

BIRMINGHAM CITY COMMISSION MINUTES
SEPTEMBER 17, 2018
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Andrew M. Harris, Mayor

II. ROLL CALL

ROLL CALL:	Present,	Mayor Harris Mayor Pro Tem Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Sherman
	Absent,	Commissioner Nickita

Administration: City Manager Valentine, City Attorney Currier, Senior Planner Baka, Assistant City Engineer Bridges, Communications Director Byrnes, Police Chief Clemence, Fire Chief Connaughton, Planning Director Ecker, Assistant City Engineer Fletcher, City Clerk Mynsberge, City Engineer O'Meara, BSD Director Tighe, DPS Director Wood

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

09-252-18 ANNOUNCEMENTS

- City Engineer O'Meara introduced Assistant City Engineer Austin Fletcher and Assistant City Manager Engineer¹ Teresa Bridges.
- Police Chief Clemence introduced Bella, who is now a Certified Therapy Dog.
- The second annual Read in the Park is being held in Beverly Park on Saturday, September 22nd from 1:00 to 4:00 p.m. In the event of rain, this event will take place at Baldwin Public Library.

IV. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

09-253-18 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Mayor Pro Tem Bordman: Item F, Special Event Request - Santa House; and, Item M, 345 Hawthorne Landscape Plan Proposal

¹ As amended at the October 8, 2018 Commission meeting.

- Commissioner Hoff: Item A, City Commission Meeting Minutes of September 6, 2018; and, Item J, 2018 Fee Schedule Change to add Applicant Review for Liquor License Applicants Removing an Existing Party to the City Clerk's Office Section
- Commissioner DeWeese: Abstained from voting on Item A, citing his absence from the September 6, 2018 Commission Meeting.

MOTION: Motion by Commissioner Deweese, seconded by Commissioner Boutros: To approve the Consent Agenda with Items A, F, J, and M removed.

ROLL CALL: Present, Mayor Harris
 Mayor Pro Tem Bordman
 Commissioner Boutros
 Commissioner DeWeese
 Commissioner Hoff
 Commissioner Sherman
 Absent, Commissioner Nickita

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated September 5, 2018 in the amount of \$228,748.31.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated September 12, 2018 in the amount of \$755,829.44.
- D. Resolution approving a request submitted by Ascension of Christ Lutheran Church requesting permission to place a Nativity scene in Shain Park from November 23, 2018 to December 31, 2018, 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.
- E. Resolution approving a request from the Birmingham Shopping District to hold the Winter Markt, in Shain Park and surrounding streets from November 27 - December 2, 2018 and to allow the use of temporary liquor licenses in Shain Park for this event, 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.
- G. Resolution approving the federal funds in the amount of \$21,781.00 for the 2018 Emergency Management Performance Grant period of 10/1/2017 to 9/30/2018. Further, to direct the Mayor to sign the agreement on behalf of the City.
- H. Resolution authorizing the Mayor of the City of Birmingham to sign the Emergency Management Performance Grant Work Agreement on behalf of the City.
- I. Resolution approving the purchase of one (1) new Toro Debris Blower from Spartan Distributors, through State of Michigan extendable purchasing contract #2017025 for a total expenditure of \$7,436.04. Funds for this purchase are available in the Equipment Fund account # 641-441.006-971.0100.
- K. Resolution approving the 2018-19 agreement with RS Contracting, Inc. for painting yellow centerline and white long line pavement markings in the amount of \$8,356.00 for the 2018-19 fiscal year; further authorizing and directing the mayor and city clerk to

sign the agreement on behalf of the city; further to authorize this budgeted expenditure from account number 202-303-001-937.0200.

- L. Resolution setting a public hearing for October 8, 2018 to consider recommended amendments to Chapter 126, Zoning, of the City Code to remove all references to Church or Churches and replace the terms with religious institution(s) and provide a definition for same.

09-254-18 APPROVAL OF THE CITY COMMISSION MEETING MINUTES OF SEPTEMBER 6, 2018 (ITEM A)

Commission Hoff noted that motion #09-247-18 on page four should be amended to include 'lease agreement between Birmingham Public Schools and the City of Birmingham for the two tennis courts adjacent to Quarton School'

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Boutros:
To approve the City Commission meeting minutes of September 6, 2018 as amended.

VOTE: Yeas, 6
 Nays, 0
 Absent, 1

09-255-18 SPECIAL EVENT REQUEST - SANTA HOUSE (ITEM F)

BSD Director Tighe stated that admission to Santa House is indeed free, and the BSD will make sure the signage explicitly states that. If someone should desire to make a voluntary donation, then the recommended donation is \$5 to the Lion's Club.

