

**BIRMINGHAM CITY COMMISSION MINUTES**  
**MAY 11, 2015**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

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

Stuart Lee Sherman, Mayor, called the meeting to order at 7:30 PM.

**II. ROLL CALL**

ROLL CALL: Present,	Mayor Sherman Commissioner Dilgard Mayor Pro Tem Hoff Commissioner McDaniel Commissioner Moore Commissioner Nickita
Absent,	Commissioner Rinschler

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, HR Coordinator Goldman, Finance Director Gerber, City Engineer O'Meara, City Planner Ecker, Police Chief Studt, Deputy Police Chief Clemence, Special Events Coordinator Rondello

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

Mayor Sherman noted the addendum to the agenda of the Public Hearing regarding 640 Baldwin (New Business Item F).

**05-92-15 APPOINTMENT TO THE BOARD OF BUILDING TRADES APPEALS**

**MOTION:** Motion by Nickita:

To appoint David Force, 1099 N. Cranbrook Rd, Bloomfield Hills, to serve a three-year term on the Board of Building Trades Appeals to expire May 23, 2018.

**MOTION:** Motion by Hoff:

To appoint James Partridge, 3916 Cottontail Ln, Bloomfield, to serve a three-year term on the Board of Building Trades Appeals to expire May 23, 2018.

**MOTION:** Motion by Dilgard:

To appoint Ronald White, 1898 Tahquamenon Court, Bloomfield Hills, to serve a three-year term on the Board of Building Trades Appeals to expire May 23, 2018.

VOTE ON NOMINATION OF FORCE:

Yeas, 6

Absent, 1 (Rinschler)

VOTE ON NOMINATION OF PARTRIDGE:

Yeas, 6  
Absent, 1 (Rinschler)

VOTE ON NOMINATION OF WHITE:

Yeas, 6  
Absent, 1 (Rinschler)

**05-93-15                    APPOINTMENT TO THE  
                                 HOUSING BOARD OF APPEALS**

**MOTION:**     Motion by Moore:

To appoint Robert Ziegelman, 36800 Woodward, Bloomfield Hills, to serve a three-year term on the Housing Board of Appeals to expire May 4, 2018.

**MOTION:**     Motion by Nickita:

To appoint Kenneth Peterson, 34 Adelaide, Detroit, to serve a three-year term on the Housing Board of Appeals to expire May 4, 2018.

VOTE ON NOMINATION OF ZIEGELMAN:

Yeas, 6  
Absent, 1 (Rinschler)

VOTE ON NOMINATION OF PETERSON:

Yeas, 6  
Absent, 1 (Rinschler)

**05-94-15                    APPOINTMENT TO THE  
                                 BROWNFIELD REDEVELOPMENT AUTHORITY**

The Commission concurred in the Mayor's appointment of Wendy Zabriskie, 463 Wimbleton, to the City of Birmingham Brownfield Redevelopment Authority to serve a three-year term to expire May 23, 2018.

**05-95-15                    APPOINTMENT TO THE  
                                 AD HOC PARKING DEVELOPMENT COMMITTEE**

**MOTION:**     Motion by McDaniel:

To appoint Terry Lang, 1532 S. Bates, as the resident member with a finance background on the Ad Hoc Parking Development Committee.

**MOTION:**     Motion by Hoff:

To appoint Mike Kennedy, 1712 Oak, as the resident member with a commercial development background on the Ad Hoc Parking Development Committee.

VOTE ON NOMINATION OF LANG:

Yeas, 6  
Absent, 1 (Rinschler)

VOTE ON NOMINATION OF KENNEDY:

Yeas, 6

Absent, 1 (Rinschler)

The Commission concurred in the appointment of Richard Astrein as the Principal Shopping District Committee member on the Ad Hoc Parking Development Committee.

The Commission concurred in the appointment of Scott Klein as the Planning Board member on the Ad Hoc Parking Development Committee.

**MOTION:** Motion by McDaniel:

To appoint Commissioner Nickita as the City Commission member on the Ad Hoc Parking Development Committee.

