

**BIRMINGHAM CITY COMMISSION MINUTES**  
**APRIL 8, 2013**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**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 Mayor Pro Tem Moore Commissioner Nickita Commissioner Rinschler Commissioner Sherman (arrived at 7:32 PM)
Absent,	None

Administration: City Manager Bruner, Attorney Currier, Clerk Broski, Assistant City Manager Valentine, Finance Director Ostin, Deputy Treasurer Klobucar, Billing Manager Laing, Planners Baka and Ecker, Building Official Johnson, DPS Director Wood, City Engineer O'Meara, Assistant to the Manager Wuerth, Police Chief Studt, Deputy Police Chief Clemence, PSD Director Heiney

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

**04-110-13 INTRODUCTION OF NEW POLICE OFFICER**

Police Chief Studt introduced new police officer Michael Simpson.

**04-111-13 APPOINTMENT TO THE ARCHITECTURAL REVIEW COMMITTEE**

**MOTION:** Motion by McDaniel:  
To appoint Christopher Longe, 1253 Yosemite, to the Architectural Review Committee to serve a three-year term to expire April 11, 2016.

VOTE: Yeas, 7  
Absent, None

**04-112-13 APPOINTMENT TO THE BOARD OF REVIEW**

**MOTION:** Motion by Rinschler:  
To appoint Ingrid Tighe, 543 Catalpa, as an alternate member, to the Board of Review to complete a three-year term to expire December 31, 2014.

VOTE: Yeas, 7

Absent, None

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.

#### **04-113-13 APPROVAL OF CONSENT AGENDA**

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

To approve the consent agenda as follows:

- A. Approval of City Commission minutes of March 18, 2013.
- B. Approval of warrant list, including Automated Clearing House payments, of March 20, 2013 in the amount of \$1,235,216.45.
- C. Approval of warrant list, including Automated Clearing House payments, of March 27, 2013 in the amount of \$474,204.94.
- D. Approval of warrant list, including Automated Clearing House payments, of April 3, 2013 in the amount of \$805,984.97.
- E. Resolution directing the Treasurer to transfer the unpaid and delinquent special assessment and invoices, including interest and penalty, to the 2013 City tax roll and authorizing removal from the list any bills paid after City Commission approval:  
WHEREAS, the City Treasurer, in accordance with the provisions in the City Code has reported certain special assessments and invoices, including interest and penalty, unpaid and delinquent on May 1, 2013, and  
WHEREAS, the City Code provides that these delinquent special assessments and invoices shall be carried to the next annual City tax roll,  
NOW THEREFORE BE IT RESOLVED, that the following unpaid and delinquent special assessments and invoices, including interest and penalty, be transferred and reassessed to the 2013 City tax roll with an additional 15% penalty and authorization be given to remove from the list any bills paid after commission approval.
- F. Resolution directing the Treasurer to transfer the unpaid and delinquent water/sewage bills of the properties listed in the report to the 2013 city tax roll and authorizing removal from the list any bills paid after City Commission approval:  
WHEREAS, The City Treasurer, in accordance with Chapter 114, Section 114-303, of the city code has reported certain water/sewage accounts, including interest and penalty, unpaid and delinquent on May 1, 2013, and  
WHEREAS, Chapter 114, Section 114-303, of the city code provides that these payments shall be carried to the next annual city tax roll,  
NOW, THEREFORE, BE IT RESOLVED, that the properties with unpaid and delinquent water/sewage accounts listed in this report, including interest and penalty, be transferred and reassessed to the 2013 city tax roll and authorization be given to remove from the list any bills paid after commission approval.
- G. Resolution approving the amendment to the Cross Connection Control Services Agreement for \$12,720.00 per year for three additional years, and further, charging the Water Fund Account #591-537.007-811.0000 for these services.
- H. Resolution approving chemical/fertilizer purchases for Lincoln Hills and Springdale Golf Courses from Harrell's for \$22,000, Residex Turfgrass for \$18,000, Great Lakes Turf for \$8,000, and John Deere Landscapes for \$5,000; not to exceed a total cost of \$53,000. Further funds are available in account number 584/597-753.001-729.0000.

