



Michigan Department of State Campaign Finance Complaint Form
 BUREAU OF ELECTIONS • RICHARD H. AUSTIN BUILDING - 1st Floor
 430 W. ALLEGAN STREET • LANSING, MICHIGAN 48918

RECEIVED/FILED
 MICHIGAN DEPT OF STATE
 2015 JUL 10 PM 3:00
 ELECTIONS/GREAT SEAL

This complaint form may be used to file a complaint alleging that someone violated the Michigan Campaign Finance Act (MCFA). For instructions on how to complete this form, see the Campaign Finance Complaint Process & Instructions document. All spaces are required unless otherwise indicated.

Section 1. Complainant			
Your Name	JAY R. SHELL		Daytime Telephone Number 248 890 6333
Mailing	1121 NORTHLAWN		
City	BIRMINGHAM	State MI	Zip 48009
Email			

Section 2. Alleged Violator		
Name BALANCE FOR BIRMINGHAM (OAKLAND COUNTY COMMITTEE ID 96377) CLINTON BALLER, TREASURER		
Mailing Address 2820 W. MAPLE ROAD, STE. 101B		
City BIRMINGHAM	State MI	Zip 48084
Email (optional) CMBALLER@AVIDPAYS.COM		

Section 3. Allegations (Use additional sheets if more space is needed.)

Section(s) of the MCFA alleged to be violated: 47

Explain how those sections were violated:

The attached mailing fails to contain the required phrase "with regulated funds" which is a violation of Section 47(4) of the MCFA. MCL 169.247(4).

Evidence included with the submission of the complaint that supports the allegations:

SEE ATTACHED MAILING

Section 4. Certification (Required)

I certify that to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of this complaint is supported by evidence.

X



Signature of Complainant

8 July 2019

Date

Section 5. Certification without Evidence (Supplemental to Section 4)

If, after a reasonable inquiry under the circumstances, you are unable to certify that certain factual contentions are supported by evidence as indicated above, you may make the following certification:

I certify that to the best of my knowledge, information, or belief, there are grounds to conclude that the following specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry. Those specific contentions are:

X

Signature of Complainant

Date

Section 15(8) of the MCFA provides that a person who files a complaint with a false certification is responsible for a civil violation of the MCFA. The person may be required to pay a civil fine of up to \$1,000.00 and some, or all, of the expenses incurred by the Michigan Department of State and the alleged violator as a direct result of the filing of the complaint.

Section 6. Submission

Once completed, mail or hand deliver the complaint form with your evidence to the address below. The complaint is considered filed upon receipt by the Bureau of Elections.

Michigan Department of State
Bureau of Elections
Richard H. Austin Building- 1st Floor
430 West Allegan Street Lansing,
Michigan 48918



BALANCE for BIRMINGHAM

Community Update

June 2019

Developers Would Get Prime Public Land, Devour All New Parking, If Voters Approve Huge Spending Request

City asks \$67 million for incomplete plan; developers deceive on need, cost

The City of Birmingham, working hand-in-hand with private developers, will ask voters Aug. 6 to approve millions in new debt to replace the N. Old Woodward parking deck. The goal is to increase parking, but the \$60 million+ deck may provide no net increase in daytime spaces, and approval would pave the way for what critics call a "giveaway" of prime public land.

heavily favors developers, wasn't properly planned and isn't ready to go to voters.

Only broad outlines have been shared with the public because the plan is incomplete. But it calls for the city to give the developer a 100-year lease on about half of the property.

The plan is based on a 23-year-old thumbnail sketch contained in the city's Downtown 2016 Plan and a parking study completed in 2014. Ironically, though Andres Duany, the author of the 2016 Plan, visited Birmingham in May to update the city's master plan, he was ordered not to discuss Bates. Some of his key recommendations are ignored in the plan.

It is part of a massive effort to redo nearly four acres downtown on the Rouge River at N. Old Woodward and Willits. It is the first time the city has tried a public-private partnership (P3), yet

There are too many uncertainties... We haven't seen any detail... I think we're shooting ourselves in the foot.

