

MINUTES
April 19, 2022
Committee of the Whole – Hybrid Meeting
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 Wolff called the meeting to order at 7:00pm.

1. Roll Call

Members Present: Chair Wolff; Ald. Miller (entered the meeting at 7:03pm), Russotto, Beck, Connelly, Solfa, Baerren, Leman, Ajazi, Uher, Cerone and Vogelsinger (remote – joined at 7:03pm)

Members Absent: Ald. Chanzit and Malay

Also Present: Mayor Schielke; Laura Newman, City Administrator; Kevin Drendel, Legal Counsel; Gary Holm, Director of Public Works; Wendy Bednarek, Director of Human Resources; and Jennifer Austin-Smith, Recording Secretary (remote)

2. Reminder: Please speak into the microphone for BATV recording

3. Approve Minutes For: February 15, 2022 and February 8, 2022

Motion: To approve minutes for February 1, 2022, February 22, 2022, March 1, 2022, March 15, 2022, March 22, 2022 and March 29, 2022

Maker: Wolff

Second: Solfa

Roll Call Vote: **Aye:** Wolff, Baerren, Leman, Ajazi, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Connelly, Solfa

Nay:

12-0 Vote, 2 Absent, Motion carried.

4. Items to be Removed/Added or Changed

None.

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

None.

6. Consent Agenda

a. Approval: COW Executive Session Minutes for February 8, 2022 – Collective Bargaining

b. Approval: COW Executive Session Minutes for February 15, 2022 – Land Acquisition

Motion: To approve Consent Agenda as presented

Maker: Beck

Second: Solfa

Roll Call Vote: **Aye:** Beck, Connelly, Solfa, Wolff, Baerren, Leman, Ajazi, Uher, Cerone, Vogelsinger, Miller, Russotto

Nay:

12-0 Vote, 2 Absent, Motion carried.

7. Discussion: Amendment 1 to Fermi Lab Kirk Road Stormwater Easement (GH 4/12/22)

Holm reported the City currently has an easement on Fermi property on the east side of Kirk Road, south of Wilson Street and north of Pine Street. Within that easement we have a stormwater retention basin. The easement and basin were both constructed in the late 1980s. A copy of the 1980s easement agreement was included in tonight's packet.

Holm continued as part of the Mahoney Creek Tributary stormwater improvements we looked to expand that existing easement in addition to constructing a new easement on the west side of the road. Expansion of the easement on the east side of the road required us to work with Fermi on items such as wetland permitting and design review.

Fermi had requested during the review process that we make updates to the 1986 agreement. Staff has reviewed all the revisions and asked the City Attorney to review the revisions. The Attorney reviewed the revisions with respect to liability and potential indemnity. We have one concern with item number two, which has to do with statutory toward immunity.

Drendel discussed section two in context from the 1986 agreement. Fermi has added to that 1986 agreement that all the protections afforded to Fermi would be extended to the Fermi Research Alliance LLC, management and operation of the Fermi National Accelerator Laboratory, and any successor contractor. That is understandable. The changes go on to say the grantee, which is the City of Batavia, shall indemnify and hold harmless the government, FRA, etc. against any and all claims brought by any third party for property damage, bodily injury or death arising from the grantees construction or operation of the detention basin. Drendel explained that we added a qualifier that entering into this contract with Fermi we want it clear that we are not waiving our toward immunity, which is a limited toward immunity. There is some risk here and are we willing to live with the risk. We have gotten to a contractual impasse and we wanted to bring this to the Council's attention so that you could make an informed decision.

The Committee held discussion on the agreement. The consensus of the Committee was to have the Mayor reach out to Fermi management this matter. Holm asked if that were not successful would we be comfortable with the agreement as revised. Solfa stated that in his opinion, yes, because it seems it would be very limited that it would be a future problem. Solfa stated that it is a very small risk for a larger benefit.

8. Project Status

Newman reported on the following:

- Bike Share bikes are out in the racks on the south plaza and at the Depot Museum

- Staff has reviewed the Hawkes Way Development Apartments. The next stage in the process is the development review meeting before the developer submits their final application
- The City received drawings and contract documents for the City entrance sign

9. Other

Uher asked if staff has heard anything further from Batavia Enterprises (BEI). Newman answered an updated plan was submitted last week and staff is meeting internally about that plan. This discussion will be brought to the COW mid May.

Leman asked about the Depot Pond. Newman answered the Park District has requested the consultant put together a proposal that would identify the possible opportunities for recreational amenities in the event that we mutually decide we want some sort of impoundment after the dam is removed. Newman will bring the draft proposal to the COW to decide if you want to share in the cost to have the analysis conducted or if you feel it is project for the Park Board alone. Chair Wolff stated that it was discussed if the Park District wanted to do something about what they could program on the river afterwards that was on them because that is their idea and what they need to know before they make a final decision internally on what they would support for the river change. Newman stated if everyone is unanimous on that she could provide that as the COW's feedback to the Park District. She asked if there was any objection. There were no objections voiced by the Committee. Newman stated that after the Park District analyzes the results she would then plan for us all to meet as a group.

10. Executive Session:

- a. Sale or Purchase of Land
- b. Personnel

Motion: To enter into Executive Session for the sale or purchase of land and personnel

Maker: Uher

Second: Cerone

Roll Call Vote: **Aye:** Wolff, Baerren, Leman, Ajazi, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Connelly, Solfa

Nay:

12-0 Vote, 2 Absent, Motion carried.

The Committee entered Executive Session at 7:37pm and exited at 9:20pm.

11. Adjournment

There being no other business to discuss, Chair Wolff asked for a motion to adjourn the meeting at 9:20pm; Made by Uher; Seconded by Connelly. Motion carried.

Minutes respectfully submitted by Jennifer Austin-Smith, Recording Secretary