

**BIRMINGHAM CITY COMMISSION MINUTES**  
**JUNE 12, 2017**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

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

Mayor Mark Nickita called the meeting to order at 7:30 p.m.

**II. ROLL CALL**

ROLL CALL:	Present,	Mayor Nickita Mayor Pro Tem Harris ( <i>arrived at 8:10 p.m.</i> ) Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Sherman ( <i>arrived at 8:46 p.m.</i> )
	Absent,	None

Administration: City Manager Valentine, Senior Planner Baka, City Clerk Brown, Police Chief Clemence, City Attorney Currier, City Planner Ecker, DPS Manager Filipski, Finance Director Gerber, Assistant to the City Manager Haines, Building Official Johnson, City Engineer O'Meara, DPS Director Wood

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

Mayor Nickita acknowledged and congratulated the graduating members of the Citizen's Academy:

- Suann Darmody
- Jonathan DeWindt
- Jill Kahler
- Michael Kern
- Angela Links, and honorary graduate Jaxon, a leader dog for the blind in training
- Ellie Noble
- Frank Pisano
- Geoff Morgenstern
- Katie Schafer
- Betsy Schneider
- Jeffrey Smith
- Julie Sutherland
- Betty Warner
- Abbey Werder

**06-145-17 APPOINTMENT TO THE BOARD OF ETHICS**

Sophie Fierro-Share was present and was interviewed by the Commission, with Commissioner Boutros commenting that Ms. Fierro-Share has been a member of the Board since its inception.

**MOTION:** Motion by Commissioner Hoff:  
To appoint Sophie Fierro-Share to the Board of Ethics to serve a three-year term to expire June 30, 2020.

VOTE: Yeas, 5  
Nays, 0  
Absent, 2 (Harris, Sherman)

**06-146-17 APPOINTMENTS TO THE HISTORIC DISTRICT STUDY COMMITTEE**  
Jonathan DeWindt was present and was interviewed by the Commission. Mr. DeWindt just graduated from the Citizen's Academy.

Michael Xenos was present and was interviewed by the Commission. Mr. Xenos has served on the Committee for the past 6 months.

Commissioner Hoff noted meetings of the Committee are called by resolution of the Commission and suggested the Commission talk about reactivating the Committee.

**MOTION:** Motion by Commissioner Bordman:  
To appoint Michael Xenos to the Historic District Study Committee to serve a three-year term to expire June 25, 2020.

**MOTION:** Motion by Commissioner DeWeese:  
To appoint Jonathan DeWindt to the Historic District Study Committee to serve the remainder of a three-year term to expire June 25, 2019.

Vote on Michael Xenos  
VOTE: Yeas, 5  
Nays, 0  
Absent, 2 (Harris, Sherman)

Vote on Jonathan DeWindt  
VOTE: Yeas, 5  
Nays, 0  
Absent, 2 (Harris, Sherman)

**06-147-17 APPOINTMENTS TO THE MUSEUM BOARD**  
James Cunningham was present and was interviewed by the Commission. City Manager Valentine recommended Mr. Cunningham's appointment as the Board member who is a business owner in the City, and asked for the Commission's concurrence.

Lori Eaton was present and was interviewed by the Commission.

Current Museum Board Member Marty Logue was not present.

Caitlin Rosso was present and was interviewed by the Commission.

**MOTION:** Motion by Commissioner Boutros:

To concur with the City Manager's recommendation to appoint James Cunningham, as the business owner member, to the Museum Board to serve the remainder of a three-year term to expire July 5, 2019.

**MOTION:** Motion by Commissioner Hoff:

To appoint Marty Logue to the Museum Board to serve a three-year term to expire July 5, 2020.

**MOTION:** Motion by Commissioner DeWeese:

To appoint Caitlin Rosso to the Museum Board to serve a three-year term to expire July 5, 2020.

**MOTION:** Motion by Commissioner Bordman:

To appoint Lori Eaton to the Museum Board to serve a three-year term to expire July 5, 2020.

Vote on Marty Logue

VOTE:       Yeas,     5  
              Nays,     0  
              Absent,  2 (Harris, Sherman)

Vote on Caitlin Rosso

VOTE:       Yeas,     5  
              Nays,     0  
              Absent,  2 (Harris, Sherman)

Vote on Lori Eaton

VOTE:       Yeas,     5  
              Nays,     0  
              Absent,  2 (Harris, Sherman)

Vote on Cunningham

VOTE:       Yeas,     5  
              Nays,     0  
              Absent,  2 (Harris, Sherman)

**06-148-17                   APPOINTMENTS TO THE RETIREMENT BOARD**

Lawrence Smith was present and was interviewed by the Commission.

Current Board Member Christopher Conti was not present.

The Commissioners were generally in favor of postponing action until Mr. Conti could attend a Commission meeting for an interview. Commissioner Hoff had some questions about Mr. Conti's attendance in 2015. Mayor Nickita characterized Mr. Conti as an asset to the Board.

City Clerk Brown administered the oath of office 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.