MOTION: Motion by Mayor Pro Tem Bordman, seconded by Commissioner DeWeese:
To approve the request from the Birmingham Shopping District to place the Santa House and related activities as described in the Special Event application in Shain Park between the week of November 24th, 2018 through the week of January 5, 2019 including free parking at the on street meters on November 24, 2018, contingent upon compliance with all permit and insurance requirements and payment of all fees, and, further, pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

VOTE: Yeas, 6
 Nays, 0
 Absent, 1

09-256-18 FEE SCHEDULE CHANGE TO CITY CLERK'S SECTION TO ADD APPLICANT REVIEW FOR LIQUOR LICENSE APPLICANTS REMOVING AN EXISTING PARTY (ITEM J)

Chief of Police Clemence explained that the \$350 fee would only apply in cases where an existing party to the liquor license is being removed without any additional applicants or operational changes.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Bordman:
To amend the 2018 City of Birmingham Fee Schedule, City Clerk's Office section, to include an "Administrative Applicant Review" fee of \$350.00 in cases where an existing party to the liquor license is being removed without any additional applicants or operational changes.

VOTE: Yeas, 6
 Nays, 0
 Absent, 1

09-257-18 345 HAWTHORNE LANDSCAPE PLAN PROPOSAL (ITEM M)

Commissioner Boutros disclosed that 345 Hawthorne is next to his home. He continued that he is in support of this resolution, and has no economic interest in 345 Hawthorne.

Mayor Pro Tem Bordman said:

- Canadian Hemlocks are beautiful trees.
- She is concerned about the selection of Canadian Hemlock because they are prone to infestation by the woolly adelgid.
- Woolly adelgids are currently in five or six counties in west Michigan and are moving east.
- She would like to know the plan for monitoring the trees.
- If one of the thirteen planned hawthornes is infested, it will spread to the twelve other hemlocks and any hemlocks in Birmingham.

DPS Director Wood said:

- DPS does not generally monitor the trees unless they are directly on a trail. Since these are newly planted trees, there may be an exception.
- Patrick Funke from Michael J. Dul & Associates could speak more to the particular issues with Canadian Hemlock.
- Mr. Cupisz would be irrigating the hemlocks as part of his landscaping.

Mr. Funke stated:

- Mr. Cupisz would also be willing to do a spray program to protect both his property and the hemlock against woolly adelgid and other infestations.
- Synthetic turf is being proposed for a part of Mr. Cupisz's backyard because it is impossible to get a lawn mower into that area. While the Engineering Department counts the synthetic turf as impervious, Michael J. Dul & Associates only uses pervious turf.

MOTION: Motion by Mayor Pro Tem Bordman, seconded by Commissioner DeWeese:
To approve the landscape plan next to 345 Hawthorne, on park property which is part of the City trail system in Linden Park, including the removal of invasive buckthorn, dead trees, and planting of thirteen new Canadian Hemlock trees. All costs to be borne by the applicant, Mr. Anthony Cupisz. Further, to authorize the Department of Public Services to issue a Tree and Shrub Permit in accordance with the Tree Preservation Ordinance for such work on public property.

VOTE: Yeas, 6
 Nays, 0
 Absent, 1

V. UNFINISHED BUSINESS

**09-258-18 UPDATES TO PROCEDURES, CONDITIONS AND REGULATIONS
FOR GREENWOOD CEMETERY**

City Manager Valentine recommended withdrawing this item for the time being pending a full legal review. Subsequently the item would come back before the Commission.

Commission Hoff asked for the number of plots under payment plans and the total dollar amount of payments made on those lots to date.

City Clerk Mynsberge replied:

- She could have that information for when this item returns to the Commission.
- Thirty plots are currently under payment plan.

Mayor Harris:

- Asked how the purchaser is made aware of the policy;
- Stated he would like to see language about pre-payment and how those payments would be allocated to plots;
- Stated the accelerated payment or pre-payment options are inconsistent with a proportionate distribution if there are multiple plots, which should be clarified;
- Stated purchasers should not forfeit all previous payments if one payment is missed, as there should be a cure period; and,
- Stated the allocation of funds to the perpetual care account should be clarified.

Mayor Pro Tem Bordman said paragraph two has unnecessary repetition which should be revised.

The Commission took no action.

