

**CITY COMMISSION MEETING MINUTES  
MUNICIPAL BUILDING  
JANUARY 28, 2013, 7:30 P.M.**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

George Dilgard, Mayor, called the meeting to order at 7:30 PM.

**II. ROLL CALL**

ROLL CALL: Present, Mayor Dilgard  
Commissioner Hoff  
Commissioner McDaniel  
Commissioner Nickita  
Commissioner Rinschler  
Commissioner Sherman  
Absent, Mayor Pro Tem Moore

Administration: City Manager Bruner, Attorney Currier, Clerk Broski, Assistant City Manager Valentine, City Engineer O'Meara, Finance Director Ostin, PSD Director Heiney, Planning Director Ecker

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

**01-17-13 APPOINTMENT TO THE PUBLIC ARTS BOARD**

The Commission agreed to postpone this appointment to the February 11<sup>th</sup> meeting as the applicants were not in attendance to be interviewed.

**01-18-13 APPOINTMENT TO THE DESIGN REVIEW BOARD**

The Commission interviewed the following individuals for appointment to the Design Review Board:

Genevieve Sparby, 440 East Southlawn  
Mark Coir, 411 S. Old Woodward  
Matthew McAlear, 1742 Latham  
Steven Samona, 750 W. Lincoln  
Frances Steinman, 550 Henley

Applicant Paula Butler, 1181 Davis, was not in attendance.

**MOTION:** Motion by Hoff:

To appoint Mark Coir, 411 S. Old Woodward, to the Design Review Board to complete a three-year term to expire September 25, 2015.

**VOTE:** Yeas, 6  
Absent, 1 (Moore)

**01-19-13**                    **APPOINTMENT TO THE  
HISTORIC DISTRICT COMMISSION**

**MOTION:**     Motion by Rinschler:  
To appoint Mark Coir, 411 S. Old Woodward, to the Historic District Commission, as an alternate member, to complete a three-year term to expire September 25, 2013.

VOTE:            Yeas, 6  
                     Absent, 1 (Moore)

**01-20-13**                    **APPOINTMENT TO THE  
ADVISORY PARKING COMMITTEE**

The Commission interviewed the following individuals for appointment to the Advisory Parking Committee:

Judith Paskiewicz, 560 Woodland  
Kenneth Konop, 366 Bird

**MOTION:**     Motion by McDaniel:  
To appoint Judith Paskiewicz, 560 Woodland, to the Advisory Parking Committee, as the resident member, to complete a three-year term to expire September 4, 2014.

**MOTION:**     Motion by Nickita:  
To appoint Kenneth Konop, 366 Bird, to the Advisory Parking Committee, as the resident member, to complete a three-year term to expire September 4, 2014.

VOTE ON NOMINATION OF PASKIEWICZ:  
                     Yeas, 3 (McDaniel, Rinschler, Sherman)  
                     Absent, 1 (Moore)

VOTE ON NOMINATION OF KONOP:  
                     Yeas, 3 (Hoff, Dilgard, Nickita)  
                     Absent, 1 (Moore)

RE-VOTE ON NOMINATION OF PASKIEWICZ:  
                     Yeas, 4 (McDaniel, Rinschler, Hoff, Sherman)  
                     Absent, 1 (Moore)

Ms. Paskiewicz was appointed to the Advisory Parking Committee.

**01-21-13**                    **APPOINTMENT TO THE  
BOARD OF REVIEW**

**MOTION:**     Motion by Hoff:  
To appoint Natalia Dukas, 1685 Henrietta, as an alternate member, to the Board of Review to complete a three-year term to expire December 31, 2013.

VOTE:            Yeas, 6  
                     Absent, 1 (Moore)

**01-22-13**                    **APPOINTMENT TO THE  
TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY**

The Commission interviewed the following individuals for appointment to the Triangle District Corridor Improvement Authority:

Jeff Bautz, 1287 Cole  
Kip Cantrick Jr., 774 Lakeside

Applicant Robert Benkert, 908 S. Adams, was not in attendance.

The Commission concurred in the Mayor's appointment of Kip Cantrick Jr., 774 Lakeside to the Corridor Improvement Authority to complete a four-year term to expire December 15, 2016.

The Clerk administered the oath to the appointed board members.

