

**CITY OF BATAVIA**  
**MINUTES OF THE BATAVIA CITY COUNCIL**  
**August 20, 2018, at 7:30 p.m. - City Council Chambers**  
**100 N. Island Ave. Batavia, Illinois**

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. Minutes 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. Any references to discussion and /or statements are only to provide greater clarity to the public and they may not reference all, some, or any of an individual speaker's comments.

**1. MEETING CALLED TO ORDER**

The meeting was called to order by Mayor Schielke at 7:30 p.m.

**2. INVOCATION followed by PLEDGE OF ALLEGIANCE**

Mayor Schielke offered a brief invocation. Ald. Cerone led the Pledge of Allegiance.

**3. ROLL CALL**

**13 of 14 aldermen were present.**

Aldermen (by ward): Michael O'Brien (1), Scott Salvati (1), Martin Callahan (2), Alan Wolff (2), Elliot Meitzler (3), Dan Chanzit (3), Anthony Malay (4), Susan Stark (4), Lucy Thelin Atac (5), Mark Uher (5), Nicholas Cerone (6), Michael Russotto (6), Drew McFadden (7) and David Brown (7) were present. Anthony Malay (4) was absent for roll call, but joined the meeting at 8:11 pm.

Also present were BATV and members of the press, public and the following:

Administrative Assistant	Anthony Isom
City Attorney	Kevin Drendel
City Clerk	Ellen Posledni
Building Commissioner	Jeff Albertson
Director of Public Works	Gary Holm
Director of Finance	Peggy Colby
Fire Chief	Randy Deicke
Community Development Director	Scott Buening
Deputy Chief of Police	Shawn Mazza

**4. ITEMS REMOVED/ADDED/CHANGED**

None.

## 5. CONSENT AGENDA

Ald. Atac read the Consent Agenda as follows:

### Accept and Place on File

- A. Committee of the Whole Minutes from July 10 and 17m, August 7, 2018
- B. July 2018 Building Reports

### Approvals:

- C. August 10, 2018 Payroll \$870,698.07
- D. Accounts Payable Check Register \$xxx
- E. City Council Minutes for August 6, 2018
- F. **RESOLUTION 18-96-R:** Authorizing Execution Of A Contract For The 2018 Patching And Seal Coating Program With Geneva Construction Co. for an amount not to exceed \$110,553.00 (CCB 8/6/18 COW 8/14/18 11/0) CS
- G. **APPROVAL:** Class G Liquor License for the 2018 “Downtown Block Party” (09/02/2018) Batavia MainStreet at 151 N. Island Ave. – Gammon Coach House, Wilson Street Tavern, River’s Edge, El Taco Grande, Pal Joey’s (Eul 8/14/18)
- H. **APPROVAL:** Class G Liquor License for the 2018 “Bulldogs Unleashed” (9/15/18) for El Taco Grande (Eul 8/14/18)

**Motion by Ald. Atac, seconded by Ald. McFadden, to approve the Consent Agenda as presented. Motion carried 13 yea/ 0 nay/ 1 absent.**

**6. PUBLIC HEARING:** 7:35 PM Special Service Area #62 for Batavia MainStreet  
The public hearing was called to order at 7:35 pm.

Community Development Director Scott Buening opened the public hearing with an explanation of the new SSA that help cover part of the funds that the city gives to Batavia MainStreet. A small amendment was added this afternoon that mandates MainStreet to provide an affidavit that it notified all of the property owners in the SSA when a levy increase is requested. If the item passes, then future action would be requested to revoke SSA #57, which expires this year.

Gene Olmstead, property owner at 221 W. Wilson St., said he feels MainStreet is admirable, but he doesn’t like the idea of property owners being forced to join an organization. He said he understands how much TIF money has been spent downtown, and he asked why TIF money couldn’t be used to cover MainStreet funding. He feels the levy should be paid by the people that use it, and perhaps money could be taken out of the TIF fund for the next couple of years to give downtown business owners a break.

Ald. Wolff asked if it’s possible to use TIF funds in this way. Director Colby said TIF funds are used for the city’s share and could be until the TIF expires.

Ald. Stark asked about wording in Section 1 regarding Home Rule and whether SSAs could be established without Home Rule. Atty. Drendel responded that SSAs are authorized by statute and the city has never deviated from that.

