

**CITY OF BIRMINGHAM**  
**BOARD OF ETHICS AGENDA AMENDED**  
**MARCH 7, 2023**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**1:00 PM**

**I. CALL TO ORDER**

James Robb, Chairperson

**II. ROLL CALL**

Alexandria Bingham, City Clerk

**III. APPROVAL OF MINUTES**

A. Approval of minutes of January 30, 2023

**IV. UNFINISHED BUSINESS**

A. To acknowledge the receipt of the proposed Ethics Ordinance amendments from City Attorney Mary Kucharek. Further discussion and consideration of recommending the proposed ordinance amendments will take place at a future Ethics Board meeting.

**V. NEW BUSINESS**

A. Hearing and Consideration of Advisory Opinion Request 2023-01 – Requested by City Manager Thomas M. Markus Re. City Commissioner Brad Host.  
1. Written correspondence from Clark Hill, RE: Request for Advisory Opinion Regarding Commissioner Bradley Host<sup>1</sup>

**INFORMATION ONLY**

A. Update on the City of Detroit Ethics Conference – Spring 2023

**VII. PUBLIC COMMENT**

**VIII. ADJOURN**

Should you wish to participate, you are invited to attend the meeting in person or virtually through ZOOM:

<https://us06web.zoom.us/j/99656852194> Meeting ID: 996 5685 2194

You may also present your written statement to the Board of Ethics, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the meeting.

*NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.*

*Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).*

I, Alexandria Bingham, the duly appointed City Clerk for the City of Birmingham, certify this meeting notice was posted at all four entrances into the Municipal Building, and to [www.bhamgov.org](http://www.bhamgov.org) on January 4, 2023.

Alexandria Bingham

<sup>1</sup> Included in agenda packet on 3/2/2023 1:00 p.m.

**City of Birmingham  
Board of Ethics Minutes  
January 30, 2023  
151 Martin, Birmingham**

**I. CALL TO ORDER**

Chair Robb called the meeting to order at 11:00 a.m.

**II. ROLL CALL**

Present: James Robb, Chair  
John Schrot, Board Member  
Sophie Fierro-Share, Board Member

Absent: None

Staff: Assistant City Manager Ecker, Assistant City Manager Fairbairn; City Clerk Bingham,  
City Attorney Kucharek

**III. APPROVAL OF MINUTES**

**MOTION:** Motion by Mr. Schrot, seconded by Ms. Fierro-Share:  
To strike the second sentence of the third bullet point of the minutes and to fix the spelling of the word 'judgment'.

VOICE VOTE: Ayes, Chair Robb  
Mr. Schrot  
Ms. Fierro-Share

Nays, None

**MOTION:** Motion by Mr. Schrot, seconded by Ms. Fierro-Share:  
To approve the minutes of November 21, 2022 as amended.

VOICE VOTE: Ayes, Chair Robb  
Mr. Schrot  
Ms. Fierro-Share

Nays, None

Mr. Schrot and the Chair thanked the Clerk's Staff for the minutes.

**IV. NEW BUSINESS**

The Board decided to modify the agenda to discuss New Business and Information Only before Unfinished Business. The Chair thanked CC Bingham for providing the materials.

The Board authorized the Clerk to set a meeting date for the week of March 6, 2023. They stated a preference for 1 p.m., March 7, 2023 if all parties would be available.

## **V. INFORMATION ONLY**

### **A. Update on the City of Detroit Ethics Conference – Spring 2023**

The Chair said he was interested in attending. He said it would be positive if someone on the Commission could attend as well.

CC Bingham stated Mayor Pro Tem McLain had expressed interest in attending.

CC Bingham said that, if it was available, she would email the Commission a copy of Detroit's Ethics Ordinance.

Mr. Schrot recommended the Board provide the Chair with comments on Detroit's Ethics Ordinance prior to his attending the Conference.

The Chair concurred.

### **B. Gunsberg – Notice of Administrative Dismissal of Ethics Complaint**

CA Kucharek explained that the complaint received was incomplete and the complainant was notified of that fact. Consequently, the complaint was administratively dismissed.

The Chair noted that the complaint was dismissed without prejudice.

## **VI. UNFINISHED BUSINESS**

### **A. Continue the review of the Ethics Ordinance and Board Rules of Procedure**

CA Kucharek provided guidance regarding the Board's discussion of the ordinance and on the ordinance overall. She recommended that the ordinance generally remain as-is.

Individual Board comments were:

- Any potential confusion between Section 2-324(a)(6) and 2-324(a)(9) was resolved by the requirement in 2-324(a)(9)(c) that 2-324(a)(8) be complied with;
- 'Section 5 B', as referenced in Section 2-324(a)(6), no longer exists and should be changed to 'Section 2-326';
- It was positive that the ordinance has existed for approximately 20 years and has not needed modifications;
- There was the possibility that if the ordinance were to change now, someone who was found to be in violation in the past could say that if the ordinance were interpreted 'correctly', they had not been found in violation;
- None of the potential modifications discussed thus far were substantive;
- Increased training of public officials regarding the Ethics ordinance would be appropriate. To date, no issues of confusion or interpretation have arisen in trainings regarding the Ethics ordinance;
- Section 2-324(a)(6) and 2-324(a)(9) discuss different aspects of public officials' behavior;
- In the eventuality that a member of the present Ethics Board retires and a new member joins, that new member may recommend changes to the ordinance without a full understanding of Ethics and of the language of the ordinance. Preserving the Ethics ordinance as it presently is would establish the ordinance's history and the authority, and would prevent the ordinance from being modified unless it is found to be inaccurate or incomplete in the future;

- At the same time, conducting the present review of the ordinance was useful to confirm the appropriateness of the ordinance; and,
- In Section 2-324(a)(1), it might be worth clarifying that the 'course of employment' should be expanded to cover either a course of employment or a course of service, since the Section's requirements would apply to both paid City employees and volunteer public officials as set forth in the beginning of sentence.

Ms. Fierro-Share raised a concern about the expedient implementation of Section 2-324(b)(2)(b), and asked whether Section 2-324(b)(2)(b) should allow a provisional vote to occur in the described circumstances. After Board and Staff comment, no recommendation was made to that effect.

CA Kucharek prompted the Board to consider whether clarification should be added to 'which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties' as stated in Section 2-324(a)(4).

Mr. Schrot and the Chair opined that Section 2-321 and the clause 'tends to influence' sufficiently clarified the expectations of Section 2-324(a)(4).

CA Kucharek said City Staff should remind public officials that, per 2-324(b)(2)(b), if a potential conflict-of-interest is raised and there is disagreement among the board members about whether the relevant board member should recuse, the conversation should immediately cease and the matter should be referred to the Ethics Board for deliberation.

CC Bingham raised questions about succession planning for the Ethics Board. She, ACM Ecker, and CA Kucharek recommended the Board consider training an alternate for their positions who could both vote when necessary and could be trained to become a permanent Board member at a later date.

It was noted that an amendment to the ordinance would be required for the creation of an alternate position on the Board.

**MOTION:** Motion by Chair Robb, seconded by Mr. Schrot:

To advance to the City Commission for its consideration adopting the following amendments to the Ethics ordinance:

1. In 2-324(a)(1), to insert after 'confidential information acquired in the course of employment', the following phrase: 'or service as a City official'; and,
2. In 2-324(a)(6), to change the reference to 'Section 5 B' to 'Section 2-326'.

VOICE VOTE:           Ayes,   Chair Robb  
                                  Mr. Schrot  
                                  Ms. Fierro-Share

Nays,   None

CA Kucharek said she would return on March 7, 2023 with the proposed ordinance amendments set forth in the motion and proposed language for a potential alternate position.

Chair Robb asked the Board to consider whether Rule 202 in the Rules of Procedure should be modified to have Rule 202(b) begin 'The Board or Chair may [...]' and whether a Rule 202(c)

should be added that states 'Any request for advisory opinion dismissed by the City Clerk or the Board Chair under this rule will be reinstated upon written request of a Board member filed with the City Clerk within 30 days after the notice was given.'

Mr. Schrot said he preferred to maintain Rule 202(b) as-is, and voiced his support for the proposed Rule 202(c) with the removal of the reference to the Board Chair.

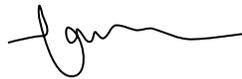
**VII. PUBLIC COMMENT**

**VIII. ADJOURN**

No further business being evident, the Board motioned to adjourn at 12:50 p.m.

---

Alexandria Bingham, City Clerk



Laura Eichenhorn, City Transcriptionist

DRAFT

CITY OF BIRMINGHAM

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 2. – ADMINISTRATION, ARTICLE IX. - ETHICS**

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 2.- Administration, Article IX. – Ethics, shall be amended to read as follows:

***ARTICLE IX. ETHICS***

**Sec. 2-320. Public policy.**

Public office and employment are public trusts. For government to operate properly, each cityCity official, employee, or advisor must earn and honor the public trust by integrity and conduct.

The cityCity hereby declares that all cityCity officials and employees must avoid conflicts between their private interests and the public interest. Public officials and employees must:

- (1) Be independent, impartial and responsible to the people;
- (2) Make governmental decisions and policy in the proper governmental channels;
- (3) Not use public office for personal gain.

To enhance public trust, the cityCity must provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants.

This Code sets minimum standards of ethical conduct for all cityCity officials and employees, elected or appointed, paid or unpaid. It proscribes actions incompatible with the public interest and directs disclosure of private financial or other interests in matters affecting the cityCity.

**Sec. 2-321. Responsibilities of public office.**

City officials and employees are bound to uphold the Constitution of the United States and the Constitution of the State and to carry out impartially and comply with the laws of the nation, state, and the cityCity. City officials and employees must not exceed their authority or breach the law or ask others to do so. City officials and employees are bound to observe in their official acts the highest standards of ethical conduct and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their official conduct should be *above reproach*.

All cityCity officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-

partisanship in all official acts, and by avoiding official conduct which may tend to undermine respect for [cityCity](#) officials and employees and for the [cityCity](#) as an institution.

## **Sec. 2-322. Definitions.**

*City official or employee* means a person elected, appointed or otherwise serving in any capacity with the [cityCity](#) in any position established by the City Charter or by [cityCity](#) ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the [cityCity](#), whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions. The term does not include election inspectors and student representatives appointed to [cityCity](#) boards or commissions.

*Consultant* means a person who gives professional advice or services regarding matters in the field of his or her special knowledge or training.

*Compensation* means any money, property, thing of value or benefit conferred upon or received by any person in return for services rendered or to be rendered to himself or herself or any other party.

*Financial interest* means any interest in money, property or thing of value or benefit.

*Immediate family* means a [cityCity](#) official or employee, his or her spouse, parents or children.

*Official duties or official action* means a decision, recommendation, approval, disapproval or other action or failure to act, which involves the use of discretionary authority.

*Personal interest* means an interest arising from blood or marriage relationships or any business association.

*Private gain* means any interest or benefit, in any form, received by a [cityCity](#) employee or official.

*Substantial* shall mean considerable in quantity or significantly great.

## **Sec. 2-323. Intention of code.**

It is the intention of section 2-324 below that [cityCity](#) officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of [cityCity](#) property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a [cityCity](#) decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the [cityCity](#) government.

The eCode of eEthics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the cityCity ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law.

## **Sec. 2-324. Promulgation.**

### *(a) Conflict of interest—General.*

- (1) No official or employee of the cityCity shall divulge to any unauthorized person, confidential information acquired in the course of employment or service as a City official in advance of the time prescribed for its authorized release to the public.
- (2) No official or employee of the cityCity shall represent his or her personal opinion as that of the cityCity.
- (3) Every official or employee of the cityCity shall use personnel resources, property and funds under his or her official care and control solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit.
- (4) No official or employee of the cityCity shall directly or indirectly, solicit or accept any gift or loan of money, goods, services or other thing of value for the benefit of any person or organization, other than the cityCity, which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties.

Gratuities do not include fees for speeches or published works on legislative subjects and, except in connection therewith reimbursement for expenses for actual expenditures for travel, and reasonable subsistence, for which no payment or reimbursement is made by the cityCity, invitations to such events as ground breakings, grand openings, charitable or civic events, or inconsequential gifts from established friends.

- (5) No official or employee of the cityCity shall engage in a business transaction in which he or she may profit because of his or her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.
- (6) No official or employee of the cityCity shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

This section shall not prohibit a part-time elected or appointed cityCity official from engaging in private employment or business on his or her own time as a private citizen and where cityCity business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 5-B2-326

below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter.

- (7) No official or employee of the [cityCity](#) shall participate, as an agent or representative of the [cityCity](#), in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.
- (8) No official or employee of the [cityCity](#) shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.
- (9) It is recognized that various boards and committees are part of the plan of government for the [cityCity](#). As such, it is further recognized that by virtue of the various requirements for membership of the board, a member may be placed in the position of participating in a decision that may directly or indirectly affect his or her financial or personal interests. Therefore, those members of the various boards and committees in the [cityCity](#), as they may be established from time to time, may participate in such decisions provided that they act:
  - a. In furtherance of the public good;
  - b. In compliance with the duties of their respective boards; and,
  - c. In a manner consistent with subsection (8) of this section.
- (10) Determination of conflict of interest. A conflict of interest exists if:
  - a. The [cityCity](#) official or employee has any financial or personal interest, beyond ownership of his or her place of residence, in the outcome of a matter currently before that [cityCity](#) official or employee, or is associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or may be adverse to the public interest in the proper performance of said official's or employee's governmental duties, or;
  - b. The [cityCity](#) official or employee has reason to believe or expect that he or she will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity, or;
  - c. The public official has any other prohibited interest as defined by state statutes relating to conflicts of interest.
- (11) Subsequent conflict of interest. No official or employee of the [cityCity](#) shall acquire any financial interest in or accept any employment concerning any project which has been granted approval by the [cityCity](#) or any commission, board, department or employee thereof within one year of the official's or employee's participation in any manner in considering or recommending the approval or disapproval of said project.

(b) *Full disclosure.*

- (1) Responsibility to disclose. It shall be the responsibility of the official or employee to disclose the full nature and extent of his or her direct or indirect financial or personal interest in a matter before him or her.

No official or employee of the cityCity shall participate, as an agent or representative of the cityCity, in approving, disapproving, voting, abstaining from voting, recommending or otherwise acting upon any matter in which he or she has directly or indirectly a financial or personal interest. The official or employee shall, in such circumstances, recuse himself or herself from the matter before him or her.

- (2) Disclosure of conflict of interest and disqualification.

- a. Any cityCity official or employee who has a conflict of interest, as defined herein, in any matter before the cityCity shall disclose such fact on the appropriate record of the cityCity prior to discussion or action thereon and shall refrain from participating in any discussion, voting or action thereon, as follows, provided that such exceptions shall be observed as are permitted by law:

1. A cityCity Commissioner shall disclose any conflict of interest and the nature and extent of such interest on the record of the cityCity eCommission;
2. A member of any cityCity board, commission or committee shall disclose any conflict of interest and the nature and extent of such interest on the records of said board, commission or committee;
3. A cityCity employee who has a financial or other interest in a matter before the cityCity eCommission or any cityCity board, commission or committee and who participates in discussion with, or gives an official opinion to the cityCity eCommission, or to such other cityCity board, commission or committee relating to such matter, shall disclose on the records of the cityCity eCommission or such other cityCity board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest.
4. Otherwise, any appointed cityCity official or employee shall address such a disclosure to the supervisory head of his or her department, and any elected cityCity official shall address such a disclosure to the general public.

- b. If a cityCity official, commissioner or employee who has a conflict of interest, as defined herein, in any matter before the cityCity, and who discloses that conflict on the appropriate records but who refuses to refrain from discussion, deliberation or voting thereon, the matter under consideration shall be immediately referred to the BBBoard of eEthics for a final determination as to the conflict in question and whether the official, commissioner or employee must refrain from discussion, deliberation, action or voting thereon.

- c. Within 20 days after election, employment, appointment, or the effective date of this ordinance, or any change in the facts set forth in the cityCity official's or employee's previously filed disclosure statement, each cityCity official and employee shall file with the cityCity eClerk an affidavit and disclosure statement. The cityCity eClerk shall provide each cityCity official or employee with the required affidavit and disclosure statement form immediately upon his or her election, employment or appointment. The affidavit and disclosure statement does not apply

to part-time and temporary employees of the cityCity. Additionally, the disclosure requirements on this section do not apply to regular full-time employees below the level of assistant department head, except at the discretion of the cityCity mManager.

- d. The effective date for this ordinance shall be July 21, 2003.

**Sec. 2-325. Violation, enforcement and Aadvisory eOpinions.**

(a) *Board of eEthics.*

- (1) The cityCity eCommission shall appoint a bBoard of eEthics, consisting of three members, as an advisory body for the purpose of interpreting this eCode of eEthics.
- (2) The initial three members of the bBoard of eEthics shall be appointed for one-, two-, and three-year terms of office respectively, which shall begin on July 1, 2003. If appointed prior to July 1st, they shall begin their terms of office immediately and their terms shall include the additional time prior to July 1st. Terms of office shall expire on June 30th of the respective years.

Thereafter, all members shall be appointed to three-year terms, beginning July 1, so that only one member's term expires each year. A member shall hold office until his or her successor is appointed. The cityCity eCommission shall fill a vacancy by an appointment for the unexpired term only.

(3) The City Commission may also appoint not more than two alternate members for the same term as regular members of the Board of Ethics. An alternate member may be called on a rotating basis to sit as a regular member of the Board of Ethics in the absence of a regular member, and shall have the same voting rights as a regular member of the Board of Ethics. An alternate member may also be called to service in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained or recused for reasons of conflict of interest. An alternate member having been appointed shall serve in the case until a final decision has been made.

- (34) The bBoard of eEthics shall be made up of residents of the cityCity who have legal, administrative or other desirable qualifications.
  - a. The members of the bBoard of eEthics shall serve without compensation, and shall not be elected officials, persons appointed to elective office, full-time appointed officials or cityCity employees, nor shall they be currently serving on any other cityCity board or commission.
  - b. The board shall select its own presiding officer from among its members.
  - c. The board shall establish such procedures it deems necessary or appropriate to perform its functions as set forth in this article.

- (b) *Functions of the bBoard of eEthics.* When there is a question or a complaint as to the applicability of any provision of this code to a particular situation, that question or complaint shall be directed to the bBoard of eEthics. It shall then be the function of the bBoard of eEthics to conduct hearings and/or issue an aAdvisory eOpinion, as applicable.

- (1) Hearings. The **b**Board of **e**Ethics shall follow the following hearing procedure:
  - a. The board shall, within seven days after any matter is brought to its attention, set a date certain for hearing said matter.
  - b. The board shall, at least 28 days before the hearing date, send notice of such hearing, accompanied by a concise statement of the alleged breach of this **e**Code of **e**Ethics, to any person requested to appear before them, by certified mail, return receipt requested, to addressee only.
  - c. Any person requested to appear before a **b**Board of **e**Ethics hearing may request one extension for a period not to exceed 28 days. Extensions thereafter will be granted only under extreme circumstances.
  - d. Any person requested to appear before a **b**Board of **e**Ethics hearing may be accompanied by his or her attorney.
  - e. All hearings at which any person shall be requested to appear shall be subject to the Open Meetings Act.
  - f. All findings of board hearings shall be published in permanent form and communicated to the **e**ityCity **e**Commission and the public, subject to the requirements of the Open Meetings Act.
- (2) Advisory **e**Opinions. All **a**Advisory **e**Opinions so issued shall also be published in permanent form and communicated to the **e**ityCity **e**Commission and the public, subject to the requirements of the Open Meetings Act.
- (3) After the **b**Board of **e**Ethics' **a**Advisory **e**Opinions and/or hearing findings have been published:
  - a. The **e**ityCity **e**Commission shall be responsible for imposing any sanction for a violation of this Code on one of its members or any person appointed by the commission to any **e**ityCity board.
  - b. If it becomes necessary to seek the removal of a **e**ityCity official after the **b**oard **B**oard of **e**Ethics' **a**Advisory **e**Opinion and/or hearing findings, the **e**ityCity shall follow the requirements for removal of a public official in accordance with the laws of the state.
  - c. The **e**ityCity **m**anager shall be responsible for imposing any discipline for a violation of this Code on any employee of the **e**ityCity.

## **Sec. 2-326. Affidavit and disclosure statement.**

Immediately following an election, employment or appointment of a **e**ityCity official or employee, the **e**ityCity **e**Clerk shall provide the individual with an affidavit and disclosure statement form. Within 20 days after election, appointment, employment or any change in the facts set forth in the **e**ityCity official's or employee's previously filed affidavit and disclosure statement, all **e**ityCity officials or employees shall file with the **e**ityCity **e**Clerk an affidavit and disclosure statement including the following:

- A. A disclosure statement responding in detail to the following questions:

1. To the best of your knowledge, do you or any members of your immediate family own any interest in real property located within the City of Birmingham, in land contiguous to the City of Birmingham, or in any area covered by a 425 Agreement to which the City of Birmingham is party?
  2. If your answer to question 1. is affirmative, to the best of your knowledge state the following information for each such interest owned:
    - (a) The nature of your interest in the real property;
    - (b) The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets), and;
    - (c) The property's permanent real estate tax identification number.
  3. To the best of your knowledge, do you or members of your immediate family own five percent (5%) or more of any business entity located in the City of Birmingham?
  4. If your answer to question 3. is in the affirmative, state the following, to the best of your knowledge:
    - (a) The name of the entity;
    - (b) The address of the entity;
    - (c) The nature of your relationship to the entity, and;
    - (d) The date relationship commenced.
  5. To the best of your knowledge, do you or any members of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit that is not reported in the prior answers.
  6. To the best of your knowledge, have you or any members of your immediate family given or received any gifts, other than from immediate family members, the value of which exceeds \$50.00, within the last year, or since the effective date of this code, whichever time period is shorter, to or from any person or business or other legal entity doing business with the City, other than legal campaign contributions? If so, list the names and addresses of each donor or donee of each such gift and the date upon which it was made and the nature of the gift.
- B. An affidavit in which the City official or employee states: "I have read and I understand the Code of Ethics of the City of Birmingham and, to the best of my knowledge, I am not in conflict with its provisions."

Dated:

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public

\_\_\_\_\_ County, Michigan

My Commission Expires:\_\_\_\_\_

All other Articles of Chapter 2. – Administration, shall remain unaffected.

Ordained this \_\_\_\_\_ day of \_\_\_\_\_, 2023. Effective upon publication.

\_\_\_\_\_  
Therese Longe, Mayor

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held \_\_\_\_\_ and that a summary was published \_\_\_\_\_, 2023.

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 2. – ADMINISTRATION, ARTICLE IX. - ETHICS**

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 2.- Administration, Article IX. – Ethics, shall be amended to read as follows:

***ARTICLE IX. ETHICS***

**Sec. 2-320. Public policy.**

Public office and employment are public trusts. For government to operate properly, each City official, employee, or advisor must earn and honor the public trust by integrity and conduct.

The City hereby declares that all City officials and employees must avoid conflicts between their private interests and the public interest. Public officials and employees must:

- (1) Be independent, impartial and responsible to the people;
- (2) Make governmental decisions and policy in the proper governmental channels;
- (3) Not use public office for personal gain.

To enhance public trust, the City must provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants.

This Code sets minimum standards of ethical conduct for all City officials and employees, elected or appointed, paid or unpaid. It proscribes actions incompatible with the public interest and directs disclosure of private financial or other interests in matters affecting the City.

