

**BIRMINGHAM CITY COMMISSION MINUTES**  
**MARCH 11, 2019**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

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

Mayor Patty Bordman called the meeting to order at 7:30 PM.

**II. ROLL CALL**

ROLL CALL: Present: Mayor Bordman  
Mayor Pro Tem Boutros  
Commissioner DeWeese  
Commissioner Harris  
Commissioner Hoff  
Commissioner Nickita  
Commissioner Sherman  
Absent: none

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, IT Director Brunk, Police Chief Clemence, Planning Director Ecker, DPS Manager Filipski, Assistant City Engineer Fletcher, City Engineer O'Meara, City Clerk Mynsberge, Interim Fire Chief Wells, DPS Director Wood

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

**03-054-19 ANNOUNCEMENTS**

Mayor Bordman announced:

- On Thursday, March 14 at 7:00 PM, the jointly sponsored Spring Lecture Series of the Birmingham Museum and Baldwin Public Library returns with the theme, *Birmingham, Then and Now*. The first presentation focuses on Jacobson's Department store and its importance to Birmingham, presented by author and department store historian, Bruce Kopytek.

**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.

**03-055-19 APPROVAL OF CONSENT AGENDA**

The following items were removed from the Consent Agenda:

- Commissioner Hoff Item F 2019 Concrete Sidewalk Repair Program  
Contract #6-19 (SW)  
Item I 2019 Quarton Lake Subdivision Reconstruction  
Phase 1

- Commissioner Nickita Item G 2019 Sidewalk Repair Program Authorization
- Commissioner Sherman stated he would abstain from voting on Item A due to his absence from the February 25, 2019 Commission meeting.

**MOTION:** Motion by Mayor Pro Tem Boutros, seconded by Commissioner Hoff:  
To approve the Consent Agenda, with the exception of Items F, G, and I, and noting Commissioner Sherman’s abstention from Item A.

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

- A. Resolution approving the City Commission meeting minutes of February 25, 2019.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated February 27, 2019 in the amount of \$432,990.79.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated March 6, 2019 in the amount of \$5,738,194.11.
- D. Resolution approving a Special Event permit as requested by the LUNGeivity Foundation for the 2019 Breathe Deep Michigan 5K Walk & Fun Run to End Lung Cancer event on Saturday, June 1, 2019, 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 Special Event permit as requested by the City of Birmingham Department of Public Services for the 2019 In the Park Concert series in Shain Park on the dates presented, 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.
- H. Resolution approving an extension of the 2018 Sidewalk Trip Elimination Program, Contract #6-18(SW) for the 2019 sidewalk program repair area, at 2018 contract prices, to Precision Concrete, Inc., in the amount of \$133,356.00, contingent upon submittal of the necessary bonds and insurance certificate. All costs shall be charged to account number 101- 444.001-981.0100.
- J. Resolution setting Monday, April 8, 2019 at 7:30 PM for a Public Hearing to consider necessity for the installation of water and sewer laterals within the Quarton Lake Reconstruction project area. Further, if necessity is declared, setting Monday, April 22, 2019 at 7:30 PM for a Public Hearing to consider confirming the roll for the installation of water and sewer laterals within the Quarton Lake Reconstruction project area.
- K. Resolution approving the purchase of one (1) 2019 Elgin Pelican from Bell Equipment Company through the State of Michigan cooperative purchasing agreement #071B7700091 in the amount of \$208,233.20 from account #641-441.006.971.0100.

- L. Resolution approving the purchase of one (1) 2019 Ford F-350 chassis from Gorno Ford of Woodhaven, MI, through the MiDeal Cooperative Purchasing Agreement #071B1300005 totaling \$32,649.00 from account #641-441.006.971.0100; further, approving the purchase and installation of a hydraulic dump body from Truck and Trailer Specialties, Inc., through the Rochester Hills Cooperative Purchasing Contract #RFP-RH-13-030 totaling \$18,925.00 from account #641-441.006.971.0100, for a total combined expenditure of \$51,574.00.
- M. Resolution approving the purchase of holiday lights from Wintergreen Corporation for a total cost not to exceed \$22,425.00. Funds are available from the General Fund-Community Activities Operating Supplies account #101-441.004-729.0000 and Property Maintenance Operating Supplies account #101-441.003-729.0000 for this purchase.
- N. Resolution authorizing the City Manager to sign the new contract with Applied Imaging for printer maintenance and supplies with a monthly cost of \$1,348.16 plus per page overages as necessary, total yearly cost of \$16,183.20. Funds are available in the IT Computer Maintenance fund account # 636-228.000-933.0600.
- O. Resolution authorizing the City Manager to sign the additional backup services contract with All Covered for an additional monthly cost of \$841.00 for a total additional yearly cost of \$10,200.00 Funds for the remainder of this year are available in the IT Computer Maintenance fund account # 636-228.000-933.0600.
- P. Resolution adopting the 2018 Amended Michigan Mutual Aid Box Alarm Association Agreement and the 2018 Amended Inter-Local Agreement. Further, authorizing the Mayor to sign the agreements on behalf of the City.
- Q. Resolution approving an addendum of the public services contract with NEXT for the purpose of expending remaining program year 2017-2018 Community Development Block Grant funds for the Minor Home Repair Program administered by NEXT through June 30, 2019; and further, authorizing the Mayor to sign the amendment on behalf of the City.
- R. Resolution confirming the City Manager's authorization for the emergency expenditure regarding the power outage at the Peabody parking garage to cover expenses associated with providing a temporary power supply and replacing the main distribution panel board and current transformer cabinet totaling \$20,524.80 to be paid from the Parking Fund account #585-538.004-930.0200, pursuant to Sec. 2-286 of the City Code.
- S. Resolution authorizing the IT department to purchase the License and support renewal for the ArcGIS software from ESRI Inc. Total cost not to exceed \$8950.00. Funds are available in the GIS fund account #636-228.000-973.0500.

