

BIRMINGHAM CITY COMMISSION MINUTES
MAY 8, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Pro Tem Andrew Harris called the meeting to order at 7:30 PM.

II. ROLL CALL

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

Administration: City Manager Valentine, City Attorney Currier, City Clerk Brown, Police Chief Clemence, City Planner Ecker, Finance Director Gerber, Building Official Johnson, City Engineer O'Meara, DPS Director Wood

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

Mayor Pro Tem Harris announced:

- The Farmers Market continues on Sundays from 9:00 AM to 2:00 PM in Municipal Parking Lot #6 on N. Old Woodward through October 29, 2017. For more information, visit www.birminghamfarmersmarket.org.
- The Birmingham Bloomfield Art Center Annual Art Birmingham will be held Saturday, May 13th and Sunday, May 14th in Shain Park. For more information and hours, visit www.theguild.org.
- The theme of this year's Celebrate Birmingham Hometown Parade is "Hats Off to Our Heroes", and it will be held Sunday, May 21st at 1:00 PM. The parade begins at S. Old Woodward and Daines, continues on S. Old Woodward to Maple, then to Bates, ending at Shain Park. Until 4:00 PM, there will be free children's activities in Shain Park immediately after the parade ends. Come out and join your neighbors to kick off your summer activities in Birmingham!

05-118-17 APPOINTMENT TO MULTI-MODAL TRANSPORTATION BOARD

Daniel Isaksen was present and was interviewed by the Commission.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese: To appoint Daniel Isaksen as an alternate member to the Multi-Modal Transportation Board to serve a three-year term to expire October 27, 2019.

VOTE: Yeas, 6
Nays, None

Absent, 1 (Nickita)

The City Clerk administered the oath of office to Mr. Isaksen.

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.

05-119-17 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Bordman – Item I (Resignations from Museum Board)
- Commissioner Hoff – Item B (Approval of Commission Minutes, April 24, 2017)

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Boutros:
To approve the Consent Agenda, with items B and I removed.

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

- A. Approval of City Commission minutes of April 22, 2017.
- C. Approval of warrant list, including Automated Clearing House payments of April 26, 2017 in the amount of \$419,107.15.
- D. Approval of warrant list, including Automated Clearing House payments of May 3, 2017 in the amount of \$414,407.27.
- E. Resolution approving the street light agreement between the City of Birmingham and DTE Energy regarding the installation of street lights at 369 N. Old Woodward Ave. Further, directing the Mayor to sign the agreement on behalf of the City. All costs relative to this agreement will be charged to the adjacent owner.
- F. Resolution awarding the 2017 Local Streets Paving Program, Contract #1-17(P) to DiPonio Contracting, Inc., of Shelby Twp., MI, in the amount of \$1,195,989.00, to be charged to the various accounts as detailed in the report; and further approving the appropriations and budget amendments as follows:

Local Street Fund		
Revenues:		
Draw from Fund Balance	#203-000.000-400.0000	\$49,540
Total Revenue Adjustments		\$49,540
Expenditures:		
Public Improvements	#203-449.001-981.0100	\$49,540
Total Expenditure Adjustments		\$49,540

AND

Resolution setting Monday, June 12, 2017 at 7:30 PM for a Public Hearing to consider declaring necessity for the installation of water laterals within the 2017 Local Street Paving Program area, and further setting Monday, June 26, 2017, at 7:30 PM for a