**Motion by Ald. Brown, seconded by Ald. Stark, to adjourn the public hearing. Motion carried 13 yea/ 0 nay/ 1 absent. The public hearing was adjourned at 7:40 pm.**

**7. PUBLIC HEARING:** 7:35 PM Special Service Area #63 for Prairie Commons Subdivision-Residential Dev

The public hearing was called to order at 7:40 pm.

Director Buening explained that both SSA #63 and #64 relate to the new Prairie Commons Subdivision and would only be activated if the homeowners' association or property owners elect not to maintain the common areas within the development. It will be on tax bills, but \$0 will be collected each year unless it needs to be activated.

There were no public comments during the hearing.

**Motion by Ald. Brown, seconded by Ald. Stark, to adjourn the public hearing. Motion carried 13 yea/ 0 nay/ 1 absent. The public hearing was adjourned at 7:42 pm.**

**8. PUBLIC HEARING:** 7:35 PM Special Service Area #64 for Prairie Commons Subdivision-Commercial Dev

The public hearing was called to order at 7:43 pm.

Director Buening reiterated the purpose for the SSA. There were no public comments during the hearing.

**Motion by Ald. Brown, seconded by Ald. Stark, to adjourn the public hearing. Motion carried 13 yea/ 0 nay/ 1 absent. The public hearing was adjourned at 7:44 pm.**

Ald. Brown noted his appreciation for the forethought put into these SSAs.

**9. MATTERS FROM THE PUBLIC: (For Items NOT on the Agenda)**

Carl Dinwiddie, 1156 Pine Street, noted that he watched last week's midterm reports and in particular, Director Colby's reports, which he said were great as usual. He said he felt TIFs were not covered completely, and he read a list of current Batavia TIFs and fund balances to the Council from a report dated June 22, 2018, from the Illinois Comptroller. He said that taken together, the TIF balance is -\$1,406,690. He read from the report that certain activities taking place to prepare for One Washington Place were funded by adjacent TIFs because there is no fund balance in TIF 5 yet. He is concerned that TIF 5 has a proposed deficit of \$16 million. He noted that Yvonne Dinwiddie has been researching TIFs since their inception, and any citizen who wants to learn more is encouraged to call their home.

Yvonne Dinwiddie, 1156 Pine Street, said she was upset that citizens were being accused of giving out false information regarding Home Rule. She proceeded to read an opinion piece on Home Rule written by Gloria Allen titled "Home Rule: Turning Citizens Into Servants." Ms. Dinwiddie shared a memo dated April 29, 2004, prepared by former City Administrator Bill McGrath that provided an analysis of the advantages and disadvantages of Home Rule. The memo include an advantage for citizens in the form of the ability to limit property taxes as well

as providing voter control over borrowing and governing. Regarding Crime Free Housing, Ms. Dinwiddie said this issue is a function of law enforcement and the only connection to Home Rule is the right to charge licensing fees. She noted that the ACLU considers Crime Free Housing as a punishment to landlords for calling the police, and she read a statement from the ACLU regarding their opposition to Crime Free Housing.

Ald. Wolff noted that one of Ms. Dinwiddie's claims was false and asked Atty. Drendel to clarify. Atty. Drendel said the Illinois Constitution, Article 7, Section 6, Subsection e, says that Home Rule unit shall have only the power that the General Assembly may provide, by law, in the following areas: to punish by imprisonment for more than six months, or to license for revenue, or to impose taxes upon or measured by income, earnings or occupation. Atty. Drendel noted that in those areas, Home Rule units have the same authority as non-Home Rule units as designated in the Constitution.

Ald. Stark asked Atty. Drendel if the Council can spend city money to encourage citizens to vote a certain way on Home Rule. Atty. Drendel confirmed that the city can't spend public funds, and public servants can't work in their public capacity, to encourage votes for or against an item on the ballot.

Ald. Stark also noted that Naperville has Crime Free Housing, which they use in all types of housing across income levels. She asked at what point it becomes discriminatory. Atty. Drendel said he couldn't offer an opinion on that but said statistics and analyses have likely been done to establish whether Crime Free Housing has a negative effect on certain people. Ald. Stark said if the law applies to any building with at least six units, it is being applied equally in terms of the law. Atty. Drendel agreed.

