

MINUTES
April 12, 2016
Committee of the Whole
City of Batavia

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

Chair Brown called the meeting to order at 7:31pm.

1. Roll Call

Members Present: Chair Brown; Ald. Russotto, Atac, Stark, Wolff, Fischer, O'Brien, Callahan, Hohmann, Mueller, Botterman, Cerone and McFadden

Members Absent: Alderman Chanzit

Also Present: Mayor Schielke; Bill McGrath, City Administrator; Kevin Drendel, City Attorney; Wendy Bednarek, Director of Human Resources; Gary Holm, Director of Public Works; Jeff Albertson, Building Commissioner; Chris Aiston, Economic Development Consultant; John Dillon, Water/Sewer Superintendent; and Jennifer Austin-Smith, Recording Secretary

2. Items to be Removed/Added/Changed

There were no items to be removed, added or changed.

3. Matters From The Public (For Items NOT on Agenda)

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

4. Resolution 16-39-R: Downtown Improvement Matching Grant for The Tea Tree, 29 N. River St (Chris Aiston 4/8/16) GS

Stark reported that Ms. Hartmann is requesting a 50/50 matching grant to assist in funding certain plumbing improvements, as required by the Kane County Health Department, as enforced through the City of Batavia building permitting process and, ultimately for occupancy at the downtown commercial building space. The estimated cost to complete the required plumbing improvements is \$19,000. Ms. Hartmann is requesting the City fund half in an amount not to exceed \$9,500.

Missy Hartman, applicant, reported that the required work to be done is a flow drain and a grease trap as required by the Kane County Health Department. In order to do so, she will have to go through limestone walls and concrete. This is required due to her selling gourmet oils. She has done a lot of the work in the building herself. She showed pictures to the Committee of the work that has been completed and images of the tables to be used. Hartman shared that the Tea Tree is a retail shop that will offer loose leaf tea, fresh spice, gourmet oil and vinegar and essential oil. The tea and spice products will be sold 'by the ounce' and in pre-packaged containers along with accessories for both. The gourmet oil and vinegar will be offered for taste test before purchase

and retail-sized bottles can either be filled on the spot or purchased already filled. The essential oils will come in many different varieties and will be complimented by their many accessories. All natural lotions, soaps, washes and candles will also be sold. This will be first store of this kind in the area. She is planning on opening in the middle of May.

Brown stated that this does meet the criteria of the Downtown Improvement Grant Program and the improvements would stay with the building itself. He is in favor of this and would support it. Callahan agreed.

Mayor Schielke shared that this building was used as a creamery and a dairy. All the farmers would bring in their milk and dairy products and the chimney in the back was used to purify liquids. The dairy got into the coffee and tea business as well and processed coffee and tea on site. He stated that this feels like the building has come full circle with the revitalization of this building.

Motion: To approve Resolution 16-39-R: Downtown Improvement Matching Grant for The Tea Tree, 29 N. River Street
Maker: Atac
Second: Hohmann
Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

5. Resolution 16-41-R: Approving Task Order #3 with Engineering Enterprises Inc. for development of a Water Works System Master Plan for an amount not-to-exceed \$136,143.00 (Gary Holm 4/7/16) PU

Holm reported in 2007 the Cross Town Water Main Project and other improvements were made. The improvements were conceived in the master plan that was made several years before that. It has been fifteen years or so since our last master plan. Maintenance has been deferred on our infrastructure because we do not know how the improvements would fit into the big picture. Holm listed infrastructure items that need to be rehabilitated or replaced such as wells and tanks. A master plan is needed so that we could move forward into the future.

The enterprise fund has some money in the reserve and we feel that it would be a good time to get answers to some of these questions so we could budget in 2017 for those projects. Engineering Enterprises Inc. (EEI) has been worked with before and the work has been very successful. Staff is recommending moving forward with EEI for task order #3 in the amount of \$136,143.00.