VI. NEW BUSINESS

09-259-18

REQUEST TO ELIMINATE THE HISTORIC DESIGNATION OF 361 E. MAPLE

Senior Planner Baka:

- Reviewed the materials in the agenda packet regarding this item, including his September 7, 2018 memo to City Manager Valentine.
- Clarified that a historic designation does not preclude changes to a building.
- Confirmed that the facade of a building is generally considered the most important part to preserve.
- Confirmed that no historically designated buildings in the historic district have been de-listed.
- Explained that the district establishes the purview of the Historic District Study Commission (HDSC), which means any changes to a building within the district must go before the HDSC. Only the landmark buildings, however, are subject to the Secretary of the Interior's Standards for Rehabilitation. These requirements are part of City ordinances.
- Said there is no restriction on height for historically designated buildings. Drastic changes would be more challenging, but there are ways to modify buildings while remaining sensitive to their historic nature.
- The only home that has been de-listed was 505 Townsend, because there were so many previous undocumented changes that the home was no longer considered historic. To Senior Planner Baka's knowledge there have also been no other requests to de-list beyond 505 Townsend and 361 E. Maple.

John Gabor, attorney representing property owner Victor Simon, explained:

- Mr. Simon requested the de-listing of 361 E. Maple to allow development of the building consistent with the City's 2016 Plan and the overlay district ordinance.
- It is not mandatory for the Commission to follow the recommendation of the HDSC to deny, as the Commission is free to consider other factors including plans, ordinances, patterns of development, and comments from other Board and Commissions.
- A report included in the agenda packet, as submitted by historic architect William L. Finnicum at the owner's request, found there is no historic significance to 361 E. Maple and supported de-listing the property. Mr. Gabor reported that in Mr. Finnicum's forty year career this is only the second time that Mr. Finnicum has supported de-listing a building.
- 361 E. Maple was of minimal historic significance when it was designated. It would not be designated as a landmark today because of the changing character of E. Maple.
- 361 E. Maple has lost that small shop context that enabled the building to be designated as a landmark.
- 361 E. Maple is a twenty-foot wide building with minimal architectural features. The original inventory form filled out at the time of designation showed very weak rationale for the designation. Question #18 on the inventory, which specifically asked about architectural significance, specified no significance. Question #19 on the inventory, asking about historical significance, also specifies no significance. It was a good example of buildings from the time, but bears no significance in and of itself. 361 E. Maple was somewhat arbitrarily chosen, as other buildings nearby have identical characteristics.
- Changes to the structures adjacent to the landmark buildings matter as much for changing or maintaining the character of the district as changes to the landmark buildings themselves.
- Due to surrounding development, the designation of 361 E. Maple has been rendered irrelevant, whereas other landmark buildings remain significant in their context.
- Robin Boyle and Daniel Share of the Planning Board supported the de-listing of 361 E. Maple, and Michael Willoughby, Thomas Trapnell, Doug Burley and Adam Charles of the Historic District Commission supported the de-listing as well.
- While this will be a precedent-setting decision, the rationale for de-listing 361 E. Maple does not apply to other landmarks, so this will not cause a landslide of other de-listing applications.
- Mr. Simon renovated 159 Pierce Street, which was also historically designated.

Property owner Victor Simon stated:

- 361 E. Maple was purchased in 2016.
- He was aware of the property's historic designation when he purchased it.
- An architect already determined that the the facade could not be maintained while achieving the development goals.

Blair Gould, attorney for the Kaftans who own the building immediately to the east of 361 E. Maple, laid out a number of reasons the Kaftans object to the proposed de-listing of 361 E. Maple including:

- Mr. Simon should have been aware of the designation at the time of purchase.
- The historic designation for these landmark properties were maintained after the 2016 Plan.
- The fact that this building is a one-story landmark building makes 361 E. Maple more significant, not less.
- The building has been zoned B-4 since 1984.

- The Kaftans have offered to acquire the property from Mr. Simon for the price that he paid in order to maintain the historic designation.

Melvin Kaftan said:

- The HDC heard the request to de-list 361 E. Maple twice and denied it.
- 261 E. Maple through 323 E. Maple are marked historic. An owner of some of those buildings said he was interested in de-listing his building as well if Mr. Simon's de-listing goes through.
- If 361 E. Maple is de-listed and is built bigger, it will require significantly more parking.

Gerri Kaftan said:

- She and her husband chose 369 E. Maple Road because the street is charming. They built their home with brick and lime in order to maintain the character of the street.
- 361 E. Maple just needs a bit of tender loving care.
- Like the man in the movie Up, Mr. Simon is trying to muscle all the charm out of Birmingham.