Ald. Callahan noted that Home Rule was added to the Illinois Constitution decades ago, and he finds that calling it an "abuse of power" is misguided. The citizens of Illinois voted to add the language to the Constitution 48 years ago, and it has never been repealed.

## **10. MAINSTREET**

Chris Faber, the new director of Batavia MainStreet, introduced himself to the Council. He has served two terms on the North Aurora Village Board, is a former president of the Batavia Chamber of Commerce, has served on the boards of several non-profits, and has a business in digital communications and public relations.

He noted that he spoke with Ald. Salvati last Friday to discuss the SSA #62 and the amendment regarding adding language around notifying business owners of any increase. He is supportive of this change to the language.

Mr. Faber announced that Cocktails in the Park raised more than \$18,000 and had more than 500 attendees. He thanked Boyce Body Works and Gerald Subaru for their sponsorship, and thanked the more than 50 volunteers who donated 900 man-hours to make the event happen.

The Batavia Dinner Table was held in early August, raising about \$10,000 for the Batavia Interfaith Food Pantry. The event had a committee of seven planners, many volunteers and took about 175 man-hours.

Sept. 2 will be the Batavia Block Party from 4 to 9 pm downtown on both sides of the river, featuring Taste of Batavia and Cruise Night. The night will feature \$3 food tastings, adult beverages, live music, a kids' zone, and the Batavia Mothers' Club Foundation pie bake-off.

Oktoberfest will be a three-day event this year, October 6 – 8, including a Family Day on Sunday and the Brat Trot 5K.

**Ald. Malay joined the meeting at 8:11 pm.**

**11. ORDINANCE 18-43:** Establishing Special Service Area 63 for Prairie Commons Subdivision – Residential Development (Rackow 8/9/18 COW-CD 8/14/18 11/0)

Ald. Brown introduced the item that was discussed during tonight's public hearing. He noted that the SSA is a backup plan that could be pursued to provide funds to maintain public areas if the homeowner's association fails to maintain the public areas in the new development.

**Motion by Ald. Brown, seconded by Ald. Stark, to approve the ordinance as presented.  
Motion carried 14 yea/ 0 nay/ 0 absent.**

**12. ORDINANCE 18-44:** Establishing Special Service Area 64 for Prairie Commons Subdivision – Commercial Development(Rackow 8/9/18 COW-CD 8/14/18 11/0)

Ald. Brown introduced the item, noting it is essentially the same concept as Ordinance 18-43, but applies to the commercial component of the development.

**Motion by Ald. Brown, seconded by Ald. Stark, to approve the ordinance as presented.  
Motion carried 14 yea/ 0 nay/ 0 absent.**

**13. ORDINANCE 18-55:** Establishing Special Service Area Number 62 for Batavia MainStreet (Buening 8/6/18 COW-CD 8/14/18 10/1)

Ald. Brown introduced the item discussed during tonight's public hearing. He noted that the City Council can stop contributing through the SSA at any time, and he said he feels the City has established a good working relationship with MainStreet to come in yearly or more often to discuss use of funds. Its financial statement is available at all times. If additional funds are requested, MainStreet would have to notify business owners of the requested increase and come before the City Council to justify the requested increase.

**Motion by Ald. Brown, seconded by Ald. Stark, to approve the ordinance as revised and submitted to the City Council before the meeting.**

Ald. Atac said she is a strong supporter of Batavia MainStreet and that the community wants to see improvements downtown. But she said that based on Economic Consultant Chris Aiston's recent report, property owners are not seeing an increase in property value, and this SSA puts an additional burden on those property owners.

Ald. Stark said she agrees with Mr. Olmstead that the city is taxing their businesses to give money to MainStreet. She said it is not voluntary like the Chamber of Commerce. MainStreet was intended to be self-funded. The city gives TIF money and has an SSA.

Ald. Callahan said he understands the points made tonight, and voting against the SSA is not voting against MainStreet. He asked if anyone knows how much value downtown businesses are receiving, and he wonders if pulling funding would actually harm business owners who are benefiting. He suggested that maybe language be added to the ordinance that says this is the last year that the SSA would automatically be renewed.