**06-149-17                   APPROVAL OF CONSENT AGENDA**

The following items were removed from the Consent Agenda:

- Commissioner Hoff: Item G – S.A.D. Public Hearing Schedule for 2017 Cape Seal  
Item H - Help America Vote Act (HAVA) Grant Agreement  
Item J - Golf Cart Lease – One Year Amendment

**MOTION:** Motion by Commissioner DeWeese, seconded by Commissioner Bordman:  
To approve the Consent Agenda, with items G, H, and J removed.

ROLL CALL VOTE:      Yeas,                      Commissioner Bordman  
   Commissioner Boutros  
   Commissioner DeWeese  
   Commissioner Hoff  
   Mayor Nickita  
                                 Nays,                                      None  
                                 Absent,                                   Mayor Pro Tem Harris  
   Commissioner Sherman

- A. Approval of City Commission minutes of May 8, 2017
- B. Approval of City Commission minutes of May 22, 2017
- C. Approval of warrant list, including Automated Clearing House payments, of May 24, 2017 in the amount of \$1,017,911.63.
- D. Approval of warrant list, including Automated Clearing House payments, of May 31, 2017 in the amount of \$130,688.65.
- E. Approval of warrant list, including Automated Clearing House payments, of June 7, 2017 in the amount of \$187,549.31.
- F. Resolution setting Monday, July 10, 2017 at 7:30 p.m. for a public hearing to consider the proposed lot split of 839 Randall Ct., Parcel #1925352018.
- I. Resolution approving the purchase of twenty-five (25) Dumor benches and five (5) trash receptacles for a total purchase price of \$35,000.00 from the sole source vendor, Penchura, LLC. Funds have been budgeted in fiscal year 2016-2017 Capital Projects Fund- Park Benches & Trash Cans for Streetscapes from Account #401-901.009-981.0100 for this equipment purchase.
- K. Resolution approving the annual subscription with MADCAD.com for online access to essential building codes and standards for Fiscal Year 2017-2018, in the amount of \$7,150.00 from account #101-371.000-728.000.
- L. Resolution approving the revised request from the Birmingham Shopping District for permission to hold Day on the Town in downtown Birmingham on July 22, 2017, 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.
- M. Resolution approving the revised request from the Birmingham Shopping District to hold the Birmingham Cruise Event on August 19, 2017, 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.
- N. Resolution approving a request submitted by Woodward Camera requesting permission to place one tent in the parking area in front of 33501 Woodward Ave on August 19, 2017, 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.

The Commission agreed to discuss the removed items at this time.

**06-150-17 S.A.D. PUBLIC HEARING SCHEDULE FOR 2017 CAPE SEAL**

Commissioner Hoff questioned the section of Fairfax from Raynale to Suffield that is included in the list, noting that Fairfax and Suffield run parallel. Assistant City Planner Baka explained that Suffield curves as it approaches Quarton.

**MOTION:** Motion by Commissioner Hoff, second by Commissioner Boutros:  
To set Monday, July 10, 2017 at 7:30 p.m. for a public hearing to consider necessity related to the 2017 cape seal program, and setting Monday, July 24, 2017 at 7:30 p.m. for a public hearing to consider confirmation of the roll for the 2017 cape seal program.

VOTE:           Yeas,     5  
                  Nays,     0  
                  Absent,  2 (Harris, Sherman)

**06-151-17 HELP AMERICA VOTE ACT (HAVA) GRANT AGREEMENT**

Commissioner Hoff asked if purchasing new voting equipment is optional, how much it would cost the City, and what happens to the old equipment.

City Clerk Brown responded:

- The State of Michigan mandated the switch to new election equipment with a \$5 million appropriation in the FY2017 State budget.
- The State combined the appropriation with remaining Federal Help America Vote Act (HAVA) funding, and in 2016, recommended local jurisdictions budget \$2,000 - \$3,000 per precinct to cover local costs.
- Birmingham budgeted \$33,000 to cover the City's costs in FY2017.
- State law requires County Clerks to choose a voting system to be used throughout their County, and through negotiations with the vendor, Hart InterCivic, by Oakland County, the amount of State and HAVA funding was enough, with no local match, to cover the cost of 9 tabulators (1 per precinct), 8 Accessible Voting Devices (AVD), which is 1 per polling location, and 2 Absent Voter Counting Board tabulators (1 per 3000 absentee ballots returned in November 2016).
- Based on experience with the last cycle of voting equipment, City Clerk Brown recommended purchase of an additional 3 tabulators and 1 additional AVD at a \$500/machine discount, which was only being offered during the initial purchase period. The extra machines will be utilized as replacements for election-day equipment malfunctions, for additional absentee ballot tabulators during presidential elections, and for an expansion of precincts if necessary during the next 10 years.
- Birmingham's cost was \$19,500, a savings of \$13,500.
- The vendor's contract, as approved by the Michigan Bureau of Elections, requires the vendor to remove the old equipment from each jurisdiction and dispose of it.