- I. Resolution approving the purchase and planting from Agroscaping Inc. for the 2013 spring purchase and tree planting project for a total project cost not to exceed \$20,210.00; further authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of all required insurances. 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.
- J. Resolution approving the installation of Journey Home by Dennis Oppenheim on the City-owned property near the northeast corner of Chester St. and Merrill St., adjacent to the Baldwin Public Library.
- K. Resolution authorizing the Mayor and Clerk to sign the agreement between Schleede-Hampton Associates, Inc. and the City of Birmingham for Geotechnical Engineering and Construction Material Testing.
- L. Resolution authorizing the issuance of a purchase order in the amount of \$111,528 to DTE Energy, for the manufacture and shipment of 40 street light luminaries and poles for the Pierce St. and Merrill St. Paving Project, charged to the following accounts:
 

Capital Improvement Fund	401-901.010-981.0100	\$ 94,798.80
Pierce St. Parking Structure	585-538.002-981.0100	<u>\$ 16,729.20</u>
TOTAL		\$111,528.00
- M. Resolution setting a public hearing date for May 6, 2013 to consider the following ordinance amendment: TO AMEND ARTICLE 04, SECTION 4.83 WN-01(WINDOW STANDARDS) TO ALLOW DESIGN FLEXIBILITY AS PERMITTED BY THE PLANNING BOARD, DESIGN REVIEW BOARD, OR HISTORIC DISTRICT COMMISSION.

ROLL CALL VOTE:    Yeas,                    Commissioner Hoff  
    Commissioner McDaniel  
    Mayor Pro Tem Moore  
    Commissioner Nickita  
    Commissioner Rinschler  
    Commissioner Sherman  
    Mayor Dilgard  
    Nays,    None  
    Absent,    None  
    Abstentions,    1, Hoff (from warrant 219401 – reimbursement)

**V. UNFINISHED BUSINESS**  
**04-114-13                    CONTINUED PUBLIC HEARING – PROPOSED SUBDIVISION**  
**2400 EAST LINCOLN**

Mayor Dilgard opened the Public Hearing to consider the proposed subdivision of 2400 E. Lincoln at 7:38 PM.

Commissioner Nickita disclosed his professional relationship with the architect on the project; however he noted that it is not related to this project.

Ms. Ecker explained the proposal to split the lot into four parcels and construct an access road. ~~She confirmed for Commissioner McDaniel that the road will be thirty feet wide, however when the property across the street is redeveloped, an additional thirty feet would be obtained.~~ She confirmed that the street will be maintained by the City.

The Mayor closed the Public Hearing at 7:46 PM.

**MOTION:** Motion by Rinschler, seconded by Sherman:  
To approve the proposed subdivision of 2400 E. Lincoln.

VOTE: Yeas, 7  
Nays, None  
Absent, None

**04-115-13 CONTINUED PUBLIC HEARING – SPECIAL LAND USE PERMIT  
2400 EAST LINCOLN**

Mayor Dilgard opened the Public Hearing to consider approval of the Final Site Plan and Special Land Use Permit for the medical office building at 2400 E. Lincoln at 7:47 PM.

Ms. Ecker presented the request to develop Parcel 2 as a medical office building. She explained that a special land use permit is needed as the proposed facility is 8,260 square feet. She summarized the conditions outlined by the Planning Board and confirmed that the lighting will conform to rail district standards.

Mayor Dilgard closed the Public Hearing at 7:59 PM.

**MOTION:** Motion by Moore, seconded by Sherman:  
To approve the Final Site Plan and Special Land Use Permit for the medical office building at 2400 E. Lincoln, pursuant to Chapter 126, Article 2, Section 2.39, Zoning, of the Birmingham City Code, with the conditions noted by the Planning Board at the January 23, 2013 meeting:

WHEREAS, Pristine Properties filed an application pursuant to Article 2, section 2.39 of Chapter 126, Zoning, of the City Code to construct a new building larger than 6,000 square feet in size in the MX zone district of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located at 2400 E. Lincoln, in Birmingham;

WHEREAS, The land is zoned MX, and is located within the Rail District, which allows an eclectic mix of small scale commercial;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board on January 23, 2013 reviewed the application for a Special Land Use Permit and recommended approval with the following conditions:

- 1) Applicant obtain approval of the proposed lot split and SLUP by the City Commission;
- 2) Applicant enter into an agreement with the City regarding the location and construction of the N/S street and the extension of E. Lincoln;
- 3) Planning Board adjusts the front setback requirements on the N/S street and the extension of E. Lincoln;
- 4) Applicant increase the height of the dense yews along E. Lincoln to a minimum of 32 in. in height at the time of planting and extend this screening to the eastern property line;
- 5) Applicant provide details on the rooftop mechanical for administrative approval;
- 6) Applicant resolve the issue with the eastern terminus of E. Lincoln with the Engineering Dept. and Fire Dept. prior to City Commission review;
- 7) Applicant comply with the requests of all departments, subject to Planning Dept. approval;