Ald. Atac said that Mr. Aiston noted that property values are not increasing downtown, and perhaps this vote should be postponed.

Ald. Callahan said some business may see other value besides property value. He said based on the current information, he was a no vote last week, but he is concerned about cutting them off immediately.

Ald. Chanzit agreed and suggested more time is needed to help MainStreet become financially independent.

Ald. Atac said this has come up before. She thinks the idea of membership is interesting. They have been assessing businesses for 10 years.

Ald. Salvati asked what the additional tax burden is. Director Colby said it is \$.28 per \$100 in property value.

Ald. Cerone said his property values are down too, so property values may not mean anything in relation to MainStreet.

Ald. O'Brien said over the years, the City has invested heavily in the downtown, and it takes a long time to see results. Businesses downtown will become successful because he believes we're on the cusp of a breakthrough downtown. The uptick may not benefit insurance companies or lawyers who are located downtown, but it can help restaurants and retailers.

Ald. McFadden said this is a worthy discussion. He believes MainStreet does a valuable service, and cutting them off tonight without a plan for how to continue would be a bad idea. He is open to continuing the conversation after tonight, though.

Ald. Uher said he agrees with Ald. O'Brien that it takes time for things to happen downtown, and that things are happening and there are fewer vacancies.

Ald. Atac said she is not advocating getting rid of MainStreet, she just isn't sure it's fair to make the property owners pay to fund it.

Ald. Stark said she likes having a more defined process, and she doesn't like the late change in the ordinance. She said business owners need to know more.

Ald. Brown said the intent was always for MainStreet to become self-funded and that funding shouldn't be cut off tonight. But communication with MainStreet is important. He suggested a survey of downtown business owners may be helpful to see if they would prefer a membership structure over the SSA. He added that if they choose membership, they may be more inclined to get involved with events. He suggested the ordinance should pass tonight, but during the budget season, continued city support could be open for discussion.

Mayor Schielke agreed that discussing during budget talks is a good idea. The City could meet with the new director and then discuss at an upcoming COW meeting.

Ald. O'Brien said he still believes the downtown is moving forward. He said business owners are benefiting, but maybe not property owners. But he believes their property values will increase in time.

Director Buening reiterated that the version of the ordinance distributed before the meeting is the most current version.

Mr. Dinwiddie said he has listened to all of the discussion and listened to last week's discussion at the COW. He said people like Mr. Olmstead and Stan Oke are institutions in town and should be listened to. He would like to see a no vote or table the item for more information.

Local property owner Mr. Marconi said MainStreet is a great organization and he is a supporter. But he noted that it doesn't help property owners, and he is not sure tenants are getting value. He said buildings are filling up because property owners are investing in their own properties, and that tenants don't even know what MainStreet is. He said the only time he hears from the organization is when they ask to use his parking lot. He said a lot of new companies are moving in, and MainStreet should be working more with them. He suggested there should be a way to get everyone working together, and he asked what MainStreet is doing for the west side. He said everyone is paying for it, so everyone should benefit.

Mr. Olmstead said he appreciated the discussion, and noted that he is not looking to abolish MainStreet. He said he saw that they could raise the rate from \$.40 to \$1.00. He said he is a founding member of MainStreet and believes it is something that downtown businesses should pay into. His biggest concern is giving them the ability to raise the rate to \$1.00.

Ald. O'Brien said he appreciated the comments.

Ald. Callahan said the question isn't, do you support MainStreet? The question is, how should it be funded? Questions need to be asked. He said he will only support the ordinance if it has a one-year expiration so that the organization can plan ahead.

Ald. Meitzler said when this was discussed months ago, he didn't like the indefinite life of the SSA, and it still bothers him. He thinks more thought needs to go into this, and will vote no as presented.

Director Buening explained that there is no term limit because it's a long process to establish an SSA. He said this can be terminated at any time.

Ald. Brown said he supports the language because it can be canceled tomorrow.

Ald. Callahan said putting an end date will let MainStreet know they need to prepare.

Ald. Brown said if they wanted to continue the SSA, they would have start all over again with a public hearing and all the work that goes into establishing an SSA.

Ald. Callahan noted that this could be a totally different City Council in a year.

Ald. O'Brien reiterated that this could be canceled at any time.