**MOTION:** Motion by Commissioner Hoff, second by Commissioner Bordman:  
To adopt the formal resolution authorizing and directing the City Clerk to execute and enter into the Help America Vote Act (HAVA) Grant Agreement between the City of Birmingham and the State of Michigan, Michigan Department of State, to receive Federal HAVA and State appropriated funded voting systems, including optical scan tabulators, accessible voting devices and Election Management System (EMS) software, pursuant to the Federal Help America Vote

Act (HAVA) of 2002, contingent upon review and approval of the formal Agreement by the City Attorney. *Formal resolution appended to minutes as Attachment A.*

VOTE:           Yeas,     5  
                  Nays,     0  
                  Absent,  2 (Harris, Sherman)

**06-152-17    GOLF CART LEASE – ONE-YEAR AMENDMENT**

In response to inquiries from Commissioner Hoff, DPS Director Wood explained:

- It was believed the current golf cart lease agreement was a four-year agreement ending in the fall of 2017.
- Plans were already underway to bid out the contract at the end of the 2017 golf season.
- It was discovered the lease agreement was only a three-year lease which ended in 2016.
- The City Attorney's Office drafted the proposed Amendment to the Golf Cart Lease Agreement with Pifer, Inc., with the rate of \$625 per cart per year and all other terms and conditions remaining unchanged during 2017.
- For many years the City of Birmingham has leased carts from Pifer Inc. as they continue to be the low bidder during every bid opportunity.
- The contract will be rebid at the end of the 2017 golf season.

**MOTION:**     Motion by Commissioner Hoff, second by Commissioner Boutros:

To approve the Amendment to the Golf Car Lease Agreement between the City of Birmingham and Pifer, Inc. for a term commencing March 10, 2017 and terminating on October 31, 2017 in the annual amount \$32,500.00. Further, to authorize the Mayor and City Clerk to sign the amended lease document on behalf of the City upon receipt of proper insurances. Funds for this lease are contained with the Equipment Rental line items, account #s 584-753.002-941.0000 and 597-753.002-941.0000.

VOTE:           Yeas,     6  
                  Nays,     0  
                  Absent,  1 (Sherman)

<b>V.    UNFINISHED BUSINESS</b>
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None

<b>VI.   NEW BUSINESS</b>
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**06-153-17           PUBLIC HEARING - FINAL SITE PLAN AND SPECIAL LAND USE PERMIT (SLUP) - 160 W. MAPLE – DICK O'DOW'S**

Mayor Nickita opened the public hearing at 8:14 p.m.

City Planner Ecker reported:

- The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District.
- The applicant, Dick O Dow's, is proposing to renovate the rear façade of the building and make interior modifications.
- The establishment operates with an existing Class C quota liquor license. Article 06, section 6.02 Continuance of Nonconformity, A (5) requires that any establishment with alcoholic beverage sales (on-premise consumption) shall obtain

a Special Land Use Permit upon change in ownership or name of establishment, or upon application for a site plan review.

- On April 26, 2017, the Planning Board conducted a public hearing on the applicant's request to renovate the rear façade of the building. The Planning Board voted unanimously to recommend approval to the City Commission of the Special Land Use Permit ("SLUP") and Final Site Plan for 160 W. Maple, Dick O'Dow's with the following conditions:
  1. No outdoor seating is allowed under this current proposal;
  2. That the rear door not be open after midnight;
  3. That when the rear door is open live music only be at the south end of the facility on the south side of the dividing doors.
- As the proposed establishment is located within the Central Business District Historic District, the applicant is also required to appear before the Historic District Commission (HDC). On May 3, 2017, the HDC voted unanimously to recommend approval to the City Commission of the proposed design changes for 160 W. Maple, Dick O'Dow's.

City Planner Ecker clarified for Commissioner Hoff:

- The new area will seat 62 at tables and 18 at the bar. The back area could accommodate a 90-person party.
- The garage door is insulated glass in an aluminum frame, so it is not designed to be soundproof.
- No outside lighting is proposed, but the glass garage door will allow ambient light into the alley.

Answering additional questions from Commissioner Hoff, Mr. Mitch Black, Dick O'Dow's noted:

- The bar will be on east wall where the fireplace is currently located.
- There will be tables along the front of the garage door, but the garage door is not for entry/exit.
- There are typically hostesses on the weekends and at other times as needed.

Mr. Black responded to questions from Commissioner DeWeese by explaining:

- Only six additional seats are proposed over the current seating in the back area.
- Potential noise problems will be monitored by Dick O'Dow's staff for compliance with the City's noise ordinance.
- The establishment has been in business for 21 years with few complaints.
- The front and back will be separated by a hallway 10' longer than the current one, to fully separate the front and back atmospheres.
- On St. Patrick's Day the weather is typically too cold to open the garage door, so it will likely be closed during those celebrations.

Commissioner DeWeese commented that the key thing is management, and indicated Dick O'Dow's has managed fairly well in the past. He encouraged Mr. Black to maintain control going forward.

Dr. Marvin Siegel, Willits Condominiums, expressed concerns about any additional plans the Commission has for the Willits Alley. Mayor Nickita indicated the plan is to keep the alley pedestrian friendly. Dr. Siegel was not opposed to stores along the alley having access for customers from the alley.

Dr. Siegal was under the impression there would be no music in the back room. Mr. Black:

- Clarified there will be no live music, but there will be background music.
- Confirmed there will be no seating in the alley.
- Confirmed the garage door will close at midnight.
- Verified the door and both front and back exits meet applicable City fire codes.