- Public Hearing to consider confirming the roll for the installation of water laterals within the 2017 Local Street Paving Program area.
- G. Resolution requesting reimbursement for the maximum allotment of \$2,648.39 for eligible mosquito control activity under the Oakland County's West Nile Virus Fund Program. (complete resolution in agenda packet)
 - H. Resolution approving the Amended and Restated Tree Care and Removal Agreement with J. H. Hart Urban Forestry, for a second year renewal (July 1, 2017 – June 30, 2018) upon thirty (30) days written notice in the amount set forth in the price schedule, with all other terms and conditions remaining the same. Funds are available in each of the following accounts for these services: Major Street Fund – Street Trees – Tree Trimming Contract account #202-449.005-819.0000; Local Street Fund – Street Trees – Tree Trimming Contract account #203-449.005-819.0000; Parks – Tree Trimming Contract account #101-751.000-819.0000; and Property Maintenance –Tree Trimming Contract account #101-441.003-819.0000.
 - J. Resolution approving an amended request submitted by the City of Birmingham to hold Celebrate Birmingham Parade on Sunday, May 21, 2017, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
 - K. Resolution setting Monday, June 12, 2017 at 7:30 PM for a Public Hearing to consider the Final Site Plan and Special Land Use Permit for 160 W. Maple - Dick O Dow's, to allow the renovation of an existing restaurant. (complete resolution in agenda packet)
 - L. Resolution approving the purchase of a 2017 Ford Fusion SE from Gorno Ford through the State of Michigan extendable purchasing contract #071B1300005 in the amount of \$21,593.00 from account #641-441.006.971.0100.
 - M. Resolution approving the purchase of one (1) 2018 Freightliner 108 chassis from Wolverine Freightliner through the Rochester Hills Cooperative Award Agreement #RFP-RH-13-30 totaling \$87,253.00 from account #641-441.006.971.0100; further, approving the purchase and installation of snow removal up-fitting equipment from Knapheide Truck Equipment through the State of Michigan MI-Deal Cooperative Purchasing Contract #071B7700087 totaling \$95,315.00 from account #641-441.006.971.0100, for a total combined expenditure of \$182,568.00.
 - N. Resolution approving the agreement between the City of Birmingham and the Village of Beverly Hills for use of the police pistol range by Beverly Hills Department of Public Safety for \$1,500 per year; authorizing the Mayor and City Clerk to sign the contract.
 - O. Resolution approving the service agreement with Heartland Payment Systems for services described in Attachment A – Agreement as submitted in the corrected proposal of April 20, 2017 and utilizing the special interchange pricing program for credit card payment processing contingent upon Heartland Payment Systems endorsing the City as additional insured upon execution of the agreement; further directing the Mayor and City Clerk to sign the agreement on behalf of the City.

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

05-120-17 APPROVAL OF CITY COMMISSION MINUTES OF APRIL 24, 2017

Commissioner Hoff, noting that she arrived late, pointed out her arrival was not recorded on Page 4. City Clerk Brown explained that she recorded Commissioner Hoff's arrival time in the *Roll Call* portion of the minutes.

MOTION: Motion by Commissioner Hoff, second by Commissioner DeWeese:
To approve the City Commission minutes of April 24, 2017, as submitted.

VOTE: Yeas, 6
Nays, None
Absent, 1 (Nickita)

05-121-17 Resignations from Museum Board

Commissioner Bordman thanked Ms. Maricak and Mr. Cristbrook for their service and expressed hope for their recovery.

MOTION: Motion by Commissioner Bordman, second by Commissioner Boutros:
To accept Ms. Maricak's and Mr. Cristbrook's resignations from the Museum Board, to thank each of them for their service, and to direct the Clerk to begin the process to fill the vacancies.

VOTE: Yeas, 6
Nays, None
Absent, 1 (Nickita)

V. UNFINISHED BUSINESS

05-122-17 PUBLIC HEARING – SLUP AMENDMENT AT 250 N. OLD WOODWARD – EMAGINE PALLADIUM/FOUR STORY BURGER

Mayor Pro Tem Harris re-opened the public hearing at 7:38 PM.