#### **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.

#### **01-23-13 APPROVAL OF CONSENT AGENDA**

The following items were removed from the consent agenda:

- Item E (Farmers Market Special Event) by Commissioner Hoff
- Item J (Set Public Hearing for Pierce & Merrill) by Commissioner Hoff
- Item N (Pierce & E. Merrill Street Paving Project) by Commissioner Hoff
- Item L (Set Public Hearing for 404 Park) by Dorothy Conrad

**MOTION:** Motion by McDaniel, seconded by Rinschler:

To approve the consent agenda as follows:

- A. Approval of City Commission Long Range Planning Minutes of January 12, 2013.
- B. Approval of City Commission minutes of January 14, 2013.
- C. Approval of Warrant List, including Automated Clearing House payments, of January 16, 2013 in the amount of \$4,761,735.55.
- D. Approval of Warrant List, including Automated Clearing House payments, of January 23, 2013 in the amount of \$567,476.40.
- F. To accept the resignation of Mark Armitage from the Cablecasting Board, thanking Mr. Armitage for his service, and directing the clerk to begin the process to fill this vacancy.
- G. To accept the resignation of Davira Taragin from the Public Arts Board, thanking Ms. Taragin for her service, and directing the clerk to begin the process to fill this vacancy.
- H. To waive the 2013 outdoor dining application fee of \$200.00 for the restaurants affected by the Pierce and Merrill construction - Toast, Townhouse, Elie's, Streetside, 220 and The Corner.
- I. To award Contract #8-09(PK), Parking Booth Removal Project, to R.L. Sheridan, LLC, in the amount of \$17,338.48, to be charged as follows:  
Pierce St. Parking Structure 585-538.002-981.0100 \$9,719.48  
N. Old Woodward Parking Structure 585-538.005-981.0100 \$7,619.00
- K. To set a Public Hearing for February 25, 2013 to consider the proposed subdivision of 740 N. Adams.
- M. To set a public hearing date for February 25, 2013 to consider approval of the Final Site Plan and Special Land Use Permit for Crush Bistro, at 555 S. Old Woodward, pursuant to Article 7, section 7.34, Zoning, of the Birmingham City Code.

ROLL CALL VOTE:	Yeas,	Commissioner Hoff Commissioner McDaniel Commissioner Nickita Commissioner Rinschler Commissioner Sherman Mayor Dilgard
	Nays,	None
	Absent,	Mayor Pro Tem Moore
	Abstentions,	1, Sherman (Item B - absent)

**V. UNFINISHED BUSINESS**

**VI. NEW BUSINESS**

**01-24-13 REGULATED USE REQUEST  
DUCATI MOTORCYCLE, 33828 WOODWARD**

Ms. Ecker explained the proposed location backs up to residential, but is buffered by an alley and parking lot. She noted that the applicant has submitted noise level information, however has not submitted a letter indicating their intent to comply with the City's noise standards. Ms. Ecker pointed out the proposed location is within 1000' of two other regulated uses and noted the applicant would need a variance from the Board of Zoning Appeals.

Commissioner Hoff pointed out the applicant and Ducati have a letter of understanding, not an agreement. Ms. Ecker confirmed that it is not a binding legal document.

Commissioner Hoff questioned the noise level. Ms. Ecker confirmed that a street bike is no louder than 83 dB, however there has been no indication on the noise level of the proposed facility.

Charlie Knoll, applicant, confirmed for Commissioner Rinschler that the service entrance and exit will be located in the courtyard area off of Woodward. The only activity in the back of the building will be deliveries from the manufacturer.

Commissioner Rinschler questioned the location of the dynamometer. Mr. Knoll explained that he has contacted a company to build a room specifically for dynamometer use. He noted the dynamometer would not run for more than a couple hours a day. He stated that the room will muffle the sound down to no greater than the federal guidelines.

Commissioner Hoff questioned where the motorcycles would be tested. Mr. Knoll explained that they would be tested on Woodward and the freeway.

Jason Chinnock, Sales & Network Development Director for Ducati, stated that he has toured the facility and is confident that Ducati will be able to make the location work. He stated that the applicant has his approval to move forward as long as they agree to the design and other elements invested in with the other proposed facility. He presented the history of Ducati and the Ducati brand.

