

MINUTES
August 24, 2021
Committee of the Whole – Hybrid Meeting
City of Batavia

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

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

1. Roll Call

Members Present: Chair Wolff; Ald. Miller, Russotto, Beck (online), Knopp (online), Chanzit, Solfa, Baerren (joined at 8:05pm, online), Leman, Ajazi (online), Malay (online), Cerone (online), Uher and Vogelsinger (online)

Members Absent:

Also Present: Mayor Schielke; Laura Newman, City Administrator; Gary Holm, Director of Public Works; Scott Buening, Director of Community and Economic Development; Joel Strassman, Planning and Zoning Officer; Anthony Isom, Assistant to the City Administrator (online); Shannon Jarmusz, Economic Development Manager; and Jennifer Austin-Smith, Recording Secretary (online)

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

3. Items Removed/Added/Changed

Chair Wolff announced that item thirteen would be moved to 6a. There were no objections voiced.

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

There were no matters from the public

5. Presentation: Progress Update Water Treatment Plant Rehabilitation Project

Newman reported the presentation for the update on the Water Treatment Plant Rehabilitation Project will be at a Committee of the Whole (COW) meeting in September.

6. Presentation: Batavia Bicycle Commission

In March, the Batavia Bicycle Commission presented to Council our recommendation to replace the City's 'share the road' signs due to the unclear message conveyed by the sign. Over the past several months they have been working with Public Works as to where the signs should be located. Since the last presentation, changes have been proposed to the Manual on Uniform Traffic Control Devices (MUTCD). This includes wording to bicycle signage, the updated sign would read 'bicycles allowed use of whole lane' and the Federal Highway Administration has proposed this change for consistency between message and sign type. The wording for the new

signs would be added to the MUTCD in the spring. Chair Wolff stated that he does not want to make signs and have to replace them in six months. He is in support of putting signs up but he does not want to do it twice. He would prefer to wait until we have final guidance. Cerone agreed. He continued we are all on the same page and it would not be a loss if we wait. It would be in our best interest to wait until spring to make a final decision. Miller agreed to wait until final approval.

Newman stated that the signage could be put into the budget for the number of signs needed to be ready as soon as the MUTCD adopts the signage. Leman asked for actual numbers to be shared with the Committee.

John Gamble, Chair of the Batavia Bicycle Commission, overviewed the report card for the designation of the Bronze Award for Bike Friendly Community by the League of American Bicyclists and key steps to the Silver Award. Beck asked if the Bicycle Commission could give the COW a bike tour of Batavia sometime next spring. Chair Wolff seconded Beck's request for a bike tour. Gamble stated that they would be glad to put that together.

Ald. Beck exited the meeting at 7:46pm.

7. Approval: Class D-1 (Restaurant – All Alcohol) Liquor License for Bocadito's Café Inc., Located at 11 N. Batavia Ave Unit #109, Batavia IL 60510 (DME 8/18/21) GS

Chanzit overviewed the memo.

Motion: To recommend to Council approval of Class D-1 (Restaurant – All Alcohol) Liquor License for Bocadito's Café Inc., Located at 11 N. Batavia Ave Unit #109, Batavia IL 60510

Maker: Chanzit

Second: Knopp

Roll Call Vote: **Aye:** Chanzit, Solfa, Wolff, Leman, Ajazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Knopp

Nay:

12-0 Vote, 2 Absent, Motion carried.

Alderman Beck returned to the meeting at 7:48pm.

8. Resolution 21-037-R: Awarding a Downtown Signage Program Grant Funds to Craft and Smoke, at 20 N. Island Ave (SCB 8/19/21) CD

Isom overviewed the memo.

Motion: To recommend to Council approval of Resolution 21-037-R: Awarding a Downtown Signage Program Grant Funds to Craft and Smoke, at 20 N. Island Ave

Maker: Wolff

Second: Cerone

Roll Call Vote: **Aye:** Wolff, Leman, Ayazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Knopp, Chanzit, Solfa

Nay:

13-0 Vote, 1 Absent, Motion carried.