**03-056-19 2019 CONCRETE SIDEWALK REPAIR PROGRAM CONTRACT #6-19 (SW)  
(ITEM F)**

Clarifications/Comments

City Engineer O'Meara said:

- About \$60,000 of the proposed \$546,927.45 will come back to the City through assessments of the adjacent properties.
- The cape seal work done as part of this project will also be recouped through assessments.

- Downtown properties are more likely to be assessed than residential properties. Residential properties are only assessed to residents where the resident is deemed to have damaged the sidewalk.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner DeWeese:  
To award the 2019 Concrete Sidewalk Repair Program, Contract #6-19 (SW) to Italia Construction, Inc., in the amount of \$546,927.45, to be charged to the various accounts as detailed in the report, contingent upon execution of the agreement and meeting all insurance requirements. Further, approving an amendment to the 2018-2019 fiscal year budget as follows:

General Fund

Revenues:

101-000.000-400.0000	Draw from Fund Balance	<u>\$46,360</u>
Total Revenue		<u>\$46,360</u>

Expenditures:

101-444.002-981.0100	Public Improvements - Alleys	<u>\$46,360</u>
Total Expenditures		<u>\$46,360</u>

VOTE:           Yeas,           7  
                  Nays,           0

**03-057-19 2019 QUARTON LAKE SUBDIVISION RECONSTRUCTION PHASE 1 (ITEM I)**

Clarifications/Comments

City Engineer O'Meara confirmed:

- These are improved streets.
- Kenwood Ct. is concrete for the first 220 ft. beginning from the west, and the rest of Kenwood Ct. to the east is asphalt.

**MOTION:** Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:  
To award the 2019 Quarton Lake Subdivision Reconstruction Phase 1 Project, Contract #1-19(P) to DiPonio Contracting, Inc., in the amount of \$2,124,010, to be charged to the Sewer Fund, account number 590-536.001-981.0100; the Water Fund, account number 591-537.004-981.0100; and the Local Streets Fund, account number 203-449.001-981.0100, contingent upon execution of the agreement and meeting all insurance requirements, and further approving the appropriation and amendment to the fiscal year 2018-2019 Local Street Fund budget as follows:

Local Streets Fund

Revenues:

203-449.001-981.0100	Draw from Fund Balance	<u>\$18,190</u>
Total Revenue		<u>\$18,190</u>

Expenditures:

203-449.001-981.0100	Capital Outlay – engineering and Construction of Roads	<u>\$18,190</u>
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Total Expenditures \$18,190

VOTE:           Yeas,           7  
                  Nays,           0

**03-058-19 2019 SIDEWALK REPAIR AUTHORIZATION (ITEM G)**

Clarifications/Comments

Commissioner Nickita said there are a number of inconsistencies in the way the northeast corner of Maple has been laid out in this project, and requested a review by either the Architectural Review Committee or a consultant before the plan is moved forward.

After further discussion, the Commissioners determined Commissioner Nickita’s concern was actually part of Item F, not Item G.

**MOTION:** Motion by Commissioner Nickita, seconded by Mayor Pro Tem Boutros:  
To authorize the 2019 Sidewalk Repair Program, and directing the Engineering Department to notify the owners of properties on the attached list(s) of the City’s intention to replace sidewalks to their properties.

VOTE:           Yeas,           7  
                  Nays,           0

City Manager Valentine advised the Commission that the approval of Item F was of the Sidewalk Repair Project in general, not the condition at Maple and Chesterfield in particular. Procedurally, these plans are only implemented after recommendation by the Architectural Review Committee (ARC) and approval by the City Manager. As a result, City Manager Valentine advised the Commission to provide him with their feedback and concerns about the Maple-Chesterfield condition.

