

BIRMINGHAM CITY COMMISSION MINUTES

AUGUST 14, 2017

**SOUTHEAST CORNER OF S. ETON AND MAPLE INTERSECTION
(NEAR BIG ROCK CHOPHOUSE, 245 S. ETON, BIRMINGHAM MI 48009)**

5:30 P.M.

**RECONVENING AT
MUNICIPAL BUILDING**

151 MARTIN, BIRMINGHAM MI 48009 PH: 248-530-1880

6:30 P.M.

A. CONVENE AT 5:30 P.M. AT THE SOUTHEAST CORNER OF S. ETON AND MAPLE INTERSECTION, BIRMINGHAM MI

Mayor Mark Nickita called the meeting to order at 5:30 p.m.

Present, Mayor Nickita
Commissioner Bordman
Commissioner Boutros
Commissioner DeWeese
Mayor Pro Tem Harris
Commissioner Hoff
Commissioner Sherman

Absent, None

Administration: City Manager Valentine, City Clerk Mynsberge, City Attorney Currier, City Engineer O'Meara, City Planner Ecker, Police Commander Grewe, Assistant Engineer Fletcher

Also present: Julie Kroll, Fleis & Vandenbrink

PHYSICAL INSPECTION OF S. ETON ST. AND MAPLE RD. INTERSECTION

City Manager Valentine noted:

- The widening of the sidewalk is marked by cones.
- In the center of the intersection, chalk lines outline both proposed island sizes.
- A 48' truck will be used to demonstrate the turns.

Mayor Nickita explained:

- For the turn to work a truck coming from the west has to clear the island and the wider sidewalk.
- The stop bar has been marked in the proposed spot further away from the intersection.
- Cars on Eton are ignoring the stop bar and moving past it to the edge of Maple.
- When cars ignore the stop bar on Eton, a truck on Maple has to wait for traffic to clear in order to have enough clearance to make the turn. While the truck is waiting for the cars to move, traffic is backing up on Maple and creating congestion.
- The demonstration will highlight the difference between creating a drawing and knowing how people will use the intersection.

- The right turn lane on Eton is wide for truck turns, but it creates an illusion for cars that there are two right turn lanes. The lane should be striped more clearly.

Julie Kroll, Fleis & Vandenbrink, reported:

- The traffic signal will have a right turn arrow for right turns from Eton to Maple.
- The traffic signal will have longer timing on Maple.
- Traffic counts show five trucks a day are making the right turn from Eton to eastbound Maple.

The truck used for the demonstration was being driven by an experienced driver from Bolyard Lumber and measured 72' in total length. The driver made turns through the intersection from all directions at least twice.

The truck, whether making a left turn or a right turn from Maple onto Eton, was usually over the centerline on Eton, sometimes hit the curb of the proposed island, and ran over the current stop bar, but was able to miss the proposed stop bar.

B. RECESS

Mayor Nickita recessed the meeting at 6:15 p.m. with instructions that the meeting would reconvene at 6:30 p.m. at the Birmingham Municipal Building, 151 Martin, Birmingham, MI.

C. RECONVENE AT 6:30 P.M. AT MUNICIPAL BUILDING, 151 MARTIN, BIRMINGHAM MI

Mayor Mark Nickita called the meeting to order at 6:30 p.m.

Present, Mayor Nickita
 Commissioner Bordman
 Commissioner Boutros
 Commissioner DeWeese
 Mayor Pro Tem Harris
 Commissioner Hoff
 Commissioner Sherman

Absent, none

Administration: City Manager Valentine, City Attorney Currier, City Planner Ecker, Finance Director Gerber, Police Commander Grewe, City Engineer O'Meara, Birmingham Museum Director Pielack, City Clerk Mynsberge

08-216-17 RESOLUTION TO MEET IN CLOSED SESSION TO DISCUSS AN ATTORNEY/CLIENT PRIVILEGE COMMUNICATION IN ACCORDANCE WITH SECTION 8(H) OF THE OPEN MEETINGS ACT.

(A roll call vote is required, and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of continuing the meeting.)

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Hoff:
 To meet in closed session to discuss an attorney/client privileged communication in accordance with Section 8(H) of the Open Meetings Act.

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

Mayor Nickita recessed the meeting to closed session at 6:32 p.m. and announced no action would be taken following the closed session.

I. RECONVENE IN OPEN SESSION AT 7:30 P.M.

Mayor Nickita reconvened the meeting at 7:35 p.m.

II. PLEDGE OF ALLEGIANCE

Mayor Nickita led the Pledge of Allegiance.

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

Mayor Nickita announced:

- Mayor Pro Tem Harris' Birthday
- The last Summer Concert of the year is Wednesday, August 16th at 7:00 PM in Shain Park, featuring The Favorites, who will be performing music from the 50's.
- The Birmingham Cruise event will be held on Saturday, August 19th from 9:00 AM to 4:00 PM in downtown Birmingham.
- The Farmer's Market continues on Sundays from 9:00 AM to 2:00 PM in Parking Lot #6 on N. Old Woodward.
- County Commissioner Shelley Taub was in attendance.
Commissioner Taub distributed new County Directories, and announced the County has paid the license fees for GIS Online for all County municipalities.

Appointments:

08-217-17 APPOINTMENT TO THE MARTHA BALDWIN PARK BOARD

Dr. Andrew Linovitz was present and was interviewed by the Commission. He confirmed for Commissioner Hoff he is aware of the Board's duties and understands the Board may not need his technical skills. Dr. Linovitz explained he would like to become involved in the community.

MOTION: Motion by Mayor Pro Tem Harris:

To appoint Dr. Andrew Linovitz to the Martha Baldwin Park Board to serve the remainder of a four-year term to expire May 1, 2019.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

08-218-17 APPOINTMENTS TO THE ADVISORY PARKING COMMITTEE

Steven Kalczynski and Lisa Krueger were present and were interviewed by the Commission.

MOTION: Motion by Commissioner Boutros:

To appoint Steven Kalczynski as the representative of a downtown commercial large retail business to the Advisory Parking Committee to serve a three-year term expiring September 4, 2020.

MOTION: Motion by Commissioner Bordman:

To appoint Lisa Krueger as the downtown employee representative to the Advisory Parking Committee to serve a three-year term expiring September 4, 2020.

Vote on Steven Kalczynski

VOTE: Yeas, 7
Nays, 0
Absent, 0

Vote on Lisa Krueger

VOTE: Yeas, 7
Nays, 0
Absent, 0

08-219-17 APPOINTMENT TO THE TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY

Clinton Baller was present and was interviewed by the Commission. Mr. Baller confirmed for Commissioner Hoff that he has a business interest in the District, and stated he is co-director of a psycho-therapy group at 999 Haynes.