– Commissioner Carroll DeWeese

Instead, local architect Victor Saroki was hired to give the sketch detail, and then was granted the project after assembling a development team. A group that included world-renowned architect Robert A.M. Stern was dismissed. The Saroki team includes Lansing developer Ron Boji, who is at the center of several other shape-shifting public-private partnerships that have drawn heavy criticism and legal action. (see www.bhambuzz.org/boji).

The preference Saroki allegedly received is the subject of a federal lawsuit filed by the losing bidder. Complaints filed with the Birmingham Board of Ethics echoed the lawsuit and

criticized the city's acceptance of \$20,000 from the developer to help pay for the election.

The original plan called for development of the entire site. But as residents pushed back, the city and developers decided to phase it – starting with the parking deck, street extension and bond issue – ostensibly putting the private development

See story on page 2



it did not seek P3 counsel until after it chose a developer. It is the largest commitment of public money in the city's history. The city is asking to borrow \$57.4 million and intends to put up \$10 million in cash.

Based on recent sales, the property is worth at least \$11 million per acre, making it some of the most valuable property in Michigan.

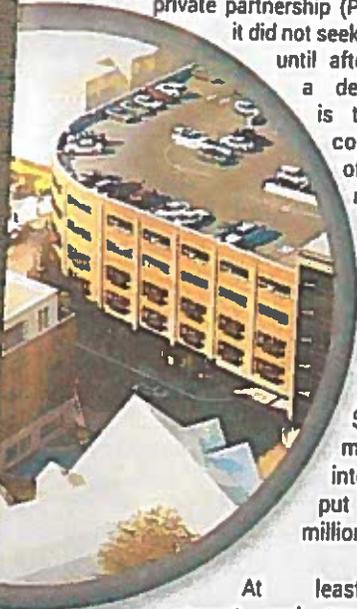
With virtually no up-front land cost and the terms of a lease still pending, the developers plan two large commercial buildings and an apartment building. They used the favorable terms to lure national retailer Restoration Hardware (RH), which proposes one of its widely lauded "galleries" for the site. Since plans have changed so

Time to start over.

– Former Commissioner Russ Dixon

frequently, financial details are scant. The city made no attempt to get the developer to foot any of the cost of the parking deck.

No formal planning process involving the public or independent urban planners was undertaken. Land use is being determined by the developer. The city's Planning Board and Planning Director were left out of the process.



At least two current and two former commissioners are on record with opposition, saying the project is being rushed,

\$57 Million in Public Debt
+ \$10 Million of Our Money
+ \$22 Million Giveaway of Public Land

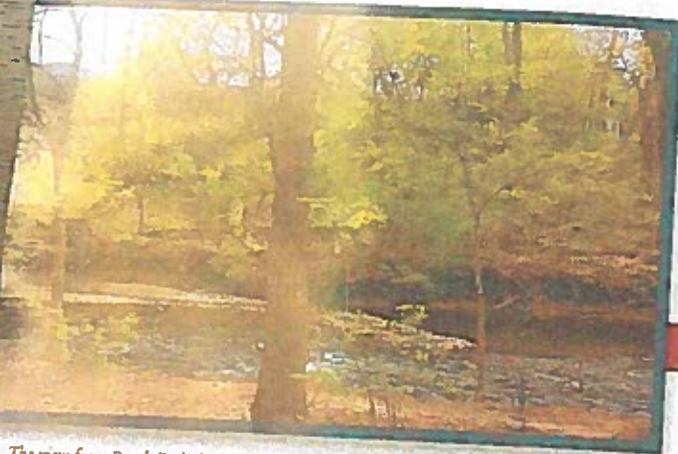
= NO Net New Parking Spaces!

The \$22 Million Land Giveaway

What the city, developers are not telling you.

Tied to the bond issue is a plan that would grant developers a 100-year lease on roughly \$22 million of public land. The return to Birmingham: A pathetic 1.8% per year. That's what developers have offered, and the city is poised to accept. But the deal hasn't been finalized.

