

**MINUTES**  
**September 11, 2018**  
**Committee of the Whole**  
**City of Batavia**

Please **NOTE:** These minutes are not a word-for-word transcription of the statements made at the meeting, nor intended to be a comprehensive review of all discussions. They are intended to make an official record of the actions taken by the Committee/City Council, and to include some description of discussion points as understood by the minute-taker. They may not reference some of the individual attendee's comments, nor the complete comments if referenced.

Chair Brown called the meeting to order at 7:00pm.

**1. Roll Call**

**Members Present:** Chair Brown; Ald. Atac (entered at 8:32pm), Stark, Chanzit, Wolff (entered at 7:01pm), Salvati, O'Brien, Callahan, Malay, Cerone (entered at 7:32pm), and McFadden

**Members Absent:** Aldermen Russotto, Meitzler, Uher

**Also Present:** Chief Eul, Batavia Police Department; Mayor Schielke (entered at 7:11pm); Laura Newman, City Administrator; Wendy Bednarek, Director of Human Resources; Gary Holm, Director of Public Works (entered at 8:32pm); Scott Buening, Director of Community Development; Andrea Podraza, Senior Civil Engineer; Chris Aiston, Economic Development Consultant; Jeff Albertson, Building Commissioner; Rahat Bari, City Engineer; Timothy Grimm, Engineer; Joel Strassman, Planning and Zoning Officer; and Jennifer Austin-Smith, Recording Secretary

**2. Approve Minutes for August 28, 2018**

**Motion:** To approve the minutes for August 28, 2018  
**Maker:** Chanzit  
**Second:** Stark  
**Voice Vote:** 8 Ayes, 0 Nays, 6 Absent  
Motion carried.

**3. Items to be Removed/Added/Changed**

Agenda item number thirteen was moved up for discussion after agenda item number eight. There was no objection from the Committee.

\*Wolff entered the meeting at 7:01pm.

**4. Matters from the Public (For Items NOT on Agenda)**

There were no matters from the public for items not on the agenda.

**5. Approval: Class D-1 Liquor License –Riverside Pizza & Pub (DE 9/7/18) GS**

McFadden overviewed the memo for the Committee.

**Motion:** To recommend to Council approval of Class D-1 Liquor License – Riverside Pizza & Pub (DE 9/7/18) GS  
**Maker:** Wolff  
**Second:** Salvati  
**Voice Vote:** 9 Ayes, 0 Nays, 5 Absent  
Motion carried.

**6. Resolution 18-105-R: Awarding a Grant under the Downtown Improvement Grant Program for 129 S. Batavia Ave., John Happel (CA 9/4/18) GS**

Chris Aiston stated that this application includes a lot of items that the Downtown Improvement Grant was developed for including: private investment in rehabbing a historic building, preservation of a historic building, bringing in a new business to the downtown, and bringing in new residences into the downtown. Aiston stated that the Council should feel very good about this particular project and Aiston personally supports this grant. Aiston stated that not including purchase price, Mr. Happel would be putting in \$300,000 towards the building improvements. All in, the City would be supporting the applicant with \$40,000 for this multi-phase project.

John Happel, 129 South Batavia Avenue, addressed the Committee. He overviewed the improvements he is doing to the historic building in downtown Batavia: new plumbing, new roof, leveled floors, tuck-point the inside and outside of the building, new windows, new storefront and doors, new flooring, new kitchens in the apartments, and his wife's art studio in the downstairs gallery area. Happel stated that the last thing they plan on doing to the building is to put a porch on the back sometime next year. He hopes that the interior and exterior will be completed in the winter.

**Motion:** To recommend to Council approval of Resolution 18-105-R: Awarding a Grant under the Downtown Improvement Grant Program for 129 S. Batavia Ave., John Happel  
**Maker:** McFadden  
**Second:** Stark  
**Voice Vote:** 9 Ayes, 0 Nays, 5 Absent  
Motion carried.

**7. Resolution 18-106-R: Awarding a Grant under the Façade Grant Program for 129 S. Batavia Ave., John Happel (CA9/4/18) GS**

**Motion:** To recommend to Council approval of Resolution 18-106-R: Awarding a Grant under the Façade Grant Program for 129 S. Batavia Ave., John Happel  
**Maker:** McFadden  
**Second:** Stark  
**Voice Vote:** 9 Ayes, 0 Nays, 5 Absent  
Motion carried.