**Sec. 2-321. Responsibilities of public office.**

City officials and employees are bound to uphold the Constitution of the United States and the Constitution of the State and to carry out impartially and comply with the laws of the nation, state, and the City. City officials and employees must not exceed their authority or breach the law or ask others to do so. City officials and employees are bound to observe in their official acts the highest standards of ethical conduct and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their official conduct should be *above reproach*.

All City officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-

partisanship in all official acts, and by avoiding official conduct which may tend to undermine respect for City officials and employees and for the City as an institution.

### **Sec. 2-322. Definitions.**

*City official or employee* means a person elected, appointed or otherwise serving in any capacity with the City in any position established by the City Charter or by City ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the City, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions. The term does not include election inspectors and student representatives appointed to City boards or commissions.

*Consultant* means a person who gives professional advice or services regarding matters in the field of his or her special knowledge or training.

*Compensation* means any money, property, thing of value or benefit conferred upon or received by any person in return for services rendered or to be rendered to himself or herself or any other party.

*Financial interest* means any interest in money, property or thing of value or benefit.

*Immediate family* means a City official or employee, his or her spouse, parents or children.

*Official duties or official action* means a decision, recommendation, approval, disapproval or other action or failure to act, which involves the use of discretionary authority.

*Personal interest* means an interest arising from blood or marriage relationships or any business association.

*Private gain* means any interest or benefit, in any form, received by a City employee or official.

*Substantial* shall mean considerable in quantity or significantly great.

### **Sec. 2-323. Intention of code.**

It is the intention of section 2-324 below that City officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of City property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a City decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the City government.

The Code of Ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City

Charter, the City ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law.

**Sec. 2-324. Promulgation.**

(a) *Conflict of interest—General.*

- (1) No official or employee of the City shall divulge to any unauthorized person, confidential information acquired in the course of employment or service as a City official in advance of the time prescribed for its authorized release to the public.
- (2) No official or employee of the City shall represent his or her personal opinion as that of the City.
- (3) Every official or employee of the City shall use personnel resources, property and funds under his or her official care and control solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit.
- (4) No official or employee of the City shall directly or indirectly, solicit or accept any gift or loan of money, goods, services or other thing of value for the benefit of any person or organization, other than the City, which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties.

Gratuities do not include fees for speeches or published works on legislative subjects and, except in connection therewith reimbursement for expenses for actual expenditures for travel, and reasonable subsistence, for which no payment or reimbursement is made by the City, invitations to such events as ground breakings, grand openings, charitable or civic events, or inconsequential gifts from established friends.

- (5) No official or employee of the City shall engage in a business transaction in which he or she may profit because of his or her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.
- (6) No official or employee of the City shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

This section shall not prohibit a part-time elected or appointed City official from engaging in private employment or business on his or her own time as a private citizen and where City business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 2-326 below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter.

- (7) No official or employee of the City shall participate, as an agent or representative of the City, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.
  - (8) No official or employee of the City shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.
  - (9) It is recognized that various boards and committees are part of the plan of government for the City. As such, it is further recognized that by virtue of the various requirements for membership of the board, a member may be placed in the position of participating in a decision that may directly or indirectly affect his or her financial or personal interests. Therefore, those members of the various boards and committees in the City, as they may be established from time to time, may participate in such decisions provided that they act:
    - a. In furtherance of the public good;
    - b. In compliance with the duties of their respective boards; and,
    - c. In a manner consistent with subsection (8) of this section.
  - (10) Determination of conflict of interest. A conflict of interest exists if:
    - a. The City official or employee has any financial or personal interest, beyond ownership of his or her place of residence, in the outcome of a matter currently before that City official or employee, or is associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or may be adverse to the public interest in the proper performance of said official's or employee's governmental duties, or;
    - b. The City official or employee has reason to believe or expect that he or she will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity, or;
    - c. The public official has any other prohibited interest as defined by state statutes relating to conflicts of interest.
  - (11) Subsequent conflict of interest. No official or employee of the City shall acquire any financial interest in or accept any employment concerning any project which has been granted approval by the City or any commission, board, department or employee thereof within one year of the official's or employee's participation in any manner in considering or recommending the approval or disapproval of said project.
- (b) *Full disclosure.*
- (1) Responsibility to disclose. It shall be the responsibility of the official or employee to disclose the full nature and extent of his or her direct or indirect financial or personal interest in a matter before him or her.

No official or employee of the City shall participate, as an agent or representative of the City, in approving, disapproving, voting, abstaining from voting, recommending or otherwise acting upon any matter in which he or she has directly or indirectly a financial or personal interest. The official or employee shall, in such circumstances, recuse himself or herself from the matter before him or her.

(2) Disclosure of conflict of interest and disqualification.

- a. Any City official or employee who has a conflict of interest, as defined herein, in any matter before the City shall disclose such fact on the appropriate record of the City prior to discussion or action thereon and shall refrain from participating in any discussion, voting or action thereon, as follows, provided that such exceptions shall be observed as are permitted by law:
  1. A City Commissioner shall disclose any conflict of interest and the nature and extent of such interest on the record of the City Commission;
  2. A member of any City board, commission or committee shall disclose any conflict of interest and the nature and extent of such interest on the records of said board, commission or committee;
  3. A City employee who has a financial or other interest in a matter before the City Commission or any City board, commission or committee and who participates in discussion with, or gives an official opinion to the City Commission, or to such other City board, commission or committee relating to such matter, shall disclose on the records of the City Commission or such other City board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest.
  4. Otherwise, any appointed City official or employee shall address such a disclosure to the supervisory head of his or her department, and any elected City official shall address such a disclosure to the general public.
- b. If a City official, commissioner or employee who has a conflict of interest, as defined herein, in any matter before the City, and who discloses that conflict on the appropriate records but who refuses to refrain from discussion, deliberation or voting thereon, the matter under consideration shall be immediately referred to the Board of Ethics for a final determination as to the conflict in question and whether the official, commissioner or employee must refrain from discussion, deliberation, action or voting thereon.
- c. Within 20 days after election, employment, appointment, or the effective date of this ordinance, or any change in the facts set forth in the City official's or employee's previously filed disclosure statement, each City official and employee shall file with the City Clerk an affidavit and disclosure statement. The City Clerk shall provide each City official or employee with the required affidavit and disclosure statement form immediately upon his or her election, employment or appointment. The affidavit and disclosure statement does not apply to part-time and temporary employees of the City. Additionally, the disclosure requirements on this section do not apply to regular full-time employees below the level of assistant department head, except at the discretion of the City Manager.
- d. The effective date for this ordinance shall be July 21, 2003.

## **Sec. 2-325. Violation, enforcement and Advisory Opinions.**

### **(a) *Board of Ethics.***

- (1) The City Commission shall appoint a Board of Ethics, consisting of three members, as an advisory body for the purpose of interpreting this Code of Ethics.
- (2) The initial three members of the Board of Ethics shall be appointed for one-, two-, and three-year terms of office respectively, which shall begin on July 1, 2003. If appointed prior to July 1st, they shall begin their terms of office immediately and their terms shall include the additional time prior to July 1st. Terms of office shall expire on June 30th of the respective years.

Thereafter, all members shall be appointed to three-year terms, beginning July 1, so that only one member's term expires each year. A member shall hold office until his or her successor is appointed. The City Commission shall fill a vacancy by an appointment for the unexpired term only.

- (3) The City Commission may also appoint not more than two alternate members for the same term as regular members of the Board of Ethics. An alternate member may be called on a rotating basis to sit as a regular member of the Board of Ethics in the absence of a regular member, and shall have the same voting rights as a regular member of the Board of Ethics. An alternate member may also be called to service in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained or recused for reasons of conflict of interest. An alternate member having been appointed shall serve in the case until a final decision has been made.
- (4) The Board of Ethics shall be made up of residents of the City who have legal, administrative or other desirable qualifications.
  - a. The members of the Board of Ethics shall serve without compensation, and shall not be elected officials, persons appointed to elective office, full-time appointed officials or City employees, nor shall they be currently serving on any other City board or commission.
  - b. The board shall select its own presiding officer from among its members.
  - c. The board shall establish such procedures it deems necessary or appropriate to perform its functions as set forth in this article.

### **(b) *Functions of the Board of Ethics.*** When there is a question or a complaint as to the applicability of any provision of this code to a particular situation, that question or complaint shall be directed to the Board of Ethics. It shall then be the function of the Board of Ethics to conduct hearings and/or issue an Advisory Opinion, as applicable.

- (1) Hearings. The Board of Ethics shall follow the following hearing procedure:
  - a. The board shall, within seven days after any matter is brought to its attention, set a date certain for hearing said matter.
  - b. The board shall, at least 28 days before the hearing date, send notice of such hearing, accompanied by a concise statement of the alleged breach of this Code

- of Ethics, to any person requested to appear before them, by certified mail, return receipt requested, to addressee only.
- c. Any person requested to appear before a Board of Ethics hearing may request one extension for a period not to exceed 28 days. Extensions thereafter will be granted only under extreme circumstances.
  - d. Any person requested to appear before a Board of Ethics hearing may be accompanied by his or her attorney.
  - e. All hearings at which any person shall be requested to appear shall be subject to the Open Meetings Act.
  - f. All findings of board hearings shall be published in permanent form and communicated to the City Commission and the public, subject to the requirements of the Open Meetings Act.
- (2) Advisory Opinions. All Advisory Opinions so issued shall also be published in permanent form and communicated to the City Commission and the public, subject to the requirements of the Open Meetings Act.
- (3) After the Board of Ethics' Advisory Opinions and/or hearing findings have been published:
- a. The City Commission shall be responsible for imposing any sanction for a violation of this Code on one of its members or any person appointed by the commission to any City board.
  - b. If it becomes necessary to seek the removal of a City official after the Board of Ethics' Advisory Opinion and/or hearing findings, the City shall follow the requirements for removal of a public official in accordance with the laws of the state.
  - c. The City Manager shall be responsible for imposing any discipline for a violation of this Code on any employee of the City.

### **Sec. 2-326. Affidavit and disclosure statement.**

Immediately following an election, employment or appointment of a City official or employee, the City Clerk shall provide the individual with an affidavit and disclosure statement form. Within 20 days after election, appointment, employment or any change in the facts set forth in the City official's or employee's previously filed affidavit and disclosure statement, all City officials or employees shall file with the City Clerk an affidavit and disclosure statement including the following:

- A. A disclosure statement responding in detail to the following questions:
  1. To the best of your knowledge, do you or any members of your immediate family own any interest in real property located within the City of Birmingham, in land contiguous to the City of Birmingham, or in any area covered by a 425 Agreement to which the City of Birmingham is party?
  2. If your answer to question 1. is affirmative, to the best of your knowledge state the following information for each such interest owned:

- (a) The nature of your interest in the real property;
  - (b) The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets), and;
  - (c) The property's permanent real estate tax identification number.
3. To the best of your knowledge, do you or members of your immediate family own five percent (5%) or more of any business entity located in the City of Birmingham?
  4. If your answer to question 3. is in the affirmative, state the following, to the best of your knowledge:
    - (a) The name of the entity;
    - (b) The address of the entity;
    - (c) The nature of your relationship to the entity, and;
    - (d) The date relationship commenced.
  5. To the best of your knowledge, do you or any members of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit that is not reported in the prior answers.
  6. To the best of your knowledge, have you or any members of your immediate family given or received any gifts, other than from immediate family members, the value of which exceeds \$50.00, within the last year, or since the effective date of this code, whichever time period is shorter, to or from any person or business or other legal entity doing business with the City, other than legal campaign contributions? If so, list the names and addresses of each donor or donee of each such gift and the date upon which it was made and the nature of the gift.
- B. An affidavit in which the City official or employee states: "I have read and I understand the Code of Ethics of the City of Birmingham and, to the best of my knowledge, I am not in conflict with its provisions."

Dated:

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public

\_\_\_\_\_ County, Michigan

My Commission Expires:\_\_\_\_\_

All other Articles of Chapter 2. – Administration, shall remain unaffected.

Ordained this \_\_\_\_ day of \_\_\_\_\_, 2023. Effective upon publication.

\_\_\_\_\_  
Therese Longe, Mayor

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held \_\_\_\_\_ and that a summary was published \_\_\_\_\_, 2023.

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk



Case No. \_\_\_\_\_  
(Assigned by clerk)

**REQUEST FOR ADVISORY OPINION**

The Procedural Rules of the Board of Ethics allow a city official or employee, the City Commission, or another city commission, board or committee, as defined in the Code of Ethics ("the requesting party"), to request an advisory opinion as to whether the requesting party's conduct or anticipated conduct, or that of a city official, employee, commission, board or committee under the requesting party's authority, conforms to the Code of Ethics. The party whose conduct is sought to be reviewed, if it is someone other than the requesting party, is called the "subject party."

All advisory opinions will be communicated to the city commission and will be published on the city's website at www.bhamgov.org.

Written requests are subject to disclosure under the Freedom of Information Act.

Name Brad Host Phone Number (248) 219-2249

Address 416 Park, Birmingham, MI 48009  
(Number, Street, City, State, Zip)

Position or Board (If Applicable) City Commissioner

- A. State each question upon which an opinion is desired. Attach additional sheets of paper if the space provided below is not sufficient.
- B. State all of the facts giving rise to each question presented.
- C. If available, provide all relevant statutory provisions, case law, prior opinions of the Ethics Board, and other authorities.

**NOTE:** Although the foregoing criteria are subject to exception when the circumstances warrant, a request which does not meet these criteria may be returned and the requestor asked to resubmit the request in an appropriate form.

**Please return requests to:** City Clerk's Office, City of Birmingham  
151 Martin, P.O. Box 3001, Birmingham, MI 48012

Revised 8/16/12

**FOR OFFICE USE ONLY**

Accepted by \_\_\_\_\_ Date \_\_\_\_\_



January 27, 2023

City of Birmingham Ethics Board  
*City of Birmingham*  
151 Martin Street  
Birmingham, MI 48009

***Re: Advisory Opinion***

Dear Members of the Board:

“Accordingly, this Opinion celebrates the rights of free speech, but also addresses the self-imposed limitations thereof when one voluntarily elects to become a City Official. When one serves in the public sector, one becomes less and less ‘a public citizen’ and more and more a ‘public servant.’ This is part of the responsibilities and burdens one accepts as a public official. Being a public servant may constrain one’s activities in many ways, including the open expression of personal views. Having the right to engage in an activity doesn’t mean exercising that right is necessarily the best course of action.” (Advisory Opinion 2009-02 Pertaining to Mr. Wisz and is Quoted in Advisory Opinion 2022-01 in regarding to Mr. Samuel Oh.)

As the above quote demonstrates, this Board has previously offered Advisory Opinions in regards to educating public servants as to how they should conduct themselves in order to be compliant with the Birmingham Code of Ethics in Article IX of the Birmingham City Code. I am requesting an Advisory Opinion as it relates to Commissioner Brad Host for his activities since at least September of 2022 through the present time in his public statements, mail activities and social media posts as it relates to the Birmingham 2040 comprehensive master plan (“2040 Plan”).

As this Board is aware, the City of Birmingham, by state statute, is required to engage in planning for the City and its future. The 2040 Plan is in its near final form after a very long process of multiple drafts and reviews by the Planning Board and ultimately the City Commission in early 2023. Please find as Attachment 1 a memo that was published to the City Commission on September 14, 2022 outlining the anticipated Schedule of Review for the 2040 Plan and notice to the Commission that sometime in February of 2023 the City Commission will be reviewing and deliberating the adoption of the 2040 Plan. Part of the 2040 Plan discusses many ideas and concepts, one of which is called *seams*. *Seams* are concepts in which neighborhood planning is achieved, and the 2040 Plan discusses access, activity and buffer seams at the edges of planning districts to better connect neighborhoods and the community at large. *Access seam concepts* involve looking at ways to improve multi-modal access to the community and neighborhoods. *Activity and Buffer seam concepts* would be those, for example, located near 14 Mile Road which contemplate a future where multi-family dwellings of an appropriate scale and character are permitted near larger and active roadways.

Important to all of these concepts in the 2040 Plan is broad interpretation and ways to achieve planning for the future of Birmingham. I offer this by way of background as Commissioner Host has



been very active in private mailings to homes and social media posts, most predominately on his Facebook page, with the obvious intent to agitate the issues and encourage loud voices to the Planning Board.

In reviewing the Code of Ethics, it is clear the Code applies to Mr. Host as a Commissioner. Section 2-322 states:

“City official or employee means a person elected, appointed or otherwise serving in any capacity with the city in any position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty.”

The Board should know, there were at least five original videos posted on Commissioner Host’s Facebook page that demonstrate Commissioner Host was misinforming and misstating the 2040 Plan. Please utilize these hyperlinks in order to view these original videos posted last fall by Commissioner Host:

[Video 1<sup>1</sup>](#), [Video 2<sup>2</sup>](#), [Video 3<sup>3</sup>](#), [Video 4<sup>4</sup>](#), [Video 5<sup>5</sup>](#)

He is advocating that the 2040 Plan calls for rezoning which is inaccurate and untrue. This [video](#), taken at Grant and Lincoln, demonstrates Commissioner Host stating “that according to the 2040 Plan the area will be rezoned to multi-family units.” This is blatantly untrue. As stated by the Board of Ethics in the Advisory Opinion 2022-01 from September 22, 2022:

“Board of Ethics member, James Robb, pointed out... Words matter. **‘As a public official, you have an obligation to make sure that statements of fact are in fact, facts. People see you as an official and maybe you are mistaken on some things you put in your petition, but that can cause mistrust of city officials by the public.’**”  
(Emphasis Added)

Commissioner Host is engaging in advocacy for a position and an opinion before the 2040 Plan even arrives at the Commission table. He directly tells the public that they only have until early January in order to speak their opinions which is untrue. As seen in this [video](#), Commissioner Host states “you have 45 days to get your opinion in and then it is going to be history after that.” This is completely untrue as the adoption of the 2040 Plan has many upcoming hearings ultimately leading to a Commission meeting wherein the public is always heard.

---

<sup>1</sup> Date: Uncertain. At Grant & Lincoln and speaking to St. James and Pierce neighborhoods.

<sup>2</sup> Date: October 31, 2022. On Oakland Street between the Woodwards looking at San Francisco area – gorgeous homes to be rezoned as multiples.

<sup>3</sup> Date: October 29, 2022. Quarton Lake waterfall area. The 2040 Plan calls for cafes, kiosks, food trucks, commercial endeavors here. Why?

<sup>4</sup> Date: September 27, 2022. Abbey and Wimbleton – showing what construction is doing to the ambience of the neighborhood.

<sup>5</sup> Date: Uncertain. Poppleton Park area. 2040 Plan is going to rezone into multiples.



At the Birmingham City Commission meeting on October 3, 2022, Planning Director Nicholas Dupuis discussed the background of the 2040 Plan and what the 2040 Plan can provide for the community and what it says, thereby educating the Commission, including Mr. Host. Yet, these videos are posted subsequent to Mr. Host being informed of the facts. Additionally, the City Manager's Report, which can be found in Attachment 2, has three pages of "setting the record straight" to clarify the misinformation by Commissioner Host. It was again explained that the 2040 Plan does not rezone property. The information presented to Commissioner Host at the [November 28, 2022 Commission meeting](#) (beginning at 1:03.25) reiterated published facts in 2021 explaining that the 2040 Plan recommends priorities but does not rezone property.

Yet, despite educating Commissioner Host to the facts, Commissioner Host reposts similar videos on Facebook, once again suggesting homes in particular areas could be in jeopardy. [Video 6](#)<sup>6</sup>, [Video 7](#)<sup>7</sup> [Video 8](#)<sup>8</sup> While he attempted to correct the errors in his videos based upon my communications with him at the November Commission meeting, the new videos continue to be misleading and he continues to advocate outside the proper channels of a Commissioner. For example, as you can see from the currently posted [video](#), he states, "How long do you think these gorgeous homes are gonna last after rezoning." He posted a video regarding Booth Park stating that the 2040 Plan called for a café in the park. He suggests there may be the inclusion of corporate enterprises which is not included in the 2040 Plan. [Video 9](#)<sup>9</sup> After the new posts were discovered, at the December 19, 2022 City Commission meeting (Attachment 3), the City Manager's Report, once again, contained six pages of material setting the record straight. Once again publicizing that "the City repeatedly corrected the inaccuracies put forth by Commissioner Host and prior written documents as well." Please see the detailed explanation and education provided to Commissioner Host at that [meeting](#) (at 2:28.50). Despite continued education in December to Commissioner Host, Commissioner Host's current videos, even at this date, continue to contain fear-mongering and continue to advocate for specific positions on topics which will eventually be presented to the full City Commission for consideration and adoption of the 2040 Plan. Commissioner Host is in fact one of the final arbiters of this Plan. He violates the normal process of the City Commission when he, as a sitting Commissioner, publicly voices his concerns, opinions and discussions in personal forums. This is not the proper governmental channel. The proper governmental channel is at the public Commission meetings with the entire City Commission present. Commissioner Host has removed the original posts, but to this day continues to have videos on his Facebook page that could be in violation of the Ethics Ordinance.

---

<sup>6</sup> Date: [December 8, 2022](#) – Grant & Lincoln from here to Woodward 2040 encourages single family homes to be zoned multiples.

<sup>7</sup> Date: [December 11, 2022](#) – Grant & 14 Mile Rd, page 46 of the Master Plan proposes to take over 45 single family houses and have them zoned to encourage infill.

<sup>8</sup> Date: [December 12, 2022](#) -Two gorgeous homes 100 years old south end of Poppleton in Poppleton Park – 2040 Plan, Chapter 2, encourages these two lots to be townhouses, duplexes, or multi-family buildings. You have until January 11<sup>th</sup> to speak your opinion.

<sup>9</sup> Date: [December 16, 2022](#) - Booth Park - Page 35 of the Master Plan permits a café – could this be a Starbucks or building – there is broad interpretation get your opinion in by January 11<sup>th</sup>.



It has further come to my attention that letters are being sent to persons' homes and emails, which you will find in Attachment 4, wherein Commissioner Host is once again advocating for the community's agitation. He violates the normal process of the City Commission when he, as a sitting Commissioner, publicly voices his concerns, opinions and discussions in personal forums. Once again, it is of note, Commissioner Host also does not ever state these are his personal opinions and not opinions of the Commission or the City. Also, these mailings are not proper governmental channels. Once again, the proper channel is at the public Commission meetings with the entire City Commission.

It is believed that as a result of Commissioner Host's public agitation, that when the Planning Board was planning its agenda for its January meeting, members of the Planning Board were so concerned about people's reactions that members requested police presence at their meeting. Also, Commissioner Host appears to be influencing and attempting to craft a product i.e. the 2040 Plan, which will ultimately be delivered to him and his colleagues on the City Commission. Again, he is one of the final arbiters of the 2040 Plan, yet he is attempting to influence the Plan itself before it even reaches the Commission table. Can his vote now be unbiased, independent and impartial?

You will also find in Attachment 5 an email to Commissioner Host from me dated Tuesday, December 20, 2022 regarding a conversation wherein Commissioner Host agreed with a citizen that the Planning Board has gone "rogue." Commissioner Host stated that was not his intent. I suggested he should publicly acknowledge that he did not intend to disparage the Planning Board, and yet that statement of correcting the record or apology has never occurred.

You will also find Attachment 6 which is a demonstration of the effect of Commissioner Host's misinformation and public advocacy. It is, in fact, causing citizens to react to this misinformation as demonstrated by an email exchange wherein I had to correct the misinformation of Commissioner Host in order to relieve the anxiety of a citizen.