- 8) Applicant provide ADA compliant ramps at the corner of E. Lincoln and the proposed N/S street;
- 9) Applicant provide required pedestrian scale street lighting, subject to Planning Dept. approval;
- 10) Applicant provide specification sheets for building and sign light fixtures prior to review by the City Commission;
- 11) Applicant reduce the light levels at the property lines or obtain a variance from the BZA;
- 12) All plan revisions needed to comply with the above conditions are in place prior to review by the City Commission; and
- 13) Add a Knox Box and other Fire Dept. requirements.

WHEREAS, The applicant has complied with all conditions for approval as recommended by the Planning Board on January 23, 2013;

WHEREAS, The Birmingham City Commission has reviewed the Pristine Properties Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that the Pristine Properties application for a Special Land Use Permit authorizing the construction of a new building larger than 6,000 square feet in size, is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

- 1) Pristine Properties shall abide by all provisions of the Birmingham City Code;
- 2) The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest;
- 3) Pristine Properties shall provide for the removal of disposable materials resulting from the operation and maintain the area in a clean and orderly condition by providing the necessary employees to guarantee this condition;
- 4) Pristine Properties shall enter into a contract with the City outlining the details of the proposed operation.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Pristine Properties and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Pristine Properties to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

VOTE: Yeas, 7  
Nays, None  
Absent, None

**04-116-13 RIGHT-OF-WAY PARKING REQUEST  
2400 EAST LINCOLN**

Ms. Ecker presented the request to use ten parking spaces in the right-of-way along the extension of East Lincoln to meet the parking requirement for the proposed medical office building.

**MOTION:** Motion by Sherman, seconded by Moore:

To approve the use of ten (10) parking spaces on the proposed extension of E. Lincoln to fulfill a portion of the off-street parking requirements per Article 4, Section 4.43 (G)(1) of the Zoning Ordinance for 2400 E. Lincoln.

VOTE: Yeas, 7  
Nays, None  
Absent, None

**VI. NEW BUSINESS**

**04-117-13 PUBLIC HEARING OF CONFIRMATION  
SPECIAL ASSESSMENT DISTRICT  
COLE AVE. PAVING PROJECT AREA**

Mayor Dilgard opened the Public Hearing of confirmation for the installation of lateral sewers within the Cole Ave. Paving project area at 8:02 PM.

Ms. Laing confirmed for Commissioner Hoff that the affected residents were notified.

Mayor Dilgard closed the Public Hearing at 8:03 PM.

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

To confirm Special Assessment Roll No. 855, to defray the cost of the installation of sewer laterals on Cole Avenue - South Adams Road to South Eton Road:

WHEREAS, Special Assessment Roll, designated Roll No. 855, has been heretofore prepared by the Billing Manager for collection, and

WHEREAS, notice was given pursuant to Section 94-7 of the City Code, to each owner or party-in-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 03-91-13 provided it would meet this 8th day of April, 2013 for the sole purpose of reviewing the assessment roll, and

WHEREAS, at said hearing held this April 8th, 2013, 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. 855 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

**04-118-13 PUBLIC HEARING – PROPOSED SUBDIVISION  
290 LAKE PARK**

Mayor Dilgard opened the Public Hearing to consider the proposed subdivision of 290 Lake Park at 8:03 PM.

Mr. Baka presented the request to divide three lots into two lots. He confirmed that the lots are currently under one ownership.

The Mayor closed the Public Hearing at 8:09 PM.

**MOTION:** Motion by Sherman, seconded by Nickita:  
To approve the proposed subdivision of 290 Lake Park as proposed.

John Bohl, 205 Lakepark, expressed concern with disruption in the neighborhood due to construction. Mr. Bruner suggested he contact the Building Official.

VOTE: Yeas, 7  
Nays, None  
Absent, None

**04-119-13 BIRMINGHAM SUSHI CAFÉ  
LIQUOR LICENSE**

**MOTION:** Motion by Rinschler, seconded by Nickita:  
To approve the liquor license request of Birmingham Sushi Café Inc. that requests a New Class C License to be issued under MCL 436.1521(A) (1) (B) & SDM with Outdoor Service (1 Area) and Specific Purpose (Food) to be located at 377 Hamilton Row, Birmingham, MI 48009, Oakland County. Furthermore, authorizing the city clerk to complete a Local Approval Notice at the request of Birmingham Sushi Café Inc. for a New Class C License to be issued under MCL 436.1521(A) (1) (B) & SDM with Outdoor Service (1 Area) and Specific Purpose (Food) to be located at 377 Hamilton Row, Birmingham, MI 48009, Oakland County.