9. Resolution 21-086-R: Approval of Downtown Improvement Grant at 15 E. Wilson St. (Ware Equity Partners, LLC) for Fire Sprinkler System (SMJ 8/24/21) CD

Jarmusz discussed the memo with the Committee.

Motion: To recommend to Council approval of Resolution 21-086-R: Approval of Downtown Improvement Grant at 15 E. Wilson St. (Ware Equity Partners, LLC) for Fire Sprinkler System

Maker: Wolff

Second: Uher

Roll Call Vote: **Aye:** Wolff, Leman, Ayazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Knopp, Chanzit, Solfa

Nay:

13-0 Vote, 1 Absent, Motion carried.

Ald. Baerren joined the meeting remotely at 8:05pm.

10. Avenue Marketplace, 1898 and 1994 McKee Street, Michael Douglas, Randall Road Resources, LLC applicant (JLS 8/19/21) CD

- a. **Ordinance 21-44: Amending the Comprehensive Plan Land Use Map to General Commercial, 1898 McKee Street**
- b. **Ordinance 21-45: Amending the Zoning Map to GC General Commercial, 1898 McKee Street and Amending/Adding Planned Development Overlay, 1898 and 1994 McKee Street**
- c. **Ordinance 21-46: Conditional Use Permit for a Drive-Through Restaurant – Starbucks, 1994 McKee Street**
- d. **Ordinance 21-47: Conditional Use Permit for a Drive-Through Restaurant – Chipotle, 1994 McKee Street**
- e. **Resolution 21-084-R: Final Plat of Subdivision for Avenue Marketplace, 1898 and 1994 McKee Street**

Strassman overviewed the memo. Newman stated that if we could solve the issue of getting the north south road all the way through it eliminates some of the left hand turn motions that would be made out of either the north side or the south side at an area that is so close to the intersection and would really be a safety improvement. Chair Wolff stated that he would like to see right hand turns. Chair Wolff stated that he and Ald. Leman met with residents and viewed the site.

Austin Dempsey, Batavia Enterprises, discussed the proposed Avenue Marketplace site plan and the off-site improvement plan with the Committee. John Green, ERA, discussed the landscape plan. He explained that the previous plan that met the City code had 22 plantings. The Plan Commission (PC) asked to add 50% more plantings along the east end and we more than doubled the amount of plantings. It will be a green living fence with year round screening. The existing berm will be needed as part of our stormwater retention facility. On average the berm is 30-36" tall and the width would be five feet tall, which allows us to stagger all of our trees. The landscape plan was shown to the Committee.

Chair Wolff opened the floor for public comment. Kevin Blanek, member of the Sierra Mills Subdivision Homeowners Association Board, addressed the COW. Our subdivision consists of 62 houses. These owners take great pride in our properties and our subdivision. The City has never dealt with an issue in our subdivision and the Homeowners Association is proactive in maintaining an attractive appearance to our common space and any areas exposed to public view. This includes lawn maintenance along McKee and Western Avenues, the pond, tree maintenance and the hedge around the City's guardrail on both Western and McKee. Our subdivision has maintained these common areas in order to preserve the attractiveness, the security and the privacy of the subdivisions properties. Our governing homeowners association guidelines strictly limit modifications, which would not comply with the harmony of the external design and/or location in relation to surrounding structures or topography. Over twenty-five years, the wooded property along the western side of the subdivision has been considered a part of this formula of the attractiveness, security and privacy of our neighborhood. This woodland has trees with an average height of over 25ft. Not one homeowner is in support of eliminating a 75ft wide forest that provides a light and sound barrier from the current traffic along Randall Road. The increase of traffic, headlights and exhaust would increase along the service road that would result in pollution of light, sound, exhaust and fast food container pollution into our neighborhood. As taxpayers, we expect that our City would work with the contractors for a solution that allows for the economic progress to move forward while balancing the protection of a quiet and vibrant subdivision that contributes to the appeal of our community. We also expect our representatives to go out of their way to ensure the preservation of our property values. There are feasible alternatives and some were addressed tonight. We met with Alderman Wolff and Leman last night and discussed options for containment into the current retention pond, stormwater mitigation techniques as have been done at Batavia High School and we also think further research into the Kane County land on Randall Road for the retention pond there should be investigated further. He believes that we would need more than 36 inches berm to protect our neighborhood. Sean Tinglegh asked if any of the existing trees would be kept in association with the proposed landscaping.