**MOTION:** Motion by Moore:

To appoint Mayor Pro Tem Hoff as the City Commission member on the Ad Hoc Parking Development Committee.

VOTE ON NOMINATION OF NICKITA:

Yeas, 6

Absent, 1 (Rinschler)

VOTE ON NOMINATION OF HOFF:

Yeas, 6

Absent, 1 (Rinschler)

The Clerk administered the oath to the appointed board members.

**IV. CONSENT AGENDA**

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

**05-96-15 APPROVAL OF CONSENT AGENDA**

**MOTION:** Motion by McDaniel, seconded by Dilgard

To approve the consent agenda as follows:

- A. Approval of City Commission budget minutes of April 18, 2015.
- B. Approval of City Commission minutes of April 27, 2015.
- C. Approval of warrant list, including Automated Clearing House payments, of April 29, 2015 in the amount of \$291,992.52.
- D. Approval of warrant list, including Automated Clearing House payments, of May 6, 2015 in the amount of \$487,467.09.
- E. Resolution setting a public hearing date for June 1, 2015 to consider the Final Site Plan and Special Land Use Permit Amendment at 735 Forest (Forest Grill) to allow the transfer in ownership of the restaurant and the accompanying liquor license from Bendyl, LLC to Forest Grill 2, LLC.
- F. Resolution setting a public hearing date for June 1, 2015 to consider the Final Site Plan and Special Land Use Permit at 2483 W. Maple, Dearborn Federal Credit Union Financial, to construct a financial institution with a Drive-thru.

- G. Resolution approving the Commercial Natural Gas Purchase contract with Constellation NewEnergy-Gas Division, LLC for natural gas purchases from December 1, 2015 thru April 30, 2017 at a rate not to exceed \$4.15/Mcf. Further directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- H. Resolution approving a request from the Principal Shopping District to hold the Birmingham Cruise Event on August 15, 2015, 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.
- I. Resolution approving a request submitted by Woodward Camera requesting permission to place two tents in the parking area in front of 33501 Woodward Ave on August 15, 2015, 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.

ROLL CALL VOTE:    Yeas,                    Commissioner Dilgard  
    Mayor Pro Tem Hoff  
    Commissioner McDaniel  
    Commissioner Moore  
    Commissioner Nickita  
    Mayor Sherman  
                                  Nays,                    None  
                                  Absent,                 1, Commissioner Rinschler  
                                  Abstentions,         None

<b>V. UNFINISHED BUSINESS</b>
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**05-97-15                    CONTINUED PUBLIC HEARING TO CONSIDER THE ADOPTION OF THE DEVELOPMENT PLAN AND TAX INCREMENT FINANCING PLAN FOR THE CORRIDOR IMPROVEMENT AUTHORITY.**

Mayor Sherman opened the Public Hearing to consider the adoption of the Development Plan and Tax Increment Financing Plan for the Corridor Improvement Authority at 7:59 PM.

City Planner Ecker explained that the County's policy is to opt out of a plan upfront, then work with their TIF review committee, budget committee, and board of commissioners to determine whether or not it will opt back in and negotiate an amount that it will opt in for under a contract with the City. She explained the County's policy states that it can only participate for up to 50% unless the City is putting in three times as much in which the amount could go up to 75%.

City Manager Valentine stated that staff recommends adopting the plan to establish the TIF. If the County does not continue with the plan, staff would return to request the plan be terminated.

The Mayor closed the Public Hearing at 8:04 PM.

**MOTION:**    Motion by Nickita, seconded by Moore:  
 To approve the Development Plan and Tax Increment Financing Plan for the City of Birmingham Corridor Improvement Authority.

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

**05-98-15 CONTINUED PUBLIC HEARING TO CONSIDER A  
SPECIAL LAND USE PERMIT AND FINAL SITE PLAN  
AT AU COCHON AND ARTHUR AVE, 260 NORTH OLD WOODWARD**

Mayor Sherman opened the Public Hearing to consider a Special Land Use Permit and Final Site Plan at Au Cochon and Arthur Ave., 260 N. Old Woodward at 8:05 PM.

