CITY OF BATAVIA

100 N. Island Ave., Batavia, IL 60510

(630) 454- 2000 http://www.cityofbatavia.net

CITY SERVICES COMMITTEE AGENDA

Tuesday, January 8, 2013

7:30 p.m. City Council Chambers 1st Floor

1. Roll Call

2. Approve Minutes For Community Development Committee And City Services December 15, 2012 Minutes

   Documents: COMMUNITY DEVELOPMENT COMMITTEE AND CITY SERVICES DECEMBER 15, 2012 MINUTES.PDF

3. Items Removed/Added/Changed

4. Code Review Section Title 7 Forestry (WRM 12/20/12)

   Documents: DECEMBER 20, 2012 MEMO CODE REVISON TITLE 7 FORESTRY.PDF

5. 2013 Bridge Sculpture Call For Entries (WRM 1/3/13)

   Documents: JANUARY 2, 2013 MEMO WRM BRIDGE SCULPTURE CALL SCIENCE.PDF

6. Refuse And Recycling Program Discussion (SH 12/27/12)

   Documents: DECEMBER 27, 2012 REFUSE AND RECYCLING MEMO.PDF

7. 2013 New Sidewalk Program And Five-Year Projected New Sidewalk Installation Program—Request For Authorization To Seek Bids (SH 1/2/13)

   Documents: 2013 NEW SIDEWALK PROGRAM REV. 1-2-13.PDF

8. Hardships For Violations For Cherry Park – Johnstone Drive & Sump Pump Connections (AMP 1/3/13)

9. Resolution 13-03-R Amending The Intergovernmental Agreement With Tri-Com Dispatch Center (RD 1/3/13)

   Documents: RESOLUTION 13-03-R, AMENDMENT TO THE TRI-COM INTERGOVERNMENTAL AGREEMENT.PDF

10. Others

11. Matters From The Public

12. Adjourn

City of Batavia

Community Development Committee
and City Services Committee Joint Meeting
Minutes for December 15, 2012

Members Present: CDC: Ald. Brown, Wolff , Clark, Thelin-Atac, and Stark
City Services: Ald. Volk, Liva, O'Brien, and Tenuta

Also Present: Bill McGrath, City Administrator; Gary Holm, Director of Public Works; John Dillon, Rich Searle; Meredith Hannah, Mayor Schielke

The meetings convened at 10:01 am in the north entrance to the First Baptist Church at Wilson Street and Washington Ave. The purpose of the meeting was to allow for Council members to tour this city owned facility and the Thomle Building at 2 East Wilson Street.

The First Baptist Church has at least three distinct parts the original sanctuary, a north side addition circa 1940's, and a later 1960's addition to the north and west of the main building. There are various levels and many small rooms in all parts of the building. The property was purchased by the City in anticipation of the Route 25 re-alignment that never occurred. Staff has proposed putting the building on the market via an RFP process.

There were questions regarding the salvage value of the kitchen equipment, the pipe organ, wood work in the older parts of the building and the tin plate on the walls and ceilings of the sanctuary. Staff pointed out some of the various problems such as the poor state of the roof over the sanctuary and the fact that there are both asphalt shingles and wood shakes on that roof.

In the basement access ports to view the foundation were opened to allow the Council members to view the state of the foundation. Various wall cracks and evidence of roof leaks were observed. Staff stated that at this time there are no known roof leaks but further patching may not be possible due to the very poor condition of the roof.

The group then proceeded to the Thomle Building at 2 East Wilson Street. This building was acquired some 15 years ago via a condemnation process. It was restored by use of Kane County grants and TIF funds. It has been used as a business incubator and the Main Street office over the years. It is a 2 story limestone building with a basement and subbasement. The building is in stable condition.

Questions were asked regarding the extent and shape of the property, the lot lines goes as far south as the parking lot. Various concepts for use of the building were discussed by Staff and Council members. In addition some reminiscences of past uses of the building were done by members of the Council.

The meetings adjourned at 10:58 am with many present moving on to the ribbon cutting ceremony at the newly opened McDonalds on West Wilson Street.

Submitted by Ald. Jim Volk
December 16, 2012

CITY OF BATAVIA

DATE: **December 20, 2012**
TO: **City Services Committee**
FROM: **Bill McGrath, City Administrator**
SUBJECT: **Municipal Code Review- Section Title 7-2: Forestry**

As part of our efforts to find areas where we can gain efficiencies, our attention turned to Title 7 Section 2 of the Municipal Code, which relates to Forestry. Certainly the urban forest has become increasingly more important over the last 20 years to the extent that all annexation agreements for residential developments require payment of monies to the City in order to pay for the planting of trees in the development. That was after years of seeing what developers and/or builders would do voluntarily, which consisted of a lot of trees being planted around the model area but few, if any on the parkways where the neighborhoods were finally built. We then went to a requirement of tree planing by the developer. There were problems with the sizes, condition, species, origin and guarantees related to many of those trees. Finally, the City found it necessary to take control of the issue because the urban forest had risen in value to the community, and the fact that staff had begun to acquire expertise aside from that furnished by long-time City Arborist Frank Saupp. John Dillon became an arborist early on, and Scott Haines is currently certified in that area. Both have been working with the Tree Commission since its establishment in 2008.

We have reviewed the relevant section as a staff for the last few months after discussions about what has changed since 2008, and how forestry issues impact the City in terms of time and expense. The attached documents are the result of those discussions.

There were so many changes that we believe that it is best to start with reading the clean version to see if it makes sense and flows for you. Later you can review the redlined version, which can be difficult, though it does contain highlighted comments about many of the changes. The easiest way may be to print the clean version and have it handy as you read through the redlined version.

As you read through it there are 3 basic areas of change:

1. The current Code is written as if the Tree Commission is about to come into existence. Many tasks are forward-looking. We have changed those terms to reflect the current reality of where we are in the development of the Commission.
2. Process: we have cleaned up the appeal section as we now have local adjudication as a tool. We recommend that City Services be the last step at the City so that a citizen can thereafter go immediately to court to question the decision if desired, unless a large amount is in involved.
3. Most importantly, we have taken a step and are recommending that we clearly draw the line between public and private nuisances. At the current time, the City inserts itself into private matters so that if a neighbor has a tree issue with another neighbor, the City can be called and spends considerable time and expense to try to resolve issues, when they do not impact anyone else in the community. Scott Haines estimates that he was involved in approximately **50** such incidents last year. He will be at the meeting to talk about his experiences. He estimates that these issues may have taken up to 1/5 of his regular time which we feel is inappropriate.

   We have redefined “public nuisance” to be just that: situations where a tree on private property may impact the public in general, either by potential damage to adjacent public

property such as light poles, transformers, street trees, wires, etc. or where injury to the public rightfully using City streets walks, or other property, such as City parking lots may occur unless the situation is abated. We simply do not have the time to attend to the private matters and the cost of working out private grievances should not be socialized throughout the community by being included as public nuisances. We have found no other nearby municipality that takes on a role in these private matters.

Now, you may also have noted that there is a current section that relates to diseases, and that the presence of a disease on private property was also formerly covered by the concept of a public nuisance. We discussed this matter thoroughly. The simple facts it that once a disease is to the point where it in fact can be observed, it is too late to do anything about it, including isolating the disease to that tree on the property. The State retains great powers in terms of working with tree diseases and we do not believe that eliminating this form our Code lessens the protections our citizens receive.

This matter will be on the January 8, 2012 City Services Committee agenda for discussion only. We did not go ahead and draft an ordinance because of the depth of conversation that may take place on the issue. Additionally, we wanted to give the Tree Commission the opportunity to discuss it during January as well. Staff recommends that the Committee discuss these changes, continue the matter to its February 5th meeting if the Tree Commission raises no objections, or to its March 5th meeting if the Commission request further discussion. Hopefully, staff would then be directed to draft the appropriate ordinance to effect the change in the Municipal Code.

Please call with any questions. Thank you.

Attachments: Clean and redlined versions of Title 7 Section 2: Forestry

C: City Council
Department Heads
Scott Haines
Batavia Tree Commission

CHAPTER 2
FORESTRY

7-2-1: PURPOSE AND INTENT:

A. Purpose: It is the purpose of this chapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs and other plants within the city.

B. Intent: It is the intent of the City that the terms of this chapter shall be construed so as to promote:

1. The planting, maintenance, restoration, and survival of desirable trees, shrubs and other plants within the city; and

2. The protection of community residents from personal injury and property damage, and the protection of Batavia from property damage, caused or threatened by the improper planting, maintenance, or removal of trees, shrubs, or other plants located within the community. (Ord. 08-11, 8-4-2008)

7-2-2: DEFINITIONS:

As used within this chapter, the following terms shall have the meanings set forth in this section:

ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE FOR BATAVIA (Arboricultural Specifications Manual[1]): A manual prepared pursuant to this chapter containing regulations and standards for the planting, maintenance, and removal of trees, shrubs, and other plants upon City Property.

ARBORIST: The City arborist of Batavia, Illinois. A volunteer position requiring expertise in the field of arboriculture who acts as an outside consultant to City staff and the Tree Commission.

CITY PROPERTY: Property owned, controlled by or dedicated to the City of Batavia within the City limits of Batavia, Illinois, including rights of way and those areas commonly known as parkways.

PROPERTY OWNER/POSSESSOR: The record owner, contract purchaser lessee or occupant of any parcel of land.

TREES, SHRUBS, AND OTHER PLANTS: All vegetation, woody or otherwise, except lawn grass and flowers less than twenty four inches (24") in height.

Urban Forest: The trees and woody vegetation on City Property within the City of Batavia. Woody vegetation shall include bushes and shrubs.

URBAN FORESTRY PROGRAM: A written forestry policy and program approved by the City from time to time, containing the long and short term forestry activities to be undertaken by the City. (Ord. 08-11, 8-4-2008)

7-2-3: BATAVIA TREE COMMISSION:

A. Establishment: The Batavia Tree Commission (hereinafter "Tree Commission") is hereby established. Its functions and duties are limited to those set forth in this chapter.

B. Composition: The Batavia Tree Commission shall be composed of seven (7) commissioners. The Mayor with the approval of the City Council shall appoint four (4) commissioners. These four (4) commissioners shall serve without pay and shall reside within the City and shall not be City employees. The remaining three (3) commissioners shall be the Director of Public Works, the Street Superintendent and the Water/Sewer superintendent. Subject to the exceptions in subsection C of this section, each commissioner shall serve for a term of four (4) years.

C. Appointment of Members: Two (2) of the four (4) commissioners initially appointed to the Tree Commission shall serve for a term of two (2) years; two (2) of the four (4) commissioners initially appointed shall serve for a term of four (4) years. The term shall start on a common date. Determination of the length of terms of the four (4) commissioners initially appointed shall be by lot. The chairperson of the commission shall be the Public Works Director or his designee.

D. Expiration or Vacation of Terms: Within thirty (30) days following the expiration of the term of any appointed commissioner, a successor shall be appointed by the Mayor with the approval of the City Council, and the successor shall serve for a term of four (4) years. Should any commissioner resign or be removed from the Tree Commission, a successor shall be appointed by the Mayor and shall serve for the unexpired period of the vacated term. A member of the Tree Commission may be removed by the Mayor with the approval of a majority of the City Council.

E. Duties: The Tree Commission shall perform the following duties:

1. The Tree Commission shall adopt and maintain rules of procedure for regular and special meetings to fulfill the duties imposed upon it by this chapter.

2. The Tree Commission shall advise and consult the City on any matter pertaining to the matters covered in this chapter and its enforcement. The topics under which this advice and consultation may be given may include, but are not limited to, any of the following:

a. Amendment to this chapter, and alterations or revisions to the arboricultural specifications manual, and alteration or revisions of the Urban Forestry Plan;

b. Policies concerning selection, planting, maintenance, and removal of trees, shrubs, and other plants within the City;

c. Allocation of funds and expenditures of funds by the City;

d. Establishment of educational and informational programs including, but not limited to, a yearly Arbor Day celebration.