The Commission assented to this option, and City Manager Valentine confirmed the Maple-Chesterfield condition would be sent back to the ARC for further review.

**V. UNFINISHED BUSINESS**

None.

**VI. NEW BUSINESS**

**03-059-19 PUBLIC HEARING TO CONSIDER THE REZONING OF 469 – 479 S. OLD WOODWARD FROM B3/D4 TO B3/D5**

Mayor Bordman suggested the Commission consider including this property in the Parking Assessment District (PAD) before considering whether to rezone the property, since they are separate considerations.

Commissioner DeWeese supported Mayor Bordman’s suggestion.

Commissioner Hoff said she was unsure whether the issues were actually separate, since the parking requirements for a property are partially dependent on whether the property is part of the PAD.

Mayor Bordman advised that the contractor's decisions vis-a-vis parking may change if the property is included in the PAD, but the Commission's decision on how to zone the property will not, and as a result should be considered separately.

Agreeing with Mayor Bordman, Commissioner Sherman suggested the entire discussion of this property's potential inclusion in the PAD be moved to a later date so as not to confuse this evening's public hearing on rezoning.

Commissioner DeWeese opined that if the Commission sends the possibility of this property's inclusion in the PAD to the Advisory Parking Committee (APC) for further study, it clarifies the topic of the evening's public hearing in the same way Commissioner Sherman intended.

Mayor Bordman sought comment from the Commission on whether this property's potential inclusion in the PAD should be sent to the APC for further study.

Mayor Pro Tem Boutros said the question of this property's inclusion in the PAD is an important subject and he would be comfortable voting on the issue separately this evening.

Commissioner Harris agreed with Commissioner Sherman and said he would like to see more thorough information from staff before the Commission decides whether to refer the question to the APC.

Commissioner Nickita said this will end up before the APC, so it would be most efficient to move the PAD question for their study now.

Commissioner Sherman opined that this discussion was inappropriate in both timing and procedure. He said that not only does this conversation have nothing to do with the current rezoning request, but the onus for requesting a property's inclusion in the PAD is on the property owner, not the City.

The Commission took no action on the question of the property's inclusion in the PAD, and Mayor Bordman affirmed it would not be part of the evening's discussions.

Mayor Bordman noted for the record that the City received a confirmed petition from the property's neighbors. As a result, according to state statute, the motion to re-zone would have to pass with a  $\frac{3}{4}$  vote, meaning six out of the seven Commissioners approving.

Mayor Bordman then gave a review of public hearing procedure and opened the public hearing at 7:59 p.m.

Planning Director Ecker presented the proposed rezoning.

#### Clarifications/Comments

Commissioner Nickita stated Birmingham Place, in terms of space which can be occupied, is 98' 2" tall. The mechanicals bring the height of the building up to 114' 4". This makes Birmingham Place 18' 2" taller in eave height than the allowable D4 height.

Planning Director Ecker explained:

- The on-site parking requirements do not change between D4 and D5.
- A D4 zoned building has a five-story and 80' maximum, including all mechanicals. If a property in the D4 district wanted to go to six stories and 80', the property would have to receive a variance from the Board of Zoning Appeals (BZA).
- Any building zoned D5 is subject to a Special Land Use Permit (SLUP) over five stories or 80'.
- Any Birmingham property owner can apply for any zoning classification, but it does not mean the owner will be granted approval for the rezoning.
- Buildings in the downtown overlay district have a maximum overall height, which includes mechanical height.
- The City has increased flexibility in influencing the design, development and use of buildings zoned D5 through the SLUP requirement, once the building is over five stories or 80'.

Rick Rattner, attorney for the applicant, presented the rezoning request. The presentation began with a four-minute video excerpt from the July 8, 2015 Planning Board (PB) meeting. Mr. Rattner said:

- The Planning Board considered the matter of the D5 zoning designation very carefully, as the video excerpt demonstrated. He reviewed the Board's process for creating the D5 designation, adding that new construction was anticipated as a result of the D5 zoning classification.
- This is clearly not an instance of spot-zoning, since spot-zoning entails changing one building to be zoned differently from the surrounding properties, allowing permitted uses that are inconsistent with the area, and is an unreasonable classification. None of those conditions are present in the subject rezoning request. The proposed rezoning would make this building the same as the surrounding properties, have similar use to the surrounding buildings, and would be a reasonable classification change.
- Rezoning 469 - 479 S. Old Woodward to D5 fits the Master Plan by allowing for the building of aesthetically similar buildings in the downtown in order to encourage a sense of place. While the property owner could build a D4-compliant building, this would result in the owner of the property not being able to enjoy the same rights of usage that the adjacent buildings enjoy.
- If Birmingham Place or the 555 Building had owned 469 - 479 S. Old Woodward at the time the D5 zoning designation was created, it is likely the 469 - 479 S. Old Woodward property would have been rezoned to D5 at the time as well. Mr. Rattner cited the 555 Building's pursuit and eventual receipt of a D5 rezoning of the vacant lot to the south of the property.
- The 469 - 479 S. Old Woodward lot is unusual in that it is long, narrow, and neither part of the PAD nor adjacent to any building that is part of the PAD. To not rezone this parcel would be to leave it as a D4 island surrounded by two D5 buildings.
- Part of the due diligence done in purchasing this parcel was understanding the City ordinance could potentially permit the rezoning of this parcel to D5. Purchasing the parcel with the intent to request its rezoning was appropriate and in-line with the intention of the D5 zoning ordinance.
- The applicant is not pursuing entry into the PAD because of their distance from the relevant parking decks.