Dr. Siegal commented, with bar traffic leaving the area at 2:00 a.m. and early morning traffic beginning around 7:00 a.m., Willits residents have only a five-hour reprieve from traffic noise.

City Attorney Currier clarified the City has control over the north-south portion of the Willits alley, but the east-west portion is owned by Willits Condominiums and the City just has an emergency vehicle easement.

Commissioner Boutros was in favor of activating and enhancing the alley.

Commissioner Hoff was in favor of Dick O'Dow's plan, calling it an asset to Birmingham. She expressed some concern about noise for the residents of the Willits Condominiums, but noted only Dr. Siegal and Cheryl Anobile from the Willits registered concern. Commissioner Hoff stated that if the Willits residents are not concerned she supports the plan.

Commissioner DeWeese asked that the prohibition against outdoor seating in the rear of the building be made clear in the Commission's action.

Mayor Nickita closed the public hearing at 8:42 p.m.

**MOTION:** Motion by Commissioner Boutros, seconded by Commissioner DeWeese: To approve the Final Site Plan and Special Land Use Permit for 160 W. Maple - Dick O'Dow's, to allow the renovation of the existing restaurant, with no outdoor seating allowed in the rear of the building.

VOTE:           Yeas,       6  
                  Nays,       0  
                  Absent,    1 (Sherman)

Mayor Nickita noted the City is responsive to reports of issues outside the parameters of a SLUP.

**06-154-17                   PUBLIC HEARING TO CONSIDER AMENDMENTS TO CHAPTER  
126, ZONING, OF THE CITY CODE TO CREATE THE T22  
TRANSITION ZONE**

Mayor Nickita opened the public hearing at 8:46 p.m.

Senior Planner Baka reported:

- The intent for the Transition Zone is to:
  - Provide for a reasonable and orderly transition from, and buffer between commercial uses and predominantly single-family residential areas or for property which either has direct access to a major traffic road or is located between major traffic roads and predominantly single-family residential areas.



- Develop a fully integrated, mixed-use, pedestrian-oriented environment between residential and commercial districts by providing for graduated uses from the less intense residential areas to the more intense commercial areas.
- TZ2 is proposed for mixed use with a maximum height of 30 ft, 2 stories that encourages a mix of residential and commercial uses.
- Specifications for TZ2 are as follows:

Maximum Building Height	30'and 2 stories minimum  For sloped roofs, the eave line shall be no more than 24' and the roof peak shall be no more than 35'  First story shall be a minimum of 14' in height, floor to floor
Minimum Lot Area/Unit	N/A
Minimum Open Space	N/A
Maximum Lot Coverage	N/A
Minimum Front Yard Setback	10'  20' abutting single family zoning district
Minimum Side Yard Setback	0' from interior side lot line  10' from side lot line abutting a single family district
Minimum Combined Front and Rear Setback	N/A
Minimum Floor Area/Unit	N/A
Maximum Total Floor Area	N/A

- Permitted uses for TZ2 are as follows:

**Residential Permitted Uses**

- Dwelling – attached single family
- Dwelling – single family (R3)
- Dwelling – multi-family

**Commercial Permitted Uses**

- Art gallery
- Artisan use
- Barber/beauty salon
- Bookstore
- Boutique
- Drugstore
- Gift shop/flower shop
- Hardware
- Jewelry store
- Neighborhood convenience store
- Office
- Tailor

### Uses with SLUP

Any permitted commercial use with interior floor area over 3,000 sq. ft. per tenant

Assisted living

Bakery

Bank/credit union with drive-thru

Church and Religious Institution

Coffee shop

Essential services

Food and drink Establishment

Government office/use

Grocery store

Health club/studio

Independent hospice facility

Independent senior living

School – private and public

Skilled nursing facility

Specialty food shop

- Additional controls on commercial uses are as follows:
  - All food related uses & dry cleaners will require a SLUP (regardless of size)
  - All uses commercial uses that occupy more than 3,000 sq. ft. in TZ2 will require a SLUP
  - All commercial uses, except office, restricted to hours of operation of 7:00 a.m. – 9:00 p.m. unless approved for extension by the Planning Board
  - Additional buffering requirements (landscaping and screen walls)

Discussion confirmed:

- The proposal is to establish the classification of TZ2 without designating which properties should be included.
- Property owners may apply to rezone their parcels to TZ2 if they wish.
- When TZ1 and TZ3 were established, a list of properties belonging in those districts was recommended.
- The process for TZ2 is two-pronged. Once the district is established further conversation will occur to incrementally apply the classification to appropriate properties.

Senior Planner Baka clarified for Commissioner Boutros:

- Medical services fall under the medical offices category, but with different parking requirements.
- The maximum building height in TZ2 would be 30', which is two-stories.

Mayor Nickita felt strongly that neighborhood convenience stores should be a use requiring a SLUP.

Commissioner Bordman contended drugstores should likewise be a use requiring a SLUP.

Mayor Pro Tem Harris concurred with both neighborhood convenience stores and drugstores requiring a SLUP.

Mayor Nickita closed the public hearing at 9:10 p.m.