MOTION: Motion by Commissioner DeWeese:

To concur in the Mayor’s appointment of Clinton Baller to the Corridor Improvement Authority to serve the remainder of a four-year term to expire December 15, 2020.

VOTE: Yeas, 7
Nays, 0
Absent, 0

08-220-17 APPOINTMENTS TO THE DESIGN REVIEW BOARD

Lauren Tolles, Keith Deyer, and Joseph Mercurio were present and were interviewed by the Commission. Mr. Deyer explained, in response to questions from Commissioner Hoff, that past attendance issues were due to babysitting duties for his grandchildren and that he will be able to attend meetings moving forward.

City Manager Valentine clarified that in 2006 when the Historic District Design Review Commission was separated into two separate boards in order for the Historic District Commission to qualify as a Certified Local Government Program for grant funding purposes, the intent of the City Commission was that the same people would not serve on both. Historically the membership of the two boards has been the same, but it is not required.

MOTION: Motion by Commissioner Bordman:
To appoint Joe Mercurio as a regular member to the Design Review Board for a three-year term to expire September 25, 2020.

MOTION: Motion by Mayor Pro Tem Harris:
To appoint Keith Deyer as a regular member to the Design Review Board to serve a three-year term to expire September 25, 2020.

MOTION: Motion by Commissioner Boutros :
To appoint Lauren Tolles as a regular member to the Design Review Board to serve the remainder of a three-year term to expire September 25, 2018.

Vote on Mercurio
VOTE: Yeas, 7
Nays, 0
Absent, 0

Vote on Deyer
VOTE: Yeas, 7
Nays, 0
Absent, 0

Vote on Tolles
VOTE: Yeas, 7
Nays, 0
Absent, 0

08-221-17 APPOINTMENTS TO THE HISTORIC DISTRICT COMMISSION

Padraic Mullin was not in attendance.

Doug Burley and Keith Deyer were present and were interviewed by the Commission.

MOTION: Motion by Commissioner Hoff:
To appoint Doug Burley as a regular member to the Historic District Commission to serve a three-year term to expire September 25, 2020.

MOTION: Motion by Commissioner DeWeese:
To appoint Keith Deyer as a regular member to the Historic District Commission to serve a three-year term to expire September 25, 2020.

Vote on Burley
VOTE: Yeas, 7
Nays, 0
Absent, 0

Vote on Deyer
VOTE: Yeas, 7
Nays, 0
Absent, 0

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.

08-222-17 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Hoff: Item J, Allen House Siding and Trim Replacement
Item N, RFP-MMTB Transportation Consultant
- Commissioner DeWeese: Item A, City Commission Minutes of July 24, 2017

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Bordman:
To approve the Consent Agenda, with items A, J and N removed.

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

- A. Approval of City Commission minutes of July 24, 2017.
- B. Approval of warrant list, including Automated Clearing House payments, of July 26, 2017 in the amount of \$555,229.01.
- C. Approval of warrant list, including Automated Clearing House payments, of August 2, 2017 in the amount of \$6,327,225.92.
- D. Approval of warrant list, including Automated Clearing House payments, of August 9, 2017 in the amount of \$814,228.89.
- E. Resolution approving a request submitted by the Birmingham Bloomfield Chamber and Junior League of Birmingham requesting permission to hold the annual Halloween Parade and Pumpkin Patch on Sunday, October 29, 2017 in downtown Birmingham, 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.
- F. Resolution approving the audit contract with Plante & Moran to include fiscal years ending June 30, 2017 through June 30, 2019 with options for June 30, 2020 and 2021 in the amount of \$70,975 for the fiscal year ending June 30, 2017 and an annual increase not to exceed the Headlee inflation factor for years two and three and option years four and five, and further authorizing the Mayor and the City Clerk to sign the agreement on behalf of the City.
- G. Resolution appointing Commissioner Patty Bordman as the Birmingham City Commission's official voting delegate at the Michigan Municipal League Annual Meeting to be held in Holland, Michigan on September 13, 2017.
- H. Resolution approving the purchase of a new 2017 Ford Transit Connect cargo van from Gorno Ford through the State of Michigan extendable purchasing contract #071B1300005 in the amount of \$23,836.00 from account #101-371.000-971.0100.

- I. Resolution approving the purchase of one (1) Tink Model 520 Claw from Alta Equipment Company in the amount of \$11,395.00 from account 641-441.006-971.0100.
- K. Resolution accepting the resignation of Shelli Weisberg from the Design Review Board and the Historic District Commission, thanking her for her service, and directing the Clerk to begin the process of filling the vacancy.
- L. Resolution accepting the resignation of Sarah Evans, Student Representative, from the Public Arts Board, and directing the City Clerk to thank her for her service on behalf of the City of Birmingham and present her with a Certificate of Appreciation.
- M. Resolution waiving the formal competitive bid process and approving the purchase of (17) Armor Express RAZOR vests with ARA-SHOCK ICW plates in the amount of \$12,602.00 from CMP Distributors, Inc. Further, authorizing this budgeted expenditure from uniform allowance account number 101-301.000-743.0000.
- O. Resolution setting Monday, August 28, 2017 at 7:30 PM for a public hearing to consider the Final Site Plan and Special Land Use Permit for 375 S. Eton to allow a commercial use greater than 6,000 sq.ft. at 375 S. Eton.

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

**08-223-17 REPLACEMENT OF THE SIDING AND TRIM AT ALLEN HOUSE
(ITEM J)**

Fielding questions and addressing concerns of commissioners, Birmingham Museum Director Pielack responded:

- The Request for Proposals specified the repair and/or replacement of siding and trim had to be according to the State Historic Preservation Office (SHPO) guidelines for the treatment of historic properties.
- The City hired certified historical architect Jackie Hoist of H2A Architects to prepare the bidding documents, and the work involved a feasibility study, the development of specifications, bid documents, and bidder qualifications, as well as oversight of the installation up to final inspection.
- Two bids were received:

Grunwell-Cashero Co.	\$ 175,900.00
L.G.K. Building, Inc.	\$ 57,430.00
- Both bids were reviewed for compliance with the City's Request for Proposal (RFP) requirements, and each bidder was interviewed to request additional information and clarification of their proposals.
- The City and Ms. Hoist found that the low bidder met the requirements outlined in the RFP.
- Ms. Hoist confirmed with the low bidder that all the prescribed materials would be used.
- Ms. Hoist will be working with the contractor to approve all materials and will be making site visits also.
- The low bidder is a family-run business which has all trades in-house and is a non-union facility. The high bidder subcontracts out a number of the special trades and is union shop.
- Labor costs seem to account for the large disparity between bids.

Commissioner Hoff made a motion, seconded by Commissioner DeWeese to approve the agreement with L.G.K. Building, Inc. Following further discussion as outlined below, Commissioner Hoff withdrew the motion.

