REQUEST FOR 469-479 S. OLD WOODWARD

RESPONSE TO “SUMMARY OF PRIOR SUBMITTAL FROM THE APPLICANT AND THE ANALYSIS & FINDINGS OF THE PLANNING DEPARTMENT’S REVIEW

Over the past several months, the applicant has submitted written documentation and evidence in support of applicant’s application to rezone 469-479 S. Old Woodward to the D-5 Downtown Overlay District. In addition, the Planning Department has completed a thorough analysis of the applicant’s request to rezone the subject property as well as all of the information that was submitted by the applicant during this rezoning process. The following is a summary of the Planning Department’s analysis and findings under the City Ordinance regarding the applicant’s request to rezone 469-479 S. Old Woodward:

- The subject site consists of two vacant, single story commercial buildings (Mountain King and First Place Bank).

Reply: Agreed

- The 0.423-acre site includes two narrow parcels, one facing 3 streets (Old Woodward, Hazel and Woodward), and the other facing 2 streets (Old Woodward and Woodward).

Reply: Agreed

- The rezoning request is made pursuant to Article 7, section 7.02 of the Zoning Code.

Reply: Agreed

- Section 7.02(B)(2)(b)(i) – Due to the site configuration fronting S. Old Woodward, Hazel and Woodward, and the narrow lot size and the off-street parking requirements, rezoning is necessary to preserve enjoyment of rights and usage commonly associated with ownership.

Reply: This is first of several completely subjective conclusions stated as fact but without any supporting facts or evidence. The actual fact is that the very nature of the lots’ size and configuration and the parking requirements make building a nine (9) story building virtually unworkable, especially as regards parking and traffic issues (see report by independent expert retained by the City with findings to the contrary of what the developer claims the Planning Board has made).

- Section 7.02(B)(2)(b)(ii) – Current zoning is no longer appropriate due to off-site parking requirements, narrow lot size configurations, and frontages.

Reply: See immediately above; rezoning would only exacerbate already serious problems.

- Section 7.02(B)(2)(b)(iii) – Rezoning will not be detrimental to surrounding properties as the adjacent and abutting properties are zoned D-5, mixed retail, commercial and residential properties, and applicant’s proposal will add consistency to the streetscape in mass and architectural detail.
Reply: The clear facts are that only Birmingham Place and the 555 Building are zoned D-5, that the office portion of the 555 Building on Hazel Street is only five (5) to six (6) stories, and that all other nearby properties are one (1) or two (2) story buildings. It is apparent at a glance that the building the developer proposes would dwarf almost all nearby buildings, would create substantial inconsistency to the area in both mass and architectural detail, the latter, based on the developer’s filings with the City to date being a very substantial departure from all adjacent and nearby buildings, make the proposed building “stick out like a sore thumb” in an otherwise very attractive area.

• Section 7.02(B)(5)(a) -- The objectives of the City’s master plan and 2016 Plan are met by the rezoning as the proposed streetscape will improve the frontages of S. Old Woodward, Hazel and Woodward and project a strong image of the City toward Woodward with similar massing and architectural detail to adjacent buildings.

Reply: The actual fact is that, based on the developer’s drawings submitted to date, the proposed building would have a virtually blank wall facing Woodward Avenue, would crowd the already narrow Hazel Street area with hotel frontage and would be detrimental to the Old Woodward frontage by adding inconsistent mass running all the way to the Hazel Street corner. The only “strong image of the City toward Woodward” would be the unwelcoming appearance of a modern day version of a medieval wall running from the north end of Birmingham Place all the way to the south end of the 555 Building.

• Section 7.02(B)(5)(b) -- The existing uses of property in the general area align with applicant’s proposed rezoning. Both the Birmingham Place and the 555 Building (neighboring properties) are mixed use buildings with both retail, commercial and residential uses. Properties to the east and west of the subject property are used for parking, retail and commercial.

Reply: The factual portion of the above re mixed use buildings, etc. is accurate, but the statement that the proposed hotel somehow “aligns” with entirely different uses in all nearby buildings is obviously inaccurate at best.

• Section 7.02(B)(5)(c) -- Both neighboring properties are zoned in the D-5 Overlay Zone.

Reply: Correct but irrelevant, especially in light of the subject property having been intentionally zoned D-4 and “both neighboring properties” having been zoned D-5 primarily, if not exclusively, to give them legal conforming status, which was never necessary or intended for the subject property.

• Section 7.02(B)(5)(d) -- The applicant’s property is suitable for uses in the D-5 which are the same as in the current D-4 Zone. However, if a 5-story or less building is constructed under the D-4 at the site, it would be completely dominated by and inconsistent with the height of the neighboring Birmingham Place and 555 Building.

Reply: In actual fact, a five (5) story or lower building would be entirely consistent with every building in the area other than Birmingham Place and the 555 Building, neither of which dominate or are inconsistent with the one (1) story properties that have occupied the subject property for decades.
• Section 7.02(B)(5)(e) – The requested rezoning is consistent with the trend of development of this area of S. Old Woodward which is dominated by the height of the 555 Building and Birmingham Place.

Reply: The alleged “domination” of Birmingham Place and the 555 Building is patently inaccurate, given the actual facts of the vast majority of development in the S. Old Woodward area. More importantly, the trend of development in Birmingham has complied with D-4 standards. A memo dated May 18, 2018 from the Planning Department to this Board (which may have been removed from this Board’s second packet and on which the Planning Department has supposedly completely reversed itself) reads in part:

"Developments trends in Birmingham's Downtown Overlay have seen many buildings built, or approved to be built, to D-4 Standards such as the Maple gateway buildings close by (Greenleaf Trust, Balmoral and the proposed Peabody Redevelopment), the Brookside development, and the proposed mixed use development replacing the Varsity Shop. There have been no buildings erected to D-5 Overlay Zoning standards in some time."

Further, there has been no change in the trend in development or in the character of this area since the 2016 Plan was adopted – taller buildings existed then, and yet the predominant character of the downtown area remains two- to four-story buildings. All other recent developments (e.g., the Daxton Hotel, Forefront, Bristol, Brookside, Peabody, Westbrown, the new proposed Maple House, even 750 Forest in the Triangle District, etc.) have complied with the Master Plan; so should this development.

• Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements of Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-4 to D-5 in the Downtown Overlay district.

Reply: It is difficult to understand how the Planning Department could come to this conclusion, if it actually has, but even if it actually has, the conclusion is clearly contrary to the obvious facts and should be ignored by the Planning Board.
Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Jay Black
1276 Smith Ave.
Birmingham, MI 48009
Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9-story building on this 0.41-acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

Anything built on this little parcel must be harmonious with the overall downtown design and long-range plans for that part of South Old Woodward. Birmingham was never meant to be, is not and should never be, cast in the mold of larger urban areas with high rise developments that cater to a much bigger population.

The Proposed Project is also esthetically displeasing. Instead of enhancing the Woodward corridor with an attractive entrance, it presents only a blank wall to the passing public. It would also create the hostile appearance of blocking off much of South Old Woodward and beyond by erecting a virtual wall of buildings running from the south end of the 555 residential units through the north end of Birmingham Place, reminiscent of medieval walls built around cities to keep people out, not to invite them in.

In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.
2. We also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.

3. Hazel Street is already a busy connector between Woodward and Old Woodward, especially at rush hour times. The Proposed Project would literally clog this small street with excess traffic, especially if the “four stack” valet service recommended by the developer’s own traffic study is implemented and if the current four on-street parking spaces are included in the Proposed Project’s plan for adequate parking, as Christopher Longe recently stated to the Planning Board would be the case. We note that the City’s own traffic advisor, Fleis & Vandenbrink, also finds considerable fault with the developer’s traffic study.

4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

5. The Proposed Project will require deep excavation (“digging half way to China,” as Mr. Longe recently expressed to the Planning Board) and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. The developer has not adequately addressed this and has not made provision to repair, or more importantly to prevent, any damage to Birmingham Place.

Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

[Signature]
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Yours very truly,

[Signature]

[Date]
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Thank you for your time and attention, and for, we sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,
Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. We believe that a 9 story building on this 0.41 acre parcel would be totally out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city.

The city’s 2016 Master Plan intentionally left this little parcel zoned to limit building to 4 or 5 stories, and there is no reason to change that well thought out plan that the city has consistently followed for nearly 20 years. Virtually all other developments in this general area (e.g., Bristol, Forefront, Daxton, Brookside, 750 Forest, Peabody, etc.) are consistent with the 2016 Master Plan. It is crucial that the same rules apply to the Proposed Project, which is on footprint smaller than most, if not every, other recent development.

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In addition, we have serious safety and other concerns, including:

1. Birmingham firefighting capability is limited to 7 stories. This would leave most of the back of the Proposed Project and virtually all of the south end of Birmingham Place with inadequate or no fire protection.

2. We also suggest that the Proposed Project would unduly burden our city’s already hard-pressed police and public safety/rescue facilities.
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4. The demolition and construction time of the Proposed Project would be finite, but during that time, the heavy equipment needed for a project this size would cause construction damage to Hazel Street, Old Woodward and Woodward. Depending on the timing, this could result in at least the repaving work already planned for Old Woodward south having to be redone at a very substantial cost.

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Thank you for your time and attention, and for, I sincerely hope, your vote to preserve all the great attributes of this beautifully walkable, charming, friendly small city.

Yours very truly,

Eunice Galperin
ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

Jackie Piper
542 Oak Ave
Birmingham 48009
ADDRESS

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 460-470 S Old Woodward Avenue (the "Proposed Project")

Ladies and Gentlemen,

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1994, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the City adopted the 1996 Master Plan, which has been crucial to the current revival and success of downtown Birmingham and has been strictly followed for over twenty years. The 1996 Master Plan provided DS zoning for only three already existing buildings. However, the small parcel for which rezoning is requested was intentionally not zoned as DS, despite being located between two of the DS buildings.

We believe that a nine-story building on this 0.41 acre parcel would be totally out of place, would violate the 1996 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

[Signature]

1996 Stanley Blvd
Birmingham, Mich
48009
ADDRESS:

DATE:

Birmingham City Commission
Birmingham Planning Board
151 Martin Street
Birmingham, MI 48009

Re: 469-479 S. Old Woodward Avenue (the “Proposed Project”)

Ladies and Gentlemen:

We are residents of the City of Birmingham and are writing to express our deeply felt disapproval of and opposition to the request for rezoning and to the Proposed Project itself. In 1996, after careful thought and planning, including obtaining outside expertise, and after much time and expense, the city adopted the 2016 Master Plan, which has been crucial to the current revival/success of downtown Birmingham and has been strictly followed for over twenty years. The 2016 Master Plan provided D5 zoning for only three already existing buildings. However, the small parcel for which re-zoning is requested was intentionally not zoned as D5, despite being located between two of the D5 buildings.

We believe that a nine story building on this 0.41 acre parcel would be totally out of place, would violate the 2016 Master Plan and would be inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plan for this beautiful city. We respectfully ask that you stay the course that has been followed and has been successful for so long. Thank you.

Yours very truly,

[Signature]

Mark D. Rubinstein
268 Pilgrim
6/23/18

[Signature]

Atene R. Rubinstein
268 Pilgrim
6/23/18
411 S. Old Woodward Avenue
Birmingham, MI 48009

March 6, 2019

Birmingham City Commission
151 Martin Street
Birmingham, MI 48009

Re: Rezoning of 469-479 S. Old Woodward Avenue (the “Subject Property”)

Honorable Mayor and City Commissioners:

We are residents and/or owners of Birmingham Place and have electronically authorized our names to be signed below to avoid multiple submissions. Birmingham Place is located immediately north of the Subject Property. The developer proposes to build a nine-story mixed use building with a coffee shop on the first floor and a self-described “high end” hotel and long-term residences or condominiums on the remaining floors (the “Proposed Project”).

We are not opposed to the reasonable redevelopment of the Subject Property, but we strongly disapprove of and oppose the current request for rezoning and the Proposed Project itself. The following is a summary of our concerns. Further detail will be presented at the hearing scheduled for March 11.

Regarding Rezoning Matters:

1. Three of the five findings that the Planning Board must make when reviewing a rezoning request under Section 7.02 (5) (a)-(e) of the Birmingham zoning ordinance are particularly relevant here:

   a. The first finding concerns the objectives of the City’s Master Plan. The proposed rezoning clearly does not meet the objectives of the current city-wide master future land use plan (the “Master Plan”) or the Downtown Birmingham 2016 Plan (the “2016 Plan”), both of which call for a maximum height of five stories.

   b. The third finding concerns the zoning classification of property within the general area. The D5 zoning of the adjacent property does not change any of the uses of the Subject Property already permitted under D4. The Subject Property, which contains two single story buildings, can become conforming under the D4 zoning classification, which requires that buildings contain at least two stories. D5 zoning is not required for the Subject Property to be conforming. Rezoning the
Subject Property would not change the uses permitted on the Subject Property - it would change only the maximum height allowed. The developer has made no showing that it requires a taller building to enjoy the permitted uses.

c. The last finding concerns the trend of development in the general area of the Subject Property. The trend of development in the general area and Birmingham as a whole has complied with the D4 overlay standards. All other recent developments are consistent with the Master Plan, the 2016 Plan and the Downtown Overlay District. The developer is the first to ask for rezoning to D5.

2. The D5 zone in the Downtown Overlay District was created to give Merrillwood, Birmingham Place and the 555 Building legal conforming status, not to allow additional high-rise structures (except for immediately south of the 555 Building, which is part of the 555 parcel). Further, rezoning Birmingham Place, the 555 Building and Merrillwood to D5 did not change the allowable uses or heights of those buildings; rather, it merely allowed the buildings to become conforming structures.

3. It is important that the city be developed on the basis of a consistent plan, such as the 2016 Plan. Ad hoc rezoning and exceptions should not be granted without undertaking a new downtown-wide land use analysis. Anything less would be unfair to Birmingham residents and business owners. There is no reason why the Subject Property should be given greater development rights than other properties.

4. When the City rezoned Birmingham Place to the D5 district Birmingham Place residents were not notified that this rezoning could potentially allow the attached buildings on the north and south ends of the Birmingham Place building to be redeveloped at nine stories.

Allowing this rezoning without thorough study and community participation could lead to more and more requests to build more and more high-rise buildings on a similar ad hoc basis. For example, all of the buildings adjacent to Merrillwood would have the very same arguments presented by the developer to justify nine story buildings on those parcels. The Powerhouse building would also be eligible for the D5 zoning. If granted, the current request could create a domino effect in which any building adjacent to a building zoned D5 would also be eligible for the D5 zoning.

Regarding the Proposed Project:

1. Putting a building as tall as Birmingham Place on this little parcel will require deep excavation and heavy equipment and materials, which could seriously jeopardize the structural integrity of Birmingham Place. While perhaps unlikely,
“Daxton-like event” could occur – the Proposed Project is not worth any risk to public and private safety.

2. The Proposed Project will seriously interfere with and/or be hazardous to vehicular and pedestrian traffic, which violates the standards in zoning ordinance subsection 7.27B.4

3. The Proposed Project does not take into account or comply with zoning ordinance subsections 7.27B.2 (interference with adequate light, air and access to Birmingham Place), subsection 7.27B.3 (diminishing the value of Birmingham Place) and subsection 7.27B.6 (landscaped open space not addressed).

4. The Proposed Project poses serious parking issues.

5. Instead of enhancing the Woodward corridor with an attractive entrance, the Proposed Project presents only a blank wall to the passing public.

We urge you to preserve all the great attributes of this beautifully walkable, charming, friendly small city by rejecting the requested rezoning. Thank you for your time and attention.

Signed by electronic authorization:

1. Michael D. and Martha B. Umphrey – owners and residents of Unit 618
2. Betty Billig – non-resident owner of Unit 918
3. Evelyn Chan – owner and resident of Unit 815
4. Ferris and Bernice Kail – owners and residents of Unit 529
5. Janette and Francis Engelhardt – owners and residents of Unit 904
6. Janis and Eric Sterling – owners and residents of Unit 615
7. Peter and Kaling Chang – non-resident owners of Unit 711
8. Miles and Callie Mattson – owners and residents of Unit 822
9. Betty and David Breedlove – non-resident owner of Unit 1014
10. Louis and Rosalind Rochkind – owners and residents of Unit 710
11. Patrick Roberts – owner and resident of Unit 907
12. Meg Conroy – owner anc resident of Unit 723
13. Isaac Kalo – owner and resident of Unit 824
15. Toni and Michael Schwartz – owners and residents of Unit 1018
16. Frederick C. Yeager – owner and resident of Unit 506
17. Wilson Chwang - non-resident owner of Unit 712
18. Susan Winshall - owner and resident of Unit 828
19. Thomas T. and Carol H. Beeler - non-resident owners of Unit 702
20. Cynthia Neal - owner and resident of Unit 612
21. Roland and Darlene Knight - owners and residents of Unit 518
22. Nikole Fine - non-resident owner of Unit 521
23. Pouyan Sardashti - owner and resident of Unit 806
24. Jim Zagruoli - owner and resident of Unit 707
25. Phil and Karen Cohen - non-resident owners of Unit 817
26. Wilma Feltman - owner and resident of Unit 606
27. Steve and Virginia Keller - owners and residents of Unit 605
28. Vandal Raofi & Negar Farhi - owners and residents of Unit 1010
29. Rachel Matz - owner and resident of Unit 801
30. Sonya Sepahban - non-resident owner Unit 906
31. Melvin C. Sernfeld - owner and resident of Unit 802
32. Valerie Foley and Gavin Butler - owners and residents of Unit 508
33. Susan M. Sosnick - owner and resident of Unit 810 & 811
34. Robert J. Levenson - resident of Unit 901
35. Estelle Miller - owner and resident of Unit 924
36. Alex and Victoria Shoneymoon - owners and residents of Unit 514
37. Barb and Chris Ammann - owners and residents of Unit 1025
38. Carol Kozlow - owner and resident of Unit 729
39. Anna and Shane Spradlin - non-resident owner of Unit 525
40. Christopher Ambrose - owner and resident of Unit 512
41. John Hoeffler - resident of Unit 721
42. Lori A. and James J. Arpin - residents and owners of Unit 706
43. Greg Harvey - resident and owner of Unit 821
44. Susan J. Elsholz - non-resident owner of Unit 703
45. Debra J. Elsholz - resident of Unit 703
46. Thomas and Pat Hardy - non-resident owners of Unit 829
47. James M. Richard - resident of Unit 829
48. Frederick A. and Kathleen A. Fromm - owners and residents of Unit 1006
49. Brenda and Eric Knight - residents and owners of Unit 1029
50. Helen Kane - non-resident owner of Unit 901
51. Karen and Gerald Reinhart – non-resident owners of Units 1001, 1002 and 1008
52. Ralph G. and Rose M. Boyle – residents and owners of Unit 725
53. Souheil Saba – non-resident owner of Unit 903
54. Gregory Geiger – resident and owner of Unit 623
55. Dennis Liu and Yushan Peng – non-resident owners Unit 631
56. Stacie Leib – resident and owner of Unit 601
57. Alice Lezotte – resident and owner of Unit 511
58. Adelheid Seidensticker and Karlheinz Sachs – non-resident owners of Unit 921 and 923
59. Stuart Glasier – resident of Unit 603
60. Alexander and Claudia Pfau – resident and owners of Unit 611
61. Giacomo Palazzolo – resident of Unit 908
62. Dana Abner – resident and owner of Unit 602
63. Vaughn Zecman – resident of Unit 700
64. Susan Kaplan – resident and owner of Unit 808
65. Daniel O’Brein – resident and owner of Unit 1004
66. Catherine Brozek – resident and owner of Unit 1012
67. Erin Mellott – resident and owner of Unit 730
68. Terry Mann – resident and owner of Unit 813
69. Gloria Salz – resident and owner of Unit 500
70. Eunice Galperin – resident and owner of Unit 902
71. Shanda Rumble – resident and owner of Unit 608
72. Erik Ronse – resident of Unit 527
73. Alexander Shiffman – resident of Unit 825
74. Shirley Vangeloff – resident and owner of Unit 718
MEMORANDUM

To: The Birmingham City Clerk and City Commission
From: Susan K. Friedlaender on behalf of the Birmingham Place Residential Condominium Association and Condominium at Birmingham Place Condominium Association
Date: March 6, 2019
RE: Protest Petition regarding the proposed rezoning of 469-479 Old S. Woodward.

INTRODUCTION

Attached to this Memorandum as Exhibit 1 is a protest petition authorized under Section 403(1)(b) of the Michigan Zoning Enabling Act, MCL 125.3101, et seq. ("MZEA") and Section 7.02 of the Birmingham Zoning Ordinance. The petition contains the signatures of persons who own residential condominium units and the supplemental petition contains the signature of the owner of Unit 1 or the commercial portion of the condominium project. Attached as Exhibit 2 and Exhibit 3 are the affidavits of the persons who collected the signatures. The signatories are protesting the rezoning request submitted for the property located at 469-479 S. Old Woodward from the D4 to the D5 Downtown Overlay Zone. The public hearing on the rezoning request is scheduled for Monday March 11, 2019 before the City Commission.

DISCUSSION

Under Section 403 of the MZEA, an amendment to a zoning ordinance, or a rezoning, by a city is subject to a protest petition which when filed requires a 2/3 vote of the City Commission or a larger vote, not to exceed a ¾ vote if required by ordinance or charter to pass the rezoning or zoning amendment. Section 7.02 of the Birmingham Zoning Ordinance requires a ¾ vote to pass an amendment for which a protest petition meeting the requires of the ordinance has been filed.

Requirements for Protest Petition

Friedlaender Nykanen & Rogowski PLC
40700 Woodward Ave. Suite 302 | Bloomfield Hills, MI 48304
Under the Zoning Ordinance and MZEA, the protest petition must be presented to the City Commission before final action on the amendment and shall be signed, in relevant part, by

[the owners of at least 20% of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change. For purposes of this Section, publicly owned land shall be excluded in calculating the 20% land area requirement.

**Facts Regarding Compliance with Ordinance and Statutory Requirements for Protest Petitions**

As demonstrated below, the protest petition has been signed by the owners of at least 20% of the area of land included within the area of land extending outward 100 feet from any boundary of 469-479 Old S. Woodward.

- Attached as Exhibit 4 is a georeferenced and scaled map which shows the area of land extending outward 100 feet from any point on the boundary of 469-479 Old S. Woodward.

The relevant area contains 34,459.25 square feet computed as follows:

<table>
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<tr>
<th>100 Feet From Northerly Boundary</th>
<th>100 feet from Easterly Boundary</th>
<th>100 feet from Southerly Boundary</th>
<th>100 feet from Westerly Boundary</th>
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<td>9703.75 square feet</td>
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- The entire area is not counted because it is within the 200 foot public right of way of Woodward Ave.
- The entire area contains 19,949 square feet minus 10245.25 sf for the Hazel Street 50 foot right of way.
- The entire area is not counted because the area measured from the westerly boundary falls within the 100 foot S. Old Woodward public right of way.