Please also find Attachment 7. This demonstrates again the actual effect of Commissioner Host's mailings upon citizens. Clearly, people are becoming afraid that "something terrible" is going to happen to their neighborhoods because of the 2040 Plan. This clearly demonstrates that fear-mongering is having a negative effect upon Birmingham citizens.

The Birmingham City Code Section 2-320. – Public Policy states that:

"Public officials and employees must:

- (1) Be independent, impartial and responsible to the people;
- (2) Make governmental decisions and policy in the proper governmental channels;
- (3) Not use public office for personal gain."



Will Commissioner Host be independent, impartial and responsible to the people when he receives the 2040 Plan sometime in early 2023, wherein he will be deliberating with his colleagues at an open public meeting, and will he remain impartial until he hears all the information at that meeting? How can he, based upon the videos he published. The Code also says that decisions and policy must be in proper governmental channels. While Commissioner Host is sending out letters and posting Facebook posts, is he making decisions and policy in a proper governmental channel, which in his case would be a public City Commission meeting? Further, at no time does Commissioner Host state that these are his personal views, and not that of the Commission. Therefore, he seems to be using his public office as a Commissioner in order to get persons to agree with his personal views and have the 2040 Plan struck down because he personally disagrees with some of the concepts.

Sec 2-323. – Intention of the code.

“It is the intention of section 2-324 below that city officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a city decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the city government.

The Code of Ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the city ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law.”

The foregoing facts, videos and letters could be in violation of Sec. 323 because they have resulted in, and created the appearance of, Commissioner Host using his office for personal gain, for losing complete independence and impartiality of action, making City decisions outside of the Commission meeting and affecting adversely the confidence of the public and the integrity of City government. This is evidenced by the communications of a citizen whereby they are reacting to misinformation. Also, the appearance of negativity in Commissioner Host’s affect, comments, and accusatory tone, particularly with



misinformation, has agitated these issues and has violated and tainted the process of government such that the Planning Board members felt they needed police presence at their meeting.

Another potential violation at Sec. 2-323(1)(2)(3) of the Code of Ethics is that Commissioner Host is known publicly as a current sitting City Commissioner. Not once in any of the nine presented videos does Commissioner Host caution the viewer that the opinions, thoughts, or questions presented are being done so by Commissioner Host as an independent private citizen. While the Commissioner is careful not to say here is what I think, or here is what I believe, his demeanor, accusatory tone, and cues clearly lead the viewer and listener to an understanding of what Commissioner Host believes. While Commissioner Host has First Amendment rights, Commissioner Host should be making it clear that he is not speaking on behalf of the City, any of its boards, or the Commission. The Ethics Board has visited this exact topic in prior ethics opinions including 2009-02 and quoted in Advisory Opinion 2022-01:

“The Wisz Ethics Opinion determined that the use of his official position in that case was not germane to the matter being pursued by the City Official. This Board has found the same in the instant case involving Mr. Oh. As stated in the Wisz Opinion, **‘(t)he ethical difficulty and concern relates to a situation where a private citizen opts to also become a ‘City Official’ and therefore ‘wears two hats.’ Someone in such position has to be careful about creating a false impression, such as that one is speaking on behalf of the City itself.’** The Ethics complaint opinion relative to Mr. Ralph L. Seger, Jr., being number 2004-02 also has some relevance herein. This Board therein made it clear that it is mandated to recognizing and adhering to the principles of the First Amendment. However, the First Amendment principles do not permit a member of a City Board to assume a role, and act as a competing fiduciary, directly against the interests of the City. As stated in Wisz, **‘(s)uch conduct presents an irreconcilable conflict of interest, may tend to undermine respect for City Officials and employees and for the City as an institution, might result and/or create an appearance of adversely affecting the confidence of the public or the integrity of the City government, and is incompatible and in conflict with the discharge of the volunteer’s official duties.’** Herein, Mr. Oh’s identification of himself as a TDCIA member at the beginning of the petition appears to create confusion for the recipient’s thereof. His representation that the use of his official title was intended to assist the public is illogical. Public officials are obligated to be aware that their words could be misinterpreted or misread. **Therefore, when making a personal statement that identifies the speaker as a city official that official must include a conspicuous disclaimer that the opinions expressed are his or her personal opinions, and not the opinion(s) of the City or any other City Official.”** (Emphasis Added)

I also question whether Commissioner Host has created a conflict of interest as described in Sec. 2-324(10) in that Commissioner Host’s behavior demonstrates that as a City Official, his personal interest may have now interfered with the outcome of a matter currently before him, and his personal interest may be adverse to the public interest in the performance of his duty. Now, does he have a responsibility to disclose his interest and recuse himself from participating in the deliberation of the adoption of the 2040 Plan when it does, in fact, make it to the City Commission as a whole?



In reviewing the analysis of the discussion of Advisory Opinion 2022-01, the Board opined that others who used their position as a City Official to advance their advocacies results in personal gain. While this Board has said that the Ethics Ordinance was never intended to preclude City Officials from expressing his or her opinions, this Board has found in the past that when City Officials conduct themselves in such a way as to fail to separate their roles as private citizens from their roles as public servants that they are not acting in conformity to the Code of Ethics.

I would like to also advise the Ethics Board that Mr. Host is likely not acting in conformity with Sec. 2-323(5) as he is adversely affecting the integrity of the City government when he appears to be finding a way to circumvent legal opinion and direction. Attachment 8 is a memo from legal counsel to the City Commission dated December 6, 2021. Legal counsel explained to the City Commission, including Commissioner Host, that case law and the Attorney General have deemed it improper for Commissioners that possess appointment powers over members of boards and committees to appear at the meetings of said boards and committees. The rationale is that an appointer's mere presence can cause duress on members of boards and committees. The City Commission appoints members to the Planning Board. Despite this education, counseling, and information, Commissioner Host continuously finds a way to ignore these directives. It is my belief that he is using public forums, including email and mail systems, to pursue avenues to influence the Planning Board without having to attend the meetings personally. He is instead agitating members of the public to appear at the Planning Board to carry out his disgruntled message. To be clear, I believe his end around of these clear directives by the Attorney General and higher courts adversely affects the integrity of the Birmingham City government.

In conclusion, despite multiple attempts to demonstrate to Commissioner Host that he is disseminating untrue information and thereby misinforming the public, and by engaging in advocacy for an item wherein he will be one of the final arbiters, he violates the public process, thereby disrupting the integrity of the process of an item coming before the City Commission. The manner in which Commissioner Host has agitated the public with misinformation may be using his public office for personal gain in order to get people to align with his personal opinion and thoughts. I believe that he has lost complete independence or impartiality of action thereby causing a conflict of interest, one of which needs to be disclosed to his fellow Commissioners and perhaps result in him not participating in discussions regarding the 2040 Plan and whether or not it should be adopted by the City Commission. All of these actions by Commissioner Host, his continuing to allow this misinformation and false information to be a part of his Facebook page, adversely affects the confidence of the public and the integrity of the City government.

I bring the aforementioned facts and thoughts to the Ethics Board requesting an Advisory Opinion as to whether or not actions of Commissioner Host are in conflict with conformity to the Ethics Code and whether he has created a conflict of interest.

I look forward to any questions you may have, and I will make myself available for a meeting as requested.



I declare the foregoing information is true and accurate to the best of my knowledge.

Thomas M. Markus, Birmingham City Manager  
[tmarkus@bhamgov.org](mailto:tmarkus@bhamgov.org)  
(248) 530-1809

Date: 1-27-23

Attachments:

1. Memo from Planning Director, Nicholas Dupuis dated September 14, 2022.
2. City Manager's Report with "Setting the Record Straight", November 28, 2022.
3. City Manager's Report at December 19, 2022 Commission with "Setting the Record Straight."
4. Content of letters being sent to persons' homes and emails.
5. Emails Dated December 20, 2022 from City Manager to Commissioner Host wherein Commissioner Host agreed with a citizen that the Planning Board has gone "rogue."
6. Email exchange with citizen demonstrating the effect of Commissioner Host's misinformation and public advocacy.
7. Text exchange with citizen demonstrating the effect of Commissioner Host's misinformation and public advocacy.
8. Memo from legal counsel to the City Commission dated December 6, 2021

## ATTACHMENT 1



## MEMORANDUM

Planning Division

**DATE:** September 14, 2022

**TO:** Planning Board Members

**FROM:** Nicholas Dupuis, Planning Director

**SUBJECT:** The Birmingham Plan 2040 – Final Draft Presentation & Process Update

---

The City of Birmingham has received the third and final draft of the Birmingham Plan 2040 (the “2040 Plan”), which is available at [www.thebirminghamplan.com](http://www.thebirminghamplan.com). The schedule of review below outlines the presentation of the plan, the required 63-day public noticing period, and the reviews planned for the Planning Board and the City Commission. The planned schedule of review is as follows:

Date	Meeting Type	Action Needed
September 14, 2022	Planning Board	<ul style="list-style-type: none"> <li>• Present final draft.</li> <li>• Board recommends to the City Commission that the Plan be distributed for public comment (minimum of a 63-day period).</li> </ul>
October 3, 2022	City Commission	<ul style="list-style-type: none"> <li>• Vote to authorize the 63-day distribution period for the final, draft Master Plan.</li> </ul>
<i>Required 63-Day Public Notice Period</i>		
December 14, 2022	Planning Board	<ul style="list-style-type: none"> <li>• Review final draft and present / discuss comments received during the distribution period.</li> <li>• Set public hearing date.</li> </ul>
January 11, 2023	Planning Board	<ul style="list-style-type: none"> <li>• Present the final Plan and hold a public hearing. Further discuss comments received during the distribution period as needed.</li> <li>• Adopt plan; recommend to the City Commission for adoption.</li> </ul>

February 2023 (Exact Date TBD)	City Commission	<ul style="list-style-type: none"> <li>• Present the final Plan and hold a public hearing.</li> <li>• If prepared to do so, the City Commission may adopt the Plan by resolution.</li> </ul>
--------------------------------	-----------------	--

At this time, the Planning Board should acknowledge the receipt of the final draft of the 2040 Plan and present it to the public, provide any high level observations, and recommend that the City Commission distribute the final draft as required by the Michigan Planning Enabling Act. Those entities in which the City is required to provide a copy of the final draft of the 2040 Plan may be summarized as follows:

- Surrounding Municipalities
- Oakland County
- SEMCOG
- Public Utilities
- CN North America (Railroad)
- SMART

**Sample Motion Language**

Motion to recommend that the City Commission authorize the 63-day distribution period for the final draft of the 2040 Plan pursuant to the requirements of Article III, Section 125.3841 of the Michigan Planning Enabling Act.

## ATTACHMENT 2

5/9/22	Pickleball	Baller, no vote	Lauren Wood	Agenda item 5/23/22	Installed on 6-3-22
1/24/22	Social Districts	M: Schafer S: Boutros	Nick Dupuis/Jana Ecker	2/14/22 - make formal item 3/9/22 - Workshop 3/14/22 - Informally brought up by Host 6/20/22 Commission and Planning Board Discussed	No formal action taken by the Commission
5/23/22	Commission Meeting Start Time	Baller	Mary Kucharek	On agenda for 6/27/22 - Mary to draft generic ordinance language and discuss in July On agenda for 7/11/22 - Commission decided not to proceed	No changes for now

**Topics Failed**

4/25/22	On Street Parking Study	M:Haig S: Host
4/11/22	Downtown Parking	M: Host S: Haig
3/28/22	Parking Matters	M: Host S: Haig
6/13/22	479 SOW (Doraid) PAD	M: Boutros

**Topics With No Vote - Resolved**

1/10/22	Unimproved Streets	Discussed during the Long Range Planning meeting.
2/28/22	Solidarity with Ukraine	City Manager arranged for exterior lighting at City Hall.

**Topics With No Vote - Unresolved**

5/9/22	-PAD ordinance/cleanup	Baller, no vote	No vote
5/9/22	-Policy for granting public space ODD/Valet	Baller, no vote	No vote

**Setting the Record Straight**

**2040 Master Plan does not Rezone Property**

The City has observed a renewed vigor regarding the [Birmingham Plan 2040](#) (“2040 Plan”) and its Neighborhood Seams concept across social media that has involved residents and a current City Commissioner. Within the posts and ensuing conversations, there has been a continued assertion or idea that the 2040 Plan will be rezoning single-family homes to build multifamily, and that somehow the City of Birmingham is ignoring its residents in favor of developers and profit.

This was the subject of two recent videos that Commissioner Host posted on social media, [one on Oakland Ave.](#) in which he stated “these five homes as well as the two lots over near Woodward are going to be *rezoned* to multiple”, and the other in the [Poppleton Neighborhood](#) in which he states “in the proposed 2040 Plan they are going to *rezone* these two houses on Poppleton and turn them into

multiples” and that “you have time to tell the master planners and Planning Board what you think about this *rezoning* proposal.” It is important that we as City staff, Boards and Commissioners are factually accurate when discussing the Master Plan and how it applies to land use.

The City has reiterated that comprehensive master plans do **not** rezone property once adopted.

Excerpt from press release distributed [February 11, 2021](#):

“It is important to clarify that a master plan does not rezone property. It is a framework setting the course for what the City may or may not do in the future,” said Birmingham Planning Director Jana Ecker. “The community is encouraged to review the Frequently Asked Questions document and continue to share their thoughts and ideas on the project website.”

Excerpt from FAQ distributed [February 10, 2021](#) and [October 13, 2021](#):

### **Is the Master Plan rezoning the City?**

No. The Master Plan will include a Future Land Use map, but not a new zoning map. The Master Plan recommends that the City study and revise its current zoning code, but does not establish any updated zoning. The Master Plan recommends that zoning be updated for two primary purposes: 1) to simplify but not substantively change zoning in the Downtown and Triangle District, and 2) to better align neighborhood zoning with existing character to avoid new houses that are out of character. Other zoning changes are recommended for further study by the City.

The words “rezone” or “rezoning” do not exist within the 2040 Plan document, nor the [Michigan Planning Enabling Act](#) that regulates comprehensive master planning in Michigan. A comprehensive master plan is a document designed to guide the future actions of a community. It presents a vision for the future, with long-range goals and objectives for all activities that affect the local government. One might say however, and correctly so, that a comprehensive master plan *informs* future zoning. In the spirit of guiding future actions and informing zoning, a Future Land Use Map is created, which is contained across pages 8 and 9 of the [current draft of the 2040 Plan](#). A Future Land Use Plan is legally required to be included in the 2040 Plan by the Michigan Planning Enabling Act.

In the 2040 Plan’s Future Land Use Map, several areas are identified as “district seams.” Seams are placed in areas where districts abut each other or natural or man-made barriers, and roadways that are more significant than a neighborhood street. These seams are broken down into three categories (download the [city’s zoning map](#) for reference):

- [Access Seams](#) – Focus is connectivity and multimodal improvements, located in R1A, R1, R2, and R3, and R4 zoning districts where abutted by R3 or more intense properties on all boundaries.
- [Activity Seams](#) – Found along regionally significant streets and places where multi-family housing, attached single-family housing, and commercial uses have previously been built, located in TZ-1, R3, R4, R5, R6, and R8 zoning districts
- [Buffer Seams](#) – Found along regionally significant streets and places where multi-family housing, attached single-family housing, and commercial uses have previously been built, located in TZ-1, TZ-3, R3, R4, R5, R6, R7, R8, and MX zoning districts.

The current composition of seams and the number of areas proposed for seams has changed dramatically since their inception in the first draft of the 2040 Plan. These changes are *directly and unequivocally* due

to the feedback that Birmingham residents provided to the City. The Planning Board, City Commission, consultant team, and City Staff have worked tirelessly over 4+ years to work the input of residents into the 2040 Plan, and to state otherwise would be inappropriate and unfair to those who have spent so much time working on the Master Plan, especially our Planning Board and City Staff.

As demonstrated [in the attached map](#), the seam concept in the Future Land Use Map affects a roughly 106 residentially zoned parcels in the City, 28 of which are already developed as multi-family or commercial (26%). Overall, roughly 78 single-family properties are being considered for exploration in locating multi-family units such as townhomes, cottage courts, and small multi-family buildings.

Finally, it is immensely important not to lose sight of why the seams concept and the accompanying hyper-specific multi-family housing types were planned in the first place. Again, we turn to the Michigan Planning Enabling Act for an initial simple justification:

**125.3807 Master plan; adoption, amendment, and implementation by local government; purpose.**

- 1) A local unit of government may adopt, amend, and implement a master plan as provided in this act.
- 2) The general purpose of a master plan is to guide and accomplish, in the planning jurisdiction and its environs, development that satisfies all of the following criteria:
  - a) Is coordinated, adjusted, harmonious, efficient, and economical.
  - b) *Considers the character of the planning jurisdiction and its suitability for particular uses, judged in terms of such factors as trends in land and population development.*
  - c) Will, in accordance with present and future needs, best promote public health, safety, morals, order, convenience, prosperity, and general welfare.
  - d) .....

As evident in subsection "c" of the above, trends in population development are a required criteria. Population trends are more than just a grand total. Population trends include:

- What kind of people live in the area;
- What types of lives they lead, and would like to lead;
- How long they will live;
- How long they will reside in the particular area;
- Who will replace them when they move out or die;
- How many children they will have (and would like to have under different conditions);
- Whether these children will live in the area; and
- Many other factors.

The 2040 Plan was developed based on a [background analysis](#) of data on population trends and forecasts from the U.S. Census Bureau and SEMCOG. The data informed the consultant team that Birmingham can expect a population increase, and that both new residents and existing residents alike will continue to require diverse housing types based on factors such as family size, health, age, and income. This has major implications for equity, aging in place, and sustainability, all of which are major pillars of planning in general, but also the City's recently adopted Strategic Goals. As the 2040 Plan states, accommodating some of these different housing types must happen in areas other than the mixed use Downtown, Triangle District (or Haynes Square), or the Rail District. In stating such, the 2040 Plan also makes sure to emphasize that multi-family development in seam areas, should it ever be permitted, must complement the character, scale and massing of the surrounding neighborhood. The suggested action in the 2040 Plan is to "encourage infill development of small homes, townhomes, duplexes, and small multi-family buildings."

## ATTACHMENT 3

## **George W. Kuhn Retention Treatment Basin**

The city received an email from Water Resources Commissioner, Jim Nash, regarding accusations made against the George W. Kuhn (GWK) Retention Treatment Basin. Mr. Nash's email ([available at this link](#)) provides information regarding the accusations, which pertain to pollution in Lake St. Clair and the Clinton River. Correspondence between Mr. Nash and Macomb County Public Works Commissioner, Candice Miller, and documentation countering the accusations are [available at this link](#).

## **Setting the Record Straight**

### **2040 Master Plan does not Rezone Property**

The previous City Manager's Report dated November 28, 2022 addressed inaccurate information being presented on social media to Birmingham's residents by a sitting City Commissioner. Specifically, two videos posted by Commissioner Host were discussed, [one on Oakland Ave.](#) in which he stated "these five homes as well as the two lots over near Woodward are going to be *rezoned* to multiple", and the other in the [Poppleton Neighborhood](#) in which he stated "in the proposed 2040 Plan they are going to *rezone* these two houses on Poppleton and turn them into multiples" and that "you have time to tell the master planners and Planning Board what you think about this *rezoning* proposal." These inaccuracies were raised and discussed at the City Commission meeting on November 28, 2022.

The City has repeatedly corrected the inaccuracies put forth by Commissioner Host in prior written documents as well. Specifically, the City has reiterated, in writing, the fact that comprehensive master plans do **not** rezone property once adopted in the following documents:

- In a press release distributed [February 11, 2021](#), which stated "it is important to clarify that a master plan does not rezone property. It is a framework setting the course for what the City may or may not do in the future."
- In a Frequently Asked Questions publication distributed on both [February 10, 2021](#) and [October 13, 2021](#), which included the following commentary:

#### **Is the Master Plan rezoning the City?**

No. The Master Plan will include a Future Land Use map, but not a new zoning map. The Master Plan recommends that the City study and revise its current zoning code, but does not establish any updated zoning. The Master Plan recommends that zoning be updated for two primary purposes: 1) to simplify but not substantively change zoning in the Downtown and Triangle District, and 2) to better align neighborhood zoning with existing character to avoid new houses that are out of character. Other zoning changes are recommended for further study by the City.

- In the November 28, 2022 edition of the City Manager's Report which stated:

The words "rezone" or "rezoning" do not exist within the 2040 Plan document, nor the [Michigan Planning Enabling Act](#) that regulates comprehensive master planning in Michigan. A comprehensive master plan is a document designed to guide the future actions of a community. It presents a vision for the future, with long-range goals and objectives for all activities that affect the local government. One might say however, and correctly so, that a comprehensive master plan *informs* future zoning. In the spirit of guiding future actions and informing zoning, a Future Land Use Map is created, which is contained across

pages 8 and 9 of the [current draft of the 2040 Plan](#). A Future Land Use Plan is legally required to be included in the 2040 Plan by the Michigan Planning Enabling Act.

Despite the continued corrections issued on the matter, yet another video has been circulating on social media in which Commissioner Host stands near the corner of Lincoln and Grant, and states that “The 2040 Plan as proposed is going to *rezone to multiples (sic)* all of the south side of Lincoln between here (*Grant Street*) and Woodward”. Once again, there is a need to reiterate that comprehensive master plans do **not** rezone property once adopted.

As discussed last month in both the City Manager’s Report and at the City Commission meeting on November 28, 2022, it is very important that City staff, board members and City Commissioners are factually accurate when discussing important issues with the public. The continued assertion by Commissioner Host that the Draft 2040 Plan will rezone single-family properties to multi-family zoning, despite repeated attempts by City staff to set the record straight as to the fact that master plans **do not** in fact rezone properties once adopted disregards the facts and staff’s attempts to advise him of his inaccuracies. Such communication undermines the confidence of the public in city government, and adversely affects the integrity of city government. Public office is a public trust. For government to operate properly, each city official, employee, or advisor must earn and honor the public trust through integrity and conduct.