Mayor Bordman made clear that the current issue before the Commission is whether to rezone the parcel to D5, and not any consideration of what might be built on the parcel. She emphasized that the focus must remain on whether rezoning the parcel is appropriate for the City as a whole.

Mayor Bordman also noted that the building to the south of 469 - 479 S. Old Woodward is 77½' tall, which is 2½' shorter than the permitted height for a D4 building.

Mr. Rattner replied that the height of the closest building to the 469 - 479 S. Old Woodward parcel is 114'. He suggested it is more appropriate to compare the parcel to the buildings directly abutting it, rather than to the building across the street. He added that the 77½' building being reference is zoned D5, and if they were approved for a SLUP could build higher because of that zoning.

Mayor Bordman invited members of the public to speak.

Mr. Rattner spoke once more, stating an objection to the submitted petition since he and the applicant have not yet had an opportunity to review its contents.

Mayor Bordman thanked Mr. Rattner for his comments.

Susan Friedlaender, attorney at Friedlaender Nykanen & Rogowski, said the excerpt Mr. Rattner presented from the July 8, 2015 PB meeting was irrelevant because the minutes from a PB meeting in January 2016 reflect the PB was unable to reach consensus about D5 zoning. At that time the PB decided to address the non-conforming aspects of the 555 Building and not the whole surrounding area. Ms. Friedlaender continued:

- At the July 26, 2016 City Commission meeting, a motion was passed "to review the non-conformance provisions pertaining to commercial buildings to provide specific requirements considering a new zoning category or categories that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures."
- The reason the applicant asked for the rehearing from the PB was because the PB failed to recognize the applicant was not in the PAD.
- The Master Plan recognizes that building height varies within the City, and the standard is that the maximum building height should be based on the smaller buildings in proximity.

Michele Prentice, property manager at Birmingham Place, said a number of condominiums sold in the building were partially purchased on the assurance that the parcel at 469 - 479 S. Old Woodward could not be built over five stories, and thus would not significantly obstruct southern sun or views even when developed. She continued:

- The effect of the proposed rezoning on the south-facing condominiums is already apparent, as one was taken off the market with no offers and two have been on the market for over 120 days, when in the last four years condominiums in Birmingham Place were on the market for less than 35 day.
- Sales of condominiums in other parts of the building have not fared better.
- A sixteen-year office tenant of Birmingham Place informed Ms. Prentice he would not be renewing his lease because he did not want his view to be obstructed by a hotel.



- Continued slow residential sales and rentals will decrease the taxable value of Birmingham Place and decrease tax revenue received by the City. The current taxable value of Birmingham Place is estimated at \$36 million which generates an estimated \$1.6 million in yearly property taxes to the City.
- Birmingham Place has 146 residential units.

Patrick Howe, attorney representing the Birmingham Place Commercial Condo Association, said:

- The Commission has to determine whether the whole of the downtown overlay district should be eligible to go from D4 to D5.
- The record reflects that this matter has only been considered by the Commission for a cumulative 18 minutes prior to this evening, in the context of discussing the applicability of the D5 ordinance to three non-conforming buildings.
- Birmingham's Master Plan speaks to compatible building heights, not whether it is appropriate for buildings to be built taller than five stories.
- According to Planning Director Ecker, the height maximum for a building zoned D5 on the 469 - 479 S. Old Woodward parcel would be 15 stories. In addition, Planning Director Ecker indicated that buildings across the street can be considered adjacent for the purpose of determining height maximums. Given this, many more parcels could reasonably argue for a D5 rezoning, which would change the look of Woodward Ave.
- It would be most appropriate to explore the potential ramifications during the City's planning process rather than exclusively during the consideration of the rezoning of a single parcel.