**MOTION:** Motion by McDaniel, seconded by Rinschler:

To approve the Regulated Use request at 33828 Woodward to allow the regulated use of a Ducati motorcycle sales and service with the following conditions:

- (1) Applicant obtain a variance for the location of the proposed Regulated Use within 1000' of other Regulated Uses;
- (2) Applicant obtain site plan and/or design approval for any exterior site plan or design changes to the existing building from the relevant board.
- (3) To provide the technical data on the noise emissions from the dynamometer subject to review by staff.

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

**01-25-13                   MULTI-MODAL TRANSPORTATION  
                                  MASTER PLAN UPDATE**

Norm Cox, The Greenway Collaborative, Inc, presented an update on the development of the Multi-Modal Transportation Master Plan. He discussed the pedestrian crossings, parking, and connector routes for bicycles through the neighborhoods.

Commissioner Hoff suggested the Marketing Study completed by the Principal Shopping District be taken into consideration.

**01-26-13                   BISTRO CONTRACT ASSIGNMENT PROCEDURES**

Mr. Bruner explained that the provision in state law dictates if a development license ceases business, then the license is surrendered to the state. He questioned the appropriate point in the process to let a bistro cease operation. He suggested language be added to the bistro contract to clarify for potential new bistro operators the City's intention.

Commissioner McDaniel commented that the Commission wants to be able to control the number of bistros without dis-incentivizing the investment.

The Commission compared the suggested resolution and the ordinance and discussed the process. Commissioner Rinschler noted that the clarification is that the SLUP is the control point, not the license.

**MOTION:**     Motion by Rinschler, seconded by McDaniel:  
To resolve that the standards to be considered and the procedure to be followed for bistro contract assignments shall include those set forth in sections 10-42 and 10-43 of the City Code.

Commissioner Hoff said this is already written in Section 10-83 of the City Code which states a bistro license issued by the City Commission shall not be transferred to another location or person/entity within the City without prior approval of the City Commission. Commissioner Sherman said the new resolution is repetitious.

Mr. Currier explained that a bistro license includes a SLUP, LLC license, and the contract. The will make it clear that the same standards that are applied for the transfer of a liquor license will be applied in order to transfer bistro license. He noted that the LLC determined that transfers no longer need local government approval or a review by the police department, but

the applicant must comply with the local ordinances. He noted that the City ordinance does not allow the transfer of a liquor license without the City Commission approval.

VOTE:           Yeas, 4  
                  Nays, 2 (Sherman, Hoff)  
                  Absent, 1 (Moore)

Mr. Bruner explained the new on-premises transaction created by the MLCC is for transfer of stock or transfer of interest. According the MLCC, local legislative body approval and local police approval is not required, however their opinions must be considered. He explained that the City Attorney is working on an amendment to Chapter 10 to require approval of the City Commission for transfer of stock or interest.

**01-27-13                    CLOSED SESSION REQUEST  
                                  CITY MANAGER PERSONNEL EVALUATION**

The Commission agreed to meet in closed session to consider a personnel evaluation as requested by the City Manager pursuant to Section 8(a) of the Open Meetings Act (Act 267 of 1976).

**01-28-13                    CLOSED SESSION REQUEST  
                                  LAND ACQUISITION**

**MOTION:**    Motion by McDaniel, seconded by Hoff:  
To meet in closed session to discuss land acquisition pursuant to Section 8(d) of the Open Meetings Act.

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

**VII.    REMOVED FROM CONSENT AGENDA  
01-29-13                    SPECIAL EVENT REQUEST  
                                  FARMERS MARKET**

Commissioner Hoff questioned why the hours were extended to 3:00 PM. Mr. Heiney explained that the Principal Shopping District took into consider the request of the farmers and shoppers. He noted that extending the Market by an hour adds the equivalent of five days.

**MOTION:**    Motion by Hoff, seconded by McDaniel:  
To approve a request from the Principal Shopping District to hold Birmingham Farmers' Market May through October, 2013 from 9:00 AM to 3:00 PM, in Municipal Parking Lot No. 6 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, 6  
                   Nays, None  
                   Absent, 1 (Moore)

**01-30-13                   SET PUBLIC HEARING FOR  
 PIERCE & MERRILL**

Mr. O'Meara confirmed for Commissioner Hoff that the main sewer contractor does the lateral work.