City Planner Ecker provided background information:

- In December of 2016 the petitioner changed the business name and concept to Four Story Burger. The City's Zoning Ordinance requires approval from the City Commission for a name change.
- During the liquor license renewal hearings the City Commission set a public hearing for April 13, 2017 to consider terminating the Special Land Use Permit (SLUP).
- The petitioner submitted a complete application to the Planning Department seeking a SLUP amendment for the name change. There is no change in ownership.
- The Planning Board, on March 22, 2017, recommended approval of the SLUP amendment.
- No exterior signage is proposed at this time. The building owner would pursue any exterior changes separately.
- On April 13, 2017, the City Commission opened the public hearing for the Special Land Use Permit Amendment and Final Site Plan Review for 250 N. Old Woodward, and continued the public hearing to May 8, 2017 to allow the managing partners to attend.
- Mr. Goldstein is present tonight.

Commissioner Sherman:

- noted the Commission requested both primary owners to attend and, if they could not, to notify the City so the public hearing could be rescheduled;
- expressed concern that the applicants have not met the Commission's expectations, which have been made explicitly clear; and
- reminded the applicants that a SLUP is given and taken at the Commission's discretion.

City Manager Valentine:

- confirmed the applicant notified the City that only one of the two main managing partners would be able to attend. The public hearing had been set, and therefore any action would appropriately be made at the public hearing; and
- confirmed the Commission requested both applicants be present for the public hearing.

Commissioner Hoff, noting both Mr. Goldstein and Mr. Glantz were requested to attend the public hearing, said she was in favor of postponing further discussion until both were in attendance.

Commissioner Boutros expressed a preference to move forward with Mr. Goldstein present, but agreed the Commission requested both owners attend the public hearing.

Commissioner Bordman commented:

- the applicants have not given the kind of care toward city ordinances they should have given;
- she believes the breakdown has occurred due to the unfortunate impression given by the applicants that the City Commission does not deserve the respect it should receive; and
- she favors postponement of the public hearing until both Mr. Goldstein and Mr. Glantz can be present.

Commissioner DeWeese recalled both owners were requested to attend the public hearing, and because they did not comply he is in favor of postponing the public hearing until Mr. Goldstein and Mr. Glantz can both attend.

Mayor Pro Tem Harris said if the applicants complied with the instruction to notify the City if one of the owners could not attend, he was inclined to move forward.

Patrick Howe, attorney representing CH Birmingham, LLC, stated:

- He notified the City last Monday morning that Mr. Glantz could not attend;
- Mr. Glantz is not involved in the food and beverage operation or in the SLUP. Mr. Goldstein is the managing partner in charge of the SLUP change;
- Mr. Glantz and Mr. Goldstein were notified of the date. Last Monday morning Mr. Howe was made aware that Mr. Glantz could not attend, and the City Manager was subsequently notified; and
- Mr. Glantz is on a family vacation that was planned six months ago.

Mr. Goldstein:

- explained he does not have Mr. Glantz's calendar, and therefore cannot specify a date when both can attend; and
- confirmed he is available on June 26, 2017.

MOTION: Motion by Commissioner Bordman, seconded by Commissioner Sherman To postpone the public hearing on the Special Land Use Permit Amendment and Final Site Plan Review for 250 N. Old Woodward, Emagine Palladium Theatre and Ironwood Grill restaurant to allow the establishment to change their name to Emagine Palladium Theatre and Four Story Burger until to June 26, 2017 to allow the parties ample time to arrange their schedules so that both Mr. Goldstein and Mr. Glantz may be present at the public hearing.

VOTE: Yeas, 4
Nays, 2 (Boutros Harris)
Absent, 1 (Nickita)

**05-123-17 PUBLIC HEARING – SLUP TERMINATION AT 250 N. WOODWARD
– EMAGINE PALLADIUM/IRONWOOD GRILL**

Mayor Pro Tem Harris re-opened the public hearing at 8:02 PM.

Mr. Howe respectfully requested the applicants be allowed to continue the operation at 250 N. Woodward and indicated a desire to resolve the issue.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Bordman:
To postpone until June 26, 2017 the public hearing on termination of the Special Land Use Permit at 250 N. Old Woodward, Emagine Palladium Theatre and Ironwood Grill restaurant for failure to comply with the terms of the SLUP.