7-2-4: Protection for the Urban Forest

A. No person or contractor, except the City, its contractors or entities operating under a franchise or other written agreement may perform any of the following acts on City Property:

1. Plant, remove or otherwise disturb any tree, shrub, stump, or other plant located on City Property, except that this provision shall not be construed to prohibit owners or possessors of property adjacent to City Property from watering, minor pruning, or fertilizing without a permit any tree, shrub, or other plant located on such City Property;

2. Trim, prune, or remove any tree or portions thereof if such tree or portions thereof reasonably may be expected to fall on City Property and thereby to cause damage to persons or property without giving City seven (7(days notice thereof;

3. Place on City Property, either above or below ground level, a container for trees, shrubs, or other plants, subject to Section C below;

4. Damage, cut, tap, carve, or transplant any tree, shrub, or other plant located on City Property;

5. Attach any rope, wire, nail, sign, poster, or any other manmade object to any tree, shrub, or other plant located on City Property;

6. Dig a tunnel or trench on City property related to trees or other plantings.

B. Nothing in this section shall preclude the establishment and maintenance of a rain garden in City parkways, under the terms and conditions contained in a right of way permit issued by the City under Title 7.

C. Public Utility Companies, Franchise holders, etc.: Nothing in this section shall be construed to exempt public utility companies, their agents, or any entity with a franchise or other

written agreement with the City from any of the requirements of this chapter, except as specifically described by statute or the agreement.

7-2-5: PUBLIC NUISANCES:

A. The following are hereby declared "public nuisances" under this chapter:

1. Any tree, shrub, other plant, or portion thereof, whether located on City or private property, which by reason of location or condition constitutes a reasonable likelihood of danger to the health, safety, or welfare of the general public, including those that obstruct the free passage of pedestrian or vehicular traffic on streets or sidewalks or paths and trails, or which unreasonably obstructs the view of any regulatory or traffic oriented public sign on City Property.

2. Any tree, shrub, other plant, or portion thereof, whether located on City or private property, which by reason of location or condition constitutes imminent danger to the health, safety, or welfare of the general public, including those that obstruct the free passage of pedestrian or vehicular traffic on streets or sidewalks or paths and trails, or which unreasonably obstructs the view of any regulatory or traffic oriented public sign on City Property.

B. Right To Inspect: The officers, agents, servants and employees of the City have the authority to enter onto private property following a reasonable attempt to give notice to the property owner in the event there is located a tree, shrub, plant or portion thereof which is reasonably suspected to be a public nuisance. If entry to the property is refused, but there is reasonable believe that the suspected nuisance poses imminent danger to City Property or people thereon, officers, agents, servants and employees of the City may enter on the property to inspect, but only to the extent necessary to confirm whether imminent danger exists.

C. Abatement: The following are the prescribed means of abating public nuisances under this chapter:

1. Any public nuisance under this chapter which is located on privately owned property shall be pruned, removed, or otherwise treated by the property owner or his/her agent in whatever fashion is required to cause the abatement of the nuisance. Except as provided below, no property owner may be found guilty of violating this provision unless and until the following requirements of notice have been satisfied:

a. The City shall cause a written notice to be personally served or sent by certified mail to the person to whom was sent the tax bill for the general taxes for the last preceding year, or an adult resident or operator of the premises.

b. Such notice shall describe the kind of tree, shrub, or other plant or plant part, which has been declared to be a public nuisance; its location on the property; the reason for declaring it a nuisance;

c. Such notice shall describe the premises by legal description or by common description;

d. Such notice shall state the actions that the property owner or occupant may undertake to abate the nuisance;

e. Such notice shall require the elimination of the nuisance within thirty (30) days of the date of service of the notice, or such shorter period of time as is deemed necessary for public safety and welfare by the City;

f. Such notice shall state that, if the nuisance is not adequately and properly abated as required in the notice, the City shall enter on the property, abate the nuisance, and the owner shall be liable for the costs of the City to abate the nuisance. It shall also contain the right to appeal described in section 7-2-8.

2. In instances in which it is determined that an imminent danger exists that poses an immediate threat to the safety of the public such that thirty (30) days to abate the nuisance would pose an unreasonable risk to the public, the notice shall state, in addition to what is required above, such shorter time period in which the nuisance must be abated to eliminate the immediate risk to the public, and the right to appeal the determination of imminent danger, which may be after the required abatement, in which case the appeal shall only address the issue of imminent danger and whether the owner shall be responsible for the cost of abatement if the abatement is undertaken by the City.

D. Removal and Expense:

1. In the event any person owning the land upon which such a nuisance described in section A (1) of this section exists refuses to cure the condition within the time frame contained in the notice after given, and no appeal is sought in writing, then the City, its agents or contractors, may take any steps necessary to remove the tree, or otherwise take those actions necessary to abate the nuisance and such removal or abatement shall be at the expense of the property owner.

2. In the event any person owning the land upon which such a nuisance described in section A (2) of this section exists refuses to cure the condition after notice, or the City is unable to successfully give reasonable notice, then the City, its agents or contractors, may take any steps necessary to remove the tree, or otherwise take only those actions necessary to abate the imminent danger, unless further authorized by the property owner. Such removal or abatement shall be at the expense of the property owner.

E. Lien For Unpaid Charges: In the event that any tree removal or nuisance abatement expense incurred by the City remains unpaid for more than ten (10) days after said service is performed by the City, said unpaid charge shall constitute a lien upon the real estate, and the City is hereby authorized, in accordance with law, to file notice of lien in the office of the Recorder of Deeds or Registrar of Titles of Kane County and to foreclose this lien against the property in a civil action to recover the money due and such costs and expenses and fees as allowed by statute. Any such judgment shall be enforced in accordance with law. Upon payment of all costs, expenses, charges and penalties, the lien created under this subsection shall be released by the City, which release shall be filed of record in the same manner as filing notice of the lien, pursuant to law, the expense of said filing to be paid by the violator aforesaid.

7-2-6: INTERFERENCE WITH FORESTRY OPERATIONS OR NUISANCE ABATEMENT:

No person shall unreasonably hinder, prevent, delay, or interfere with the City or its agents while engaged in the execution or enforcement of this chapter. (Ord. 08-11, 8-4-2008)

7-2-7: VIOLATION AND PENALTY:

A. Any person who violates any provision of this chapter or who fails to comply with any notice issued pursuant to the provisions of this chapter, upon being found guilty of violation, shall be subject to a fine not to exceed seven hundred fifty dollars ($750.00) for each separate offense, each day during which any violation of the provisions of this chapter shall occur or continue shall be a separate offense.

B. If, as the result of the violation of any provision of this chapter, the injury, mutilation, or death of a tree, shrub, or other plant located on City Property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens", as published by the International Society of Arboriculture. (Ord. 08-11, 8-4-2008) and shall take into account, but not be limited by, the expenses associated with removal and planting, and time and maintenance necessary for a replacement tree to reach parity with the damaged tree

7-2-8: APPEAL:

Review of any decision rendered by the City relating to the subject matter of this chapter, other than an issue determined by Administrative Adjudication under this Code or court order may be had when requested in writing by a person claiming to have been aggrieved by such a decision. The appeal must be filed with the City within thirty (30) days from the date of the decision.This review may include interpretation and/or enforcement of the Arboricultural Specifications Manual, the City of Batavia Urban Forestry Plan, a decision that a public nuisance (other than one posing imminent danger) does or does not exist, or other matters. A decision of imminent danger may be appealed only for the purpose of determining whether the City should seek

reimbursement for any costs expended to abate such imminent danger. Such a review shall be conducted by the City Services Committee if requested. The determination of the City Services Committee shall be final, unless the issue involves expenditure by a property owner or possessor in excess of $10,000 in which case the issue may be appealed to the City Council, if requested. Nothing in this section shall be construed to limit the jurisdiction of any court of law with regard to such disputes.

CHAPTER 2
FORESTRY

7-2-1: PURPOSE AND INTENT:

A. Purpose: It is the purpose of this chapter to promote and protect the public health, safety, and general welfare by providing for the regulation of the planting, maintenance, and removal of trees, shrubs and other plants within the city.

B. Intent: It is the intent of the City that the terms of this chapter shall be construed so as to promote:

1. The planting, maintenance, restoration, and survival of desirable trees, shrubs and other plants within the city; and

2. The protection of community residents from personal injury and property damage, and the protection of Batavia from property damage, caused or threatened by the improper planting, maintenance, or removal of trees, shrubs, or other plants located within the community. (Ord. 08-11, 8-4-2008)

7-2-2: DEFINITIONS:

As used within this chapter, the following terms shall have the meanings set forth in this section:

ARBORICULTURAL SPECIFICATIONS AND STANDARDS OF PRACTICE FOR BATAVIA (Arboricultural Specifications Manual[1]): A manual prepared pursuant to this chapter containing regulations and standards for the planting, maintenance, and removal of trees, shrubs, and other plants upon City~~owned~~ Property. (Comment: Changed to be consistent with change to City Property definition)

ARBORIST: The City arborist of Batavia, Illinois. A volunteer position requiring expertise in the field of arboriculture -who acts as an outside consultant to City staff and the Tree Commission.

CITY PROPERTY: Property owned, controlled by or dedicated to the City of Batavia within the City limits of Batavia, Illinois, including rights of way and those areas commonly known as parkways.
~~City~~~~in fee simple absolute, or~~
~~B. Implied or expressly dedicated to the public for present or future use for purposes of vehicular or pedestrian traffic, including those areas commonly known as parkways.~~ Comment: Changing the definition by broadening it expanding helps reduce the number of words required later on. The change has already been made in the balance of this draft)

PROPERTY OWNER/POSSESSOR: The record owner, ~~or~~ contract purchaser lessee or occupant of any parcel of land.

TREES, SHRUBS, AND OTHER PLANTS: All vegetation, woody or otherwise, except lawn grass and flowers less than twenty four inches (24") in height.

Urban Forest: The trees and woody vegetation on City Property within the City of Batavia. Woody vegetation shall include bushes and shrubs. Comment: We will have to treat grasses in the weed section of the Code.

URBAN FORESTRY PROGRAM: A written forestry policy and program approved by the City from time to time, containing the long and short term forestry activities to be undertaken by the City. (Ord. 08-11, 8-4-2008) (Comment: Changed "annually" to "from time to time"as the program is not reviewed annually and is actually pretty consistent. There are regular reviews.

7-2-3: BATAVIA TREE COMMISSION:

A. Establishment: The Batavia Tree Commission (hereinafter "Tree Commission") is hereby established. Its functions and duties are limited to those set forth in this chapter.

B. Composition: The Batavia Tree Commission shall be composed of seven (7) commissioners. The Mayor with the approval of the City Council shall appoint four (4) commissioners. These four (4) commissioners shall serve without pay and shall reside within the City and shall not be ~~employed by the c~~City employees. The remaining three (3) commissioners shall be the Director of Public Works, the Street Superintendent and the Water/Sewer superintendent. Subject to the exceptions in subsection C of this section, each commissioner ~~appointed by the mayor~~ (Comment: redundant) shall serve for a term of four (4) years.

C. Appointment Of Members: Two (2) of the four (4) commissioners initially appointed to the Tree Commission shall serve for a term of two (2) years; two (2) of the four (4) commissioners initially appointed shall serve for a term of four (4) years. The term shall start on a common date. Determination of the length of terms of the four (4) commissioners initially appointed shall be by lot. The chairperson of the commission shall be the Public Works Director or his designee.~~Mayor shall designate the chairperson of the Tree Commission.~~ Comment: For consistency and a City employee can more easily do the administrative work. Check w Mayor.

