

BIRMINGHAM CITY COMMISSION MINUTES
OCTOBER 26, 2015
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Stuart Lee Sherman, Mayor, called the meeting to order at 7:33 PM.

II. ROLL CALL

ROLL CALL:	Present,	Mayor Sherman Commissioner Dilgard Mayor Pro Tem Hoff Commissioner McDaniel Commissioner Moore Commissioner Nickita (arrived at 7:41 PM) Commissioner Rinschler
	Absent,	None

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, City Planner Ecker, City Engineer O'Meara, DPS Director Wood, Finance Director Gerber, Deputy Treasurer Klobucar, Police Chief Studt, Deputy Police Chief Clemence, HR Manager Taylor, Assistant to the City Manager Haines

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

10-239-15 PROCLAMATION RECOGNIZING 50TH ANNIVERSARY OF BUSINESS OWNER MEL KAFTAN

Mayor Sherman presented a proclamation to Mel Kaftan recognizing his 50th anniversary as business owner of Kaftan Communities.

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.

10-240-15 APPROVAL OF CONSENT AGENDA

The following items were removed from the consent agenda:

- Item D (2015 fall tree purchase and planting project) by Commissioner Dilgard
- Item A (Minutes of October 12, 2015) by Mayor Pro Tem Hoff
- Item G (Special Event Request – Birmingham Street Art Fair) by Mayor Pro Tem Hoff

MOTION: Motion by Rinschler, seconded by McDaniel:

To approve the consent agenda as follows:

- B. Approval of warrant list, including Automated Clearing House payments, of October 14, 2015 in the amount of \$489,304.46.

- C. Approval of warrant list, including Automated Clearing House payments, of October 21, 2015 in the amount of \$864,679.02.
- E. Resolution approving the street light agreement between the City of Birmingham and DTE Energy regarding the installation of street lights at 2200 Holland Rd. Further, directing the Mayor to sign the agreement on behalf of the City. All costs relative to this agreement will be charged to the adjacent owner.
- F. Resolution approving the Live Scan fingerprinting system equipment upgrade purchase from Oakland County CLEMIS in the amount of \$7,985.74; further, waiving normal bidding requirements and authorizing this expenditure to the General Fund Police Department Equipment Maintenance account #101-301-000-933.0200.
- H. Resolution adopting the "Working Hours" Policy Amendment as a City policy and authorizing the HR Department to implement and enforce accordingly.

ROLL CALL VOTE: Yeas, Commissioner Dilgard
 Mayor Pro Tem Hoff
 Commissioner McDaniel
 Commissioner Moore
 Commissioner Rinschler
 Mayor Sherman
 Nays, None
 Absent, 1, Nickita
 Abstention, 1, Moore (from warrant #237759 – reimbursement)

The Commission agreed to consider Item D (2015 fall tree purchase and planting project) at this time.

10-241-15 2015 FALL TREE PURCHASE AND PLANTING PROJECT

Commissioner Dilgard noted that the caliper of the trees increased. DPS Director Wood explained that recent improvements increased the caliper of the trees to improve the stock. She confirmed for Mayor Sherman that the RFP specifies the type of trees, size, and quantity of each tree from the internally approved tree list.

MOTION: Motion by Dilgard, seconded by Rinschler:
 To approve the purchase and planting of 101 trees from Greg Davis Landscape Service, Inc. for the 2015 fall tree purchase and planting project for a total project cost not to exceed \$39,150.00. Funds are available from the Local Streets Fund-Forestry Service Contract account #203-449.005-819.0000, the Major Streets Fund-Forestry Service Contract account #202-449.005-819.0000, the Local Streets Fund-Operating Supplies account #203-449.005-729.0000 and the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 for these services. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

VOTE: Yeas, 7
 Nays, None
 Absent, None

The Commission agreed to consider Item G (Special Event Request – Birmingham Street Art Fair) at this time.