Planning Director Ecker explained that the applicant submitted a new plan to show outdoor dining on the sidewalk which would bring the dining count on the sidewalk to twelve. She noted that the applicant still wishes to pursue a platform.

Zack Sklar, owner, explained that the redesign of the sidewalk only added two tables, which was a total of four seats, to the exterior. He stated that this project will not work without outdoor dining. In regards to the hours of operation, Mr. Sklar stated that bistro licenses have to have their outside patios closed by midnight, but Class C licensees do not.

Mayor Pro Tem Hoff noted that previously there was seating for three at the tables. She questioned why they were turned into seating for two. Mr. Sklar explained the changes was based on adding trash cans, service stations, room for servers to walk around the tables and space to put the guardrail around. This was the most efficient way he saw to put the patio together.

Mayor Sherman closed the Public Hearing at 8:13 PM.

**MOTION:** Motion by Nickita, seconded by Moore:

To approve the Final Site Plan and Special Land Use Permit to allow the operation of Au Cochon and Arthur Ave. restaurants at 260 N. Old Woodward, operating under one Class C Liquor License, with a Direct Connect Endorsement, to be held by Bellar Birmingham Ventures, LLC with outdoor seating on the sidewalk only:

WHEREAS, Au Cochon and Arthur Ave. have together filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate two food and drink establishments under common ownership, both serving alcoholic liquors, as required in Article 6, section 6.02(5) of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the west side of N. Old Woodward between Hamilton and Oakland;

WHEREAS, The land is zoned B-4, and is located within the Downtown Birmingham Overlay District, which permits food and drink establishments serving alcoholic liquors with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board on February 11, 2015 reviewed the application for Final Site Plan and Special Land Use Permit and recommended approval with the following conditions:

1. The applicant execute a contract with the City outlining the details of the proposed restaurants;
2. Reconfigure the on street platform in accordance with the direction of the Advisory Parking Committee;
3. Repair sidewalk as required by the Engineering Department;
4. Provide specification sheets for the proposed service station and trash receptacle;
5. The applicant provide full details on the height of the railings, spacing, and load specifications, and clarify which material will be used for the outdoor dining deck platforms;
6. The applicant enter into a license agreement with the City for use of the public right-of-way, to provide the required insurance and to obtain an outdoor dining permit;
7. Provide a minimum 5' wide barrier-free clearance on the sidewalk, applicant may use tree grates towards the 5'; and
8. Applicant must meet all department requirements.

WHEREAS, The applicant has agreed to comply with all conditions for approval as recommended by the Planning Board on February 11, 2015;

WHEREAS, The Advisory Parking Committee reviewed the proposed design and layout of an outdoor dining deck for Au Cochon and Arthur Avenue on both February 25, 2015 and March 18, 2015 and took no action;

WHEREAS, The Birmingham City Commission has reviewed Au Cochon and Arthur Ave.'s Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that the Au Cochon and Arthur Ave. application for a Special Land Use Permit authorizing the operation of two food and drink establishments, under common ownership, serving alcoholic liquors with a Class C liquor license with a Direct Connect Endorsement at 260 N. Old Woodward in accordance with Chapter 10, Alcoholic Liquors, is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. The applicant is permitted to have outdoor seating on the sidewalk only;
2. Repair sidewalk as required by the Engineering Department;
3. Provide specification sheets for the proposed service station and trash receptacle;
4. The applicant provide full details on the height of the railings, spacing, and load specifications, and clarify which material will be used for the outdoor dining deck platforms;
5. The applicant enter into a license agreement with the City for use of the public right-of-way, to provide the required insurance and to obtain an outdoor dining permit;