D. Expiration or Vacation of Terms: Within thirty (30) days following the expiration of the term of any appointed commissioner, a successor shall be appointed by the Mayor with the approval of the City Council, and the successor shall serve for a term of four (4) years. Should any commissioner resign or be removed from the Tree Commission, a successor shall be appointed by the Mayor and shall serve for the unexpired period of the vacated term. A member of the Tree Commission may be removed by the Mayor with the approval of a majority of the City Council.

E. Duties: The Tree Commission shall perform the following duties:

1. ~~Within a reasonable time after the appointment of the tree commission, upon call of the chairperson of the tree commission,~~ 1. T~~t~~he ~~tree commission~~Tree Commission shall ~~meet and~~ adopt and maintain rules of procedure for regular and special meetings to fulfill the duties imposed upon it by this chapter. (Comment: This section was drafted at the initiation of the Commission and before there were rules)

2. 2. The Tree Commission shall advise and consult the City ~~Services Committee~~(Comment; expanded to acknowledge that Tree Commission can advise all parts of the City government, including staff) on any matter pertaining to the matters covered in this chapter and its enforcement. The topics under which this advice and consultation may be given may include, but are not limited to, any of the following:

a. Amendment to this chapter, and alterations or revisions to the arboricultural specifications manual, and alteration or revisions of the Urban Forestry Plan;

b. b. Policies~~y~~ concerning selection, planting, maintenance, and removal of trees, shrubs, and other plants within the City;

c. c. Allocation of funds and expenditures of funds by the City~~department of public works~~;

d. Establishment of educational and informational programs including, but not limited to, a yearly Arbor Day celebration.

e. ~~Issuance of permits required by this chapter.~~Comment: They shouldn't issue permits but we are recommeding no permits anyway.

3. ~~Review of any decision rendered by the department of public works relating to the subject matter of this chapter may be had when requested by a person claiming to have been aggrieved by such a decision. This review may relate to interpretation and/or enforcement of the arboricultural specifications manual, the urban forestry plan, the issuance of permits, or the abatement of nuisances. The results of any such review shall be reviewed by the city services committee if requested. The determination of the city services committee may be appealed to~~

~~the City Council, if requested. Nothing in this section shall be construed to limit the jurisdiction of any court of law with regard to such disputes. (Ord. 08-11, 8-4-2008)~~Comment: This entire section was redone . See following comment. A volunteer commission shouldn't be making code enforcement decisions. The Commission should be helping staff to make the tough decisions when necessary but in the end staff, representing the City, are decision makers. Including being part of a judicial process over fellow citizens may have an impact on getting volunteers for the commission. If it's an issue for adjudication then it should go there, and then to court. If not an adjudication matter, then staff decision should be appealed to City Services directly. If the Council wants it to go to CS then that should be the last step before court. More discussion of this below.

~~7-2-4: PUBLIC WORKS DEPARTMENT DUTIES:~~

Comment: Staff recommends that this section be removed from the Code It was in this model ordinance the City adopted, but now that the notion of the urban forest is common and integrated into our operation it is no longer necessary. Many of the points are internal matters and aren't policies, and don't impact the residents. Some of the duties could result in setting the City up for liability in certain situations.

~~A. Duties: The Public Works Department shall perform the following duties:~~

~~1. The Public Works Department with the assistance of the Tree Commission and Cityarborist shall develop, and each subsequent year, update the Urban Forestry Plan. The plan shall outline urban forestry program activities for a minimum of the next five (5) years. This plan shall describe the urban forestry activities to be undertaken by the city, the reasons for those activities, the possible funding source(s), the means of accomplishing the activities, the alternatives available to the City to fund or accomplish the activity, the projected date of completion, and the consequences if the activity is not completed. Activities may include, but are not limited to, street tree inventory, planting, tree removal, beautification projects, and educational projects.~~

~~2. The Public Works Department, with the assistance of the Tree Commission and City arborist shall develop and periodically review and revise, as necessary, the Arboricultural Specifications Manual. This manual shall contain regulations and standards for the planting, maintenance and removal of trees, shrubs and other plants upon Cityowned property.~~

~~3. The public works department shall cause the urban forestry plan and the arboricultural specifications manual, and all revisions and amendments to it, to be published and promulgated; and shall cause their copies of the manual, and all revisions and amendments to it, to be available for public inspection at the office of the City Clerk. The Arboricultural Specifications anual, and any revisions and additions thereto shall become effective upon the effective date of any ordinance approving the manual or revision or amendments thereto.~~

4. The Public Works Department shall make available to any interested person copies of this chapter, information about the activities of the Tree Commission, copies of the arboricultural specifications manual and copies of the Urban Forestry Plan.

5. The Public Works Department shall administer the Urban Forestry Plan, this chapter and the provisions of the arboricultural specifications manual.

6. The Public Works Department shall perform those acts deemed necessary, including the planting and maintenance of trees, the removal of undesirable trees, shrubs, and other plants, and the issuance of permits to others for work on City Property to ensure that all trees, shrubs, and other plants located on City Property conform with the Urban Forestry Plan, the Arboricultural Specifications Manual, and this chapter.

7. The Public Works Department shall issue such permits as are required by this chapter and shall obtain as a condition precedent to the issuance of such permits the written agreement of each person who applies for such permits that he or she will comply with the requirements of this chapter, the Urban Forestry Plan, and with the regulations and standards of the Arboricultural Specifications Manual. The Public Works Department shall have the right to inspect all work performed pursuant to such permits. If the Public Works Department finds that the work performed is not in compliance with the requirements of this chapter, the Urban Forestry Plan, or with the regulations or standards of the Arboricultural Specifications Manual, the Public Works Department shall provide written notice of his/her finding to the permit applicant. The notice shall contain a copy of subsection 7-2-3E3 of this chapter; and

a. The permit shall be nullified and shall be void; and

b. The public works department may issue a written order that the permit applicant cease and desist all work for which the permit was required; and

c. The permit applicant shall be subject to penalty under the terms of this chapter; and

d. the City may take steps to correct the results of the noncomplying work and the reasonable costs of such steps shall be charged to the permit applicant.

8. The Public Works Department shall establish a program of public information and education that will encourage the planting, maintenance, or removal of trees, shrubs, and other plants on private property in furtherance of the goals of the Urban Forestry Plan. (Ord. 08-11, 8-4-2008)

7-2-5: PERMITS: removeComment: The current Code allows for permits to be issued allowing people to wrork on City owmned propertyeorpty. After discussingdosicsing the facts that we would want insurance, and that we still feel we would have some liability in the case of an accirtdent, either legally or in the public's eye, we recommendbeliev that no onwe should be allowed to work on City property unless they are a City contractor, except for minor pruning, and under very unusual circumstances wghi9ch PW would handle individually. There might be

some limited work as part of right of way permits, and utilities have franchise agreements which allow some pruning.

7-2-~~5~~4: Protection for the Urban Forest Comment: My term. Be glad to have suggestions. Should it be defined?

A. ~~Scope Of Requirements:~~ No person or contractor, except the City, its contractors or entities operating under a franchise or other written agreement ~~Public Works Department or a contractor hired by the City~~~~Public Works Department~~ may perform any of the following acts on City Property:~~without first obtaining from the public works department, a permit for which no fee shall be charged. Nothing in this section shall be construed to exempt any person from the requirements of obtaining any additional permits as are required by law.~~

1. Plant ~~on city owned property~~, remove or otherwise disturb any tree, shrub, stump, or other plant located on City Property, except that this provision shall not be construed to prohibit owners or possessors of property adjacent to City Property from watering, minor pruning, or fertilizing without a permit any tree, shrub, or other plant located on such City Property;

2. Trim, prune, or remove any tree or portions thereof if such tree or portions thereof reasonably may be expected to fall on City Property and thereby to cause damage to persons or property without giving City seven (7(days notice thereof;

3. Place on City Property, either above or below ground level, a container for trees, shrubs, or other plants~~,~~ subject to Section C below;

Comment [Y1]: What about people wanting to do rain gardens which I think we will need to allow and support under certain conditions?

4. Damage, cut, tap, carve, or transplant any tree, bush or shrub, or other plant located on City Property;

5. Attach any rope, wire, nail, sign, poster, or any other manmade object to any tree, shrub, or other plant located on City Property;

6. ~~5.~~ Dig a tunnel or trench on City property related to trees or other plantings.

~~B. Issuance: Within seven (7) days of receipt of the application, the Public Works Department shall issue a permit to perform within thirty (30) days of the day of issuance any of the acts specified in subsection A of this section, and this subsection B, for which a permit is requested whenever:~~ Comment: permit language removed

~~1. Such acts would result in the abatement of a public nuisance; or~~

~~2. Such acts are not inconsistent with the development and implementation of the Urban Forestry Plan or with any regulations or standards of the arboricultural specifications manual; and whenever~~

3. ~~An application has been signed by the applicant and submitted to the Public Works Department detailing the location, number, size, and species of trees, shrubs, or other plants that will be affected by such acts, setting forth the purpose of such acts and the methods to be used, and presenting any additional information that the Public Works Department may find reasonably necessary;~~ No permits

4. ~~The applicant agrees to perform the work for which the permit is sought in accordance with the provisions of this chapter, the Urban Forestry Plan and with the regulations and standards set forth in the arboricultural specifications manual;~~Comment: redundant

5. ~~The applicant certifies that he or she has read and understands those provisions of the Urban Forestry Plan, this chapter and of the arboricultural specifications manual which are pertinent to the work for which the permit is sought; and~~ Comment: Redundant

~~6~~. ~~If the work for which a permit is issued entails the felling of any tree or part thereof, located on private property, which, as a result of such felling reasonably may be expected to fall upon City Property, and if such felling is done by one other than the owner of the property on which such felling is done, the applicant agrees to indemnify and to hold the City harmless for all damages resulting from work conducted pursuant to the permit and deposits with the City a liability insurance policy in the amount of one hundred thousand dollars ($100,000.00) per person/three hundred thousand dollars ($300,000.00) per accident for bodily injury liability and fifty thousand dollars ($50,000.00) aggregate for property damage liability, which policy shall name Batavia as an additional insured.~~

B. Comment is this where we would allow for limited activity? Rain gardens flower beds, we want people to adopt and take stewardship of the UF don't we? Nothing in this section shall preclude the establishment and maintenance of a rain garden in City parkways, under the terms and conditions contained in a right of way permit issued by the City under Title 7 (Comment: I'm thinking that Title 7 may be changed from Streets and Sidewalks to Streets Sidewalks and Parkways, and then have a section under parkways for permits relating to parkwat work, i.e thinking of rain gardens, concrete mailboxes and the like. At the moment however, the definition of Streets in the code covers parkways, so we still have control. I see some changes in Title 7 perhaps, if we really address rain gardens some day.)

C. Public Utility Companies, ~~:~~ Franchise holders, etc.: Nothing in this section shall be construed to exempt public utility companies, ~~or~~ their agents, or any entity with a franchise or other written agreement with the City ~~-~~from any of the requirements of this chapter, except as specifically described by statute or the agreement.~~-~~ (Ord. 08-11, 8-4-2008)Comment: ComCast, for example, isn't a public utility per se.

7-2-~~6~~5: ~~DISEASES AND~~ PUBLIC NUISANCES:
(Comment: This is where the discussion regarding 2 major issues takes place: 1. "public" vs "private" nuisance ~~arises~~ and our recommendation to deal with public nuisances only, being those that can impact the public or public property and 2) deleting disease except where it has

resulted in a dangerous condition. Scott Haines will discuss the fact that once the disease is discovered, it is generally too late to do anything about it, and if it gets to the point of being dangerous to City property, we would require removal. This is also subject to state law on particular diseases. These 2 areas are where Streets and Scott Haines in particular is spending an inordinate amount of time.)