**8. Discussion: Dam Ownership (Bruce L. Goldsmith, Dykema) (LN 9/7/18) GS**

Bruce L. Goldsmith, attorney, addressed the Committee. He reported on the history of the dam. He stated that in 1835 the dam was built by the VanNortwick family in order to run a mill. Historically, nothing happens to the dam until 1904 where, at that point, a different group of companies (three mill companies, a wagon manufacturer and a pub company) enter into an agreement to maintain the dam. The early history of the dam has the dam being used for some kind of commercial purpose. Nothing significantly happens in the legal perspective until 1975. In 1975 the City had the opportunity to have the dam rebuilt. In order to get the dam rebuilt the City had to gain ownership of the dam and was able to receive funding from the State of Illinois to construct the dam. There is no history of a permit being issued for the dam. The dam was rebuilt and in order for that to happen there were nine property owners, including the Batavia Park District, that transferred ownership of interest in the dam to the City. As a way of history, the dam was always described at various legal transfers of title. In 1975 there were various property owners from each side of the river transferring their interest in the little pieces of property where the dam is affixed to the west and east banks of that side of the river to the City. The nine property owners gave up their rights at that time and the City accepted those deeds and transfer of title. This is confirmed by staff research and Chicago Title report. There is no question that private parties owned this dam. The deed transfers that dam and the property on each side of the dam to the City in 1975.

Goldsmith stated that he was asked to look further into this matter, as who has the responsibility over the dam. Goldsmith stated that the property owners on each side of the river would be responsible for the dam. By virtue of owning the west and east side of the dam you own the riverbed too. In 1975 the nine parties transferred their property and the dam came with it. By the City owning the west side and the east side, the City owns the dam in the middle. The State of Illinois has extensive statutory provisions with respect to dams and extensive regulatory provisions in respect of the maintenance of dams. Once you own the dam, you have the duty to maintain the dam. His legal opinion is the City has been responsible for the dam since 1975.

Goldsmith discussed promissory estoppel where if you rely to your detriment on something that someone promises to do for you, you could sue that person without having an actual contract in order to hold that person responsible. It has been said the City originally thought that taking title to the dam, once the dam was constructed the State would take ownership of the dam. That was the concept of promissory estoppel. Governments do not have the same benefits as private citizens. There are no documents that show the State had agreed to take ownership of the dam and the maintenance going forward and beyond that the courts don't recognize promissory estoppel except in varied instances of governmental units for public policy reasons. Beyond that, there is the statute of limitations. The normal statute would be five years. The legal opinion is that the City has owned the dam since 1975 and has maintenance responsibilities since that time and would have that as long as the City owns the dam. It is way too late to state that the State of Illinois is responsible in some way for taking ownership.

Chair Brown stated that he has been pushing all along that the City does not own the dam because of the intent. His father was the mayor back then and explained to him that the intent was the State would take ownership if we obtained the rights to it. Chair Brown stated that after listening to the legal opinion stated tonight he is ready to move forward with the understanding

that the City owns the dam. Brown and Callahan asked staff to create a resolution regarding acceptance of the legal opinion of the City's ownership of the dam.

\*Alderman Cerone entered at 7:32pm.

**9. Presentation: Project Update and Discussion of Alternatives for Prairie Street Reconstruction Pine Street to Wilson Street Phase I Engineering (TG 9/6/18) CS**

The PowerPoint presentation to the Committee by CMT provided the following:

- Overview and history
- Field Meeting with Illinois Commerce Commission (ICC)
  - Noted if right turn lanes are implemented, then a 10 foot wide center barrier median is required to support the crossing gate
- Meeting with IDTO and FHWA
  - IDOT CBLRS and FHWA agreed to design exceptions for no right turn lanes on Wilson, due to parking/property impacts
- Aerial View of Prairie Street at Wilson Street (53:00); Ultimate Improvement Right Turn Lanes on Wilson Street
- Interim improvements no right turn lanes
- Queue Analysis; AM Peak; PM Peak
- Intersection Improvements Alternatives Prairie St. at Wilson St.

The Committee discussed the project. CMT stated that there would be a net benefit of 24 seconds to add right turn lanes but would require the removal of the parking. The right turn lanes would be a larger cost as well. Wolff stated that the cost of removing half a parking lot of a business and other parking is a cost he does not want to do. Wolff stated that the project should start at the railroad tracks south. After a lengthy discussion, the COW directed staff to go forward with their recommendation to not do the right hand turn lanes, leave the intersection as is, and reconstruct the street from the train track down.