6. Provide a minimum 5' wide barrier-free clearance on the sidewalk, applicant may use tree grates towards the 5';
7. Applicant meet all department requirements;
8. Au Cochon and Arthur Ave. shall abide by all provisions of the Birmingham City Code;
9. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest;
10. The hours of operation for all outdoor dining shall cease at 2:00 a.m.;
11. Au Cochon and Arthur Ave. shall provide for the removal of disposable materials resulting from the operations and maintain the area in a clean and orderly condition by providing the necessary employees to guarantee this condition, and by the placement of a trash receptacle in the outdoor seating area; and
12. Au Cochon and Arthur Ave. shall enter into a contract with the City outlining the details of the operation of the proposed restaurants.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Au Cochon and Arthur Ave. and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Au Cochon and Arthur Ave. to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that Au Cochon and Arthur Ave., which will do business at 260 N. Old Woodward, Birmingham, Michigan, 48009, are located in the Principal Shopping District which was designated as a Redevelopment Project Area, pursuant to Section 521a (1)(b) of the Michigan Liquor Control Code of 1988, being MCL 36.1521a(1)(b), by Birmingham City Commission Resolution adopted September 24, 2007; and

MAY IT BE FURTHER RESOLVED that Au Cochon and Arthur Ave. are recommended for operation of two restaurants, under common ownership, serving alcoholic liquors, with a Class C Liquor License with a Direct Connect Endorsement, at 260 N. Old Woodward, Birmingham, Michigan, 48009, above all others, pursuant to Chapter 10, Alcoholic Liquors, of the Birmingham City Code, subject to final inspection.

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

<b>VI. NEW BUSINESS</b>
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**05-99-15                   ECONOMIC DEVELOPMENT CLASS C LIQUOR LICENSE FOR HOSPITALITY OF BIRMINGHAM, LLC AT 820 EAST MAPLE**

Deputy Police Chief Clemence explained that police department conducted a background investigation on the shareholders of Hospitality of Birmingham, LLC. He noted that the investigation came back with nothing of note. He noted that the applicant is requesting an additional five service bars as well as a dance and entertainment permit.

Mayor Pro Tem Hoff questioned why, in an independent senior residence, five additional service bars and a dance and entertainment permit is needed. Seth Tompkins, attorney for the applicant explained that a permanent bar will be located in the kitchen and used primarily to serve drinks at dinner in the club dining, club lounge, and the main dining area. The second

permanent service bar will be located in the bistro area and will be used for normal bistro operations. The first temporary service bar may be set up on a daily basis in a private dining room for private dining events; the second temporary service bar may be set up during events on the rooftop terrace. He noted that there are residential entertainment events which consist of entertainers such as music, singing, magic. For that an entertainment permit is needed. There are events where dancing occurs therefore a dance permit is needed. He noted that the events are not advertised to the general public. The events are for residents and their guests and parking will not be affected. The last temporary service bar is for major events. He noted that there will be a total of two permanent bars and four temporary rollout bars.

**MOTION:** Motion by McDaniel, seconded by Dilgard:

To approve the request of Hospitality of Birmingham, LLC for a new Economic Development Class C Liquor License with Sunday Sales Permit (AM and PM), Living Quarters and (5) Add Bars located at 820 E. Maple, Birmingham, Michigan.

Furthermore, pursuant to Birmingham City Ordinance, authorizing the city clerk to complete the Local Approval Notice at the request of Hospitality of Birmingham, LLC for a new Economic Development Class C Liquor License with Sunday Sales Permit (AM and PM), Living Quarters and (5) Add Bars located at 820 E. Maple, Birmingham, Michigan.

VOTE: Yeas, 5  
Nays, 1 (Hoff)  
Absent, 1 (Rinschler)

**05-100-15                    ORDINANCE AMENDMENT – CHAPTER 114  
    ILLICIT STORM WATER DISCHARGE**

City Engineer O'Meara explained that the ordinance is a book keeping effort with the MDEQ in order to give the City more strength in dealing with an illicit discharge of a polluting pipe or other items being dumped in the river.

**MOTION:** Motion by Hoff, seconded by Nickita:

To adopt an ordinance amending Chapter 114 of the City Code, Utilities, to add Division 5, Sections 277 to 296, to establish methods for controlling the introduction of pollutants into the municipal separate storm sewer system, and to comply with the requirements of the National Pollution Discharge Elimination System (NPDES). Further, reserving Sections 297 to 500 for future use.