Bob Clemente of 411 S. Old Woodward advised the Commission that he owns a couple of condominiums in Birmingham Place, and works in a Birmingham Place office where his employer has been a tenant since around 1985. Mr. Clemente agreed with Mr. Howe. He added:

- The goal of the 2016 Plan was to strengthen the spatial and architectural character of the downtown area in mass and scale with the immediate surroundings and the downtown tradition of two- to four- story buildings.
- Rezoning the 469 - 479 S. Old Woodward parcel stands to have an intensely negative impact on Birmingham Place over an eighteen-foot height difference.
- The applicant and their representative have made it clear that the building would be viable if they kept the D4 zoning on the parcel in question, but just prefer it to be D5.

Jason Abel, attorney for the Birmingham Place Development Master Association, said:

- The implications of 7.02(b)(5)(d) and 7.02(b)(2)(b)(1) would be the focus of his comments.
- The PB recommended the Commission consider the rezoning by a 4-3 vote, with two of the dissenting members asking why the rezoning would be required for enjoyment of use. Mr. Abel asserted they were not provided with an answer to that inquiry because the rezoning is not, in fact, necessary for the enjoyment of use.
- City staff reports show no finding of fact that would allow for the legitimate support of the applicant on this issue. The findings of fact only noted that under the current zoning classification all the same uses are permitted as under the D5 classification, and that the building is not part of the PAD.
- He challenges the applicant to prove that the property cannot be used under the D4 classification, as that is the fundamental consideration of 7.02(b)(2)(b)(1).

- Mr. Rattner argued that rezoning should be considered based on whether it is necessary in order to bestow the rights and usage common to an adjacent property to the property in question, which is not what the City ordinance says. The question the ordinance actually addresses is whether the current zoning allows for the enjoyment of property ownership.

Mickey Schwartz of Birmingham Place said the City's previous plans intentionally limited building height, and this matter should be considered as part of the current Master Planning process. He noted that a number of other buildings in the area have conformed to their D4 zoning and it has not been a problem for them.

Richard Huddleston, vice-president of Valstone Asset Management and office tenant at 260 E. Brown, explained that from November 2010 - December 2017 Valstone owned the commercial space at Birmingham Place. He continued:

- Valstone rescued the commercial space at Birmingham Place from foreclosure by purchasing the note, renovating the building, and turning it into one of the most desirable business addresses in southeastern Michigan.
- When 469 - 479 S. Old Woodward was on the market, he was approached by the real estate brokers to purchase the property. After running the numbers, he determined that the only way to make the parcel profitable would be to significantly obscure the southern view for the tenants of Birmingham Place, and he found that he would not in good conscience be able to do that.

Karl Sachs of 666 Baldwin Ct. said he would be concerned about the domino effect of granting D5 zoning to this parcel and other buildings along Woodward pursuing the same height increases through their own subsequent requests for rezoning.

Anthony Yousaif, one of the developers of the 469 - 479 S. Old Woodward parcel, yielded his time to Duraid Markus.

Duraid Markus introduced himself as one of the partners in the 469 - 479 S. Old Woodward development. Mr. Markus said:

- The project went back to the PB because the developers were unsure whether a D5 zoning allowed for the expansion of buildings, not only because the building had not been appropriately described as being outside of the PAD.
- City Attorney Currier had already opined that the parcel is eligible for D5 rezoning.
- When he considered purchasing the parcel, research into the City ordinances indicated rezoning should be possible subject to the owners entering into a SLUP.
- There are no other buildings in Birmingham where the middle building is zoned differently from the buildings on the left and the right.
- Rezoning to D5 would allow the proposed building to be stepped back, which would minimize the impact on Birmingham Place. Leaving the zoning at D4 would require the building to be built up to the lot line, resulting in far more obstruction for south-facing Birmingham Place tenants.
- The domino effect concern with rezoning leading to more rezoning is a red herring considering the loss of flexibility a developer experiences when agreeing to a SLUP. In many cases it is more likely that a developer would find it more beneficial to remain in D4 than to agree to a SLUP.

Alice Lezotte, a Birmingham Place resident, said that Birmingham Place is a vertical neighborhood and entreated the Commissioners to consider it as such, keeping in mind what they would want for their horizontal neighborhoods. She explained this discussion is a matter of quality of life, air, space, noise, and safety for the residents of Birmingham Place.

Fred Lavery, owner of the Audi Dealership on Woodward in Birmingham, said that as a business owner who has been party to SLUPs with the City he believes Mr. Markus is correct in saying that the City gains control by rezoning the parcel to D5 because of the SLUP requirement. The Triangle District, which is designed with consideration of New Urbanism, requires building heights from five to nine stories, meaning the precedent for taller buildings has already been set in Birmingham.

Paul Reagan, 997 Purdy, said he had occasion to attend the PB meeting on adjacent buildings and recalled it being said that it was nothing more than cleaning house for the two non-conforming buildings. The 555 Building and Birmingham Place are aberrations in Birmingham planning, not an appropriate standard. Mr. Reagan shared concern that this is an attempt to get a parcel rezoned in a way that would no longer be possible after the community has its say as part of the upcoming Master Planning process, and he urged the Commission not to let it go through. He asked the Commission to send the issue back to the PB with a focus on respecting the 2016 Plan and figuring out the issue of shared parking for the parcel.