A. ~~Definitions:~~ The following are hereby declared "public nuisances" under this chapter:

~~1. Any dead or dying tree, shrub, or other plant, whether located on city~~ City~~owned property or on private property;~~

~~2~~1~~. Any otherwise healthy tree, shrub, or other plant, whether located on city owned property or on private property, which harbors insects or diseases which reasonably may be expected to injure or harm any tree, shrub, or other plantSaid trees, shrubs or plants must be removed or treated in accordance with the requirements set by the State of Illinois.~~

~~;~~

~~3. 2~~1. Any tree, shrub, other plant, or portion thereof, whether located on City or private property, which by reason of location or condition constitutes a~~n~~ reasonable likelihood of ~~imminent~~ danger to the health, safety, or welfare of the general public, including those that obstruct the free passage of pedestrian or vehicular traffic on streets or sidewalks or paths and trails, or which unreasonably obstructs the view of any regulatory or traffic oriented public ~~street~~ sign on City Property.~~ include utilities?~~; (Comment: ~~Combined with below provisions~~Combined with comdtions described below, and added reference to sidewalks, paths and trails. Note the term "reasonable likelihood" as opposed to "imminent" in the following paragraph. This differentiates our rights and processes regarding our ultimate right to enter on property and abate.

2. Any tree, shrub, other plant, or portion thereof, whether located on City or private property, which by reason of location or condition constitutes imminent danger to the health, safety, or welfare of the general public, including those that obstruct the free passage of pedestrian or vehicular traffic on streets or sidewalks or paths and trails, or which unreasonably obstructs the view of any regulatory or traffic oriented public sign on City Property.

~~4. Any tree, shrub or other plant or portion thereof whether located on city~~ City~~owned property or on private property, which obstructs the free passage of pedestrian or vehicular traffic or which obstructs a street sign on city~~ City~~property;~~

~~5. Any diseased or infested tree, shrub or other plant declared a nuisance by the state of Illinois, including, without limitation, elm trees infected with Dutch elm disease (Ceratocystis ulmi) or ash trees infected with the emerald ash borer (Agrilus planipennis Fairmaire) whether located~~

on city Cityowned property or on private property must be removed in accordance with the requirements set by the state of Illinois.Comment: just relocated

a. Preventive chemical treatments of nondiseased or noninfested trees, shrubs, and other plants are acceptable. The chemicals used for treatments must be acceptable products for use on trees, shrubs, and other plants. The chemical must be used in accordance with manufacturer specifications by a licensed applicator. Comment: just relocated

b. It is the duty of the private landowner to provide documentation of the annual preventive treatments to the city Cityof Batavia street departmentDepartment. Comment: just relocated

65. Any tree, shrub or other plant or portion thereof whether located on city Cityowned property or on private property which dangerously obstructs the view as such may be determined by the director of public works pursuant to this chapter.(Comment: combined into above provision)

B. Citizen's Duty To Report: It is made the duty of any person in the City to report to the City of Batavia the existence of any diseased or infested tree of which such person has knowledge. Comment: Don't believe we have the right to impose the duty.

C. Right To Inspect: The officers, agents, servants and employees of the City have the authority to enter onto private property following a reasonable attempt to give notice to the property owner in the eventwhereon there is located a tree, shrub, plant or portion thereofplant part which is reasonably suspected to be a public nuisance. If entry to the property is refused, but there is reasonable believe that the suspected nuisance poses imminent danger to City Property or people thereon, officers, agents, servants and employees of the City may enter on the property to inspect, but only to the extent necessary to confirm whether imminent danger exists.

D. Abatement: The following are the prescribed means of abating public nuisances under this chapter:

1. Any public nuisance under this chapter which is located on City roperty shall be pruned, removed, or otherwise treated by the public works department in whatever fashion is required to cause the abatement of the nuisance within a reasonable time after its discovery.Comment: This sets us up for liability and just shouldn't be in here.

2. Any public nuisance under this chapter which is located on privately owned property shall be pruned, removed, or otherwise treated by the property owner or his/her agent in whatever fashion is required to cause the abatement of the nuisance. No property owner may be found guilty of violating this provision unless and until the following requirements of notice have been satisfied:

a. a.The Citypublic works department shall cause a written notice to be personally served or sent by certified mail to the person to whom was sent the tax bill for the general taxes for the last preceding year, or an adult resident or operator of the premises.

b. Such notice shall describe the kind of tree, shrub, or other plant or plant part, which has been declared to be a public nuisance; its location on the property; the reason for declaring it a nuisance;

c. Such notice shall describe the premises, by legal description or by common description, the premises;

d. Such notice shall state the actions that the property owner or occupant may undertake to abate the nuisance;

e. Such notice shall require the elimination of the nuisance within thirty (30) days of the date of service of the notice, or such shorter period of time as is deemed necessary for public safety and welfare by the Citypublic works department.

f. Such notice shall state that, if the nuisance is not adequately and properly abated as required in the notice, the City shall enter on the property, abate the nuisance, and the owner shall be liable for the costs of the City to abate the nuisance. It shall also contain the right to appeal described in section 7-2-8, except in instances of a determination of imminent danger.

Formatted: Indent: Left: 0.25"

D. Removal And Expense: (Comment: In this section we have differentiated in our response depending upon whether the nuisance creates an imminent danger or not.)

1. In the event any person owning the land upon which such a nuisance described in section A(1) of this section exists refuses to cure the condition remove the diseased or infested tree as described is Section 7-6-2-A(1) , or removed a tree **or that portion thereof** that creates a public nuisance as described in Section 7-6-2-A(2) (Comment: there are occasions where pruning only will abate the nuisance) within the time frame contained in the notice after given, and no appeal is sought in writing, then the City, its agents or contractors, shall the City may take any steps necessary to remove the tree, or otherwise take those actions necessary to abate the nuisance. in accordance with sState of Illinois guidelines within thirty (30) days after notice by the City (Comment: We will determine time depending on our availability. what we think is an appropriate time. to do so and such removal or abatement shall be at the expense of the property owner.

2. In the event any person owning the land upon which such a nuisance described in section A (2) of this section exists refuses to cure the condition after notice, or the City is unable to successfully give reasonable notice, then the City, its agents or contractors, may take any steps necessary to remove the tree, or otherwise take only those actions necessary to abate the imminent danger, unless further authorized by the property owner. Such removal or abatement shall be at the expense of the property owner.

E. Lien For Unpaid Charges: In the event that said tree removal or nuisance abatement expense remains unpaid for more than ten (10) days after said service is performed and expense incurred by the City, said unpaid charge shall constitute a lien upon the real estate, and the City is hereby authorized, in accordance with law, to file notice of lien in the office of the recorder of deeds or registrar of titles of Kane County~~,~~ and to foreclose this lien~~,~~ against the ~~and to sue the owner, or lessee or occupant of the real estate, or their agents,~~ in a civil action to recover the money due and such costs and expenses and fees as allowed by statute.~~for services rendered, costs recording, plus all expenses and reasonable attorney fees (Kevin, can we recover fees?) to be fixed by the court.~~ Any such judgment shall be enforced in accordance with law. ~~In addition to the charges due, the City is entitled to collect the costs of filing notice of lien, foreclosing said lien and litigation costs, together with all office and legal expense incurred in connection with the collection of the amount due.Kevin: duplicative of earlier sentence?)~~

Upon payment of all costs, expenses, charges and penalties, the lien created under this subsection ~~supra~~ shall be released by the City, which release shall be filed of record in the same manner as filing notice of the lien, pursuant to law, the expense of said filing to be paid by the violator aforesaid.

~~3. The public works department is empowered to cause the immediate abatement of any public nuisance provided that In the event the nuisance is determined by the City public works department to be an immediate threat to any person, or property, then the City shall have the right to cause the immediate abatm,ent of the nuisance following reasonable notice. (Ord. 08-11, 8-4-2008)~~

7-2-~~7~~6: INTERFERENCE WITH FORESTRY OPERATIONS OR NUISANCE ABATEMENT~~PUBLIC WORKS DEPARTMENT~~:

No person shall unreasonably hinder, prevent, delay, or interfere with the City~~public works department~~ or its agents while engaged in the execution or enforcement of this chapter. (Ord. 08-11, 8-4-2008)

7-2-~~8~~7: VIOLATION AND PENALTY:

A. Any person who violates any provision of this chapter or who fails to comply with any notice issued pursuant to the provisions of this chapter, upon being found guilty of violation, shall be subject to a fine not to exceed seven hundred fifty dollars ($750.00) for each separate offense, each day during which any violation of the provisions of this chapter shall occur or continue shall be a separate offense.

B. If, as the result of the violation of any provision of this chapter, the injury, mutilation, or death of a tree, shrub, or other plant located on City Property is caused, the cost of repair or replacement of such tree, shrub, or other plant shall be borne by the party in violation. The replacement value of trees and shrubs shall be determined in accordance with the latest revision of "A Guide To The Professional Evaluation Of Landscape Trees, Specimen Shrubs, And Evergreens", as published by the International Society of Arboriculture. (Ord. 08-11, 8-4-2008) and shall take into account, but not be limited by, the expenses associated with removal and planting, and time and maintenance necessary for a replacement tree to reach parity with the damaged tree

7-2-98: APPEAL: Comment: reworked due to removal of Tree Commission from the process

Review of any decision rendered by the City relating to the subject matter of this chapter, other than an issue determined by Administrative Adjudication under this Code, or court order may be had when requested by a person claiming to have been aggrieved by such a decision. The appeal must be filed with the City within thirty (30) days from the date of the decision.This review may include interpretation and/or enforcement of the Arboricultural Specifications Manual, the City of Batavia Urban Forestry Plan, a decision that a public nuisance (other than one posing imminent danger) does or does not exist, or other matters. A decision of imminent danger may be appealed only for the purpose of determining whether the City should seek reimbursement for any costs expended to abate such imminent danger. Such a review shall be conducted by the City Services Committee if requested. The determination of the City Services Committee shall be final, unless the issue involves expenditure by a property owner or possessor in excess of $10,000 in which case the issue may be appealed to the City Council, if requested. Nothing in this section shall be construed to limit the jurisdiction of any court of law with regard to such disputes. include (other than one posing imminent danger) (Comment: If we determine a public nuisance exists then Administrative Adjudication process would handle it. If we determined that a public nuisance does NOT exist, a resident could ask for a review under this language If so, it should go to City Services and let the Commission make a recommendation if it wants, but not have a formal due process hearing before it.? Kevin, can we get away with that? conducted of law with regard to such disputes. (Ord. 08-11, 8-4-2008) Comment to comment- we are trying to make the process a bit more palatable for the citizen and Rregardless the person could go to court for administrative review.

~~Any party who elects to dispute any action or decision by the public works~~Public Works ~~department~~Department~~, tree commission~~Tree Commission ~~or city~~ City~~services committee shall be entitled to appeal to the City~~ City~~Council for a final determination. Any appeal of the City~~ ~~City~~ END of DRAFT

CITY OF BATAVIA

DATE: **January 2, 2013**
TO: **City Services Committee**
FROM: **Bill McGrath, City Administrator**
SUBJECT: **William J Donovan Bridge Sculpture Competition Call**

The History sculpture is well on its way to completion. I have attached a few photos of it in progress. It should be completed by June 1 and perhaps celebrated at the River Street Project party in June.

We lost a year with the last one because of a combination of the call going out too late and the fact that the winning piece has a fairly long fabrication time. I would like to avoid that if possible, but that is up to you. The money ($30,000) has been budgeted as a TIF expense.

This year's theme is Science and it should bring out some interesting concepts, hopefully something kinetic but in any event, inspiring. I would like to try to get a broader marketing of the opportunity, another reason to start early.

I have attached a proposed call for your review. It utilizes the same combination of community and art expert input to aid in your determination. If the winner is a piece which is in existence, unveiling could be as early as September. If not, a to-be-constructed piece might not be ready until perhaps February of 2014. That would leave one to be obtained, that for Art in 2014.

Staff recommends that the Committee send this to the City Council for approval and issuance to the public at its January 21, 2013 meeting.

This will be on the January 8, 2013 City Services agenda. Please call with any comments or questions. Thank you.