**10. Ordinance 18-57: Amending the Official Zoning Map of the City of Batavia 750-812 Main Street, City of Batavia, Applicant (JS 9/7/18) CD**

\*Alderman Atac entered the meeting at 8:32pm.

Stark stated that this ordinance was on the City Council (CC) agenda and an alderman asked that this be taken off the agenda so that staff could have further discussion with business owners and property owners. Strassman addressed the Committee and overviewed the memo and the options for the COW to consider this evening.

Callahan explained that he requested that this ordinance be taken off of the agenda because there were still questions and various opinions being discussed on this topic by residents. He felt that it needed more time for discussion and consideration. The COW discussed the zoning classifications Light Industrial (LI), Neighborhood Commercial (NC) and Community Commercial (CC). Wolff stated that he does not want to leave the area as LI so we could really see something change in the neighborhood. Wolff stated that several residents did prefer the CC

zoning because it provided a larger buffer. Callahan stated that he supports CC as the preferred zoning designation. Stark welcomed members from the audience to address the Committee.

Dave Beckman, 709 Main Street, stated that he doesn't have an issue with what is proposed. He has a bigger issue with process. When the whole TIF was going on, he was concerned about changing the proposed use of his land and he was told no one is changing the zoning on your property. He was informed that the only one that could request a zoning change on your property is you. The City initiated this zoning change and he wonders if they could do it over there the City could still do it to his property. He was told one thing but the opposite is happening on the other side of the street. He does not think it is right and leaves him with an uneasy feeling.

Stark asked Strassman if the City could come to her house tomorrow and state they want to zone her land as LI. Strassman answered that the City could say they wanted to rezone the land but hopefully the jurisdiction would propose zoning of the land that is in line with the adopted plan. A municipality could rezone a private property owner's property with or without the property owner's consent. Stark commented that this rezoning to NC or CC is in line with the TIF District and the area's planned development. Strassman stated that it is generally in line with the vision with the West Town focus plan and TIF funding. Wolff stated that he believes, in this case, the process works. The City is doing what we are supposed to do. There were some questions and there were things that were not understood on Facebook so we did want to address it. The reality is the process works and it may take some more communication up front. Wolff stated that he would like to make a motion to approve the Ordinance and state that there will be a discussion on what is allowed and not allowed in CC. Newman noted that the ordinance has been voted on in a past COW meeting and just needs to move forward to CC.

The Committee decided that this already approved ordinance would be brought back to City Council for consideration.

**11. Resolution 18-05-R: Authorizing Execution of an Intergovernmental Agency Agreement with Kane County for the Intersection Improvements at Deerpath Road & Main Street (AMP 9/5/18) CS**

Podrazza overviewed the memo regarding the project and the Intergovernmental Agency Agreement (IGA) for the Committee's consideration on agenda items eleven, twelve and thirteen.

**Motion:** To recommend to Council approval of Resolution 18-05-R: Authorizing Execution of an Intergovernmental Agency Agreement with Kane County for the Intersection Improvements at Deerpath Road & Main Street

**Maker:** McFadden

**Second:** Cerone

**Voice Vote:** 11 Ayes, 0 Nays, 3 Absent  
Motion carried.

**12. Resolution 18-06-R: Authorizing Execution of the Construction Engineering Services Agreement for Federal Participation in the amount of \$207,432.17 for Deerpath Road & Main Street Intersection for Phase 3 Construction Engineering Services with V3 Companies (AMP 9/5/18) CS**

**Motion:** To recommend to Council approval of Resolution 18-06-R: Authorizing Execution of the Construction Engineering Services Agreement for Federal Participation in the amount of \$207,432.17 for Deerpath Road & Main Street Intersection for Phase 3 Construction Engineering Services with V3 Companies

**Maker:** Malay

**Second:** McFadden

**Voice Vote:** 11 Ayes, 0 Nays, 3 Absent  
Motion carried.

**13. Resolution 18-107-R: Authorizing Execution of the Local Agency Agreement for Federal Participation for Deerpath Road & Main Street Intersection Improvements Phase 3 Construction Engineering Services with the Illinois Department of Transportation (AMP 9/5/18) CS**

**Motion:** To recommend to Council approval of Resolution 18-107-R: Authorizing Execution of the Local Agency Agreement for Federal Participation for Deerpath Road & Main Street Intersection Improvements Phase 3 Construction Engineering Services with the Illinois Department of Transportation