**2040 Master Plan does not Propose Food and Beverage Services at Quarton Lake Park or the W. Lincoln Well Site**

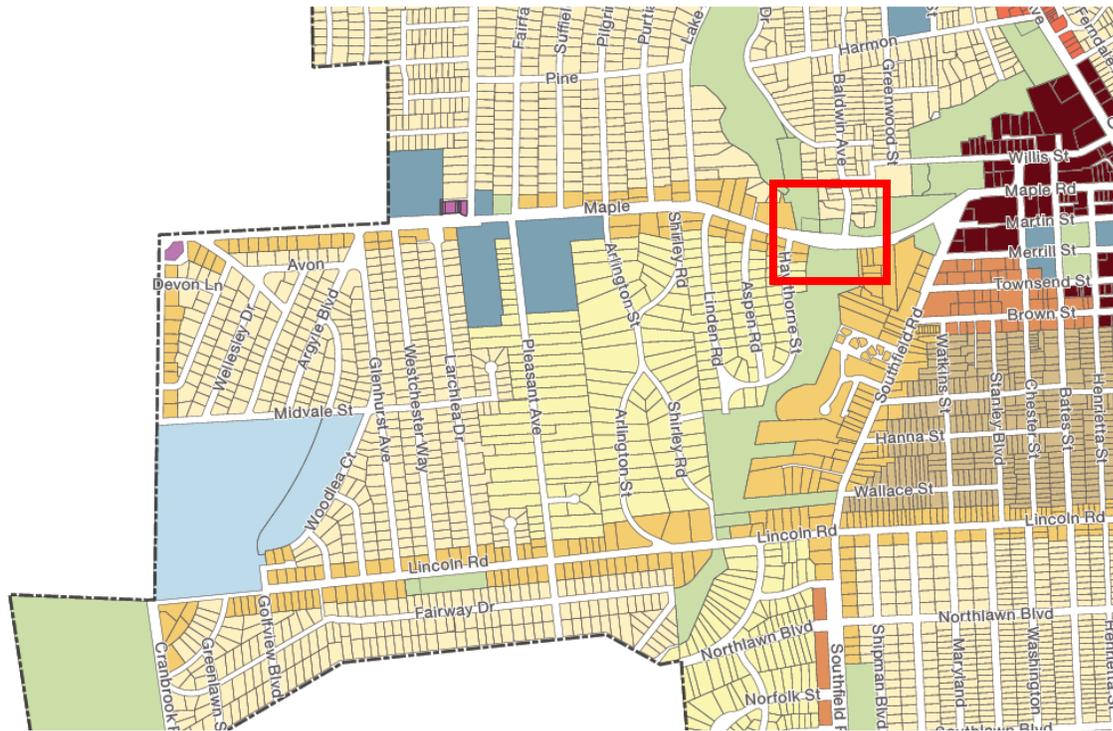
It is also important to set the record straight due to another video that has been circulating on social media in which Commissioner Host states that the 2040 Plan “proposes kiosks, cafes, food trucks, commercial endeavors here”, referencing the waterfall at the south end of Quarton Lake at the dam.

This area is part of Quarton Lake Park, and the draft 2040 Plan clearly refutes Commissioner Host’s inaccurate statement. Chapter 3, Retain Neighborhood Quality, of the draft 2040 Plan clearly contains a chart on page 53 (Figure 34) with all parks listed, and specifically excludes the provision of food and beverage services at Quarton Lake Park (see highlighted chart below).

	Athletics	Food & Bev.	Garden	Dogs	Exercise	Play	Splash	Seating	Walkways
<b>Specialty Parks</b>									
18. Booth		X		X	X	X	X	X	X
19. Rouge River								X	X
20. Shain		X				X	X	X	X
21. Quarton Lake			X	X	X	X	X	X	X
22. Museum								X	X
23. Manor					X	X		X	X
24. Springdale	X			X	X	X		X	X
25. Lincoln Hills	X			X	X			X	X
26. Worth Park		X						X	
26. Haynes Sq.		X			X	X	X	X	X

Figure 34. Recommended Park Amenities for Consideration in a Parks and Recreation Plan Update.

In addition, the Future Land Use Map contained in the draft 2040 Plan also clearly refutes Commissioner Host’s statement. Section B, Future Land Use, of the draft 2040 Plan clearly contains the Future Land Use Map on page 8 (Figure 5), which does NOT recommend a commercial destination at the south end of Quarton Lake Park (location highlighted in red).



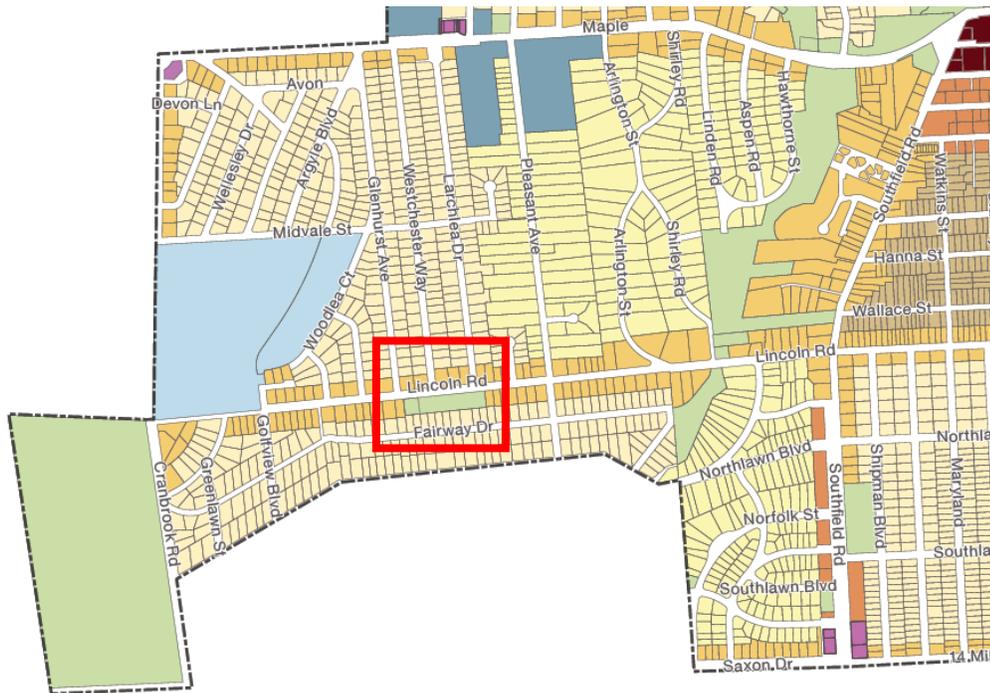
- District Destinations**
- Civic Destination: General
  - Civic Destination: School
  - Civic Destination: Cemetery
  - Recreational Destination
  - Commercial Destination

Yet another video was circulated on social media on December 14, 2022 in which Commissioner Host appears at the W. Lincoln Well Site on Lincoln between Larchlea and S. Glenhurst, and states that the 2040 master plan shows that “they want to put in kiosks, cafes, food trucks or carts...this is subject to interpretation. Does that mean a Starbucks?” at the W. Lincoln Well Site.

Once again, it is important to set the record straight. The area referenced by Commissioner Host is formally named W. Lincoln Well Site, and is also known as Lincoln Park. The draft 2040 Plan clearly refutes Commissioner Host’s inaccurate statement. Chapter 3, Retain Neighborhood Quality, of the draft 2040 Plan clearly contains a chart on page 53 (Figure 34) with all parks listed, and specifically excludes the provision of food and beverage services at W. Lincoln Well Site (see highlighted chart below).

	Athletics	Food & Bev.	Garden	Dogs	Exercise	Play	Splash	Seating	Walkways
<b>Mini Parks</b>									
1. Baldwin Well								X	
2. Derby Well			X	X	X	X		X	X
3. Pump House					X			X	X
4. Redding Well			X		X			X	X
5. Lynn Smith			X		X			X	X
6. Martha Baldwin					X			X	X
7. South Well			X					X	X
<b>Neighborhood Parks</b>									
8. Crestview	X	X	X	X	X	X		X	X
9. Howarth	X		X	X	X	X		X	X
10. Linden	X		X	X	X	X		X	X
11. Pembroke	X		X	X	X	X		X	X
12. St. James	X		X	X	X	X		X	X
13. W. Lincoln Well Site	X		X	X	X	X		X	X
14. Adams Park	X				X	X		X	X
A. Adams Square	X			X	X	X		X	X
B. Quarton School	X			X	X	X		X	X

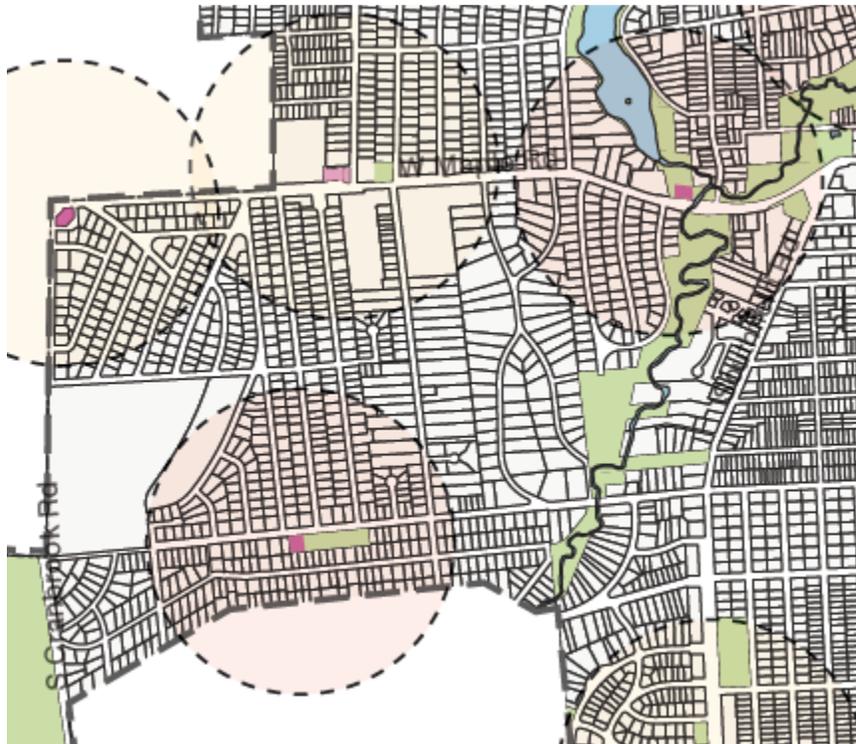
In addition, the Future Land Use Map contained in the draft 2040 Plan also clearly refutes Commissioner Host's statement. Section B, Future Land Use, of the draft 2040 Plan clearly contains the Future Land Use Map on page 8 (Figure 5), which does NOT recommend a commercial destination at the W. Lincoln Well Site (location highlighted in red).



### District Destinations

- Civic Destination: General
- Civic Destination: School
- Civic Destination: Cemetery
- Recreational Destination
- Commercial Destination

The confusion about “commercial endeavors” being proposed in Quarton Lake Park, or a coffee shop at the W. Lincoln Well Site may have arisen as a result of Figure 22 in Chapter 1, Connecting the City, on page 36 of the draft 2040 Plan. Figure 22 shows recommended neighborhood commercial destinations at the south end of Quarton Lake Park, and at the west end of the W. Lincoln Well Site.



- Commercial Destinations
- Recreational Destinations
- 5-minute Walk (existing)
- 5-minute Walk (new)

However, during Planning Board review of the draft plan, direction was provided to the consultant at a public meeting to remove the Quarton Lake Park and the W. Lincoln Well Site neighborhood commercial destinations based on public input. These updates were made to Figure 34 (Parks Chart) and to Figure 5 (Future Land Use Map) but updates were not made, and should have been, to Figure 22 (Neighborhood Destinations). However, Planning Director Dupuis clearly stated at the November 28, 2022 City Commission meeting that the consultant will ensure these corrections would be made in the final draft of the 2040 Plan.

During the past week, yet another video was posted on social media by Commissioner Host regarding the Poppleton neighborhood, wherein Commissioner Host states that “the 2040 master plan asks us to embrace managed growth and encourages these 2 lots to be townhouses, duplexes or multi-family buildings”. The change in terminology utilized in this video seems to demonstrate that perhaps

Commissioner Host may be attempting to self-correct his previous misstatements as to rezoning in earlier videos.

As noted above, it is very important that City staff, board members and City Commissioners are factually accurate when discussing important issues with the public, and thus City Commissioners and board members should contact City staff to verify the accuracy of all public communications.

The City goes to great lengths to accurately describe the purpose of our public meetings. Having elected officials encouraging public attendance is fine. Misrepresenting what the purpose of a hearing is or the topics that are to be discussed is inappropriate and only causes conflict and needless emotional distress. As I have stated before, "Let the process work". The City Commission has appointed citizens to the Planning Board to review the master plan drafts and the board members have shown their willingness to be completely transparent and open to considering public comments which may differ from what the draft master plan calls for. The professional staff and consultants are paid to provide their professional advice, however, they recognize that their recommendations must stand the test of the public process, and are likely to be questioned, challenged and altered through the very public and transparent review process. What the public does not need is a public official misstating the proposals contained within the draft 2040 Plan or encouraging a public position for or against the various recommendations contained in the evolving drafts of the proposed master plan.

I would also say that prematurely taking positions or advocating positions on the various aspects of the draft 2040 Plan is contrary to following an open public process, especially when it comes to a City Commissioner who ultimately is one of seven persons who are held responsible for the final decision on the plan. As those of you who have gone through the new City Commissioner orientation process know, I encourage our elected officials to keep an open mind about the decisions they make right up to the time they are called upon to vote.

Finally, I repeat, "Let the process work". Our community is filled with intelligent, thoughtful and well-informed people who are not likely to sit in a pot of boiling water without making their discomfort and views known. Our process works quite well and in my opinion, does not benefit from misinformation or fear mongering.

### **Boiling Frog Metaphor**

At the November 28, 2022 City Commission meeting, a Commissioner asserted that frogs will remain in a pot of water that is slowly brought to a boil. Although the boiling frog metaphor is commonly used in political discourse, herpetologists have found that frogs will, in fact, attempt to escape a pot as its water temperature is raised. For more information, read this brief [article](#) by [Dr. Whit Gibbons](#), Professor Emeritus of Ecology at the University of Georgia.

## **Department of Public Services**

### **Pat Andrews Tribute**

The table below describes the donations received to date in honor of Pat Andrews.

<b>Pat Andrews Tribute</b>	<b>Amount Received</b>	<b>Date Received</b>
Name of Donor		
Debicki, Sandra	\$225.00	12/16/2021
Host, Bradley	\$500.00	11/17/2021
Karhohs, Jo	\$100.00	11/17/2021

ATTACHMENT 4

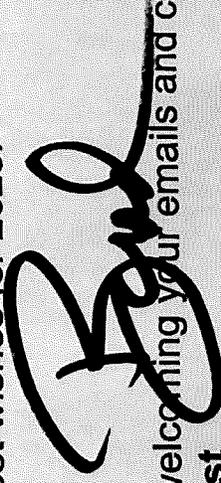
**A wish for you and yours to have a Happy New Year! We can all hope for a better 2023!**

You should be interested to know The Birmingham Planning Board is in the final stages of reviewing the 2040 Master Plan for the City. Chapter 2, *Embrace Managed Growth*, identifies the properties that are single-family today along the Southside of Lincoln between Grant and Woodward and states:

*"... While there are not many properties available for infill.... those areas able to accommodate infill should be zoned to encourage it... Create a new zoning district or modify the transition zone districts to enable infill development of small homes, townhouses, duplexes, and small multi-family buildings..."*

The Planning Board will hear your comments in person 7:30PM Wednesday, January 11, 2023. Or you can **go online to send your comments** at <https://thebirminghamplan.com/comment>

Again, best wishes for 2023.



Always welcoming your emails and calls.

**Brad Host**

**248.219.2249**

**BraddHost@gmail.com**



**Josh Greenwald**

Torry Community Assoc · 9m ·

Apparently a new development (likely townhouses) is being planned for t

January 2, 2023

Dear Birmingham Neighbors,

**A wish for you and yours to have a Happy New Year! We**  
**for a better 2023!**

You should be interested to know The Birmingham Planning E  
final stages of reviewing the 2040 Master Plan for the City. C  
*Embrace Managed Growth*, identifies the three single-family h  
Southeast corner of Eton and Lincoln and states:

*"...While there are not many properties available for infill.... th  
able to accommodate infill should be zoned to encourage it... C  
zoning district or modify the transition zone districts to enable  
development of small homes, townhouses, duplexes, and sma  
buildings..."*

The Planning Board will hear your comments in person 7:30P  
Wednesday, January 11, 2023. Or you can **go online to send**  
**comments** at <https://thebirminghamplan.com/comment>

ATTACHMENT 5

## Mary Kucharek

---

**From:** Tom Markus <tmarkus@bhamgov.org>  
**Sent:** Tuesday, December 20, 2022 6:43 PM  
**To:** Brad Host  
**Cc:** City Commission; Department Heads  
**Subject:** Re:

As I previously stated: "If that was not your intent, I would suggest that you publicly acknowledge that you did not intend to disparage the Plan Board.

On Tue, Dec 20, 2022 at 1:41 PM Brad Host <bhost@bhamgov.org> wrote:

Thanks Tom.

Couldn't conceive agreeing with a "rogue" comment. My intention was agreeing with a less friendly local environment ONLY. Have stated same to Linda. Would you want me to address this retraction with the Planning Board?

Best safe wishes,

Brad

Sent from my iPhone

On Dec 20, 2022, at 11:06 AM, Tom Markus <tmarkus@bhamgov.org> wrote:

As I observed your reaction to my comment about you agreeing with a citizen that our Plan Board has gone rogue, you seemed to not know what I was referring to and or you acted as if it did not happen. Please see the attached commentary that I am referring to. It is pretty clear that you agreed with the "rogue comment". Is it possible that someone else has access to your facebook page and is communicating in your place? Obviously, your comment creates the view that you think our Plan Board is operating improperly. If that was not your intent, I would suggest that you publicly acknowledge that you did not intend to disparage the Plan Board. Remember that our Plan Board members are citizens who volunteer their time (a lot of time) to help the City Commission plan for the future of our community. As I noted at Monday's meeting our Plan Board is one of the most competent Planning Boards I have had the privilege to work with.

----- Forwarded message -----

From: **thomas markus** <tmsquared20@gmail.com>

Date: Tue, Dec 20, 2022 at 9:14 AM

Subject:

To: <tmarkus@bhamgov.org>

<Resized-image-110218743756182.jpeg>

--  
You received this message because you are subscribed to the Google Groups "DepartmentHeads" group. To unsubscribe from this group and stop receiving emails from it, send an email to [departmentheads+unsubscribe@bhamgov.org](mailto:departmentheads+unsubscribe@bhamgov.org).

To view this discussion on the web visit

[https://groups.google.com/a/bhamgov.org/d/msgid/departmentheads/CALPLqCh0Xye3ZfVNPJ-dMe4Rc%3D%3DSb4cOM\\_RnG\\_YjVdsRGzZqfQ%40mail.gmail.com](https://groups.google.com/a/bhamgov.org/d/msgid/departmentheads/CALPLqCh0Xye3ZfVNPJ-dMe4Rc%3D%3DSb4cOM_RnG_YjVdsRGzZqfQ%40mail.gmail.com).

## Mary Kucharek

---

**From:** Tom Markus <tmarkus@bhamgov.org>  
**Sent:** Tuesday, December 20, 2022 11:06 AM  
**To:** Brad Host  
**Cc:** City Commission; DepartmentHeads  
**Subject:** Fwd:

As I observed your reaction to my comment about you agreeing with a citizen that our Plan Board has gone rogue, you seemed to not know what I was referring to and or you acted as if it did not happen. Please see the attached commentary that I am referring to. It is pretty clear that you agreed with the "rogue comment". Is it possible that someone else has access to your facebook page and is communicating in your place? Obviously, your comment creates the view that you think our Plan Board is operating improperly. If that was not your intent, I would suggest that you publicly acknowledge that you did not intend to disparage the Plan Board. Remember that our Plan Board members are citizens who volunteer their time (a lot of time) to help the City Commission plan for the future of our community. As I noted at Monday's meeting our Plan Board is one of the most competent Planning Boards I have had the privilege to work with.

----- Forwarded message -----

**From:** **thomas markus** <[tmsquared20@gmail.com](mailto:tmsquared20@gmail.com)>  
**Date:** Tue, Dec 20, 2022 at 9:14 AM  
**Subject:**  
**To:** <[tmarkus@bhamgov.org](mailto:tmarkus@bhamgov.org)>



**Brad Host**

22h ·

The city needs your voice:

<https://www.thebirminghamplan.com/comment>



7

2 comments 70 views

Like

Comment

Send



**Linda Orlans**

Thanks [Brad Host](#). Looks like the Planning group has gone Rogue again. What is happening to our family friendly Birmingham! So disappointing.

Like Reply



**Brad Host**

[Linda Orlans](#) agree!

Like Reply

--

You received this message because you are subscribed to the Google Groups "City Commission" group.

To unsubscribe from this group and stop receiving emails from it, send an email to [city-commission+unsubscribe@bhamgov.org](mailto:city-commission+unsubscribe@bhamgov.org).

To view this discussion on the web visit <https://groups.google.com/a/bhamgov.org/d/msgid/city-commission/CALPLqCgx%3DHqHdX%3D%2BEQjppguODGLLG7cRuS7R28ejfw%2BXUN%3Du2A%40mail.gmail.com>.

## ATTACHMENT 6

## Mary Kucharek

---

**From:** Tom Markus <tmarkus@bhamgov.org>  
**Sent:** Thursday, December 22, 2022 2:15 PM  
**To:** nord718@aol.com  
**Cc:** City Commission; DepartmentHeads  
**Subject:** Draft 2040 Plan Comments

Dear Ms. Nordlie,

Thank you for your comments on the Draft 2040 Plan that you provided via email to Commissioner Host (attached below).

Commissioner Host has asked that we forward your comments to the Planning Board for consideration during the public review process. We are happy to share your email comments with the Planning Board.

Did you know that the café discussed in the Draft 2040 Plan for Booth Park is not a new idea, but has been included in the recommendations contained in the Downtown Birmingham 2016 Plan since 1996? The 2016 Plan had specific recommendations for improvements in Booth Park, including the provision of a café or kiosk located near the corner of N. Old Woodward and Harmon, to anchor the corner and activate the area by providing food and drink to park visitors. In addition, the most recent Parks and Recreation Plan (2018) also shows a concept plan for Booth Park that includes an urban plaza entry feature at the corner of Harmon and N. Old Woodward with umbrella covered tables with seating for visitors to enjoy. The Draft 2040 Plan continues to recommend the addition of a café or kiosk in Booth Park, as recommended since at least 1996.

As the Downtown Birmingham 2016 Plan, the Parks and Recreation Plan and the Draft 2040 Plan are master plans, they provide recommendations, but do not mandate the implementation of each element. Rather, the plans recommend concepts for further study and exploration in the future, given the right opportunity and the availability of funding for study and potential implementation. However, incorporation in a master plan does not guarantee implementation, as the City would need to fund and conduct further study and planning in the future, and this would require formal approval of the City Commission before any further steps are taken.

In light of this information, please verify that you wish to send your comments as presented to the Planning Board. If that is your desire, please let us know and we will be happy to pass your email along to the Planning Board for consideration during the public review process.

Tom Markus

Forwarded

**From:** [nord718@aol.com](mailto:nord718@aol.com)  
**Date:** December 20, 2022 at 2:00:18 PM EST

**To:** [bhost@bhamgov.org](mailto:bhost@bhamgov.org)  
**Subject:** Booth Park cafe?

Hi Brad...

I think you may have asked for some feedback on this issue, so I would like to respond.

I think it is a bad idea for at least two reasons:

1) the potential for an increase in vehicle traffic. There are already numerous times when that part of the street is blocked off by people who park illegally to go to the park or pick up to-go orders from the nearby restaurants, etc. Also, many times there are already times when traffic on that street is problematic even without any increase due to the cafe.

2) the increase in trash and littering. There is already too much trash on the park property, on Harmida Street, and many more napkins, to-go cups, etc. blowing around that area. Also, there is no need for a cafe in that concentration of restaurants in that area.

Just a thought... if you want to test out the idea before investing in the infrastructure, why not find a way to test it out first to see what the response is and if traffic and litter do become bigger problems.

I hope this feedback is helpful. Thanks for your service as a commissioner.

Sincerely,  
Nancy Nordlie  
450 Tooting Lane  
Birmingham, MI 48009

--

You received this message because you are subscribed to the Google Groups "City Commission" group.

To unsubscribe from this group and stop receiving emails from it, send an email to [city-commission+unsubscribe@bhamgov.org](mailto:city-commission+unsubscribe@bhamgov.org).

