

**BIRMINGHAM CITY COMMISSION MINUTES
SEPTEMBER 9, 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
Absent,	None

Administration: City Manager Bruner, Attorney Currier, Clerk Broski, City Engineer O'Meara, Police Chief Studt, City Planner Ecker

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

**09-255-13 APPOINTMENT TO THE
ADVISORY PARKING COMMITTEE**

MOTION: Motion by McDaniel:

To appoint Lex Kuhne, 1530 Pilgrim, to the Advisory Parking Committee, as the professional member, to serve a three-year term to expire September 4, 2016.

MOTION: Motion by Nickita:

To appoint Judith Paskiewicz, 560 Woodland, to the Advisory Parking Committee, as the resident member, to serve a three-year term to expire September 4, 2016.

VOTE ON NOMINATION OF KUHNE:

Yeas, 7
Absent, None

VOTE ON NOMINATION OF PASKIEWICZ:

Yeas, 7
Absent, None

**09-256-13 APPOINTMENT TO THE HISTORIC DISTRICT COMMISSION
AND DESIGN REVIEW BOARD**

MOTION: Motion by Hoff:

To appoint Natalia Dukas, 1685 Henrietta to the Design Review Board and Historic District Commission, as a regular member, to serve a three-year term to expire September 25, 2016.

MOTION: Motion by Sherman:

To appoint Michael Willoughby, 667 Greenwood, to the Design Review Board and Historic District Commission, as a regular member, to serve a three-year term to expire September 25, 2016.

VOTE ON NOMINATION OF DUKAS:

Yeas, 7
Absent, None

VOTE ON NOMINATION OF WILLOUGHBY:

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.

09-257-13 CONSENT AGENDA

The following item was removed from the consent agenda:

- Item I (Special Event Request – Lungevity Foundation 5K) by Commissioner Hoff

MOTION: Motion by Sherman, seconded by Nickita:

To approve the consent agenda as follows:

- A. Approval of City Commission minutes of August 26, 2013.
- B. Approval of warrant list, including Automated Clearing House payments, of August 28, 2013 in the amount of \$412,806.62.
- C. Approval of warrant list, including Automated Clearing House payments, of September 4, 2013 in the amount of \$5,362,395.19.
- D. Resolution setting a public hearing for October 7, 2013 to consider the proposed division of 555 S. Old Woodward.
- E. Resolution setting a public hearing for October 7, 2013 to consider approval of the Final Site Plan and Special Land Use Permit for Crush, at 555 S. Old Woodward, pursuant to Article 7, section 7.34, Zoning, of the Birmingham City Code.
- F. Resolution setting a public hearing date for October 7, 2013 to consider a Special Land Use Permit amendment request for 1800 W. Maple, Lutheran Church of the Redeemer, pursuant to Article 7, section 7.34, Zoning, of the Birmingham City Code.
- G. Resolution setting a public hearing for October 7, 2013 to consider an application for a Special Land Use Permit and Final Site Plan for HOME at 210 S. Old Woodward.
- H. Resolution setting a public hearing for October 7, 2013 to consider an application for a Special Land Use Permit Amendment and Revised Final Site Plan for Luxe Bar and Grill at 525 N. Old Woodward.
- J. Resolution approving a request from the Birmingham Bloomfield Chai Center requesting permission to display a Menorah in Shain Park from November 26 to December 5, 2013

and to hold a lighting ceremony on December 1, 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.

K. Resolution accepting the report for the final expenditures for the additional work performed on the 2012 Concrete Replacement Program, Contract #10-12(SW):

General Fund (Sidewalks) 101-444.001-981.0100	\$111,702.48
Major Street Fund 202-449.001-981.0100	\$ 841.89
Local Street Fund 203-449.001-981.0100	\$ 92,948.89
Sewer Fund 590-536.001-811.0000	\$ 28,311.76
Water Fund 591-537.005-811.0000	\$ 19,371.66
General Fund (Alleys) 101-444.002-981.0100	\$ 5,688.89
Capital Projects Fund (DPS) 401-901.013-977.0000	\$(23,846.00)
Fire Dept. Capital Improvements 401-339.000-977.0000	<u>\$ 64,040.31</u>
	\$299,060.14

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

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

**09-258-13 SPECIAL EVENT REQUEST
 DASH FOR DESTINY & GIRLS ON THE RUN 5K**

Amy Stea, Junior League of Birmingham, presented the request to hold the Dash for Destiny event with the Girls on the Run program. She noted that this would increase their event from 400 to 4000 participants. Jackie Kippen, counselor for Girls on the Run, explained the Girls on the Run program.