Attachments: Draft Call for Sculpture

C: City Council, Department Heads

Call for Sculpture Proposals

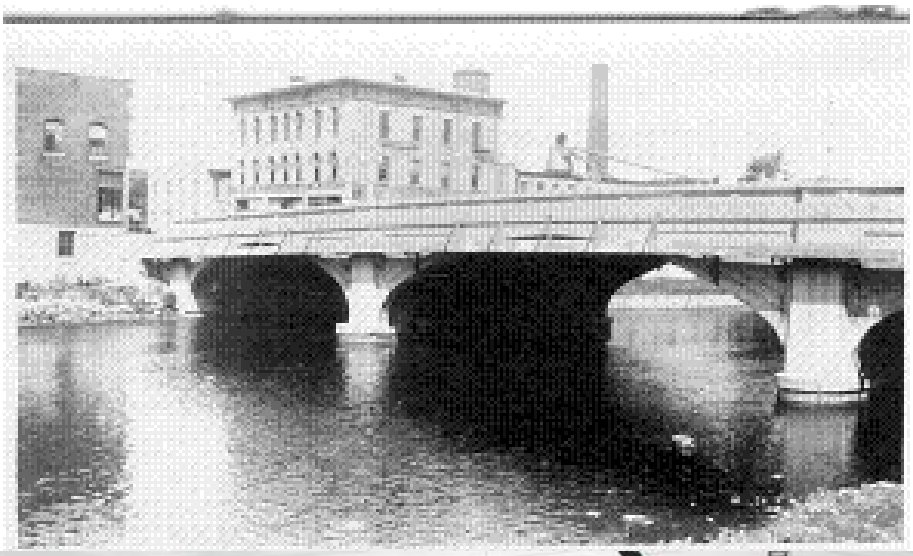
January 22, 2013

City of Batavia, Illinois

William J. Donovan Bridge Sculpture Competition

#3 ("Science")

The City of Batavia, Illinois, a community of approximately 25,000 located 40 miles west of Chicago (www.cityofbatavia.net), announces the third of 4 annual sculpture design competitions for works of public art to grace the rebuilt William J. Donovan Bridge across the Fox River in the heart of the city.



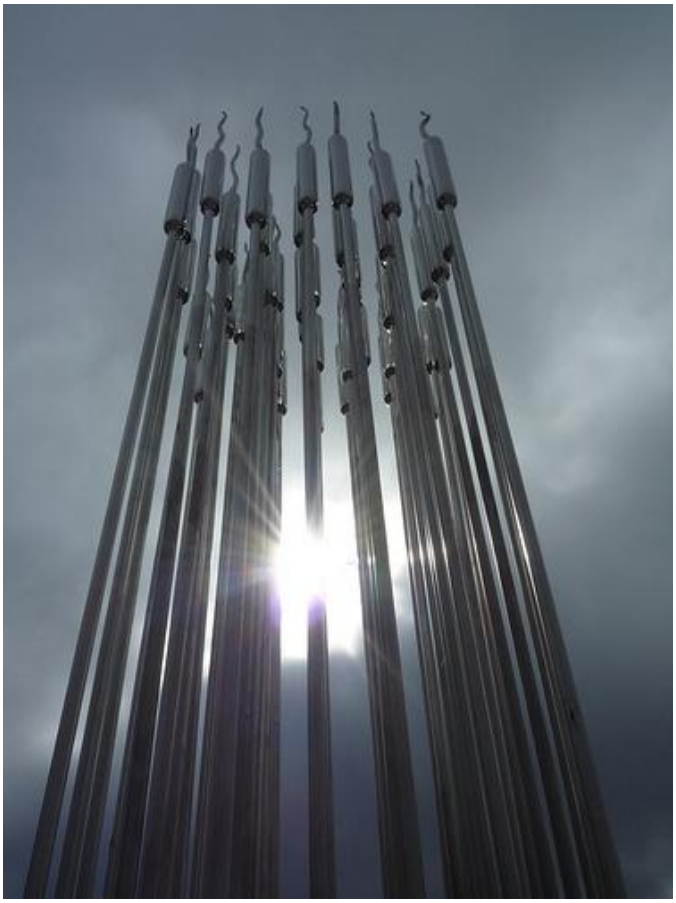
The 1911 bridge was demolished and rebuilt in 2007- 8. The new design incorporated pedestals for 4 themed sculptures to be installed on bridge overlooks. The decision was made to choose them sequentially so that the City could cast a wider net and the sculpture community could have more chances to participate.

Art and self-expression are important elements of present day life in Batavia. From its first public acquisition "Self-Made Man", to the development of a City Art Gallery, support of Water Street Studios, a 29-studio-gallery classroom community art center, sponsorship of the annual Art In Your Eye Festival, and the recent opening of the Batavia Fine Arts Center, the community supports an atmosphere conducive to expression in all forms, and welcomes submissions in support of that value.

As the most visible and important piece of public infrastructure in the City, the bridge and the associated sculptures will make a statement for current and future Batavians and others as to the importance the community places upon the sculpture themes, as well as the unique ability of art, sculpture in particular, to convey thoughts, ideals and values, to stimulate questions, and to evoke joy, wonder or mystery.

"Self-Made Man"
Bobbie Carlyle, Colorado.
(Photo by Thomas Henneman Photography, Batavia, Il)

The theme for the first competition was Nature. “Nature’s Harmony” by Kai Schulte of Sugar Grove, IL was installed on April 29, 2009. A kinetic piece, in moderate winds chiming can be heard from within. Approximately 20 artists from across the country submitted concepts.



The 2011-12 sculpture had History as its theme. 14 submittals were reviewed and “A Step Back in Time”, by Oscar Leon and Jessica LoPresti, of the Studio of Rotblatt-Amrany was selected. Currently in fabrication, it is due to be unveiled in June of 2013.

“A Step Back in Time” will be composed of a base of solid glass and stone representing the natural elements, a Pottawatomie Indian representing some of the first residents of this area, and working windmills reflecting Batavia’s reputation as the Windmill City, when it was the site of 6 windmill manufacturing concerns and was among the largest producers of windmills in the world.

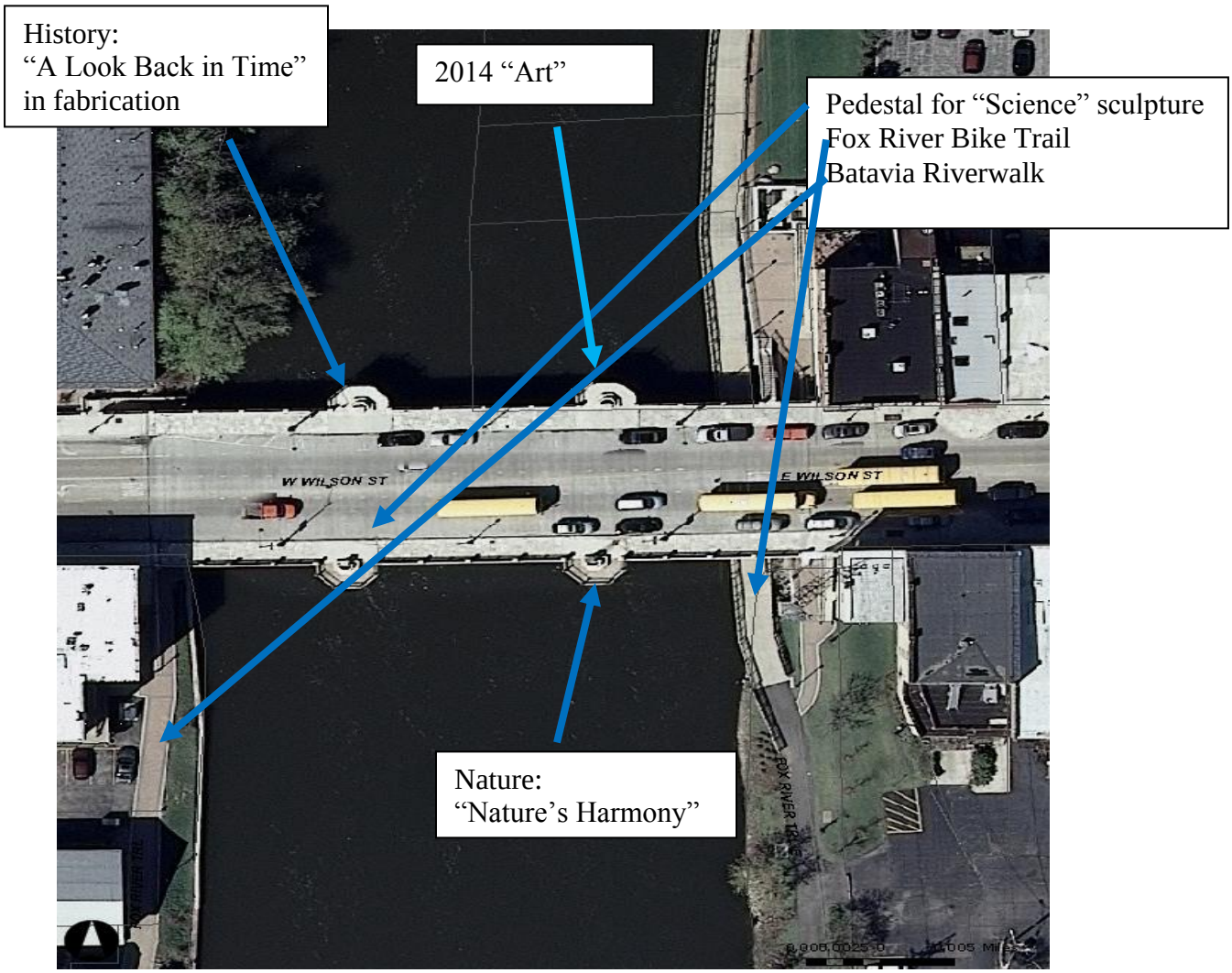
Progress photos:

The 2013 Sculpture: "Science"

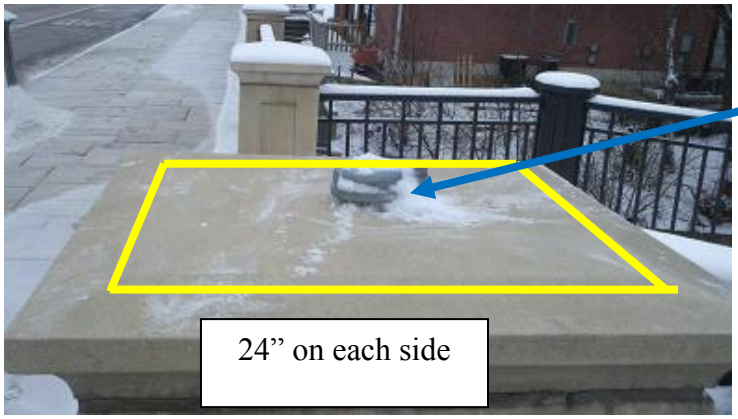
Theme: The theme of this sculpture is Science. The Sculpture should make an affirmative statement of the importance of Science to man, and can also reference the Batavia community in particular. The piece need not be realistic, and can reflect general expressions regarding man's quest to understand his physical surroundings with concepts such as entropy, acceleration, gravity, particles, or relativity. It can also draw upon specific elements related to science linked to Batavia including the science behind its history of manufacturing as well as the profound accomplishments made at Fermi National Accelerator Laboratory on our eastern border, which would resonate with the community in a strong way. The City would like a design which is thematically accessible to its residents and visitors, yet which artistically interprets the relationship man has with science. Resources are the Batavia Depot Museum and Gustafson Research Center (http://www.bataviaparks.org/park27.htm), the Batavia Historical Society (http://www.bataviahistoricalsociety.org/main_index.htm), the City web site (http://www.cityofbatavia.net/Content/templates/?a=679), the Batavia Public Library (http://www.bataviapubliclibrary.org/catalog.aspx) and the Fermi site (http://www.fnal.gov).