**10-242-15 SPECIAL EVENT REQUEST
BIRMINGHAM STREET ART FAIR**

Mayor Pro Tem Hoff noted that the time of set up was changed. City Manager Valentine explained that the Principal Shopping District will communicate that information to its members and note that their concerns have been addressed.

MOTION: Motion by Hoff, seconded by McDaniel:

To approve a request from Common Ground to hold the 42nd Annual Birmingham Street Art Fair on South Old Woodward on September 17 - 18, 2016, 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.

VOTE: Yeas, 7
Nays, None
Absent, None

V. UNFINISHED BUSINESS

10-243-15 PARKS AND RECREATION DONOR POLICY

DPS Director Wood explained that the purpose of the donor policy is to have options for the public and a specific process to follow. She noted that the Donor Policy encompasses the Recognition Program currently in place for benches, trees, and playground equipment.

In response to a question from Mayor Pro Tem Hoff, City Manager Valentine explained the difference between the Donor Policy and Recognition Policy is that the Recognition Policy is for smaller scale items that would be placed somewhere. The Donor Policy is for the larger scale public improvement projects and sets a process for those donations.

MOTION: Motion by Rinschler, seconded by Nickita:

To approve the City of Birmingham Parks and Recreation Donor Policy as submitted.

VOTE: Yeas, 7
Nays, None
Absent, None

VI. NEW BUSINESS

**10-244-15 PUBLIC HEARING OF CONFIRMATION
CATALPA PAVING PROJECT SEWER LATERALS**

Mayor Sherman opened the Public Hearing of Confirmation for Special Assessment Roll No. 871, Catalpa Drive Paving Project, Sewer Laterals at 7:56 PM.

Hearing no public comment, the Mayor closed the Public Hearing at 7:57 PM.

MOTION: Motion by Hoff, seconded by McDaniel:

To confirm Special Assessment Roll No. 871, to defray the cost of installing sewer laterals on Catalpa Drive:

WHEREAS, Special Assessment Roll, designated Roll No. 867, has been heretofore prepared for collection, and

WHEREAS, notice was given pursuant to Section 94-7 of the City Code, to each owner or party- interest of property to be assessed, and

WHEREAS, the Commission has deemed it practicable to cause payment of the cost thereof to be made at a date closer to the time of construction and Commission Resolution 10-231-15 provided it would meet this 26th day of October, 2015 for the sole purpose of reviewing the assessment roll, and

WHEREAS, at said hearing held this October 26th, 2015, all those property owners or their representatives present have been given an opportunity to be heard specifically concerning costs appearing in said special assessment roll as determined in Section 94-9 of the Code of the City of Birmingham,

NOW, THEREFORE, BE IT RESOLVED, that Special Assessment Roll No. 871 be in all things ratified and confirmed, and that the City Clerk be and is hereby instructed to endorse said roll, showing the date of confirmation thereof, and to certify said assessment roll to the City Treasurer for collection at or near the time of construction of the improvement.

BE IT FURTHER RESOLVED, that special assessments shall be payable in ten (10) payments as provided in Section 94-10 of the Code of the City of Birmingham, with an annual interest rate of four and a quarter percent (4.25%) on all unpaid installments.

VOTE: Yeas, 7
Nays, None
Absent, None

10-245-15 AUDIT PRESENTATION

Joe Heffernan and Tim St. Andrew, Plante Moran, presented the audit. Mr. Heffernan explained that the audit reviews the internal controls as it relates to financial reporting which includes receiving cash, dispersing cash, investing and management of it as well as the general ledger accounting monthly reporting.

Mr. St. Andrew explained that the City's five year forecast has helped to budget the expenditures. He explained that in looking at the general fund, the fund balance was within the Commission's fund balance policy of 17-40% of annual expenditures. He explained the governmental accounting standards implemented in 2015 and the standards to be implemented in 2018.

Mr. Heffernan explained that the component of investment and capital asset is ahead and the component on the operating and people cost is a little behind. He noted that this is quite unusual compared to other communities. The City is in much better shape than 80-90% of other communities. Clearly there will be a significantly positive net position.