Mayor Bordman closed the public hearing at 9:42 p.m.

Commissioner Hoff explained that she understood Birmingham Place residents' concerns, but the decision before the Commission is the rezoning of a parcel, not how that rezoning might affect the residents of Birmingham Place. She continued:

- Rezoning the parcel to D5 would not significantly change or benefit the streetscape versus a D4 parcel, despite the applicant's assertion that it would.
- When the PB determined which buildings would be part of the D5 zone, the decision specifically applied to those buildings. The ordinance specifies that it is "to allow for the extension or enlargement of existing legal non-conforming commercial buildings."
- She is concerned about setting a precedent for further D5 zoning. The condition of buildings of different heights in Birmingham already exists, and Birmingham is a beautiful city with it.
- Section 7.02(b)(2) states that rezoning must be proven necessary for the preservation and enjoyment of rights of usage, and she was not convinced that it is necessary.
- She would not be voting in favor of the rezoning.

Commissioner DeWeese said he did not understand the D5 zoning designation to be applicable to any buildings beyond the specific non-conforming buildings for which the designation was designed. He said he was not convinced the zoning needed to be changed for enjoyment of use, and that the 555 Building seems to be made up of two buildings, the shorter of which would be more appropriate to determine the height to which the proposed building at 469 - 479 S. Old Woodward could go. While he said he would consider other points, at this time Commissioner DeWeese indicated he would not be voting to approve the rezoning.

Commissioner Sherman said the question of what buildings and areas would be appropriately included in the D5 zoning area, with specific attention from Haines to Brown, should be sent back to the PB with a request for a definitive answer. No action should be taken on the motion because it is too related to the potential development in this case.

Commissioner DeWeese said he would be comfortable sending this back to the PB with the request that they pay particular attention to the issues broached this evening. He added that he was not comfortable with the 4-3 vote by the PB and would like more unanimity in their recommendation.

Mayor Bordman said she was not in favor of sending the matter back to the PB. She noted all the information the Commission had been provided with in order to make a decision and said it would not be appropriate to delay.

Commissioner Nickita said:

- The 200-foot right-of-way of the Woodward Corridor between the 555 Building and Birmingham Place on the west side and the west side of the Triangle District on the east side has been intentionally planned and developed as a high-density area.
- While the Downtown Overlay has always adhered to buildings that are no more than five stories in height, the Woodward Corridor has been built with taller buildings. For this reason, rezoning the parcel at 469 - 479 S. Old Woodward to D5 would not establish a precedent for the buildings in the Downtown Overlay. The D4 parcel in question is anomalous among the other buildings along the Woodward Corridor.
- The City has much more influence on any development at 469 - 479 S. Old Woodward if they change the zoning to D5 because of the SLUP requirement.
- The Citywide Master Plan is a broad view, and as such will not focus on specific zoning details like the question currently before the Commission.
- The ability to update non-conforming properties or parcels was the intention of the D5 classification. The ordinance was supposed to refer to whatever property is closest to the property in question in order to determine the maximum height. Because the ordinance language seems not to be clear on the issue, it would be inappropriate to vote on this since the definition of 'adjacent and abutting' is being interpreted more broadly than may have been originally intended. The point in the D5 ordinance language should be clarified so that an 'adjacent' building cannot be interpreted as a building across the street.

Mayor Pro Tem Boutros said he would like to see this studied as part of the Master Planning process.

Commissioner Harris said he agrees with Mayor Bordman that the decision should be made this evening. Referring to 7.02(2)(b)(2), he continued:

- He does not see a significant difference between the first criterion requiring rezoning for the necessity and preservation of enjoyment and rights and the second criterion requiring rezoning if the zoning classification is no longer appropriate. That said, the applicant made a compelling case that parking is unfeasible with this parcel zoned to D4, which satisfies both criteria.

- He was hoping to hear how D5 zoning would resolve the issue of parking, but since the applicant sufficiently demonstrated that parking would be an issue in D4 the criteria were still met.
- A staff report from November 8, 2018 stated adhering to a D4 would be “completely inconsistent and dominated by the height of the adjacent Birmingham Place and 555 Buildings.”
- The last criterion under 7.02(b)(2)(b) is “why the proposed zoning will not be detrimental to the surrounding properties.” The applicant made a compelling case as to why D5 is better for Birmingham Place, and the SLUP requirement would allow the City to encourage the accommodation of the neighboring properties.
- Commissioner Nickita’s assessment that there are limitations on when the D5 can be applied to future properties is accurate. There is no real risk of a ‘slippery slope’ with this zoning because this decision is not binding for any other decision. In addition, any building that sought to be rezoned to D5 would be subject to a SLUP.
- The risk level that the property owner assumed when buying the 469 - 479 S. Old Woodward parcel is irrelevant to the present discussion.
- Although the D5 was designed with the particular focus on the previous non-conforming properties, it was not restricted to only those non-conforming properties.
- For all those reasons, he is inclined to support the rezoning request.
- He also took heed of Commissioner Nikita's comments about the ambiguity in the ordinance, which he agrees should be addressed, but at a later date. The ambiguity does not dissuade him from approving the rezoning for this particular property.