- The attached petition contains the signatures of the owners of at least 20% (6,891.85 sf) of the area of land included within the relevant area of land determined as follows:

- According to the Master Deed for the Condominiums at Birmingham Place, as Amended and Restated, the land area of the Condominium Project contains 70,573 square feet. The land is a General Common Element of the Condominium Project. As part of their
ownership rights in the Condominium Project, each Co-owner has exclusive rights to its unit and limited common elements appurtenant to the unit. They also own undivided and inseparable rights to share with other Co-owners the General Common Elements of the Condominium Project. All the Co-owners therefore together own the Condominium land area. Additionally, there is a percentage of value assigned to each unit which is determinative of each Co-owner’s respective undivided and inseparable share of the General Common Elements. The percentage of value is computed from the square feet of the Co-owner’s unit. The Condominium Project contains a commercial component which comprises 106,201 square feet and a residential component which comprises 148,542 square feet. The Unit 1 or commercial component Co-owners collectively own a 42% share of the land area and the Residential Co-owners collectively own a 58% share of the land area. The residential petition signatories collectively own 41% of Condominium land area and commercial or Unit 1 signatory owns the 42% of the land area, which includes the portion of land that is within the relevant protest petition area.

CONCLUSION

The petition therefore contains the signatures of persons who own at least 20% of the area of land included within the area of land extending outward 100 feet from any boundary of 469-479 Old S. Woodward.
EXHIBIT 1
PETITIONS
SUPPLEMENTAL PROTEST PETITION RE 469-479 S. OLD WOODWARD AVENUE

The undersigned the Presidents of the Condominium at Birmingham Place Association and the Birmingham Place Residential Condominium Association and the owner of Unit 1 at Birmingham Place, which represents 143 Condominium units located within one hundred (100) feet of the real estate located at 469-479 S. Old Woodward Avenue (the “Property”) and are adamantly opposed to the proposed rezoning of the Property from the D4 Overlay District to the D5 Overlay District to permit a nine (9) story building to be built on this small 0.41 acre plot and to any related Special Land Use Permit.

This Supplemental Protest Petition is in support of and is intended to be a part of or supplement to the Protest Petition previously filed with the City of Birmingham signed by the owners of 96 residential units at Birmingham Place located within one hundred (100) feet of the property.

We respectfully request that the City Commission reject the 4 to 3 rehearing decision of the Planning Board recommending the rezoning to the D5 Overlay District. The decision departed from the 2016 Master Plan without the benefit of a full study of building heights in the Downtown Overlay District and without meaningful public participation. The Planning Board’s ad hoc decision made without the benefit of comprehensive planning accorded special treatment to this single property despite the short- and long-term detriment to the city and to those who live and work here.

Condominium at Birmingham Place Association, a Michigan Non-Profit Corporation

By: [Signature]  
Kareem Long, Its President

Dated February 7, 2019

Birmingham Place Residential Condominium Association, a Michigan Non-Profit Corporation

By: [Signature]  
Vandad Raofi, Its President

Dated February 7, 2019

MTM Investments Holdings, LLC, Owning Unit 1, a Delaware limited liability company

By: [Signature]  
Jeffrey S. Silverman, Its Authorized Agent

Dated February 7, 2019
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<tr>
<td>1014</td>
<td>154</td>
<td>793</td>
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<td>1018</td>
<td>153</td>
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<td>1021</td>
<td>143</td>
<td>1,373</td>
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<td>1022</td>
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<td>1024</td>
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<td>1025</td>
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<tr>
<td>1028</td>
<td>150</td>
<td>1,949</td>
<td>7/19/2018</td>
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<tr>
<td>1029</td>
<td>147</td>
<td>1,432</td>
<td>7/12/2018</td>
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<td>105,177</td>
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<tr>
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<tr>
<td>Residential</td>
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<tr>
<td>Office</td>
<td>106,201</td>
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<td>Total</td>
<td>254,743</td>
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<td>Date</td>
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<tr>
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<tr>
<td></td>
<td>07/12/18</td>
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<tr>
<td></td>
<td>07/22/18</td>
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</tr>
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</table>

We especially request that the City Commission heed the 5-0-2 decision of the Planning Board, that it not depart from the 2016 Master Plan without a full study of building heights in the Downtown Overlay District, with single property despite the short and long-term detriment to the city and to those who live and work here.

We respectfully request that the City Commission heed the 5-0-2 decision of the Planning Board, that it not depart from the 2016 Master Plan without a full study of building heights in the Downtown Overlay District, with single property despite the short and long-term detriment to the city and to those who live and work here.
PROTEST PETITION RE 469-479 S. OLD WOODWARD AVENUE

We are the owners of condominium units located within one hundred (100) feet of the real estate located at 469-479 S. Old Woodward Avenue and are adamantly opposed to the proposed rezoning of that property from the D4 Overlay District to the D5 Overlay District to permit a nine (9) story building to be built on this small 0.41 acre plot and to any related Special Land Use Permit.

We respectfully request that the City Commission heed the 5-to-2 decision of the Planning Board, not depart from the 2016 Master Plan without a full study of building heights in the Downtown Overlay District with meaningful public participation, and not make ad hoc decisions that would accord special treatment to this single property despite the short- and long-term detriment to the city and those who live and work here.

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<tr>
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<tr>
<td>07/16/18</td>
<td><strong>Sardasedi</strong></td>
<td>411 S. Old Woodward Avenue, Unit # 806</td>
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<tr>
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<td><strong>Pouyan Sardasedi</strong></td>
<td>Birmingham, MI 48009</td>
</tr>
<tr>
<td>07/18/18</td>
<td><strong>Michael Scharf</strong></td>
<td>411 S. Old Woodward Avenue, Unit # 1018</td>
</tr>
<tr>
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<td><strong>Scharf</strong></td>
<td>Birmingham, MI 48009</td>
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<tr>
<td>07/18/18</td>
<td><strong>Jennifer Longoria</strong></td>
<td>411 S. Old Woodward Avenue, Unit # 608</td>
</tr>
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<td></td>
<td><strong>Longoria</strong></td>
<td>Birmingham, MI 48009</td>
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<tr>
<td>07/20/18</td>
<td><strong>Alex Shedd</strong></td>
<td>411 S. Old Woodward Avenue, Unit # 514</td>
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<td><strong>Shedd</strong></td>
<td>Birmingham, MI 48009</td>
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<td>07/21/18</td>
<td><strong>Suszla Sosnick</strong></td>
<td>411 S. Old Woodward Avenue, Unit # 510</td>
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<td>Birmingham, MI 48009</td>
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<td>07/21/18</td>
<td><strong>Chris Amorose</strong></td>
<td>411 S. Old Woodward Avenue, Unit # 512</td>
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<td>07/21/18</td>
<td><strong>Jean Blank</strong></td>
<td>411 S. Old Woodward Avenue, Unit # 918</td>
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<tr>
<td>07/26/18</td>
<td><strong>Suszla Sosnick</strong></td>
<td>411 S. Old Woodward Avenue, Unit # 811</td>
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<td>07/26/18</td>
<td><strong>Evelyn Chan</strong></td>
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<td><strong>Chan</strong></td>
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<tr>
<td>07/26/18</td>
<td><strong>Berna Tellen</strong></td>
<td>411 S. Old Woodward Avenue, Unit # 606</td>
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<td><strong>Tellen</strong></td>
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<tr>
<td>07/26/18</td>
<td><strong>Donald A. Roberts</strong></td>
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<tr>
<td>07/26/18</td>
<td><strong>Eric Sturtevant</strong></td>
<td>411 S. Old Woodward Avenue, Unit # 605</td>
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<td><strong>Sturtevant</strong></td>
<td>Birmingham, MI 48009</td>
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**PROTEST PETITION RE 469-479 S. OLD WOODWARD AVENUE**

We are the owners of condominium units located within one hundred (100) feet of the real estate located at 469-479 S. Old Woodward Avenue and are adamantly opposed to the proposed rezoning of that property from the D4 Overlay District to the D5 Overlay District to permit a nine (9) story building to be built on this small 0.41 acre plot and to any related Special Land Use Permit.

We respectfully request that the City Commission heed the 5-to-2 decision of the Planning Board, not depart from the 2016 Master-Plan without a full study of building heights in the Downtown Overlay District with meaningful public participation, and not make ad hoc decisions that would accord special treatment to this single property despite the short- and long-term detriment to the city and those who live and work here.

<table>
<thead>
<tr>
<th>DATE</th>
<th>SIGNATURE/NAME</th>
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</table>
| 07/13/18 | Signature:  
Print Name: David Breedlove | 411 S. Old Woodward Avenue, Unit #1014  
Birmingham, MI 48009 |
| 07/13/18 | Signature:  
Print Name: Betty S. Breedlove | 411 S. Old Woodward Avenue, Unit #1014  
Birmingham, MI 48009 |
| 07/16/18 | Signature:  
Print Name: Eunyoun Suckhae | 411 S. Old Woodward Avenue, Unit #1014  
Birmingham, MI 48009 |
| 07/17/18 | Signature:  
Print Name: Ann Cohen | 411 S. Old Woodward Avenue, Unit #610  
Birmingham, MI 48009 |
| 07/17/18 | Signature:  
Print Name: Dana Barsa | 411 S. Old Woodward Avenue, Unit #713  
Birmingham, MI 48009 |
| 07/18/18 | Signature:  
Print Name: Alice Logadale | 411 S. Old Woodward Avenue, Unit #511  
Birmingham, MI 48009 |
| 07/18/18 | Signature:  
Print Name: Cyril Lebl | 411 S. Old Woodward Avenue, Unit #612  
Birmingham, MI 48009 |
| 07/18/18 | Signature:  
Print Name: Ray Prasad | 411 S. Old Woodward Avenue, Unit #622  
Birmingham, MI 48009 |
| 07/18/18 | Signature:  
Print Name: Alice Leisy | 411 S. Old Woodward Avenue, Unit #911  
Birmingham, MI 48009 |
| 07/18/18 | Signature:  
Print Name: Julie Wolfe | 411 S. Old Woodward Avenue, Unit #1021  
Birmingham, MI 48009 |
| 08/2/18 | Signature:  
Print Name: Emma Gayden | 411 S. Old Woodward Avenue, Unit #902  
Birmingham, MI 48009 |
| 08/2/18 | Signature:  
Print Name: Ethel Mid | 411 S. Old Woodward Avenue, Unit #949  
Birmingham, MI 48009 |
PROTEST PETITION RE 469-479 S. OLD WOODWARD AVENUE

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<td>Sign: Brenda Knight</td>
<td>411 S. Old Woodward Avenue, Unit #1029 Birmingham, MI 48009</td>
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<tr>
<td></td>
<td>Print Name: Pfeffer Knight</td>
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<tr>
<td>07/31/18</td>
<td>Sign: Mary Rehbock</td>
<td>411 S. Old Woodward Avenue, Unit #522 Birmingham, MI 48009</td>
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<tr>
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<td>Print Name: Mary Rehbock</td>
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<tr>
<td>07/31/18</td>
<td>Sign: Erin Melnick</td>
<td>411 S. Old Woodward Avenue, Unit #730 Birmingham, MI 48009</td>
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<tr>
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<td>Print Name: Erin Melnick</td>
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<td>Sign:</td>
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<td></td>
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PROTEST PETITION RE 469-479 S. OLD WOODWARD AVENUE

We are the owners of condominium units located within one hundred (100) feet of the real estate located at 469-479 S. Old Woodward Avenue and are adamantly opposed to the proposed rezoning of that property from the D4 Overlay District to the D5 Overlay District to permit a nine (9) story building to be built on this small 0.41 acre plot and to any related Special Land Use Permit.

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<td>Sign: John J. Elsholz Print Name: DEBRA J. ELSHOLZ</td>
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<tr>
<td>08/1/18</td>
<td>Sign: Maru W. Par Print Name: MARC W. PORECOK</td>
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<td>08/1/18</td>
<td>Sign: Susan W. Winstall Print Name: SUSAN WINSFALL</td>
<td>411 S. Old Woodward Avenue, Unit # 52S Birmingham, MI 48009</td>
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<tr>
<td>08/1/18</td>
<td>Sign: Barry Koal Print Name: BARRY KOAL</td>
<td>411 S. Old Woodward Avenue, Unit # 52S Birmingham, MI 48009</td>
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<tr>
<td>08/1/18</td>
<td>Sign: Print Name: Greg Harvey</td>
<td>411 S. Old Woodward Avenue, Unit # 821 Birmingham, MI 48009</td>
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<td>08/2/18</td>
<td>Sign: Print Name: Berger: Janette A. Engelmer</td>
<td>411 S. Old Woodward Avenue, Unit # 904 Birmingham, MI 48009</td>
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<td>08/2/18</td>
<td>Sign: Print Name: SPAULDING</td>
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<td>08/2/18</td>
<td>Sign: Print Name: BRIGITTE GEIBER</td>
<td>411 S. Old Woodward Avenue, Unit # 623 Birmingham, MI 48009</td>
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<td>08/2/18</td>
<td>Sign: Print Name: JILL E. DOLIK</td>
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<td>08/2/18</td>
<td>Sign: Print Name: STEVEN R. KELLER</td>
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<tbody>
<tr>
<td>08/3/18</td>
<td>Sign: Sameer A. Sarita Print Name: Sameer A. Sarita</td>
<td>411 S. Old Woodward Avenue. Unit # 825 Birmingham, MI 48009</td>
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<tr>
<td>08/3/18</td>
<td>Sign: Gloria Sall Print Name: GLORIA SALL</td>
<td>411 S. Old Woodward Avenue. Unit # 510 Birmingham, MI 48009</td>
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<td>08/3/18</td>
<td>Sign: K. S. Print Name: K. S.</td>
<td>411 S. Old Woodward Avenue. Unit # 531 Birmingham, MI 48009</td>
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<tr>
<td>08/3/18</td>
<td>Sign: Rachel Katz Print Name: Rachel Katz</td>
<td>411 S. Old Woodward Avenue. Unit # 801 Birmingham, MI 48009</td>
</tr>
<tr>
<td>08/7/18</td>
<td>Sign: Karen Zack Print Name: Karen Zack</td>
<td>411 S. Old Woodward Avenue. Unit # 625 Birmingham, MI 48009</td>
</tr>
<tr>
<td>08/8/18</td>
<td>Sign: Print Name:</td>
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<tr>
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<tbody>
<tr>
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<td>Sign: [Signature] &lt;br&gt; Print Name: Studly Nakas</td>
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<tr>
<td>08/1/18</td>
<td>Sign: [Signature] &lt;br&gt; Print Name: Studly Nakas</td>
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<td>08/1/18</td>
<td>Sign: [Signature] &lt;br&gt; Print Name: Studly Nakas</td>
<td>411 S. Old Woodward Avenue, Unit # &lt;br&gt; Birmingham, MI 48009</td>
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PROTEST PETITION RE 469-479 S. OLD WOODWARD AVENUE

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PROTEST PETITION RE 469-479 S. OLD WOODWARD AVENUE

We are the owners of condominium units located within one hundred (100) feet of the real estate located at 469-479 S. Old Woodward Avenue and are adamantly opposed to the proposed rezoning of that property from the D4 Overlay District to the D5 Overlay District to permit a nine (9) story building to be built on this small 0.41 acre plot and to any related Special Land Use Permit.

We respectfully request that the City Commission heed the 5-to-2 decision of the Planning Board, not depart from the 2016 Master Plan without a full study of building heights in the Downtown Overlay District with meaningful public participation, and not make ad hoc decisions that would accord special treatment to this single property despite the short- and long-term detriment to the city and those who live and work here.

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PROTEST PETITION IN OPPOSITION TO
REZONING 469-479 S. OLD WOODWARD AVENUE

We are not residents of the City of Birmingham, but we own real estate in the Birmingham Place condominium building (the “Building”) and in that capacity wish to express, in the strongest possible terms, our adamant opposition to the proposed rezoning of the property known as 469-479 S. Old Woodward Avenue (formerly Mountain King Restaurant and First Place Bank) from the D4 Overlay District to the D5 Overlay District to permit a nine (9) story hotel-and-apartment mixed use building to be built on this small 0.41 acre plot.

The property does not meet the plain qualifications for inclusion in the special purpose D5 Overlay District, which was intended only to provide conforming status to existing buildings greater than five stories and not to permit new buildings over five stories other than for vacant land on the 555 S. Old Woodward site. The proposed rezoning also directly contravenes the city’s 2016 Master Plan, poses serious risks to the integrity of and fire hazards to the Building, will increase already serious traffic problems and is esthetically out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plans for this beautiful city – it’s just one building, some will say, but once on this slippery slope, the city will be pressured to give other property owners the right to build larger buildings than was ever intended.

We respectfully request that the City Commission not depart from the 2016 Master Plan, which has worked well to date, without following the proper procedure for any such radical change of the city’s long held land use policies regarding building height in the Downtown Overlay District. That procedure and our due process rights require a full study of building heights in the Downtown Overlay District with meaningful public participation. It would be bad policy and unfair to residents for the city to engage in ad hoc and arbitrary zoning decisions that accord special treatment to a single property, allowing a developer to maximize its return despite the short- and long-term harm to the city and its residents.

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<td>Doris Hanna</td>
<td>411 S. Old Woodward Ave., Units 804,805 and 624</td>
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<td>Michel Hanna</td>
<td>411 S. Old Woodward Ave., Unit 915</td>
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<td>Mostafa Hanna</td>
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**PROTEST PETITION RE 469-479 S. OLD WOODWARD AVENUE**

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We respectfully request that the City Commission heed the 5-to-2 decision of the Planning Board, not depart from the 2016 Master Plan without a full study of building heights in the Downtown Overlay District with meaningful public participation, and not make ad hoc decisions that would accord special treatment to this single property despite the short- and long-term detriment to the city and those who live and work here.

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<td></td>
<td>Print Name: [Dennis Liu]</td>
<td>[Birmingham, MI 48009]</td>
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Hello,

I have attached a petition to prevent the property next door from building above 5 stories could you please sign and send back.

**Scott Sims**
Assistant Property Manager | Detroit
Dir 248-642-9000 | Fax 248-642-2529
411 S. Old Woodward Birmingham, MI 48009
Scott.sims@colliers.com

www.colliers.com

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**PROTEST PETITION RE: 469-479 S. OLD WOODWARD AVENUE**

We are the owners of condominium units located within one hundred (100) feet of the real estate located at 469-479 S. Old Woodward Avenue and are adamantly opposed to the proposed rezoning of that property from the D3 Overlay District to the D5 Overlay District to permit a nine (9) story building to be built on this small 0.41 acre plot and to any related Special Land Use Permit.

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<td>[Signature]</td>
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<td></td>
<td>Frederick C. Yeager</td>
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<td>411 S. Old Woodward Avenue, Unit # 702</td>
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PROTEST PETITION IN OPPOSITION TO REZONING 469-479 S. OLD WOODWARD AVENUE

We, the undersigned residents of the City of Birmingham, wish to express, in the strongest possible terms, our adamant opposition to the proposed rezoning of the property known as 469-479 S. Old Woodward Avenue (formerly Mountain King Restaurant and adjacent bank) from the D4 Overlay District to the D5 Overlay District to permit a nine (9) story hotel-and-apartment mixed use building to be built on this small 0.41 acre plot.

The property does not meet the plain qualifications for inclusion in the special purpose D5 Overlay District, which was intended only to provide conforming status to existing buildings greater than five stories and not to permit new buildings over five stories other than for vacant land on the 555 S. Old Woodward site. The proposed rezoning also directly contravenes the city’s 2016 Master Plan, poses serious risks to the integrity of and fire hazards to the building at 411 S. Old Woodward, will increase already serious traffic problems and is esthetically out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plans for our beautiful city – it’s just one building, some will say, but once on this slippery slope, the city will be pressured to give other property owners the right to build larger buildings than was ever intended.

We respectfully request that the Planning Board (and the City Commission, should this matter be brought before it) not depart from the 2016 Master Plan, which has worked to well to date, without following the proper procedure for any such radical change of the city’s long held land use policies regarding building height in the Downtown Overlay District. That procedure and our due process rights require a full study of building heights in the Downtown Overlay District with meaningful public participation. It is bad policy and unfair to residents for the city to engage in ad hoc and arbitrary zoning decisions that accord special treatment to a single property, allowing a developer to maximize its return despite the short- and long-term harm to the city and its residents.

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<td>Valerie Lynn</td>
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<td>Erik Reise</td>
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<td>Ann Cohen</td>
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<td>Howard Dreyfus</td>
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The property does not meet the plain qualifications for inclusion in the special purpose D5 Overlay District, which was intended only to provide conforming status to existing buildings greater than five stories and not to permit new buildings over five stories other than for vacant land on the 555 S. Old Woodward site. The proposed rezoning also directly contravenes the city’s 2016 Master Plan, poses serious risks to the integrity of and fire hazards to the building at 411 S. Old Woodward, will increase already serious traffic problems and is esthetically out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plans for our beautiful city – it’s just one building, some will say, but once on this slippery slope, the city will be pressured to give other property owners the right to build larger buildings than was ever intended.

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<td>Susan Sosnovic</td>
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<td>06/25/18</td>
<td>Todd Schwartz</td>
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<td>06/25/18</td>
<td>Dean Noller</td>
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<td>06/25/18</td>
<td>Carol Kozlo</td>
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<td>Arleen D'Verue</td>
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<td>Sherry B. Shaw</td>
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<td>Susan Kaplan</td>
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PROTEST PETITION IN OPPOSITION TO
REZONING 469-479 S. OLD WOODWARD AVENUE

We, the undersigned residents of the City of Birmingham, wish to express, in the strongest possible terms, our adamant opposition to the proposed rezoning of the property known as 469-479 S. Old Woodward Avenue (formerly Mountain King Restaurant and adjacent bank) from the D4 Overlay District to the D5 Overlay District to permit a nine (9) story hotel-and-apartment mixed use building to be built on this small 0.41 acre plot.

The property does not meet the plain qualifications for inclusion in the special purpose D5 Overlay District, which was intended only to provide conforming status to existing buildings greater than five stories and not to permit new buildings over five stories other than for vacant land on the 555 S. Old Woodward site. The proposed rezoning also directly contravenes the city’s 2016 Master Plan, poses serious risks to the integrity of and fire hazards to the building at 411 S. Old Woodward, will increase already serious traffic problems and is esthetically out of place and inconsistent with the small town downtown concept we firmly believe is very important to maintaining the character and long-standing plans for our beautiful city – it’s just one building, some will say, but once on this slippery slope, the city will be pressured to give other property owners the right to build larger buildings than was ever intended.