Jake Bolyard expressed concern with the large disparity between bids, and said he thought it would create problems. He noted that regardless of the size of the company, they still have many of the same expenses: overhead, worker's compensation insurance, and other insurance.

Mr. Bolyard suggested further investigation of the low bidder, such as whether the company's bills are being paid. He further suggested the project be rebid.

Responding to additional questions from commissioners, Birmingham Museum Director Pielack noted:

- Both bidders included the same materials, as specified in the RFP, in their bids.
- The selected contractor will have to post a performance bond.
- L.G.K. Building, Inc. is an established company which worked on a large historic law building in Detroit 20 years ago. Most of their work has been in custom home building since then.
- L.G.K. Building, Inc. meets all the requirements of the RFP.
- The Historic District Commission reviewed all the information and unanimously agreed the project should go forward.
- The small number of bids may be attributable to the time of year.
- L.G.K. Building, Inc. included all non-siding costs, such as paint and labor in a "miscellaneous" category rather than presenting them as separate line items.
- Research was not conducted on whether or not there are liens or evidence of non-payment of bills.

Birmingham Museum Director Pielack clarified for Mayor Pro Tem Harris that an RFP was issued prior to the current RFP, and the previous RFP considered using fiber-cement siding instead of cedar siding, which did not go over. The current high bidder, Grunwell-Cashero Co., bid \$96,000 on the previous RFP.

Discussion ensued about rebidding the project, with Commissioner Boutros and Mayor Nickita expressing interest in obtaining a third bid. Birmingham Museum Director Pielack reported the historical architect believes the current siding will make it through one more winter.

Mr. Bolyard reported the cost of cedar siding has gone up 40% in the last 90 days.

Commissioners then discussed further investigation into the low bidder before deciding whether or not to rebid the project.

Commissioner Sherman and Commissioner Hoff summed up the general consensus of the Commission to research L.G.K. Building, Inc. more thoroughly:

The staff is asked to do some due diligence on L.G.K. Building, Inc. because of the large disparity in bids between the two bidders, including:

- Check the company's Dun & Bradstreet Report;
- Find out what other projects the company has done;
- Check references for those projects;
- Research tax liens or other unpaid obligations;
- Check references from recent historic restorations and other recent, comparable projects done by L.G.K. Building, Inc.

The Commission took no action.

08-224-17 MULTI-MODAL TRANSPORTATION CONSULTING SERVICES REQUEST FOR PROPOSALS (ITEM N)

Commissioner Hoff asked if the City is looking for a firm with a multi-discipline approach with a licensed traffic engineer and an urban planning/urban design professional on staff, or does the

RFP require that two firms go together to bid on the our project. Mayor Nickita explained both approaches are common.

City Manager Valentine confirmed for Commissioner Hoff the chosen firm will not be a full-time consultant and will only perform work when requested by the City.

Commissioner Hoff pointed out the Chair of the Multi-Modal Transportation Board (MMTB) works with a firm that may submit a bid and will speak with the City Attorney about a possible conflict of interest.

Mayor Nickita prefaced his request for revisions by explaining:

This is a critical piece of our infrastructure development.

It's very important that the consultant brings the expertise that has been missing, especially in our newer way of looking at infrastructure which is "complete streets" and multi-modal activity.

Mayor Nickita requested the following revisions to the RFP:

- Under Consultant Skills and Experience, Page 4 of the RFP, change the introductory paragraph to read, "The successful multimodal transportation consultant submitting a proposal under this RFP must be able to demonstrate professional knowledge and experience in the following areas of expertise to assist the City of Birmingham, *in order of importance*".
- To set the stage for proper design, recognition of the multi-modal aspects, and then the details of traffic engineering, and to set the expectation that the City designs its streets for people and accommodation of cars instead of designing its streets for cars and accommodating pedestrians, prioritize the items in order of importance:
 - #1. Context-Sensitive Planning and Urban Design.
 - #2. Multi-Modal Mobility Planning
 - #3. Traffic Engineering
- Under Context-Sensitive Planning and Urban Design, change the second sentence to, "The consultant's team must include an urban design professional who has the skill set to conceptualize, design, and present multiple approaches, strategies and solutions for critical infrastructure projects defined by the City Manager."

Mayor Nickita explained most urban designers understand urban planning, but most urban planners don't necessarily know how to do urban design. The specification of the skill set will result in presentations to the MMTB that explain exactly what the options are and enable the MMTB to make the best decision, with staff. The options, when brought to the Commission, will contain a lot more specifics, so that the Commission does not have to go on-site see it in place.

Commissioner Hoff felt the language in the proposed RFP says the same thing Mayor Nickita is saying, just not as specifically.

Mayor Nickita countered that any consultant will say they do context-sensitive planning and design, but not everyone will say they are able to "conceptualize, design, and present multiple approaches, strategies and solutions for critical infrastructure projects".

Commissioner Bordman expressed support for Mayor Nickita's specific language, based on his experience and insight. She was in favor of anything that will reduce the amount of personal

designing the Commission is having to do on field trips, and will instead supply the Commission with options.

Commissioner DeWeese supported Mayor Nickita's changes, noting he has seen in the literature where people talk about context-sensitive designs, but their assumption is context for cars, not context-sensitive for pedestrians. He commented the City needs someone who can look at balance and tradeoffs, which is the intention of the Mayor's suggested changes.

The Commission was in general consensus to have the RFP amended with the suggested changes and brought back for consideration on the next agenda.

The Commission took no action.

08-225-17 CITY COMMISSION MINUTES OF JULY 24, 2017 (ITEM A)

Commissioner DeWeese asked that on Page 13, midway through the second paragraph, after the sentence, "Commissioner DeWeese requested further clarification that modification to the standards must be approved by a majority of the board members appointed and serving, rather than just by a majority of those board members in attendance at the meeting", the City Attorney's answer be added. The answer was, "City Attorney Currier confirmed that approval must be by a majority of members appointed and serving."

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Harris:
To approve the City Commission meeting minutes of July 24, 2017 as amended.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

V. UNFINISHED BUSINESS

08-226-17 DTE EASEMENT AND TREE REPLACEMENT

City Manager Valentine reported:

- On July 24, 2017, a site visit was conducted by the City Commission to evaluate the proposed easement location and tree removals necessitated by the relocation of the DTE power line to service the development at 856 N. Old Woodward.
- Further discussion on this easement occurred during the regular City Commission meeting on this same date during which concerns arose from the developer's contribution for tree removal and replacement in the easement.
- Given these concerns, no action was taken and the item was to be brought back with a plan at the earliest opportunity.
- Subsequent to that meeting, additional discussions occurred with the developer to bring their contribution in line with the costs related to the impact and use of the public property.
- As a result, the developer has agreed to contribute \$50,000 towards the city's tree fund.