To view this discussion on the web visit <https://groups.google.com/a/bhamgov.org/d/msgid/city-commission/CALPLqCjoJeD5kxFnuPAFFDQKmuGcAUtOi9aJWMYS80mcpE%3DqEQ%40mail.gmail.com>.

## ATTACHMENT 7

11:32



Mark >

December 30, 2022

Dear Birmingham Neighbors,

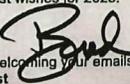
A wish for you and yours to have a Happy New Year! We can all hope for a better 2023!

You should be interested to know The Birmingham Planning Board is in the final stages of reviewing the 2040 Master Plan for the City. Chapter 2, *Embrace Managed Growth*, identifies the properties that are single-family today along the Southside of Lincoln between Grant and Woodward and states:

*"...While there are not many properties available for infill... those areas able to accommodate infill should be zoned to encourage it...Create a new zoning district or modify the transition zone districts to enable infill development of small homes, townhouses, duplexes, and small multi-family buildings..."*

The Planning Board will hear your comments in person 7:30PM Wednesday, January 11, 2023. Or you can go online to send your comments at <https://thebirminghamplan.com/comment>

Again, best wishes for 2023.

  
Always welcoming your emails and calls.  
Brad Host  
248.219.2249  
BraddHost@gmail.com

Good afternoon Tom

Just thought you would find interest in this

My neighbor just pulled me aside this morning, in total fear that something terrible was going to happen to our neighborhood.

She got this in her mailbox dropped off by hand. Funny thing, I didn't get one. I wonder why?



iMessage





Mark &gt;

This is a handout designed to scare, but not explain. It's interesting how it says very little, but implies a lot.

And it absolutely does not clarify the facts about what is going on.

Intentionally designed as a fear, mongering piece, in my opinion.

More of the same inappropriate behavior by commissioner.

I definitely believe this is not the way the commissioner should handle this issue. Not impressed to say the least.

FYI

Have a great day  
Mark

May I share this with the commission?

Yes, for sure

But  
I assume , Not my text message.



iMessage



11:32



Mark >



Yes, for sure

But  
I assume , Not my text message.  
Just the letter, right?

Is that what you mean?

You can surely say that it came  
from one of my neighbors. If  
you'd like. It's up to you,

I think your text message would  
add context. I ccd a similar Brad  
letter at the last meeting and  
made comments

Delivered

And I thought you'd want to  
share it with Mary as well. I think  
it's worthwhile to consider an  
ethics review regarding his  
actions.

On a sidenote, dropping a letter  
in people's mailboxes is also bar  
questionable and I don't think it's  
legal either. But that's just  
another side point



iMessage



March 2, 2023

**City of Birmingham Ethics Board**  
City of Birmingham  
151 Martin Street  
P.O. Box 3001  
Birmingham, MI 48012  
[clerksoffice@bhamgov.org](mailto:clerksoffice@bhamgov.org)

***Re: Request for Advisory Opinion Regarding Commissioner Bradley Host, dated January 27, 2023 (the “Request”)<sup>1</sup>***

Dear Ethics Board:

We are counsel for Commissioner Bradley Host (“Commissioner Host” or “Mr. Host”) and write in response to the above-referenced Request.

#### **INTRODUCTION AND SUMMARY OF RESPONSE**

The Request for Advisory Opinion form (“RAO Form”) to be completed by the “requesting party” is clear – each request should include:

- (i) “each question upon which an opinion is desired”,
- (ii) “*all* of the facts giving rise to each question presented”, and
- (iii) “*all* relevant... authorities”.

Exhibit A (*emphasis added*). Pursuant to the plain language of the RAO Form, if a request “does not meet these criteria [it] may be returned...” *Id.*

The at-issue Request falls short of this straightforward standard, and instead presents as little more than an advocacy piece. In doing so, the Request resorts to unsupported conclusions, argumentation, and (at times) misstatements of fact. Compounding matters, the Request asks this Board to take action that risks chilling protected speech and directs elected City officials to substantially limit their accessibility to the very constituents they have been democratically elected to serve. And it does so without providing the Board with copious amounts of applicable authority.

Regardless of whether the Board agrees or disagrees with Commissioner Host’s assumed position regarding discrete aspects of the 2040 Plan substantively, the Request should be rejected for four (4) principal reasons:

---

<sup>1</sup> A copy of the Request is attached as **Exhibit A** for ease of reference.

*First*, the Request fails to offer Commissioner Host or this Board the “(i) what is the question, (ii) what are the facts and (iii) what are the authorities” format called for in the RAO Form and required for proper response and adjudication. It should not be incumbent upon any responding party or this Board to speculate regarding such important matters. On this basis alone, whether pursuant to Rule 204(e) (failure to demonstrate a violation of the Code of Ethics) or Rule 205 (no genuine issue of material fact) of the Board of Ethics Procedural Rules (the “BEPR”), or otherwise, the Request should be rejected.<sup>2</sup>

*Second*, the Request offers insufficient evidence to establish that Mr. Host’s social media posts or communications were intended to or did misinform the public. The Request asserts that Mr. Host’s videos and letters spread misinformation regarding the 2040 Plan by calling attention to the eventual re-zoning of certain areas of the City of Birmingham. Meanwhile, not only does the Request fabricate a “quote” from one of the at-issue videos, but it fails to adequately articulate how the actual words used by Mr. Host in the at-issue posts/communications may be fairly characterized as misinformation. The materials attached to the Request, in addition to the 2040 Plan itself, state clearly that the Plan calls for the re-zoning of the areas referenced in Mr. Host’s social media posts, even if adoption of the 2040 Plan is not self-effectuating of the re-zoning.

*Third*, apparently confusing a difference of opinion (apparently derived from nothing more than Mr. Host’s “tone” in the at-issue videos) with a conflict of interest, the Request fails to offer even a modicum of evidence that Mr. Host’s personal pecuniary (or other) interests impair in any manner whatsoever his ability to serve the role he was *elected* to serve as Commissioner, and this is so even if Commissioner Host disagrees with the drafter(s) of the Request, or even the majority. The Request raises that Commissioner Host may have an undisclosed and unspecified conflict of interest in violation of the Code of Ethics but fails to disclose any facts or law to support this conclusion. The Request merely concludes that there is a “conflict of interest,” because Mr. Host is encouraging constituents to have themselves be heard on their opinions regarding portions of the 2040 Plan. The at-issue videos and communications do little more than encourage viewers to visit the City of Birmingham’s official website launched for obtaining citizen feedback on the 2040 Plan (<https://www.thebirminghamplan.com/comment>) and let themselves be heard.

*Fourth*, this Board has held time and again that the Code of Ethics cannot be interpreted to inhibit a public official’s right to free political speech, especially when such an official does not attempt to use his or her title as part of their speech to advance their objective and when the speech in question does not risk undermining the public’s confidence in the City’s government. In none of the videos/communications cited in the Request does Mr. Host identify himself as a commissioner or even a city official. Nor does he say anything to adversely affect the public’s confidence in the City or in the Commission. In each of the videos/communications, he simply points out contents of the 2040 Plan and encourages City of Birmingham residents to express their opinions on the Plan. He does not direct them to oppose it or criticize it. And even if he did, his speech would not be in violation of the Code of Ethics, because he does not identify himself as a commissioner (or otherwise hold himself out as speaking on behalf of the Commission or the City) in any of the communications/posts.

---

<sup>2</sup> Under the BEPR, the Board may do so without conducting a hearing.

If the drafter(s) of the Request do not like Commissioner Host's (inferred) position on the 2040 Plan (or any other issue, for that matter), they are free to plead their case... *to the voters in November*. Instead, the Request resorts to misstatements of fact and other untoward tactics, hoping to enlist this Board to lower Commissioner Host's "voice" and to dissuade other elected officials from expressing any opinion that deviates from that of City Management or encouraging citizens to share their opinions. An attempt to use a governmental body to shame any opinion runs contrary to the very foundation of our democracy, namely elected officials carrying the voices of their constituents to our governmental bodies. Seeking to enlist this Board to shame or otherwise discourage elected officials or the citizens of the City of Birmingham from opposing proposed government action is troublesome at best, and likely unconstitutional. This Board should not countenance the gamesmanship apparent in the attempt to utilize this body to litigate such matters and silence citizens along the way. As more fully discussed below, for any combination of the foregoing reasons, the Request should be rejected, and this Board should give due consideration to cautioning future requesting parties regarding appropriate use of the RAO review process.

## RESPONSE

### ***A. The Request Should be Dismissed Because it Fails to Comply with the Procedural Rules***

Rule 202(a) of the Board of Ethics Procedural Rules allows the city clerk to "administratively dismiss a request for an advisory opinion if the request fails to comply with Rule 201." Rule 201 requires requesting parties to abide by the form prescribed by the clerk in articulating the need for an advisory opinion (the "RAO Form"). The RAO Form asks a requesting party to "[s]tate each question upon which an opinion is desired" and "[s]tate all of the facts giving rise to each question presented." Further, Rule 204(e) empowers this Board to issue an advisory opinion decision when a "request for advisory opinion on its face fails to demonstrate any violation of the code of ethics." The Request profoundly fails to conform to the Procedural Rules or to the RAO Form, and for this standalone reason, should be dismissed.

In ready-fire-aim fashion, the Request makes grand but hollow allegations regarding Commissioner Host's "impartiality" and "conflict of interest" without reference to any facts that could give rise to such a conclusion. The Request points to several videos posted to social media in which Mr. Host asks the public to share (*via a dedicated website published by the City of Birmingham for this express purpose*) what they think regarding the potential re-zoning of certain areas under the 2040 Plan, then, out of nowhere, the Request arrives at the conclusion that Commissioner Host has an (unspecified) ulterior motive or that his opinions threaten in some (unspecified) way the integrity of City government. For example, the Request states:

*The foregoing facts, videos, and letters could be in violation of Sec. 323 because they have resulted in, and created the appearance of, Commissioner Host using his office for personal gain, for losing complete independence and impartiality of action, making City decisions outside of the Commission meeting and affecting adversely the confidence of the public and the integrity of City government.*

(Request at p. 5).<sup>3</sup>

Aside from the conclusions, the Request offers nothing. No evidence of the alleged “personal gain.” No evidence of the alleged “loss of independence or impartiality of action.” No evidence of an unwillingness to listen to constituents and others at the “Commission meeting.” The Request only offers the naked conclusion.

For this reason alone, the Request should be dismissed, and the Board should call on future requesting parties to conform their requests to this body’s procedural rules and the plain directives of the RAO Form.

***B. The Request Fails to Support Its Conclusion That Commissioner Host’s Videos Were Intended to or Did Misinform the Public***

Unimpeded by the facts, the Request argues that Commissioner Host’s public statements via letters and social media posts which contain reference to the potential rezoning of certain areas of the City under the 2040 Plan spread misinformation and are (in some unspecified way) a form of fearmongering. The Request, however, fails to point to any language in the referenced videos or letters that reflect inaccurate information. For example, below is an actual transcript of “Video 1” referenced in the Request:

*Hey, here we are at Grant and Lincoln and in the 2040 Plan as proposed they’re gonna rezone to multiples all in the south side of Lincoln between here and Woodward. If you’re in the St. James or Pierce neighborhood, what do you think about that? Do you want this re-zoning? We have attached a link so you can tell the planning board and the master planners what you think.*

The Request asserts that any reference to rezoning single family homes into multi-family dwellings is to be considered a form of “fearmongering” and spreading misinformation regarding the 2040 Plan. Yet, the materials attached to the Request and the 2040 Plan itself outline the need for rezoning as part of the implementation of the 2040 Plan. Although the adoption of the 2040 Plan does not effectively re-zone the areas in question, it is indisputable that the 2040 Plan does call for rezoning. Therefore, references to the potential re-zoning contemplated by the 2040 Plan is not “misinformation.”

The Request cites the City Manager’s Report, Attachment 2 to the Request (the “Report”) and says that the Report is comprised of “three pages of ‘setting the record straight’ to clarify the misinformation by Commissioner Host.” (Request at p. 3) The Report says that “the words ‘rezone’ or ‘rezoning’ do not exist within the 2040 Plan document.” (Report at p. 2) In the very same paragraph, however, the Report goes on to say “one might say however, *and correctly so*, that a comprehensive master plan *informs* future zoning. In the spirit of guiding future actions and

---

<sup>3</sup> Additional examples include the Request’s “question whether Commissioner Host has created a conflict of interest” as “his personal interest may be adverse to the public interest,” (Request at p. 6), and the allegation that Commissioner Host “has lost complete independence or impartiality of action thereby causing a conflict of interest one of which needs to be disclosed to his fellow Commissioners, (Request at p. 7).

informing zoning, a Future Land Use Map is created, which is contained across pages 8 and 9 of the current draft of the 2040 Plan.” (Report at p. 2) (emphasis added and in original) Further, the current draft of the 2040 Plan contains a comprehensive Zoning Plan under Section B titled “Future Land Use” which outlines in detail the proposed ideal zoning makeup of the City of Birmingham necessary to effectuate the components of the 2040 Plan. (See 2040 Plan at pp. 10-15). Although the adoption of the 2040 Plan does not effectively re-zone the districts in question, it undeniably calls for the re-zoning to take place and adoption of the 2040 Plan would be a step in that direction. The language of the 2040 Plan and the Report both make that abundantly clear. Therefore, Commissioner Host was speaking factually when he said in his video “in the 2040 Plan as proposed they’re gonna rezone multiples...” because he was referencing the re-zoning that is foreshadowed in both the Report and the 2040 Plan.

Disappointingly and ironically, in the same breath that it seeks to have Commissioner Host censured/sanctioned for a video that allegedly spreads “misinformation,” the Request misinforms the Ethics Board, the public, and every other reader about the contents of the at-issue videos. The Request states that the video “demonstrates Commissioner Host stating ‘that according to the 2040 Plan the area will be rezoned to multi-family units.’” (Request at p. 2) As made clear by the above transcription, this “quote” is not contained in the video linked in the Request. Running the irony to its inevitable conclusion, the Request immediately follows the blatant misquote of the video with a quote from a prior opinion of this Board: “words matter” and **“as a public official, you have an obligation to make sure that statements of fact are in fact, facts. People see you as an official and maybe you are mistaken on some things you put in your petition, but that can cause mistrust of city officials by the public.”** (Request at p. 2) (emphasis in original) <sup>4</sup>

Even if the Board could get beyond the failure of the Request to comply with the procedural rules of this body and the RAO Form (it should not), because the Request fails to adduce evidence sufficient to conclude that Mr. Host’s at-issue communications were intended to or did misinform the public, the Request should be rejected.

**C. *The Request Fails to Point to Any Facts Showing that Commissioner Host Has a Conflict of Interest***

Unafraid to move without evidence, the Request alleges that Commissioner Host has some unspecified and improperly undisclosed “personal gain” or conflict of interest that should prevent him from fulfilling his duty to serve as a voice for the constituents who elected him to vote on the 2040 Plan. Unsurprisingly, the Request is devoid of any specificity regarding the alleged interest(s). The Request merely raises a “concern” that Mr. Host may have “created a conflict of interest as described in Sec. 2-324(10) in that Commissioner Host’s behavior demonstrates that as a City Official, his personal interest may have now interfered with the outcome of a matter currently before him, and his personal interest may be adverse to the public interest in the performance of his duty.” (Request at p. 6). Said differently, hypothesis plus supposition equals

---

<sup>4</sup> Indeed, even if, *arguendo*, this fabricated “quote” had been said by Commissioner Host, it would not be inaccurate or untruthful because the 2040 Plan does call for the rezoning of certain parts of the city as explained above.

rabid speculation. The Request offers nothing on which this Board can conclude that Commissioner Host has a conflict of interest under Sec. 2-324(10) of the Code of Ethics.

Section 2-324(10) of the Code of Ethics states:

Determination of conflict of interest. A conflict of interest exists if:

- a. The city official has any ***financial or personal interest, beyond ownership of his or her place of residence***, in the outcome of a matter currently before that city official or employee, or is associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or may be adverse to the public interest in the proper performance of said official's or employee's governmental duties, or;
- b. The city official or employee has reason to believe or expect that he or she will ***derive a direct monetary gain or suffer a direct monetary loss***, as the case may be, by reason of his or her official activity, or;
- c. The public official has ***any other prohibited interest defined by state statutes*** relating to conflicts of interest.

(emphasis added). Section 2-324(11) adds:

*Subsequent conflict of interest. No official or employee of the city shall acquire any financial interest in or accept any employment concerning any project which has been granted approval by the city or any commission, board, department or employee thereof within one year of the official's or employee's participation in any manner in considering or recommending the approval or disapproval of said project.* (emphasis added).

The Code defines a conflict of interest as an actual or potential for personal pecuniary gain beyond an official's ownership of their place of residence. The Request does not point to a single fact as support, nor does it even allege that Mr. Host stands to gain any financial or personal benefit from any outcome of the evaluation of the 2040 Plan.

In Advisory Opinion 2007-05, this Board was presented with similar empty allegations, as the Complainant alleged that a city official had violated Section 2-324's prohibition against a conflict of interest without providing any support for such allegations. The complainant asserted that a city official's efforts against the campaigns of two city commission candidates pointed to a conflict of interest, without advising on the nature of the alleged conflict. This Board ultimately found no violation of Section 2-324 for that reason and held that the complaint "fails for lack of proof." (Advisory Opinion 2007-05, p. 8).

Here, the Request goes on to allege that Commissioner Host's "personal interest may be adverse to the public interest in the performance of his duty," without any mention of what the Request purports this "personal interest" to be. Similarly, the Request alleges that Commissioner Host's conduct violates Section 2-320 because he is "not independent or impartial" and is "using public office for personal gain" without pointing to any facts that could support these serious allegations. What is this personal gain the Request keeps repeating? What is the conflict of interest?

Without answers (grounded in evidence, not reckless hyperbolic speculation) to these questions, neither Commissioner Host, nor this Board should be called upon to respond.

The Requesting Party appears to arrive at this assumption merely because Commissioner Host's (inferred) opinion on the current version of the 2040 Plan (which, notably, has evolved as a direct result of the very constituent comments the Request abhors) appears to differ from that of the drafter(s) of the Request. A difference of opinion, however, is not synonymous with a conflict of interest. Not surprisingly, the Code of Ethics does not require commissioners to agree, nor deem dissenters conflicted. Doing so would be antithetical to the very role of elected officials. Indeed, nothing in the Code of Ethics inhibits commissioners from freely expressing their opinions or suggesting that residents utilize official City channels to provide their thoughts. This is particularly so, where, as here, the at-issue conduct is little more than calling on residents to take advantage of the very website published by the City for the express purpose of collecting comments on the 2040 Plan.<sup>5</sup> In fact, the very opinion issued by this Board on which the Request heavily relies, Advisory Opinion 2022-01, emphasizes the importance of city officials' ability to exercise their First Amendment Right to free speech:

*The foregoing was and is never intended to preclude a City Official from expressing his or her opinions on matters that come before his or her respective board... The Ordinance encourages them to act independently. Ethics Ordinance Section 2-323(III)... If City officials cannot express opinion, debate the merits of those opinions and vote their consciences, the quality of our city's democracy would be significantly impaired.*

(Advisory Opinion 2022-01, p. 6, citing Advisory Opinion 2007-02).

The Request repeatedly references Advisory Opinion 2022-01 as if it is a precedential paragon in support of the Request. It is important for this Board, however, to distinguish the facts giving rise to Advisory Opinion 2022-01 from the facts at hand.

Advisory Opinion 2022-01 concerned Mr. Samuel Oh, a member of the Triangle District Corridor Improvement Authority ("TDCIA") (an appointed, as opposed to elected position) and found that Mr. Oh's online petition for the revision of the Triangle District Master Plan was "incompatible and in conflict with the discharge" of Mr. Oh's official duties, principally because Mr. Oh held himself out in his official capacity. (Advisory Opinion 2022-01, P. 5) Mr. Oh, however, was *appointed* to his post on the TDCIA, not elected by the citizens of Birmingham (in a hotly contested election, no less). He does not carry a duty to represent constituents' interests, educate them, or advocate on their behalf. Commissioner Host does. This is particularly so as

---

<sup>5</sup> "Birmingham leaders are providing multiple ways for residents and property owners to participate in this planning process, described in detail on the 'Participation' page of this website. However, if there is a comment or idea that you're not able to provide through the project's extensive engagement avenues, please share your information with our team by filling out the below form. We look forward to hearing from you!"

<https://www.thebirminghamplan.com/comment>.

Commissioner Host made clear during his campaign that he plans to act as a voice for a more resident-focused approach on the Commission. The Request effectively asks the Board to direct Commissioner Host to stop educating Birmingham citizens on the proposed effects of the 2040 Plan (in his official or individual capacity) and encouraging them to have their voices heard on the very website published by the City of Birmingham for that purpose. If Commissioner Host is forced to cede to that demand, it would betray his constituents and possibly violate his duty under the Code of Ethics to “earn and honor public trust by integrity and conduct.” (Section 2-320).

Further distinguishing Mr. Oh’s situation from the one at-hand is the reality that Mr. Oh held himself out as speaking in his official capacity, whereas Commissioner Host did nothing of the sort. In 2022-01, the Board made much of the reality that Mr. Oh began his online petition with “My name is Samuel Oh and I am a member of the Corridor Improvement Authority (Triangle District Development) board” without any disclaimer that the views expressed are his individual views and not those of the TDCIA or the City. (Advisory Opinion 2022-01, p. 2). Commissioner Host makes no such declaration nor in any way references his position on the Commission in any of the videos. The 2022-01 Board held that “when making a personal statement *that identifies the speaker as a city official* that official must include a conspicuous disclaimer that the opinions expressed are his or her personal opinions, and not the opinion(s) of the City or any other City official.” (Advisory Opinion 2022-01, p. 6, emphasis added). Commissioner Host does not identify himself as a city official in any of the communications cited in the Request. It follows that he was not obligated to disclaim that the opinions expressed in the videos (if any) are his and not the City’s (that is self-evident). In the at-issue videos and communications, there was simply nothing from which any reasonable observer could glean that Commissioner Host was speaking in an official capacity, let alone on behalf of the City.

In any event, the Request contains no evidence whatsoever that Commissioner Host’s perceived conflict of opinion with the requesting party afflicts Commissioner Host with a conflict of interest, particularly as defined under the Code of Ethics. The Request is devoid of any factual or evidentiary underpinning sufficient to find that Commissioner Host suffers from any conflict of interest under the Code of Ethics. For this third independent reason, the Request should be rejected.

***D. The Request Should be Dismissed Because Commissioner Host’s Conduct is Protected by Principles of Free Speech as this Board has Held on Multiple Occasions***

Rule 202(b)(ii) of the Board of Ethics Procedural Rules states that this Board may dismiss a request if its subject matter has already been addressed by the Board. This Board has held time and again that the Code of Ethics cannot be interpreted to inhibit city officials’ political speech where such speech does not mislead the public or unduly impair the public’s confidence in City government, as such an interpretation would run afoul of the First Amendment of the Constitution, and in turn, violate Section 2-323 of the Code of Ethics. Section 2-323 states that “[t]he code of ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the city ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.”

Further, this Board has expressed hesitation to hold officials' social media posts to be in violation of the Code of Ethics in the absence of any guidelines adopted by the City that are specific to social media.