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

To adopt the Ordinance amending Chapter 126, Zoning, of the City Code, as follows:

Article 2, section 2.43, TZ2 (Transition Zone 2) District Intent, permitted uses, and special uses to add the TZ2 zoning classification, as amended to move Drugstore and Neighborhood Convenience Store from Commercial Permitted Uses to Uses requiring a Special Land Use Permit;

Article 2, section 2.44, TZ2 Development Standards to add Standards for the TZ2 District;

Renumber the existing TZ3 (Transition Zone 3) zoning classification, District Intent, permitted uses, and special uses to Article 2, section 2.45 with no changes;

Renumber the existing TZ3 (Transition Zone 3) zoning classification, Development Standards to article 2, section 2.46 with no changes;

Article 5, section 5.15, Use Specific Standards, to add use specific standards for the TZ2 zone district.

AND

Article 4, all sections noted below, to apply each section to the newly created TZ2 zone district as indicated:

Ordinance Section Name	Section Number
Accessory Structures Standards (AS)	4.02
	4.04
Essential Services Standards (ES)	4.09
Fence Standards (FN)	4.10
Floodplain Standards (FP)	4.13
Height Standards (HT)	4.16
	4.18
Landscaping Standards (LA)	4.20
Lighting Standards (LT)	4.21
	4.22
Loading Standards (LD)	4.24
Open Space Standards (OS)	4.30
Outdoor Dining Standards (OD)	4.44
Parking Standards (PK)	4.45
	4.46
	4.47
	4.53
Screening Standards (SC)	4.54
	4.59
Setback Standards (SB)	4.65
Street Standards (ST)	4.73
Structure Standards (SS)	4.74
	4.83
Temporary Use Standards (TU)	4.84
Utility Standards (UT)	4.88
Vision Clearance Standards (VC)	4.89
Window Standards (WN)	4.90

VOTE:            Yeas,        7  
                      Nays,         0

Absent, 0

**06-155-17 PUBLIC HEARING TO CONSIDER NECESSITY FOR THE INSTALLATION OF WATER LATERALS WITHIN THE 2017 LOCAL STREET PAVING PROGRAM AREA – LOT 97 OF HARROWGATE SUBDIVISION AND LOTS 2, 3 AND 6 OF BELMONT SUBDIVISION**

Mayor Nickita opened the public hearing at 9:14 p.m.

City Engineer O'Meara reported:

- The City will be reconstructing one block of Oak Street this summer between Glenhurst Dr. and Chesterfield Ave.
- Because the original pavement will be completely replaced, the City policy to replace the sewer and water laterals where applicable within the right-of-way applies.
- Four homes are impacted because their water service is only  $\frac{3}{4}$ " in diameter which does not meet current criteria.
- It is recommended the properties be put into a special assessment district and have their services replaced with 1" pipe.
- The property owners have been notified.
- No sewer lateral replacements are planned.
- A separate front yard sewer was constructed when the subject block was first developed that services the ten homes on the north side of the street, therefore, there are no older sewer laterals to replace at this time.
- Other than the water services on Oak St., no other sewer or water service lateral work is proposed.
- The average water service price among bidders was \$49.50 per foot, and therefore the City believes charging the low bidder's price of \$50.00 per foot is appropriate. The estimated price to be charged to homeowners is \$850 per house.
- On the proposed resolution, in paragraphs 3 and 5, there are references to "sewer laterals" which should be changed to "water laterals".

Commissioner Hoff noted many of the properties in this area have already upgraded their water lateral, so only four properties are involved in this project.

John Hammer, 1764 Oak Street, pointed out that the chart sent by Mr. O'Meara does not list an installation date for the current  $\frac{3}{4}$ " lead line, and he presumed that lack of documentation is because installation happened over 90 years ago. City Planner O'Meara agreed if a compliant line was found during excavation, the line would be left in place and the property owner would not be billed.

Mr. Hammer asked if the City's contractor could use the lowest water service bid from among the bidders, which was \$30/foot. City Manager Valentine explained the City followed its practice of averaging the cost of bids for the water lateral component among all bidders to arrive at \$50/foot. City Manager Valentine explained no further negotiation on price can be done because the bid has already been awarded.

Lois Casey, 1860 Oak, asked why sewers aren't being moved from about 2' in front of the house to where sewers normally are on the street. I have been there 17 years and I have had constant backups in my basement because where the sewer line runs is where people have trees. She asked why the sewers aren't being replaced.

City Engineer O'Meara explained:

- There is a unique situation on the subject block because the builder built the sewer in the front yards instead of in the right-of-way, so the homes are tied to a sewer the city maintains in the front yard.
- The decision was made not to incur the cost of building a whole other sanitary sewer system in the street but rather to keep maintaining the current one.
- The sewer on the subject block is being reviewed as a potential lining candidate.

Responding to questions from Mayor Nickita, City Engineer O'Meara stated:

- What is being reviewed is whether the sewer on the Oak St. block should be added to the lining contract currently being worked on for other sewers in the immediate area.
- Lining the sewer on Oak St. would not be part of the street paving contract.
- The street paving project will require digging up the right-of-way, but the sewer is not located in the road.
- Digging up the existing sewer would require digging up the front yards.
- The sewer is still working.