Commissioner Bordman expressed pleasure that the property owner has stepped up and provided something of great value for the City, which are the funds to plant many trees, not just on that property but around the City. She supported the proposed motion and appreciated the work that both sides did to arrive at a very good resolution.

Commissioner DeWeese felt the proposed solution is fair to all parties, noting the City receives a replacement on the total caliper of trees removed and has some flexibility.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Bordman:
To authorize the Mayor to sign DTE Electric Company Overhead Easement No. 47698093-47698095, located on Lot 91 of Assessor's Plat #29, located in the northwest ¼ corner of Section 25, City of Birmingham; and
To authorize the Mayor to sign the Tree Replacement Agreement with FLS Properties #5, LLC on behalf of the City of Birmingham.

City Manager Valentine confirmed for Mayor Pro Tem Harris that \$50,000 is commensurate with the potential of more than 14 trees being removed, and is representative of all costs, including labor. City Manager Valentine noted approximately 30 trees will be planted based on the caliper-to-caliper replacement agreement, and also noted there is additional investment for the easement itself.

Responding to a question from Commissioner Hoff, City Manager Valentine explained:

- Communication was received from the property owner with a question relative to the property description, specifically the location of the vacated drive.
- Oakland County provided a map showing the vacated drive outlined in red.

Drew Deitling, resident directly next door to the subject property, asked questions relative to the tree replacement which were answered by City Manager Valentine:

- Replacement trees are being installed by the City.
- The City has set the minimum caliper at 4", which would be the largest that could be maneuvered into place without using large-scale equipment.
- Oaks and maples are the species discussed, and, as trees that are going to grow, the minimum caliper will be 4" when the trees go in the ground.
- Tree replacement will be focused in the easement area, and some may be planted on the adjoining property owned by the City.
- The City has committed to involving the neighbors in the process of locating the replacement trees.

Mr. Deitling stated:

- The easement agreement gives DTE the authority to remove any tree on the subject property that they believe could interfere with the maintenance and operation of their equipment. He predicted that over time DTE will eventually remove every mature tree from the hillside.
- At the proposed contribution of \$50,000 for a 1160 square foot piece of property, the City has effectively established a value for City green-space of \$43.10 per square foot.
- He requests the City reject the proposed easement.

City Manager Valentine noted each case is evaluated individually on its own merits. In this particular case, the subject area is a watershed.

Sam Ball said:

- DTE should run the lines underground.
- If DTE drops the wires, and they run all the way around, it's simple geometry – they're going to need some support wires. If you run the direct high-voltage line, all the poles

are tied into together, they're straight. As soon as you deviate from that, the poles are bent, and they're going to lay down.

- DTE is going to need an easement from the primary to the secondary on the other side of the river, and the City is going to need this easement cleared out.

Mayor Nickita commented:

- It's important to note this piece of land is not a park, it's a City-owned property within the water shed, and it has a limited amount of use.
- The City will be mindful of the trees that are removed and what DTE will do, and will be working with the residents to replace the trees.
- The proposal has been studied extensively, and the result will be receiving funds to replace the trees that are removed, to add many more trees, and to clean up the site.
- The new easement is valuable to the City because the electricity that connects the center of the city to the north is susceptible to failure in storms, and according to what DTE has said this easement will diminish the likelihood the north side of the City losing power.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

**08-227-17 MAPLE RD. & S. ETON RD. INTERSECTION MULTI-MODAL
TRANSPORTATION BOARD IMPROVEMENTS**

City Engineer O'Meara reported:

- Tonight we met out at the intersection of S. Eton, to discuss the potential approval of an island as well as other improvements to the intersection
- Julie Kroll from Fleis & Vandenbrink is present.
- A professional count was taken of both truck and pedestrian traffic making the turn in and out of Eton. Ten of the largest truck category, the WB-62 category, were counted. That is the size of the truck used tonight at the on-site demonstration.
- The MMTB thought some turning movements could be disqualified based on some of the reports heard during the public meeting, but in practice trucks are turning in and out in all directions possible.
- Staff is now suggesting a mountable island that is entirely concrete in the area that is not typically driven or walked on, which would slow traffic and make pedestrians feel safer traversing through the area.
- The island is not intended to be a refuge. The traffic signals will be set so that pedestrians should be able to walk through the entire intersection without feeling like they have to stop in the middle.

In response to comments from Mayor Nickita, Ms. Kroll stated Fleis & Vandenbrink was tasked with a concept to make the intersection safer as well as more pedestrian friendly, and to determine if trucks can navigate. Before the island can be designed as to materials, type of curb, etc., the Commission has to determine whether or not they want an island, and, if so, what size.

Commissioners were split on the question installing the island, with Commissioner DeWeese in favor of the smaller island to slow traffic and Commission Hoff feeling installing a mountable curb on a pedestrian island is in conflict. She suggested waiting and observing what happens

with traffic signal adjustments. Commissioner Boutros suggested moving the island 5' east. Mayor Nickita was strongly in favor of an island.

Generally the Commissioners agreed the right turn lane on Eton, which is supposed to be one lane, is being used by cars as two turn lanes, and the final plan needs to discourage cars from using it as two turn lanes while still allowing trucks room to turn.

Commissioner Hoff introduced discussion of waiting on the island but moving forward with widening the sidewalk and installing the ADA ramp as part of the 2017 Concrete Sidewalk Program, although she expressed concern with encouraging people to walk on that side of Eton and cross Eton at the subject crosswalk. Commissioner Bordman agreed, stating there are too many options regarding the island and she is not comfortable voting on it. Commissioner DeWeese agreed there was no disadvantage to expanding the sidewalk now, noting it would give pedestrians more space and narrow the road, which causes cars to be more careful.

Mayor Nickita noted it is a matter of scheduling. The Commission either votes to move forward now with a plan that is not fully designed because of an anticipated increase in the number of pedestrians when Whole Foods opens, on hold off until mid-summer 2018. He pointed out Whole Foods is opening in late October, so there will be more pedestrian traffic without any safety installations.

Commissioner Sherman observed pedestrians choose to cross further north at the top of the hill where Eton is narrower and suggested eliminating the subject crosswalk and moving it to where pedestrians are crossing. He noted the experienced truck driver was crossing the yellow line when turning onto Eton. He noted two cars are making right turns next to each other in a lane meant for one car. He said he didn't have an opinion on the island because there are too many variables. Commissioner Sherman said the area being reviewed should be expanded beyond just the intersection.