**Maker:** Malay

**Second:** Cerone

**Voice Vote:** 11 Ayes, 0 Nays, 3 Absent  
Motion carried.

**14. Discussion: Main Street Reconstruction Design Engineering Plans (RB 9/7/2018) CS**

Bari overviewed the memo. Bari discussed the depressed curbs and driveways with the Committee. He wanted the COW to see the proposed plans because Main Street will be worked on next year. Staff is in negotiation with property owners for a temporary easement. Some sidewalks are on the private property side and staff is reaching out to residents to take those sidewalks out of the private property side and put them on the driveway side. Bari discussed the importance of attaining temporary easement in time for the State's review so that this project could begin on time.

**15. Resolution 18-108-R: Authorizing Execution of a Contract with Hoerr Construction for the 2018 Tri-Cities CIPP Lining Program in the amount of \$265,776.32 (JB 9/7/2018) PU**

O'Brien overviewed the memo and the budget with the COW.

**Motion:** To recommend to Council approval of Resolution 18-108-R: Authorizing Execution of a Contract with Hoerr Construction for the 2018 Tri-Cities CIPP Lining Program in the amount of \$265,776.32

**Maker:** McFadden

**Second:** Salvati  
**Voice Vote:** 11 Ayes, 0 Nays, 3 Absent  
Motion carried.

#### **16. Discussion: Communication During Power Outages (GH 9/7/18) PU**

Newman stated that they used to only communicate massive impact power outages and now we communicate power outages more frequently. Now that the City has been communicating more frequently about power outages we are receiving feedback that we are suddenly a less reliable system. We would like to have a discussion on obtaining a balance on letting people know when there are significant power outages but not to unnecessarily let the people feel that the system is less reliable. Holm overviewed the memo with the Committee and the objectives listed in the memo on page four. Holm stated that we are now informing people of any and all power outages whether or not those communicated with are affected by the outage or not. Having every single outage put out on social media may be doing more harm than good by giving the wrong impression that our system is suddenly less reliable. Everyone in the City is receiving an alert to a power outage that does not affect them. Holm stated that a small area impacted would be able to call in to the City to find out what is going on but it may not be necessary to alert the entire City. Holm noted that finding the cause of an outage does take time to assess because the City employees have to drive out to the site and assess what caused the power outage.

The COW discussed communication during power outages. Callahan suggested to give the communication plan more time and it is always best to be open about the information in a timely manner. McFadden stated that there is a difference in being open and providing all of the information versus actively pushing out all of the information to those who don't necessarily need the information. McFadden suggested having an available source where people could access it rather than pushing out the information every time. A big event could be pushed out wide scale. McFadden stated that there should be a place where the information could be attained by those who need it but not inundate people with information that they do not need.

Holm was directed to have a centralized location on the City's website for communication regarding power outages for those who need that information and not push out every single event to everyone. Holm was asked to also have a phone-in option with a recorded notification as well. Holm stated that there would be a live webpage that people could access the information without pushing out the information out to the entire City unless it is a large-scale event and then it would be sent out to the entire City. Holm noted that there is always an option to speak to a live person when someone calls in as well.

#### **17. Project Status**

Newman reported on the following:

- The Slow Down Campaign was a success and residents are being asked to take down the signs until the next campaign.
- An information brochure to teach residents about Home Rule and what Home Rule is and the loss if the City gets Home Rule Status is being developed. A Home Rule information meeting will be held at City Hall on October 8<sup>th</sup> at 7pm and will be filmed by BATV.
- The Siemens property fences have been removed.

**18. Other**

Salvati asked about the Giese stormwater project. Holm stated that completion should be at the end of September. O'Brien asked for more dust control.

Wolff asked about the email received by a resident on Morton regarding their driveway. Newman has been in contact with the resident.

**19. Executive Session: Collective Bargaining (WB) GS**

**Motion:** To enter into Executive Session for Collective Bargaining.

**Maker:** O'Brien

**Second:** Salvati

**Voice Vote:** 11 Ayes, 0 Nays, 3 Absent  
Motion carried.

The Committee entered into executive session at 9:57pm and exited at 10:23pm.

**20. Adjournment**

There being no other business to discuss, Chair Brown asked for a motion to adjourn the meeting at 10:23pm; Made by O'Brien; Seconded by Salvati. Motion carried.

Minutes prepared and submitted by Jennifer Austin-Smith, Recording Secretary, on September 18, 2018.