O'Brien noted that if we decide to abandon a well full of potable water than it is lost forever. These are big decisions that need to be made and EEI will help us to make. O'Brien stated that this is essential for the sustainability of our town. Brown asked about developing a plan to improve water quality (softened water). Holm stated that you have major infrastructure that needs to be considered and then the quality of water that needs to be considered. He stressed that staff would not be making these decisions in a vacuum. The recommendations will go to Council for decision.

O'Brien asked if there are any preliminary costs on this. Dillon stated that there are several different treatment processes that would work for Batavia but it is much too early to make cost estimates on this because we do not have a plan yet. There is money in the budget to rehab this well. The question is do we need to spend that money now. There is a cost to wells even though we don't use them. We cannot just ignore them.

Motion: To approve Resolution 16-41-R: Approving Task Order #3 with Engineering Enterprises Inc. for development of a Water Works System Master Plan for an amount not-to-exceed \$136,143.00

Maker: Wolff

Second: Cerone

Voice Vote: 13 Ayes, 0 Nays, 1 Absent

Motion carried.

CONSENT AGENDA

6. Discussion: Massage Establishments (WRM 4/8/16) CD

Callahan stated that, in light of the conversation last week, there was concern from the public about issues with massage establishments. The discussion tonight is addressing some concerns that people have on these types of businesses, not particularly the one recently approved. This is a topic that we took seriously since we changed this use from permitted to conditional. There are a lot of people that are licensed massage therapists and we do not want to make laws and rules and make it harder for those trying to do a good job. There are indicators that you look for when considering establishments that are not law abiding. The chief has been made aware and made some suggestions on ordinances that we could pass to strengthen and give the police department a better say on how to control it without being heavy handed unnecessarily. Callahan stated that he would like to hear from the public about this and he thought our legal counsel could talk about these issues. Concerns have been brought to our attention and we are paying attention to it and we are aware of it.

McGrath stated that they have asked legal counsel to draft a new ordinance and one of the issues is about the ability to make some of the new items retroactive on existing places. Staff should have something to the Committee late by April or early May.

Drendel stated that the licensing is a state activity and there is a Massage Licensing Act. The act states that the regulation and licensing of massage therapy is an exclusive power and function of the state. A home rule unit may not regulate or license a massage therapist. However, we do have zoning authority. There have been concerns and we have seen the news. There are a lot of legitimate massage therapist businesses and there are a lot of illegitimate businesses. St. Charles, North Chicago, and Algonquin have an ordinance to address illegitimate businesses so we have some examples to work with. There is a degree of regulation. We do not want to create an environment where legitimate massage therapists could not work in our town. Staff will put something together with reasonable regulations without being unduly heavy handed and hopefully prevent issues from happening.

Mayor Schielke read some of the provisions listed in the ordinance of North Chicago. Mayor Schielke asked legal counsel to take a look into the provisions to see what the City could

implement. Wolff asked if there would be the ability for us to revoke a conditional use for a massage establishment if there was illegal activity or is this something that could be added to the ordinance. Drendel stated that this would not fall into zoning but it is important to look at what we could do to regulate establishments through other means. Wolff stated that another question that we would have to answer is how to regulate this when someone does massage from their own home. He is not saying that they are doing anything wrong but it is something that we would have to answer. Stark stated that if we didn't allow massage businesses on the main streets of our downtown district this would not be of any concern. If this were along Randall Road with the other nail salons there would not be such an issue. She stated that there is a perception that we do not want massage establishments along the main streets in downtown. We need to regulate through zoning on how we want our downtown to look. McFadden stated that there are plenty of places in the downtown where a legitimate massage business could be. He has a vision of where he would like to see the downtown go with retail and entertainment options. Callahan expressed concern about having the downtown look a certain way due to our vision. He explained you want a mixture of retail, service industry, and should be decided separately than excluding types of businesses that we do not like. Stark stated that if it is not a retail tax generating establishment then it does not go onto the main street of our town. However, St. Charles did this and they had empty storefronts and then had to reverse that decision. Stark expressed concern with limiting high-end types of businesses that would want to move into our downtown. Atac noted that the lack of parking might be a prohibitive problem for attracting retail.

Chair Brown opened the floor for public comment.