A member of the audience noted that 361 E. Maple is the smallest of the landmark buildings at twenty feet in width.

Patricia Lang stated three times that in the Bay Area historic buildings are not allowed to be demolished unless they are entirely beyond repair. She continued:

- That building owners in the Bay Area are not able to build a structure that would change the light neighbors receive unless all the neighbors sign off on it.
- She does not want to see Birmingham lose its character.
- She implored the Commission to maintain the historic designation for 361 E. Maple.

Mr. Gabor noted that 369 E. Maple was built to four stories, adhering more to the 2016 Plan and the overlay district than the previous character of the street.

Mr. Gould stated that there are alternatives to fully demolishing 361 E. Maple and clarified Mr. Kaftan's claim that another owner expressed his desire to de-list. The owner, rather, stated that he supported the de-listing of 361 E. Maple, describing the building as ugly.

Mayor Harris called a brief recess at 8:59 p.m. and reconvened the meeting at 9:02 p.m.

Mayor Pro Tem Bordman noted:

- Birmingham's historic buildings are important to many Birmingham residents.
- 361 E. Maple fulfills the definition of a landmark because it is "an example of its type".
- It was built in 1927, and maintaining the building is a way to see the past.

MOTION: Motion by Mayor Pro Tem Bordman, seconded by Commissioner Hoff:
To deny the request by the property owner to eliminate the historic designation on 361 E. Maple as recommended by the Historic District Study Committee.

Commissioner Sherman said a skilled architect could maintain the facade of 361 E. Maple without needing to de-list the property.

Commissioner Hoff noted that since the building is one of the last of its kind, she will be supporting the motion.

Mayor Harris stated:

- The first question for de-listing a building is whether the building has lost its historic significance.
- He is concerned that if this building is de-listed buildings around it will also be de-listed and the historical significance will be eliminated.

Commissioner DeWeese said the best approach will be to maintain the designation and preserve the building's best features.

VOTE: Yeas, 6
 Nays, 0
 Absent, 1

**09-260-18 PUBLIC HEARING – BISTRO ORDINANCE AMENDMENTS TO
 CHAPTER 126, ZONING OF THE BIRMINGHAM CITY CODE**

Mayor Harris opened the public hearing at 9:09 p.m.

Planning Director Ecker Reviewed her September 7, 2018 memo to City Manager Valentine and explained:

- Bar seating is included in the maximum number of indoor seats.
- Any bistros with enclosures to allow year-round outdoor dining are grandfathered in.
- A special land use permit (SLUP) would allow the Commission to address the possibility of high-top tables without seats should the situation arise.
- Class C restaurants generally have at least 125 seats.

Mayor Pro Tem Bordman² shared concern about the possibility of competition between bistros and Class C restaurants since these ordinance changes allow bistros with up to 170 seats. She continued that bistros were originally intended to be intimate.

Mayor Harris closed the Public Hearing at 9:22 p.m.

Planning Director Ecker clarified:

- Class C restaurants have no restrictions on their seating numbers beyond what is determined by their SLUP.
- Outdoor rooftop dining for bistros is permitted as long as surrounding properties are not impacted in a negative manner.

Commissioner Hoff echoed Mayor Pro Tem Bordman's concerns regarding the number of potential seats being proposed for bistros.

Commissioner DeWeese said he was also concerned with the numbers, and with the possibility of encouraging nightclub-like atmospheres with these changes.

Mayor Pro Tem Bordman stated:

- Having bistros in the Rail District and the Triangle District is a fabulous idea.
- She appreciates all the work the Planning Board has done with these amendments.
- Encouraging bistros too aggressively stands to undermine Class C restaurants.

² *As amended at the October 8, 2018 Commission meeting.*

- This item should go back to the Planning Board specifically to discuss the number of allowed seats in a bistro.
- The Planning Board could also consider incentives. For instance perhaps if a bistro provides some measure of parking, they could increase their number of seats by a percent.
- Going over 65 seats defeats the whole idea of a bistro.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To approve the following ordinance amendments to Chapter 126, Zoning of the Birmingham City Code:

1. Section 3.04, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
2. Section 5.06, O1 – Office District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
3. Section 5.07, O2 – Office District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
4. Section 5.08, P – Parking District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
5. Section 5.10, B2 – General Business District, B2B – General Business District, B2C – General Business District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
6. Section 5.11, B3 – Office-Residential District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
7. Section 5.12, B4 – Business-Residential District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit;
8. Section 5.13, MX – Mixed Use District, Specific Standards, Building Use, to amend the regulations of the bistro Special Land Use Permit; and