VOTE: Yeas, 6
Nays, None
Absent, 1 (Nickita)

VI. NEW BUSINESS

05-124-17 STREET PAVING POLICY (SPECIAL ASSESSMENTS) PROJECT LIMITS

City Engineer O'Meara explained:

- The City of Birmingham historically has asked residents on unimproved streets who wish to have an engineered, permanent pavement installed to petition the City, thereby indicating that a majority of the owners are in favor of the project, and in favor of creating a special assessment district. For many years, the City Commission has encouraged that such projects be sized in a manner that makes sense from an efficiency standpoint. Projects should typically not be started or stopped at odd locations (such as mid-block) to help create a majority in favor, if such a project would not be in the best interest of the City or the impacted owners, both within and adjacent to the proposed district.
- A request from residents on Lakeview Ave. led to an evaluation of whether engineering problems would arise from building shorter sections, rather than the entire length of a road in one project. There are certain costs of contracting regardless of the size of project, such as mobilization, bonding, and insurance. If two sections of a road are paved at different times these costs have to be paid twice, by smaller groups of homeowners. Also noise and dirt impacts in the neighborhood will be greater, and construction traffic on an existing chip seal pavement, which is not being replaced, may be damaged in the process.
- City Engineer O'Meara stated if a change in policy is considered, the following criteria are recommended for Lakeview Ave. and similar projects going forward:
 - The majority of the property owners of the section to be impacted shall be in favor of the project, as indicated by a written petition. Similarly, it should be clear through the petitioning process that there is not a majority in favor for the section not being included.

- The downsized project shall not create drainage problems on the street or adjacent right-of-way, particularly in the areas surrounding the ends of the project. Further, a reasonable storm sewer outlet for the project area shall be available.
- If an intersection is within the project area, and it is unimproved, it should be included in the project scope, unless there are clear engineering reasons to the contrary.
- As always, water main and City sewer improvements shall be included in the job, if needed.
- Each driveway approach within the project area shall be replaced with new concrete.
- The new pavement shall comply with the City's standard street width requirements.

Commissioner Bordman:

- received clarification that the current process has been in place since at least 2009;
- commented the current practice seeks to avoid a hodgepodge of improved/non-improved roads;
- stated dividing a small street to be improved at separate times costs more to the City's taxpayers; and
- said she is inclined to leave the City's practice as is.

Commissioner DeWeese felt the proposed policy is a good representation of the current process, except for the word "downsized" in the second bullet point. He was not in favor of changing the policy, but would like the current guidelines clarified.

Mayor Pro Tem Harris appreciated civil discourse on the issue but was not in favor of amending the current policy. He suggested including the issue in the master plan would be appropriate for exploring alternate measures for addressing the street improvements.

Commissioner Sherman:

- noted every capital asset has a lifespan, which drives the current policy because eventually a street reaches a condition that encourages buy-in from the majority of the residents on the street;
- explained the current street is basically a slurry coated gravel road, and the cape seal maintenance approach creates a crown on the road; and
- indicated the City has a sufficient number of streets with the requisite majority to allow improvements to move forward on other streets.

Commissioner Hoff, citing the City's past consistency in requiring an entire street to be improved, stated her preference that the commission take no action.

Commissioner Boutros:

- clarified the issue before the Commission is not a specific street, but a policy change;
- supported improvements as a public safety issue and encouraged residents to keep working toward what is best for them; and
- did not support changing the policy.

City Manager Valentine clarified a successful petition would change the designation of the road from an unimproved road to an improved road, meaning it would no longer be a glorified asphalt street and would have curb and gutter.

Kay Lurie confirmed a majority of residents on Lakeview are opposed to a paved street with curbs and requested the City not change the policy.

James Gorman expressed opposition to the policy change and urged the Commission to consider more thoroughly what constitutes a section if a policy change is made.

Rodney Lockwood voiced opposition to improvements of Lakeview Ave. He said blocks should be considered a distance between major intersections.

Don Schiemann spoke about a historical situation regarding a bridge on Baldwin and opposed a change in policy.