Lurona Bain, Batavia resident for 13 years, has been a licensed massage therapist for twelve years. She is a member of the Massage Therapy Association and has been an educator of massage therapy for ten years. She stated that she takes massage therapy very seriously. Calling massage establishments a parlor is like calling Gaetano's a greasy spoon.

Bain gave statistics of human trafficking and sex trade in Illinois from the Human Trafficking Freedom Coalition. Bain left a copy of the statistics for the Committee. She stated that, to her knowledge, two spas have opened in the past sixteen months in Batavia. The proposed would be the third to open within a mile of each other. The two that are open have unprofessional practices such as obstructed views and ring for services. These are not practices that your average licensed massage therapists use. There are some inconsistent things with the applicant's letter such as listing the address for the massage license as a business. This is not a typical practice. The licensed professional usually has their home address on their license. When you apply for a license the home address is used because it needs to match your ID as well as the school transcripts. It has to be the same name and same address. The business in Springfield, which this business is connected to, has advertisements running on sites that professionals would never use to advertise massage therapy. The massage license became active in 2014 but the application states that the person has ten years of experience. Bain stated that ring for service is not professional. It is not the same as by appointment only. By appointment only would include unlocked doors during operating hours. She continued that this proposed businesses is being built with three rooms, as shown on the plan, and there would be staffing available to properly greet patrons. There is a big difference from massage establishments and independent therapists doing business. Establishments should be similar to other places with employees like unobstructed

windows, unlocked doors, licensed therapists and acceptable hours of operation. There is a balance that is needed here. She would like the right to practice in the state she is licensed in. She would not like to practice her health care profession in a basement or a second floor. This profession is difficult and it should not be made even more difficult. However, with certain types of spas if they are unchallenged at the City level they would know that this is the place they could set up shop. If they find that is too hard to set up shop here they will go somewhere else. She does not want them to go somewhere else, she wants them to be shut down. Until the state can step in and do something about this our hands are somewhat tied.

Bain stated that she would be happy to work with the City to help decide what we can do. Massage therapists are autonomous and do not require a prescription in order to treat like other health care professions. To make rules that would make it harder for massage therapists to earn a living and practice massage therapy is not the right way to go.

Brea Hayes addressed the Committee. She stated that she agrees with the previous comments made. Hayes stated that she comes from another side of this and that is the sexual assault and prevention side. She has been doing this type of work for fifteen years. She has a great depth of knowledge on sex trafficking and illegal and unregulated prostitution. She stated that she respects massage as a profession. Legitimate massage places have websites. They talk about the health benefits, have unobstructed views, have appointments and open doors. When you talk about the probability of some level of prostitution and human trafficking those establishments advertise on the back pages. The place in Springfield on the woman's certification and the two massage parlors in Batavia all advertise those back pages websites. Legitimate massage establishments do not advertise on those websites. We don't want to worry that there is illegal trafficking downtown. Hayes stated that she would be willing to work with the City, as a community member, to keep these illegal establishments out of Batavia.

Carmen Hampson, 12-year Batavia resident, stated that her concerns are related to the human rights violations going on with the establishment in the downtown. She stated that there are so many red flags about this establishment. She stated that there were children that she felt were being held against their will on her block. She urged the City to please check that place out and she is scared that other places will open up like that in Batavia. It is easy to spot the difference between legitimate and illegitimate businesses by looking for closed front windows and doorbells as well as advertisements on back pages. Hampson stated that she called that business today and asked for a massage, was asked if it was for her or her husband, and, when she indicated it was for herself, was told that they were closed. When she asked if she could come another day and make an appointment for herself she was told no, they were closed. Hampson stated that human trafficking is increasing. Towns are hurting for tax dollars. These types of businesses are invading strip malls all over the country. People are busier and not noticing things as much. You don't notice it until you are looking for it. Law enforcement is often struggling to keep up with other responsibilities. These businesses pay their bills, pay their taxes and are licensed. There is prejudice about prostitution. People think it is consensual, it is the oldest profession. However, this is not prostitution, they do not have a choice, they do not get paid, they do not leave the parlor. Callahan stated that other complaints have been received and has been forwarded to the police department. The police department is following up on it and it is being worked on.