VOTE: Yeas, 6
 Nays, 0
 Absent, 1

Commissioner Sherman stated:

- The definition of “Bistro” in Section 9.02, Definitions is concerning because it treats bistros as larger than Class C restaurants for nine months out of the year.
- He was on the Commission when bistro licenses were developed and making them larger than Class C restaurants was never the intention.
- Very few sites would justify a 65-seat outdoor capacity.
- The following changes could be made to the proposed ordinance:
 - Bistro: When located in the Downtown Overlay District, a restaurant with a full service kitchen with interior seating for no more than 65 people and seating for outdoor dining ~~of no more than 65 people~~. When located in the Triangle District or Rail District, a restaurant with a full service kitchen with interior seating for no more than 85 people and seating for outdoor dining ~~of no more than 85 people~~.
- Then the Planning Board should consider a smaller number for outdoor dining.

Mayor Pro Tem Bordman replied that 85 indoor seats is still too large for a bistro. She suggested keeping bistros at 65 indoor seats in all areas, and sending it back to the Planning Board for the outdoor numbers.

Planning Director Ecker said the Planning Board is strongly against putting any limit at all on outdoor seating. The proposed limit of 85 was to address the Commission's previous concerns. If the Commission desires to go in a specific direction, the Planning Board has given their input.

Commissioner Sherman asked for a list of current bistros and their indoor/outdoor seating numbers.

Mayor Pro Tem Bordman said she would also like Class C restaurants included on that list.

Commissioner Boutros recalled a Class C restaurant owner in the Triangle District speaking in support of the proposed SLUP for a large bistro in the Triangle District when the issue came before the Commission. Because of this he suggested the Commission should choose the number of seats they are comfortable with.

Mayor Pro Tem Bordman said she would like to see other numbers before the Commission makes a decision.

Commissioner Sherman commented that the Commission's job is not to protect the legacy license holders, but to serve the best interest of the community as a whole.

Commissioner DeWeese suggested the Planning Board could recommend incentives for bistros in the Rail and Triangle Districts.

Planning Director Ecker said:

- She would bring back the information regarding seating.
- If no changes are made to 9.02 this evening, bistros will remain limited to 65 seats for now.

City Manager Valentine clarified:

- This year's application deadline for bistro applications is October 1, 2018.
- The proposed ordinance changes will be in effect when the applications come in, with the exception of the maximum capacity on outdoor dining.
- Applicants will be advised as to the changes in the bistro ordinances when they submit their applications.

Commissioner Sherman said it would not be an issue because the bistro applications are concept plans, not approvals, which means the Commission will have a bit more time.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Bordman:
To continue the public hearing until October 8, 2018.

VOTE: Yeas, 6
 Nays, 0
 Absent, 1

**09-261-18 REQUEST TO AMEND THE BROWNFIELD PLAN FOR 34965
 WOODWARD TO INCLUDE 215 PEABODY**

Planning Director Ecker presented her September 10, 2018 memo to City Manager Valentine.

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Bordman

To approve the developer's request to amend the Brownfield Plan for 34965 Woodward to include the property known as 215 Peabody as recommended by the Brownfield Redevelopment Authority on September 5, 2018.

VOTE: Yeas, 6
 Nays, 0
 Absent, 1

09-262-18 PROFESSIONAL SERVICES TO UPDATE COMPREHENSIVE MASTER PLAN

Planning Director Ecker reviewed the provided information regarding this item, including her September 10, 2018 memo to City Manager Valentine. She continued by introducing Senen Antonio, DPZ Partner, Matt Lambert, DPZ Partner, Mr. McKenna and Bob Gibbs, urban planner with specialization in retail from Gibbs Planning.

Commissioner Sherman expressed concern that the DPZ proposal is broader than the Commission asked for in the RFP, as the RFP focused on the neighborhoods and integrating them into Birmingham's existent sub-plans.

Mr. Lambert said Commissioner Sherman's concerns came across loud and clear and that DPZ had already received similar feedback from City staff. In DPZ's reply to the feedback, they focused on:

- Their neighborhood planning experience;
- How neighborhoods internalize the character of their plans; and
- The interaction between downtown, the neighborhoods and their interaction with each other since this is a comprehensive Master Plan.

Mr. Gibbs explained a retail study would determine the interest in retail within the neighborhoods in order to create more walkable areas.