*1. This Board has Consistently Held that to that the First Amendment Bars the Code of Ethics Could from being Interpreted to Prohibit Political Speech*

With respect to freedom of speech, "Birmingham's code of ethics is not sufficiently clear and narrow so as to withstand constitutional scrutiny." (Advisory Opinion 2009-02, citing Advisory Opinion 2004-02). This Board has so opined in, *inter alia*, Advisory Opinions 2009-02, 2007-05, 2007-02, and 2004-02. In Advisory Opinion 2007-02, for example, this Board examined whether the Code of Ethics allows a member of an advisory board to express disagreement with a decision of the City Commission and concluded it does permit such. The Board noted that "[i]f City officials cannot express opinion, debate the merits of those opinions and vote their consciences, the quality of our City's democracy would be significantly impaired." (*Id.*)

In Advisory Opinion 2004-02, this Board examined whether the efforts of a City board member to promote a lawsuit against the City and City officials by raising funds to help support the plaintiff's legal fees violates the Code of Ethics. Although this official was effectively calling on the public to help fund a lawsuit against the City of Birmingham, this Board held that the act of advocating for the plaintiff and helping raise funds could not be held to violate the Code of Ethics as that would run contrary to the First Amendment of the Constitution. Drawing from US Supreme Court opinions, this Board noted that any restriction on speech must be content-neutral, narrow, and cannot be written "so broadly as to exceed the governmental purpose furthered by the restriction." (Advisory Opinion 2004-02, P. 7, citing *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548; 93 S. Ct. 2880 (1973)).

Similar to the requesting party in 2004-02, the Request relies on Sec. 2-323 in alleging that Commissioner Host's videos and communications violate the Code because "they have resulted in, and created the appearance of, Commissioner Host using his office for personal gain, for losing complete independence and impartiality of action, making city decisions outside of the Commission meeting and affecting adversely the confidence of the public and the integrity of City government." (Request, p. 5). Not only are such allegations false, unsupported, and conclusory, but they attempt to apply Sec. 2-323 in an overly restrictive manner that would exceed its governmental purpose. The Code seeks to avoid adverse effects to the confidence of the public in city government. (Sec. 2-323). Mr. Host's communications cannot adversely affect the public's view of Birmingham's city government because they merely educate the public on the City's 2040 Plan and encourage viewers to express their opinions on it (in a content-neutral manner). It borders on absurd to contend that educating the public about an opportunity to let their elected and appointed officials know about individual opinions on proposed government action risks shaking the public's confidence in their government. Because the Request is devoid of any evidence that the at-issue communications pose such a risk, applying the Code of Ethics to restrict Commissioner Host's speech would be beyond the governmental purpose behind Sec. 2-323.

Advisory Opinion 2007-05 concerned attack ads in the form of postcards against two city commission candidates circulated by a political action committee that was formed by a city

official.<sup>6</sup> This Board found no violation of the Code of Ethics because the postcards did not identify the city official who initiated them nor did they make any “materially untrue” statements. (Advisory Opinion 2007-05 p. 7) The complainant asserted that the postcards violated Sec. 2-323 because attack ads set a bad tone and “evidenced a type of campaigning of which the citizens of Birmingham could not be proud.” (*Id.*). Not only did this Board reiterate its 2004 holding in finding that the postcards are constitutionally protected free speech, but it pointed to the positive effect that the postcards had on the political process, “the postcards promoted the electoral process by focusing the public attention on the candidates’ qualifications to hold public office and by sharpening the public’s consideration of the campaign’s issues.” (*Id.*). Similarly, Mr. Host’s speech (in his individual capacity) promotes citizen participation by focusing attention on the City’s plans and initiatives and directing the reader/viewer to the very website published by the City to collect citizen opinions on the 2040 Plan. The 2007-05 Board also noted that “[a]lthough the postcards disagreed with the decisions or actions Messrs. Chafetz and Dilgard had taken, they contained no statements that tended to undermine respect for them within the meaning of the ordinance.” Not only does Commissioner Host’s speech not even express disagreement with city government, but it also contains no statements that would undermine the citizens’ respect for the government.

In Advisory Opinion 2009-02, this Board faced the question of whether a member of the City Traffic and Safety Board may use their position and title on the board to circulate documents titled “Oppose Countywide Bus Tax Increase” and “Oppose Chicago-Detroit/Pontiac Transit Center Boondoggle.” The Board held that such an official could indeed do so upon including a disclaimer that the documents reflect his personal opinion and not the Safety Board’s or the City’s. As conceded by the Request (at p. 6), nothing in Commissioner Host’s at-issue communications actually opposes the 2040 Plan, aside from possibly certain unspecified aspects of his “demeanor,” “tone,” and “cues.” In any event, the at-issue communications, are each in compliance with, *inter alia*, the 2009-02 Board’s guidance in that Commissioner Host does not hold himself out in any of the at-issue communications in his official capacity.

2. *This Board Has Held that Specific Guidelines with Respect to Officials’ Use of Social Media Must be Adopted by the City **Before** the Board may Properly Evaluate a Social Media Post*

In Advisory Opinion 2020-01, this Board held that social media posts in which a commissioner interacts with constituents, *even where the commissioner identifies himself as a member of the Commission*, do not violate Section 2-320 of the Code of Ethics because no city guidelines exist with respect to social media. (Advisory Opinion 2020-01 p. 4). Therefore, no standard exists for this Board to apply to assess whether a commissioner’s conduct on their social media account conforms to the Code of Ethics.

In Advisory Opinion 2020-01, a Birmingham resident filed a request for an advisory opinion against Commissioner Clinton Baller regarding a social media post. After getting suspended from the NextDoor platform for a comment that violated NextDoor’s guidelines,

---

<sup>6</sup> One of the postcards said “Chafetz and Dilgard’s Agenda Will Lead to Higher Taxes,” while another said “Don’t Let Chafetz and Dilgard Regulate Your Home,” and another said “Chafetz and Dilgard’s Divisive Tactics.”

Commissioner Baller took to Facebook and a personal newsletter to express his frustration as a result of his banishment from NextDoor, and publicly blamed a Birmingham resident, the requesting party there, for his banishment. (Advisory Opinion 2020-01, p. 1). Commissioner Baller's post garnered many comments from other citizens, including several that were critical of the requesting party in that instance. Commissioner Baller was even found to have made untrue statements in those posts regarding the requesting party's involvement in his banishment from NextDoor. (Advisory Opinion 2020-01, p. 4).

Despite publicly singling out a constituent and making adjudicated false allegations about her involvement in his banishment, all while holding himself out in his official capacity, this Board absolved Commissioner Baller of any violation of the Code of Ethics. More specifically, the Board found that his conduct did not violate any portion of the Code because no guidelines exist as to how commissioners are to conduct themselves on social media.

*Notably, Section 2-320 obligates the City to "provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants." As to social media, no evidence was presented that any specific guidelines exist or, if they do, that Mr. Baller violated them. Given the increasing importance of social media, the City Commission may wish to adopt guidelines for public officials' use of social media.*

(Advisory Opinion 2020-01, p. 4). As of today, no such guidelines have been adopted. Thus, this Board remains in uncharted territory and without a rulebook against which it may evaluate Mr. Host's social media posts.

In any event, Mr. Host's posts more squarely fit within Birmingham's Code of Ethics than Commissioner Baller's posts examined by the 2020-01 Board. As explained above, Mr. Host' at-issue posts do not contain misrepresentations of fact, and Mr. Host does not hold himself out in any of the at-issue communications in his official capacity. And as acknowledged by the 2020-1 Board, "[h]onesty does not and cannot mean accuracy in all things. By becoming a public official a person does not become subject to being judged unethical if they make a factual mistake." (Advisory Opinion 2020-01, p.5).

As reaffirmed by this Board in Advisory Opinion 2020-01, public officials are free to engage with their constituents on social media, provided such an exchange remains respectful.

*[R]espect does not mean that a public official can't disagree with a constituent, even vehemently, or that the public official's opinion can't offend... But the official can disagree and should do so if that is their honest belief. Public officials can't treat citizens as if they don't exist or that their views don't matter.*

(Advisory Opinion 2020-01, p. 5). Mr. Host's videos aim to engage with Birmingham citizens in exactly the way prescribed by this Board. Mr. Host attempts to solicit citizens' opinions on matters concerning their community and shows them that their views *do* matter by encouraging them to let the City know what they think. By encouraging this Board to condemn Mr. Host's posts, the

Request effectively seeks to silence any public opinion that might be perceived to oppose the 2040 Plan and seeks to treat citizens as if they do not exist and as if their views do not matter.

### CONCLUSION

In the end, here, the ends are as unjustified as the means. Whether the members of this Board agree or disagree substantively with Commissioner Host's (inferred) position on the still-evolving 2040 Plan, this Board should reject the Request. Whether because the Request (i) failed to adhere to this body's procedural rules and the RAO Form, (ii) failed to adduce evidence that Commissioner Host engaged in the dissemination of misinformation and founded itself on a fundamental misquote, (iii) failed to offer anything beyond speculation regarding Commissioner Host's alleged conflict of interest, (iv) asks this Board to take action that flies in the face of well-established principals of free speech, (v) asks this Board to take action contrary to its prior rulings, or (vi) any combination of these reasons, the Request should be dismissed/rejected and the Board should consider offering appropriate guidance to future requesting parties regarding the importance of adherence to the BEPR and the RAO Form.

Respectfully submitted,

/s/ Jordan S. Bolton

Jordan S. Bolton (P66309)

Magy E. Shenouda (P85576)

Clark Hill PLC

151 S Old Woodward Ave., Suite 200

Birmingham, MI 48009

*Attorneys for Commissioner Bradley Host*

Dated: March 2, 2023

# EXHIBIT A



Case No. \_\_\_\_\_  
(Assigned by clerk)

**REQUEST FOR ADVISORY OPINION**

The Procedural Rules of the Board of Ethics allow a city official or employee, the City Commission, or another city commission, board or committee, as defined in the Code of Ethics ("the requesting party"), to request an advisory opinion as to whether the requesting party's conduct or anticipated conduct, or that of a city official, employee, commission, board or committee under the requesting party's authority, conforms to the Code of Ethics. The party whose conduct is sought to be reviewed, if it is someone other than the requesting party, is called the "subject party."

All advisory opinions will be communicated to the city commission and will be published on the city's website at www.bhamgov.org.

Written requests are subject to disclosure under the Freedom of Information Act.

Name Brad Host Phone Number (248) 219-2249

Address 416 Park, Birmingham, MI 48009  
(Number, Street, City, State, Zip)

Position or Board (If Applicable) City Commissioner

- A. State each question upon which an opinion is desired. Attach additional sheets of paper if the space provided below is not sufficient.
- B. State all of the facts giving rise to each question presented.
- C. If available, provide all relevant statutory provisions, case law, prior opinions of the Ethics Board, and other authorities.

**NOTE:** Although the foregoing criteria are subject to exception when the circumstances warrant, a request which does not meet these criteria may be returned and the requestor asked to resubmit the request in an appropriate form.

**Please return requests to:** City Clerk's Office, City of Birmingham  
151 Martin, P.O. Box 3001, Birmingham, MI 48012

Revised 8/16/12

**FOR OFFICE USE ONLY**

Accepted by \_\_\_\_\_ Date \_\_\_\_\_



January 27, 2023

City of Birmingham Ethics Board  
*City of Birmingham*  
151 Martin Street  
Birmingham, MI 48009

***Re: Advisory Opinion***

Dear Members of the Board:

“Accordingly, this Opinion celebrates the rights of free speech, but also addresses the self-imposed limitations thereof when one voluntarily elects to become a City Official. When one serves in the public sector, one becomes less and less ‘a public citizen’ and more and more a ‘public servant.’ This is part of the responsibilities and burdens one accepts as a public official. Being a public servant may constrain one’s activities in many ways, including the open expression of personal views. Having the right to engage in an activity doesn’t mean exercising that right is necessarily the best course of action.” (Advisory Opinion 2009-02 Pertaining to Mr. Wisz and is Quoted in Advisory Opinion 2022-01 in regarding to Mr. Samuel Oh.)

As the above quote demonstrates, this Board has previously offered Advisory Opinions in regards to educating public servants as to how they should conduct themselves in order to be compliant with the Birmingham Code of Ethics in Article IX of the Birmingham City Code. I am requesting an Advisory Opinion as it relates to Commissioner Brad Host for his activities since at least September of 2022 through the present time in his public statements, mail activities and social media posts as it relates to the Birmingham 2040 comprehensive master plan (“2040 Plan”).

As this Board is aware, the City of Birmingham, by state statute, is required to engage in planning for the City and its future. The 2040 Plan is in its near final form after a very long process of multiple drafts and reviews by the Planning Board and ultimately the City Commission in early 2023. Please find as Attachment 1 a memo that was published to the City Commission on September 14, 2022 outlining the anticipated Schedule of Review for the 2040 Plan and notice to the Commission that sometime in February of 2023 the City Commission will be reviewing and deliberating the adoption of the 2040 Plan. Part of the 2040 Plan discusses many ideas and concepts, one of which is called *seams*. *Seams* are concepts in which neighborhood planning is achieved, and the 2040 Plan discusses access, activity and buffer seams at the edges of planning districts to better connect neighborhoods and the community at large. *Access seam concepts* involve looking at ways to improve multi-modal access to the community and neighborhoods. *Activity and Buffer seam concepts* would be those, for example, located near 14 Mile Road which contemplate a future where multi-family dwellings of an appropriate scale and character are permitted near larger and active roadways.

Important to all of these concepts in the 2040 Plan is broad interpretation and ways to achieve planning for the future of Birmingham. I offer this by way of background as Commissioner Host has



been very active in private mailings to homes and social media posts, most predominately on his Facebook page, with the obvious intent to agitate the issues and encourage loud voices to the Planning Board.

In reviewing the Code of Ethics, it is clear the Code applies to Mr. Host as a Commissioner. Section 2-322 states:

“City official or employee means a person elected, appointed or otherwise serving in any capacity with the city in any position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty.”

The Board should know, there were at least five original videos posted on Commissioner Host’s Facebook page that demonstrate Commissioner Host was misinforming and misstating the 2040 Plan. Please utilize these hyperlinks in order to view these original videos posted last fall by Commissioner Host:

[Video 1<sup>1</sup>](#), [Video 2<sup>2</sup>](#), [Video 3<sup>3</sup>](#), [Video 4<sup>4</sup>](#), [Video 5<sup>5</sup>](#)

He is advocating that the 2040 Plan calls for rezoning which is inaccurate and untrue. This [video](#), taken at Grant and Lincoln, demonstrates Commissioner Host stating “that according to the 2040 Plan the area will be rezoned to multi-family units.” This is blatantly untrue. As stated by the Board of Ethics in the Advisory Opinion 2022-01 from September 22, 2022:

“Board of Ethics member, James Robb, pointed out... Words matter. **‘As a public official, you have an obligation to make sure that statements of fact are in fact, facts. People see you as an official and maybe you are mistaken on some things you put in your petition, but that can cause mistrust of city officials by the public.’**”  
(Emphasis Added)

Commissioner Host is engaging in advocacy for a position and an opinion before the 2040 Plan even arrives at the Commission table. He directly tells the public that they only have until early January in order to speak their opinions which is untrue. As seen in this [video](#), Commissioner Host states “you have 45 days to get your opinion in and then it is going to be history after that.” This is completely untrue as the adoption of the 2040 Plan has many upcoming hearings ultimately leading to a Commission meeting wherein the public is always heard.

<sup>1</sup> Date: Uncertain. At Grant & Lincoln and speaking to St. James and Pierce neighborhoods.

<sup>2</sup> Date: October 31, 2022. On Oakland Street between the Woodwards looking at San Francisco area – gorgeous homes to be rezoned as multiples.

<sup>3</sup> Date: October 29, 2022. Quarton Lake waterfall area. The 2040 Plan calls for cafes, kiosks, food trucks, commercial endeavors here. Why?

<sup>4</sup> Date: September 27, 2022. Abbey and Wimbleton – showing what construction is doing to the ambience of the neighborhood.

<sup>5</sup> Date: Uncertain. Poppleton Park area. 2040 Plan is going to rezone into multiples.



At the Birmingham City Commission meeting on October 3, 2022, Planning Director Nicholas Dupuis discussed the background of the 2040 Plan and what the 2040 Plan can provide for the community and what it says, thereby educating the Commission, including Mr. Host. Yet, these videos are posted subsequent to Mr. Host being informed of the facts. Additionally, the City Manager's Report, which can be found in Attachment 2, has three pages of "setting the record straight" to clarify the misinformation by Commissioner Host. It was again explained that the 2040 Plan does not rezone property. The information presented to Commissioner Host at the [November 28, 2022 Commission meeting](#) (beginning at 1:03.25) reiterated published facts in 2021 explaining that the 2040 Plan recommends priorities but does not rezone property.

Yet, despite educating Commissioner Host to the facts, Commissioner Host reposts similar videos on Facebook, once again suggesting homes in particular areas could be in jeopardy. [Video 6](#)<sup>6</sup>, [Video 7](#)<sup>7</sup> [Video 8](#)<sup>8</sup> While he attempted to correct the errors in his videos based upon my communications with him at the November Commission meeting, the new videos continue to be misleading and he continues to advocate outside the proper channels of a Commissioner. For example, as you can see from the currently posted [video](#), he states, "How long do you think these gorgeous homes are gonna last after rezoning." He posted a video regarding Booth Park stating that the 2040 Plan called for a café in the park. He suggests there may be the inclusion of corporate enterprises which is not included in the 2040 Plan. [Video 9](#)<sup>9</sup> After the new posts were discovered, at the December 19, 2022 City Commission meeting (Attachment 3), the City Manager's Report, once again, contained six pages of material setting the record straight. Once again publicizing that "the City repeatedly corrected the inaccuracies put forth by Commissioner Host and prior written documents as well." Please see the detailed explanation and education provided to Commissioner Host at that [meeting](#) (at 2:28.50). Despite continued education in December to Commissioner Host, Commissioner Host's current videos, even at this date, continue to contain fear-mongering and continue to advocate for specific positions on topics which will eventually be presented to the full City Commission for consideration and adoption of the 2040 Plan. Commissioner Host is in fact one of the final arbiters of this Plan. He violates the normal process of the City Commission when he, as a sitting Commissioner, publicly voices his concerns, opinions and discussions in personal forums. This is not the proper governmental channel. The proper governmental channel is at the public Commission meetings with the entire City Commission present. Commissioner Host has removed the original posts, but to this day continues to have videos on his Facebook page that could be in violation of the Ethics Ordinance.

---

<sup>6</sup> Date: [December 8, 2022](#) – Grant & Lincoln from here to Woodward 2040 encourages single family homes to be zoned multiples.

<sup>7</sup> Date: [December 11, 2022](#) – Grant & 14 Mile Rd, page 46 of the Master Plan proposes to take over 45 single family houses and have them zoned to encourage infill.

<sup>8</sup> Date: [December 12, 2022](#) -Two gorgeous homes 100 years old south end of Poppleton in Poppleton Park – 2040 Plan, Chapter 2, encourages these two lots to be townhouses, duplexes, or multi-family buildings. You have until January 11<sup>th</sup> to speak your opinion.

<sup>9</sup> Date: [December 16, 2022](#) - Booth Park - Page 35 of the Master Plan permits a café – could this be a Starbucks or building – there is broad interpretation get your opinion in by January 11<sup>th</sup>.



It has further come to my attention that letters are being sent to persons' homes and emails, which you will find in Attachment 4, wherein Commissioner Host is once again advocating for the community's agitation. He violates the normal process of the City Commission when he, as a sitting Commissioner, publicly voices his concerns, opinions and discussions in personal forums. Once again, it is of note, Commissioner Host also does not ever state these are his personal opinions and not opinions of the Commission or the City. Also, these mailings are not proper governmental channels. Once again, the proper channel is at the public Commission meetings with the entire City Commission.

It is believed that as a result of Commissioner Host's public agitation, that when the Planning Board was planning its agenda for its January meeting, members of the Planning Board were so concerned about people's reactions that members requested police presence at their meeting. Also, Commissioner Host appears to be influencing and attempting to craft a product i.e. the 2040 Plan, which will ultimately be delivered to him and his colleagues on the City Commission. Again, he is one of the final arbiters of the 2040 Plan, yet he is attempting to influence the Plan itself before it even reaches the Commission table. Can his vote now be unbiased, independent and impartial?

You will also find in Attachment 5 an email to Commissioner Host from me dated Tuesday, December 20, 2022 regarding a conversation wherein Commissioner Host agreed with a citizen that the Planning Board has gone "rogue." Commissioner Host stated that was not his intent. I suggested he should publicly acknowledge that he did not intend to disparage the Planning Board, and yet that statement of correcting the record or apology has never occurred.

You will also find Attachment 6 which is a demonstration of the effect of Commissioner Host's misinformation and public advocacy. It is, in fact, causing citizens to react to this misinformation as demonstrated by an email exchange wherein I had to correct the misinformation of Commissioner Host in order to relieve the anxiety of a citizen.

Please also find Attachment 7. This demonstrates again the actual effect of Commissioner Host's mailings upon citizens. Clearly, people are becoming afraid that "something terrible" is going to happen to their neighborhoods because of the 2040 Plan. This clearly demonstrates that fear-mongering is having a negative effect upon Birmingham citizens.

The Birmingham City Code Section 2-320. – Public Policy states that:

"Public officials and employees must:

- (1) Be independent, impartial and responsible to the people;
- (2) Make governmental decisions and policy in the proper governmental channels;
- (3) Not use public office for personal gain."



Will Commissioner Host be independent, impartial and responsible to the people when he receives the 2040 Plan sometime in early 2023, wherein he will be deliberating with his colleagues at an open public meeting, and will he remain impartial until he hears all the information at that meeting? How can he, based upon the videos he published. The Code also says that decisions and policy must be in proper governmental channels. While Commissioner Host is sending out letters and posting Facebook posts, is he making decisions and policy in a proper governmental channel, which in his case would be a public City Commission meeting? Further, at no time does Commissioner Host state that these are his personal views, and not that of the Commission. Therefore, he seems to be using his public office as a Commissioner in order to get persons to agree with his personal views and have the 2040 Plan struck down because he personally disagrees with some of the concepts.

Sec 2-323. – Intention of the code.

“It is the intention of section 2-324 below that city officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a city decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the city government.

The Code of Ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the city ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law.”

The foregoing facts, videos and letters could be in violation of Sec. 323 because they have resulted in, and created the appearance of, Commissioner Host using his office for personal gain, for losing complete independence and impartiality of action, making City decisions outside of the Commission meeting and affecting adversely the confidence of the public and the integrity of City government. This is evidenced by the communications of a citizen whereby they are reacting to misinformation. Also, the appearance of negativity in Commissioner Host’s affect, comments, and accusatory tone, particularly with



misinformation, has agitated these issues and has violated and tainted the process of government such that the Planning Board members felt they needed police presence at their meeting.