Green shared that an arborist has been there and found that a lot of it is invasive species. Unfortunately, stormwater management requirements are so strenuous for the County and City, we are required to manipulate all the earth and grades and the detention pond would be dug out five to six feet deep. We will be replanting the detention area with all native species. The berm would be replaced. The City requires 6ft tall trees and our plan has 8ft trees. We are exceeding the ordinance in tree height. We would be planting on to of a 36in berm that would allow for the staggering of the trees. Green stated they exceeded the City requirements for buffering by 3x what the code requirement is. They did that out of the feedback received by the community and residents at the public hearing.

The Committee discussed berm heights, drainage, pond detention sizing, impervious area, stormwater runoff, engineering analysis and review, parking and site ingress and egress.

Motion: To recommend to Council approval of Ordinance 21-44: Amending the Comprehensive Plan Land Use Map to General Commercial, 1898 McKee Street

Maker: Wolff

Second: Knopp

Roll Call Vote: **Aye:** Wolff, Baerren, Leman, Ayazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Knopp, Chanzit, Solfa
 Nay: None
 14-0 Vote, 0 Absent, Motion carried.

Motion: To recommend to Council approval of Ordinance 21-45: Amending the Zoning Map to GC General Commercial, 1898 McKee Street and Amending/Adding Planned Development Overlay, 1898 and 1994 McKee Street

Maker: Wolff
Second: Miller

Roll Call Vote: **Aye:** Wolff, Baerren, Leman, Ayazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Knopp, Chanzit, Solfa
 Nay: None
 14-0 Vote, 0 Absent, Motion carried.

Motion: To recommend to Council approval of Ordinance 21-46: Conditional Use Permit for a Drive-Through Restaurant – Starbucks, 1994 McKee Street

Maker: Wolff
Second: Miller

Roll Call Vote: **Aye:** Wolff, Baerren, Leman, Ayazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Knopp, Chanzit, Solfa
 Nay: None
 14-0 Vote, 0 Absent, Motion carried.

Motion: To recommend to Council approval of Ordinance 21-47: Conditional Use Permit for a Drive-Through Restaurant – Chipotle, 1994 McKee Street

Maker: Wolff
Second: Solfa

Roll Call Vote: **Aye:** Wolff, Baerren, Leman, Ayazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Knopp, Chanzit, Solfa
 Nay: None
 14-0 Vote, 0 Absent, Motion carried.

Motion: To recommend to Council approval of Resolution 21-084-R: Final Plat of Subdivision for Avenue Marketplace, 1898 and 1994 McKee Street

Maker: Wolff
Second: Knopp

Roll Call Vote: **Aye:** Wolff, Baerren, Leman, Ayazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Knopp, Chanzit, Solfa
 Nay: None
 14-0 Vote, 0 Absent, Motion carried.

Chair Wolff asked for a break at 9:29pm. The COW went on break and then returned at 9:34pm.

11. Ordinance 21-37: Amending the Batavia City Code Related to Parking Regulations, Title 3 Business and License Regulations and Title 10 Zoning Code, City of Batavia, Applicant (DR 8/20/21) CD

Rackow overviewed the memo.

Motion: To recommend to Council approval of Ordinance 21-37: Amending the Batavia City Code Related to Parking Regulations, Title 3 Business and License Regulations and Title 10 Zoning Code, City of Batavia, Applicant

Maker: Wolff

Second: Knopp

Roll Call Vote: **Aye:** Wolff, Baerren, Leman, Ayazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Knopp, Chanzit, Solfa

Nay: None

14-0 Vote, 0 Absent, Motion carried.