Rob Lavoie stated he is a practicing civil engineer and understands the concerns raised about the policy. He questioned how long Lakeview's paving will last, asked how to get the road paved, explained there are drainage issues, and asked if there is a clearly defined policy in place.

Christine Carlson believes the residents need an objective third party to decide if the street can be fixed with cape seal or needs to be improved

Christina McKenna urged the Commission to adopt the policy change, stating the system relies disproportionately on citizen initiative. She suggested the City rethink the system, provide the upgrade and protect the infrastructure.

Derek and Vivian Isrow expressed concerns about the sewer and why it is the homeowner's responsibility if it fails.

Marjorie Duncan does not believe the quality of the street matches the quality of homes on it and noted curb appeal begins at the street.

Orlando Juarez explained there are different topographies at the two ends of the street and that the street is far from passable. He stated the infrastructure below the road, sewer and water mains, needs to be upgraded. Mr. Juarez urged the Commission to clarify "meaningful section" and come up with a policy.

Chris Walton supported the policy change primarily because he supports improving Lakeview Ave.

The Commission took no action.

05-125-17 ON STREET ACCESSIBLE PARKING POLICY

City Planner Ecker provided information on the development of the proposed policy:

- In 2016, the City installed over 60 on-street designated accessible parking spaces to comply with new regulations under the Americans with Disabilities Act (ADA). The guidelines require cities to provide reserved, marked accessible parking spaces, in all municipal lots and on any public street that has individually marked spaces.
- Staff was asked to explore creating an accessible parking installation policy for areas with unmarked on-street parking. On March 2, 2017, the Multi-Modal

Transportation Board discussed the issue of establishing a policy for on street accessible parking in areas outside of the Parking Assessment District.

- On April 13, 2017, the MMTB again discussed the on street accessible parking policy, and voted unanimously to recommend an application process be established to review and evaluate requests for additional on-street accessible parking spaces. The installation of a space is estimated to cost the City a minimum of \$245.99 per space.
- After much discussion, the Multi-Modal Transportation Board voted not to pass the cost for an on street accessible parking space on to the applicant. The MMTB recommended approval of the proposed on-street accessible parking policy, with no application fee.

Commissioner Bordman felt the discussion is premature and should be included as part of the master plan process.

Commissioner DeWeese agreed the discussion is premature and believes an integrated approach through the master plan is needed.

Commissioner Hoff expressed concern with instituting policies based on minimal requests and felt there is not enough demand to change the existing policy.

Commissioner Sherman received clarification that a street accessible parking space would need to be renewed every two years.

Mayor Pro Tem Harris received confirmation that a space could be for commercial or residential use. Mayor Pro Tem Harris was open to exploring the issue during the master plan process but not now.

The Commission took no action.

05-126-17 DEFINITION OF RETAIL IN THE REDLINE RETAIL DISTRICT

City Planner Ecker provided introductory comments:

- The City Manager has directed staff to consider measures to provide temporary relief to halt the addition of non-retail uses into storefronts in Downtown Birmingham located within the Redline Retail District, while the Planning Board continues to study this issue.
- Over the past decade, there has been an ongoing desire by some City Boards and Commissions to review the current definition of retail to ensure that we are encouraging true retail downtown, and not allowing office and other service uses to dominate. The issue is specifically relevant in the Downtown Overlay, where retail use is required in the first 20' of depth for all buildings in the Redline Retail District.
- Article 9, section 9.02 of the Zoning Ordinance provides the following retail related definitions:

Retail Use: Any of the following uses: artisan, community, commercial, entertainment (including all establishments operating with a liquor license

obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development), bistro or restaurant uses.

Artisan Use: Any premises used principally for the repair, manufacture, and sale of domestic furniture, arts, and crafts. The work must take place entirely within an enclosed building using only hand-held and/or table-mounted manual and electric tools.

Community Use: Premises used principally for education, worship, cultural performances, and gatherings administered by nonprofit cultural, educational, and religious organizations; premises used principally for local, state, and federal government, administration, provision of public services, education, cultural performances, and gatherings.