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<td>David Rocklin</td>
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<td>Evan M.</td>
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<td>Amanda L.</td>
<td>411 S Old Woodward</td>
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<td>Print Name: Amanda L.</td>
<td>Birmingham, MI 48009</td>
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| 06/22/18 | Sign: [Signature]  
Print Name: CAROLE O. CLAUDIA | Address: 411 S. OLD WOODWARD AVE  
Birmingham, MI 48009 |
| 06/23/18 | Sign: [Signature]  
Print Name: KESSA HANNAH | Address: 1000  
Birmingham, MI 48009 |
| 06/23/18 | Sign: [Signature]  
Print Name: MELISSA BISSIERE | Address: 411 S. OLD WOODWARD AVE  
Birmingham, MI 48009 |
| 06/27/18 | Sign: [Signature]  
Print Name: ALICE TALL | Address: 411 S. OLD WOODWARD AVE  
Birmingham, MI 48009 |
| 06/27/18 | Sign: [Signature]  
Print Name: GLORIA SILL | Address: 411 S. OLD WOODWARD AVE  
Birmingham, MI 48009 |
| 06/27/18 | Sign: [Signature]  
Print Name: MARTIN TIMMER | Address: 411 S. OLD WOODWARD AVE  
Birmingham, MI 48009 |
| 06/27/18 | Sign: [Signature]  
Print Name: KALI PERKINS | Address: 411 S. OLD WOODWARD AVE  
Birmingham, MI 48009 |
| 06/27/18 | Sign: [Signature]  
Print Name: DAVID Launch | Address: 714  
Birmingham, MI 48009 |
| 06/28/18 | Sign: [Signature]  
Print Name: SHANNON O'NEAL | Address: 411 S. OLD WOODWARD AVE  
Birmingham, MI 48009 |
PROTEST PETITION IN OPPOSITION TO
REZONING 469-479 S. OLD WOODWARD AVENUE

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<td>Donald A Roberts</td>
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<td>Print Name: Donald A Roberts</td>
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<td>Barb Ammann</td>
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RESIDENTS’ PETITION RE 469-479 S. OLD WOODWARD AVENUE

We are residents of the City of Birmingham living at the addresses shown below. As residents, we wish to express our opposition to the proposed rezoning of 469-479 S. Old Woodward Avenue from the D4 Overlay District to the D5 Overlay District to permit a nine (9) story building to be built on this small 0.41 acre plot and to any related Special Land Use Permit.

We respectfully request that the City Commission heed the 5-to-2 decision of the Planning Board, that it not depart from the 2016 Master Plan without a full study of building heights in the Downtown Overlay District with meaningful public participation, and that it not make ad hoc decisions that would accord special treatment to this single property despite the short- and long-term detriment to the city and to those who live and work here.

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<td>4410 Red Willow</td>
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<td>2400 E. Lincoln</td>
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EXHIBIT 2

AFFIDAVIT
AFFIDAVIT OF SCOTT SIMS

Scott Sims, being first duly sworn deposes and says:

1. My name is Scott Sims and I have personal knowledge of the matters stated in this affidavit.

2. I am the Property Manager Assistant of the Condominiums at Birmingham Place, which is located at 401-411 S. Old Woodward, Birmingham, MI 48009. My address is 401 S. Old Woodward, Birmingham, MI 48009.

3. The Senior Property Manager, Michele Prentice, and I each collected and witnessed signatures on the attached protest petition.

4. I can attest that the signatures I obtained for the protest petition were the signatures of a Co-owner of the area of land as further described in the attached Memorandum prepared by the attorney for the Birmingham Place Residential Condominium Association.

By: ________________________________

Scott Sims

Subscribed and sworn to before me this 10th day of August

DIANA C. O’NEALL
Notary Public, State of Michigan
County of Oakland
My Commission Expires 08-14-2023
Acting in the County of Oakland

Notary Public, Oakland County

My Commission expires: 08/14/2023
EXHIBIT 3

AFFIDAVIT
AFFIDAVIT OF MICHELE PRENTICE

Michele Prentice, being first duly sworn deposes and says:

1. My name is Michele Prentice and I have personal knowledge of the matters stated in this affidavit.

2. I am the Senior Property Manager of the Condominiums at Birmingham Place, which is located at 401-411 S. Old Woodward, Birmingham, MI 48009. My address is 401 S. Old Woodward, Birmingham, MI 48009.

3. My colleague Scott Sims and I each collected and witnessed signatures on the attached protest petition.

4. I can attest that the signatures I obtained for the protest petition were the signatures of a Co-owner of the relevant area of land as further described in the attached Memorandum prepared by the attorney for the Birmingham Place Residential Condominium Association.

By: Michele Prentice

Subscribed and sworn to before me this 10th day of August

Diana C. O’Neal
Notary Public, Oakland County

My Commission expires: 08/14/2023
EXHIBIT 4

MAPS AND PERCENTAGES
March 6, 2019

City of Birmingham
City Commission
151 Martin St.
Birmingham, MI 48009

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI (“Subject Property”) in the D5 Downtown Birmingham Overlay District Zone

Dear Members of the City Commission:

Petitioner respectfully requests that the City Commission adopt the Planning Board’s recommendation that 469-479 S. Old Woodward be rezoned from D4 to D5 in the Downtown Overlay. The Planning Board has determined that Petitioner meets the established Zoning Ordinance requirements of Article 1 Section 1.04, Article 7 Section 7.02 (B)(2)(b)(i-iii), and Article 7 Section 7.02(B)(5)(a-e) to qualify for a rezoning of the property from D4 to D5 in the Downtown Overlay district. See Petitioner’s letters of August 13, 2018 and May 17, 2018 (Exhibit A) for recitation of the foregoing Ordinance requirements. The Planning Board’s decision is based on its thorough review of the rezoning request and supporting documentation submitted by Petitioner.

Petitioner has received some opposition to the proposed rezoning. The opposition has advanced three main arguments against rezoning: 1) rezoning the subject property would be Spot Zoning, 2) the subject property is not eligible to be rezoned to D5, and 3) Petitioner has not sufficiently demonstrated that rezoning the subject property is necessary. Petitioner addresses each of these arguments in turn below.

I. Rezoning the Subject Property to D5 is not Spot Zoning

Some concern has been expressed that rezoning the subject property to D5 may be “Spot Zoning." The rezoning of this property to D5 is not Spot Zoning. Planning Director Jana Ecker told the City Commission, during the February 11, 2019 meeting, that “the Planning Board did discuss whether this request was spot zoning and concluded it was not.”
The concept of Spot Zoning is easily, and often, misunderstood. Because of these common misconceptions about the Spot Zoning doctrine, it offers an attractive, albeit erroneous, argument against the rezoning petition. Consequently, this Commission should not be distracted by this argument since it is clearly not applicable to the rezoning of this property.

This is not the City’s first exposure to the question of whether a proposed rezoning might be impermissible Spot Zoning. The issue was raised during the Commission’s consideration of transitional zoning amendments to the Birmingham Zoning Ordinance that were recommended by the Planning Board in 2015. Legal guidance regarding Spot Zoning was sought from the City Attorney, Mr. Timothy Currier.

In his August 20, 2015 letter to the Mayor and the City Commission (Exhibit B), Mr. Currier provided a comprehensive overview of the Spot Zoning concept and a thorough explanation about what, exactly, Spot Zoning is and is not. Mr. Currier quoted at length the authoritative publication *Zoning and Land Use Controls, Volume VI*. This publication gives the following definition of Spot Zoning: “‘Spot Zoning’ is exactly what it sounds like—the zoning (usually rezoning) of a ‘spot’ of land in a way that is significantly different from the zoning that surrounds it” (emphasis supplied).¹

The Planning Board likewise faced similar concerns in 2015 and 2016 during discussions regarding the proposed D5 Downtown Overlay Zone. The Planning Board was provided with clarification regarding Spot Zoning, consistent with Mr. Currier’s 2015 letter, as applied to the proposed D5 Overlay Zone. The petitioner in that deliberation pointed out that the zoning of this area of South Old Woodward is contemplated for the D-5 Overlay Zone is B-3/D-4. The uses in the B-3/D-4 Overlay Zone are the same or similar to the uses proposed in the newly proposed D-5 Overlay District. Thus, since the uses of the adjacent districts are practically identical, it is impossible that such a zone could be considered a spot zone. The Planning Board then voted to recommend approval of the proposed D5 Zoning Ordinance, and this Commission adopted the Planning Board’s recommendation.

In fact, Petitioner’s request is the exact opposite of the Spot Zoning definition. The existing Overlay District of subject property is zoned in a way that is different from the zoning that surrounds it. Petitioner is simply requesting that the subject property be made consistent with the Overlay Zone that surrounds it. Ironically, a decision to not allow rezoning of the subject property results in the subject property remaining an island of D4 amidst D5 properties.

When this Commission rezoned the two adjacent properties to the D5 Zone in 2017, this property was left as a D4 Zone between two D5 Zones. The discussions surrounding this ordinance amendment were part of the exhaustive study of D5 and where it should be applied. At the hearing, there was even a suggestion of an additional zone of D6, which was not adopted. However, this Commission recognized that the addition of a D5 District was clearly not Spot Zoning.

¹ Exhibit A, p. 1
As stated during the January 23, 2019 Planning Board meeting, “there’s probably no other situation in Birmingham where two buildings are zoned in the same way with a third building, in the middle, zoned differently.”\(^2\) This was recognized by the Planning Board at that time, but the Planning Board found it inappropriate to rezone the subject property without a request for such rezoning from the property owner.\(^3\) Petitioner purchased that middle property and has now made that request. It has been approved by the Planning Board.

Rezoning the subject property to D5 will not create a zone with uses inconsistent to those of the surrounding properties. Under the current D4 zoning, all of the same uses are permitted as those under the surrounding D5 zoning classification. The land uses and zoning districts of properties surrounding the subject property all allow a mix of residential, retail, and commercial uses. This is consistent with the allowed uses of the subject property, both now and after the proposed rezoning to D5. Additionally, a rezoning of the subject property from D4 to D5 is consistent with recent zoning changes for the adjacent properties from D4 to D5.\(^4\)

The Planning Department made specific findings, in writing, that Petitioner’s proposed rezoning was harmonious with the City’s Master Plan and the 2016 Plan.\(^5\) Petitioner’s “proposed building under the D5 would allow for mixed uses and a scale that will match the adjacent buildings, meanwhile supporting the improvement of the streetscape along S. Old Woodward, Hazel, and Woodward by building to the frontage line as required by the 2016 Plan.”\(^6\)

Rezoning the subject property into the D5 Zone is appropriate given its location next to the iconic 555 Building. As previously observed by Planning Board member Mr. Williams, “everyone knows the 555 Building is the gateway to Birmingham.”\(^7\) In addition, the Board found that Petitioner’s “proposed building will project a strong image of the City towards Woodward with consistent architectural details and similar massing to the adjacent buildings,” consistent with the 2016 Plan.\(^8\)

To conclude that rezoning the subject property to D5 would be impermissible Spot Zoning is an argument without any support or merit. By definition, it clearly is not.

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\(^2\) January 23, 2019 Approved Planning Board Minutes
\(^3\) June 27, 2018 Approved Planning Board Minutes
\(^4\) November 8, 2018 Memorandum of Planning Director Jana Ecker to the Planning Board, p. 5
\(^5\) Id.
\(^6\) Id.
\(^7\) July 8, 2015 Approved Planning Board Minutes
\(^8\) November 8, 2018 Memorandum of Planning Director Jana Ecker to the Planning Board, p. 5
II. The Creation of the D5 Zone Was the Result of Years of Exhaustive Discussions and Careful Drafting so that it Complied With the City’s Master Plan and the City’s Standards for the Introduction of an Additional Overlay District

Concerns have been raised that the D5 category was created for the sole purpose of making three nonconforming buildings in Downtown Birmingham conforming. This theory is based on the erroneous assumption that D5 is only applicable to those three properties. This argument has no merit. Nothing could be further from the truth.

As a threshold matter, the Planning Board requested the City Attorney to confirm whether Petitioner can apply for rezoning of the subject property to D5. The City Attorney answered affirmatively. The City Attorney’s finding that the subject property is eligible for rezoning into D5 supports the work and study of this Overlay District by the Planning Board and this Commission. Although the D5 Overlay District did solve issues with the three existing buildings in the City, it contemplated how the Overlay would be applied to other properties if appropriate.

The unambiguous language of the ordinance itself is also dispositive on the point that the addition of more buildings was expected. Chapter 126, Zoning, of the Code of the City of Birmingham, Article 03, Section 3.04, Specific Standards, paragraph 4, D5 Zone (over 5 stories), subparagraph C provides:

New buildings constructed or additions to existing buildings in the D5 Zone must meet the requirements of the Downtown Birmingham Overlay District and the D4 Zone, except that the height of any addition and new construction in the D-5 Zone may be over the maximum building height up to, but not exceeding, the height of an existing building in the D-5 to which they are immediately adjacent or abutting if the property owner agrees to the construction of the building under the provisions of a Special Land Use Permit (emphasis supplied).

The only possible conclusion to be made from reading this provision is that at some point in time, there are going to be additional properties in the D5 Zone. This is made obvious by the reference to “an existing building in the D-5" to which the property at issue is “immediately adjacent or abutting.” To assert that D5 is limited to only 555 Building, Merrilwood Building, and Birmingham Place ignores the obvious stated intent and a common-sense interpretation of the ordinance.

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9 September 12, 2018 Approved Planning Board Minutes
10 October 1, 2018 Letter from Timothy J. Currier, Esq. to Planning Board (Exhibit C)
The Planning Board’s many discussions regarding the purpose and intent of D5 provides further evidence that D5 is available to other properties. A brief discussion is warranted here to dispel confusion. Based upon comments from the public and arguments advanced by counsel for Birmingham Place residents, it appears that some still maintain the mistaken impression that D5 was created exclusively for three buildings (Birmingham Place is one of the benefitted buildings).

It is true that D5 initially came about as a result of 555 Building’s 2015 application seeking a rezoning that would give the building a legal, conforming status. For two years the Planning Board considered how best to help 555 achieve its goal while also providing the maximum benefit to the City of Birmingham as a whole. Chairperson Clein encouraged the Board to view 555 Building’s rezoning application “as an opportunity to take a look at this building along with several parcels in the context of future development.”\textsuperscript{11} This objective was echoed by other Planning Board members prior to enactment of the D5 Ordinance.

- Mr. Williams: “Somehow the board has to craft something that allows for the development of other parcels on Woodward Avenue, but at the same time allows improvements to these three geographic areas.”\textsuperscript{12}

- Mr. Koseck: “The Board should be looking at the proposed language in a broad way, and not just specific to the 555 South Old Woodward Avenue property.”\textsuperscript{13}

It is fair to say that these planning considerations were the basis of a comprehensive review of not only the language of the ordinance, but to what properties and in what area the district should apply. Several plans were discussed and studied and several versions of the ordinance were considered. In late 2016, Planning Director Jana Ecker issued a Memorandum to Planning Board members that summarized Board’s prior discussions regarding the proposed D5 Zone.\textsuperscript{14} Excerpts from the Memorandum are below.

* * *

On May 13, 2015, the Planning Board began discussing the applicant’s proposal to create a new D-5: Downtown Gateway (Over Five Stories) zoning classification in the Downtown Birmingham Overlay District. Planning Board members discussed the desire to review the proposed amendment within the spirit, vision and context of the entire downtown, and not to create a new zoning classification around a specific building.

* * *

\textsuperscript{11} June 10, 2015 Approved Planning Board Minutes
\textsuperscript{12} July 8, 2015 Approved Planning Board Minutes
\textsuperscript{13} June 10, 2015 Approved Planning Board Minutes
\textsuperscript{14} The Memorandum is dated September 22, 2015, which date appears to be a typo.
The Planning Board indicated that they would like to craft a zoning classification or overlay expansion that allows the 555 Building to be renovated but also mirrors the development standards in the Triangle District across Woodward, which allows a maximum of 9 stories. Board members discussed taking a look at the 555 building along with several other parcels in the context of future development.

* * *

The board reviewed multiple examples of similar “gateway corridor” districts in other cities (see attached), along with highlights, notes and sample ordinance language from other cities that were relevant. There were varying viewpoints on whether a new overlay should be created that included multiple properties along Woodward, and if so, which properties to include.

* * *

Board members discussed the appropriate height for buildings along the west side of Woodward adjacent to the Triangle District.

* * *

By 2017, 555’s rezoning application had been pending for nearly two years while the Planning Board considered various options for the entire gateway district that would also help 555. The Board studied the new district thoroughly. The Planning Board elected to implement the D5 Overlay Zone using flexible language. It further safeguarded future designs of the new District by adding a Special Land Use Permit requirement. The ordinance was crafted to be able to consider rezoning additional properties to D5 in the future when such requests were in front of the Board.

The initial action of the Planning Board recommended that the D5 apply to the 555 Building, Merrillwood, Birmingham Place, and the vacant property to the south of Birmingham Place. Note that if the subject property of this petition was owned by either the Birmingham place or the 555 Building, it most probably would have been rezoned at that time as well. There was an agreement that a D5 Overlay was reasonable and important for the City’s future zoning planning.

On February 13, 2017 the City Commission voted, 7-0, to take two separate and distinct actions, as recommended by the Planning Board:

1. To amend Chapter 126, Zoning, Article 3, Downtown Birmingham Overlay District, Section 3.04, to create a new D5 Zone and to establish development standards for this district, and Article 6, Nonconformances, Section 6.02, to allow for the extension and/or enlargement of existing legal, non-conforming commercial buildings;
AND

2. To approve the rezoning of the 3 nonconforming buildings into the newly-created D5 Zone (555 Building, Birmingham Place, Merrillwood Building).\textsuperscript{15}

So while D5’s genesis in 2015 may have been 555’s request, it does not follow that D5 was created merely to address the needs of these three buildings. D5 was created to afford the Planning Board the flexibility to consider future requests to rezone other gateway district properties to conform to the Master Plan and development of the South Old Woodward area. It is a part of the City’s comprehensive plan for future development. The goal of every zoning action is to meet the needs of individual property owners in a way that benefits the entire community to maintain the health, safety, and welfare of the City. Viewed in this context, the intent of this District is to fulfill the goals of competent and reasonable zoning.

Planning Board members have since clearly expressed their recollection and understanding that additional buildings would eventually be rezoned to D5:

- Mr. Share: “When D-5 was implemented, the Board did not preclude other sites from seeking to be zoned D-5 in the future.”\textsuperscript{16}

- Mr. Williams: “[My] understanding is that the Board didn’t go beyond the three properties which were non-conforming because no other properties were before them.”\textsuperscript{17}

- Mr. Share: “[My] strong recollection is that when the Planning Board adopted the D-5 Zoning it was not exclusive to the three properties. It was open to other places but it was inappropriate for the Board to rezone a property without them being there to request it.”\textsuperscript{18}

This understanding was further confirmed during the February 11, 2019 City Commission meeting. City Manager Valentine explained, “When D5 zoning was created it allowed the properties adjacent to D5-zone properties the opportunity to be considered on a case-by-case basis for a SLUP that would allow for a height increase.” Planning Director Ecker made the following statements:

- “When D5 was created, various areas of the City were considered for the zoning classification. The City ultimately decided to rezone three properties requesting the rezoning at the time as D5.”

\textsuperscript{15} February 13, 2017 Approved City Commission Minutes (emphasis added).
\textsuperscript{16} January 23, 2019 Approved Planning Board Minutes
\textsuperscript{17} October 10, 2018 Approved Planning Board Minutes
\textsuperscript{18} October 10, 2018 Approved Planning Board Minutes
Included in D5 zoning are stipulations to make buildings legal-conforming, language regarding additions to existing non-conforming buildings, and language regarding new buildings.”

It was not the intention of the Planning Board to limit the newly created D5 Overlay Zone to just the three properties with non-conforming buildings. It was created as part of long-term development planning by the City. The language of the amendment creating D5 was carefully crafted to provide the Board with flexibility in the future. And the Ordinance itself is clear and unambiguous – its language indicates there is going to be other buildings in the D5 Zone.

According to Ms. Whipple-Boyce, “the Board and the City Commission spent many public meetings discussing the issue in depth.”

During the February 11, 2019 City Commission meeting, Planning Director Ecker stated that the Board was able to consider the instant rezoning application without engaging in a “larger zoning study since the original study to create D5 was so comprehensive.”

The creation of the D5 Zone in the Downtown Overlay was the culmination of several years’ hard work. The Board determined that creating a D5 zone was in line with the Master Plan, the 2016 Plan, and the long-term vision and goals of the City.

It is natural that property owners will want to avail themselves of the advantages of the new D5 zoning classification, where such rezoning is necessary and proper. In the words of Mr. Boyle, “zoning is powerful when it is able to adapt . . . change is normal; it is not frequent, but it is usual.” Petitioner’s request for the subject property to be rezoned to D5 is exactly the type of request contemplated by the Board when D5 was enacted, and Petitioner has met all the criteria to be rezoned to D5.

Not only did the Planning Board contemplate that additional properties could be zoned D5, it previously considered rezoning this particular parcel at the same time it rezoned the three existing D5 properties. It chose not to do so because the then-owner of the property had not made a request for rezoning.

During the January 23, 2019 Planning Board meeting, Mr. Jaffares said: “When we discussed this before, I don’t recall us saying that if this property in between these two buildings wanted to pursue D5 that they should go to the Board of Zoning Appeals. We didn’t. We said they should come back here, they weren't here that night. We said we'll listen to it when they have an issue.” The current owner of the subject property has now made the rezoning request as anticipated by the Board.

19 January 23, 2019 Approved Planning Board Minutes
20 June 27, 2018 Approved Planning Board Minutes
21 November 8, 2018 Memorandum of the Planning Division
22 January 23, 2019 Planning Board Meeting Video; June 27, 2018 Planning Board Meeting Video
23 January 23, 2019 Planning Board Meeting Video, at time 1:29:45
During the June 28, 2018 Planning Board meeting, Mr. Jaffares said:

We did talk about this particular – these two parcels together, because we realized, and it may not have made the minutes, but if you can go back and stomach sitting through the film, that we would have this situation. [Holds both hands up, and apart, to indicate gap between]. So that was absolutely true, that we did discuss it. I remember Mr. Williams' comment, the point was well there's nobody here from there, to make their case, so let's just do the buildings that are in existence.24

Planning Director Ecker confirmed during the February 11, 2019 City Commission meeting that if the then-owner of the subject property had come forward and requested the rezoning to D5 at that time, the request would have been approved:

- The lot between the 555 Building and Haines is zoned D5 and owned by the owner of the 555 Building.

- Had the 469-479 S. Old Woodward property been owned by the owner of the 555 Building, it would have been zoned to D5 at the same time the 555 Building's south lot was.25

It stands to reason that if it was appropriate to rezone the subject property then, it is appropriate to rezone it now.

It is abundantly clear that at the time D5 was enacted, the Planning Board, at a bare minimum, considered the two parcels adjacent to 555 Building. The subject property is adjacent to 555 and to Birmingham Place. In the words of Mr. Jaffares, it has a double-adjacency.26 Rezoning the subject property is a reasonable and natural application of the D5 Ordinance.

III. Rezoning the Subject Property Is Necessary and Appropriate

The Planning Board has found that Petitioner has met its burden of showing why it would be appropriate to rezone the subject property, and has recommended that the City Commission approve Petitioner's request. However, allegations that Petitioner has not sufficiently met the requirements for rezoning have been advanced by those opposed to the rezoning.

24 June 27, 2018 Planning Board Meeting, at time (1:48:16)
25 February 11, 2019 Approved City Commission Minutes
26 January 23, 2019 Planning Board Meeting Video, at time (1:29:45)
Petitioner has not been deaf to the concerns of the Birmingham Place residents. Petitioner takes these concerns very seriously and has proactively engaged in meetings with Birmingham Place residents to come up with mutually agreeable solutions. Petitioner has incorporated the solutions developed during those meetings into the ongoing preliminary design of its proposed building. All written communications and oral comments of Birmingham Place residents were included in the record and considered by the Board in making its decision to recommend approval of Petitioner’s rezoning request.

This important process was reinforced by Mr. Boyle during the January 23, 2019 Planning Board meeting:

There are checks and balances built into our system here. Were this to be approved, this rezoning, we would have two additional elements that we would bring to the table, the city would have, the community would have 2 mechanisms. One would be a very rigorous site plan review process, which is in two parts, we would look at lots and lots of different elements of this. And secondly because of its particular height – it is the height that kicks in the SLUP – that we would have the special land use permit where we can recommend to city commission a whole number of modifications.