The property at the proposed Bates St. extension, overlooking the Rouge River, is the most valuable, beautiful, and desirable piece of undeveloped property in the city. And we, the Birmingham residents, own it. Based on recent sales, it is worth at least \$11 million per acre. Developers would lease around half of the four-acre site for around \$400,000 per year. Development plans are incomplete, (and ever-changing) and though a development agreement has been signed between the city and developer, lease terms have not been finalized.



The view from Booth Park, looking south across the Rouge River at the Bates Street property.

I can't believe the city is asking us to vote on a \$57 million bond proposal based on conceptual drawings and incomplete financials. It is way too early to vote on a plan that hasn't been properly vetted.

— Former Commissioner Dianne McKeon

A mailing to voters from a political action committee formed by the developers focuses solely on the parking deck, and ignores the lease deal and private development that would follow. It also asserts that the deck needs to be replaced, when the city admits that the deck is safe and needs merely a facelift and routine maintenance. The developers are echoing the city's posture.

We are being asked to vote on an incomplete plan that will give control of this property to developers for 100 years - a plan that provides no public benefit to us as residents.

Do we really want it paved over and dominated by a parking garage?

Based on recent sales that average around \$11 Million per acre for commercial property in Birmingham, the land for the proposed project is worth over \$22 Million.

- The City plans to "lease" the property for 100 years at a price of \$400,000 per year.

That is a 1.8% return on assets.

- Would you rent out YOUR property for that?
- And lose control over it for 100 years?
- In order to get the City NO additional net parking spaces?

Huge Spending Request (continued from page 1)

on the back burner. The city now faces accusations of giving the developer what amounts to a no-bid contract to build the parking deck. And with RH under a tight deadline to vacate Somerset, and city officials proclaiming RH a "once-in-a-lifetime opportunity," no one seriously thinks the land lease and private development will be delayed. Many suspect the rush to a vote is motivated by RH. A narrow, parklike connection to Booth Park, originally included in the plan, is not part of the bond issue and has not been finalized.

Developers argue the deck is aging and should be replaced, but the city stresses the deck is safe, and acknowledges that most of the problems are with the façade, and only "small fixes" are necessary to keep the deck in operation.

The new deck would dwarf the existing one and dominate the site, with three underground and seven above-ground levels. All vehicular access would be on Bates, putting more than 2,000 cars a day on the new street.

Bad Deal for Birmingham

\$57 Million in Public Debt
 + \$10 Million of Our Money
 + \$22 Million Giveaway of Public Land
 = NO Net New Parking Spaces!

I thought this was going to be a public-private partnership with a little more benefit to the public... I don't think we're achieving balance

— Commissioner Rackeline Hoff

The plan is opposed by several former city commissioners and a wide range of residents, including those both pro- and anti-development.

"It's interesting that \$57 million is being spent on a project of no benefit to homeowners. Imagine a \$50 million bond for a senior center or sewers or sidewalks. We need a manager and commission that put homeowners first," said resident Paul Reagan.

"This is an epic failure of out-of-touch leadership," said resident Clinton Baller.

\$57 Million in New Debt



The Parking Illusion

Realistic assessment shows development would consume all new parking

Voters are being asked to approve a new parking deck that may result in a net loss of parking spaces. That's the result of a realistic assessment of the demand that would be created by new retail and office that will accompany the deck.