Another potential violation at Sec. 2-323(1)(2)(3) of the Code of Ethics is that Commissioner Host is known publicly as a current sitting City Commissioner. Not once in any of the nine presented videos does Commissioner Host caution the viewer that the opinions, thoughts, or questions presented are being done so by Commissioner Host as an independent private citizen. While the Commissioner is careful not to say here is what I think, or here is what I believe, his demeanor, accusatory tone, and cues clearly lead the viewer and listener to an understanding of what Commissioner Host believes. While Commissioner Host has First Amendment rights, Commissioner Host should be making it clear that he is not speaking on behalf of the City, any of its boards, or the Commission. The Ethics Board has visited this exact topic in prior ethics opinions including 2009-02 and quoted in Advisory Opinion 2022-01:

“The Wisz Ethics Opinion determined that the use of his official position in that case was not germane to the matter being pursued by the City Official. This Board has found the same in the instant case involving Mr. Oh. As stated in the Wisz Opinion, **‘(t)he ethical difficulty and concern relates to a situation where a private citizen opts to also become a ‘City Official’ and therefore ‘wears two hats.’ Someone in such position has to be careful about creating a false impression, such as that one is speaking on behalf of the City itself.’** The Ethics complaint opinion relative to Mr. Ralph L. Seger, Jr., being number 2004-02 also has some relevance herein. This Board therein made it clear that it is mandated to recognizing and adhering to the principles of the First Amendment. However, the First Amendment principles do not permit a member of a City Board to assume a role, and act as a competing fiduciary, directly against the interests of the City. As stated in Wisz, **‘(s)uch conduct presents an irreconcilable conflict of interest, may tend to undermine respect for City Officials and employees and for the City as an institution, might result and/or create an appearance of adversely affecting the confidence of the public or the integrity of the City government, and is incompatible and in conflict with the discharge of the volunteer’s official duties.’** Herein, Mr. Oh’s identification of himself as a TDCIA member at the beginning of the petition appears to create confusion for the recipient’s thereof. His representation that the use of his official title was intended to assist the public is illogical. Public officials are obligated to be aware that their words could be misinterpreted or misread. **Therefore, when making a personal statement that identifies the speaker as a city official that official must include a conspicuous disclaimer that the opinions expressed are his or her personal opinions, and not the opinion(s) of the City or any other City Official.”** (Emphasis Added)

I also question whether Commissioner Host has created a conflict of interest as described in Sec. 2-324(10) in that Commissioner Host’s behavior demonstrates that as a City Official, his personal interest may have now interfered with the outcome of a matter currently before him, and his personal interest may be adverse to the public interest in the performance of his duty. Now, does he have a responsibility to disclose his interest and recuse himself from participating in the deliberation of the adoption of the 2040 Plan when it does, in fact, make it to the City Commission as a whole?



In reviewing the analysis of the discussion of Advisory Opinion 2022-01, the Board opined that others who used their position as a City Official to advance their advocacies results in personal gain. While this Board has said that the Ethics Ordinance was never intended to preclude City Officials from expressing his or her opinions, this Board has found in the past that when City Officials conduct themselves in such a way as to fail to separate their roles as private citizens from their roles as public servants that they are not acting in conformity to the Code of Ethics.

I would like to also advise the Ethics Board that Mr. Host is likely not acting in conformity with Sec. 2-323(5) as he is adversely affecting the integrity of the City government when he appears to be finding a way to circumvent legal opinion and direction. Attachment 8 is a memo from legal counsel to the City Commission dated December 6, 2021. Legal counsel explained to the City Commission, including Commissioner Host, that case law and the Attorney General have deemed it improper for Commissioners that possess appointment powers over members of boards and committees to appear at the meetings of said boards and committees. The rationale is that an appointer's mere presence can cause duress on members of boards and committees. The City Commission appoints members to the Planning Board. Despite this education, counseling, and information, Commissioner Host continuously finds a way to ignore these directives. It is my belief that he is using public forums, including email and mail systems, to pursue avenues to influence the Planning Board without having to attend the meetings personally. He is instead agitating members of the public to appear at the Planning Board to carry out his disgruntled message. To be clear, I believe his end around of these clear directives by the Attorney General and higher courts adversely affects the integrity of the Birmingham City government.

In conclusion, despite multiple attempts to demonstrate to Commissioner Host that he is disseminating untrue information and thereby misinforming the public, and by engaging in advocacy for an item wherein he will be one of the final arbiters, he violates the public process, thereby disrupting the integrity of the process of an item coming before the City Commission. The manner in which Commissioner Host has agitated the public with misinformation may be using his public office for personal gain in order to get people to align with his personal opinion and thoughts. I believe that he has lost complete independence or impartiality of action thereby causing a conflict of interest, one of which needs to be disclosed to his fellow Commissioners and perhaps result in him not participating in discussions regarding the 2040 Plan and whether or not it should be adopted by the City Commission. All of these actions by Commissioner Host, his continuing to allow this misinformation and false information to be a part of his Facebook page, adversely affects the confidence of the public and the integrity of the City government.

I bring the aforementioned facts and thoughts to the Ethics Board requesting an Advisory Opinion as to whether or not actions of Commissioner Host are in conflict with conformity to the Ethics Code and whether he has created a conflict of interest.

I look forward to any questions you may have, and I will make myself available for a meeting as requested.



I declare the foregoing information is true and accurate to the best of my knowledge.

Thomas M. Markus, Birmingham City Manager  
[tmarkus@bhamgov.org](mailto:tmarkus@bhamgov.org)  
(248) 530-1809

Date: 1-27-23

Attachments:

1. Memo from Planning Director, Nicholas Dupuis dated September 14, 2022.
2. City Manager's Report with "Setting the Record Straight", November 28, 2022.
3. City Manager's Report at December 19, 2022 Commission with "Setting the Record Straight."
4. Content of letters being sent to persons' homes and emails.
5. Emails Dated December 20, 2022 from City Manager to Commissioner Host wherein Commissioner Host agreed with a citizen that the Planning Board has gone "rogue."
6. Email exchange with citizen demonstrating the effect of Commissioner Host's misinformation and public advocacy.
7. Text exchange with citizen demonstrating the effect of Commissioner Host's misinformation and public advocacy.
8. Memo from legal counsel to the City Commission dated December 6, 2021

# ATTACHMENT 1



## MEMORANDUM

Planning Division

**DATE:** September 14, 2022

**TO:** Planning Board Members

**FROM:** Nicholas Dupuis, Planning Director

**SUBJECT:** The Birmingham Plan 2040 – Final Draft Presentation & Process Update

The City of Birmingham has received the third and final draft of the Birmingham Plan 2040 (the “2040 Plan”), which is available at [www.thebirminghamplan.com](http://www.thebirminghamplan.com). The schedule of review below outlines the presentation of the plan, the required 63-day public noticing period, and the reviews planned for the Planning Board and the City Commission. The planned schedule of review is as follows:

Date	Meeting Type	Action Needed
September 14, 2022	Planning Board	<ul style="list-style-type: none"> <li>• Present final draft.</li> <li>• Board recommends to the City Commission that the Plan be distributed for public comment (minimum of a 63-day period).</li> </ul>
October 3, 2022	City Commission	<ul style="list-style-type: none"> <li>• Vote to authorize the 63-day distribution period for the final, draft Master Plan.</li> </ul>
<i>Required 63-Day Public Notice Period</i>		
December 14, 2022	Planning Board	<ul style="list-style-type: none"> <li>• Review final draft and present / discuss comments received during the distribution period.</li> <li>• Set public hearing date.</li> </ul>
January 11, 2023	Planning Board	<ul style="list-style-type: none"> <li>• Present the final Plan and hold a public hearing. Further discuss comments received during the distribution period as needed.</li> <li>• Adopt plan; recommend to the City Commission for adoption.</li> </ul>

February 2023 (Exact Date TBD)	City Commission	<ul style="list-style-type: none"> <li>• Present the final Plan and hold a public hearing.</li> <li>• If prepared to do so, the City Commission may adopt the Plan by resolution.</li> </ul>
--------------------------------	-----------------	--

At this time, the Planning Board should acknowledge the receipt of the final draft of the 2040 Plan and present it to the public, provide any high level observations, and recommend that the City Commission distribute the final draft as required by the Michigan Planning Enabling Act. Those entities in which the City is required to provide a copy of the final draft of the 2040 Plan may be summarized as follows:

- Surrounding Municipalities
- Oakland County
- SEMCOG
- Public Utilities
- CN North America (Railroad)
- SMART

**Sample Motion Language**

Motion to recommend that the City Commission authorize the 63-day distribution period for the final draft of the 2040 Plan pursuant to the requirements of Article III, Section 125.3841 of the Michigan Planning Enabling Act.

## ATTACHMENT 2

5/9/22	Pickleball	Baller, no vote	Lauren Wood	Agenda item 5/23/22	Installed on 6-3-22
1/24/22	Social Districts	M: Schafer S: Boutros	Nick Dupuis/Jana Ecker	2/14/22 - make formal item 3/9/22 - Workshop 3/14/22 - Informally brought up by Host 6/20/22 Commission and Planning Board Discussed	No formal action taken by the Commission
5/23/22	Commission Meeting Start Time	Baller	Mary Kucharek	On agenda for 6/27/22 - Mary to draft generic ordinance language and discuss in July On agenda for 7/11/22 - Commission decided not to proceed	No changes for now

**Topics Failed**

4/25/22	On Street Parking Study	M:Haig S: Host
4/11/22	Downtown Parking	M: Host S: Haig
3/28/22	Parking Matters	M: Host S: Haig
6/13/22	479 SOW (Doraid) PAD	M: Boutros

**Topics With No Vote - Resolved**

1/10/22	Unimproved Streets	Discussed during the Long Range Planning meeting.
2/28/22	Solidarity with Ukraine	City Manager arranged for exterior lighting at City Hall.

**Topics With No Vote - Unresolved**

5/9/22	-PAD ordinance/cleanup	Baller, no vote	No vote
5/9/22	-Policy for granting public space ODD/Valet	Baller, no vote	No vote

**Setting the Record Straight**

**2040 Master Plan does not Rezone Property**

The City has observed a renewed vigor regarding the [Birmingham Plan 2040](#) (“2040 Plan”) and its Neighborhood Seams concept across social media that has involved residents and a current City Commissioner. Within the posts and ensuing conversations, there has been a continued assertion or idea that the 2040 Plan will be rezoning single-family homes to build multifamily, and that somehow the City of Birmingham is ignoring its residents in favor of developers and profit.

This was the subject of two recent videos that Commissioner Host posted on social media, [one on Oakland Ave.](#) in which he stated “these five homes as well as the two lots over near Woodward are going to be *rezoned* to multiple”, and the other in the [Poppleton Neighborhood](#) in which he states “in the proposed 2040 Plan they are going to *rezone* these two houses on Poppleton and turn them into

multiples” and that “you have time to tell the master planners and Planning Board what you think about this *rezoning* proposal.” It is important that we as City staff, Boards and Commissioners are factually accurate when discussing the Master Plan and how it applies to land use.

The City has reiterated that comprehensive master plans do **not** rezone property once adopted.

Excerpt from press release distributed [February 11, 2021](#):

“It is important to clarify that a master plan does not rezone property. It is a framework setting the course for what the City may or may not do in the future,” said Birmingham Planning Director Jana Ecker. “The community is encouraged to review the Frequently Asked Questions document and continue to share their thoughts and ideas on the project website.”

Excerpt from FAQ distributed [February 10, 2021](#) and [October 13, 2021](#):

### **Is the Master Plan rezoning the City?**

No. The Master Plan will include a Future Land Use map, but not a new zoning map. The Master Plan recommends that the City study and revise its current zoning code, but does not establish any updated zoning. The Master Plan recommends that zoning be updated for two primary purposes: 1) to simplify but not substantively change zoning in the Downtown and Triangle District, and 2) to better align neighborhood zoning with existing character to avoid new houses that are out of character. Other zoning changes are recommended for further study by the City.

The words “rezone” or “rezoning” do not exist within the 2040 Plan document, nor the [Michigan Planning Enabling Act](#) that regulates comprehensive master planning in Michigan. A comprehensive master plan is a document designed to guide the future actions of a community. It presents a vision for the future, with long-range goals and objectives for all activities that affect the local government. One might say however, and correctly so, that a comprehensive master plan *informs* future zoning. In the spirit of guiding future actions and informing zoning, a Future Land Use Map is created, which is contained across pages 8 and 9 of the [current draft of the 2040 Plan](#). A Future Land Use Plan is legally required to be included in the 2040 Plan by the Michigan Planning Enabling Act.

In the 2040 Plan’s Future Land Use Map, several areas are identified as “district seams.” Seams are placed in areas where districts abut each other or natural or man-made barriers, and roadways that are more significant than a neighborhood street. These seams are broken down into three categories (download the [city’s zoning map](#) for reference):

- [Access Seams](#) – Focus is connectivity and multimodal improvements, located in R1A, R1, R2, and R3, and R4 zoning districts where abutted by R3 or more intense properties on all boundaries.
- [Activity Seams](#) – Found along regionally significant streets and places where multi-family housing, attached single-family housing, and commercial uses have previously been built, located in TZ-1, R3, R4, R5, R6, and R8 zoning districts
- [Buffer Seams](#) – Found along regionally significant streets and places where multi-family housing, attached single-family housing, and commercial uses have previously been built, located in TZ-1, TZ-3, R3, R4, R5, R6, R7, R8, and MX zoning districts.

The current composition of seams and the number of areas proposed for seams has changed dramatically since their inception in the first draft of the 2040 Plan. These changes are *directly and unequivocally* due

to the feedback that Birmingham residents provided to the City. The Planning Board, City Commission, consultant team, and City Staff have worked tirelessly over 4+ years to work the input of residents into the 2040 Plan, and to state otherwise would be inappropriate and unfair to those who have spent so much time working on the Master Plan, especially our Planning Board and City Staff.

As demonstrated [in the attached map](#), the seam concept in the Future Land Use Map affects a roughly 106 residentially zoned parcels in the City, 28 of which are already developed as multi-family or commercial (26%). Overall, roughly 78 single-family properties are being considered for exploration in locating multi-family units such as townhomes, cottage courts, and small multi-family buildings.

Finally, it is immensely important not to lose sight of why the seams concept and the accompanying hyper-specific multi-family housing types were planned in the first place. Again, we turn to the Michigan Planning Enabling Act for an initial simple justification:

**125.3807 Master plan; adoption, amendment, and implementation by local government; purpose.**

- 1) A local unit of government may adopt, amend, and implement a master plan as provided in this act.
- 2) The general purpose of a master plan is to guide and accomplish, in the planning jurisdiction and its environs, development that satisfies all of the following criteria:
  - a) Is coordinated, adjusted, harmonious, efficient, and economical.
  - b) *Considers the character of the planning jurisdiction and its suitability for particular uses, judged in terms of such factors as trends in land and population development.*
  - c) Will, in accordance with present and future needs, best promote public health, safety, morals, order, convenience, prosperity, and general welfare.
  - d) .....

As evident in subsection "c" of the above, trends in population development are a required criteria. Population trends are more than just a grand total. Population trends include:

- What kind of people live in the area;
- What types of lives they lead, and would like to lead;
- How long they will live;
- How long they will reside in the particular area;
- Who will replace them when they move out or die;
- How many children they will have (and would like to have under different conditions);
- Whether these children will live in the area; and
- Many other factors.

The 2040 Plan was developed based on a [background analysis](#) of data on population trends and forecasts from the U.S. Census Bureau and SEMCOG. The data informed the consultant team that Birmingham can expect a population increase, and that both new residents and existing residents alike will continue to require diverse housing types based on factors such as family size, health, age, and income. This has major implications for equity, aging in place, and sustainability, all of which are major pillars of planning in general, but also the City's recently adopted Strategic Goals. As the 2040 Plan states, accommodating some of these different housing types must happen in areas other than the mixed use Downtown, Triangle District (or Haynes Square), or the Rail District. In stating such, the 2040 Plan also makes sure to emphasize that multi-family development in seam areas, should it ever be permitted, must complement the character, scale and massing of the surrounding neighborhood. The suggested action in the 2040 Plan is to "encourage infill development of small homes, townhomes, duplexes, and small multi-family buildings."

# ATTACHMENT 3

## **George W. Kuhn Retention Treatment Basin**

The city received an email from Water Resources Commissioner, Jim Nash, regarding accusations made against the George W. Kuhn (GWK) Retention Treatment Basin. Mr. Nash's email ([available at this link](#)) provides information regarding the accusations, which pertain to pollution in Lake St. Clair and the Clinton River. Correspondence between Mr. Nash and Macomb County Public Works Commissioner, Candice Miller, and documentation countering the accusations are [available at this link](#).

## **Setting the Record Straight**

### **2040 Master Plan does not Rezone Property**

The previous City Manager's Report dated November 28, 2022 addressed inaccurate information being presented on social media to Birmingham's residents by a sitting City Commissioner. Specifically, two videos posted by Commissioner Host were discussed, [one on Oakland Ave.](#) in which he stated "these five homes as well as the two lots over near Woodward are going to be *rezoned* to multiple", and the other in the [Poppleton Neighborhood](#) in which he stated "in the proposed 2040 Plan they are going to *rezone* these two houses on Poppleton and turn them into multiples" and that "you have time to tell the master planners and Planning Board what you think about this *rezoning* proposal." These inaccuracies were raised and discussed at the City Commission meeting on November 28, 2022.

The City has repeatedly corrected the inaccuracies put forth by Commissioner Host in prior written documents as well. Specifically, the City has reiterated, in writing, the fact that comprehensive master plans do **not** rezone property once adopted in the following documents:

- In a press release distributed [February 11, 2021](#), which stated "it is important to clarify that a master plan does not rezone property. It is a framework setting the course for what the City may or may not do in the future."
- In a Frequently Asked Questions publication distributed on both [February 10, 2021](#) and [October 13, 2021](#), which included the following commentary:

#### **Is the Master Plan rezoning the City?**

No. The Master Plan will include a Future Land Use map, but not a new zoning map. The Master Plan recommends that the City study and revise its current zoning code, but does not establish any updated zoning. The Master Plan recommends that zoning be updated for two primary purposes: 1) to simplify but not substantively change zoning in the Downtown and Triangle District, and 2) to better align neighborhood zoning with existing character to avoid new houses that are out of character. Other zoning changes are recommended for further study by the City.

- In the November 28, 2022 edition of the City Manager's Report which stated:

The words "rezone" or "rezoning" do not exist within the 2040 Plan document, nor the [Michigan Planning Enabling Act](#) that regulates comprehensive master planning in Michigan. A comprehensive master plan is a document designed to guide the future actions of a community. It presents a vision for the future, with long-range goals and objectives for all activities that affect the local government. One might say however, and correctly so, that a comprehensive master plan *informs* future zoning. In the spirit of guiding future actions and informing zoning, a Future Land Use Map is created, which is contained across

pages 8 and 9 of the [current draft of the 2040 Plan](#). A Future Land Use Plan is legally required to be included in the 2040 Plan by the Michigan Planning Enabling Act.

Despite the continued corrections issued on the matter, yet another video has been circulating on social media in which Commissioner Host stands near the corner of Lincoln and Grant, and states that “The 2040 Plan as proposed is going to *rezone to multiples (sic)* all of the south side of Lincoln between here (*Grant Street*) and Woodward”. Once again, there is a need to reiterate that comprehensive master plans do **not** rezone property once adopted.

As discussed last month in both the City Manager’s Report and at the City Commission meeting on November 28, 2022, it is very important that City staff, board members and City Commissioners are factually accurate when discussing important issues with the public. The continued assertion by Commissioner Host that the Draft 2040 Plan will rezone single-family properties to multi-family zoning, despite repeated attempts by City staff to set the record straight as to the fact that master plans **do not** in fact rezone properties once adopted disregards the facts and staff’s attempts to advise him of his inaccuracies. Such communication undermines the confidence of the public in city government, and adversely affects the integrity of city government. Public office is a public trust. For government to operate properly, each city official, employee, or advisor must earn and honor the public trust through integrity and conduct.

**2040 Master Plan does not Propose Food and Beverage Services at Quarton Lake Park or the W. Lincoln Well Site**

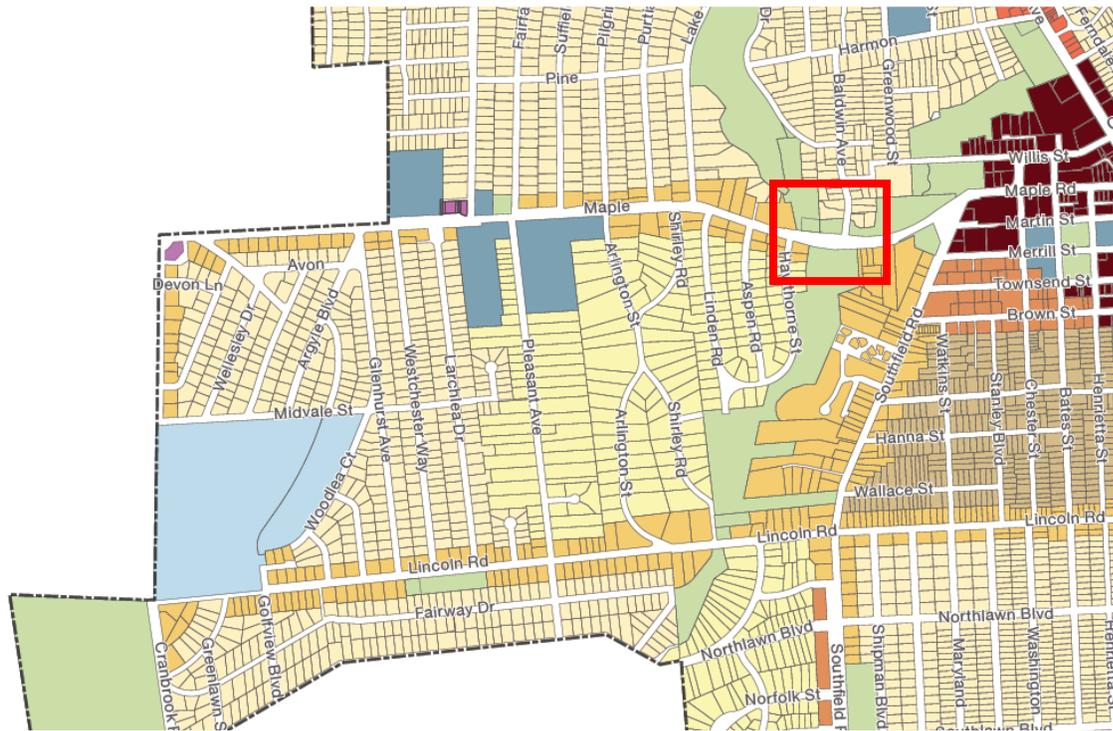
It is also important to set the record straight due to another video that has been circulating on social media in which Commissioner Host states that the 2040 Plan “proposes kiosks, cafes, food trucks, commercial endeavors here”, referencing the waterfall at the south end of Quarton Lake at the dam.

This area is part of Quarton Lake Park, and the draft 2040 Plan clearly refutes Commissioner Host’s inaccurate statement. Chapter 3, Retain Neighborhood Quality, of the draft 2040 Plan clearly contains a chart on page 53 (Figure 34) with all parks listed, and specifically excludes the provision of food and beverage services at Quarton Lake Park (see highlighted chart below).

	Athletics	Food & Bev.	Garden	Dogs	Exercise	Play	Splash	Seating	Walkways
<b>Specialty Parks</b>									
18. Booth		X		X	X	X	X	X	X
19. Rouge River								X	X
20. Shain		X				X	X	X	X
21. Quarton Lake			X	X	X	X	X	X	X
22. Museum								X	X
23. Manor					X	X		X	X
24. Springdale	X			X	X	X		X	X
25. Lincoln Hills	X			X	X			X	X
26. Worth Park		X						X	
26. Haynes Sq.		X			X	X	X	X	X

Figure 34. Recommended Park Amenities for Consideration in a Parks and Recreation Plan Update.

In addition, the Future Land Use Map contained in the draft 2040 Plan also clearly refutes Commissioner Host’s statement. Section B, Future Land Use, of the draft 2040 Plan clearly contains the Future Land Use Map on page 8 (Figure 5), which does NOT recommend a commercial destination at the south end of Quarton Lake Park (location highlighted in red).