The specific concerns raised by Birmingham Place residents demonstrate the necessity of rezoning the subject property to D5 to give Petitioner flexibility in its design. Additional building height is a critical component allowing some movement in the placement of the building. It should be noted that the first four levels of Birmingham Place are commercial and the exterior wall abutting the new building is mostly solid brick. The remainder of the building is residential.

Many of the windows and balconies of the south side residences will be facing any new D4-allowable building. Those residents are concerned with having sufficient space between the two buildings. D4 allows a five-story, mixed-use building up to 80 feet in height. The size and shape of the subject property present design challenges that will be difficult to overcome under the existing D4 classification. Because this parcel is long and narrow, a D4 building would need to utilize the maximum amount of width available to it, causing the first 7 ½ levels of Birmingham Place to be directly abutting the new building. The south-side residences of Birmingham Place from the fifth floor through part of eight floor will be closer to a D4 building than they would to a D5 building.

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27 During the January 23, 2019 Planning Board meeting, Mr. Longe explained that the idea of stepping back the proposed building from Birmingham Place to provide more open space between the two buildings came about as part of the ongoing discussion with the tenants of Birmingham Place.
28 October 10, 2018 Approved Planning Board Meeting Minutes
29 January 23, 2019 Planning Board Meeting Video, at time (2:00:28)
Rezoning the subject property to D5 helps to solve a design problem because a taller building could be stepped back from Birmingham Place. Some of the higher floors of Birmingham Place already have a step-back. The additional height available under D5 would allow Petitioner to continue working with Birmingham Place residents to design its new building in a way that would maximize the space between the two buildings. In other words, rezoning to D5 would benefit Birmingham Place residents by providing more space between buildings than a D4 structure that has no flexibility in design.

There have been comments that Petitioner hasn’t proved that a five-story (or shorter) mixed-used building would be impossible to develop on this property. However, impossibility of building a structure is not the standard by which an application for rezoning is determined pursuant to the Birmingham City Ordinances. Nothing in the Ordinance says that in order for a rezoning to be approved, the applicant must first demonstrate that no building can be erected on a property. Rather, Petitioner must demonstrate that the current zoning classification is no longer appropriate.\footnote{Sec. 7.02(B)(2)(ii)}

Petitioner contends that D4 zoning is no longer appropriate because, in part, a D4 building would be detrimental to Birmingham Place residents occupying floors eight and below. Rezoning the subject property to D5, in which a taller building would allow for a step-back, provides the greatest benefit to the greatest number of Birmingham Place residents.

Additionally, the entire City of Birmingham would benefit from a new, modern, mixed-use building that provides onsite parking. From the South Old Woodward standpoint, a taller building would fill in a gap in the streetscape, as previously envisioned by the Planning Board. Rezoning this important and unique parcel would allow for development of this iconic gateway area to the Downtown District in a way that is consistent with the Master Plan and the 2016 Plan.

IV. Conclusion

A rezoning must be done pursuant to the applicable Zoning Ordinance and in compliance with the City’s Master Plan and 2016 Plan. It could not be more clear that rezoning the subject property to the D5 Zone is necessary and appropriate. Petitioner has met every single criteria set forth in the Zoning Ordinance. This rezoning meets the development goals of the Gateway District in a way that is most beneficial to the adjacent properties and the health, safety, and welfare of the City as whole. Finally, rezoning the subject property to D5 facilitates the goals of the Master Plan and the 2016 Plan.

\footnote{Sec. 7.02(B)(2)(ii)}
We respectfully request the City Commission grant the motion to rezone 469-479 S. Old Woodward from D4 to D5 Overlay.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

Richard D. Rattner, Esq.

RDR/jmg
August 13, 2018

City of Birmingham
City Commission
Planning Board
151 Martin St.
Birmingham, MI 48009
Attention: Ms. Jana Ecker

Re: Request for Re-Hearing on Application to include 469 and 479 S. Old Woodward, Birmingham, MI (“Subject Property”) in the D5 Downtown Birmingham Overlay District Zone (“Application”)

Dear Members of the City Commission, Planning Board and Ms. Ecker:

Please accept this letter from the property owner (“Property Owner”) of 469 and 479 S. Old Woodward (“Property”) as a Request for Re-Hearing of the Property Owner’s rezoning Application to rezone the Subject Property from the D-4 Overlay Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

The information set forth in this letter supplements the information set forth in the Application and the undersigned’s letter of May 17, 2018. Please recall that the subject Property is a former single-storied restaurant building and drive-through bank that sits between two existing D-5 zoned buildings in the City. The Property is in the B-3 Office-Residential Zone and the D-4 Overlay Zone.

Summary

The Application was considered by the Planning Board at its meeting on June 27, 2018 and the Planning Board denied the Application. The Applicant requests that the Planning Board rehear the Application due to consideration of new information not reviewed and to correct certain factual inaccuracies or errors in the record that quite likely prevented the Planning Board from affording this Application a full and fair hearing. Without such a full consideration of all of these new and pertinent factors, the Board will be in the position of recommending denial of a petition without the opportunity of hearing all of the important issues related to the intent, purpose and consequences of such a zone, and without the advantage of putting those issues in perspective when considering a zoning ordinance that is a crucial part of the Birmingham Downtown Overlay District plan.
The D-5 ordinance is one of the most carefully drafted ordinances produced by the City. It is the subject of over two years of study and research. Multiple alternative drafts were proposed by the City Planning Department over the years, and every section has been fully discussed and vetted by the City Commission and the Planning Board. This D-5 ordinance was recognized as being an integral part of the Downtown Birmingham Overlay District by the City. When the ordinance was passed it was heralded as not only solving existing problems but it fit into the fabric of the Overlay District’s plan to encourage mixed use buildings in the Downtown Overlay (especially in the South Old Woodward area) so that our city can maintain a vibrant, pedestrian friendly attractive live, work and entertainment district. It was enacted as part of the City’s modern plan to create a sustainable, vibrant downtown.

To mischaracterize this ordinance as a mere correction of nonconformity for three buildings is not only erroneous, but does disservice to the hard work done by the City Commission, Planning Board and Administration. Most importantly, such an analysis does not comply with the spirit, intent and vision exhibited in theory and practice in the Downtown Birmingham Overlay District. Said simply, such an interpretation ignores and discredits all of the good faith hard work that went into the creation of not only the Ordinance, but the master plan process for the future of our growing and vibrant downtown.

**The Property is not within the Parking Assessment District, Contrary to Information Presented in the Board’s Packet**

This Property is not within the parking assessment district. This is a serious flaw in any zoning analysis and must be corrected in order for the public record of the Board’s action and recommendation on the Application to properly reflect the realities of this matter. Correcting this fact leads to new information about the Property and the plan for development of the Property that is central to the question of rezoning pursuant to the Zoning Enabling Act. The Board has not had an opportunity to review this new information in the first instance. The new information significantly changes the analysis of rezoning under Article 7.02B2b and 7.02B5 of the Zoning Ordinance.

Contrary to what was assumed by the Planning Board, because the Property is not in the Parking Assessment District (Parking Assessment District Map is enclosed for your reference at Exhibit A), it currently has no possibility of providing off-street parking on the premises. In fact, it is currently non-conforming and cannot comply with Article 4.46 of the Zoning Ordinance (Off-Street Parking Spaces Required).

The Planning Department’s Memorandum submitted to the Planning Board, dated May 18, 2018, regarding the Community Impact Statement of the Property’s redevelopment, erroneously provides, “The subject Property is in the Parking Assessment District.” And not only is the subject Property not in the Parking Assessment District, contrary to what was reported to the Planning Board, but we understand that this Property is the only D-4 zoned property in the
City not included in the Parking Assessment District.

**Zoning Analysis – Revisited**

Whether or not the Property is within the Parking Assessment District makes a significant difference in terms of the analysis under Sec. 7.02(B)(2)(b)(i-iii), Zoning Amendments. Section 7.02(B) requires the Applicant to provide certain explanations about the rezoning to be considered by the Planning Board and the City Commission. Please consider the following new information regarding the effects of the Parking Assessment District on this analysis, which was not reviewed by the Board.

- **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**

  The issue of location outside of the Parking Assessment District provides new information about the necessity of rezoning the Property to preserve the Applicant’s enjoyment of rights associated with ownership. Because of the size and narrow corner configuration of the Property, it will not support street-level retail, residential, and the required parking for those uses. The off-street parking requirements for this Property make the engineering and design of a mixed-use D-4 seriously impractical if not impossible. The 2016 Plan promotes mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Not only will the Applicant lack the required area within which to locate all of the mixed uses with a first-floor retail mandate, the Applicant also is absolutely hamstrung by the off-street parking requirements for this site. The maximum use of the underground area will not yield enough parking spaces for a building designed to current zoning. Rezoning the Property to the D-5 Zone will allow more vertical space within which to accommodate a mixed-use building together with the required parking for all permitted uses.

- **Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate**

  The Applicant provided information that the current zoning was no longer appropriate at the June 27, 2018 meeting. However, the Board inadvertently coalesced around a discussion and conclusion that the Applicant had not shown that a “D-4 building would not work” at the site (Mr. Kosceck and Ms. Whipple-Boyce at hearing time 2:20:15). But this is not the requirement set forth in the ordinance. Further, the Board denied discussion about the development plan for the Property, until after the Applicant obtained rezoning. The Board applied a standard of proof that is not part of the ordinance, but rather more aptly applies to considering whether the rezoning depended on whether the Applicant can use the property as zoned. This is not the standard under the ordinance. Such a standard is often heard in a discussion of whether the property has been inversely condemnec by the application of the ordinance. It is unfair to hold the applicant to a
standard that requires proof that the property cannot be used as zoned rather than the
“appropriateness” of current zoning. When properly analyzed in the context of the Master Plan,
which is the standard of the Birmingham ordinances, it is appropriate for the subject Property to
share the same zoning classification as its immediate neighbors. As will be demonstrated in the
next paragraph, the Property is incapable of supporting a structure built to current D-4 or B-3
zoning requirements.

The Property consists of two lots -- 469 and 479 -- which front Old Woodward and
Woodward Avenue. The lots are in the “retail/red-line district” and under current zoning, each
lot is severely restricted.

469 S. Old Woodward

The 469 lot width narrows as it extends east and has approximately 21 feet of Woodward
Avenue frontage. The site has an existing 1 story, 2,900 square feet building, formerly used as a
restaurant. Should this parcel be re-used, its only use (by necessity) would need to be a
‘nonconforming’ restaurant, since any change in use without a parking assessment district
designation would require it to provide onsite parking for the new intended uses. However, since
the restaurant has been closed for more than six months, it would not be eligible to continue as a
nonconforming use!

Given the parcel’s narrow configuration, the only onsite parking that could be provided to
satisfy the ordinance is two (2) spaces off of Woodward Avenue. Only two onsite parking spaces
would limit the building footprint to approximately 300 to 600 square feet, depending on the
permitted use. There is no practically feasible way to provide greater parking spaces.

479 S. Old Woodward

The 479 parcel has 211 feet of frontage on Hazel and approximately 40 feet of frontage
on Old Woodward. This lot expands as it extends east to approximately 66 feet of Woodward
Avenue frontage. The lot has an existing one-story, 11,826 square foot enclosure of which a
small portion is a finished bank building. The balance is dedicated to a drive-thru lane for a
drive-thru bank. Should this parcel be re-used, its only use (by necessity) must be a
‘nonconforming’ drive-thru bank since any change in use under the Ordinance would trigger
onsite parking requirements for the new intended use. Also, drive-thru banks are specifically
prohibited in the downtown Birmingham Overly District. See ordinance at Article 3(4)(C)(2)(b):
“The following uses are prohibited...Drive-in facilities or any commercial use that encourages
patrons to remain in their automobiles while receiving goods or services.”

Given lot 479’s configuration, the only onsite parking that would be practically feasible is
approximately 13 spaces to be entered off of Woodward Avenue or Hazel. Thirteen onsite
parking spaces would limit the building footprint to not more than from 1,950 square feet to
approximately 3,900 square feet, depending on the permitted use. It is possible for a new building to be multiple stories and this may allow for greater area on the ground floor for parking spaces. At most with a 2200 square foot ground floor, 27 parking spaces could be fit to the site. However, the building would be limited to approximately two stories and would not be contextual to the neighborhood. In essence, the lot would be converted partially to a surface parking lot.

**Combined Lots**

Seemingly, the combination of the two parcels would create greater opportunity to develop a project conforming to the Master Plan and the 2016 Downtown Plan goals for the B3/D4 zoning. Unfortunately, the combined parcel cannot meet the Master Plan and 2016 Downtown Plan goals of mixed uses and first floor retail without both onsite parking and underground parking. The Ordinance mandates main level retail (20’ minimum in depth) on Old Woodward. Of course, onsite parking must be provided for any additional uses. This forces redevelopment toward uses with minimal parking requirements, such as hotels, which is what the Applicant proposes. As stated elsewhere in this letter, there are serious difficulties with building an underground garage within the D-4 design parameters that is deeper than two levels. Clearly, the current zoning unfairly forces the owner into an unreasonable position when considering the parcel’s potential use and its place in the Downtown Overly District. Consequently, any such garage is limited to approximately 60 parking spaces.

To discuss these difficulties in a vacuum is not the intention of the Zoning Enabling Act. The Act at MCL 125.3203 provides that zoning must be determined according to a plan. Here, the Applicant attempted to explain to the Board that the site plan is impacted by the fact that the Property is not within the Parking Assessment District. Unfortunately, the Board refused to consider any site plan and its conformance to the 2016 Plan, putting such review off until the Applicant obtained rezoning. This placed the Applicant in a double-bind. He could not demonstrate the inappropriateness of current zoning without an analysis of how the Parking Assessment District, or lack thereof, affects the site plan design. Had the Applicant been allowed to at least discuss a site plan design in relation to the rezoning analysis, he would have demonstrated that there is no feasible option to develop the Property within the current zoning classifications outside of the Parking Assessment District. This would have been a valuable discussion of new information that should have at least been heard by the Planning Board.

**Mischaracterization that the D-5 Ordinance was Passed Only to Make Three Properties Conforming**

Two attorneys from the same law firm, as representatives of the residents of Birmingham Place, each separately addressed the Board during the June 27th hearing. The main thrust of their argument to the Board was that the only reason the D-5 Zone was added to the ordinance was in order to correct the non-conformity of the 555 Building, Merrill Wood and Birmingham
Place. They argued that the new Zone did not apply to any other properties. This assertion ignores the very careful hard work of the City Commission, the Planning Board, and the Administration. This claim is also clearly contrary to the history of the D-5 ordinances and to its plain language.

The history of the Planning Board’s consideration of the D-5 Zone was outlined in detail by Ms. Ecker at the June 27th meeting. The Planning Board studied and considered the revisions to the ordinance for the South Old Woodward area for two years prior to adopting the D-5 Zone. In the Planning Department’s Memorandum to the Planning Board, dated September 22, 2016, submitted to the Board for its September 28, 2016 study session, Ms. Ecker wrote: “The consensus of the Board was to allow additional height for new buildings in the D-5 zone district to match existing adjacent buildings, if the new building was constructed under the provisions of a SLUP.”

During the June 27, 2018 hearing, Chairman Clein expressed (at time 2:10:25 of the hearing video), that during consideration of the new D-5 Zone, the Board considered the entire southern area of Downtown and positively did discuss the subject Property for potential property rezoning. However, the Board did not include the Property initially because no applicant or interested owner had come forward at that time. Mr. Jeffares also reiterated the same point (at time 1:48:30 of the hearing video). Ms. Ecker clearly stated (at video time 2:09:00) that the new D-5 Zone is a zoning classification that is not limited to the three non-conforming buildings (555 Building, Merrill Wood and Birmingham Place).

Despite clear evidence to the contrary, the mischaracterizations assumed in this hearing were espoused by Ms. Whipple-Boyce who indicated that she understood the D-5 Zone only applied to the three properties, and was not available for the Applicant’s Property. These misrepresentations had a direct bearing on consideration of the Applicant’s explanation of why the rezoning will not be detrimental to surrounding properties.

**Sec. 7.02(B)(2)(b)(iii) - An Explanation of Why the Proposed Zoning will not be Detrimental to the Surrounding Properties**

Both the adjacent and abutting properties are in the D-5 Zone. These misrepresentations that the D-5 is closed to other buildings led the Board to bypass the Applicant’s D-5 site plan design. Instead the Board envisioned the abutment of a D-5 structure next to the Birmingham Place and the impact of such on the Birmingham Place residents. However, it is clear that when these neighboring properties were rezoned to D-5, the Planning Board anticipated that eventually the owner of the subject Property would apply to be rezoned for the reasons stated in this letter. The idea that an ordinance is created for only a few buildings, when the ordinance itself states otherwise, is unsupportable and unreasonable. Rezoning the subject Property to a D-5 Zone will be putting this parcel on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be
developed as an attractive part of the South Old Woodward gateway and, most importantly, bring that area into compliance with the spirit and intent of the 2016 Master Plan. Many of the condominium owners from Birmingham Place who spoke out against the rezoning, as did their attorneys, will lose their views to the south even with a development compliant with current zoning. Please see the attached depiction of the D-4 height overlaid against the Birmingham Place (Exhibit B). However, the Board seemed to acknowledge the mootness of the alleged detriment to Birmingham Place given the potential impact of a conforming D-4 structure, and yet at least one member, Ms. Whipple-Boyce, still maintained that the D-5 Zone was intended to correct the non-conformance of only three properties.

The Board Failed to Make Required Findings of Fact under Ordinance Sec. 7.02(B)(5)

In making its decision on June 27th, the Board denied the Application based on Ordinance Sec. 7.02(B)(2)(b) and the required explanations imposed on the Applicant. As a result of its misunderstanding of the analysis required by the Zoning Amendments section of the Ordinance, the Board committed error in basing its decision on Sec. 7.02(B)(2)(b) rather than on the findings of fact required by Sec. 7.02(B)(5). Section 7.02(B)(5)(a-e) lists five findings the Board must make regarding the Application when making its recommendation to the City Commission. Without these findings by the Planning Board, the recommendation to the City Commission does not give the commission sufficient information to understand why this rezoning Application was denied.

- **Sec. 7.02(B)(5)(a) - The objectives of the City’s then current master plan and the City’s 2016 Plan.**

The Board made no findings of fact with respect to the objectives of the City’s current master plan and the City’s 2016 Plan. A simple motion to deny a recommendation of rezoning was made “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.” (See Exhibit C, June 27, 2018 meeting minutes, at p.10).

The Applicant, however, in its May 17, 2018 letter to the Board, submitted significant information relating to the conformance of D-4 to D-5 rezoning of the Property with the goals of the 2016 Master Plan to promote mixed uses and consistency in architectural details and massing to neighboring structures.

- **Sec. 7.02(B)(5)(b) - Existing uses of the property within the general area of the property in question.**

The Board made no finding of fact with respect to uses of property within the area of the Property, although the Board acknowledged the D-5 zone to the immediate north and south of the Property. And as stated above, the Board coalesced around the conclusion that the Applicant had not “shown a D-4 building could not work.”
In his May 17, 2018 supplemental letter to the Board, the Applicant explained the proposed mix-use of the development as retail, hotel and residential, all uses consistent with surrounding properties.

- **Sec. 7.02(B)(5)(c) - Zoning classification of the property within the general area of the property in question.**

  The Board acknowledged that the entire southern area of Birmingham has been studied for change in zoning possibly to a gateway district due to the established heights of the iconic 555 Building and the Birmingham Place Building. The Board acknowledged the recent rezoning of the abutting and adjacent properties to the D-5 Zone and the current zoning classifications of nearby properties. The Board did not make any findings that addressed the fact that the subject Property is not only located in the area of the D-5 zone, but actually is situated between two D-5 zoned parcels. The adjacent and abutting properties are zoned D-5.

- **Sec. 7.02(B)(5)(d) - The suitability of the property in question to the uses permitted under the existing zoning classification.**

  The Board made no findings of fact regarding the suitability of the Property in question to the uses under the existing zoning classification. The Board’s discussion centered on the height of the proposed development under the D-5 versus the D-4. There was no finding or discussion of suitability to permitted uses. The Applicant directs the Board’s attention here because the Property sits outside of the Parking Assessment District. The Board failed to engage with this fact and its implications on the Applicant’s site plan, which has a significant negative impact on the Applicant’s ability to use the Property within the uses promoted by the 2016 Plan. Again, without a factual finding, the Board concluded that the Applicant had not proven that a D-4 building would not work at the Property (June 27, 2018 hearing video, Chairman Clein, starting at video time 2:10:25).

- **Sec. 7.02(B)(5)(e) - The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.**

  There was little discussion of the trend of development in the general area, other than the discussion of the historical development of the 555 Building and Birmingham Place prior to their down-zoning in later amendments to the Ordinance. Again, the Board acknowledged the recent changes in zoning to the 555 Building and Birmingham Place, as well as a mention of a zoning variance obtained for the development of the Pearl property. However, the Board did not make a finding of fact regarding the trend of development and its relationship to its decision to deny the Applicant’s request.
Conclusion

Applicant respectfully requests that this matter be referred back to the Planning Board to allow full consideration of the following:

- Report of the Planning Department concluding that the Petitioner had satisfied all of the ordinance requirements of Sec. 7.02(B)(5)(a-e). No contrary findings of fact were made by the Planning Board.

- The Property is the only D-4 property in the City not in the Parking Assessment District. The report in the Planning Department’s packet to the Planning Board with regard to the CIS mistakenly stated that the Property was in the Parking Assessment District. This new fact is crucial to an accurate analysis of the rezoning request.

- The purpose of the D-5 ordinance was mischaracterized as merely an ordinance to correct only three buildings in the City. The ordinance clearly states otherwise, and there was much discussion during the years of meetings about the area of the City that should be considered for the D-5 zone.

- The standard used for the discussion of rezoning the Property was not a requirement of the zoning ordinance. An applicant must present facts that support the ordinances in Sec. 7.02(B)(5)(a-e) as well as Sec. 7.02(B)(2)(b)(i-iii). None of those ordinance sections requires the Applicant show that the Property cannot be used as zoned, contrary to what was discussed in the public hearing.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

[Signature]
Richard D. Rattner

RDR/gsm
May 17, 2018

City of Birmingham
City Commission
151 Martin St.
Birmingham, MI 48009

Re: Application to include 469 and 479 S. Old Woodward, Birmingham, MI ("Subject Property") in the D5 Downtown Birmingham Overlay District Zone ("Application")

Dear Members of the Planning Board and City Commission:

Please accept this letter from the property owner ("Property Owner") of 469 and 479 S. Old Woodward ("Property") as a Supplement to the referenced rezoning Application file to rezone the Subject Property from the D-3 Zone to the D-5 Overlay Zone in the Downtown Birmingham Overlay District.

**Executive Summary**

The Subject Property is a former single-story restaurant building and bank that sits between two existing tall buildings in the City. Birmingham Place is located to the north and the 555 Buildings are located to the south. The placement of the buildings is not only inconsistent with a cohesive and harmonious streetscape in that area but is contrary to the intent of the Master Plan. This inconsistent height results in a streetscape along South Old Woodward that appears to have a "missing tooth."