Commercial Use: Premises used generally in connection with the purchase, sale, barter, display, or exchange of goods, wares, merchandise, or personal services.

Office: A building or portion of a building wherein services are performed, including professional, financial (including banks), clerical, sales, administrative, or medical services.

- As defined in Article 9, retail uses include the direct sale of products from the premises, but also include restaurants, entertainment and the purchase, sale or exchange of personal services (given the inclusion of personal services in the definition of commercial uses, which are included as retail uses). No definition for personal services is provided. Personal financial services, beauty services, banking services, real estate services, advertising services and other similar uses have been permitted within the Redline Retail District under the umbrella of personal services, provided that there is a display area for the sale or exchange of such goods and services in the first 20' of the storefront, and the storefront is open to the public during regular business hours. Concern has been raised that this small display area 20' in depth is not sufficient to create an activated, pedestrian-friendly retail district.
- The current definitions for retail and commercial have thus permitted some uses that are not universally considered "true retail" as there are no physical goods for sale. In the past, both the Planning Board and the Birmingham Shopping District Board have expressed concern with the existing retail definition, and have considered alternative definitions to tighten the definition of retail to include only shops which sell products, not financial, real estate or other such personal services. On the other hand, many property owners in the past have expressed concerns about tightening up the definitions as they desire the flexibility to lease space to a wider range of users to avoid vacancies.
- At the joint meeting with the City Commission on June 20, 2016, both the City Commission and the Planning Board members agreed that the existing definition of retail, and the related definitions in the Zoning Ordinance should be discussed in further detail.

- Accordingly, the City Commission may wish to consider providing temporary relief to halt the addition of non-retail uses into storefronts in Downtown while the Planning Board continues to study this issue. A simple option discussed by the Planning Board is to strengthen the retail definition by requiring the sale or exchange of goods and eliminating the categories of community and commercial use (which permits personal service uses). This could also be accomplished by leaving the definitions of retail and commercial uses as is pending further study, and simply excluding community and personal service uses from the Redline Retail District only in the Downtown Birmingham Overlay District. This would ensure that all establishments offering only personal services would not be permitted in the first floor redline retail areas. This would also remove community uses from the Redline Retail District as these may not provide the type of active retail uses envisioned. Community uses include schools, religious institutions, government offices or cultural performance establishments. Schools, religious institutions and government offices often have limited hours, cater to limited groups of people, and do not offer the purchase, sale, barter, display or exchange of goods, wares or merchandise preferred in a dedicated retail district. Cultural performances however could also fall under the category of entertainment, which could remain under the definition of retail even if community uses were removed.
- With this option, beauty salons and similar establishments that offer personal beauty services would not be permitted in the Redline Retail District unless they sell or display an extensive offering of beauty products as well in the first 20' of their storefront space.

City Planner Ecker, in response to questions from the Commission, explained:

- The only time you would see office use on the first floor in the downtown retail district is if the business claims to offer "personal services", which is listed in the Ordinance under the heading of "Commercial Use", but is not defined.
- The proposed amendment would remove personal services and community uses from the retail definition in the Redline Retail District.
- Community and commercial uses are included in the "Retail" definition in the District. Commercial use includes personal services. Offices are not allowed in the District, unless they try to identify themselves as personal services.

Commissioner Bordman commented:

- the "creep" of business into the District has to stop because the District needs to be animated;
- she is not in favor of reducing the size of the District;
- the proposal is not quite ready to be adopted; and
- a year is too long to wait for the Planning Board to come up with solution.

Commissioner DeWeese believed the proposal as presented is an attempt at a quick fix without exploring all the implications and could have unintended consequences. He was in favor of the Planning Board accelerating their process of addressing the issue, but he was not supportive of the proposed motion.

City Manager Valentine explained the proposal is intended to address, in the short-term, concern with the transition of the District to business until a long-term solution is provided.