Location of Sculpture: The sculpture will be located on the pedestal on the Southwest bridge overlook, as depicted in this and following photos. The work should be designed for viewing by both people passing in vehicles and by pedestrians passing by, not only from Wilson Street, but from sections of the Fox River Bike Trail and Batavia Riverwalk that pass immediately below the bridge. Wilson Street itself carries approximately 20,000 vehicles per day and is the main thoroughfare of the city.

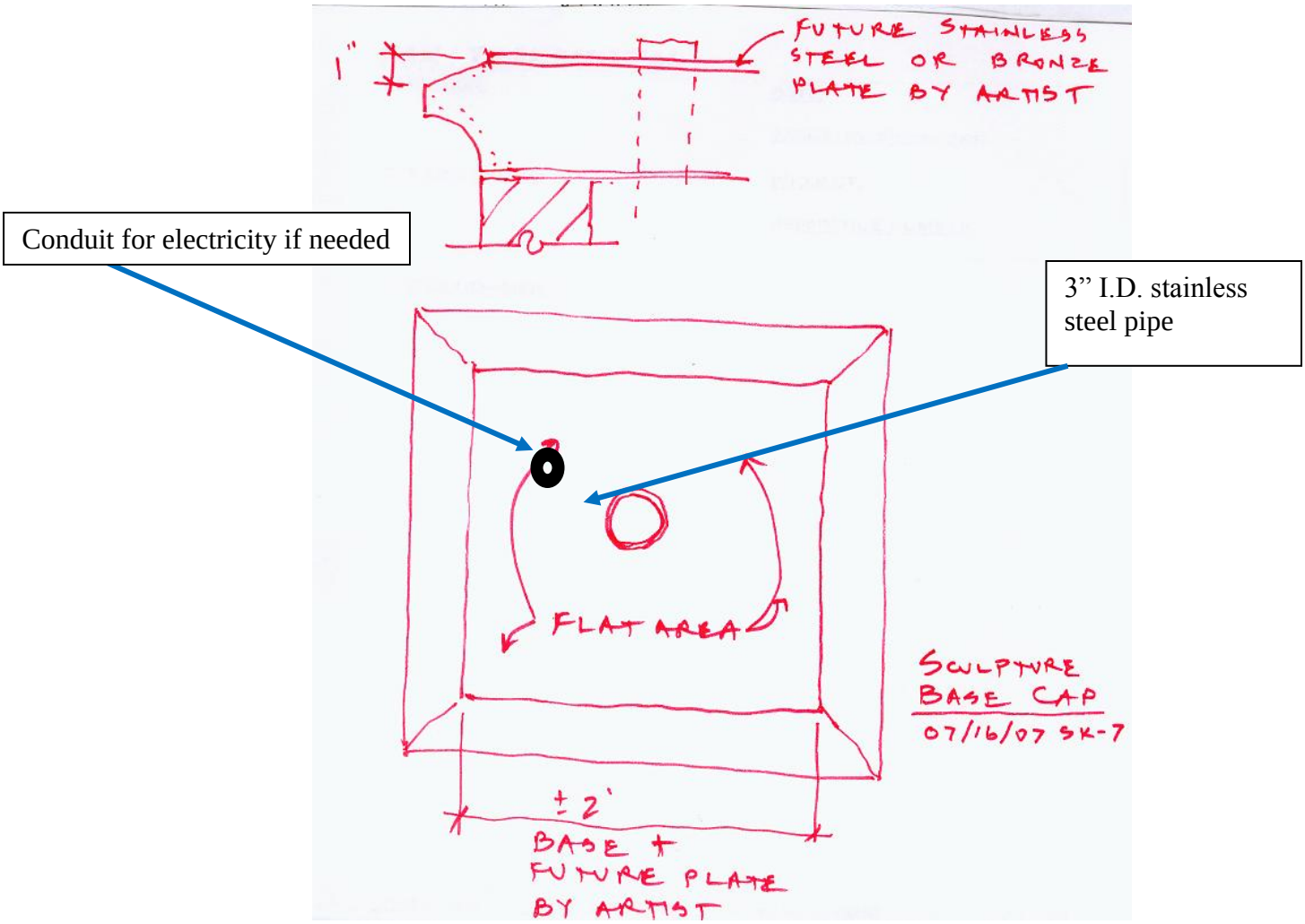
Here's another view:



Project Specifications: The sculpture is to sit/stand on a limestone pedestal, 4'-4" in height, and integrated into a seating/planting structure. The size of the <u>flat area</u> of the pedestal top is 24" x 24". (See photos below). The piece should be approximately 8 ft high with a maximum width of 4 ft. Small appendages outside that limit may be allowed. Kinetic sculptures are encouraged so long as artist understands that the pedestals are approximately 15 feet from traffic and that therefore, sudden movements may create a driving hazard, and that the base of the sculpture is certainly within arm's reach. Lighting which flashes or moves as an integral part of a kinetic sculpture will not be allowed for this very reason. We would prefer that any kinetic piece be powered by wind and/or integrated solar, though electricity may actually be available through a conduit already at the top of the pedestal. The piece should be designed to last at least 50 years without special attendance.


3” ID stainless, threaded pipe
24” on each side

The sculpture will be connected to the pedestal by means of an existing 3” I.D. stainless steel sleeve connector and bolts (see connection detail below). Depending on the piece, the City will allow a plate to be installed as was done with “Harmony”.



Who may submit Proposals: Open to artists 21 year of age or older residing within the United States of America.

Important Note: Work done as class projects will not be considered.

Awards:
First Prize: Commission and Award of $30,000 for the <u>completed and installed</u> sculpture. The award distribution will be negotiated in the contract, but is contemplated to be 1/4 upon commission award and contract execution, 2, 1/4 progress payments at agreed upon benchmarks (approval for foundry, etc.), and 1/4 upon installation. We can be flexible in working with foundries, etc.

Considerations in addition to thematic strength:

- Sculptures must withstand severe outdoor winter weather including sub-zero temperatures, intense heat and sunlight, high humidity, as well as intermittent high winds across the bridge (Kinetic sculptors take note).
- Materials used should be low maintenance with excellent sustainability (50 years).
- Delivery, site preparation, assembly, and installation costs are the artist's responsibilities.
- Either existing works or newly created works will be considered, as long as they are reflective of the theme. Existing works must not be currently installed within 50 miles of Batavia, and the artist must sign a statement to the effect that other replicas will not be installed within 50 miles of Batavia with the Artist's consent.

- The final work(s) will be chosen on the artwork's own merit. However, consideration will be given to the artist's background and demonstrated ability to complete the project on time and within budget.

All proposals are to include:

1. **Proposal Cover Sheet (attached)**

2. **Artist's Resume**

3. **Artist's General Statement.**

4. **The submitted design**

    a. **If Submission is a Piece Not Yet Constructed.** The artist is required to submit a 1-2 page written description (double spaced/legible) of the work, including the artist's concept of how the piece reflects Science, and enough simple drawings of the concept to give an accurate visual impression of the finished work. Drawings/ description should include basic dimensions and proposed materials. Include any special details relating to the exterior installation which you think are relevant.

    b. **If Proposing an Existing Piece**: The artist is required to submit a 1-2 page written description (double spaced/legible) of the work, including the artist's concept of how the piece reflects Science. Multiple images showing all possible views and description of materials should be submitted. Kinetic works should include images of all visual effects. Artist should furnish a list of locations where the piece is currently installed/exhibited, and the number of pieces if a series, and note differences, if any.

5. **Artist's Past Work** The proposals should be accompanied by between 8-15 images of recent work (within the past five years) on a CD or DVD (**Slides are not allowed!)** Please make sure that your submission materials are clearly labeled with your name and phone number on each page submitted. All images should have accompanying descriptions or explanatory notes, including artist's name, project titles, media, year, size (height x width x depth) and weight.

6. Each Proposal submitted must be complete with its own set of forms and discs. **Incomplete Proposals will not be considered.**

7. **No email submissions will be accepted.**

8. All material will become property of the City of Batavia and will only be returned if special arrangements are (1) made at the time of submission; and (2) confirmed by the City of Batavia.

The selection process: All Proposals will be viewed and considered by a jury of art professionals. Following review of proposals, and a public "open house" for the community, five (5) to ten (10) candidates will be asked (by the City Council in consultation with the judges) to provide a maquette/scale model within 45 days that will provide an accurate depiction of the work. Each candidate will be provided a stipend of $250 toward material costs within 10 business days after receipt of maquette/model submission. The maquette/model of the winning piece will become property of the City of Batavia. A second Open House for the community will be held, and the City Council, again in consultation with the judges shall make a final award. Artists selected will be required to sign a contract with the City of Batavia for this project. The contract will include terms that allow the City the non-

exclusive right to feature images of the piece on its web site, note cards, calendars, t-shirts or other promotional materials so long as credit is given the artist. The contract will also allow the City and artist to negotiate for additional rights to use the image for miniature copies. The contract will specifically prohibit the City from making full-size physical copies of the piece.

Please see the attached timeline.

Questions about the project: Any questions about project process must be submitted before August 15, 2011 by email to bmcgrath@cityofbatavia.net. We will not respond to individual inquiries but will post them on our website at www.cityofbatavia.net/bridgesculpture by August 16, 2011.

PROJECT TIMELINE

- January 22, 2013- Call for submittals issued
- March 1, 2013(Fri.) Last day for process questions regarding the project
- March 6, 2013(Wed.) All Q & A's posted on the City website www.cityofbatavia.net/bridgesculpture
- May 6, 2013 5 p.m. Deadline for receipt of concept s/proposals
- May 13 – June 3, 2013, Public Exhibition of Concepts, Solicitation of Comments, Jury review
- June 3, 2013 (Mon.) Selection of Finalists by City Council
- Monday August 5, 2013(Mon.) Final date for acceptance of models
- August 7 – Sept. 2 - Exhibition of models and solicitation of comments, Jury review, inquiries of artists
- September 2, 2013 CC Meeting (Tues.) - City Council Announcement of Commission
- September 3, 2013- February, 2014 – Contract, Fabrication (if necessary), Installation
- Dedication

Proposals and related materials should be sent to or dropped off at:

City of Batavia
Donovan Bridge Sculpture Competition
100 N. Island Ave.
Batavia, Il 60510

CITY OF BATAVIA

DATE: **December 27, 2012**
TO: **City Services Committee**
FROM: **Scott A. Haines, Street Superintendent**
SUBJECT: **Refuse and Recycling Program**

It's that time again to discuss the City's refuse and recycling contract, which expires June 30, 2013. Our intention is to seek bids to find the most reasonable cost for this service without sacrificing quality and efficiency. Staff has started discussions with the cities of Geneva and St. Charles with the goal of combining our programs together into one larger project that we hope will provide a very competitive cost. This was done when we worked with Geneva in the spring of 2012 to bid our mosquito programs. In essence, the two very similar programs were bid out together using the same basic contract language but allowing each city the ability to manage its program independently. At this point, we are proposing a similar concept to discuss at committee, along with specific program options for our refuse and recycling contract. We don't intend to change the management of each city's contract but rather put together a joint program that should produce more buying power and ideally reduce costs for our residents.

The industry has been moving in the direction of all toter programs so operators don't have to get out of the collection trucks or just use toter lifting devices. This trend has created a safer environment for the operator which, in turn, reduces injuries. It is generally the most efficient and cost-effective method. This type of program reduces the cost for the average user but increases the cost for those who produce less than the average amount of refuse, i.e., senior citizens and sole occupants. With that said, it would be very difficult to make significant changes to our program that would require all residents to use a refuse toter. Oswego recently went to a program where residents can put out unlimited refuse cans (per the specifications) for a flat fee per month collected through the city bill. Residents can also rent any size toter from the vendor for $2 per month, and all residents were provided with recycle toters. With this program there is a single-family rate, as well as a senior rate that is $3.45 less than single-family rates. Oswego residents are also allowed one bulk item per week at no additional cost, and yard waste is only $1 per bag or bundle. These are very low costs when compared to our program.