If the Subject Property is rezoned to D-5, there is an excellent opportunity for the Subject Property, Birmingham Place and the 555 Buildings to create an impressive southern gateway to Downtown Birmingham. It is therefore reasonable that the Subject Property, sitting directly between the 555 Buildings and Birmingham Place, be included in the same zoning district, that is as part of the D-5 Overlay District, as those neighboring two buildings.

Rezoning the Subject Property to the same classification as the buildings immediately to the north and south will enhance and complete the streetscape of these important two blocks of Downtown Birmingham. Inclusion of the Subject Property in the D-5 Overlay Zone is consistent with the 2016 Master Plan. Moreover, it will allow the Subject Property to enjoy the same development regulations as the neighboring properties.
The Subject Property and the Master Plans

A review of the history surrounding the zoning of this area of Downtown is instructive. The minutes of the City Commission during the late 1960s and early 1970s, reveals that the height of the buildings in this area of Downtown were historically zoned for the height of the 555 Buildings and Birmingham Place. However, the zoning ordinance was amended in the 1970’s after the construction of those buildings to a maximum of four stories. Therefore, for several years, the taller buildings in the City were burdened with the status of legal nonconforming uses.

In 2016, the City corrected this down zoning for the 555 Building to the south and Birmingham Place to the north, with the creation of the D-5 Zone to allow for existing heights (in the case of the 555 Buildings and Birmingham Place) and to allow for new construction to a height up to the same height of an immediately adjacent or abutting building (see Ordinance 3.04-4-b). While the 555 Building and Birmingham Place are now at allowable heights, sitting in between them, the Subject Property is the only building in that streetscape that cannot be constructed to a height that is consistent to its neighbors. This inconsistency creates an obvious gap in the street’s architecture which is not harmonious with the overall downtown design and longer-range plan for that part of South Old Woodward.

The Birmingham of 2016

In 1996, the City Commission adopted the Downtown Birmingham 2016 Plan (“2016 Plan”) and amended the Zoning Ordinance to include the Downtown Birmingham Overlay District. The Subject Property is located in the D-3 Zone, sitting between two tall buildings in the City that have been rezoned to the D-5 zone. These multi-story buildings are the established character of this particular area of the City. Placing the Subject Property in the D-5 zone would allow development of the Subject Property to be at a similar height to the buildings directly to the north and south. The Applicant desires to develop the Subject Property in a manner that completes the block between Brown and Hazel while adding to the cohesiveness of the South Old Woodward southern gateway area.

The Birmingham Zoning Ordinance at Sec. 1.04 provides that the purpose of the Zoning Ordinance is to “…guide the growth and development of the City in accordance with the goals, objectives and strategies stated within the Birmingham Master Plan (“Birmingham Plan”), and Downtown Birmingham 2016 Plan. A review of the Birmingham Plan (1980) and the Downtown Birmingham 2016 Plan (1996) reveals that this application to include the Subject Property in a D-5 Overlay District meets the spirit and intent of the ordinance as well as the 2016 Plan. It will allow for mixed uses and add to the vitality of the modern streetscape envisioned for this part of town by the 2016 Plan. With rezoning, the Subject Property can become that desired mixed-use space for retail, residential and hotel, and bring new life to the South Old Woodward area.
Any redevelopment of the Subject Property in compliance with its current zoning classification would result in a building with frontage dwarfed by the existing neighboring structures. Therefore, by rezoning the Subject Property to the D-5 overlay, a new building could be built to a similar height as the neighboring buildings, and effectively complete an otherwise missing piece of the streetscape.

In summary, it is clear that the intent of the 2016 Plan includes development of this southern area of the Downtown Overlay District as a gateway to Downtown through enhancing the character of buildings and providing our City with an active, pedestrian-friendly, urban streetscape.

Rezoning Amendment – Sec. 7.02 (B)(2)(b)(i)-(iii)

The Zoning Ordinance at Sec. 7.02 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. Please consider the following comments with respect to these issues.

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

Rezoning of the Subject Property is necessary to preserve the Applicant’s enjoyment of rights associated with ownership of a property zoned for mixed uses. Because of the size and corner configuration of the parcel, it will not support street-level retail, residential, and parking for residents in the same manner as the neighboring properties. The 2016 Plan clearly anticipates mixed use developments. Such planning requires space to design and locate mixed uses within a given structure. Without the ability to go higher with a new building than current zoning allows, the Applicant will not have the required area within which to locate a mix of uses, or otherwise to be able to enjoy all of the allowed uses that would commonly be associated the design of such a modern, mixed-use building. Furthermore, the D-5 Ordinance, at section 3.04-4-b, anticipates that the Subject Property and those similarly situated may enjoy the same rights of usage through an extension of height as other existing tall buildings already enjoy in the D-5 Overlay District.

Sec. 7.02(B)(2)(b)(ii) - An Explanation of Why the Existing Zoning Classification is No Longer Appropriate

The existing D-3 zoning classification is no longer appropriate for the Subject Property. The Subject Property is surrounded by the Birmingham Place, a ten-story building on the north side and the 555 Buildings, a fifteen-story building on the south side. This height is an established pattern in this area of the City. This rezoning request is actually an “infill” rezoning to bring the entire area into architectural and design harmony with surrounding buildings. It is reasonable for the Subject Property to share the same zoning classification as its surrounding neighbors. This would allow development of the property in a manner consistent with the
existing structures from Brown Street south to Haynes Street. It will create a more unified block and enhance the character of the gateway area to Downtown Birmingham. The rezoning of the Subject Property would restore the property to a zoning classification this area of the City once enjoyed, as the Planning Board has done for with Birmingham Place and the 555 Buildings. Hence, given the location of the Subject Property sandwiched between two properties in the D-5 Zone, the D-3 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 of the Subject Property is not detrimental to surrounding property owners. Note that the proposed rezoning does not extend the D-5 classification further to the north or south of the current D-5 Zoning, but actually fills in the one gap in the streetscape that is noticeably out of place and anachronistically remains in the D-3 Zone. The surrounding properties to the north and south already are in the D-5 Zone. When these neighboring properties were rezoned, the Planning Board anticipated that eventually the Subject Property also may be rezoned for the reasons stated in this letter. Placing the Subject Property in D-5 Zone will be placing it on equal footing with the surrounding properties from a structural, use and design perspective. The proposed rezoning will enhance the entire area by allowing it to be developed as an attractive part of the South Old Woodward gateway and bring that area into compliance with the spirit and intent of the 2016 Master Plan.

**Conclusion**

The Applicant respectfully requests that the City Commission rezone the Subject Property from the D-3 to the D-5 Zone as discussed in this letter.

Very truly yours,

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

[Signature]

Richard D. Rattner

RDR/emc
Exhibit B
August 20, 2015

Birmingham City Commission  
151 Martin Street, P.O. Box 3001  
Birmingham, MI 48012-3001

Re:  Spot Zoning

Dear Mayor and Commissioners:

The Commission will be considering the proposed transitional zoning amendments to the Birmingham Zoning Ordinance. Questions have been raised as to whether this constitutes some form of “Spot Zoning.” This letter is intended to give an overview of the Spot Zoning concept.

What actually constitutes “Spot Zoning” was stated by the Michigan Supreme Court in Penning v Owens, 340 Mich 355 (1954) to be:

“A small zone of inconsistent use within a larger zone.”

Contrary to widespread belief, Spot Zoning is not per se illegal.

In the comprehensive work of “Zoning and Land Use Controls” Volume VI Dean Emeritus and Professor of Law Patrick J. Rohan, and Professor of Urban Planning, Eric Damian Kelley provided the following excellent overview:

“Spot zoning is the rezoning of a parcel—usually small—to a zoning classification that is dissimilar to the zoning of the surrounding property. Although small area zoning can be sustained as valid, particularly when supported by the comprehensive plan, ‘spot zoning’ is most often a shorthand used by the courts to refer to a small area rezoning that is struck down....

‘Spot zoning’ is exactly what it sounds like—the zoning (usually rezoning) of a ‘spot’ of land in a way that is significantly different from the zoning that surrounds it. There are ‘broad’ and ‘narrow’ definitions of the term ‘spot zoning.’ Both state that spot zoning involves amendments to existing zoning ordinances singling out a small area for a use classification which is different—whether more or less restrictive—from that of the surrounding area. The narrow definition, however, limits the meaning of spot zoning to those amendments that are per se invalid. In contrast, an amendment that results in spot zoning under the broad definition can be either a valid or invalid legislative enactment.
In the narrow sense of the term, spot zoning is the arbitrary and unreasonable reclassification of a small area within a zoning district to a use which is inconsistent with the surrounding district, where the rezoning does not conform to a comprehensive plan, serves no public purpose and is solely for private gain. Spot zoning, in this sense, has been used almost as a kind of epithet to condemn a zoning amendment. It is a judicial doctrine used to challenge or invalidate a zoning ordinance amendment on the grounds that it arbitrarily and capriciously violates a community’s comprehensive or well-considered zoning plan. Used in the narrow sense of the term, spot zoning is impermissibly inconsistent with the legitimate purpose of zoning, i.e., the furtherance of the public health, safety, morals or general welfare.

... 

Typically, an amendment to a zoning ordinance is adopted at the request of a land owner who wishes to use the land for a use prohibited by the existing zoning scheme... The courts have found impermissible spot zoning in instances where the amendment is designed to relieve a particular property from applicable zoning restrictions for the benefit a particular property owner or specifically interest party, to the detriment of other owners in the vicinity, and the community as a whole.

... 

Two elements must be satisfied before spot zoning can be said to exist. **First, the zone change must concern a small area of land.** Second, the **change must be out of harmony with the comprehensive plan** for zoning adopted to serve the needs of the community as a whole. The **comprehensive plan is to be found in the scheme of the zoning regulations themselves.**

Thus has evolved the doctrine, which generally holds that:

Spot zoning has come to mean arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan. Spot zoning is a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole.

Do the roots of the doctrine make a difference? Absolutely. There are a great many instances in which the zoning of a small area differently from what
surrounds it makes a great deal of sense, a fact that many courts have acknowledged by recognizing that spot zoning is not invalid per se. Consider these examples:

- Zoning to allow a small neighborhood shopping center in a residential area;
- Zoning to allow a small hospital in an area surrounded by apartments and offices in a small town;
- Zoning to allow a grain elevator and chemical supply store in an area otherwise restricted to production agriculture and residential uses;
- Zoning to allow a truck stop, motel or restaurant at an Interstate highway interchange in a rural, agricultural area; or
- Zoning for a jail, powerplant or other unique, free-standing use.

All of these are examples of uses that are likely to be surrounded by dissimilar uses. Is that necessarily undesirable? No. A good comprehensive plan should provide for such uses and should indicate the circumstances in which they will be allowed. For example, without mapping such uses, the plan might suggest that:

- Neighborhood shopping centers be allowed at the intersection of a collector street with an arterial street;
- Grain elevators and agricultural chemical supply dealers should be located near major rail stops, along a state or federal highway;
- Truck stops, motels and other highway-service uses should be located along arterial roads within a specified distance of the intersection of the arterial road with an Interstate or other federal or state highway.

Such planning policies are logical, rational and necessary. Each of those policies suggests that it may be appropriate and necessary to create small ‘spots’ of zoning that differ from the surrounding zoning.

... .

The relationship between comprehensive planning and zoning is one that has long been the subject of thoughtful commentary. It is at the heart of the spot-zoning doctrine, well represented by the leading case of Rodgers v. Village of Tarrytown, in which New York’s highest court held, ‘If, therefore an ordinance is enacted in
accordance with a comprehensive zoning plan, it is not ‘spot zoning,’ even though it (1) singles out and affects but one small plot...or (2) creates in the center of a large zone small areas or districts devoted to a different use.’ The Main Supreme Court has noted the relationship between the consistency doctrine and the concept of spot zoning and suggested that, as local planning becomes universal (by state mandate) in that state, the doctrine of spot zoning will be less significant.

This holding in Rodgers has been followed in numerous cases. The majority rule is that the litmus test of the validity of a zoning amendment is whether it has been enacted in accordance with a comprehensive or well-considered plan. Indeed, several courts have expressly labeled invalid spot zoning as the very antithesis of planned zoning, treating the two concepts as obverse sides of the same issue. Some courts, moreover, have harmonized zoning reclassifications with comprehensive plans by viewing reclassifications as constituting concomitant and proper amendments of the comprehensive plan.” (Emphasis Added)

* * * * * * *

The amendments which the Commission is considering are part of the comprehensive plan for transitional zoning. Simply stated, the plan is to make an appropriate transition from one zoning classification to another where the two different districts are next to each other. The Planning Board has considered this matter for several years and has heard the comments from many individuals. The Planning Board has taken into account the health, safety and welfare of the entire community and the adjacent owners and occupants of nearby properties. They have presented a plan for the gradual transition of uses between bordering zone districts. It is, therefore, our opinion that the proposed transitional zoning amendments do not constitute “spot zoning.”

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier
Birmingham City Attorney

TJC/jc
Exhibit C
October 1, 2018

Ms. Jana L. Ecker and
Planning Board Members
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012

Re: Legal Opinion Regarding Rezoning Application for 468-479 S. Old Woodward

Dear Members of the Board:

The Board has requested a legal opinion in connection with the following question:

Is the owner of the property located 469-479 S. Old Woodward (currently zoned D4 in the Downtown Overlay District) legally permitted to apply for rezoning to the newly created D5 zone district in the Downtown Overlay District?

ANSWER: YES.

If you have any additional questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

TJC/jc

Timothy J. Currier
**NOTICE OF PUBLIC HEARINGS**

**BIRMINGHAM CITY COMMISSION**

**PUBLIC HEARING OF NECESSITY**

**PUBLIC HEARING OF CONFIRMATION**

| Meeting Date, Time, Location: | HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT  
Monday, March 11, 2019, 7:30 PM  
Municipal Building, 151 Martin,  
Birmingham, MI |
|-------------------------------|-----------------------------------------------------|
| Meeting Date, Time, Location: | HEARING OF CONFIRMATION FOR SPECIAL ASSESSMENT DISTRICT  
Monday, March 25, 2019, 7:30 PM  
Municipal Building, 151 Martin,  
Birmingham, MI |
| Location: | Park Street from Oakland Avenue to Hamilton Row (Park Street Paving Project) |
| Nature of Improvement: | Installation of Standard streetscape and new street lights |
| City Staff Contact: | Paul O’Meara 248.530.1836  
pomeara@bhamgov.org |
| Notice Requirements: | Mail to affected property owners  
Publish February 17th and February 24th, 2019 |
| Approved minutes may be reviewed at: | City Clerk’s Office |

You or your agent may appear at the hearings to express your views; however, if you fail to protest either in person or by letter received on or before the date of the hearing, you cannot appeal the amount of the special assessment to the Michigan Tax Tribunal. Mail any correspondence to: City Clerk, P.O. Box 3001, Birmingham, MI 48012.

The property owner may file a written appeal of the special assessment with the State Tax Tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

All special assessments, including installment payments, shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk’s Office at 248.530.1880 (voice) or 248.644.5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.
DATE: March 1, 2019
TO: Joseph A. Valentine, City Manager
FROM: Austin W. Fletcher, Assistant City Engineer
SUBJECT: Park Street Paving Project – Oakland to Hamilton Streetscape & Street Light Special Assessment Public Hearing

INTRODUCTION:

As part of the City’s on-going capital improvement plan, Park Street from Oakland Avenue to Hamilton Row is scheduled to be reconstructed in 2019. As part of this project, the right-of-way will be updated to the City’s Standard Streetscape to also include new street lights. This will require the creation of a special assessment district.

BACKGROUND:

Previously, the City Commission received a report from City staff regarding the proposed construction of the above-referenced street. The Commission approved scheduling a public hearing pertaining to the creation of an assessment district to cover the cost of the streetscape and street light enhancements for Monday, March 11, 2019. Should the project be authorized at that meeting, a hearing of confirmation has also been approved for Monday, March 25, 2019.

Soon after the hearing date was set, the attached letter was delivered to all owners and tenants via US Mail. To date, City staff had not received any correspondence in regards to this project.

The City has also been working with the Architectural Review Committee (ARC) and MKSK (City’s consultant) on a design for the NW corner of Park and Hamilton where additional right-of-way lends an opportunity for a unique landscaping feature. Once approved by the ARC, a separate report will be forwarded to the Commission containing the approved plan.

LEGAL REVIEW:

The suggested special assessment district is consistent with the City Charter, and past precedence. No legal review is required.

FISCAL IMPACT:

As previously noted, the City’s charge of $25.00 per square foot reflects seventy-five percent (75%) of the streetscape enhancements costs (i.e. sidewalk, exposed aggregate and trees) and one-hundred percent (100%) of the costs for the new street lights. The City will be responsible for all costs associated with the reconstruction of the street, public sewer repairs and the landscape feature at the NW corner of Park and Hamilton.
SUMMARY:

It is suggested that the City Commission consider the necessity of this project. If the project is declared a necessity, then direct the Assessor to create a special assessment district and prepare the assessment roll to be reviewed and confirmed during a public hearing on March 25, 2019.

ATTACHMENTS:

- Clerk’s Notice
- Project Announcement Letter
- Previous SAD Public Hearing Memo

SUGGESTED RESOLUTION:

To receive the report regarding Streetscape & Street Light Special Assessment on Park Street from Oakland Avenue to Hamilton Row.

WHEREAS, The City Commission is of the opinion that construction of the improvement herein is declared a necessity; and

RESOLVED, that there be constructed an improvement to be hereinafter known as PARK STREET STREETSCE & STREET LIGHT ENHANCEMENTS consisting of the construction of exposed aggregate concrete and regular concrete pavement sidewalks, new street lights, as well as new trees and landscaping where needed, be further

RESOLVED, that at such time as the Assessor is directed to prepare the assessment roll, one-hundred percent (100%) of the estimated cost be levied against the assessment district, be it further

RESOLVED, that there be a special assessment district created and special assessments levied in accordance with benefits against the properties within such assessment district, said special assessment district shall be all properties, both public and private, within the following districts:

“Oak Grove Addition Plat”
Lots 37, 38 & 39 except for that portion taken for Oakland Avenue and Woodward Avenue rights-of-way.

“Assessor’s Plat No. 21”
Lot 42 except for that portion taken for Woodward Avenue right-of-way, lot 43 except for that portion taken for Park Street right-of-way, lot 44 except for that portion taken for the Park Street right-of-way and rear alley, lots 70 thru 76 except for that portion taken for Woodward Avenue right-of-way.

RESOLVED, that the Commission shall meet on Monday, March 25, 2019 at 7:30 P.M., for the purpose of conducting a public hearing to confirm the roll for the Park Street Streetscape & Street Light Enhancement.
# NOTICE OF PUBLIC HEARINGS

**BIRMINGHAM CITY COMMISSION**  
**PUBLIC HEARING OF NECESSITY**  
**PUBLIC HEARING OF CONFIRMATION**

| Meeting Date, Time, Location: | HEARING OF NECESSITY FOR SPECIAL ASSESSMENT DISTRICT  
Monday, March 11, 2019, 7:30 PM  
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| Nature of Improvement: | Installation of Standard streetscape and new street lights |
| City Staff Contact: | Paul O'Meara 248.530.1836  
pomeara@bhamgov.org |
| Notice Requirements: | Mail to affected property owners  
Publish February 17th and February 24th, 2019 |
| Approved minutes may be reviewed at: | City Clerk’s Office |

You or your agent may appear at the hearings to express your views; however, if you fail to protest either in person or by letter received on or before the date of the hearing, you cannot appeal the amount of the special assessment to the Michigan Tax Tribunal. Mail any correspondence to: City Clerk, P.O. Box 3001, Birmingham, MI 48012.

The property owner may file a written appeal of the special assessment with the State Tax Tribunal within 30 days after the confirmation of the special assessment roll if that special assessment was protested at the hearing held for the purpose of confirming the roll.

All special assessments, including installment payments, shall, from the date of the confirmation thereof, constitute a lien on the respective lots or parcels assessed, and until paid shall be charged against the respective owners of the lots or parcels assessed.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk’s Office at 248.530.1880 (voice) or 248.644.5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.
February 14, 2019

NOTICE!
DOWNTOWN CONSTRUCTION PLANS FOR 2019

Starting in late Spring or early Summer, a Contractor hired by the City will begin the Park Street Paving Project. The limits of this project will be Park Street between Hamilton Row and Oakland Avenue. The goal is to completely renew this corridor with a new concrete street, sidewalks, and street lights. The existing public utilities (i.e. water and sewer) are not a part of this project as they are adequately sized and in good condition with the exception of several isolated repairs to the sewer which will be included with this project. A summary of the work is as follows:

- Complete replacement of the pavement between the curbs with new concrete pavement;
- Select curb and gutter repairs, where needed, to address deteriorated sections or drainage concerns;
- Miscellaneous repairs to the public sewer;
- Sidewalk removal;
- Installation of new City Streetscape (i.e. sidewalk, exposed aggregate, tree wells, City trees);
- New Streetlights;

This project is currently in the design stage and a Contractor has not yet been selected. Therefore, a detailed time schedule is not available. Once it becomes available, additional information will be sent out. Since this street is vital to the adjacent businesses and parking structure, our goal is to close the street to all traffic for no more than four (4) weeks. The entire project should be completed within 2 ½ months.

Business owners and tenants should be aware that a special assessment district is being created with this project. All properties along Park Street between Hamilton Row and Oakland Avenue will be responsible for the following assessment:

**Sidewalk Streetscape & Street Light Assessment** – The City will be completely removing the area between the sidewalk and curb. This area will be replaced with the City’s Standard Streetscape similar to what is currently on Hamilton Row (i.e. a new 5’ wide sidewalk with the remaining 4 ½’ being exposed aggregate). In addition, new tree wells and City trees will be install between the sidewalk and curb (where possible) as well as new enhanced street lights (similar to the ones along Hamilton Row). The estimated cost is $25.00 per square foot of frontage between the property line or building face and the curb. The assessment ranges between $9,450 to $47,250 for individual properties. This assessment can be paid back over ten (10) years if desired (with interest due each year on the remaining balance).

A public hearing will be scheduled to take comments from owners on this assessment district at the City Commission meeting of **March 11, 2019, at 7:30 PM**.

We are happy to provide detailed information relative to your particular property. For additional information, please feel free to contact our office at 248-530-1850.
INTRODUCTION:

As part of the City’s on-going capital improvement plan, Park Street from Oakland Avenue to Hamilton Row is scheduled to be reconstructed in 2019. As part of this project, the right-of-way will be updated to the City’s Standard Streetscape to also include new street lights. This will require the creation of a special assessment district.

BACKGROUND:

Park Street is scheduled to be reconstructed in summer of 2019. As part of the planning for this project, the existing public utilities and private service leads were evaluated. The existing public utilities are in good condition and adequately sized, no upgrades are planned with the exception of several sewer repairs, which will be included in this project. All of the existing service leads within the project area have been install or replaced recently with the oldest being done in 1984, so no sewer lateral improvements are needed or required at this time.