Commissioner Hoff said there were valid reasons for sending this back to the PB, but she believed that a decision should be made.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner DeWeese:  
To deny the rezoning of 469 - 479 S. Old Woodward from B3/D4 to B3/D5.

City Attorney Currier said he would have to research whether the applicant could submit a new application before a year’s time elapses if the City makes changes to the D5 ordinance, because it might sufficiently constitute a material change in circumstance.

Mayor Bordman said she would be supporting the motion because she does not want the issue to go back to the PB.

**VOTE:** Yeas, 3  
Nays, 4 (Boutros, Harris, Nickita, Sherman)

**MOTION FAILED**

**MOTION:** Motion by Commissioner Harris  
To approve the rezoning of 469 - 479 S. Old Woodward from B3/D4 to B3/D5.

**MOTION DIED FOR LACK OF A SECOND**

**MOTION:** Motion by Mayor Pro Tem Boutros  
To postpone the hearing to do a comprehensive study.

### **MOTION DIED FOR LACK OF SECOND**

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita:  
To postpone the public hearing to July 22, 2019 for the purposes of sending it back to the Planning Board with specific direction to look at the issues raised by Commissioner Nickita on the D-5 ordinance and to look at the properties between Haines and Brown, Old Woodward and Woodward for the appropriate zoning classification.

Planning Director Ecker said the ordinance language could possibly be reviewed and brought back by July 22, 2019. She was not sure if the PB would reach consensus in three months on the geographic area to which the D5 zoning should be applied, since they have already studied the issue and were not able to reach consensus.

Commissioner Hoff said she would be interested in knowing whether building heights should be to the eaves or to the tallest structure on a building, and the specific meaning of the 'adjacent' and 'abutting' in the context of the ordinance.

Commissioner Sherman said he would be willing to change the date in the motion to allow an additional month of study.

Commissioner Nickita said it should not take four months to define the method of determining building height and the definitions of 'adjacent' and 'abutting'. He said it would be better to keep the date in the motion and to extend it if necessary.

Mayor Bordman invited public comment on the motion.

Mr. Rattner stated the applicant had no objection to the motion.

Mr. Schwartz said that all the interested parties have weighed in on the issue, and the Commission is in effect postponing a civic duty.

Mr. Bloom said he would like to know the impact on the City if the parcel is built up as a hotel, office building, mixed use space, or any other type of development. He would want the PB to report on each building-type's likely impact on parking, public safety, density, and overall quality of life for Birmingham residents.

Mr. Reagan said 'adjacent' and 'abutting' were terms already discussed at the beginning of the 2016 planning process. In addition, the expansion of the geographic area being studied concerned Mr. Reagan because, as he stated, the neighborhood included within that area already deals with significant congestion, cut-through traffic, and parking issues. If these developments occur, there has to be sufficient parking accommodations. Mr. Reagan asserted parking shortages would stem the possible larger D5 developments the City is considering allowing.

Ms. Friedlaender said choosing to raise the heights of buildings should be part of a community study process, and all the buildings around the Merrillwood building should be included in this motion and studied since Merrillwood is also zoned D5.

Mr. Abel said the Commission should make a decision this evening.

Commissioner Hoff said Commissioner Nickita's concerns should be spelled out in the motion.

Mayor Bordman agreed with Mr. Abel and Commissioner Hoff. She asked if there was a motion to amend in order to include Commissioner Nickita's comments.

No motion to amend was offered.

**VOTE:**           Yeas,               2 (Nickita, Sherman)  
                  Nays,               5

**MOTION FAILED**

The Commission took no action. The property remains zoned D4.

Mayor Bordman referred the issue to City Attorney Currier to determine the specific terms under which the applicant may re-apply, since the application was not denied.

Mayor Bordman recessed the meeting for three minutes. The meeting resumed at 10:48 p.m.

**03-060-19               PUBLIC HEARING ON SPECIAL ASSESSMENT DISTRICT FOR  
PARK STREET PAVING PROJECT – OAKLAND TO HAMILTON  
STREETSCAPE AND STREET LIGHT**

Mayor Bordman opened the public hearing at 10:48 p.m.