Ms. Stea explained that the Dash for Destiny is a timed race, however Girls on the Run is not. Ms. Kippen noted that only registered participants are allowed to participate in the Girls on the Run portion of the event.

Commissioner McDaniel suggested the Girls on the Run limit the registration to 500. Ms. Stea explained that there would be five different start times to alleviate any congestion.

In response to a question from Mayor Pro Tem Moore on how this compares to other races, Police Chief Studt explained that the volume of participants will lock down the neighborhood.

Kim Robinson, Bank of Birmingham, expressed support of this event.

Commissioner Sherman and Mayor Pro Tem Moore expressed concern with the notice to the residents about the event.

The Commission discussed limiting the participation to significantly less than in the application. Ms. Stea requested the Dash for Destiny event be approved. She noted that they will review the Girls on the Run portion to make it friendlier for the neighborhoods.

MOTION: Motion by McDaniel, seconded by Nickita:

To approve a request submitted by Junior League of Birmingham requesting permission to hold the Dash for Destiny 5K Run/Walk on May 4, 2014, 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 and to postpone the Girls on the Run portion.

City Clerk Broski confirmed that the same route was proposed for the scaled down version of the event, therefore additional notice is not necessary.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**09-259-13 SPECIAL EVENT REQUEST
 LUNGEVITY FOUNDATION 5K WALK**

Commissioner Hoff noted that the Dash for Destiny and Lungevity event are one day apart. She had expressed concern, but noted these events were one day apart this year.

MOTION: Motion by Hoff, seconded by Nickita:

To approve a request submitted by the Lungevity Foundation requesting permission to hold Breathe Deep Michigan, a 5K walk, on Saturday, May 3, 2014, 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

**09-260-13 SPECIAL EVENT REQUEST
 HARRIERS 5K RUN**

Stephen Young presented the proposed 5K run which would be a fundraiser for the Seaholm Cross Country Team. He confirmed that the race is expected to last an hour.

Commissioner Hoff expressed concern that the application was submitted within the ninety-day requirement. The Commission discussed the proposed event, the impact on the neighborhood, and the precedent of accepting an application within the ninety-days.

Dorothy Conrad expressed concern that the local high school is being charged for City services. Carl Rundell explained that he has worked with staff to reduce the cost. Mr. Bruner explained

that the fees listed are estimated costs. He noted that staff routinely works with applicants to reduce costs and minimize the impact on the neighborhoods.

MOTION: Motion by Sherman, seconded by Rinschler:

To approve a request submitted by the Seaholm Cross Country Team requesting permission to hold Birmingham Harriers 5K Run on Sunday, October 6, 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.

Dorothy Conrad suggested the ninety-day application requirement be reviewed, the City fees for this event be waived, and the policy be reviewed for local school activities.

VOTE: Yeas, 7
Nays, None
Absent, None

Mayor Pro Tem Moore and Commissioner McDaniel suggested a discussion be held regarding the number of races in the neighborhood.

**09-261-13 PUBLIC HEARING – SPECIAL LAND USE PERMIT
ROJO, 250 EAST MERRILL**

Mayor Dilgard opened the Public Hearing to consider an application for a Special Land Use Permit and Final Site Plan for ROJO at 250 East Merrill at 8:40 PM.

City Planner Ecker presented the request to open ROJO at 250 East Merrill. She reviewed the site plan and signage. She noted that the outdoor dining will be held on private property and the outdoor dining area will not be enclosed in the winter. Ms. Ecker confirmed that the liquor license is a quota license previously used by Max & Erma's Restaurant and all requirements have been met.

In response to a question from Commissioner Nickita, Ms. Ecker confirmed that an outdoor dining street platform is not being proposed at this time.

Dan Linnen, 888 Humphrey and owner of ROHO, confirmed that if business calls for a platform in the future, he would consider it. He explained that the restaurant concept will remain the concept. He noted that the food to alcohol ratio is 73-27. Mr. Linnen confirmed for Commissioner McDaniel that an acoustical guitar may play inside the restaurant, however entertainment and dancing is not part of the concept.