A review of the area between the curb and property line revealed a combination of treatments (see below and the attached exhibits);

Eastside of the street:

- All existing street lighting is overhead ‘corba’ style;
- Three quarters of the street has grass and no city trees;
- Remaining area has all plain concrete and tree wells;

Westside of the street:

- The area along the Park St. Parking Structure has the Standard City Streetscape including new streetlights (as funded by the Auto Parking System and installed in 2014);
- Remaining area has all plain concrete, one City tree (not in a well) and no streetlights;

In addition, there is additional right-of-way at the northwest corner of Park and Hamilton that lends to the potential for something unique (i.e. planter box, additional vegetation, bench, art work, etc...) which the City Staff will further explore with the assistance of the Architectural Review Committee (ARC) and our consultant MKSK.
As reviewed previously by the Multi-Modal Transportation Board (MMTB) and the City Commission, the Multi-Modal Master Plan did not call for any changes on this block. The MMTB recommended enhancements to the crosswalks, including the one located near the southeast corner of the Park St. Parking Structure. The existing three-lane street, which consists of ten (10) foot wide lanes, will be replaced to match the existing condition. Continuing the operation of the northbound left turn lane at the parking structure entrance remains imperative given the strong demand for left turns at this location.

The existing 50 ft. right-of-way, once the street is installed, provides space for a relatively narrow 9.5 ft. wide sidewalk, similar to the conditions on the adjacent Hamilton Row. As you know, the streetscape was completely upgraded on the entire length of Hamilton Row in 2016. To provide a consistent streetscape environment matching both the Park St. Structure frontage, and adjacent Hamilton Row, the City’s standard streetscape is proposed, consisting of a 5 ft. wide standard concrete with the sawcut grid pattern used elsewhere, supplemented with a 4.5 ft. exposed aggregate strip between the sidewalk and the new curb. Tree wells will be installed to support existing viable trees, and to add new trees where possible. (Photos of existing conditions both at the Park St. Structure and on Hamilton Row are attached to this report.)

The attached map highlights those property frontages that would be subject to a sidewalk streetscape and street light assessment. A detailed spreadsheet is also attached with estimated assessment values. As noted above, the Park St. Parking Structure is not included in the assessment district as the streetscape and updated street lights were recently installed.

If the public hearing is set by the City Commission, the Engineering Department will prepare and distribute an information letter explaining the details of this project to include costs, payback schedule, timing, scope, proposed access plan, etc... to all effected property owners and tenants.

LEGAL REVIEW:

The suggested special assessment district is consistent with the City Charter, and past precedence. No legal review is required.

FISCAL IMPACT:

On previous projects of this nature, it has been policy to assess 75% of the sidewalk which would include sidewalk, exposed aggregate, and trees. When pedestrian scale street lights are expanded into a new area where they have not previously existed, the construction cost has been assessed at the rate of 100%. The estimated costs of these improvements are $25.00 per square foot of the frontage between the property or building edge and the curb. The street reconstruction and any necessary public sewer repairs will be completed at City expense.

Attached is a table of the estimated costs for the assessment district. The costs include all costs associate with the streetscape (sidewalk, exposed aggregate and trees) and new lighting. The estimate cost is $25.00 per square foot of frontage between the property line or building face and the curb. The assessment range is between $9,450 to $47,250 for individual properties. Property owners will be offered the chance to pay over a 10-year period, with interest charges on the remaining balance applied.

The City will be responsible for all of the costs associated with the reconstruction of the street, public sewer repairs and landscape feature at the NW corner of Park and Hamilton, currently estimated at $310,000. (Major Street Fund - $245,000 and Sewer Fund - $65,000).
SUMMARY:

It is recommended that the City Commission set a public hearing for the meeting of March 11, 2019 to consider the creation of a special assessment district to install the City’s standard streetscape and new street lights on Park Street between Oakland Avenue and Hamilton Row.

ATTACHMENTS:

- Map of proposed Special Assessment District
- Table of properties and estimated costs for the assessment district
- Existing right-of-way conditions

SUGGESTED RESOLUTION:

RESOLVED, that the City Commission shall meet on Monday, March 11, 2019 at 7:30 P.M., for the purpose of conducting a public hearing of necessity for the installation of Streetscape new street lights proposed herein.

FURTHER RESOLVED, if necessity is determined on March 11, a hearing to review the assessments and to confirm the roll will be held on March 25, 2019, at 7:30 P.M.
Sidewalk & Street Light Special Assessment District

Park St. Parking Structure

300
390
346
391
220
## SIDEWALK SAD CHART

Collector Street Paving Program - Contract # 2-19 (P)

<table>
<thead>
<tr>
<th>Address</th>
<th>Street</th>
<th>Footage</th>
<th>Width</th>
<th>Estimated Area Sq.Ft.</th>
<th>Estimated Cost</th>
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</thead>
<tbody>
<tr>
<td>220</td>
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<td>1233</td>
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<tr>
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<td>Park</td>
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<td>$14,625.00</td>
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<td><strong>TOTALS</strong></td>
<td><strong>$121,500.00</strong></td>
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EAST SIDE

Park Street - Oakland Ave. to Hamilton Row

WEST SIDE

<table>
<thead>
<tr>
<th>Address</th>
<th>Street</th>
<th>Footage</th>
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<tr>
<td>391</td>
<td>Hamilton</td>
<td>86</td>
<td>9</td>
<td>774</td>
<td>$19,350.00</td>
</tr>
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</table>

* Includes Streetlight Costs
DATE: February 20, 2019

TO:    Joseph A. Valentine, City Manager

FROM:  Scott A. Grewe, Operations Commander

APPROVED: Chief Mark H. Clemence

SUBJECT:      Wimbleton Neighborhood Intersection Evaluation

INTRODUCTION:
The City has received a complaint from residents concerned over the lack of any traffic control devices at the intersection of Henley and Warwick. The residents expressed concern that drivers were traveling at excessive speeds through this intersection and were also concerned about the potential of accidents occurring. There are numerous intersections in this neighborhood that are “uncontrolled” intersections in addition to Henley and Warwick.

BACKGROUND:
Multiple traffic studies were conducted on the streets in this neighborhood as well as accident data was reviewed. According to the Michigan Manual on Uniform Traffic Control Devices (MMUTCD) for uncontrolled intersections, the following rules apply:

“Right of Way at Intersections”, when two vehicles approach an intersection from different streets or highways at approximately the same times, the right-of-way rule requires the driver of the vehicle on the left to yield the right-of-way to the vehicle on the right.

In addition, the use of YIELD or STOP signs should be considered at the intersection of two minor streets or local roads where the intersection has more than three approaches and where one or more of the following conditions exist:

1. The combined vehicular, bicycle and pedestrian volume entering the intersection from all approaches averages more than 2,000 units per day.
2. The ability to see conflicting traffic on an approach is not sufficient to allow a road user to stop or yield in compliance with the normal right-of-way rule if such stopping or yielding is necessary.
3. Crash records indicate that five or more crashes that involve the failure to yield the right-of-way at the intersection under the normal right-of-way rule have been reported within a 3-year period, or that three or more such crashes have been reported with in a 2-year period.

Using police department records, all uncontrolled intersections were examined and reviewed using current speed data, traffic counts and accident data. Only one accident, in the last three years, was located that was a result of failure-to-yield at the intersection of Henley and Oxford.
A review of available traffic counts suggests that the total vehicle traffic at any intersection is around 800 or less. No speed related concerns were uncovered.

Based on the information obtained and the complaints received the City’s engineering traffic consultants, Fleis and Vandenbrink, were contacted and asked to review the areas intersections.

LEGAL REVIEW:
No review required.

FISCAL IMPACT:
None.

SUMMARY:
Fleis and Vandenbrink reviewed the intersections in the area and identified several locations where yield signs should be installed due to sight distance issues and the ability to see conflicting traffic upon approach. See attached report from F&V.

This information was presented to the Multi-Model Transportation Board (MMTB) at their February 7th meeting. The MMTB passed a motion to recommend to the City Commission that signs be installed at the recommended locations.

ATTACHMENTS:
1. Email from Laura Cook (587 Henley)
2. Report from Fleis and Vandenbrink
3. Traffic counts from area streets
4. MMTB February 7th minutes

SUGGESTED RESOLUTION:
To approve the installations of “Yield” signs at the following locations:
1. Henley at Abbey
2. Henley at Oxford
3. Henley at Warwick
4. Henley at Tottenham
5. Tottenham at Warwick

And the installation of a “Stop” sign:
1. Oakdale at Rivenoak.
On Fri, Apr 22, 2016 at 7:55 AM, Laura Cook <lauracook72@gmail.com> wrote:

Good morning,

I am writing to voice my concern regarding the lack of signage at Henley and Warwick Streets. I live at 587 Henley, at the Warwick intersection. There are no signs. While those of us in the neighborhood are aware there are no signs and most slow down, all of the cut through traffic is not aware. So, they see no stop sign and they don't stop. People are FLYING through this intersection as they cut through from Abbey to Wimbledon. I understand drivers are supposed to slow and treat it as a four way stop, but that would be only if they are aware there are not signs in all directions. Most people would never consider that there are NO signs on a four way intersection in a neighborhood; it doesn't even cross their mind. I have erected a small "drive like your kids live here" sign with no results.

I would like your input as to what solutions are available, even if temporary while the construction is in effect. Or feel free to direct me to a more appropriate person to address this concern.

Best Regards,
Laura Cook
248-616-0774
Fleis & VandenBrink (F&V) staff is pleased to present this memo to the City of Birmingham for your use evaluating the recommended signing for the uncontrolled intersections within the Wimbledon Neighborhood. This study was performed to determine if intersection control should be provided at any of the following uncontrolled intersections:

- W. Henley Street & Abbey Street
- Henley Street & Oxford Road
- Henley Street & Warwick Street
- Henley Street & Putney Street
- Henley Street & Tottenham Road
- Warwick Street & Tottenham Road
- Riveroak Street & Oakdale Street
- Warwick Street & Sheppardbush Street
- Warwick Street & Wimbledon Drive
- Sheppardbush Street & Tottenham Road
- Sheppardbush Street & Putney Street
- Sheppardbush Street & Abbey Street
- Poppleton Street & Abbey Street

The guidance regarding regulatory traffic measures is provided in the *Michigan Manual of Uniform Traffic Control Devices (MMUTCD)* Sections 28.04, 28.06, and 28.07. Additional information is provided in the American Association of State Highway and Transportation Officials *Geometric Design of Highway and Streets (Green Book)* and the *Guidelines for Converting Stop to Yield Control at Intersections*, National Cooperative Highway Research Program (NCHRP) Report 320. F&V referenced the *MMUTCD* and additional documents to evaluate the existing intersection conditions and develop a recommendation. The results of the analysis and the recommendations are included herein.

**Intersection Control Analysis**

Section 28.04 of the *MMUTCD* provides a set of criteria to evaluate in order to determine when intersection control (YIELD or STOP) should be considered at the intersection of two local streets. The use of YIELD or STOP signs should be considered if any of the following conditions exists:

A. **The combined vehicular, bicycle, and pedestrian volume entering the intersection from all approaches exceed 2,000 vehicles per day**

B. **The ability to see conflicting traffic on an approach is not sufficient to allow a road user to stop or yield in compliance with the normal right-of-way rule if such stopping or yielding is necessary.**

C. **Crash records indicate that five or more crashes that involve the failure to yield the right-of-way at the intersection under the normal right-of-way rule have been reported within a 3-year period, or that three or more such crashes have been reported within a 2-year period.**

The Birmingham Police Department collected volume and crash data for the Wimbledon Neighborhood and indicated that **Condition A** and **Condition C** are not met for any of the intersections. F&V conducted an evaluation of the corner clearance for each of the study intersections and compared existing conditions to the...
requirements for corner clearance outlined in the AASHTO Green Book. Several of the study intersections do not have the necessary intersection corner clearance to operate as uncontrolled intersections, due to significant line of sight obstructions. The intersections without adequate corner clearance are as follows:

- W. Henley Street & Abbey Street
- Henley Street & Oxford Road
- Henley Street & Warwick Street
- Henley Street & Tottenham Road
- Warwick Street & Tottenham Road
- Rivenoak Street & Oakdale Street

Therefore, traffic control signage is recommended at all of these study intersections. All of the other study intersections have the necessary intersection corner clearance, having only minor obstructions within the line of sight, and are therefore recommended to remain as uncontrolled intersections.

**YIELD CONTROL ANALYSIS**

The MMUTCD recommends the use of STOP signs only when warranted. The NCHRP report recommends a wider use of YIELD signs for new intersection, where the given criteria are met. For the purpose of this evaluation, the installation of intersection control signage at a previously uncontrolled intersection functions similarly to the evaluation of intersection control for the installation of a new intersection. At many locations, the most appropriate intersection control measure will be YIELD signs or no control at all. The NCHRP report provided guidelines to use when evaluating where YIELD signs are to be used for intersection control. The criterion encompassed in these guidelines includes the evaluation of the following: Roadway Classification, Traffic Volumes, Speeds, and Crashes. The analyses of the study intersections being recommended for traffic control signage are summarized below.

**ROADWAY CLASSIFICATION**

The major street has been designated as a through street with control along a substantial length that grants or implies right-of-way by using traffic. Not met.

All of the studied intersection roadways within the Wimbledon Neighborhood are classified as Local Streets; therefore, the designation of which roadway is the major street cannot be determined solely on the basis of roadway classification. However, the majority of intersections within the study area are three-way “T-leg” intersections; these intersections produce an underlying implication that the major roadway is designated as the through street and the dead-end street is the minor roadway. Therefore, it is recommended that traffic control signage be provided on the dead-end leg that intersects with the through street.

Additionally, the MMUTCD provides support, stating “The following are considerations that might influence the decision regarding the appropriate roadway upon which to install a YIELD or STOP sign where two roadways with relatively equal volumes and/or characteristics intersect:

A. Controlling the direction that conflicts the most with established pedestrian crossing activity or school walking routes;
B. Controlling the direction that has obscured vision, dips, or bumps that already require drivers to use lower operating speeds
C. Controlling the direction that has the best sight distance from a controlled position to observe conflicting traffic.

The intersections of Henley Street & Oxford Road and Henley Street & Warwick Street are 4-leg intersections, with relatively similar approach volumes. Traffic control is recommended to be provided on Henley Street, at both intersections, on the basis that Henley Street provides the best sight distance from a controlled position.

**TRAFFIC VOLUMES**

The average daily traffic should be less than 1,500 vehicles per day on the major street and less than 600 vehicles per day on the minor street. Met.

The Birmingham Police Department has collected volume data within the neighborhood and has indicated that the roadway volumes for all of the study intersections fall below the given thresholds.

**SPEED DATA**

The intersection(s) should be a residential street intersection with a speed limit of 25 mph or lower. Met.

The speed limit for all of the study roadways within the Wimbledon Neighborhood is 25mph, however people will drive the speed that they feel is “comfortable” for the roadway and is dependent on several factors (road condition, width, set-back, lane width, etc.) Therefore, engineers use the 85th percentile speed as a guide to set the speed limit to provide a safe speed and to promote uniform traffic flow along a corridor. The
85th percentile speed is the speed at or below which 85 percent of all vehicles are observed to travel under free-flowing conditions past a monitored point.

Existing speed data was collected by the Birmingham Police Department, on Tuesday-Friday July 31, 2018 - August 3, 2018 at two locations: 1) along Henley Street between Oxford Road and Warwick Street, and 2) along Warwick Street between Henley Street and Wimbleton Drive. The speed data is summarized below, and the detailed speed data are attached.

<table>
<thead>
<tr>
<th>85TH PERCENTILE SPEEDS (MPH)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Count Location</td>
</tr>
<tr>
<td>Henley Street (Oxford Road to Warwick Street)</td>
</tr>
<tr>
<td>Warwick Street (Henley Street to Wimbleton Drive)</td>
</tr>
</tbody>
</table>

The results of the analyses show that the 85th percentile speeds are lower than the posted speed limit and are within the typical range for a residential neighborhood. Therefore, the remaining roadways were evaluated assuming a conservative 85th percentile speed of 25mph.

CRASH DATA
No more than two crashes involving vehicles on the minor street have occurred over the past three years. Met.

The City of Birmingham Police Department performed a crash analysis for all of the study intersections within the Wimbleton Neighborhood. The results of their analyses showed that, within the most recent three years of data, only one crash occurred that could be corrected by changes in traffic control devices.

SUMMARY
The results of the analysis show that intersection control should be provided for the following intersections:

- W. Henley Street & Abbey Street
- Henley Street & Oxford Road
- Henley Street & Warwick Street
- Henley Street & Tottenham Road
- Warwick Street & Tottenham Road
- Riveneak Street & Oakdale Street

The study indicates that, for the aforementioned study intersections, traffic control should be provided on the minor street and that YIELD control is the recommended traffic control device, with the exception of Riveneak Street and Oakdale Street. At the study intersection of Riveneak Street and Oakdale Street, there are substantial line of sight obstructions along Oakdale Street, requiring motorists to stop in order to safely observe oncoming traffic; therefore, STOP control is recommended at this location. The YIELD analysis results are summarized below.

<table>
<thead>
<tr>
<th>YIELD Sign Criterion (NCHRP Report, 320)</th>
<th>Met?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roadway Classification: The major street has been designated as a through street with control along a substantial length that grants or implies right-of-way by using traffic.</td>
<td>No</td>
</tr>
<tr>
<td>Traffic Volumes: The average daily traffic should be less than 1,500 vehicles per day on the major street and less than 600 vehicles per day on the minor street.</td>
<td>Yes</td>
</tr>
<tr>
<td>Speeds: The intersection(s) should be a residential street intersection with a speed limit of 25 mph or lower.</td>
<td>Yes</td>
</tr>
<tr>
<td>Crashes: No more than two crashes involving vehicles on the minor street have occurred over the past three years</td>
<td>Yes</td>
</tr>
</tbody>
</table>

YIELD Control Recommended: Yes
In addition, the MMUTCD provides further clarification regarding when the use of STOP signs on the minor-street approaches should be considered if engineering judgment indicates that a stop is always required because of one or more of the following conditions:

<table>
<thead>
<tr>
<th>STOP Sign Criterion (MMUTCD Section 2B.06)</th>
<th>Met?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Traffic Volumes</strong></td>
<td>The vehicular traffic volumes on the through street or highway exceed 6,000 vehicles per day</td>
</tr>
<tr>
<td><strong>Sight Distance</strong></td>
<td>A restricted view exists that requires road users to stop in order to adequately observe conflicting traffic on the through street or highway</td>
</tr>
<tr>
<td><strong>Crashes</strong></td>
<td>Crash records indicate that three or more crashes that are susceptible to correction by the installation or a STOP sign have been reported within a 12-month period, or that five or more such crashes have been reported within a 2-year period. Such crashes include right-angle collisions involving road users on the minor-street approach failing to yield the right-of-way to traffic on the through street or highway.</td>
</tr>
</tbody>
</table>

**STOP Control Recommended** | No |

At each of the study intersections, the intersection corner clearance does not provide adequate stopping sight-distance, however the crash data at the intersections does not indicate there is a correctable pattern of crashes that would be mitigated with STOP control on the minor street approached.

**RECOMMENDATIONS**

1. Based on the results of this study, YIELD control is recommended on the minor street approach for each of the following intersection:
   - W. Henley Street & Abbey Street
   - Henley Street & Oxford Road
   - Henley Street & Warwick Street
   - Henley Street & Tottenham Road
   - Warwick Street & Tottenham Road

2. STOP control is recommended along Oakdale Street as it intersects with Rivenoak Street.

**2.3 All** of the other study intersections within the Wimbleton Neighborhood are recommended to remain uncontrolled. A summary of the recommended intersection control is provided in the Table below.

<table>
<thead>
<tr>
<th>Intersection</th>
<th>Recommended Traffic Control Device</th>
<th>Minor Roadway (Yield controlled)</th>
</tr>
</thead>
<tbody>
<tr>
<td>W. Henley Street &amp; Abbey Street (3-way)</td>
<td>Yield</td>
<td>W. Henley Street</td>
</tr>
<tr>
<td>Henley Street &amp; Oxford Road</td>
<td>Yield</td>
<td>Henley Street</td>
</tr>
<tr>
<td>Henley Street &amp; Warwick Street</td>
<td>Yield</td>
<td>Henley Street</td>
</tr>
<tr>
<td>Henley Street &amp; Putney Street</td>
<td>No control</td>
<td>N/A</td>
</tr>
<tr>
<td>Henley Street &amp; Tottenham Road</td>
<td>Yield</td>
<td>Henley Street</td>
</tr>
<tr>
<td>Warwick Street &amp; Tottenham Road</td>
<td>Yield</td>
<td>Tottenham Road</td>
</tr>
<tr>
<td>Warwick Street &amp; Shepardbush Street</td>
<td>No control</td>
<td>N/A</td>
</tr>
<tr>
<td>Warwick Street &amp; Wimbleton Drive</td>
<td>No control</td>
<td>N/A</td>
</tr>
<tr>
<td>Shepardbush Street &amp; Tottenham Road</td>
<td>No control</td>
<td>N/A</td>
</tr>
<tr>
<td>Shepardbush Street &amp; Putney Street</td>
<td>No control</td>
<td>N/A</td>
</tr>
<tr>
<td>Shepardbush Street &amp; Abbey Street</td>
<td>No control</td>
<td>N/A</td>
</tr>
<tr>
<td>Popleton Street &amp; Abbey Street</td>
<td>No control</td>
<td>N/A</td>
</tr>
<tr>
<td>Rivenoak Street &amp; Oakdale Street</td>
<td>Stop</td>
<td>Oakdale Street</td>
</tr>
</tbody>
</table>

2.4 If the conditions and crash patterns at any of the study intersections change, the City should consider reevaluating the corridor to determine if changes to the traffic control measures are warranted and recommended.

If you have any questions or concerns regarding this engineering analysis, please contact our office.
<table>
<thead>
<tr>
<th>Lane1</th>
<th>1-5</th>
<th>6-10</th>
<th>11-15</th>
<th>16-20</th>
<th>21-25</th>
<th>26-30</th>
<th>31-35</th>
<th>36-40</th>
<th>41-45</th>
<th>46-50</th>
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<th>21-25</th>
<th>26-30</th>
<th>31-35</th>
<th>36-40</th>
<th>41-45</th>
<th>46-50</th>
<th>51-55</th>
<th>56-60</th>
<th>61-65</th>
<th>&gt;65</th>
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85 percentile = 26
Minutes of the regular meeting of the City of Birmingham Multi-Modal Transportation Board held Thursday, February 7, 2019.

Chairperson Johanna Slanga convened the meeting at 6:02 p.m.

1. ROLL CALL

Present: Chairperson Johanna Slanga, Vice-Chairperson Lara Edwards, Amy Folberg, Daniel Rontal, Katie Schafer (arrived 6:10 p.m.), Joe Zane (arrived 6:06 p.m.); Alternate Board Member Daniel Isaksen

Absent: Board Member Doug White; Student Representative Alex Lindstrom

Administration: Jana Ecker, Planning Director
Scott Grewe, Police Commander
Paul O'Meara, City Engineer
Laura Eichenhorn, Transcriptionist

Fleis & Vanderbrink ("F&V"):

Julie Kroll

2. INTRODUCTIONS (none)

3. REVIEW AGENDA (no change)

4. APPROVAL OF MINUTES, MMTB MEETING OF JANUARY 3, 2019

Motion by Mr. Isaksen
Seconded by Ms. Folberg to approve the MMTB Minutes of January 3, 2019 as presented.

Motion carried, 5-0.

VOICE VOTE
5. MAPLE ROAD / N. ETON – SIGNAL TIMING
Planning Director Ecker reviewed the previous information and discussion on the item.

City Engineer O’Meara then invited Ms. Kroll from F&V to continue with the item.