City Engineer O'Meara clarified for Commissioner Sherman:

- The sewer that is in the front yards of about ten houses starts near the west end of the block and runs east toward Chesterfield where it connects with the city sewer on Chesterfield.
- The sewer was constructed in the 1920's like most of the sewers in the neighborhood.
- To put in a new sewer would require obtaining easements to dig up the front yards because the houses don't have a sewer that runs out to the street. Each house is tied to the front yard sewer that's probably 20'-30' from the right-of-way.

Commissioner Sherman:

- Took issue that the replacement of a 100 year old sewer during a street reconstruction project requiring digging up the road was not planned before the project was bid. He stated the City's policy is that all issues be considered before pursuing and bidding a project so that a street isn't torn up one year, only to be torn up later to replace a 100 year old sewer.
- Suggested the front yard sewers could easily be moved into the street where it should be for ease of maintenance.
- Debated the need to obtain easements and suggested the City might just need permission to go in there and extend sewer laterals into the street.
- Expressed concern with how the subject project was planned.
- Stated the real problem is not knowing exactly what steps will be taken with a hundred year old sewer; whether it will be lined or left alone; whether it will be okay or whether it will not.
- Reiterated this is not how things are done.

City Engineer O'Meara replied:

- He considered the issues with the project and believes this is the best approach possible.
- He is confident the sewer can be used well into the future just like the backyard sewers will be. Because the sewer is working it should either stay as is or be lined.
- Digging up everyone's front yard as well as the street would be much more disruptive.
- His approach was an attempt to save the City money

City Engineer O'Meara confirmed for City Manager Valentine that the sewer has been inspected with cameras and the results will be forthcoming.

Commission Sherman commented:

- If lining is done should it be done right away or is there time to wait and do it in the future
- He disagrees with the assumption made that we wanted to just line the sewer and leave it under the front yards, even though we are having the street torn up.
- If there is a sewer break, after the lining is done, then we have to go into the front yards at that time, and then we will need the easements.
- If we move the sewer we don't need the easements, only permission to extend the sewer lateral.

City Manager Valentine recommended that staff come back to the Commission with more detail on the sewer aspect so we can have a more informed discussion and look at the alternatives. Commissioner Sherman agreed but was adamant the answer be known before the project moves forward. He reiterated the City's policy is that everything is looked at before a project is ever bid out and everything is done at the same time.

Commissioner Hoff said Commissioner Sherman made an excellent point, but pointed out the project is already contracted to begin June 19.

Mayor Nickita asked City Manager Valentine if the Commission can address the issue by taking a look at the sewer component and incorporating it into this scope of work.

City Manager Valentine suggested alternatives be vetted, the contractor be consulted, and the issue be brought back to the Commission on June 26 with recommendations to be considered to address this in the best possible way.

Commissioner Sherman suggested having a special meeting at the June 19 workshop session with the Planning Board in order to move this project forward in a timely manner.

Commissioner Hoff commented this is more than just a decision by the Commission on what to do, noting if it is decided the sewer should be moved 10 or 12 different properties will be involved. She expressed concern with telling people at the last minute that their front yard's going to be dug up.

City Engineer O'Meara clarified for Commissioner Sherman that the City has an easement to line the sewer, but the City does not have an easement from the City sewer in the front yard out to Oak St.

Mayor Pro Tem Harris fully supported further investigation, but commented that the only scenario in which we would not be acting consistent with city policy would be if sewer lining was not the right solution. He asked City Engineer O'Meara to explain the differences in construction labor to line the sewer as opposed to moving the sewer to the street.

City Engineer O'Meara explained if the sewer is moved to the street a separate sanitary sewer has to be built in the street and then pipes have to be built from that sewer up to the existing sewer, which is approximately 40' per house, mostly on private property. To line the sewer, the

sewer is accessed through the manhole and the lining is done without disrupting the homeowners.

Mayor Nickita closed the public hearing at 9:35 p.m.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner DeWeese:  
To adopt the formal resolution as follows:

- WHEREAS, The City Commission has established a policy requiring the replacement of undersized or lead water lateral lines when the City street is open for repairs or reconstruction; and
- WHEREAS, The City Commission is of the opinion that replacement of water laterals not meeting current criteria as a part of the planned road paving project is declared a necessity; and
- WHEREAS, Formal bids have been received and the actual cost per foot for replacement of the water laterals has been determined.
- RESOLVED, That all water laterals not meeting current criteria located within the limits of the following streets shall be replaced as a part of the paving project on Oak St. from Glenhurst Dr. to Chesterfield Ave.
- RESOLVED, That at such time as the Assessor is directed to prepare the assessment roll, of which 100% of the contractor's charge to replace water lateral (calculated at the rate of \$50 per linear foot) shall be charged to the adjoining property owners benefiting from the water lateral.
- 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 within the following district:  
**"Harrowgate Subdivision"**  
Lot 97.  
**"Belmont Subdivision"**  
Lots 2, 3, and 6.
- RESOLVED, That the Commission shall meet on Monday, June 26, 2017, at 7:30 P.M., for the purpose of conducting a public hearing to confirm the roll for the replacement of water laterals within the Oak St. 2017 Paving Project.