**MOTION:**    Motion by Hoff, seconded by McDaniel:  
 RESOLVED, that the City Commission shall meet on Monday, February 25, 2013, at 7:30 P.M., for the purpose of conducting a public hearing of necessity for the installation of lateral sewers within the Pierce St. & Merrill St. Paving project area. Be it further RESOLVED, that the City Commission meet on Monday, March 4, 2013, at 7:30 P.M. for the purpose of conducting a public hearing to confirm the roll for the installation of lateral sewers in the Pierce St. & Merrill St. Paving project area.

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

**01-31-13                   PIERCE & MERRILL PAVING PROJECT AWARD**

Mr. O'Meara confirmed for Commissioner Hoff that the street will be closed during the project, however the goal is to keep the number of days it is closed to a bare minimum.

**MOTION:**    Motion by Hoff, seconded by Nickita:  
 To award the Pierce & E. Merrill Street Paving Project, Contract #1-13(P), to F.D.M. Contracting, Inc. of Shelby Township, MI, in the amount of \$1,046,018.12, to be funded from the following accounts:

Sewer Fund	590-536.001-981.0100	\$ 218,415.20
Water Mains Fund	591-537.004-981.0100	\$ 132,341.15
Major Streets Fund	202-449.001-981.0100	\$ 463,553.45
General Fund (Sidewalk SAD)	101-444.001-985.6500	\$ 209,717.20
Capital Projects Fund	401-901.006-981.0100	\$ 18,766.12
APS Fund (Parking meters)	585-305.000-811.0000	<u>\$ 3,225.00</u>
	TOTAL	\$1,046,018.12

and further; to approve the appropriation and amendment to the 2012-2013 General Fund, Major Streets Fund, and Capital Projects Fund budgets as follows:

General Fund Revenues:		
Draw from Fund Balance		
101-000.000-400.0000		\$80,000
Total Revenue		\$80,000
Expenditures:		
Sidewalks/Pierce St. & E. Merrill St.		
101-444.001-985.6500		\$80,000
Total Expenditures		\$80,000
Major Streets Fund		
Revenues:		
Draw from Fund Balance		

202-000.000-400.0000	\$96,000
Total Revenue	\$96,000
Expenditures:	
EPS-Construction/Public Improvements	
202-449.001-981.0100	\$96,000
Total Expenditures	\$96,000
Capital Projects Fund	
Revenues:	
Draw from Fund Balance	
101-000.000-400.0000	\$4,000
Total Revenue	\$4,000
Expenditures:	
Downtown 2016/Public Improvements	
401-901.006-981.0100	\$4,000
Total Expenditures	\$4,000

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

**01-32-13                   SET PUBLIC HEARING  
                                   404 PARK**

Dorothy Conrad stated that the state zoning law requires a 2/3 vote when abutting property owners are opposed. She noted that the Planning Board approved this by a 4-2 vote.

Mr. Currier explained that the Planning Board makes recommendations to the City Commission. To adopt a rezoning would require a super majority vote of the City Commission.

Ms. Conrad expressed concern with conditional zoning. She objected to the Public Hearing. She asked when the Commission had passed an ordinance regarding conditional zoning. Mr. Currier explained that conditional zoning is allowed under state law.

**MOTION:**    Motion by Rinschler, seconded by Nickita:  
 To set a public hearing date for February 25, 2013 to consider approval of a Conditional Rezoning request for the rezoning of the vacant property at 404 Park Street from R-1 (Single-Family Residential) to B2C (General Business), with the voluntary restriction of the applicant to allow only residential uses on the site.

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

**VIII. COMMUNICATIONS**

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

**X. REPORTS**

**01-33-13                   COMMISSIONER COMMENTS**



The Commission discussed the agenda software. Mr. Bruner confirmed that the Dropbox will continue to be used for communications.

**01-34-13                      SECOND QUARTER INVESTMENT REPORT**

The Commission received the Second Quarter Investment Report submitted by Finance Director Ostin.

**01-35-13                      UPDATE ON DNR COMMUNITY FORESTRY GRANT**

The Commission received ~~the update on~~ the results of the public tree inventory conducted by City staff and the Davey Resource Group, which was funded by the DNR Community Forestry Grant and submitted by DPS Director Wood.

Mr. Bruner confirmed for Commissioner Hoff that a future tree management program will be discussed at the budget session.

The Commission recessed to closed session at 10:20 PM.  
The Commission reconvened in open session at 10:49 PM.

**XI.      ADJOURN**

The Mayor adjourned the meeting at 10:49 PM.

Laura M. Broski  
City Clerk