Commissioner Sherman shared concern regarding Mr. Gibbs' inclusion on the team because he previously represented Birmingham building owners advocating for offices on the first floor before the Commission. He added:

- Other residents had raised this concern as well.
- If there is to be a retail study, the focus must remain on whether retail in walking distance of the neighborhood is appropriate, as opposed to any attempt to redefine retail.

Mr. Gibbs clarified:

- That he did not previously appear before the Commission as a representative.
- He gave his opinion before the Commission regarding the possibility of offices on the first floor in Birmingham.

Mayor Pro Tem Bordman said:

- DPZ's plan does not reflect an understanding of what the Commission outlined very clearly in the RFP. The comprehensive community engagement plan should have been a focal point in DPZ's plan, because engaging Birmingham residents is such a high priority.
- Birmingham is not a large City trying to develop its downtown at this point. The Commission is looking to invest in Birmingham neighborhoods, an issue better addressed by MKSK in their proposal.

- She was concerned that only \$30,000 was allotted to 'comprehensive community engagement' in DPZ's plan, whereas MKSK allotted \$104,500 to 'comprehensive community engagement'. These numbers seemed to imply a lack of engaging the citizens of Birmingham on DPZ's part.³

Commissioner DeWeese echoed concerns over community engagement, noting that a large part of the process is not just creating the plan but generating excitement about the plan. He continued that the focus needs to be on integrating all the areas of the City, not just developing the downtown.

Mr. Lambert explained:

- The \$30,000 budget for the comprehensive community engagement plan is solely for publicity.
- About \$70,000 of the 'Plan Preparation' fees would be spent on further community engagement, because community engagement is considered integral to the planning process by DPZ.
- Community engagement is such a high business priority for DPZ that they are rebranding to emphasize it. Community engagement was budgeted under plan preparation because the plans are made through an ongoing dialogue with the community.
- Neighborhood planning has evolved especially in regards to what a neighborhood unit is, how the structure functions, and the relationships between different types of neighborhoods. DPZ has spent a significant amount of time working with neighborhood planning but did not adequately represent their experience in their response to the RFP.
- The Jacobs Firm is a global firm headquartered in Atlanta, and DPZ is headquartered in Florida.

Commissioner Hoff said:

- Companies nearer to Birmingham tend to have a better sense of what Birmingham is looking for with these projects.
- The biographies included in DPZ's proposal focused heavily on urban revitalization, new urbanism, and downtowns, which is not what Birmingham is looking for in this process.

Mr. Lambert stated:

- DPZ partner Andres Duany, who was part of the Downtown Birmingham 2016 plan team, will lead and be heavily involved in the Charrette process and the preparation of the plan.
- Mr. Lambert is the project manager on this project and his mother, grandparents and great-grandparents lived in Birmingham, which gives him familiarity with the City. While he was not raised in Birmingham, he spent recreational time during his teen years in Birmingham.
- DPZ has worked with municipalities of all sizes, including ones with neighborhood structures similar to Birmingham's.

Commissioner Boutros said he was reassured that DPZ will do sufficient community engagement, but wants to hear more about how they are not focusing excessively on the retail environment of Birmingham.

³ *As amended at the October 8, 2018 Commission meeting.*

Senen Antonio, Partner at DPZ, explained that Mr. Duany will be meeting one-on-one with representatives from each Birmingham neighborhood during the Charrette in order to discuss issues within the neighborhoods and to devise solutions.

Mr. Lambert said that DPZ presented much more of their experience with neighborhoods, planning and engagement during their interview with the Ad Hoc Master Plan Selection Committee. He stressed DPZ:

- Will be taking direction from the Commission and from the residents.
- Fully understands the focus on Birmingham's residential neighborhoods.
- Also understands the holistic nature of the comprehensive master plan.

Mr. Antonio stated that DPZ's work in Miami and Omaha focused primarily on the seams between the commercial corridors and the residential areas, which parallels what the Commission is looking for on behalf of Birmingham.

Commissioner DeWeese read aloud a question from Commissioner Nickita: "How will the consultant work to unify the residential and commercial areas of the City?"

Mr. Lambert replied that DPZ has extensive experience in the area, the openness to listen to the Commission and the residents, and to not bring preconceived notions to bear.

Mr. Antonio said DPZ projects usually have a kick-off, then meetings with the client teams, due diligence and technical studies, followed by the Charrette, further meetings with the client team and local decision makers for comment and further input, final revisions and a final plan submission. During this whole time there is also a simultaneous community engagement process.