Other issues to consider going forward are that our current vendor has experienced some counterfeiting of stickers, and we've had residents express concerns about stickers being stolen. Unless the sticker is put out just before it's collected, residents are vulnerable to having their stickers stolen.

Our current program details are as follows:

- Refuse sticker
- Half refuse bag

- Yard waste sticker and bag
- 35-gallon refuse toter
- 65-gallon refuse toter
- 95-gallon refuse toter
- 65-gallon recycling toter (optional rental)
- White goods (appliances) – 1 sticker
- Large items (furniture/mattresses) – 1 sticker
- Included in the contract at no cost to the city: collect refuse/recycling from all city dumpsters, provide dumpsters and toters for festivals, empty all downtown/streetscape refuse/recycling containers, and pick up Christmas trees.

Current use of our program:

In general, the percentages change significantly depending on the neighborhood. Newer areas tend to favor the toter options, while older areas seem to be split or favor the sticker option. The sticker usage in all areas varies between 1-2 stickers. The recycle bin usage averages from 1.5-2.3 with most using two or more.

The information from the survey does not overwhelmingly suggest significant changes to the refuse collection program although modifications to the recycling portion seem to be warranted. With the lowest average area at 1.5 bins (27 gallons), to the highest average are at 2.3 bins (41 gallons), it's time to explore our options to require recycling toters. This would provide all homeowners with one recycle toter from 35 gallons to 95 gallons, depending on a resident's usage. Our goal with the recycle toters will promote more recycling and keep our streets cleaner on collection days, especially when it's windy. In each of the areas surveyed, there were a number of homes that did not have refuse or recycling. Perhaps these homes only use the program every other week, are vacant homes, or homeowners take it elsewhere.

E. Wilson St. (26 homes)		
No refuse or recycling (6)	23%	
Recycle and no refuse (0)	0%	
Half bag (1 user)	4%	
Sticker option (10 users)	38%	Ave. 1.6 sticker/user
Refuse toter option (9 users)	35%	(7) 95-gal. & (2) 65-gal.
Notes: Ave. recycle bins used per household (1.64) and 2 recycle toter users		

Hamlet & Church Streets (34 homes)		
No refuse or recycling (2)	6%	
Recycle and no refuse (4)	11%	
Half bag (0)	0%	
Sticker option (20 users)	59%	Ave. 1.5 sticker/user
Refuse toter option (8 users)	24%	(4) 95-gal. & (4) 65-gal.
Notes: Ave. recycle bins used per household (1.5) and 1 recycle toter user		

S. Raddant Rd. (23 homes)		
No refuse or recycling (2)	9%	
Recycle and no refuse (3)	13%	
Half bag (0)	0%	
Sticker option (12 users)	52%	Ave. 1.1 sticker/user
Refuse toter option (6 users)	26%	(3) 95-gal. & (3) 65-gal.
Notes: Ave. recycle bins used per household (2.2) and 0 recycle toters users		

Davey Farm (46 homes)		
No refuse or recycling (2)	4%	
Recycle and no refuse (7)	15%	
Half bag (0)	0%	
Sticker option (16 users)	35%	Ave. 1.3 sticker/user
Refuse toter option (21 users)	46%	(16) 95-gal. & (5) 65-gal.
Notes: Ave. recycle bins used per household (2) and 12 recycle toters users		

McKee St. (36 homes)		
No refuse or recycling (6)	17%	
Recycle and no refuse (4)	11%	
Half bag (0)	0%	
Sticker option (19 users)	53%	Ave. 1.2 sticker/user
Refuse toter option (7 users)	19%	(2) 95-gal. & (5) 65-gal.
Notes: Ave. recycle bins used per household (1.7) and 2 recycle toters users		

S. Jefferson St. (45 homes)		
No refuse or recycling (8)	18%	
Recycle and no refuse (11)	24%	
Half bag (0)	0%	
Sticker option (11 users)	24%	Ave. 1 sticker/user
Refuse toter option (15 users)	34%	(10) 95-gal. & (3) 65-gal. & (2) 35-gal.
Notes: Ave. recycle bin used per household (2.1) and 6 recycle toters users; refuse with no recycle (3)		

Lockwood Ln. & Ct. (38 homes)		
No refuse or recycling (5)	13%	
Recycle and no refuse (5)	13%	
Half bag (0)	0%	
Sticker option (22 users)	58%	Ave. 1 sticker/user
Refuse toter option (6 users)	16%	(4) 95-gal. & (1) 65-gal. & (1) 35-gal.
Notes: Ave. recycle bin used per household (2) and 1 recycle toters users		

Bradford & Landfield (34 homes)		
No refuse or recycling (2)	6%	
Recycle and no refuse (5)	15%	
Half bag (0)	0%	
Sticker option (14 users)	41%	Ave. 1.2 sticker/user
Refuse toter option (13 users)	38%	(8) 95-gal. & (4) 65-gal. & (1) 35-gal.
Notes: Ave. recycle bin used per household (2.1) and 2 recycle toters users; refuse with no recycle (2)		

Trout Farm (30 homes)		
No refuse or recycling (5)	17%	
Recycle and no refuse (1)	3%	
Half bag (0)	0%	
Sticker option (12 users)	40%	Ave. 1.3 sticker/user
Refuse toter option (12 users)	40%	(9) 95-gal. & (2) 65-gal. & (1) 35-gal.
Notes: Ave. recycle bin used per household (2.3) and 5 recycle toters users; refuse with no recycle (1)		

Weaver Landing (34 homes)		
No refuse or recycling (2)	6%	
Recycle and no refuse (3)	9%	
Half bag (0)	0%	
Sticker option (10 users)	29%	Ave. 1 sticker/user
Refuse toter option (19 users)	56%	(10) 95-gal. & (8) 65-gal. & (1) 35-gal.
Notes: Ave. recycle bin used per household (2.1) and 3 recycle toters users		

Bird Ln. (33 homes)		
No refuse or recycling (8)	24%	
Recycle and no refuse (3)	9%	
Half bag (0)	0%	
Sticker option (1 users)	3%	Ave. 2 sticker/user
Refuse toter option (21 users)	64%	(16) 95-gal. & (5) 65-gal. & (0) 35-gal.
Notes: Ave. recycle bin used per household (2.3) and 10 recycle toters users; refuse with no recycle (1)		

Joint program options to be discussed:

- Joint program with one contract. This would merge all three programs into one program requiring Intergovernmental Agreements, and each city would have an identical program.
- Bid the programs out together using different sets of details for each city, and use the same general contract documents much like our mosquito program.
- Bid out our program completely independent from the other two cities.

Specific program details that need to be discussed:

- Sticker or no sticker?
- All refuse and recycling toters? Recycle toters must be free for the program.
- Should the program use both stickers and toters as is currently done?
- Mandatory free recycling toters to help keep our streets clean. Need to get rid of recycle bins.
- If we put together a joint program, are the current dates critical to retain or can they be changed to accommodate the joint program, assuming there is a cost savings?
- Should the program allow for a large bulk item to be disposed of each week at no cost?
- Extending yard waste collection through December. Is it possible to provide free leaf bags to residents who miss leaf collection or have trees which drop leaves late?

Staff Recommendation:

- Authorize staff to continue working with the cities of Geneva and St. Charles on a joint bidding process for the refuse and recycling program.
- Staff would like to continue the discussion of specific program details at a future committee meeting.

Recommended Committee Action:

- Authorize staff to continue working with the cities of Geneva and St. Charles on a joint bidding process for the refuse and recycling program.

CITY OF BATAVIA

DATE: January 2, 2013
TO: Mayor and City Council
FROM: Scott A. Haines, Street Superintendent
SUBJECT: 2013 New Sidewalk Program and Five-Year Projected New Sidewalk Installation Program

Summary

Again this year we are proposing to continue our efforts to improve the walkability of our community. The primary goals of the New Sidewalk Program are to connect neighborhoods, provide safe walking routes to schools and parks, and fill gaps in existing sidewalks. Below is the proposed list of locations to be installed in 2013. Attached is a draft of the Five-Year Projected New Sidewalk Installation Program. The City continues to work with the School District to establish walking routes for all schools. Once the walking routes are completed, some of the proposed locations in the Five-Year Projected New Sidewalk Installation Program may need to be reprioritized. We've added two new locations that were not on the five-year list last year, Carlisle Rd. (Batavia Ave. to Jefferson St.) and Van Nortwick Ave. (Wilson St. to McKee St.). There have been some local residents expressing interest in each of these locations. They have been added to the 2017 list but can be moved up if the committee desires.

The attached map shows the "Proposed 2013 New Sidewalk Program" locations in blue, along with "Approved Safe Routes to School" locations in yellow, and "Proposed Safe Routes to School" that are awaiting approval. The green lines on the map represent existing sidewalks and the red lines indicate that sidewalks do not exist. One of the Spring St. locations (Washington to Van Buren) has been included in a CDBG application. If the grant is approved, staff will return to the committee at a later date with an alternate location. This approval will also allow staff to begin the process of residential notification.

Proposed 2013 New Sidewalk Program Locations:

Branford Ave.	West Side	Wilson to Cleveland	640 L.F.
Cleveland Ave.	North Side	Branford to Cottonwood	130 L.F.
Hamlet St.	East Side	Franklin to Spring	150 L.F.
Spring St.	South Side	College to Hamlet	340 L.F.
College St.	West Side	Spring north to existing	100 L.F.
Spring St.	South Side	Washington to Van Buren	350 L.F.
Larkspur Ln.	West Side	Chillem to Giese	600 L.F.

Alternatives

a. Review and approve the proposed 2013 New Sidewalk locations so the program can be combined with the 2013 Sidewalk Replacement Program for increased cost efficiencies. With this option, construction would likely occur by mid-summer.

b. Defer approval of the 2013 New Sidewalk Program until the committee has more time to review and approve the Five-Year Projected New Sidewalk Program. Construction of this year's program would be completed by the fall.

Staff Recommendation
Staff recommends approval of the proposed 2013 New Sidewalk Program

Recommended Committee Action
Authorize staff to go out for bids on the 2013 New Sidewalk Program

c: Bill McGrath
Gary Holm
Heidi Wetzel
Roman Seckel

CITY OF BATAVIA

DATE: January 3, 2013
TO: City Services Committee
FROM: Randy Deicke, Fire Chief
SUBJECT: Resolution 13-03-R, Amendment to the Tri-Com Intergovernmental Agreement

Resolution 13-03 is an amendment to the TriCom Intergovernmental Agreement. The amendment changes the fee structure for both the charter members (Batavia, Geneva, and St.Charles) and all contractual members such as Elburn Fire and Police. The reason for the change was to make TriCom a more financially feasible option for other departments that may be looking at new dispatching options and to open the doors to possible cost savings through consolidation. Currently, TriCom requires each contract Department to pay for the cost of one dispatcher plus benefits, regardless of the size of the Department. The charter members then pay the rest with each department paying a proportion based upon their call volume. Such an arrangement makes it financially difficult for small departments to consider TriCom and not in TriCom's interest to take on larger departments that should be paying more.

The reason for bringing the change now is that three new departments (North Aurora FPD, Sugar Grove FPD, and Sugar Grove PD) expressed interest in being contractual members of TriCom. The Executive Director of TriCom evaluated the potential costs and savings of taking on the additional departments. She has determined that TriCom has the capacity and technology to take on the additional departments and that such a consolidation would save money for all members involved if the fee structure could be revised. The additional capital from the new departments would not only help reduce the contributions from the existing members but also help increase staffing and dispatching capability.

The new fee structure assesses a base fee to each Department of 1% of the operating budget. The remaining costs are divided among the departments based upon call volume. The projected savings to Batavia of changing the fee structure and bringing on the three additional departments would be about $12,000 a year. The Amendment has been reviewed by the TriCom Board of Directors, the TriCom Attorney, and the City Administrators and Attorneys for the Batavia, Geneva and St.Charles. The TriCom Board of Directors feels that the new fee structure is a more equitable and fair structure that benefits all parties, and has voted to recommend to each City Council the passage of this amendment to the TriCom Intergovernmental Agreement.