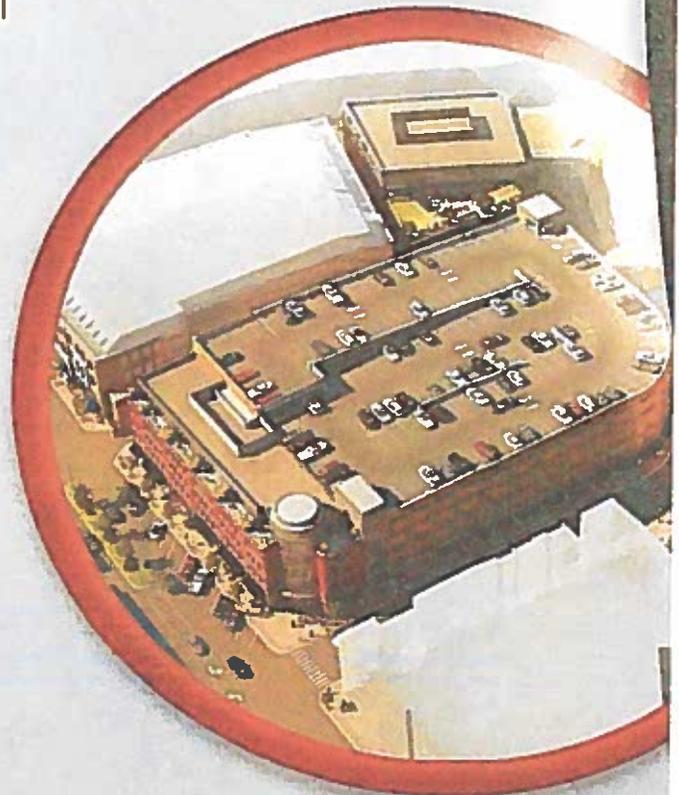
The developer says 400 new spaces will be added to the existing 745. But the developer also plans to add 65,000 square feet of retail, and 27,000 square feet of office, which will create new demand the city is not addressing.

The city has several standards for required parking. In its basic zoning, it requires one space for every 150-300 square feet of office or retail space, and one space for every 75 square feet of restaurant. But for unexplained reasons, at Bates the city is requiring just one space for every 564 square feet of retail or office, greatly underestimating the amount of parking that would be required.

The table below provides a more realistic, but still conservative, look at the plan. We have used the standard of one space per 300 square feet of retail, one space per 150 square feet of office, and one space for every 250 square feet for Restoration Hardware, since it is hybrid retail/restaurant. The assessment shows a net loss of 33 spaces.

Our estimate takes into account that modern offices pack in more workers. At least one downtown office has one worker for every 99 square feet of space.

The city manager is so obsessed with building a new parking deck he forgot to do the math.



	SQ/FT	ONE SPACE REQUIRED PER	PARKING SPACES
City says deck will provide:			+ 400
New retail will consume	10,000	300 SQ/FT	-33
New office will consume	27,000	150 SQ/FT	- 180
Restoration Hardware will consume	55,000	250 SQ/FT	-220
NET LOSS			= -33

**Bad Deal
for
Birmingham**

\$57 Million in Public Debt
+ \$10 Million of Our Money
+ \$22 Million Giveaway of Public Land

= NO Net New Parking Spaces!

BALANCE *for* BIRMINGHAM

Paid for by Balance 4 Birmingham
950 S. Old Woodward
Birmingham, MI 48009



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EDD:1

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ECRWSS
Residential Customer

OPINION:

Take Half-Baked Plan Off Table, Put City Back on Track

Every now and then, a government goes off the rails, and voters need to put it back on track. Chalk this one up to committees gone haywire, inexperience, target fixation and a succumbing to salesmanship. It's time for Birmingham voters to roll up their sleeves.

There are so many reasons to VOTE NO on Aug. 6, where do we start?

Bad planning? Bad execution? Bad stewardship of public funds?

Previous blunders (underground parking at Shain Park and the Baldwin Library bond proposal come to mind) pale in comparison to this one.

We don't argue with the premise. The property at N. Bates St. is a gem of public land, ripe for redevelopment. And that's exactly what developers saw: a juicy piece of property ripe for the picking from naïve city officials.

in the bargain. But this isn't the way. City officials are being short-sighted, giving away too much, and getting too little in return.

The parking deck, as designed, is a monster that dominates the site. And with all the access on Bates, it turns what could be an extraordinary public space into little more than an on- and off-ramp for 2,000 cars a day.

There's a right way to do this, and assertions that a NO VOTE will kill redevelopment prospects is just another disingenuous assertion from city officials who don't want to backtrack, and developers who don't want to see potential profits slip through their hands.

VOTE NO, and tell Birmingham to start over, and do it right. The next 100 years literally hangs in the balance.