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

**05-101-15                    TEMPORARY MUNICIPAL PARKING LOT LEASE  
    AT 35975 WOODWARD AVE**

City Engineer O'Meara explained the opportunity to rent an existing lot on Woodward. He stated that there are forty spaces in the lot for the busy area that is south of the lot. If approved, the City will move forward to purchase signs and open the lot to the public around June 1<sup>st</sup>. He confirmed for Commissioner McDaniel that it would be permit parking only and forty permits would be sold.



**MOTION:** Motion by McDaniel, seconded by Dilgard:

To authorize the Mayor to sign the proposed lease to allow the operation of a temporary municipal parking lot at 35975 Woodward Ave., to be known as Parking Lot #11, further directing staff to proceed with the additional amenities planned for the lot to allow it to operate successfully as a Police patrolled monthly permit only public parking lot on an indefinite basis in accordance with the terms of the lease and the plan as prepared, and further, directing the Central Parking/SP+ local parking staff to sell up to 40 monthly parking permits at a cost of \$135 per quarter (\$45 per month) similar to the permits currently sold in and around Parking Lot #6 to current businesses and employees located with the Parking Assessment District, and to allow current holders of Parking Lot #6 monthly permits to park in this lot as needed.

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

**05-102-15 CLOSED SESSION REQUEST  
ATTORNEY / CLIENT PRIVILEGED COMMUNICATION**

**MOTION:** Motion by Nick, seconded by Hoff:

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

ROLL CALL VOTE: Yeas, Mayor Pro Tem Hoff  
Commissioner McDaniel  
Commissioner Moore  
Commissioner Nickita  
Commissioner Dilgard  
Mayor Sherman  
Nays, None  
Absent, 1, Commissioner Rinschler  
Abstentions, None

**05-103-15 CLOSED SESSION REQUEST  
PENDING LITIGATION**

**MOTION:** Motion by Nick, seconded by McDaniel:

To meet in closed session to review pending litigation regarding Gennie Hill v Ronald Dix & City of Birmingham pursuant to Section 8(e) of the Open Meetings Act.

ROLL CALL VOTE: Yeas, Commissioner McDaniel  
Commissioner Moore  
Commissioner Nickita  
Commissioner Dilgard  
Mayor Pro Tem Hoff  
Mayor Sherman  
Nays, None  
Absent, 1, Commissioner Rinschler  
Abstentions, None

**05-104-15 PUBLIC HEARING TO CONSIDER A LOT REARRANGEMENT**

**AT 640 BALDWIN**

Mayor Sherman opened the Public Hearing to consider the proposed lot rearrangement at 640 Baldwin at 8:32 PM.

City Planner Ecker explained that this applicant is requesting to move the lot line five feet to make the two existing parcels as close to equal in size as possible. She noted that both lots will meet the minimum lot with requirement.

The Mayor closed the Public Hearing at 8:43 PM.

**MOTION:** Motion by McDaniel, seconded by Moore:  
To approve the proposed lot rearrangement at 640 Baldwin as proposed.

**VOTE:** Yeas, 6  
Nays, None  
Absent, 1 (Rinschler)

**VII. REMOVED FROM CONSENT AGENDA**

**VIII. COMMUNICATIONS**

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

**X. REPORTS**

**05-105-15 COMMISSIONER REPORTS**

The Commission intends to appoint members to the Board of Ethics on June 1, 2015.

**05-106-15 COMMISSIONER COMMENTS**

Commissioner Nickita suggested the City review its branding and image in regards to updating its graphics, logos and tagline.

The Commission agreed that the City should move forward with a review of the branding and image of the City.

**05-107-15 CITY STAFF REPORTS**

The Commission received the Third Quarter Financial Reports submitted by Finance Director Gerber.

The Commission received the Third Quarter Investment Report submitted by Finance Director Gerber.

The Commission received the Ad Hoc Parking Development Committee agenda outline submitted by City Engineer O'Meara.

The Commission recessed to closed session at 8:45 PM.  
The Commission reconvened in open session at 9:22 PM.

**XI. ADJOURN**

The Mayor adjourned the meeting at 9:22 PM.

Laura M. Pierce  
City Clerk