VOTE:           Yeas,       7  
                  Nays,       0  
                  Absent,    0

**06-156-17                   RUSSELL THAYER APPLICATION TO DONATE *WIND RAPIDS***

City Planner Ecker reported:

- The Public Arts Board (PAB) recently reviewed loan agreements on all public art pieces on display in the City.
- After being offered the option to either extend the duration of the loan by 5 years or to donate the sculpture permanently to the City, Russell Thayer submitted an application proposing to donate his sculpture, Wind Rapids.
- The sculpture is 72" tall, with three legs supporting a flow of horizontal aluminum waves and is currently located in the Pierce Street Parking Structure plaza along Merrill Street.
- The value of the sculpture has increased from \$9,500 (2005 assessment) to \$11,000.

- Should the sculpture be accepted as a donation, the City would cover the annual insurance premium of \$140 and be responsible for future cleaning and maintenance of the artwork.
- On April 19, 2017, the PAB reviewed Mr. Thayer's application to donate Wind Rapids to the City and voted unanimously to recommend approval of the donation to the City Commission.

On his application, Mr. Thayer wrote, "It is in a beautiful spot – just the right scale for the space. Nicely landscaped increased its beauty for me!"

Commissioner Bordman expressed concern that the artist is requiring the statue to remain in its current location.

The Commission was in general agreement to seek clarification of the artist's intent and expressed the desire to have flexibility to move the statue in the future. When clarification is received the item will be brought back to the Commission for consideration.

City Manager Valentine asked that the application be revised for future use.

**06-157-17                    2018 MEETING SCHEDULE**

City Clerk Brown presented the proposed 2018 City Commission meeting schedule. The Commissioners requested several changes be made and that the revised schedule be brought back for consideration at the next meeting.

**06-158-17                    FOURTH QUARTER 2016-2017 BUDGET AMENDMENT**

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Harris:  
To approve the appropriations and amendments to the fiscal year 2016-2017 budget as follows:

**General Fund:**

Expenditures:

Public Safety	101-301.000-702.0001	\$(30,000)
	101-301.000-702.0002	(10,000)
	101-301.000-706.0002	(20,000)
	101-336.000-706.0002	(20,000)
Community Development	101-721.000-811.0000	30,000
Transfers Out	101-999.000-999.0639	50,000
Total Expenditure Adjustments		<u>\$ -0-</u>

**Major Streets Fund:**

Expenditures:

Traffic Controls & Engineering	202-303.001-937.0300	\$ 10,000
Street Cleaning	202-449.004-702.0001	5,000
	202-449.004-941.0000	15,000
Street Trees	202-449.005-702.0001	10,000
Snow & Ice Control	202-449.006-729.0000	(40,000)
Total Expenditure Adjustments		<u>\$ -0-</u>

**Local Streets Fund:**

Expenditures:

Traffic Controls & Engineering	203-303.001-937.0300	\$ 3,000
Maintenance of Streets and Bridges	203-449.003-702.0001	45,000



	203-449.003-941.0000	50,000
Street Trees	203-449.005-702.0001	15,000
Capital Outlay – Engineering & Construction of Roads	203-449.001-981.0100	(93,000)
Snow & Ice Control	203-449.006-729.0000	<u>(20,000)</u>
Total Expenditure Adjustments		<u>\$ -0-</u>

**Solid Waste Fund:**

Revenues:

Draw from Fund Balance	226-000.000-400.0000	<u>\$ 31,700</u>
Total Revenue Adjustments		<u>\$ 31,700</u>

Expenditures:

Personnel Services	226-582.000-702.0001	\$ 2,000
	226-582.000-702.0002	10,000
Supplies	226-582.000-729.0000	2,200
Other Contractual Services	226-582.000-827.0100	<u>17,500</u>
Total Expenditure Adjustments		<u>\$ 31,700</u>

**Principal Shopping District:**

Revenues:

Draw from Fund Balance	247-000.000-400.0000	<u>\$ 59,000</u>
Total Revenue Adjustments		<u>\$ 59,000</u>

Expenditures:

Principal Shopping District	247-441.005-702.0002	\$ 5,000
	247-441.005-941.0000	15,000
	247-748.000-811.0000	33,000
	247-748.000-904.0000	<u>6,000</u>
Total Expenditure Adjustments		<u>\$ 59,000</u>

VOTE:       Yeas,       7  
               Nays,       0  
               Absent,   0

**VII. REMOVED FROM CONSENT AGENDA**

The items removed were discussed earlier in the meeting.

**VIII. COMMUNICATIONS**

None.

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

In response to a question from Rick Reid, Mayor Nickita indicated the issue in which Paul Glantz is involved will be before the Commission on June 26, 2017.

**X. REPORTS**

**06-159-17                   COMMISSIONER REPORTS**

The Commission will appoint members to the Martha Baldwin Park Board and the Greenwood Cemetery Advisory Board, and will appoint alternate members to the Advisory Parking Committee, the Parks and Recreation Board, and the Public Arts Board on July 10, 2017.

**06-160-17 COMMISSIONER COMMENTS**

Commissioner Hoff expressed concern about the museum and requested the Commission plan a discussion about the museum's direction, its focus, how to attract more visitors, and what its benefit is to Birmingham.