Mr. Lambert explained that on the first day of the Charrette, Mr. Duany will present background on the project, information DPZ has learned to-date, and summary of some of the elements of prior plans and observations of existing conditions.

Mayor Pro Tem Bordman stated that she was still disturbed that DPZ did not understand what Birmingham was looking for from the RFP for the project. She said their response to the RFP demonstrated a lack of understanding of the community.

Mr. Gibbs asserted that DPZ understands neighborhoods better than any other consultant because DPZ reinvented the prewar neighborhood. He continued that:

- Part of the DPZ process will be designing specific plans for each neighborhood as part of the citywide plan.
- Mckenna is Michigan's largest planning firm with extensive experience across Michigan.
- He has lived in several Birmingham neighborhoods, and his office has been across the street from City Hall in Birmingham for thirty years. His children attended Birmingham schools, and he has served on Birmingham boards.
- DPZ's intention is to fully understand Birmingham's neighborhoods.
- He is currently in the process of writing a book on Birmingham's neighborhoods because they are superlative.
- DPZ has built hundreds of neighborhoods across the country and are very astute when it comes to implementing the residents' vision.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Sherman:

To approve the contract with DPZ Partners, LLC, as recommended by the Ad Hoc Master Plan Selection Committee, in the amount of \$298,000.00 payable from account # 101-721-000-811.000, to provide professional services to prepare an update to the City's comprehensive master plan, and to direct the Mayor to execute same.

Commissioner Hoff said she would like to hear a presentation from MKSK as well.

City Manager Valentine stated MKSK was invited to this meeting but was not able to attend due to a conflict.

Commissioner DeWeese agreed with Commissioner Hoff since DPZ and MKSK were nearly identical based on scores.

Mayor Harris said he sees no reason to ignore the Ad Hoc Master Plan Selection Committee's (MPSC) near-unanimous recommendation of DPZ. He thinks they would be a great partner in this long-term project and stated he was inclined to support the motion.

Commissioner Sherman pointed out that the Commission appointed the MPSC to vet the proposals, hear the proposals, and make a recommendation to the Commission. He continued that:

- If MKSK presents to the Commission, then the Commission will be doing the exact same work the MPSC has already completed.
- DPZ solely answered questions this evening, and made no presentation to the Commission. Therefore, if MKSK presents, DPZ will need to present as well, rendering all the work of the MPSC entirely redundant.

Mayor Harris agreed with Commission Sherman.

Mayor Pro Tem Bordman emphasized:

- The MPSC makes a recommendation, but not the final decision, as that responsibility rests with the Commission.
- If the Commission agreed with every recommendation, the Commission would merely be a rubber stamp.
- There was a 1.69% difference between DPZ's score and MKSK's score.

Mayor Harris objected to the characterization of accepting the MPSC's recommendation as rubber stamping since the Commission received reams of documents, the minutes of all presentations, and detailed answers from the applicants. He concluded that the Commission had done due diligence on the matter.

VOTE:	Yeas,	3 (Harris, Sherman, Boutros)
	Nays,	3 (Hoff, Bordman, DeWeese)
	Absent,	1

Commissioner Sherman said the next step must be to have both teams return and present to the Commission.

Commissioner Hoff said she would just like the opportunity to ask questions of MKSK.

Mayor Pro Tem Bordman agreed with Commissioner Hoff.

Commissioner DeWeese said:

- It was a problem that the Commission did not hear from a representative of the MPSC this evening to explain why they recommended strongly in favor of DPZ.
- Being able to speak to both sides allows for education and for better decisions.
- Since the Commission did not have access to the presentations given to the MPSC by MKSK and DPZ, the Commission is only going on the originally submitted materials.

Planning Director Ecker stated that she was given the cellphone number of Chris Herman, the President of MKSK, in case the Commission had questions.

Chris Longe, vice-chair of the MPSC, explained:

- The score sheet the Commission is seeing was from prior to the MPSC's interviews with MKSK and DPZ.
- During the interview process it became clear that there was a compelling difference between DPZ and MKSK.
- The interview process likely even swung some votes that were initially leaning towards MKSK.

There was consensus that MKSK should appear before the Commission to answer questions in a similar manner to this evening's proceedings with DPZ.

Mayor Harris thanked DPZ and affiliated entities for coming to the meeting.