Ms. Kroll explained F&V did some additional field investigation at the intersection, creating two different timing plans: one for the period between 4:00 p.m. - 6:00 p.m., and one outside the period of 4:00 p.m. - 6:00 p.m. She continued:

- At this signal there is a 130-second cycle length, whereas the cycle length at the intersections to the east is 120 seconds. The intersections to the west run a 90-second cycle length. With the 130-second cycle length the timing was not going to work. A 90-second cycle length was too short for the offset intersections, so the option of running a 120-second cycle length was recommended.
- Outside of the 4:00 p.m. - 6:00 p.m. time period, there were significant queues on S. Eton, particularly around 3:30 p.m.

Vice-Chairperson Edwards noted that school lets out at 3:30 p.m.

Ms. Kroll continued her presentation, adding:

- The long queues on S. Eton around 3:30 p.m. were caused by the protected left turn going into the Whole Foods parking lot. F&V looked at the possibility of eliminating the protected left turn and replacing it with permissive left turns which operate between 4:00 p.m. - 6:00 p.m.
- Southbound right turns on N. Eton have a green arrow during two periods each cycle: once as an overlap phase with adjacent signals when S. Eton is running, and once during the 17 seconds the intersection allows for the Whole Foods approach. The right-turn arrow times ended up totalling approximately seventy seconds per cycle. Eliminating the 17 second leg still left about 50 seconds of southbound right turns, allowing for the clearance of southbound right turns.
- As a result, F&V recommends turning off the southbound right-turns at the same time the northbound lefts are exiting the Whole Foods approach. This eliminates the conflict beneath the bridge.

Chairperson Slanga reminded the Board that at the N. Eton intersection the only concerns were the two turning lanes. The table of alternatives shared at the Board’s January 3, 2019 meeting had Alternatives 1 & 2 with permissive turns which feature flashing lights that allowed both lanes to turn together. Alternative 3 would allow each lane an opportunity to turn. The change being proposed is a revised cost and a recommendation to look at Alternative 3.

Ms. Kroll explained to Chairperson Slanga that Alternative 2 is only different from Alternative 1 in that it provides a short amount of time for protected turns. Alternative 3, in contrast, turns off the southbound right turns because F&V found the right-turn lane already had enough time during the 120-second cycle length to clear. The northbound left turns only have
17 seconds, so F&V wanted to make sure that all 17 seconds were given to the Whole Foods approach in order to allow the Whole Foods approach to clear those vehicles and to avoid the southbound turns filling up the queue space under the bridge.

Ms. Kroll confirmed for Mr. Rontal there will be a red right arrow shown to the southbound right turn lane during the 17 seconds allotted for northbound right turns.

Vice-Chairperson Edwards said Alternative 3 would not improve the efficiency of the traffic flow at the intersection, but would make the intersection safer. She said drivers heading southbound into the intersection and attempting to turn right encounter a lower level of service. She also confirmed that she understood why Alternative 3 was being suggested, but that some people driving the intersection might be displeased with the change.

Mr. Isaksen pointed out that the level of service for the southbound right turn is still one of the highest on the table, and suggested that as a result the southbound right turns will be least negatively impacted by a small loss in level of service.

Vice-Chairperson Edwards agreed with Mr. Isaksen, just saying that some of the neighbors of the intersection are grumbling about the possible change.

Ms. Kroll noted the southbound right turns are still ranked ‘C’ for level of service in Alternative 3, which is adequate and only causes an additional 10-12 second wait for the turn. She also explained she used the recommendations from Alternative 3 as the baseline conditions to evaluate all the alternatives listed for Maple Road / S. Eton – Pedestrian Improvements, in order to clarify their compatibility.

The Board was then shown modelling of the existing conditions as well as Alternative 3.

Dr. Rontal explained that the westbound left-turn out of Whole Foods would be synchronized with the eastbound left-hand turn out of N. Eton. The southbound N. Eton traffic turning left to go eastbound onto Maple is synchronized with northbound left-turn going westbound into Whole Foods.

Ms. Kroll confirmed, adding the southbound left is permissive between 4:00 - 6:00 p.m., causing cars to yield to any traffic leaving the Whole Foods driveway.

Vice-Chairperson Edwards expressed concern that when parents go to pick up their children from Pembroke School around 3:50 p.m. the intersection gets overwhelmed with cars heading south and trying to make a left.

Mr. Isaksen suggested that maybe there should be another time of day where the signal operation is different to address the school traffic.

Ms. Kroll said that during school drop-offs northbound right turns back up under the bridge due to a westbound protected left turn occurring at the same time. Alternative 3 proposes to create a permissive westbound left turn outside the hours of 4:00 p.m. - 6:00 p.m. in order to allow the northbound right turns to flow more freely.
Motion by Mr. Isaksen
Seconded by Mr. Rortal to recommend approval of Alternate 3 referenced in the F&V report dated January 26, 2019, creating a protected left turn phase for northbound vehicles turning left from the Whole Foods approach, at an estimated cost of $8,550.

Motion carried, 7-0.

VOICE VOTE
Yeas: Isaksen, Rortal, Schafer, Zane, Slanga, Edwards, Folberg
Nays: None
Absent: White

6. MAPLE ROAD / S. ETON — PEDESTRIAN IMPROVEMENTS
City Engineer O’Meara introduced the item and Ms. Kroll presented the item.

Ms. Kroll clarified that the largest truck going through this intersection regularly is a 53’ semi-trailer, also known as a WB 65. No alternatives are being offered as part of this item that require trucks to drive over parts of the pedestrian islands. The schematics do not include trucks making the northbound-to-eastbound right turn because the trucks would hit the bridge.

City Engineer O’Meara noted F&V recommended Alternatives 1 or 6, and said it would be worth inviting an outside safety expert to review Alternative 6 if it was chosen to make sure pedestrians would be sufficiently visible to motorists even if a pedestrian crossed at the wrong time.

Dr. Rortal said Alternative 6 could feel like a daunting cross for a pedestrian.

Ms. Schafer said there may be impeded sightlines for westbound motorists, as well.

Planning Director Ecker acknowledged the difficulties, confirming it is just an overall difficult intersection for crossing. She also explained that the City Commission had previously turned down the Board’s recommendation because they wanted to wait until Whole Foods was opened and the patterns of traffic and crossing at this intersection were more established.

City Engineer O’Meara confirmed the west sidewalk is to be widened to 8’, per a City Commission decision from 2018. He added that the proposed pedestrian island in both Alternatives 1 and 6 would be landscaped with a small green space.

Ms. Kroll confirmed and said the current drawing is concept, whereas a final plan would be surveyed and to scale with inclusion of the 8’ width of the west sidewalk.

Vice-Chairperson Edwards said Alternative 5 seemed like it would feel the safest to a pedestrian even though the option is likely cost-prohibitive. She noted that people cross north-south frequently at this intersection because narrower east-west crossings are possible at various points along Eton.

Planning Director Ecker said Alternative 5 makes the intersection much larger than it is today, even though the pedestrian island is also much larger. As a result, it is unlikely a pedestrian would
necessarily feel any safer with the island as proposed in Alternative 5. In addition the City would have to go to a property owner for the right-of-way and add in a retaining wall because of the grade for Alternative 5. With Alternative 6, the crosswalk is significantly reduced in length versus the current length, likely allowing for increased feelings of pedestrian safety.

Mr. Zane said there are two issues: does it feel safe to cross east-west, and should the City move the crosswalk.

Planning Director Ecker said the east-west crosswalk is an improvement, and the Board can decide whether to keep the north-south crosswalk where it is or move it over, noting the north-south crosswalk will be technically safer if relocated to the east side of the intersection. That said, she also acknowledged there are other factors to consider including sight issues caused by the hill and the bridge, and having to cross in order to go north.

Mr. Isaksen said he was uncomfortable with the possibility in Alternative 6 that a car coming westbound under the bridge may not see a pedestrian in time to stop if the pedestrian was going northbound and jaywalking against the light.

Dr. Rontal said Alternatives 1 & 6 seem to be the best options, acknowledging that there seemed to be no perfect option.

Ms. Kroll said the only tables included in the report were ones reflecting a change in operations of the intersection.

Vice-Chairperson Edwards said the proposed alternatives could give more definition to the intersection, make the intersection feel safer, and encourage cars to move slower.

Chairperson Slanga noted people who avoid the back-up on S. Eton and intend to turn right sometimes move over into the actual turn lane. A splitter island would, in contrast, force those drivers into one lane and encourage turns that stay closer to the corner.

Chairperson Slanga asked the Board to recommend moving forward with discussion of Alternatives 1 and 6, with the understanding that Alternative 6 would require further discussion of the location of the north-south crosswalk and an evaluation by an outside safety consultant.

The Board confirmed.

Ms. Kroll told Chairperson Slanga that the cost difference between Alternatives 1 and 6 reflect the necessity of moving the traffic signal and the pedestrian push button if the crosswalk is moved.

7. WIMBLETON NEIGHBORHOOD INTERSECTION EVALUATION

Police Commander Grewe presented the item.

In response to Board questions, Police Commander Grewe added:
- A "traffic control device" is anything that affects the flow of traffic, such as a stop sign, yield sign, or traffic light.
- The red areas in the images provided were inserted to highlight objects which obstructed
the field of view.
- Two four-way intersections on Henley had no traffic control devices. Those were the most complained about intersections, and the rest were T-intersections with some problems, but fewer.
- Warwick and Oxford would be the non-yielding traffic streets.
- This resolution only includes proposed yield signs, not the yield signs already existing throughout the neighborhood.
- This is a minor enough change that a public hearing would not be necessary.

Planning Director Ecker confirmed for Dr. Rontal that the neighborhood residents have been in touch with Police Commander Grewe requesting traffic control devices for some time now.

City Engineer O'Meara confirmed that #6 in the resolution should have listed a stop sign and not a yield sign due to visibility issues.

Motion by Mr. Rontal
Seconded by Vice-Chairperson Edwards to install YIELD signs at the following intersections:
1. On Henley at Abbey
2. On Henley at Oxford
3. On Henley at Warwick
4. On Henley at Tottenham
5. On Tottenham at Warwick

And a STOP sign on Oakdale at Rivenoak.

Motion carried, 7-0.

VOICE VOTE
Yeas: Isaksen, Rontal, Schafer, Zane, Slanga, Edwards, Folberg
Nays: None
Absent: White

8. MEETING OPEN TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA
(no public)

9. MISCELLANEOUS COMMUNICATIONS (none)

10. NEXT MEETING MARCH 7, 2019 at 6 p.m.

11. ADJOURNMENT
No further business being evident, the board members adjourned at 7:21 p.m.
Jana Ecker, Planning Director Paul O'Meara, City Engineer
DATE: March 8, 2019

TO: City Commission

FROM: Joseph A. Valentine, City Manager

SUBJECT: Request for Closed Session pursuant to Sections 8(h) and 8(e) of the Open Meetings Act, MCL 15.261 - 15.275

It is requested that the City Commission meet in closed session pursuant to the Open Meetings Act, Section 8(h) to consider material exempt from discussion or disclosure by state or federal statute, and Section 8(e) to review pending litigation in the matter of Darakjian v City of Birmingham.

SUGGESTED RESOLUTION:
To meet in closed session pursuant to the Open Meetings Act, Section 8(h) to consider material exempt from discussion or disclosure by state or federal statute, and Section 8(e) to review pending litigation in the matter of Darakjian v City of Birmingham.

(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)
At the meeting of Monday, April 8, 2019 the Birmingham City Commission intends to appoint one regular member to the Architectural Review Committee to serve a three-year term to expire April 11, 2022, and one regular member to serve the remainder of a three-year term to expire April 11, 2020. Members of this Committee will be appointed by the Commission. The Committee shall consist of three Michigan licensed architects who reside in the City of Birmingham.

The purpose of this committee is to review certain public improvement projects initiated by the City and referred to the committee by the City Manager or his/her designee. The Committee is expected to offer opinions as to what physical alterations or enhancements could be made to these projects in order to improve the aesthetic quality of the project and the City’s overall physical environment.

Interested citizens may submit an application available at the City Clerk’s Office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk’s office on or before noon on Wednesday, April 3, 2019. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointments.

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

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*2017 Rooftop valet utilization increased Jul—Oct 2017 due to the Park Street Paving Project*
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<th>N.Old Wood</th>
<th>Chester</th>
<th>Lot #6/$210</th>
<th>Lot #6/$150</th>
<th>South Side</th>
<th>Lot B</th>
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5. Permits - end of previous month  
550 750 400 800 1140 150 40 8 30 50 175 4093

6. Permits - end of month  
550 750 400 800 1140 150 40 8 30 50 225 4143

7. Permits - available at end of month  
0 0 0 0 0 0 0 0 0 0 0 0

8. Permits issued in month includes permits effective 1st of month  
13 20 0 4 1 0 0 0 0 0 0 38

9. Permits given up in month  
13 20 0 4 1 0 0 0 0 0 0 38

10. Net Change  
0 0 0 0 0 0 0 0 0 0 0 0

11. On List - end of month*  
1119 1020 1068 1388 996 0 0 0 0 0 0 5591  
**On List-Unique Individuals 3511

12. Added to list in month  
16 11 12 15 9 0 0 0 0 0 0 63

13. Withdrawn from list in month (w/o permit)  
0 0 0 0 0 0 0 0 0 0 0 0

14. Average # of weeks on list for permits issued in month  
143 82 141 126 57 0 0 0 0 0 0 109.8

15. Transient parker occupied  
172 102 102 153 104 N/A N/A N/A N/A N/A N/A 633

16. Monthly parker occupied  
459 699 328 578 748 N/A N/A N/A N/A N/A N/A 2812

17. Total parker occupied  
631 801 430 731 852 N/A N/A N/A N/A N/A N/A 3445

18. Total spaces available at 1pm on Wednesday 12/12  
75 10 7 14 28 N/A N/A N/A N/A N/A N/A 134

19. “All Day” parkers paying 5 hrs. or more  
A:Weekday average  
221 183 120 116 94 N/A N/A N/A N/A N/A N/A 734  
B:Maximum day  
N/A N/A N/A N/A N/A N/A N/A N/A N/A N/A 0

20. Utilization by long term parkers  
N/A N/A N/A N/A N/A N/A N/A N/A N/A N/A #DIV/0!

(1) Lot #6 does not have gate control, therefore no transient count available  
(2) (Permits/Oversell Factor + Weekday Avg.) / Total Spaces  
* Average Maximum day not available currently in Skidata  
** Unique individuals represent the actual number of unique people on the wait list regardless of how many structures they have requested.
Birmingham Parking System
Transient & Free Parking Analysis
Months of January 2018 & January 2019

January 2018

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<th>FREE CARS</th>
<th>CASH REVENUE</th>
<th>% FREE</th>
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**TOTALS**

|     | 76,811 | 34,909 | $237,483.75 | 45% |

January 2019

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**TOTALS**

|     | 74,311 | 33,224 | $235,858.00 | 45% |

**BREAKDOWN:**

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**Notes:**

Garage not filled.
### Park Street Structure

**FEBRUARY 2019**

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**Notes:**
N.O.W. Structure

FEBRUARY 2019

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Notes:
Peabody Structure

FEBRUARY 2019

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<td>28 Chester-99</td>
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Notes:
Feb. 2018 - Feb. 2019

Combined Parking Structure Full Status

Number of business days/year - 251 x 4 structures = 1004

- Total monthly occurrences of Chester, Park, Peabody and Pierce structures being full (1-4 hrs.)
Structure Occupancy at 1 pm Tuesday-Thursday
Average Available Spaces - February 2019

Chester: 131 (Tue), 108 (Wed), 93 (Thur)
N. Old Woodward: 120 (Tue), 96 (Wed), 54 (Thur)
Park: 62 (Tue), 50 (Wed), 22 (Thur)
Peabody: 36 (Tue), 59 (Wed), 46 (Thur)
Pierce: 105 (Tue), 103 (Wed), 88 (Thur)
Parking Full Status by Structure
February 2019 - Business Days Only (M-Friday)

- Pierce St.: 0
- Peabody St.: 0
- Park St.: 0 (Rooftop valet utilized 2 days)
- N.Old Woodward: 0
- Chester: 0

Total Occurrences by structure of being full 1-4 hrs
DATE: March 4, 2019

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Community Development Department/Planning Division Annual Report & Planning Board, Historic District Commission, and Design Review Board Action Lists for 2019-2020

Please find attached the Planning Division’s Annual Report for 2018-2019, including the Planning Board’s Action List 2019-2020, the Historic District Commission’s Action List, and the Design Review Board’s Action List for your review.
Each year, the City Commission asks the Planning Division to prepare a report outlining the board and commission activities from the previous year. This report covers the year beginning April 1, 2018 and ending March 31, 2019. In preparing the report, the Planning Board, the HDC, and the DRB have the chance to review their goals and objectives for the upcoming year.

The report is separated into two distinct parts: 1) Accomplishments and 2) Goals. The Accomplishments section cites in narrative form the activities conducted by each board. This narrative will include a list of public hearings, studies and reviews.

The Goals section lists the items from the Planning Board's 2019-2020 Action List, the HDC's 2019-2020 Action List, and the DRB’s 2019-2020 Action List and speaks to the action taken on each item. From this list, each board, as well as the City Commission, has the opportunity to evaluate their goals and objectives, and make any needed amendments.
**SECTION ONE: ACCOMPLISHMENTS**

**Planning Board**

**Site Plans**
The Planning Board, which meets the second and fourth Wednesdays of each month, sets aside their first meeting of the month for discussion or study items and their second meeting of the month for site plan reviews. The following list includes all the site plans reviewed from April 1, 2018 to March 31, 2019. It should be noted that each site plan may have been reviewed more than once:

1. 33588 Woodward – Shell Gas Station/Dunkin Donuts, small addition for restroom and new signage
2. 225 E. Maple – Social Kitchen, design changes to existing exterior color and existing outdoor dining enclosures on roof and in City’s via
3. 34977 Woodward - to allow the new restaurant Hazel, Ravines and Downtown, lighting, landscape and signage changes, as well as exterior materials changes and conversion of entry vestibule into indoor/outdoor patio
4. 469-479 S. Old Woodward, (former Mountain King) to allow construction of a new 9 story mixed use building
5. 209 Hamilton Row/250 N. Woodward – Emagine Theater, Palladium Bldg., for closure of Four-Story burger and installation of a private viewing theater room
6. 1268 Bennaville Ave. – existing lot, requesting approval to reconfigure existing parking lot to add spaces
7. 35001 Woodward – currently vacant, to permit new construction of a five story retail and office building
8. 260 N. Old Woodward – The Morrie, application to add dance floor to previously approved plans
9. 2010 Cole – currently vacant, to renovate existing building and expand parking lot
10. 277 Pierce Street (former Varsity Shop building), request to extend the approved Final Site Plan which would have expired on August 23, 2018
11. 298 S. Old Woodward – The Daxton Hotel (formerly Doctors’ House Calls), request for design and material changes to the exterior of the building
12. 800 N. Old Woodward (former Ziegleman Building), addition of a third floor to existing building and expansion of the building to the north to connect to the Pearl under construction at 825 N. Old Woodward
13. 361 E. Maple (Historic Resource – Hawthorne Building), addition of four stories on top of the existing one story historic resource
14. 695 W. Brown (formerly 525 Southfield Road), request for approval of two new attached single family units facing Watkins
15. 35001 Woodward – (Hunter House and vacant parking lot), request for approval of new five story mixed use building with hotel, retail and residential uses
16. 277 Pierce Street (former Varsity Shop building), request to extend the approved Final Site Plan which would have expired on February 23, 2019
17. 33828 Woodward – Vespa Scooters, request for Regulated Use in existing building
18. 123 W. Maple – American Jewelry and Loan (former Art Loft space), request for Regulated Use in existing building
19. 310 E. Maple – Pernoi (former Café Via space), request for transfer of bistro to new owner

Special Land Use Permits
The Planning Board reviewed the following special land use permits (SLUPs):

1. 33588 – Shell Gas Station/Dunkin Donuts, small addition for restroom and new signage
2. 225 E. Maple – Social Kitchen, design changes to existing exterior color and existing outdoor dining enclosures on roof and in City’s Via
3. 34977 Woodward - to allow the new restaurant Hazel, Ravines and Downtown, lighting, landscape and signage changes, as well as exterior materials changes and conversion of entry vestibule into indoor/outdoor patio
4. 191 N. Chester – The Jeffery (formerly Church of Christ Scientist), to allow renovation and expansion to the existing building for office use over 3,000 sq. ft. in size
5. 209 Hamilton Row/250 N. Woodward – Emagine Theater, Palladium Bldg., for closure of Four-Story burger and installation of a private viewing theater room
6. 260 N. Old Woodward – The Morrie, application for SLUP amendment to allow addition of dance floor
7. 33828 – Vespa Scooters Detroit, SLUP required for Regulated Use in existing building
8. 123 W. Maple – American Jewelry and Loan (former Art Loft space), request for Regulated Use in existing building
9. 310 E. Maple – Pernoi (former Café Via space), request for transfer of bistro to new owner

Community Impact Statements
For proposed construction over 20,000 square feet, the developer must provide a Community Impact Statement (CIS), which addresses planning, zoning, land use and environmental issues, as well as public service and transportation concerns.

1. 469-479 S. Old Woodward, (former Mountain King) to allow construction of a new 9 story mixed use building
2. 191 N. Chester – The Jeffery (formerly Church of Christ Scientist), to allow renovation and expansion to the existing building for office use over 3,000 sq. ft. in size
3. 361 E. Maple (Historic Resource – Hawthorne Building), addition of four stories on top of the existing one story historic resource
4. 35001 Woodward (vacant) – to permit new construction of a five story retail and office building
5. 35001 Woodward (Hunter House & vacant parking lot) – Request for approval of new five story mixed use building with hotel, retail and residential uses.

Rezoning Applications
Over the past year, there was one (1) request for rezoning/zoning amendments on property within the City of Birmingham.

1. 469-479 S. Old Woodward (former Mountain King), Request for rezoning from B3/D4 to B3/D5 to allow construction of a new 9 story mixed use building
Pre-Application Discussions, as suggested in the DB2016 Report, are recommended for new construction. This type of discussion is beneficial to both the applicant and the Planning Board, giving both the opportunity to informally discuss proposals. However, the placement of the discussion, at the end of a site plan review meeting, often precludes all issues from being discussed. The following Pre-Application discussions occurred from April 1, 2018 to March 31, 2019:

1. 469-479 S. Old Woodward (formerly Mountain King) – to permit new construction of nine story mixed use building
2. 2010 Cole – Renovation of existing building
3. Bowers and Elm Project – New Construction
4. 33877 Woodward – CVS
5. 800 N. Old Woodward – Building Addition
6. 123 W. Maple – SLUP Request
7. 34000 Woodward
8. 203 Pierce Street – Toast

Courtesy Reviews

1. 300 W. Merrill Street - Baldwin Library, Youth Room Addition

Study Sessions/ Discussions
The Planning Board also engaged in many study sessions and discussions with regard to the following topics. It should be noted that these topics are often discussed at multiple meetings:

Study Sessions
1. Review of Process for Renovation/Reconstruction Projects
2. Downtown Birmingham Redline Retail District
3. Retail Discussion
4. Planning Board Rules of Procedure
5. Bistro Regulations
6. Parking Requirements in Commercial Areas
7. Sign Ordinance Review
8. Projections into the Right-of-Way
9. Church/Religious Institutions
10. Payment in Lieu of Parking in Triangle District
11. Review of Planning Board’s Action List
12. Retail RFP Response
13. Regulated Use/Special Land Use Review Process
14. Rooftop Usage in the MX District
15. Renovation of Commercial Properties
16. 2018 Administrative Approval Report
17. Parking Study Update
Public Hearings/ Zoning Amendments
Public hearings were held by the Planning Board to ensure public participation at various stages in the planning process. The following ordinances were reviewed at public hearings by the Planning Board:

BISTROS:
PROPOSED AMENDMENTS TO CHAPTER 126, ZONING, OF THE CITY CODE AS FOLLOWS:

TO AMEND SECTION 3.04, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.06, O1 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.07, O2 – OFFICE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.08, P – PARKING DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.10, B2 – GENERAL BUSINESS DISTRICT, B2B – GENERAL BUSINESS DISTRICT, B2C – GENERAL BUSINESS DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.11, B3 – OFFICE-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.12, B4 – BUSINESS-RESIDENTIAL DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 5.13, MX – MIXED USE DISTRICT, SPECIFIC STANDARDS, BUILDING USE, TO AMEND THE CONDITIONS OF THE BISTRO SPECIAL LAND USE PERMIT.