Mayor Nickita commented:

- This is about creating a safe environment.
- People are going to cross where they want to cross and where it makes sense to cross.
- People do not want to walk more than they need to, and they definitely do not want to cross two streets when they can cross one, even if the one is not very good.
- The subject crosswalk needs to be made safe for pedestrians.
- The amount of time pedestrians are in an unsafe environment needs to be diminished, and the way to do that is to narrow the street edge to edge, add something in the middle which diminishes their exposure, and adding as much crosswalk and signage as needed.
- There are too many unanswered questions to make a decision.
- Safety is priority number one, congestion is another concern, and access for trucks is another concern, in that order.
- The only thing the Commission needs to consider right now is whether to widen the sidewalk on the west side, or take the whole project into next year for further investigation.

Commissioner DeWeese indicated in urban planning and walkability literature, having narrow sidewalks next to busy streets is not conducive to walkability. He felt widening the sidewalk will make it friendlier. He also commented putting yellow on the curbs to make them stand out, particularly from the west to the east and turning, to slow traffic. He saw no downside to

extending the sidewalk because it does not seem to make a difference for what the future design will be for the crosswalk.

Mayor Pro Tem Harris supported the extension of the west side sidewalk for the reasons that have been stated. He asked Mayor Nickita which of the four items recommended by staff for the S. Eton Rd. – Maple Rd. to Yosemite Blvd. section he is advocating.

Mayor Nickita explained if the west side curb is widened now it might have to be redone to accommodate the final crosswalk plan.

City Engineer O'Meara remarked it would be helpful to have the whole design at once because if the crosswalk is widened to the new 12' crosswalk standard, the other corner will have to be bigger, and it would be nice to coordinate the crosswalk markings all at once. If they change next year they are going to get scratched up, and they are not going to look as good if they are moved and put back a different way.

Mayor Nickita pointed out the importance of safety. The design of a street changes the way people use it, particularly the actions of the drivers. If the street is narrowed, an island is added, a crosswalk is added with a continental pattern of 12" wide, 2" strips, with 2" gaps, that street would be significantly safer. The question is do we try it one more time and bring it back before the end of the season, or do we take more time to look it over and address it for next year.

Commissioner DeWeese indicated the issue should go back to the MMTB. The Commission should have better options, context, awareness of the whole situation and the trade-offs. Doing the curb on the west side is not going to change anything very much right now. He noted he would make the intersection work for larger trucks, and he fully supported the island, because even if it does not serve much point in terms of pedestrians it will serve a point in slowing down traffic.

Commissioner Hoff was in favor of waiting until next year, as was Commissioner Bordman, because there are currently too many variables.

Mayor Nickita stated:

- Truck access from the westbound to Eton worked well conceptually with the island, and there is enough room for it. I do not anticipate that truck making that left from westbound Maple. I think we should very seriously consider eliminating truck-turning from that. We allow trucks to make that left already, we allow trucks to make that turn under the bridge, we know there are a number of trucks that will not go that way anyway, we recognize that routes are generally from the west, from Adams or Woodward, and so with that being the case that obtuse angle allows the trucks to go, and there is a reasonable amount of room if we have something like this island.
- The gap that allows cars to double up and turn right needs to be addressed.
- We have to recognize the fact that trucks are going to be limited in a day so typically there will not be trucks going there when pedestrians are walking there, so for the most part the design needs to be for the majority of the period when it is used with an accommodation for when trucks are present. The intersection has to work for everyone else all the time.
- Staff and the design team need to give us some clarity on those things, so that when we or the MMTB see it again we can actually review those things more specifically and

hopefully get us to where we need to go, so that we are looking at an approval and not designing at the table.

Mayor Pro Tem Harris agreed with everything that has been said, and gave further direction to staff to collect data on multiple days with different lengths and frequency of trucks, the feasibility of having the island, the likelihood of vehicles stopping, and what happens if they do not.

Commissioner Bordman asked that data be collected after Whole Foods opens.

The Commission took no action.

VI. NEW BUSINESS

08-228-17 PUBLIC HEARING FOR 211 S. OLD WOODWARD – BIRMINGHAM THEATER SPECIAL LAND USE PERMIT AND FINAL SITE PLAN

Commissioner Sherman recused himself based on a conversation with the City Attorney, and left the Commission room at 9:48 p.m.

Mayor Nickita opened the public hearing at 9:47 p.m.

City Planner Ecker reported:

- The subject site, Birmingham Theater, is located at 211 S. Old Woodward, on the east side of S. Old Woodward at Merrill.
- The parcel is zoned B-4, Business-Residential and D-4 in the Downtown Overlay District.
- The applicant, Birmingham Teatro, LLC, is applying for a Special Land Use Permit (SLUP) to operate with a Class C liquor license under the new ordinance allowing a movie theater to operate with a liquor license.
- Birmingham Teatro is owned equally by Daniel Shaw and Nicholas Lekas, who in addition to operating the theater, are also part owners of Birmingham Theater, LLC, which is the sub-landlord for 211 S. Old Woodward.
- Article 2, section 2.37, B4 (Business-Residential) District requires that any establishment with alcoholic beverage sales (on-premise consumption) shall obtain a Special Land Use Permit.
- On July 12, 2017, the Planning Board conducted a public hearing and voted unanimously to recommend approval to the City Commission of the Special Land Use Permit ("SLUP") and Final Site Plan for 211 S. Old Woodward, Birmingham Theater, with no conditions.
- No exterior changes to the Birmingham Theater building are proposed.

Answering questions from commissioners, City Planner Ecker explained:

- Alcohol will be sold only on the upper level. Patrons may buy alcohol and take it down to the lower level.
- Birmingham Teatro is owned by Daniel Shaw and Nicholas Liekas, both of whom are also part owners of Birmingham Theater, the EA Fuller Oak Mgmt., and Fuller Oak Mgmt. One or more of the principals who are involved in Birmingham Teatro are also involved in the other organizations, but the SLUP resolution and the contract is with Birmingham Teatro LLC. So if the two owners in Birmingham Teatro LLC change or if they add a new owner, then they would have to come back.

- Changes in the owners of the other organizations would not affect the SLUP with Birmingham Teatro.
- Birmingham Teatro does not own the building.

Liquor License Attorney Kelly Allen explained:

- Birmingham Emagine Theater has a Birmingham full quota Class C license. Birmingham Teatro is requesting a transferrable Oakland County Class C license by virtue of a Birmingham ordinance allowing it to be used for a theater.
- The last service of alcohol will always be one hour before the last movie ends and never after 1:00 a.m.
- Patrons are not allowed to remove liquor from the establishment.

Janet Lekas on behalf of Birmingham Teatro clarified for Commissioner Hoff that the theater is trying to attract more independent movies which are typically shown on the second level and the bar will be a good complement.

Mayor Nickita closed the public hearing at 10:01 p.m.