Assistant City Engineer Fletcher presented the proposed project and special assessment district (SAD).

Clarifications/Comments

City Manager Valentine clarified that the SAD would be assessed for the same standard streetscape that exists throughout the downtown. The only corner that would be different is Park and Hamilton, which is publicly owned and currently before the Architectural Review Committee for design.

City Engineer O'Meara advised the Commission that all residents affected by the SAD have been sent a two page letter documenting all the information, and the City has received no questions or concerns regarding the issue.

Commissioner Sherman reminded the Commission that it has approved similar SADs in other locations without plans. The proposal encompasses the standard streetscape of the sidewalk, exposed aggregate, the trees and the lights. He said there is no reason to postpone this decision.

Commissioner Nickita said he would like to see schematic designs before plans are finalized and ready to go out for bid, for both this and future projects. Commissioner DeWeese concurred.

City Engineer O'Meara said it would take approximately a month to present schematic designs.

Mayor Bordman closed public hearing at 11:03 p.m.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner DeWeese:  
To receive the report regarding Streetscape & Street Light Special Assessment on Park Street from Oakland Avenue to Hamilton Row; and

WHEREAS, The City Commission is of the opinion that construction of the improvement herein is declared a necessity; and

RESOLVED, that there be constructed an improvement to be hereinafter known as  
**PARK STREET STREETScape & STREET LIGHT ENHANCEMENTS**

Consisting of the construction of exposed aggregate concrete and regular concrete pavement sidewalks, new street lights, as well as new trees and landscaping where needed; be further

RESOLVED, that at such time as the Assessor is directed to prepare the assessment roll, one hundred percent (100%) of the estimated cost be levied against the assessment district; be it further

RESOLVED, that there be a special assessment district created and special assessments levied in accordance with benefits against the properties within such assessment district, said special assessment district shall be all properties, both public and private, within the following districts:

**"Oak Grove Addition Plat"**

Lots 37, 38 & 39 except for that portion taken for Oakland Avenue and Woodward Avenue rights-of-way.

**"Assessor's Plat No. 21"**

Lot 42 except for that portion taken for Woodward Avenue right-of-way, lot 43 except for that portion taken for Park Street right-of-way, lot 44 except for that portion taken for the Park Street right-of-way and rear alley, lots 70 thru 76 except for that portion taken for Woodward Avenue right-of-way.

RESOLVED, that the Commission shall meet on Monday, March 25, 2019 at 7:30 P.M., for the purpose of conducting a public hearing to confirm the roll for the Park Street Streetscape & Street Light Enhancement.

VOTE:           Yeas,           7  
                  Nays,           0

**03-061-19                   WIMBLETON NEIGHBORHOOD INTERSECTION EVALUATION**

Police Chief Clemence presented the intersection evaluation.

**MOTION:** Motion by Commissioner DeWeese, seconded by Mayor Pro Tem Boutros:  
To approve the installations of "Yield" signs at the following locations:



1. Henley at Abbey
2. Henley at Oxford
3. Henley at Warwick
4. Henley at Tottenham
5. Tottenham at Warwick

And the installation of a "Stop" sign at:

1. Oakdale at Rivenoak

VOTE:           Yeas,           7  
                   Nays,           0

**03-062-19                   RESOLUTION TO MEET IN CLOSED SESSION PURSUANT TO SECTIONS 8(H) AND 8(E) OF THE OPEN MEETINGS ACT**

**MOTION:**    Motion by Commissioner Nickita, seconded by Commissioner Hoff: to meet in closed session pursuant to the Open Meetings Act, Section 8(h) to consider material exempt from discussion or disclosure by state or federal statute, and Section 8(e) to review pending litigation in the matter of Darakjian v City of Birmingham.

**(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.)**

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

**VII.   REMOVED FROM CONSENT AGENDA**  
 Items removed from the Consent Agenda were addressed earlier in the meeting.

**VIII.   COMMUNICATIONS**  
 None

**IX.   OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**  
 None

**X.   REPORTS**

**03-063-19   COMMISSIONER REPORTS**  
 The City Commission will appoint two regular members to the Architectural Review Committee on April 8, 2019.

**03-064-19 CITY STAFF**

Parking Utilization Report, submitted by Assistant City Manager Gunter.

Annual Report of the Planning Board, Historic District Commission and Design Review Board by Planning Director Ecker.

Planning Director Ecker explained that the Building Department is currently reviewing the issue of short term rentals.

<b>XI. ADJOURN</b>
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Mayor Bordman adjourned the meeting to closed session at 11:08 p.m.

Mayor Bordman announced no action is anticipated following the closed session.

Mayor Bordman reconvened the regular meeting at 12:33 a.m. and, there being no further business, adjourned the meeting at 12:33 a.m.

J. Cherilynn Mynsberge, City Clerk