**Bad Deal
for
Birmingham**

There's a way to do this right -- to help solve our parking problem and get a great national retailer

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Committee Details

Committee ID: 96377

Committee Name: BALANCE FOR BIRMINGHAM

Committee Type: INDEPENDENT

Formation Date: 09/18/2015

Has Waiver: No

Committee Address: 2820 W. MAPLE RD., STE. 101B
BIRMINGHAM, MI 48084

Telephone: (248) 258-1626

Mailing Address: 2820 W. MAPLE RD., STE. 101B
BIRMINGHAM, MI 48084

Treasurer: BALLER, CLINTON
2820 W. MAPLE RD., STE. 101B
BIRMINGHAM, MI 48084

Telephone: (248) 258-1626

[Begin a New Search](#)



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

July 16, 2019

Balance for Birmingham
Clinton Baller
2820 West Maple Road Ste 101B
Birmingham, Michigan 48084

Re: *Shell v. Balance for Birmingham, et al.*
Campaign Finance Complaint
No. 2019-07-21-47

Dear Balance for Birmingham & Mr. Baller:

The Department of State (Department) has received a formal complaint alleging you have violated MCL 169.247 of the Michigan Campaign Finance Act (MCFA) by failing to include a complete and correct identification statement on certain campaign-related materials. A copy of the complaint is enclosed.

The complaint was submitted to the Department on July 10, 2019 and alleges that a mailing you produced fails to contain a proper paid for by statement. Specifically, Mr. Shell alleges that you have failed to include the phrase "with regulated funds." As evidence to the complaint, Mr. Shell has included a copy of the mailing.

The MCFA and corresponding administrative rules require a person who produces printed material that relates to an election include the phrase "Paid for by [name and address of the person who paid for the item]." MCL 169.247(1), R 169.36(2). Materials produced by anyone other than a candidate or the candidate committee are required to include the phrase "with regulated funds" after the paid for by statement. MCL 169.247(4). A knowing violation constitutes a misdemeanor offense punishable by a fine of up to \$1,000.00, imprisonment for up to 93 days, or both. MCL 169.247(6).

Upon review, the evidence submitted supports the conclusion that a potential violation of the Act has occurred. From the outset, the Department must consider whether it is an expenditure covered by the MCFA. The mailer specifically urges voters to "VOTE NO, and tell Birmingham to start over, and do it right." Because it urges voters to vote against the passage of a ballot question using words of express advocacy, the flyer is covered by the gambit of the Act and must include the paid for by statement outlined under section 47. MCL 169.206(2)(j). Although the mailer contains a paid for by statement, the phrase "with regulated funds" has been omitted

Balance for Birmingham
Clinton Baller
July 16, 2019
Page 2

entirely. Since this phrase is absent, the evidence supports the conclusion that a potential violation has occurred.

After reaching this conclusion, the Act requires the Department to “endeavor to correct the violation or prevent a further violation by using informal methods [.]” if it finds that “there may be reason to believe that a violation ... has occurred [.]” MCL 169.215(10). The objective of an informal resolution is “to correct the violation or prevent a further violation [.]” *Id.*

Given this, the Department concludes that a formal warning is a sufficient resolution to the complaint and is hereby advising you that MCL 169.247(1) and R 169.36(2) require you to print a complete and accurate identification statement on all campaign materials, consisting of the phrase “paid for by” followed by the full name and address of your committee and the phrase “with regulated funds.”

Note that all printed materials containing words of express advocacy produced in the future must include this identification statement. For all materials currently in circulation, the paid for by statement must be corrected. If this information has been included in your materials and you wish to rebut the Department’s conclusion, you must respond in writing to the Department within 15 business days of the date of this letter otherwise the Department will treat the complaint as resolved.

Please be advised that this notice has served to remind you of your obligation under the Act to identify your printed matter and may be used in future proceedings as evidence that tends to establish a knowing violation of the Act. A knowing violation is a misdemeanor offense and may merit referral to the Attorney General for enforcement action. MCL 169.247(6), 215(10).

Sincerely,



Adam Fracassi
Bureau of Elections
Michigan Department of State

Enclosure
c: Jay Shell