Please present Resolution 13-03R for approval at the January 8, 2013 City Services Committee meeting, and then bring it to the City Council on January 22, 2013 to approve this amendment to the TriCom Intergovernmental Agreement. For further information, questions, please feel free to contact me.

RD/cjc

cc: Jeffery D. Schielke, Mayor
City Council
William McGrath, City Administrator
Jason Bajor, Assistant City Administrator
Heidi Wetzel, City Clerk
Peggy Colby, Finance Director

Attachment: Resolution 13-03-R

CITY OF BATAVIA, ILLINOIS
RESOLUTION 13-03-R

AUTHORIZING THE AMENDED INTERGOVERNMENTAL AGREEMENT WITH TRI-COM CENTRAL DISPATCH AGENCY

WHEREAS, the City of Batavia and the Tri-Com Central Dispatch Agency have previously entered into a certain Intergovernmental Agreement, which Agreement stated that the Tri-Com Central Dispatch Agency would provide dispatch services to the City of Batavia Fire and Police Departments in exchange for payment; and

WHEREAS, representatives of the City and the Tri-Com Central Dispatch Agency have reached an Agreement with respect to the terms and conditions of an Amendment to the Intergovernmental Agreement for the provision by the Tri-Com Central Dispatch Agency to provide dispatch services to the City of Batavia; and

WHEREAS, the terms and conditions of the Amendment are fair and equitable, and it is in the best interests of the City that the Amendment to Intergovernmental Agreement be approved and executed;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

> **SECTION 1.** The Mayor and City Clerk are authorized to execute the Amendment to the Intergovernmental Agreement for Dispatch Service to the City of Batavia Fire and Police Department, a copy of which is attached hereto as EXHIBIT "1."

PRESENTED to and **PASSED** by the City Council of the City of Batavia, Illinois, this _____ day of _____, 2013.

APPROVED by me as Mayor of said City of Batavia, Illinois, this _____ day of _____, 2013.

_____
Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Sparks				
2	Dietz					Wolff				
3	Jungels					Chanzit				
4	Volk					Stark				
5	Frydendall					Thelin Atac				
6	Liva					Clark				
7	Tenuta					Brown				
Mayor Schielke										

VOTE: Ayes 0 Nays 0 Absent Abstention(s)
Total holding office: Mayor and 14 aldermen

ATTEST:

_____
Heidi Wetzel, City Clerk

Exhibit 1 to Resolution 13-03-R

FIFTH AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT
[TRICOM CENTRAL DISPATCH]

City of St. Charles, City of Geneva, and City of Batavia, Illinois

THIS FIFTH AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT (this "Amendment"), is made and entered into this ____day of _____, 2013, by and between the CITY OF ST. CHARLES, DuPage and Kane Counties, Illinois ("St. Charles"), the CITY OF GENEVA, Kane County, Illinois ("Geneva") and CITY OF BATAVIA, Kane County, Illinois ("Batavia"). St. Charles, Geneva and Batavia sometimes hereafter referred to, collectively, as "Original Members".

WITNESSETH:

WHEREAS, St. Charles, Geneva and Batavia entered into an Intergovernmental Agreement relating to a cooperative arrangement to provide communications services for police, fire, ambulance and other emergency functions (the arrangement or agency commonly referred to as "TriCom Dispatch" or "TriCom") within each municipality on June 7, 1976 (hereinafter referred to as "Agreement"); and

WHEREAS, the Agreement was subsequently amended 1979, 1985, and 1986; and

WHEREAS, the Original Members find that it is in their respective best interests to amend the Agreement, as heretofore amended; and

WHEREAS, the Original Members are "units of local government" as defined by Article VII, Section 1, of the Constitution of the State of Illinois of 1970, and Geneva is "non-home rule unit(s)" and St. Charles and Batavia are "home rule unit(s)", as defined by the Constitution of the State of Illinois of 1970; and,

WHEREAS, units of local government are enabled by Article VII, Section 10 of the Constitution of the State of Illinois of 1970 to enter into agreements among themselves to obtain or share services and to exercise, combine or transfer any power or function in any manner not prohibited by law or ordinance; and,

WHEREAS, the Original Members desire to modify the Agreement, as amended, as to (1) the manner in which the expenses of operating are allocated between the Original Members and any other

unit of local government receiving contract communication service from TriCom and (2) the manner of authorizing contracts for communication service to other units of local government ("contract service communication members"; and

WHEREAS, St. Charles, Geneva and Batavia have authorized, by ordinance, the execution of this Amendment as an exercise of their intergovernmental cooperation authority under the Constitution of the State of Illinois, and the Intergovernmental Cooperation Act.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises hereinafter contained, the adequacy and sufficiency of which the parties hereto stipulate St. Charles, Geneva and Batavia agree as follows:

Section 1. Incorporation of Recitals. The recitals set forth hereinabove are incorporated herein by reference as substantive provisions of this Amendment.

Section 2. Amendment to Paragraph 2 (Purpose) of the Agreement.

Paragraph 2 of the Agreement is hereby deleted and the following provisions are substituted therefor:

"2. Purpose. The purpose of this Agreement is to unite the parties in a cooperative arrangement to provide communications services for police, fire, ambulance and other emergency functions within St. Charles, Geneva and Batavia, as well as other units of local government which TRICOM, as hereinafter defined, through its Board of Directors may contract for rendering communication services (contract communications service member). In no event shall any contract communications service member become a party to this Agreement without first complying with the terms and conditions set forth at Paragraph 14 (Additional Parties). Contract communication service members shall have no voting rights on the Board of Directors (as defined below) or entitlement to any capital investments of TriCom, but shall be permitted to attend open meetings of the Board of Directors."

<u>Section 3</u>. <u>Amendment to Paragraph 10 (Finances) of the Agreement.</u> Paragraph 10 (Finances) of the Agreement is hereby deleted and the following provisions are substituted therefor:

"10. Finances. St. Charles, Geneva and Batavia as well as contract communication service members (as defined at Paragraph 19 below) each shall pay to Geneva, on behalf of TriCom, an annual sum as and for the service fee for communication services provided by Tri-Com (Annual Service Fee). The Annual Service Fee shall be paid to Geneva in the name of TriCom in equal quarter annual installments by the tenth day of the month following receipt of an invoice from TriCom. The Annual Service Fee is based on the sum of the Base Fee and the Usage Fee. The Base Fee is One (1%) percent of the annual day-to-day operating budget for Tri-Com. The purpose of the Base Fee is to allocate among all Original Members and contract communication service members expenses of TriCom. The Usage Fee is a member's proportionate share of the remaining balance of the annual day-to-day operating budget (reduced by total Base Fees and non-Usage Fee revenues) based upon the number of Call for Service received from a member's corporate jurisdiction for the prior fiscal year. A Call for Service is a telephonic alarm dispatch request or emergency responder request received by TriCom Central Dispatch from a location within (or for a location within) the corporate boundaries of a member (Original Member or contract communication service member). The proportionate share of a member for a fiscal year shall be determined by dividing the total number of Calls for Service originating from a member by the total number of Calls for Service received by TriCom . For illustration purposes only, assume that Tri-Com's annual day-to-day operating budget for year 2012 is

$2,500,000 and Tri-Com received 182,500 Calls for Service in year 2011 and Municipality "X" generated 63,875 Calls for Service. The Annual Service Fee for Municipality "X" would be calculated as follows:

Base Fee (1% of $2,500,000) = $25,000.00

Usage Fee (63,875/182,500 = 35% x $2,325,000*= $813,750.00

Annual Service Fee ($25,000.00 +$813,750): $838,750.00

***Net day-to-day Operating Budget after Base Fee and non-Usage Fee Reductions**

Geneva shall keep accurate records of the cost of operating TriCom, which records shall be available at Geneva's municipal offices for inspection by a duly authorized agent or employee of an Original Member or contract communication service member during regular business hours. The operating expenses shall include a reasonable sum for Geneva's administrative expenses. Geneva shall invoice the Original Members and contract communications service members for their respective shares of the Annual Service Fee quarter annually. Invoices shall be paid within thirty (30) days from receipt thereof. The financial records of Tri-Com shall be audited annually by an auditor selected by the City of Geneva and the cost of audit shall be a cost of operating Tri-Com."

<u>Section 4. Amendment to Paragraph 14 (Additional Parties) of the Agreement.</u> The following language is hereby added to Paragraph 14 of the Agreement:

"The Board of Directors may enter into contract communications service contracts with units of local government, whether or not contiguous to the corporate boundaries of

any Original Member. All new members as well as contract communications service members shall be required to, prior to the effective date of commencing service with TriCom, pay to TriCom a proportionate share of the minimum operating reserves of TriCom and any expenses related to the conversion of service to TriCom. The new member's proportionate share of the minimum operating reserves shall be calculated by multiplying one-fourth (25%) of the current year's day-to-day operating budget of TriCom ("minimum 3-month operating reserve") by the anticipated call volume percentage of the new member. The anticipated call volume, which is the number of 9-1-1 calls received, shall be determined by using the new member's call volume for the prior calendar year. The new member's call volume shall be interpolated into an estimated percentage of TriCom call volume. For illustration purposes only, assume TriCom's current day-to-day operating budget is $2,500,000 and the new member's prior year's call volume would have constituted 1.2% of TriCom's entire call volume for the prior year, the new member's contribution to the operating reserve would be $7,500. ($2,500,000 x .25 = $625,000 x .012 = $7,500) for its one-time, nonrefundable contribution to the financial operating reserves of TriCom."

Section 5. Binding Effect. This Agreement shall be binding upon and shall apply only to the legal relationship between St. Charles, Geneva and Batavia. Nothing herein shall be used or construed to affect, support, bind or invalidate any claims of any Original Member insofar as such claims shall affect any entity, which is not a party to this Amendment or the Agreement, as modified.

Section 6. Amendment. No Original Member shall directly or indirectly seek any modification of this Amendment or the Agreement, as amended, through court action and the Agreement, as heretofore and herein amended, shall remain in full force and effect until amended or changed in writing by the mutual agreement of the Original Members .

Section 7. Partial Invalidity. If any provision of this Amendment shall be declared invalid for any reason, such invalidation shall not affect other provisions of this Amendment, which can be given effect without the invalid provisions and to this end, the provisions of this Amendment are deemed to be separable.

Section 8. Notice and Service. Any notice hereunder from either municipality hereto to the other municipality shall be in writing and shall be served by registered or certified mail, postage prepaid, return receipt requested addressed as follows:

To St. Charles:	City of St. Charles 2 E. Main Street St. Charles, IL 60174 Attn: City Administrator
To Geneva:	City of Geneva 22 South First Street Geneva IL 60134 Attn: City Administrator
To Batavia:	City of Batavia 100 N. Island Batavia, IL 60510 Attn: City Administrator

or to such persons or entities and at such address as either municipality may from time to time designate by notice to the other municipality. Notice shall be deemed received on the third business day following deposit in the U.S. Mail in accordance with this Section.

Section 9. Illinois Law. This Agreement shall be construed in accordance with the laws of the State of Illinois.

Section 10. Execution of Agreement, Recordation and Counterparts. Each municipality shall authorize the execution of this Agreement by an ordinance duly passed and approved. This Amendment may be executed by the parties in counterparts.

Section 11. Effective Date. The effective date ("Effective Date") of this Amendment shall be date the last party executes the Amendment.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date first above written.

CITY OF ST. CHARLES, an Illinois municipal corporation

By: _____
Mayor

ATTEST:

_____
City Clerk

CITY OF GENEVA, an Illinois municipal corporation

By: _____
Mayor

ATTEST:

_____
City Clerk

CITY OF BATAVIA, an Illinois municipal corporation

By: _____
Mayor

ATTEST:

_____
City Clerk