MOTION: Motion by Mayor Pro Tem Harris, seconded by Commissioner DeWeese: To approve the Final Site Plan and Special Land Use Permit for 211 S. Old Woodward to allow for the addition of a theater liquor license for the Birmingham Teatro d/b/a/ Birmingham Theater. *Formal resolution appended to these minutes as Attachment A.*

VOTE: Yeas, 6
 Nays, 0
 Absent, 0
 * Recused, ~~Abstain~~, 1 (Sherman)

(* As amended on August 28, 2017.)

08-229-17 PUBLIC HEARING TO CONSIDER APPROVAL OF THE BROWNFIELD PLAN AND REIMBURSEMENT AGREEMENT FOR 35975 WOODWARD (VACANT SITE, FORMER GAS STATION)

Commissioner Sherman returned to the Commission room at 10:02 p.m.

Mayor Nickita opened the public hearing at 10:02 p.m.

City Planner Ecker reported:

- The State Brownfield Redevelopment Statute (Public Act 381 of 1996, as amended) allows the City to approve a Brownfield Plan in order to help finance the cleanup of a contaminated site through the use of Tax Increment Financing (TIF).
- In March 2017, the owner of 35975 Woodward submitted a draft Brownfield Plan (“the Plan”) to the City in anticipation of the construction of a new two story commercial development.
- The Brownfield Plan outlines numerous environmental concerns on the site, including historical operations and contamination of the adjacent sites, and contamination on the subject site. Extensive soil and groundwater contamination was found, including the presence of various volatile organic compounds (VOCs), polyaromatic hydrocarbons (PAHs), and metals at concentrations exceeding Part 201 Generic Residential Criteria.

- The contamination of the soil and groundwater has been demonstrated to be pervasive across the entire site, as shallow as 0.5 feet below ground surface and as deep as 13 feet below ground surface.
- On May 9, 2017, AKT Peerless completed their review and recommended approval of the Plan. The applicant is now requesting approval of the Brownfield Plan and the future reimbursement of \$826,210 in environmental costs in order to clean up the site to meet the Michigan Department of Environmental Quality standards.
- On June 27, 2017, the Brownfield Redevelopment Authority ("BRA") met and reviewed the applicant's Brownfield Plan and the associated Reimbursement Agreement. After much discussion regarding the history of contamination, previous property owners, and potential liable parties, the BRA postponed the matter and requested that the applicant reach out to BP (previous owner) and determine if they are willing to assist with the vapor intrusion and soil removal costs.
- On July 12, 2017, the BRA again met to discuss the proposed Brownfield Plan and associated Reimbursement Agreement for 35975 Woodward.
- The applicant advised that they had contacted BP, and had a letter from them indicating that they were not liable for assisting with any environmental cleanup costs. The BRA questioned BP's potential liability, but after much discussion voted to approve a maximum of \$826,210 in environmental cleanup costs, to be reimbursed over a maximum of 10 years.
- Further, the agreement states that if relevant State of Michigan agencies do not approve the School Taxes component of the Brownfield Plan (estimated to be \$247,243), then the City will not reimburse the developer for such amounts from the local Taxes component. In this case, reimbursable eligible costs will not exceed \$580,570, and reimbursement from Local Taxes will not exceed \$333,327.

Beth Gotthelf, Chair of BRA, provided clarification on reimbursement amounts:

- The petitioner originally asked for \$826,000, but due to discussions the total amount was reduced to \$580,000.
- There are two portions: the state portion, and the local portion, part of that being the County. The local portion is \$333,000 and has to be approved by the City Commission.
- The MDEQ has to approve the state portion.
- If the state does not approve their portion, the City will not automatically approve the amount. If the petitioner wants that, they will have to ask for an amendment to the agreement, present it to the BRA, and then seek approval from the Commission.

Troy Helmick, SME, further clarified Oakland County's portion of the \$333,000 would be approximately \$100,000.

Ms. Gotthelf clarified for Mayor Pro Tem Harris the requested reimbursement amount is \$580,000, over ten years.

Mayor Pro Tem Harris asked if the previous owners were to pay for whatever environmental violations they incurred, would the expense be incorporated into this agreement. Ms. Gotthelf explained the cost that a prior liable party would have incurred, under their obligations to cap the site, were originally included in the petitioner's request for reimbursement. However we cannot ask someone to clean up to standards more stringent than the level the property is currently zoned for. So that is why the number came down from \$826,000 to \$580,000.

Commissioner DeWeese asked why a type II landfill is appropriate. Ms. Gotthelf explained the fill is considered domestic waste and a type II landfill has to be lined and have a leachate collection system.

Mayor Nickita closed the public hearing at 10:17 p.m.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Boutros:
To adopt the resolution approving the Brownfield Plan and Reimbursement Agreement for 35975 Woodward. *Formal resolution appended to these minutes as Attachment B.*

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

08-230-17 REPEAL CHAPTER 122 – VEHICLES FOR HIRE, ARTICLE IV – TAXICABS, DIVISIONS 1, 2, 3, 4 AND 5, AND SECTIONS AS LISTED FROM CITY OF BIRMINGHAM CODE OF ORDINANCES

Commander Grewe reported:

- The State of Michigan Legislature passed a new law removing all local control over taxi carriers. Public Act 345 of 2016 prohibits a local unit of government from imposing a tax or fee upon, or requiring a license for, a limousine carrier, taxicab carrier or Transportation Network Company (TNC) such as Uber or Lyft, a limousine driver, taxicab driver or TNC driver, or a limousine, taxicab or personal vehicle, if the tax, fee or license is related to the provision of limousine or taxicab service or TNC prearranged rides.
- Under Public Act 346 of 2016, a local unit of government may issue a civil infraction to a limousine, taxicab or TNC driver for a violation of sections of the Act regarding signage, a TNC driver carrying proof of insurance, a TNC driver accepting a request for transportation outside of a TNC's digital network and nondiscrimination.
- Regulation of all taxicabs, limousine and TNC carriers will now be handled by the State of Michigan Department of Licensing and Regulatory Affairs (LARA). Under this new framework, each entity is required to register with LARA, complete a vehicle safety inspection if the vehicle is five years old or older, post proper signage on the vehicle and ensure that each driver has passed a criminal background check and obtained proper insurance. Additionally, local officers will know what vehicles are state approved because the law requires that all vehicles subject to this act display a consistent and distinctive signage or emblem that is approved by the department at all times that is readable from at least 50 feet, reflective and sufficiently identify the limousine carrier, taxicab carrier or transportation network company with which the vehicle is affiliated.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Hoff:
To repeal Chapter 122–Vehicles for Hire, Article IV–Taxicabs, Divisions 1, 2, 3, 4 and 5, All Sections: 121, 122, 131, 132, 136, 137, 138, 139, 140, 147, 148, 149, 150, 151, 152, 161, 162, 163, 164, 165, 166, 167, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 196, 197, 198, 199, 200, 201, 211, 212, 213, 214, 215, 216 and 217 from the City of Birmingham Code of Ordinances.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