Commissioner Bordman agreed some thought needs to be given to recent museum programs, their historical content and their intended audience. She reiterated earlier concerns she has with whether the qualifications for appointment to the City's boards and committees, with emphasis on the Museum Board, adequately describe the Commission's current expectations.

Commissioner DeWeese related he has heard comments from community members that the museum no longer has the historical core they desire.

Commissioner Sherman suggested requesting a letter from the Museum Director outlining recent programming.

Mayor Nickita wanted to be clear that the Commission is not trying to be critical as much as trying to ascertain that the museum is on the right track. He also noted that Director Pielack is working on programs for the anniversary of the museum that will focus on the true historic nature of the City.

City Manager Valentine will distribute the museum's strategic plan to aid the Commission in planning their discussion.

Commissioner Bordman announced NEXT is temporarily moving to Beverly School on June 16, and will be closed until June 21. Phone numbers and hours of operation will remain the same.

Commissioner Bordman, explaining the Commission receives monthly reports on the utilization of the City's parking structures, announced that in the Pierce, Peabody, Park and Chester structures combined there were, in May, fewer than 15 total occurrences when the structures were full for 1-4 hours.

Commissioner Sherman explained he was late because he was attending a banquet at Groves High School for the students who produce the Groves Scriptor magazine/newspaper. The students and publication won 16 national and state awards, making it the most awarded student publication in the country. He asked that the Commission consider awarding a proclamation to honor the students.

**06-161-17 CITY STAFF REPORTS**

The Commission received the parking utilization report, submitted by City Engineer O'Meara.

**XI. RECESS**

**06-162-17 PEDESTRIAN SCALE STREET LIGHTS IN THE RAIL DISTRICT**

**MOTION:** Motion by Commissioner DeWeese, seconded by Commissioner Bordman: To recess the meeting and reconvene immediately outdoors by the easterly most streetlight on the north side of E. Lincoln Street, near the intersection with S. Eton Street (the closest building address is Armstrong White Advertising Agency, 2125 E. Lincoln Street, Birmingham MI 48009).

**VOTE:** Yeas, 7

Nays, 0  
Absent, 0

The meeting recessed at 10:23 p.m. and reconvened at 10:37 p.m.

The Commission commented:

- The light was brighter on one side than the other
- The light was still too hot.
- Options from a different manufacturer would be welcome.

No action was taken by the Commission.

<b>XII ADJOURN</b>
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The regular meeting was adjourned at 10:49 p.m.

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J. Cherilynn Brown  
City Clerk

**AUTHORIZATION TO ENTER INTO HELP AMERICA VOTE ACT  
(HAVA) GRANT AGREEMENT WITH THE STATE OF  
MICHIGAN, MICHIGAN DEPARTMENT OF STATE FOR  
FEDERAL HAVA AND STATE-APPROPRIATED FUNDED  
VOTING SYSTEMS**

WHEREAS, The City of Birmingham wishes to apply to the Secretary of State for a grant to purchase a new voting system; and

WHEREAS, A Grant Agreement between the City of Birmingham and the State of Michigan, Michigan Department of State, is the mechanism by which the City of Birmingham must apply to the State of Michigan to receive Federal HAVA and State-appropriated funded voting systems, including optical scan tabulators, accessible voting devices and Election Management System (EMS) software, pursuant to the Federal Help America Vote Act (HAVA) of 2002; and

WHEREAS, The State of Michigan has provided a sample form of the Help America Vote Act (HAVA) Grant Agreement with the State of Michigan; and

WHEREAS, The State of Michigan will provide the City of Birmingham with a formal Help America Vote Act (HAVA) Grant Agreement between the City of Birmingham specifically and the State of Michigan, Michigan Department of State prior to delivery of the new voting system; and

WHEREAS, Partial funding for the new voting system will be provided by the State, and will include a combination of Federal Help America Vote Act and State-appropriated funds; and

WHEREAS, Local funding obligations are detailed in Schedule C, Cost Table 1, of the State of Michigan's contract with Hart InterCivic, Inc.; and

WHEREAS, The City of Birmingham plans to implement the new voting system in 2017.

NOW THEREFORE BE IT RESOLVED, The sample Help America Vote Act (HAVA) Grant Agreement with the State of Michigan is approved as to form; and

BE IT FURTHER RESOLVED, That the Birmingham City Commission authorizes and directs its City Clerk to execute and enter into the Help America Vote Act (HAVA) Grant Agreement between the City of Birmingham and the State of Michigan, Michigan Department of State to receive Federal HAVA and State-appropriated funded voting systems, including optical scan tabulators, accessible voting devices and Election Management System (EMS) software, pursuant to the Federal Help America Vote Act (HAVA) of 2002, contingent upon review of the formal Agreement by the City Attorney.

The foregoing resolution was offered by Commission Member Hoff, and seconded by Commission Member Bordman.

VOTE:           Yeas,    5  
                  Nays,    0  
                  Absent, 2 (Harris, Sherman)

The resolution was declared adopted.

I, J. Cherilynn Brown, 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 June 12, 2017.

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J. Cherilynn Brown  
City Clerk