Commissioner Hoff suggested temporarily prohibiting an office as opposed to personal service.

Commissioner Sherman agreed the proposal is not the perfect resolution but gives the City time to deal with the issue. He encouraged adoption of the proposal under these circumstances as being in the long-term interest of the District.

Commissioner Boutros commented:

- the Commission is being asked to amend the downtown Birmingham overlay standards to exclude community and personal service without a definition of either;
- he cannot support the motion as written, without a real definition of "personal service"; and
- he is supportive of moving forward with amendments to the motion.

Mayor Pro Tem Harris also agreed the suggested resolution is not clear and is not a final resolution.

Commissioner Hoff stated she would not support the motion, explaining the Commission is being asked to disallow "personal service" without there being a definition of it. She asked if empty storefronts are preferable to a business that attracts a lot of people.

Commissioner Sherman preferred the Planning Board to come back with some type of definition of "community" and "personal service".

Commissioner Boutros asked if the motion can be amended to require the uses in retail to be defined.

City Planner Ecker clarified the definition of "retail" includes "community uses" and "commercial uses", and noted the definition of "commercial uses" includes "personal services".

Commissioner DeWeese said he would not support the motion, noting his concerns with disallowing community use in the redline district and with not having a clear definition of "personal service".

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Bordman:
To direct the Planning Board to review and present the recommendation to amend Article 3, section 3.04(C)(6), Specific Standards, to amend the Downtown Birmingham Overlay Standards to exclude community and personal service uses as permitted in the Redline Retail District, and to forward a recommendation to the City Commission on or before July 24, 2017, with the caveat that the Planning Board provide definitions of "community" and "personal service".

VOTE: Yeas, 4
 Nays, 2 (DeWeese, Hoff)
 Absent, 1 (Nickita)

05-127-17 CLOSED SESSION – ATTORNEY/CLIENT PRIVILEGE

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 Commissioner Sherman
	Nays,	None
	Absent,	Mayor Nickita

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

Resident Mr. Potts commended the Birmingham Police Department for their quick response and excellent service in responding to a serious car accident in which he was involved.

X. REPORTS

05-128-17 COMMISSIONER REPORTS

The Commission will appoint members to the Historic District Study Committee, Ethics Board, Retirement Board, and Museum Board on June 12, 2017.

05-129-17 COMMISSIONER COMMENTS

Commissioner Bordman would like the qualifications for membership on City boards and committees to be evaluated to determine if they are sufficient for the job.

Commissioner DeWeese requested an explanation of the chart on page 2 of the Fitch Report.

05-130-17 CITY STAFF REPORTS

The Commission received the 3rd Quarter Budget Report, and the 3rd Quarter Investment Report, submitted by Finance Director Gerber.

Commissioner Hoff was concerned that only 32% of CDBG funds were expended in 2015/2016. Finance Director Gerber explained funds are often carried over into the next fiscal year because of the timing of projects and when the City is authorized to expend the funds.

The Commission received the Parking Structure Utilization Report, submitted by City Engineer O'Meara.

City Manager Valentine noted public perception is that there is not enough parking, but the statistics show otherwise. Commissioners asked that the information be made public, and City Manager Valentine reported new technology should be available via the City's website by the end of May that will show, in real time, the number of parking spaces available.

The Commission received a report on invisible fence signage, submitted by City Attorney Carrier.

City Attorney Currier suggested the central issue in providing protection from loose dogs is what constitutes reasonable control of an animal. He reported many communities do not consider invisible fences as a means of maintaining reasonable control of an animal.

Mayor Pro Tem Harris, who had introduced at the last Commission meeting the idea of requiring signage for invisible fences, stated he does not feel compelled to advocate for ordinance changes based on City Attorney Currier's report. He believes enforcement is the issue.

Mayor Pro Tem Harris announced no action would be taken following the closed session.

The City Commission adjourned to closed session at 10:28 PM.

XI. ADJOURN

The regular meeting was adjourned at 12:00 AM.

J. Cherilynn Brown
City Clerk