08-231-17 AMENDMENT TO THE 2016-2017 CAPITAL PROJECTS BUDGET

Finance Director Gerber reported:

- In October 2016 the City refinanced three of its bonds (2008 Park Bonds, 2006 Park Refunding Bonds, and the 2004 Sewer Refunding Bonds) with the 2016 Refunding Bond issue, as approved by the City Commission on July 25, 2016.
- Generally accepted accounting principles (GAAP) require that the proceeds from the bond sale be recorded as revenue and the defeasement of the old bonds as expenditures for the portion of the bond sale related to the two park bonds. This transaction was not considered when the 4th quarter budget amendment was presented to the City Commission on June 12, 2017. As a result, the Capital Projects Fund will be over budget.
- This issue was discussed with City auditors, Plante & Moran. They stated most communities with large unexpected budget variances will do an amendment after year end to address the situation.
- While the State does not require a budget for the Capital Projects Fund, it is prudent and good practice for the City Commission to address the budget overage with a budget amendment reaffirming the action taken on July 25, 2016.
- The transactions related to the two park bond issues are as follows:

	<u>2008 Park Bonds</u>	<u>2006 Park Ref. Bonds</u>	Total
Bond Proceeds	\$ 2,791,885	\$ 8,553,720	\$ 11,345,605
 Bond Disbursements:			
Bond Costs	\$ 27,727	\$ 81,613	\$ 109,340
Bond Defeasance	\$ 2,764,158	\$ 8,472,107	\$11,236,265
Total	<u>\$ 2,791.885</u>	<u>\$ 8,553.720</u>	<u>\$ 11,315,605</u>

Commissioner DeWeese asked for further clarification, so Finance Director Gerber explained:

- There are three bond issues the City refinanced, two of which were park-related and one was sewer-related.
- Governmental Accounting Standards require that the debt related to the park bonds, which are recorded in the governmental accounting funds, has to show the revenue coming in and an expenditure going out. The City has to book the revenues as the bond money received, and expenditure of the debt retirement in the old bonds.
- The sewer bonds are not handled the same way because it is an enterprise fund, and accounting for that fund is different from the capital projects fund.

Finance Director Gerber confirmed for Commissioner DeWeese the process is moving numbers on the books to meet transparency standards, but it doesn't affect any of the City's positions otherwise.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Bordman:
To approve the appropriation and budget amendment to the 2016-2017 Capital Project's Fund budget as follows:

Capital Project Fund		
Revenues:		
Other Revenue – Bond Proceeds	401-751.000-698.0001	\$11,345,605

Expenditures:		
Capital Projects Fund – Bond Costs	401-751.000-824.0300	\$ 109,340
Capital Projects Fund –		
Debt Retirement	401-751.000-994.0000	\$11,236,265
Total Expenditures		\$11,345,605

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

**08-232-17 WOODWARD AVE. RESURFACING QUARTON RD. TO 14 MILE RD.
 NOISE ORDINANCE WAIVER REQUEST**

City Engineer O'Meara reported:

- The Michigan Department of Transportation (MDOT) is planning a resurfacing project for Woodward Ave. to be completed in the spring and summer of 2018.
- The plan for the work that will begin in the fall of this year is as follows:
 - The work will begin after Labor Day, and extend to approximately the end of October.
 - MDOT estimates that a total of six weekends of work will be required.
 - The Contractor will begin removals on Friday evenings at 9 PM, with the goal of repairing two lanes at a time. All concrete patching will be complete about the middle of the following Saturday.
 - While work is underway (on Friday evenings/Saturday mornings) three lanes will be closed in one direction. (Two lanes would be repaired, and the third lane is a safety buffer while workers are in the roadway.) Once the concrete is placed, two lanes will remain closed for the remainder of the weekend until 6 AM Monday morning.
 - All four lanes in each direction will be opened back to full usage during the work week, with the cycle repeating again the following Friday evening.
- The plan for the work that will be done in the spring and summer of 2018 is as follows:
 - Asphalt milling, joint repairs, and resurfacing will be completed two lanes at a time, starting at 9 PM any night of the week, and completed by 6 AM the following morning (work hours will be extended to 9 AM on Saturday mornings, and 10 AM on Sunday mornings). For the safety of the workers, although two lanes will be getting repaved, three lanes in one direction will be closed, leaving just one lane open for traffic through the night.
 - No more than one lane (either the far left or far right lane) will be allowed to stay closed into the daytime. Lane closures must be allowed due to concrete curb replacements at handicap ramps crossing Woodward Ave., as the concrete will take about 3 days to cure.
 - The contract stipulates that a maximum of one out of the eight lanes can be closed during daytime hours.
 - The heavy duty asphalt milling and resurfacing operation, which would be the main body of night time work to complete, would be compressed into a two to three week period within the longer contract time frame, which is expected to last between April and August, 2018.
- Section 50-74 of the Birmingham City Code prohibits construction work outside of the normal working hours of 7 AM to 7 PM, six days a week. Due to the high impact the planned lane closures will have, MDOT has written the contracts with the assumption that the City Commission will approve the request to waive the local noise ordinance, allowing this work to be completed when traffic demands are lightest, and allowing the

road to remain open and available to the public to the highest extent possible during the day, particularly weekdays.

Commissioner Hoff asked how the MDOT and Old Woodward reconstruction projects will overlap. City Engineer O'Meara indicated the two projects will be done at the same time, with Old Woodward beginning in March 2018 and the MDOT project beginning in April 2018, with both projects slated to be completed by August 2018 before the Dream Cruise.

City Engineer O'Meara commented the fall 2017 work is the most disruptive to peak hour traffic, so the worst lane closures will be this fall as far as daytime traffic goes.

Steve Minton, MDOT, explained the intent for this fall is for saw cutting to be done during the night during the week, and concrete work to be done during the weekends.

Mr. Minton confirmed for Commissioner Hoff that saw cutting is noisy by nature, noting multiple 4' x 12' sections of pavement will be cut out.

Commissioner DeWeese pointed out, and Mr. Minton confirmed, MDOT will be doing a section at a time and moving along, so the disruption for residents will be for a week or two, not constant throughout the project. Mr. Minton further explained the paving work in 2018 will be done almost exclusively at night and is also a moving operation. Milling is the noisy part of that project, but will have a short term impact in terms of noise in front of any particular residence.

MOTION: Motion by Mayor Pro Tem Harris, seconded by Commissioner DeWeese:
To grant a waiver of Section 50-74(b) of the Birmingham City Code to the Michigan Dept. of Transportation pertaining to the repair and resurfacing of Woodward Ave. (M-1) from September, 2017 to August, 2018 so that MDOT may allow its contractors to operate under lane closures at those times of day that traffic demands are relatively light.