AND

TO AMEND SECTION 9.02, DEFINITIONS: BISTRO

OVERLAY SIGN STANDARDS
PROPOSED AMENDMENTS TO CHAPTER 126, ZONING, OF THE CITY CODE TO DELETE: ARTICLE 03, OVERLAY DISTRICTS, SECTION 3.04(F) SPECIFIC STANDARDS, SECTION 3.04, DOWNTOWN OVERLAY DISTRICT TO ELIMINATE THE OVERLAY SIGNAGE STANDARDS
CHURCHES / RELIGIOUS INSTITUTIONS
PROPOSED AMENDMENTS TO CHAPTER 126, ZONING, OF THE CITY CODE AS FOLLOWS:

1. TO AMEND ARTICLE 2, SECTION 2.03, R1A (SINGLE-FAMILY RESIDENTIAL) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;
2. TO AMEND ARTICLE 2, SECTION 2.05, R1 (SINGLE-FAMILY RESIDENTIAL) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;
3. TO AMEND ARTICLE 2, SECTION 2.07, R2 (SINGLE-FAMILY RESIDENTIAL) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;
4. TO AMEND ARTICLE 2, SECTION 2.09, R3 (SINGLE-FAMILY RESIDENTIAL) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;
5. TO AMEND ARTICLE 2, SECTION 2.11, R4 (TWO-FAMILY RESIDENTIAL) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;
6. TO AMEND ARTICLE 2, SECTION 2.13, R5 (MULTIPLE-FAMILY RESIDENTIAL) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;
7. TO AMEND ARTICLE 2, SECTION 2.15, R6 (MULTIPLE-FAMILY RESIDENTIAL) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;
8. TO AMEND ARTICLE 2, SECTION 2.17, R7 (SINGLE-FAMILY RESIDENTIAL) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;
9. TO AMEND ARTICLE 2, SECTION 2.21, O1 (OFFICE) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;
10. TO AMEND ARTICLE 2, SECTION 2.25, P (PARKING) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A
SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;

11. TO AMEND ARTICLE 2, SECTION 2.27, B1 (NEIGHBORHOOD BUSINESS) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE PERMITTED USES, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;

12. TO AMEND ARTICLE 2, SECTION 2.29, B2 (GENERAL BUSINESS) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE PERMITTED USES, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;

13. TO AMEND ARTICLE 2, SECTION 2.31, B2B (GENERAL BUSINESS) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE PERMITTED USES, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;

14. TO AMEND ARTICLE 2, SECTION 2.33, B2C (GENERAL BUSINESS) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE PERMITTED USES, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;

15. TO AMEND ARTICLE 2, SECTION 2.37, B4 (BUSINESS-RESIDENTIAL) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE PERMITTED USES, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;

16. TO AMEND ARTICLE 2, SECTION 2.39, MX (MIXED USE) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;

17. TO AMEND ARTICLE 2, SECTION 2.43, TZ2 (TRANSITION ZONE) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;

18. TO AMEND ARTICLE 2, SECTION 2.45, TZ3 (TRANSITION ZONE) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES, TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT, TO REMOVE CHURCH AND REPLACE WITH RELIGIOUS INSTITUTION;

19. TO AMEND ARTICLE 3, SECTION 3.07 – PERMITTED USES AND SPECIAL USES, TO REMOVE CHURCH IN THE LAND USE MATRIX;

20. TO AMEND ARTICLE 4, SECTION 4.45 (G)(5)(a)(ii) and (iii) – PK-01 GENERAL PARKING STANDARDS – TO AMEND THE METHODS OF PROVIDING PARKING FACILITIES, TO REPLACE CHURCH WITH RELIGIOUS INSTITUTION;

21. TO AMEND ARTICLE 4, TO AMEND TABLE A – REQUIRED OFF- STREET PARKING SPACES, TO REPLACE CHURCH WITH RELIGIOUS INSTITUTION;

22. TO AMEND ARTICLE 4, SECTION 4.66 (A)(1)(STORAGE AND DISPLAY STANDARDS), TO REPLACE CHURCH WITH RELIGIOUS INSTITUTION;
23. TO AMEND ARTICLE 4, SECTION 4.84 TU-01 (A)(2)(TEMPORARY USE STANDARDS), TO REPLACE CHURCH OR OTHER RELIGIOUS FACILITY WITH RELIGIOUS INSTITUTION;
24. TO AMEND ARTICLE 4, SECTION 4.86 TU-03 (A)(1)(TEMPORARY USE STANDARDS), TO REPLACE CHURCH WITH RELIGIOUS INSTITUTION;
25. TO AMEND ARTICLE 7, SECTION 7.21 (A)(1) – REQUIREMENTS, TO REPLACE CHURCHES WITH RELIGIOUS INSTITUTIONS;
26. TO AMEND ARTICLE 9, SECTION 9.02 – DEFINITIONS, TO ADD A DEFINITION OF RELIGIOUS INSTITUTION;
27. TO AMEND APPENDIX A, LAND USE MATRIX, TO MERGE CHURCH AND CHURCH AND RELIGIOUS INSTITUTION ROWS INTO ONE ROW UNDER RELIGIOUS INSTITUTION; AND
28. TO AMEND APPENDIX B, INDEX, TO ELIMINATE Indexed PAGES WHERE CHURCH NO LONGER EXISTS, ADD RELIGIOUS INSTITUTION AND CORRESPONDING PAGE NUMBERS.

PAYMENT IN LIEU OF PARKING IN TRIANGLE DISTRICT
PROPOSED AMENDMENT TO CHAPTER 126, ZONING, OF THE CITY CODE:

TO AMEND ARTICLE 03, SECTION 3.08(E)(1), ADDITIONAL BUILDING HEIGHT, TO AMEND THE COST OF A PARKING SPACE UNDER THE PAYMENT IN LIEU OF PARKING OPTION TO GAIN ADDITIONAL BUILDING HEIGHT/STORIES IN THE TRIANGLE DISTRICT.
<table>
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<th>TOPIC</th>
<th>SPECIFIC DIRECTION/PROBLEM DEFINITION</th>
<th>STUDY SESSION</th>
<th>PUBLIC HEARING</th>
<th>STATUS</th>
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<td>Commercial Projections onto Public Property / Architectural Allowances</td>
<td>• Clarify in the Zoning Ordinance which, if any, projections are permitted into the ROW • Draft regulations to address the height, projection or permitted materials for architectural features projecting into the ROW</td>
<td>1/10/18 8/8/18 10/10/18 10/24/18 11/14/18 11/28/18 2/13/19</td>
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<td>Renovation of Commercial Properties</td>
<td>Amend the review procedures for new construction and/or the Renovation of existing buildings</td>
<td>8/19/17 10/13/17 1/10/18 4/11/18 1/9/19 2/13/19</td>
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<td>Shared Parking</td>
<td>Evaluate the success/difficulties encountered in other communities</td>
<td>8/10/16 2/8/17 3/29/17 5/10/17 7/12/17</td>
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<td>Require a formal shared parking agreement</td>
<td>7/11/18 7/25/18 8/13/18(CC) 2/13/19</td>
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<td>As discussed at the joint meeting of the City Commission / Planning Board on 6/18/18</td>
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<td>Parking Requirements</td>
<td>Review parking requirements for residential uses</td>
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<td>Rooftop Uses &amp; Structures</td>
<td>Allow use and occupation of rooftops in the MX District consistent with other mixed use zone districts</td>
<td>10/24/18 12/12/18 2/13/19 3/13/119</td>
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<td>As discussed at the joint meeting of the City Commission / Planning Board on 10/15/18</td>
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|   | • Consider ordinance amendments to allow existing homes to be modified for increased accessibility  
• Consider allowing multi-generational housing stock  
• Encourage affordable housing opportunities  
• Enhance public spaces to accommodate an aging population |   |   |   |
|   |   |   |   |   |
|   | As discussed at the joint meeting of the City Commission / Planning Board on 10/15/18 |   |   |   |
|   |   |   |   |   |
| 7 | Consider looking at principal uses allowed and add flexibility ("and other similar uses") |   |   |   |
|   | • Evaluate the current system of listing only permitted uses in each zone district  
• Determine whether to continue this system, or switch to broad use categories (ie. retail is permitted, instead of listing drugstore, shoe store, grocery store |   |   |   |
<p>| | | | | |
|   |   |   |   |   |
| 8 | Potential residential zoning changes; MF &amp; MX garage doors |   |   |   |
|   | • Consider adding garage placement standards and/or garage and garage door size or design standards for mixed use and multi-family residential developments |   |   |   |
|   |   |   |   |   |</p>
<table>
<thead>
<tr>
<th></th>
<th>Sustainable Urbanism (Green building standards, pervious surfaces, geothermal, native plants, low impact development etc.)</th>
<th></th>
<th></th>
</tr>
</thead>
</table>
| 9 | • Incentive option in Triangle District  
• Guest speakers in LEED Certification, Pervious Concrete, LED Lighting, Wind Power, Deconstruction  
• Sustainability website & awards  
• Native Plant brochure | 2/09/2005  
7/11/2007  
8/08/2007  
9/12/2007  
1/9/2008  
9/10/08  
1/14/09  
1/28/09  
2/10/09 (LRP)  
5/13/09  
8/12/09  
11/11/09  
1/23/10 (LRP)  
5/12/10  
6/9/10 | 2/25/09 (PB Solar)  
1/13/10 (PB-Wind)  
2/10/10 (PB-Wind)  
| 10 | Additional Items to be Considered during Master Plan Process | 7/12/17 | On Hold |
|   | • Woodward Avenue Gateway Plan (Lincoln to 14 Mile Road)  
• Parking  
• Complete Streets  
• Regional Planning |   |   |
| 11 | Review Process for Public Projects |   |   |
|   | • Clarify review process for projects on public property  
• Consider requiring same site plan review process as that for private projects |   |   |
## Completed Items 2018 – 2019

| Overlay Signage Standards | • Consider consistent signage standards inside and out of the Downtown Birmingham Overlay District  
|                           | • Consider quality of signage and fastening systems | 6/18/18  
|                           |                                                   | 7/11/18  
|                           |                                                   | 7/25/18  
|                           |                                                   | 9/12/18 (PB)  
|                           |                                                   | 2/11/19 (CC)  
|                           |                                                   | Completed  
|                           |                                                   | • As discussed at the joint meeting of the City Commission / Planning Board on 6/18/18  
| Bistro Parameters | • Review bistro regulations on the location or number of outdoor dining seats permitted  
|                           | • Clarify and/or provide additional regulations for the operation of bistros  
|                           | • Consider different standards for different districts | 7/12/17  
|                           |                                                   | 8/9/17  
|                           |                                                   | 9/13/17  
|                           |                                                   | 1/10/18  
|                           |                                                   | 3/14/18  
|                           |                                                   | 6/13/18  
|                           |                                                   | 7/11/18  
|                           |                                                   | 8/18/18  
|                           |                                                   | 4/11/18 (PB)  
|                           |                                                   | 8/18/18 (PB)  
|                           |                                                   | 9/7/18 (CC)  
|                           |                                                   | 10/8/18 (CC)  
|                           |                                                   | 12/3/18 (CC)  
|                           |                                                   | Completed  
|                           |                                                   | • As directed by the City Commission on 7/10/17  
| Amend cost of parking space for payment- in- lieu of parking to allow additional building height in the Triangle District | • Update cost of parking space to today’s cost  
|                           | • Build in automatic cost increase / year into ordinance language | 8/8/18  
|                           |                                                   | 9/12/18  
|                           |                                                   | 10/10/18 (PB)  
|                           |                                                   | 11/19/18 (CC)  
|                           |                                                   | Completed  
|                           |                                                   | • As directed by the City Manager  
| Church / Religious Institutions | • Add definitions for Church and/or Religious Institutions  
|                           | • Clarify in which zone district(s) each use is permitted | 8/8/18  
|                           |                                                   | 9/12/18 PB  
|                           |                                                   | Completed  
|                           |                                                   | • As directed by the City Manager  
| Window Tinting Standards | • Consider allowing clear glass only on first floor storefront windows  
|                           | • Consider adding tint standards for upper story windows | 3/29/17  
|                           |                                                   | 5/10/17  
|                           |                                                   | 6/14/18 PB  
|                           |                                                   | Completed  
|                           |                                                   | • As directed by the City Manager  

Updated February 2019
<table>
<thead>
<tr>
<th>Site Plan Submittal Requirements</th>
<th>• Add requirement that all applicants submit a plan showing adjacent properties to review context</th>
<th>1/10/18</th>
<th>2/28/18 PB 3/14/18 PB</th>
<th>Completed</th>
<th>• As directed by the City Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creation of Hotel Liquor Licenses</td>
<td>• Add a new category of liquor license to allow the City Commission to grant approval of liquor licenses for hotel uses in the City</td>
<td>3/28/18 PB</td>
<td>Completed</td>
<td>• As requested by owner of the Daxton Hotel</td>
<td></td>
</tr>
</tbody>
</table>
Both the HDC (Historic District Commission) and the DRB (Design Review Board) meet on the first and third Wednesdays of each month, with a limit of 4 regular reviews per meeting, and up to 8 reviews without formal presentation. Limiting reviews in this way allows the HDC & DRB time to conduct public hearings and discuss study session items.

**Design Reviews**
The following businesses requested design reviews by the DRB to alter the appearance of their buildings:

1. 607 Bates – Major Jones House  
2. 225 E. Maple – Social Kitchen  
3. 251 E. Merrill – Merrillwood Building  
4. 487 Willits – Edgar Lamb House  
5. 34200 Woodward – Tomatoes a Pizza  
6. 33779 Woodward – Floyd's 99 Barbershop  
7. 34000 Woodward – Commercial building  
8. 555 S. Old Woodward – Building identification sign and lighting

**Historic Reviews**
The following historic buildings proposed changes that required review by the HDC:

1. 556 W. Maple – Allen House, (Birmingham Historic Museum), historic designation review  
2. 361 E. Maple – Hawthorne Bldg., Historic designation elimination review  
3. 539 S. Bates – Bates Street Historic District  
4. 225 E. Maple – Social Kitchen  
5. 251 E. Merrill – Merrillwood Building  
6. 277 Pierce – Varsity Shop  
7. 412 Willits – Stickney House  
8. Baldwin Library – Youth Services Renovation

**Sign Reviews**
The following businesses requested sign reviews:

1. 34901 Woodward – Morgan Stanley  
2. 33633 Woodward – Wesch Cleaners  
3. 1065 E. Maple – Mobile Gas Station

**Study Session Discussions:**

1. Overlay signage standards  
2. Selection of HDC/DRB member to serve on Master Plan Selection Committee  
3. Open / Closed Signs
SECTION TWO: GOALS

The Planning Division boards and commissions set specific goals and priorities each year as part of the annual report. The formulation of these goals comes from the City Commission, Planning Board, HDC, DRB, and City Staff. Upon review of the items noted on the action lists that follow (see attached), the Planning Board, the HDC, and the DRB will make recommendations to the City Commission, as they deem important and necessary.

2019 HDC ACTION LIST RANKING

<table>
<thead>
<tr>
<th>HISTORIC</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Historic District Ordinance Enforcement</td>
<td>1</td>
</tr>
<tr>
<td>Preservation Education</td>
<td>2</td>
</tr>
<tr>
<td>Commercial In-fill Guidelines</td>
<td>3</td>
</tr>
<tr>
<td>Certified Historic Homes Plaques</td>
<td>4</td>
</tr>
<tr>
<td>Print Eco City Neighborhood Survey</td>
<td>5</td>
</tr>
<tr>
<td>Alleys and Passages</td>
<td>6</td>
</tr>
</tbody>
</table>
### 2019 DRB ACTION LIST RANKING

#### SIGNS

<table>
<thead>
<tr>
<th>Task</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coordinate Overlay/Historic/General sign standards</td>
<td>1</td>
</tr>
<tr>
<td>Sign Band Designation on New buildings</td>
<td>2</td>
</tr>
<tr>
<td>Sign Ordinance Enforcement</td>
<td>3</td>
</tr>
<tr>
<td>Develop Informational Sign Guidelines</td>
<td>4</td>
</tr>
</tbody>
</table>

#### DESIGN REVIEW

<table>
<thead>
<tr>
<th>Task</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinance Enforcement</td>
<td>1</td>
</tr>
<tr>
<td>Improve Sequence of Reviews Between Boards</td>
<td>2</td>
</tr>
<tr>
<td>Continue to Implement 2016 Plan</td>
<td>3</td>
</tr>
<tr>
<td>Alleys and Passages</td>
<td>4</td>
</tr>
</tbody>
</table>
February 7, 2019

Ms. Cherilynn Mynsberge
City Clerk
City of Birmingham
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012

Dear Ms. Mynsberge,

As part of our ongoing efforts to keep you informed of changes that impact our customers, I want to share an upcoming change in our channel line-up offering.

Effective on or after February 26, 2019, HSN (channel 8), HSN HD (channel 210), QVC2 (channel 17) and QVC HD (channel 213) will be included as part of WOW! Small Cable. MotorTrend will be on WOW! Medium Cable (channel 276) and MGM HD will be on WOW! HD Pak (channel 277). HDTV and HD receiver required to receive HD programming.

As a result of this change, customers subscribing to WOW! Small Cable will have access to HSN, HSN HD, QVC2 and QVC HD, customer subscribing to WOW! Medium Cable will have access to MotorTrend and customers subscribing to WOW! HD Pak will have access to MGM HD at no additional charge. We will communicate this change to our customers by placing a notice in the local newspaper and on our website.

Thank you for your continued support and cooperation. If you have any questions, please contact me at 248-677-9080.

Sincerely,

[Signature]

Terrell Priester
Everyone's Friend, Family Focused, Sports Fan
Director, Operations of WOW! Southeast Michigan
WOW! Internet, Cable and Phone

INFORMATION ONLY
February 19, 2019

Ms. Cherilynn Mynsberge
City Clerk
City of Birmingham
151 Martin Street
P.O. Box 3001
Birmingham, MI 48012

Dear Ms. Mynsberge,

As part of our ongoing efforts to keep you informed of changes that impact our customers, I want to share an upcoming change in our channel line-up offering.

Effective on or after March 26, 2019, QVC (Ch.12) will be included as part of WOW! Small Cable.

As a result of this change, customers subscribing to WOW! Small Cable will have access to QVC for no additional charge. We will communicate this change to our customers by placing a notice in the local newspaper and on our website.

Thank you for your continued support and cooperation. If you have any questions, please contact me at 248-677-9080.

Sincerely,

[Signature]

Terrell Priester
**Everyone's Friend, Family Focused, Sports Fan**
Director, Operations of WOW! Southeast Michigan
WOW! Internet, Cable and Phone
STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION NOTICE
OF HEARING
FOR THE GAS CUSTOMERS OF
CONSUMERS ENERGY COMPANY
CASE NO. U-20356

- Consumers Energy Company requests the Michigan Public Service Commission’s approval for authority to reconcile its gas revenue decoupling mechanism and for other relief.

- The information below describes how a person may participate in this case.

- You may call or write Consumers Energy Company, One Energy Plaza, Jackson, MI 49201, or call 517-788-0550 for a free copy of its application. Any person may review the documents at the offices of Consumers Energy Company.

- A pre-hearing will be held:

  DATE/TIME:      Tuesday, March 12, 2019, at 10:00 AM
  BEFORE:         Administrative Law Judge Kandra Robbins
  LOCATION:       Michigan Public Service Commission
                  7109 West Saginaw Highway
                  Lansing, Michigan 48917

  PARTICIPATION:  Any interested person may attend and participate. The hearing site is accessible, including handicapped parking. Persons needing any accommodation to participate should contact the Commission's Executive Secretary at (517) 284-8090 in advance to request mobility, visual, hearing or other assistance.

The Michigan Public Service Commission (Commission) will hold a pre-hearing to consider Consumers Energy Company’s (Consumers Energy) November 30, 2018 application requesting the Commission to approve: 1) the reconciliation of its Revenue Decoupling Mechanism for the period January 1, 2018 through August 31, 2018; 2) Consumers Energy to apply a one-month per customer surcharge, to collect the Revenue Decoupling Mechanism revenues by rate schedule based on the projected number of customers for the August 2019 bill month; 3) Consumers Energy to apply the proposed remaining residual balance reconciliation methodology to any remaining residual balances that continue to exist after the implementation of the proposed surcharges; and 4) other relief.

All documents filed in this case shall be submitted electronically through the Commission’s E-Dockets website at: https://mi-psc.force.com/s/. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to: mpscedockets@michigan.gov. If you require assistance prior to e-filing, contact Commission staff at (517) 284-8090 or by email at: mpscedockets@michigan.gov.

INFORMATION ONLY
Any person wishing to intervene and become a party to the case shall electronically file a petition to intervene with this Commission by March 5, 2019. (Interested persons may elect to file using the traditional paper format.) The proof of service shall indicate service upon Consumers Energy Company’s Legal Department – Regulatory Group, One Energy Plaza, Jackson, MI 49201.

Any person wishing to appear at the hearing to make a statement of position without becoming a party to the case may participate by filing an appearance. To file an appearance, the individual must attend the hearing and advise the presiding administrative law judge of his or her wish to make a statement of position. All information submitted to the Commission in this matter becomes public information, thus available on the Michigan Public Service Commission’s website, and subject to disclosure. Please do not include information you wish to remain private.

Requests for adjournment must be made pursuant to the Michigan Administrative Hearing System’s Administrative Hearing Rules R 792.10422 and R 792.10432. Requests for further information on adjournment should be directed to (517) 284-8130.

A copy of Consumers Energy Company’s application may be reviewed on the Commission’s website at: michigan.gov/mpscedockets, and at the office of Consumers Energy Company. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; 1919 PA 419, as amended, MCL 460.54 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and Parts 1 & 4 of the Michigan Administrative Hearing System’s Administrative Hearing Rules, Mich. Admin Code, R 792.10106 and R 792.10401 through R 792.10448.

[THE MICHIGAN PUBLIC SERVICE COMMISSION MAY APPROVE, REJECT, OR AMEND PROPOSALS MADE BY CONSUMERS ENERGY.]

1902-G