Leah McCloskey addressed the Committee. She stated that she is a licensed massage therapist, certified in 2002. Licensing took effect in 2005. McCloskey stated that they tried very hard to get licensure required in Illinois because there is a stigma with their profession. She stated that they have to be finger printed and pass a test in order to get licensed. At the time she finished school, there were 770 hours of education and 100 hours of clinical education required for that licensure. She has never been asked to show her license and that upsets her because that is why these types of businesses get away with those practices. She has her licenses displayed on her wall with her home address blocked for privacy.

Drendel stated that when the state passed the Massage Therapy Act most municipalities assumed that there were no regulatory authority for them and it is all in the state's hands. That is why the police have never inquired on licensure because we do not have the authority to regulate that. It is coming around though because of the illegitimate businesses. Municipalities have enacted ordinances because of illegitimate businesses. Drendel stated that this discussion has been helpful and beneficial and will help us draft an ordinance that tackles the illegitimate business without affecting the legitimate business.

Michele Benz, Batavia resident for 14 years, stated that she is a licensed massage therapist and for us massage therapists we are all on the same page in regards to those types of parlors, not establishments. We need to work together to regulate that. People come to her with pain, not to relax. She would be happy to help the City to make those ordinances. To have something legitimate, a good massage establishment on the main drag is something to be proud of. It speaks to the diversity of what Batavia is, all-inclusive and proud of legitimate great businesses whether retail or services. She thanked the Committee for their time.

Chair Brown asked all who spoke to leave contact information with the City Administrator. McGrath stated that this discussion has been informative and he will be sending those who spoke tonight drafts of the ordinance and will invite their feedback. O'Brien stated that he hopes that we try to root it out and get rid of it immediately. We need to address this immediately if we can and asked that the police and legal counsel are proactive on that. Drendel stated that he would look into this further. Botterman asked for the Police Chief to come and address the concerns and would like to hear what we are doing about that while we are sorting out the ordinance. He would like to hear a report from the Police Department. McGrath stated that the Police Department is involved as we speak and he will have the Police Chief communicate to the but probably not in public because of law enforcement strategies. McGrath asked if the ordinance could be retroactive. Drendel stated that rather than retroactive we could pass a regulatory ordinance and require compliance within a certain period of time.

Motion: To reconsider the Conditional Use Permit for a Massage Establishment, 11 East Wilson Street, Yune Zhou, Sunshine Massage, Applicant

Maker: Callahan

Second: Fischer

Roll Call Vote: **Aye:** Brown, Russotto, Atac, Stark, Wolff, Fischer, O'Brien, Callahan, Hohmann, Mueller, Botterman, Cerone, McFadden

Nay:

13-0 Vote, 1 Absent, Motion carried.

Motion: To table discussion on Ordinance 16-16: Conditional Use Permit for a Massage Establishment, 11 East Wilson Street, Yune Zhou, Sunshine Massage, Applicant

Maker: Callahan

Second: Hohmann

Roll Call Vote: **Aye:** Brown, Russotto, Atac, Stark, Wolff, Fischer, O'Brien, Callahan, Hohmann, Mueller, Botterman, Cerone, McFadden

Nay:

13-0 Vote, 1 Absent, Motion carried.

7. Project Status – Fox River Issues CD

There was no project status at this time.

8. Other

There were no others at this time.

9. Closed Session

a. Personnel

b. Purchase and Sale of Real Property

Motion: To enter into closed session for the purpose of discussion of personnel and purchase and sale of real property

Maker: O'Brien

Second: McFadden

Voice Vote: 13 Ayes, 0 Nays, 1 Absent
Motion carried.

Closed Session began at 9:16pm and ended at 10:04pm.

10. Adjournment

There being no other business to discuss, Brown asked for a motion to adjourn the meeting at 10:04pm; Made by O'Brien; Seconded by Wolff. Motion carried.

Minutes respectfully submitted by Jennifer Austin-Smith