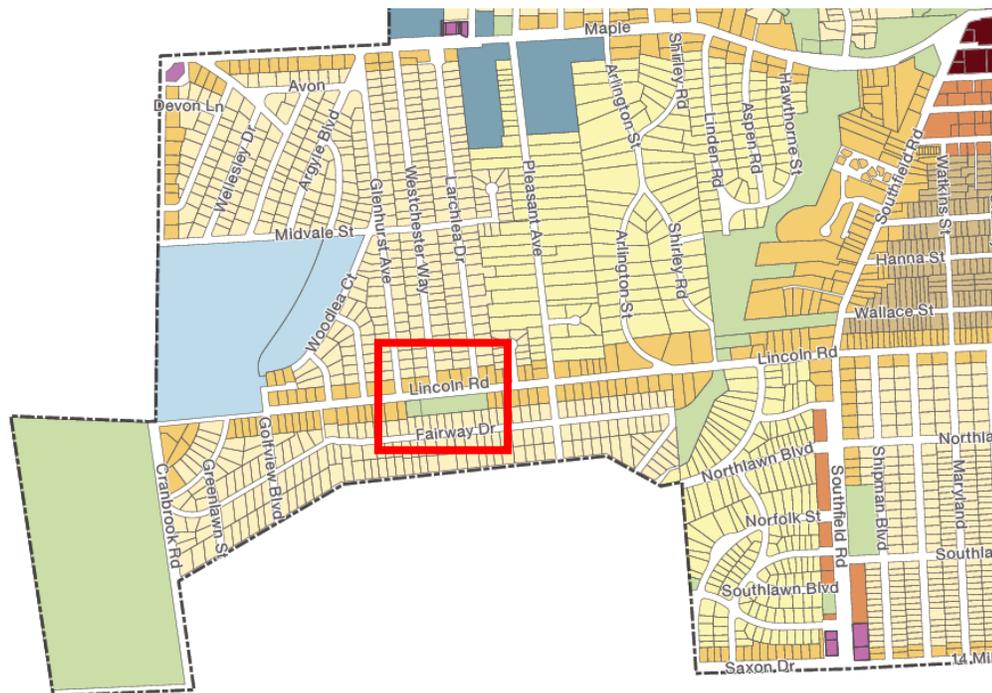
- District Destinations**
- Civic Destination: General
  - Civic Destination: School
  - Civic Destination: Cemetery
  - Recreational Destination
  - Commercial Destination

Yet another video was circulated on social media on December 14, 2022 in which Commissioner Host appears at the W. Lincoln Well Site on Lincoln between Larchlea and S. Glenhurst, and states that the 2040 master plan shows that “they want to put in kiosks, cafes, food trucks or carts...this is subject to interpretation. Does that mean a Starbucks?” at the W. Lincoln Well Site.

Once again, it is important to set the record straight. The area referenced by Commissioner Host is formally named W. Lincoln Well Site, and is also known as Lincoln Park. The draft 2040 Plan clearly refutes Commissioner Host’s inaccurate statement. Chapter 3, Retain Neighborhood Quality, of the draft 2040 Plan clearly contains a chart on page 53 (Figure 34) with all parks listed, and specifically excludes the provision of food and beverage services at W. Lincoln Well Site (see highlighted chart below).

	Athletics	Food & Bev.	Garden	Dogs	Exercise	Play	Splash	Seating	Walkways
<b>Mini Parks</b>									
1. Baldwin Well								X	
2. Derby Well			X	X	X	X		X	X
3. Pump House					X			X	X
4. Redding Well			X		X			X	X
5. Lynn Smith			X		X			X	X
6. Martha Baldwin					X			X	X
7. South Well			X					X	X
<b>Neighborhood Parks</b>									
8. Crestview	X	X	X	X	X	X		X	X
9. Howarth	X		X	X	X	X		X	X
10. Linden	X		X	X	X	X		X	X
11. Pembroke	X		X	X	X	X		X	X
12. St. James	X		X	X	X	X		X	X
13. W. Lincoln Well Site	X		X	X	X	X		X	X
14. Adams Park	X				X	X		X	X
A. Adams Square	X			X	X	X		X	X
B. Quarton School	X			X	X	X		X	X

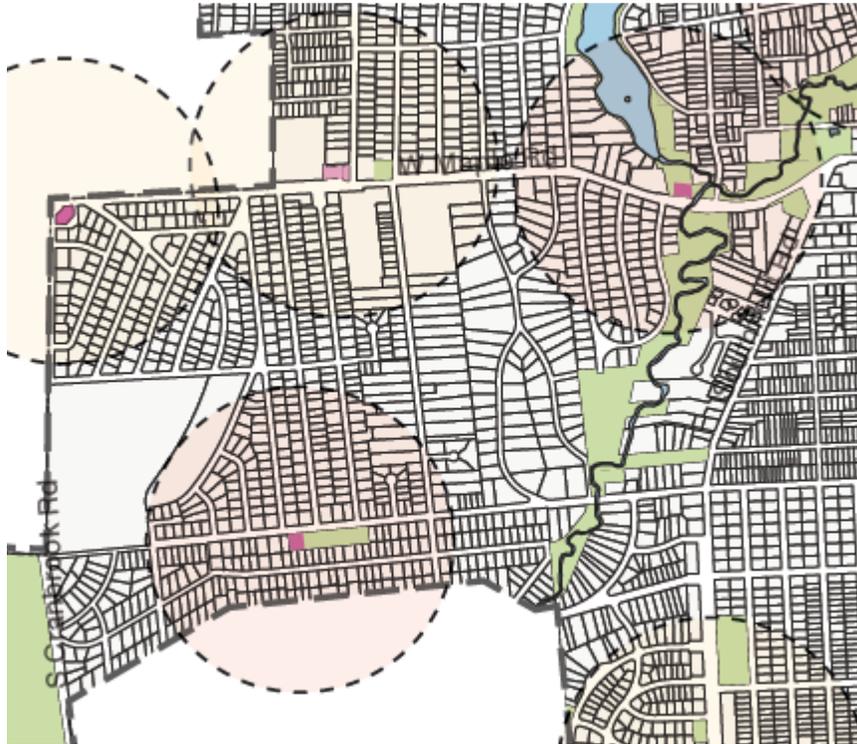
In addition, the Future Land Use Map contained in the draft 2040 Plan also clearly refutes Commissioner Host's statement. Section B, Future Land Use, of the draft 2040 Plan clearly contains the Future Land Use Map on page 8 (Figure 5), which does NOT recommend a commercial destination at the W. Lincoln Well Site (location highlighted in red).



### District Destinations

- Civic Destination: General
- Civic Destination: School
- Civic Destination: Cemetery
- Recreational Destination
- Commercial Destination

The confusion about “commercial endeavors” being proposed in Quarton Lake Park, or a coffee shop at the W. Lincoln Well Site may have arisen as a result of Figure 22 in Chapter 1, Connecting the City, on page 36 of the draft 2040 Plan. Figure 22 shows recommended neighborhood commercial destinations at the south end of Quarton Lake Park, and at the west end of the W. Lincoln Well Site.



- Commercial Destinations
- Recreational Destinations
- 5-minute Walk (existing)
- 5-minute Walk (new)

However, during Planning Board review of the draft plan, direction was provided to the consultant at a public meeting to remove the Quarton Lake Park and the W. Lincoln Well Site neighborhood commercial destinations based on public input. These updates were made to Figure 34 (Parks Chart) and to Figure 5 (Future Land Use Map) but updates were not made, and should have been, to Figure 22 (Neighborhood Destinations). However, Planning Director Dupuis clearly stated at the November 28, 2022 City Commission meeting that the consultant will ensure these corrections would be made in the final draft of the 2040 Plan.

During the past week, yet another video was posted on social media by Commissioner Host regarding the Poppleton neighborhood, wherein Commissioner Host states that “the 2040 master plan asks us to embrace managed growth and encourages these 2 lots to be townhouses, duplexes or multi-family buildings”. The change in terminology utilized in this video seems to demonstrate that perhaps

Commissioner Host may be attempting to self-correct his previous misstatements as to rezoning in earlier videos.

As noted above, it is very important that City staff, board members and City Commissioners are factually accurate when discussing important issues with the public, and thus City Commissioners and board members should contact City staff to verify the accuracy of all public communications.

The City goes to great lengths to accurately describe the purpose of our public meetings. Having elected officials encouraging public attendance is fine. Misrepresenting what the purpose of a hearing is or the topics that are to be discussed is inappropriate and only causes conflict and needless emotional distress. As I have stated before, "Let the process work". The City Commission has appointed citizens to the Planning Board to review the master plan drafts and the board members have shown their willingness to be completely transparent and open to considering public comments which may differ from what the draft master plan calls for. The professional staff and consultants are paid to provide their professional advice, however, they recognize that their recommendations must stand the test of the public process, and are likely to be questioned, challenged and altered through the very public and transparent review process. What the public does not need is a public official misstating the proposals contained within the draft 2040 Plan or encouraging a public position for or against the various recommendations contained in the evolving drafts of the proposed master plan.

I would also say that prematurely taking positions or advocating positions on the various aspects of the draft 2040 Plan is contrary to following an open public process, especially when it comes to a City Commissioner who ultimately is one of seven persons who are held responsible for the final decision on the plan. As those of you who have gone through the new City Commissioner orientation process know, I encourage our elected officials to keep an open mind about the decisions they make right up to the time they are called upon to vote.

Finally, I repeat, "Let the process work". Our community is filled with intelligent, thoughtful and well-informed people who are not likely to sit in a pot of boiling water without making their discomfort and views known. Our process works quite well and in my opinion, does not benefit from misinformation or fear mongering.

### **Boiling Frog Metaphor**

At the November 28, 2022 City Commission meeting, a Commissioner asserted that frogs will remain in a pot of water that is slowly brought to a boil. Although the boiling frog metaphor is commonly used in political discourse, herpetologists have found that frogs will, in fact, attempt to escape a pot as its water temperature is raised. For more information, read this brief [article](#) by [Dr. Whit Gibbons](#), Professor Emeritus of Ecology at the University of Georgia.

## **Department of Public Services**

### **Pat Andrews Tribute**

The table below describes the donations received to date in honor of Pat Andrews.

<b>Pat Andrews Tribute</b>	<b>Amount Received</b>	<b>Date Received</b>
Name of Donor		
Debicki, Sandra	\$225.00	12/16/2021
Host, Bradley	\$500.00	11/17/2021
Karhohs, Jo	\$100.00	11/17/2021

# ATTACHMENT 4

**A wish for you and yours to have a Happy New Year! We can all hope for a better 2023!**

You should be interested to know The Birmingham Planning Board is in the final stages of reviewing the 2040 Master Plan for the City. Chapter 2, *Embrace Managed Growth*, identifies the properties that are single-family today along the Southside of Lincoln between Grant and Woodward and states:

*"... While there are not many properties available for infill.... those areas able to accommodate infill should be zoned to encourage it... Create a new zoning district or modify the transition zone districts to enable infill development of small homes, townhouses, duplexes, and small multi-family buildings..."*

The Planning Board will hear your comments in person 7:30PM Wednesday, January 11, 2023. Or you can **go online to send your comments** at <https://thebirminghamplan.com/comment>

Again, best wishes for 2023.



Always welcoming your emails and calls.

**Brad Host**

**248.219.2249**

**BraddHost@gmail.com**



**Josh Greenwald**

Torry Community Assoc · 9m ·

Apparently a new development (likely townhouses) is being planned for t

January 2, 2023

Dear Birmingham Neighbors,

**A wish for you and yours to have a Happy New Year! We**  
**for a better 2023!**

You should be interested to know The Birmingham Planning E  
final stages of reviewing the 2040 Master Plan for the City. C  
*Embrace Managed Growth*, identifies the three single-family h  
Southeast corner of Eton and Lincoln and states:

*"...While there are not many properties available for infill.... th  
able to accommodate infill should be zoned to encourage it... C  
zoning district or modify the transition zone districts to enable  
development of small homes, townhouses, duplexes, and sma  
buildings..."*

The Planning Board will hear your comments in person 7:30P  
Wednesday, January 11, 2023. Or you can **go online to send**  
**comments** at <https://thebirminghamplan.com/comment>

# ATTACHMENT 5

## Mary Kucharek

---

**From:** Tom Markus <tmarkus@bhamgov.org>  
**Sent:** Tuesday, December 20, 2022 6:43 PM  
**To:** Brad Host  
**Cc:** City Commission; Department Heads  
**Subject:** Re:

As I previously stated: "If that was not your intent, I would suggest that you publicly acknowledge that you did not intend to disparage the Plan Board.

On Tue, Dec 20, 2022 at 1:41 PM Brad Host <bhost@bhamgov.org> wrote:

Thanks Tom.

Couldn't conceive agreeing with a "rogue" comment. My intention was agreeing with a less friendly local environment ONLY. Have stated same to Linda. Would you want me to address this retraction with the Planning Board?

Best safe wishes,

Brad

Sent from my iPhone

On Dec 20, 2022, at 11:06 AM, Tom Markus <tmarkus@bhamgov.org> wrote:

As I observed your reaction to my comment about you agreeing with a citizen that our Plan Board has gone rogue, you seemed to not know what I was referring to and or you acted as if it did not happen. Please see the attached commentary that I am referring to. It is pretty clear that you agreed with the "rogue comment". Is it possible that someone else has access to your facebook page and is communicating in your place? Obviously, your comment creates the view that you think our Plan Board is operating improperly. If that was not your intent, I would suggest that you publicly acknowledge that you did not intend to disparage the Plan Board. Remember that our Plan Board members are citizens who volunteer their time (a lot of time) to help the City Commission plan for the future of our community. As I noted at Monday's meeting our Plan Board is one of the most competent Planning Boards I have had the privilege to work with.

----- Forwarded message -----

From: **thomas markus** <tmsquared20@gmail.com>

Date: Tue, Dec 20, 2022 at 9:14 AM

Subject:

To: <tmarkus@bhamgov.org>

<Resized-image-110218743756182.jpeg>

--  
You received this message because you are subscribed to the Google Groups "DepartmentHeads" group. To unsubscribe from this group and stop receiving emails from it, send an email to [departmentheads+unsubscribe@bhamgov.org](mailto:departmentheads+unsubscribe@bhamgov.org).

To view this discussion on the web visit

[https://groups.google.com/a/bhamgov.org/d/msgid/departmentheads/CALPLqCh0Xye3ZfVNPJ-dMe4Rc%3D%3DSb4cOM\\_RnG\\_YjVdsRGzZqfQ%40mail.gmail.com](https://groups.google.com/a/bhamgov.org/d/msgid/departmentheads/CALPLqCh0Xye3ZfVNPJ-dMe4Rc%3D%3DSb4cOM_RnG_YjVdsRGzZqfQ%40mail.gmail.com).

## Mary Kucharek

---

**From:** Tom Markus <tmarkus@bhamgov.org>  
**Sent:** Tuesday, December 20, 2022 11:06 AM  
**To:** Brad Host  
**Cc:** City Commission; DepartmentHeads  
**Subject:** Fwd:

As I observed your reaction to my comment about you agreeing with a citizen that our Plan Board has gone rogue, you seemed to not know what I was referring to and or you acted as if it did not happen. Please see the attached commentary that I am referring to. It is pretty clear that you agreed with the "rogue comment". Is it possible that someone else has access to your facebook page and is communicating in your place? Obviously, your comment creates the view that you think our Plan Board is operating improperly. If that was not your intent, I would suggest that you publicly acknowledge that you did not intend to disparage the Plan Board. Remember that our Plan Board members are citizens who volunteer their time (a lot of time) to help the City Commission plan for the future of our community. As I noted at Monday's meeting our Plan Board is one of the most competent Planning Boards I have had the privilege to work with.

----- Forwarded message -----

**From:** **thomas markus** <[tmsquared20@gmail.com](mailto:tmsquared20@gmail.com)>  
**Date:** Tue, Dec 20, 2022 at 9:14 AM  
**Subject:**  
**To:** <[tmarkus@bhamgov.org](mailto:tmarkus@bhamgov.org)>



**Brad Host**

22h ·

The city needs your voice:

<https://www.thebirminghamplan.com/comment>



7

2 comments 70 views

Like

Comment

Send



**Linda Orlans**

Thanks [Brad Host](#). Looks like the Planning group has gone Rogue again. What is happening to our family friendly Birmingham! So disappointing.

Like Reply



**Brad Host**

[Linda Orlans](#) agree!

Like Reply

--

You received this message because you are subscribed to the Google Groups "City Commission" group.

To unsubscribe from this group and stop receiving emails from it, send an email to [city-commission+unsubscribe@bhamgov.org](mailto:city-commission+unsubscribe@bhamgov.org).

To view this discussion on the web visit <https://groups.google.com/a/bhamgov.org/d/msgid/city-commission/CALPLqCgx%3DHqHdX%3D%2BEQjppguODGLLG7cRuS7R28ejfw%2BXUN%3Du2A%40mail.gmail.com>.

# ATTACHMENT 6

## Mary Kucharek

---

**From:** Tom Markus <tmarkus@bhamgov.org>  
**Sent:** Thursday, December 22, 2022 2:15 PM  
**To:** nord718@aol.com  
**Cc:** City Commission; DepartmentHeads  
**Subject:** Draft 2040 Plan Comments

Dear Ms. Nordlie,

Thank you for your comments on the Draft 2040 Plan that you provided via email to Commissioner Host (attached below).

Commissioner Host has asked that we forward your comments to the Planning Board for consideration during the public review process. We are happy to share your email comments with the Planning Board.

Did you know that the café discussed in the Draft 2040 Plan for Booth Park is not a new idea, but has been included in the recommendations contained in the Downtown Birmingham 2016 Plan since 1996? The 2016 Plan had specific recommendations for improvements in Booth Park, including the provision of a café or kiosk located near the corner of N. Old Woodward and Harmon, to anchor the corner and activate the area by providing food and drink to park visitors. In addition, the most recent Parks and Recreation Plan (2018) also shows a concept plan for Booth Park that includes an urban plaza entry feature at the corner of Harmon and N. Old Woodward with umbrella covered tables with seating for visitors to enjoy. The Draft 2040 Plan continues to recommend the addition of a café or kiosk in Booth Park, as recommended since at least 1996.

As the Downtown Birmingham 2016 Plan, the Parks and Recreation Plan and the Draft 2040 Plan are master plans, they provide recommendations, but do not mandate the implementation of each element. Rather, the plans recommend concepts for further study and exploration in the future, given the right opportunity and the availability of funding for study and potential implementation. However, incorporation in a master plan does not guarantee implementation, as the City would need to fund and conduct further study and planning in the future, and this would require formal approval of the City Commission before any further steps are taken.

In light of this information, please verify that you wish to send your comments as presented to the Planning Board. If that is your desire, please let us know and we will be happy to pass your email along to the Planning Board for consideration during the public review process.

Tom Markus

Forwarded

**From:** [nord718@aol.com](mailto:nord718@aol.com)  
**Date:** December 20, 2022 at 2:00:18 PM EST

**To:** [bhost@bhamgov.org](mailto:bhost@bhamgov.org)  
**Subject:** Booth Park cafe?

Hi Brad...

I think you may have asked for some feedback on this issue, so I would like to respond.

I think it is a bad idea for at least two reasons:

1) the potential for an increase in vehicle traffic. There are already numerous times when that part of the street is blocked off by people who park illegally to go to the park or pick up to-go orders from the nearby restaurants, etc. Also, many times there are already times when traffic on that street is problematic even without any increase due to the cafe.

2) the increase in trash and littering. There is already too much trash on the park property, on Harmful to the Environment, and many more napkins, to-go cups, etc. blowing around that area. Also, there is no need for a high concentration of restaurants in that area.

Just a thought... if you want to test out the idea before investing in the infrastructure, why not find a way to test it out and see what the response is and if traffic and litter do become bigger problems.

I hope this feedback is helpful. Thanks for your service as a commissioner.

Sincerely,  
Nancy Nordlie  
450 Tooting Lane  
Birmingham, MI 48009

--

You received this message because you are subscribed to the Google Groups "City Commission" group.

To unsubscribe from this group and stop receiving emails from it, send an email to [city-commission+unsubscribe@bhamgov.org](mailto:city-commission+unsubscribe@bhamgov.org).

To view this discussion on the web visit <https://groups.google.com/a/bhamgov.org/d/msgid/city-commission/CALPLqCjoJeD5kxFnuPAFFDQKmuGcAUtOi9aJWMYS80mcpE%3DqEQ%40mail.gmail.com>.

# ATTACHMENT 7

11:32



Mark >

December 30, 2022

Dear Birmingham Neighbors,

A wish for you and yours to have a Happy New Year! We can all hope for a better 2023!

You should be interested to know The Birmingham Planning Board is in the final stages of reviewing the 2040 Master Plan for the City. Chapter 2, *Embrace Managed Growth*, identifies the properties that are single-family today along the Southside of Lincoln between Grant and Woodward and states:

*"...While there are not many properties available for infill... those areas able to accommodate infill should be zoned to encourage it...Create a new zoning district or modify the transition zone districts to enable infill development of small homes, townhouses, duplexes, and small multi-family buildings..."*

The Planning Board will hear your comments in person 7:30PM Wednesday, January 11, 2023. Or you can go online to send your comments at <https://thebirminghamplan.com/comment>

Again, best wishes for 2023.

Always welcoming your emails and calls.  
Brad Host  
248.219.2249  
BraddHost@gmail.com

Good afternoon Tom

Just thought you would find interest in this

My neighbor just pulled me aside this morning, in total fear that something terrible was going to happen to our neighborhood.

She got this in her mailbox dropped off by hand. Funny thing, I didn't get one. I wonder why?



iMessage





Mark &gt;

This is a handout designed to scare, but not explain. It's interesting how it says very little, but implies a lot.

And it absolutely does not clarify the facts about what is going on.

Intentionally designed as a fear, mongering piece, in my opinion.

More of the same inappropriate behavior by commissioner.

I definitely believe this is not the way the commissioner should handle this issue. Not impressed to say the least.

FYI

Have a great day  
Mark

May I share this with the commission?

Yes, for sure

But  
I assume , Not my text message.



iMessage





Mark &gt;



Yes, for sure

But  
I assume , Not my text message.  
Just the letter, right?

Is that what you mean?

You can surely say that it came  
from one of my neighbors. If  
you'd like. It's up to you,

I think your text message would  
add context. I ccd a similar Brad  
letter at the last meeting and  
made comments

Delivered

And I thought you'd want to  
share it with Mary as well. I think  
it's worthwhile to consider an  
ethics review regarding his  
actions.

On a sidenote, dropping a letter  
in people's mailboxes is also bar  
questionable and I don't think it's  
legal either. But that's just  
another side point



iMessage





## **MEMORANDUM**

City Clerk's Office

**DATE:** February 20, 2023  
**TO:** Board of Ethics  
**FROM:** Alexandria Bingham, City Clerk  
**SUBJECT:** Update on Detroit Ethics Conference

---

In conversation today with Christal Phillips, Executive Director, Board of Ethics for the City of Detroit the following information was obtained:

- Due to the fact that this is their first time hosting the conference will be scheduled for one day
- A date will be determined soon, most likely in the first two weeks of April
- The conference will likely be held at the Butzel Family Recreation Center
- The conference will likely include a few key note speakers and several panels on topics such as budgeting and creating/drafting an ordinance
- The Board of Ethics for the City of Detroit will be creating a registration form and distributing information about the conference soon
- Ms. Phillips recommended that I check in with her in another two weeks for more information