MOTION: Motion by Rinschler, seconded by Dilgard:
To accept audit for the period ending June 30, 2015.

VOTE: Yeas, 7
Nays, None
Absent, None

**10-246-15 48TH JUDICIAL DISTRICT COURT
2016 BUDGET**

Jim Harkin, Court Administrator, presented the 2016 budget for the 48th District Court.

In response to a question from Mayor Pro Tem Hoff, Mr. Harkin explained that the court collects 98% of the civil infraction fines and fees as there is an active collection process to follow up on the delinquent accounts.

Commissioner Rinschler questioned the increased cost for security at the court. Mr. Harkin explained that the court contracts with the Oakland County Sheriff's Department to provide security. Commissioner Moore noted that security for the court is not the core function of the Sheriff's Department which is why there is a fee.

Mayor Sherman requested an update on the Keego Harbor lawsuit and if an accounting has been requested. Mr. Harkin explained that they are waiting for a return call from the prosecutor for an update.

MOTION: Motion by Nickita, seconded by Hoff:
To receive the 2016 proposed budget from the 48th Judicial District Court; and further, approving the budget as submitted.

VOTE: Yeas, 7
 Nays, None
 Absent, None

10-247-15 INITIAL SCREENING OF BISTRO APPLICANTS - 2016

The City Commission heard proposals from the following bistro applicants:

- Toshi, 135 North Old Woodward
- The Fun Wine Co, 588 North Old Woodward

The Commission discussed each concept and the location of each proposal. Concern was expressed with the location of Toshi as the 2016 Plan calls for retail in the core of the City. Concern was expressed with the outdoor dining and parking challenges of The Fun Wine Co.

MOTION: Motion by Rinschler, seconded by Nickita:
To direct the bistro application for The Fun Wine Co, 588 North Old Woodward, to the Planning Board for full site plan and design review and Special Land Use Permit review.

MOTION: Motion by Hoff, seconded by Dilgard:
To direct the bistro application for Toshi, 135 North Old Woodward, to the Planning Board for full site plan and design review and Special Land Use Permit review.

VOTE ON MOTION FOR THE FUN WINE CO:
 Yeas, 4 (McDaniel, Moore, Nickita, Rinschler)
 Nays, 3 (Dilgard, Hoff, Sherman)
 Absent, None

MOTION CARRIED

VOTE ON MOTION FOR TOSHI:

Yeas, 3 (Dilgard, Hoff, McDaniel)
Nays, 4 (Moore, Nickita, Rinschler, Sherman)
Absent, None

MOTION FAILED

**10-248-15 LIQUOR LICENSE TRANSFER OF MEMBERSHIP INTEREST
FOREST GRILL, 735 FOREST**

Deputy Chief Clemence explained that this is the third step in the process as the previous two steps were already approved. He explained the transfer of 50% membership interest from Elm Restaurant Group to Sammy Eid, SSE Restaurant Group. He stated that the investigation found nothing that would deny the applicants request for the transfer.

In response to a question from Mayor Pro Tem Hoff, Sammy Eid explained the improvements to the space and noted that the focus of the food will be true to Forest Grill.

MOTION: Motion by Rinschler, seconded by Nickita:

To approve the Request to Transfer 50% Membership Interest of Class C Liquor License and SDM Liquor Licenses with Sunday Sales (PM), Catering Permit, Outdoor Service Permit and Official Permit (Food) from Elm Restaurant Group, LLC (Business Id. No. 205823) located at 735 Forest, Birmingham, MI., Oakland County, to SSE Restaurant Group, LLC. Furthermore, pursuant to Birmingham City Ordinance, authorizing the City Clerk to complete the Local Approval Notice at the request of SSE Restaurant Group, LLC approving the Request to Transfer 50% Membership Interest of Class C Liquor License and SDM Liquor Licenses with Sunday Sales (PM), Catering Permit, Outdoor Service Permit and Official Permit (Food) from Elm Restaurant Group, LLC (Business Id. No. 205823) located at 735 Forest, Birmingham, MI., Oakland County, to SSE Restaurant Group, LLC.