Zachary Kay, business owner across from the proposed restaurant, expressed support for the restaurant and concern with an outdoor dining platform at that location.

The Mayor closed the Public Hearing at 8:58 PM.

MOTION: Motion by Moore, seconded by McDaniel:

To approve the Special Land Use Permit and Final Site Plan for 250 E. Merrill to allow Rojo Five, LLC, dba ROJO, to operate a food and drink establishment in a B-4 zone district:

WHEREAS, Rojo Five, LLC, dba ROJO, filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a food and drink establishment in the B4 zone district in accordance Article 2, Section 2.37 of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the south side of E. Merrill, west of S. Old Woodward;

WHEREAS, The land is zoned B-4, and is located within the Downtown Birmingham Overlay District, which permits the operation of food and drink establishments serving alcoholic beverages with a Special Land Use Permit;

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 applicant submitted an application for a Special Land Use Permit and Final Site Plan for ROJO;

WHEREAS, The Planning Board on July 24, 2013 reviewed the application for a Special Land Use Permit and recommended approval of the application with the following conditions:
 (1) The applicant provide a trash receptacle within the outdoor dining area; and
 (2) The applicant obtain an outdoor dining permit from the City of Birmingham.

WHEREAS, The applicant has agreed to comply with the conditions of approval recommended by the Planning Board;

WHEREAS, The Birmingham City Commission has reviewed ROJO's 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 ROJO's application for a Special Land Use Permit and Final Site Plan at 250 E. Merrill 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. ROJO shall abide by all provisions of the Birmingham City Code; and
 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.

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, ROJO 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 ROJO to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that ROJO is recommended for the operation of a food and drink establishment serving alcoholic beverages on premises, with a Class C Liquor License, at 250 E. Merrill, Birmingham, Michigan, 48009, above all others, pursuant to Chapter 10, Alcoholic Liquors, of the Birmingham City Code, subject to final inspection.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**09-262-13 TRANSFER OF PROPERTY ADJACENT TO
 MERRILLWOOD BUILDING, 251 EAST MERRILL**

City Attorney Currier explained that while the Merrillwood Building was going through refinancing recently, it was discovered that a two foot portion of their property was supposed to have been deeded to the City years ago and was not. He explained that their lot line was supposed to be two feet further to the east and the City alley two feet wider. The proposed resolution will correct this.

MOTION: Motion by Sherman, seconded by Rinschler:

To accept the Quit Claim Deed conveying a two foot area located between the alley and the Merrillwood Building, 251 E. Merrill Street, to the City of Birmingham pursuant to Commission Resolution 235-66 and directing the Billing Manager to correct the legal descriptions for all contiguous properties.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**09-263-13 CLOSED SESSION REQUEST
 MATERIAL EXEMPT FROM DISCLOSURE**

MOTION: Motion by Hoff, seconded by Sherman:

To meet in closed session to consider material exempt from discussion or disclosure by state or federal statute in accordance with Section 8(h) 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

09-264-13 COMMUNICATIONS

The Commission received the following communications:

- Comcast regarding a programming change
- Consumers Energy regarding a public hearing on September 10, 2013
- Consumers Energy regarding a public hearing on September 17, 2013
- Jeff Merriam regarding Pierce & Merrill sidewalk caulking program and response from City Manager Bruner
- Margaret Betts regarding No Soliciting signs and response from City Clerk Broski

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

09-265-13 OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

Margaret Betts commented on the "No Soliciting" decals offered by the City.

X. REPORTS

09-266-13 COMMISSIONER REPORTS

The Commission intends to appoint members to the Board of Zoning Appeals on October 7, 2013.

09-267-13 COMMISSIONER COMMENTS

Commissioner McDaniel expressed concern with the low attendance of the Design Review Board members.

Commissioner Rinschler suggested the Historic District Commission and Design Review Board be reviewed at the Long Range Planning Session.

The Commission recessed to closed session at 9:05 PM.
The Commission reconvened in open session at 9:54 PM.

XI. ADJOURN

The Mayor adjourned the meeting at 9:54 PM.

Laura M. Broski
City Clerk