VOTE: Yeas, 7  
Nays, None  
Absent, None

**04-120-13 MARKET  
LIQUOR LICENSE**

Joe Bongiovanni confirmed for Commissioner Hoff that they intend to open late June/mid July depending on the liquor license approval through the state.

**MOTION:** Motion by McDaniel, seconded by Hoff:  
To approve the liquor license request of Zero Nine Two Six, LLC that requests a New Class C License to be issued under MCL 436.1521(A) (1) (B) & SDM with Outdoor Service (1 Area) and Specific Purpose (Food) to be located at 474 North Old Woodward, Birmingham, MI 48009, Oakland County. Furthermore, authorizing the city clerk to complete a Local Approval Notice at the request of Zero Nine Two Six, LLC for a New Class C License to be issued under MCL 436.1521(A) (1) (B) & SDM with Outdoor Service (1 Area) and Specific Purpose (Food) to be located at 474 North Old Woodward, Birmingham, MI 48009, Oakland County.

VOTE: Yeas, 7  
Nays, None  
Absent, None

**04-121-13 SPECIAL EVENT REQUEST  
PIERCE & MERRILL BLOCK PARTY**

Mr. Heiney presented the request to hold the Pierce & Merrill Block Party to celebrate the reopening of Pierce Street and Merrill Street after the construction.

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

To approve a request submitted by the Principal Shopping District to hold the Pierce & Merrill Block Party on July 13, 2013 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

**04-122-13 2013-2016 STRATEGIC PLAN  
BIRMINGHAM HISTORICAL MUSEUM & PARK**

The Mayor announced this item would be postponed to the April 22<sup>nd</sup> Commission meeting.

**04-123-13 CITY COMMISSION RULES AND PROCEDURES  
AMENDMENT RE: MINUTES**

Ms. Broski presented the proposed revision to the City Commission Rules and Procedures.

Commissioners Hoff and Sherman agreed that if there are comments during a discussion, a summary should be included. The following revision was suggested: "Commission comments shall may include, where appropriate, a summary in support or opposed and discussion which may be relevant for future reference."

Commissioner Rinschler stated that each item does not need discussion included. Mayor Pro Tem Moore noted that the policy can be changed if necessary.

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

To amend the City Commission Rules and Procedures to include the proposed section titled "MINUTES":

The minutes shall include the mandatory information as required by the Open Meetings Act 267 of 1976; Section 15.269. The minutes shall reflect an overview or brief summary of the subject matter and any Commission comments that may have had an effect on the outcome. Commission comments may include a summary in support or opposed and discussion which may be relevant for future reference.

The minutes shall include a participating citizen's name and position on an issue when there is public comment during the commission meeting in all of the following instances: (1) a public hearing, (2) an agenda item or (3) recognition of citizens in the audience.

VOTE: Yeas, 5  
Nays, 2 (Hoff, Sherman)  
Absent, None

**04-124-13 CLOSED SESSION REQUEST  
PURCHASE OR LEASE OF REAL PROPERTY**

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

To meet in a closed session to consider the purchase or lease of real property in accordance with Section 8(d) of the Open Meetings Act (Act 267 of 1976).

ROLL CALL VOTE: Yeas, Commissioner McDaniel



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

**VII. REMOVED FROM CONSENT AGENDA**

**VIII. COMMUNICATIONS**

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

**X. REPORTS**

**04-125-13 COMMISSIONER REPORTS**

The Commission intends to appoint members to the Board of Building Trades Appeals, Brownfield Redevelopment Authority and the Housing Board of Appeals on May 6, 2013.

**04-126-13 DUCATI MOTORCYCLE SALES UPDATE  
33828 WOODWARD AVE**

The Commission received the report with an update on the Ducati Motorcycles Sales Regulated Use located at 33828 Woodward Avenue submitted by Planning Director Ecker.

The Commission recessed to closed session at 8:25 PM.  
The Commission reconvened in open session at 8:39 PM.

**XI. ADJOURN**

The Mayor adjourned the meeting at 8:39 PM.

Laura M. Broski  
City Clerk