09-263-18 PRIORITY LOCATIONS FOR BUS SHELTERS

Planning Director Ecker reviewed the provided information on priority locations for bus shelters.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Boutros:
To approving the recommendation from the Multi-Modal Transportation Board that the attached list (*appended to these minutes as Attachment A*) of priority locations for bus shelters be used as a guide when new bus shelters are considered for installation.

AND

To direct City staff to work with SMART to install three SMART enhanced FAST style shelters at SMART FAST bus stops on Woodward Ave. northbound at 14 Mile Rd. and northbound and southbound at Maple Rd.

AND

To relocate the existing standard Birmingham shelter on northbound Woodward Ave. at 14 Mile Rd. to westbound 14 Mile Rd. at Woodward Ave. in order to facilitate the installation of a SMART enhanced FAST style shelter at the existing bus stop.

AND

To approve a bus shelter at westbound E. Maple Rd. and Coolidge as the next bus shelter to be installed.

VOTE: Yeas, 6
 Nays, 0
 Absent, 1

09-264-18 MDEQ LEAD AND COPPER RULES CONCURRENCE

Commissioner Sherman:

- Asked City Engineer O'Meara to confirm that this motion is to concur with the recommendation that the Michigan Department of Environmental Quality change their methodology for imposing rules.
- Specified that this motion is not in support of lead or copper in the water system.

City Engineer O'Meara confirmed for Commissioner Sherman, saying that the goal of this is to give MDEQ a chance to reconsider their process.

MOTION: Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Bordman: To authorize the Mayor to sign the Concurrence Form regarding the Request for Declaratory Ruling filed by the Great Lakes Water Authority, the Detroit Water & Sewer Dept., and the Oakland Co. Water Resources Commissioner pertaining to the new Lead & Copper Rules as issued by the Michigan Dept. of Environmental Quality dated June 14, 2018.

City Manager Valentine explained this item was passed to municipalities throughout Michigan, and that while some are passing resolutions, City Manager Valentine and City Attorney Currier agreed this was a more appropriate avenue for Birmingham.

VOTE: Yeas, 6
 Nays, 0
 Absent, 1

09-265-18 HEARING ON APPEAL OF FOIA REQUEST

City Attorney Currier reviewed the provided information on the matter.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese: To grant the appeal to provide the information from FOIA request #18-0425 to Mr. Arthur Siegal, Jaffe, Raitt, Heuer & Weiss, PC.

Mayor Harris stated the City is not waiving any objections to discovery if this matter is requested during litigation.

Commissioner Sherman said this is not a good way to perform an end-run around discovery, but since there is nothing here, he is moving it forward.

Commissioner Hoff asked for City Attorney Jeff Haynes' opinion.

City Attorney Haynes said:

- It would not be arbitrary and capricious for the Commission to deny the FOIA request appeal because the FOIA was brought by an attorney working for a law firm representing a client with whom the City is in litigation.
- The material that is being requested could be requested through discovery. The difference between a FOIA request and discovery is a matter of time and cost.
- Granting the FOIA appeal request expedites the process.

Commissioner Sherman noted that, except in rare cases, a FOIA is paid for by the requesting party, which means Mr. Siegal and his client will be paying for the expedited receipt of this information.

City Manager Valentine explained the FOIA request is for documents related to the Brownfield reimbursement for the 2400 E. Lincoln property.

City Attorney Haynes added that the FOIA request is also for the documents retained by the City for the joint consultant between 2400 E. Lincoln and the City, which are voluminous.

City Attorney Currier explained that his letter dated September 12, 2018 to Mr. Siegal was an attempt to narrow the scope of the FOIA request, which Mr. Siegal accommodated.

Mr. Siegal said:

- In this case it works to the City's advantage to provide the information.
- He did not wish to put the City to undue expense or effort, so he would come in and look at the files to specify the individual documents he wants.
- The current litigation is exceptionally narrowly focused and he does not believe any of the documents requested are pertinent to said litigation. While it involves some of the same parties and the same property, it has no bearing on the issues currently before the court in the pending litigation.
- This request has to do with clarifying the grounds on which the Brownfield Redevelopment Authority terminated an agreement.

VOTE:	Yeas,	6
	Nays,	0
	Absent,	1

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

08-266-18 ACCEPTANCE OF THE 2017 ANNUAL REPORT OF THE GREENWOOD CEMETERY ADVISORY BOARD

Commissioner Hoff recommended this and the GCAB payment plan policy be considered at the next Commission meeting due to the late hour.

XI. ADJOURN

Mayor Harris adjourned the meeting at 11:22 p.m.

J. Cherilynn Mynsberge, City Clerk