VOTE: Yeas, 7
Nays, None
Absent, None

**10-249-15 DOWNTOWN PARKING SYSTEM EXPANSION PROJECTS
PARKING DEVELOPMENT CONSULTANT SERVICES**

City Engineer O'Meara explained that the Ad Hoc Parking Development Committee has recommended that a consultant team be hired consisting of an architect, an urban design professional, and a parking consultant to work with the Committee in regards to the Pierce Street and North Old Woodward parking structure sites in visioning, studies, and cost estimating. He noted that an RFP was issued and three firms submitted proposals. The Albert Kahn team and Victor Saroki team were interviewed.

Commissioner McDaniel commented that the Committee worked hard to come to a conclusion. Based on his experience on the Shain Park Ad Hoc Committee, the Albert Kahn group was hired to do the design work and it did not go well. He stated that Albert Kahn was the higher of the two bidders by \$12,000, given how close the point scores were, the past experience with Albert Kahn, and Saroki's knowledge of the community, he suggested that Saroki is the way to go.

Commissioner Rinschler expressed support of Commissioner McDaniel's comments. He commented that with a large firm, a small project becomes cumbersome. The parking issue is a big issue for Birmingham, but it is a relatively small project from an architectural view. He noted that Albert Kahn is a great firm to hire if there is a fairly large undertaking.

Mayor Pro Tem Hoff stated that she is a member of the Committee. The Committee worked hard and reviewed the proposals, samples and presentations. It was a difficult decision. She commented that when a Committee makes a decision and has a hard time doing it, it is not a good practice for the Commission to not listen.

Commissioner Dilgard commented that he was also on the Shain Park Committee. He gave an example on the Shain Park lighting plan and noted the lighting had to be retrofit with something that fit the community. He noted that the City would be well served with the Saroki firm.

Commissioner Nickita explained the process of the Committee and noted that it spent a lot of time on this decision.

MOTION: Motion by Hoff, seconded by Nickita:

To approve the agreement with Albert Kahn Associates, Inc., for the Downtown Parking System Expansion Projects Parking Development Consultant Services in the amount not to exceed \$67,860, charged to account number 585-538.001- 981.0100, Parking System General Capital Improvements Account. Further, to approve the appropriation and budget amendment as follows:

Auto Parking System Fund		
Revenues:		
Draw from Fund Balance	#585-000.000-400.0000	\$67,860
Total Revenue Adjustments		\$67,860
Expenditures:		
Major Street Public Improvements	#585-538.001-981.0100	\$67,860
Total Expenditure Adjustments		\$67,860

Mayor Sherman noted that he will not support the motion. He stated that the City would be remiss if it did not use the experiences of the Commissioners. With the points being so close, experience comes into play and should be relied on.

Commissioner Moore noted that he will not support the motion. He stated that he would like to take advantage of utilizing an applicant with a tremendous amount of institutional history, understanding of Birmingham, its architecture, issues, history and has been a part of it such as the Saroki firm. With the points so close, he would like to utilize the kind of expertise and cultural understanding that Saroki would bring to this project.

Commissioner Nickita stated that he will support the motion. The Committee worked hard on this. The decision was so close either team could do a credible job.

Mayor Pro Tem Hoff agreed that either contractor could do a good job. She expressed support of the Committee's decision.

VOTE: Yeas, 2 (Hoff, Nickita)
Nays, 5 (Dilgard, McDaniel, Moore, Rinschler, Sherman)

Absent, None

MOTION: Motion by McDaniel, seconded by Rinschler:

To approve the contract subject to an agreement being reached with Victor Saroki and Associates for the Downtown Parking System Expansion Projects Parking Development Consultant Services in an amount not to exceed \$55,000 and to approve the appropriation and budget amendment.