Answering a question from Mayor Nickita, Mr. Minton reported the signal work at the Oak St. crosswalk and the realignment of the pedestrian access on Oakland Ave. will be done as part of the 2018 project. He noted the City received a TAP grant on which MDOT will be partnering to implement the changes.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

08-233-17 RESOLUTION TO MEET IN CLOSED SESSION TO DISCUSS AN ATTORNEY/CLIENT PRIVILEGE COMMUNICATION IN ACCORDANCE WITH SECTION 8(H) OF THE OPEN MEETINGS ACT.

(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese:

To meet in closed session to discuss an attorney/client privileged communication in accordance with Section 8(H) of the Open Meetings Act.

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

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

None.

X. REPORTS

08-234-17 COMMISSIONER REPORTS

The Commission will appoint members to Board of Zoning Appeals on Monday, September 11, 2017 at 7:30 p.m.

08-235-17 CITY STAFF REPORTS

The Commission received the Perpetual Care Fund Annual Investment Report, submitted by Finance Director Gerber.

The Commission received the High-Rise Fire Ratings report, submitted by Building Official Johnson. City Manager Valentine summarized the report at the request of Commissioner DeWeese:

- Recent fires in high-rise buildings have generated media attention about fire safety requirements within building codes.
- The buildings in London and Honolulu did not have fire sprinkler systems, and the lack of passive and active fire protection systems contributed to the loss at both buildings.
- Passive fire protection involves using noncombustible materials to separate areas in high-rise buildings to limit how far a fire can spread.
- "Active" fire protection includes fire sprinkler systems, smoke alarms, and fire alarm pull stations used to extinguish or reduce a fire and to warn building occupants to evacuate if a fire occurs.
- The building codes in Birmingham have required passive and active fire protection for many decades to limit losses in the event of fire.
- High-rise buildings recently constructed in Birmingham comply with the latest requirements, and the existing buildings in town all have noncombustible exterior walls, at least two remote emergency exit stairways separated from the remainder of

the building and have fire sprinkler and alarm systems that met the code requirements at the time they were constructed.

XI. ADJOURN

Mayor Nickita adjourned the meeting into closed session at 10:36 p.m. and reconvened the regular meeting at 11:43 p.m.

The regular meeting was adjourned at 11:43 p.m.

J. Cherilynn Mynsberge, City Clerk

**BIRMINGHAM TEATRO, LLC
DBA BIRMINGHAM 8 THEATER
211 S. OLD WOODWARD
SPECIAL LAND USE PERMIT 2017**

WHEREAS, Birmingham Teatro, LLC filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to serve alcoholic liquors at an existing theater with the City;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the east side of S. Old Woodward at Merrill Street;

WHEREAS, The land is zoned B4 (Business-Residential), which permits theaters serving alcoholic liquors 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 Planning Board on July 12, 2017 reviewed the application for Final Site Plan Review and a Special Land Use Permit and recommended approval with no conditions;

WHEREAS, The Birmingham City Commission has reviewed Birmingham Teatro, LLC'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 Birmingham Teatro, LLC's application for a Special Land Use Permit authorizing the service of alcoholic liquors at the existing theater at 211 S. Old Woodward in accordance with Chapter 10, Alcoholic Liquors, 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. Birmingham Teatro, LLC shall abide by all provisions of the Birmingham City Code;
2. The Special Land Use Permit may be cancelled by the City Commission upon finding that the continued use is not in the public interest;
3. Birmingham Teatro, LLC shall enter into a contract with the City outlining the details of the proposed service of alcoholic liquors at the existing theater;
4. Birmingham Teatro, LLC shall have a duty of continuing compliance with regards to off-street parking as required in the Zoning Ordinance;
5. Birmingham Teatro, LLC agrees to resolve any future parking issues that

may arise, including but not limited to parking overflow and encroachment into residential areas or public parking facilities, to the satisfaction of the City or the Special Land Use Permit by be cancelled by the City Commission; and

6. Birmingham Teatro, LLC is required to have any modifications to the site plan, floor plan or operation of the theater approved through a Special Land Use Permit Amendment as required in the Zoning Ordinance.

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, Birmingham Teatro, LLC 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 Birmingham Teatro, LLC to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on August 14, 2017.

J. Cherilynn Mynsberge, City Clerk

CITY OF BIRMINGHAM

**RESOLUTION APPROVING A BROWNFIELD PLAN
FOR 35975 WOODWARD**

Moved by Commission Member DeWeese; seconded by Commission Member Boutros.

WHEREAS, the Birmingham Brownfield Redevelopment Authority (the "Authority"), pursuant to 1996 PA 381, as amended (the "Act"), prepared and recommended for approval by this Commission a brownfield plan ("the Plan") for property located at 35975 Woodward, Birmingham, Michigan; and,

WHEREAS, the City of Birmingham, at least ten days before the meeting of this Commission at which this resolution is considered, provided notice of a hearing to all taxing jurisdictions which are affected by the Plan (the "Taxing Jurisdictions") and fully informed the Taxing Jurisdictions about the fiscal and economic implications of the Plan; and,

WHEREAS, the City of Birmingham, at least ten days before the meeting of this Commission at which this resolution is considered, provided notice of the hearing to the Department of Environmental Quality and the Michigan Strategic Fund (or its designee); and,

WHEREAS, this Commission held a public hearing on the Plan at which officials from the Taxing Jurisdictions had an opportunity to be heard in regard to the adoption of the brownfield plan, interested persons had an opportunity to be heard, any written communications with reference to the Plan were received and considered, and a record of the public hearing, including all data presented at the hearing, was made and preserved.

NOW, THEREFORE, BE IT RESOLVED THAT

1. The Plan constitutes a public purpose.
2. The Plan meets all of the requirements for a brownfield plan set forth in Section 13 of the Act.
3. The proposed method of financing the costs of the eligible activities, as described in the Plan, is feasible and the Authority has the ability to arrange the financing.
4. The costs of the eligible activities proposed in the Plan are reasonable and necessary to carry out the purposes of the Act.
5. The amount of captured taxable value estimated to result from the adoption of the Plan is reasonable.
6. The Plan is approved.
7. The reimbursement agreement pertaining to the Plan is approved.

AYES: Commissioners Bordman, Boutros, DeWeese, Hoff, and Sherman, Mayor
Pro Tem Harris, and Mayor Nickita
NAYS: None
ABSENT: None

MOTION CARRIED.

I, J. Cherilynn Mynsberge, Clerk of the City of Birmingham, certify that the foregoing is a true and compared copy of a Resolution duly made and passed by the Birmingham City Commission at a meeting held on August 14, 2017.

J. Cherilynn Mynsberge, City Clerk