Ald. Cerone asked if Ald. Callahan's amendment passed and the Council decided to keep the SSA next year after all, would there be a cost. Director Buening said yes, it would cost several thousand dollars to create a new SSA. He suggested they could strike the sentence that automatically renews the \$40,000 levy, which would keep it open-ended.

Ald. Uher supported that idea, so MainStreet would clearly know it's not indefinite, but it will save money and time.

Ald. Russotto suggested MainStreet come to the City Council during budget talks to request a set amount.

Ald. Salvati said the intention is to make sure the City works closely with MainStreet, and they are willing to do so. The goal is to make downtown better, and the City wants MainStreet to prosper and increase property values.

Ald. Brown said the beauty of removing the sentence as Director Buening suggested is that if MainStreet doesn't like the funding level from the City, they have an incentive to go out and find more.

Ald. Chanzit reassured the new director that while the discussion has taken an ominous turn, the City plans to work closely with MainStreet and supports its efforts.

Ald. Cerone agreed and said this move will encourage conversation and may help get more property owners involved.

**Motion by Ald. Callahan, seconded by Ald. Stark, to amend the ordinance by adding a one-year sunset clause. Motion failed 3 yea/ 11 nay/ 0 absent.**

**Motion by Ald. Uher, seconded by Ald. Cerone, to amend the ordinance by striking the last sentence of Section 4, Paragraph 3. Motion carried 14 yea/ 0 nay/ 0 absent.**

**Ald. Brown's initial motion was then considered. Ordinance 18-55, as revised before the meeting and amended at the meeting, passed 14 yea/ 0 nay/ 0 absent.**

**14. RESOLUTION 18-97-R:** Authorizing Execution Of A Contract With Peak Substation Services, LLC Of Birmingham, AL For Substation Structure And Materials Package For The Northeast Distribution Substation For The Not-To-Exceed Amount Of \$107,100.00 (Bob Rogde 8/10/18 COW 8/14/18 11/0) PU

Ald. O'Brien introduced the item relating to two new structures to be built at the Northeast Substation.

**Motion by Ald. O'Brien, seconded by Ald. Stark, to approve the resolution as presented. Motion carried 14 yea/ 0 nay/ 0 absent.**

**15. RESOLUTION 18-98-R:** Authorizing Execution Of A Contract With MP Systems Of New Berlin, WI For Substation Construction Services For The Northeast Distribution Substation For The Not-To-Exceed Amount Of \$1,086,361.00 (Bob Rogde 8/10/18 COW 8/14/18 11/0) PU

Ald. O'Brien introduced the item regarding the construction project at the Northeast Substation.

**Motion by Ald. O'Brien, seconded by Ald. Stark, to approve the resolution as presented. Motion carried 14 yea/ 0 nay/ 0 absent.**

**16. RESOLUTION 18-99-R:** Authorizing Execution Of A Contract With Myers Controlled Power, LLC North Canton, OH For 38 KV And 15kV Indoor Metal-Clad Switchgear For The Northeast Distribution Substation for the Not-To-Exceed Amount Of \$1,091,231.00 (Bob Rogde 8/10/18 COW 8/14/18 11/0) PU

Ald. O'Brien introduced the item regarding the construction project at the Northeast Substation.

Ald. Brown noted how quickly the City Council passed these resolutions to spend more than \$2 million, but spent one hour discussing the \$40,000 funding of Batavia MainStreet.

Ald. Uher also noted that these funds come from utility fees, not taxes, and will extend the life of the facility and will especially benefit commercial customers.

**Motion by Ald. O'Brien, seconded by Ald. Malay, to approve the resolution as presented. Motion carried 14 yea/ 0 nay/ 0 absent.**

**17. RESOLUTION 18-94-R:** Authorizing Sale of Municipally Owned Real Estate on Danforth Drive (Buening 7/20/18 COW-CD 8/14/18 11/0) (2/3 majority vote required)

Ald. Stark introduced the item related to the sale of property that was left over from parcels previously sold by the city. A buyer has come forward for this parcel.