VOTE: Yeas, 6
Nays, 1 (Hoff)
Absent, None

**10-250-15 ALDEN DEVELOPMENT GROUP, LLC AGREEMENT
ACQUISITION OF LAND**

City Attorney Currier explained that when the property was rezoned, the City and Alden Group discussed the possible acquisition of a small portion of land on the south side of the development project to improve the width of the roadway to facilitate the possible Bates Street extension contemplated by the 2016 Plan. In return for the roadway, the City would create an open park parcel adjacent to the southwest corner of the Alden Development project for the purpose of creating a buffer between the project and possible Bates Street extension. He explained the details of the agreement.

MOTION: Motion by Moore, seconded by Rinschler:

To approve the Agreement and Declaration with Alden Development Group, LLC, for the acquisition of land on the south side of the Brookside Development project, and to authorize the Mayor and Clerk to execute the Agreement.

Mr. Currier explained for Mayor Pro Tem Hoff that the open park parcel is located on the southwest area adjacent to the Alden Development. Five parking spots would be turned into parkland and extend to the river. It would remain City property, but the City is agreeing to leave it as open space.

Commissioner Rinschler and Commissioner Nickita expressed support of the motion. Commissioner Nickita noted that the Bates Street extension is not only an access point for cars, but it is the connection between Old Woodward. It is important from a pedestrian standpoint to connect Bates Street to Woodward.

VOTE: Yeas, 7
Nays, None
Absent, None

**10-251-15 CLOSED SESSION REQUEST
PENDING LITIGATION**

MOTION: Motion by Nickita, seconded by Hoff:

To meet in closed session to review pending litigation regarding Wolf v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act.

ROLL CALL VOTE: Yeas, Mayor Pro Tem Hoff
Commissioner McDaniel

Commissioner Moore
 Commissioner Nickita
 Commissioner Rinschler
 Commissioner Dilgard
 Mayor Sherman
 Nays, None
 Absent, None
 Abstentions, None

VII. REMOVED FROM CONSENT AGENDA

10-252-15 CITY COMMISSION MEETING MINUTES OF OCTOBER 12, 2015

Mayor Pro Tem Hoff suggested the following addition to Resolution #10-224-15: "Mayor Pro Tem Hoff expressed support and commented that if Phase 1 is implemented, the public will see the results which may generate support for future improvements."

Mayor Pro Tem Hoff suggested the following addition to Resolution #10-226-15: "Mayor Pro Tem Hoff questioned the effect of this rezoning project on the potential Bates Street extension and the parking development project. Ms. Ecker explained the discussion that will occur at the Planning Board level which will take into account potential future projects."

Mayor Pro Tem Hoff suggested the following addition to the second paragraph on page 11 of Resolution #10-229-15: "She expressed concern that the parking spots for her clients would be used by clients of the proposed establishment."

MOTION: Motion by Moore, seconded by Rinschler:
 To approve the City Commission minutes of October 12, 2015 as amended.

VOTE: Yeas, 7
 Nays, None
 Absent, None

VIII. COMMUNICATIONS

10-253-15 COMMUNICATIONS

The Commission received a communication from Alice Thimm regarding South Eton.

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

10-254-15 OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

Dorothy Conrad, David Young, and Stuart Jeffares thanked the four outgoing Commissioners for their service to the community.

David Bloom reviewed the history of library project.

Craig Hall expressed concern with the pan-handling in the City.

X. REPORTS

10-255-15 COMMISSIONER REPORTS

The Commission intends to appoint members to the Principal Shopping District Board on November 23, 2015.

10-256-15 COMMISSIONER COMMENTS

Commissioner Nickita and Mayor Pro Tem Hoff thanked the four outgoing Commissioners for their service to the community.

The Commission recessed to closed session at 9:58 PM.
The Commission reconvened in open session at 10:28 PM.

XI. ADJOURN

The Mayor adjourned the meeting at 10:28 PM.

Laura M. Pierce
City Clerk