**Motion by Ald. Stark, seconded by Ald. Meitzler, to approve the resolution as presented.  
Motion carried 14 yea/ 0 nay/ 0 absent.**

**18. RESOLUTION 18-100-R:** A Resolution Placing a Public Question on the Ballot at the Next Election in the City of Batavia (Laura Newman 8/16/18)

Mayor Schielke noted that over the last two days, he has talked to every member of the City Council individually and suggested there be no vote on this item. He said they should put their faith in the votes of Batavia. He is concerned that residents will get confused with two competing resolutions. He asked that no motion be made to vote on it.

Ald. Chanzit said he would not make a motion on it. While the issue is of concern to him, he said he is not afraid of his neighbors, although he said the wording on the petition is menacing.

Ald. Uher asked if it is electioneering if the city sends a postcard explaining what a vote means. Atty. Drendel said the City can send out factual information and authoritative opinions, but it can't use public funds to advocate for a position.

Ald. Cerone asked if aldermen can communicate as residents of the City. Atty. Drendel said yes, although it is a delicate situation, and communication should not be done with City Alderman next to your name. He said you can't present yourself as a City Council member when discussing it.

Ms. Dinwiddie said she agreed the wording is problematic but it is statutory. Ald. Callahan said he understood the wording couldn't be changed. He lamented that we are in a place where we can't even have open conversations with each other about what things mean to us and people aren't able to just talk to each other anymore. He said they should just put the question out there and let the people have their say. He said the Council tonight had an open discussion and debate on a subject and came to a unified decision. The rhetoric around Home Rule is causing immense divide in the community.

Ald. Cerone asked for more clarity regarding electioneering. Atty. Drendel said when there is a public question on the ballot, public funds can't be used and public officials can't advocate for a position. Ald. Stark asked if they could be members of a group. Atty. Drendel wasn't sure how to answer that. Ald. Stark said she speaks as a citizen who is informed and has an opinion. Atty. Drendel said he would look into it further.

Mayor Schielke said that all Council members are in a position where citizens will be asking what their opinion is. Ald. Chanzit asked what he should say if his neighbor asks him how to vote. Atty. Drendel said he could likely say that as a citizen of the city, he will vote a certain way. Ald. Chanzit asked what his personal liability is if legal action is taken against him for electioneering. Would he have to pay his own lawyer? Atty. Drendel said he would further investigate these questions.

No motion was made on the item.

## **19. ADMINISTRATOR'S REPORT**

The City Administrator was out of town and unable to present a report.

## **20. COMMITTEE REPORTS**

Ald. Brown announced that the next Committee of the Whole meeting would be tomorrow night, August 21. The next Plan Commission meeting was cancelled. Historic Preservation is meeting August 27 at 5:30 pm.

Ald. Atac said at the COW, short-term home rentals would be discussed. Staff has been directed to begin enforcing the bed and breakfast ordinance so that short-term rental facilities will need to apply for a license with the city, meet B&B regulations and pay a 3 percent hotel tax. Scott Buening will send initial letters in a few weeks to those properties they believe will be affected. If the property is being leased for more than 30 days, it does not qualify as a B&B.

Ald. Wolff noted that at the COW, they will discuss selling surplus property: a 1955 truck.

## **21. OTHER BUSINESS**

Ald. Wolff noted that the Batavia High School football team's first game of the season is Friday night at Lemont High School.

## **22. MAYOR'S REPORT**

Mayor Schielke shared that as of the first of the year, he has attended 18 ribbon-cuttings in Batavia, and staff is in discussions with six new restaurants: three downtown and three on Randall Road. He said several City Council members from other communities have been interested in touring Batavia, and aldermen from Lockport and Dixon have visited. The mayors of Frankfurt and Rosemont are also studying downtown Batavia and are especially interested in the success of our Farmers' Market. The growth and interest in the downtown is the result of highly controversial expenditures passed by the City Council over the years. He said three members of the Chicago mayor's staff recently told him how much they enjoy riding their bikes in Batavia.

Ald. Brown said he is hearing a lot of comments about the beautiful planters and hanging baskets downtown, and said no other downtown is more beautiful than ours. He added he wished the flowers could be displayed along Rt. 31 as well.

## **23. ADJOURNMENT**

**Motion to adjourn by Ald. Brown, seconded by Ald. Salvati. Motion carried by voice vote.**

The City Council meeting adjourned at 9:29 p.m.

*Minutes prepared and submitted by Ellen Posledni, City Clerk, August 30, 2018.*