12. Ordinance 21-48: Proposing the Establishment of Special Service Area 56 for the Fox Valley Business Park (East of S River Street and North of Prairie Path Bike Trail) (SCB8/19/21) CD

Buening discussed the memo with the Committee.

Motion: To recommend to Council approval of Ordinance 21-48: Proposing the Establishment of Special Service Area 56 for the Fox Valley Business Park (East of S River Street and North of Prairie Path Bike Trail)

Maker: Wolff

Second: Miller

Roll Call Vote: **Aye:** Wolff, Baerren, Leman, Ayazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Knopp, Chanzit, Solfa

Nay: None

14-0 Vote, 0 Absent, Motion carried.

13. Resolution 21-087-R: Authorizing Execution of a Contract with Active Transportation Alliance and Ride Illinois for the Creation of an Active Transportation Plan for the City of Batavia, IL (LN 8/19/21) CD

This item was discussed after agenda item six. Alderman Baerren was absent.

Newman stated that this is part of our Strategic Action Plan taking into account other non-motorized forms of transportation. In 2019 the Bicycle Commission recommended that we work with Ride Illinois to update our ride plan. This was placed in the 2020 budget but then put on hold due to the pandemic. Staff would like to recommend we work both with Active Transportation Alliance and Ride Illinois. Previously we budgeted \$13,000. The Active Transportation Alliance services amount to \$19,188 and Ride Illinois services to \$5,700 for a total cost of \$24,888. The professional services part of the City Administrator's budget would be used to cover the additional charges anticipated with this plan.

Motion: To recommend to Council approval of Resolution 21-087-R: Authorizing Execution of a Contract with Active Transportation Alliance and Ride Illinois for the Creation of an Active Transportation Plan for the City of Batavia, IL

Maker: Wolff

Second: Beck

Roll Call Vote: **Aye:** Wolff, Leman, Ayazi, Malay, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Knopp, Chanzit, Solfa

Nay:

13-0 Vote, 1 Absent, Motion carried.

14. Discussion: One Washington Place Project Update

Newman stated that last Tuesday the Developer shared with us that they have not heard final word from their lender in regard to the construction loan. On Thursday we were notified that they have received a commitment from the lender for the construction loan. City Council asked that in the event that the loan was approved that City Staff work with the lender to determine the effect of the delay on the project's timeline and to come back to City Council with what the revision of that timeline would look like. Our City Attorney was asked to advise City Council on possible alternatives. Newman announced David Patzelt, Shodeen, and David Silverman, attorney, is in attendance to discuss possible alternatives City Council could take in regards to rights and obligations under the RDA.

Attorney David Silverman stated that understanding the timeline change and thus going out of compliance with certain benchmarks set in the redevelopment agreement we are presented with four options at this point. The first option is the do nothing option. He does not recommend this option. Second option is the provision in the Redevelopment Agreement (RDA) that provides that the City without cause may terminate the agreement. In order to do that the language in this agreement and in the prior agreement is the City would have to reimburse the developer for their costs. The cost clock began with the first amendment of the RDA. Because of the significance of those costs that may not be a realistic option at this point. The next possible alternative is to provide a notice to the developer of your intent to terminate the agreement. The RDA provides you can give this notice of attempt to terminate and the developer could agree and walk away or they could begin a cure process to try to catch up with the dates that have slipped. The last option is to amend the RDA once again to reset the dates to more realistic dates due to the developer's situation at this point and time.

David Patzelt, Shodeen, addressed the Committee. He shared paper copies as well as the PowerPoint presentation utilizing the shared screen of Zoom. The PowerPoint presentation titled 'One Washington Place Schedule of Dates' included the following information:

- RDA Paragraph
- Per RDA 3rd Amendment
- Per RDA 3rd Amendment with Financing
- Per RDA 3rd Amendment extended paragraph 1.04(b)
- Proposal Amendment

Patzelt stated that there is no delay to the end of the project. We don't need to amend the dates at the end to complete the project. He would suggest keeping those dates fixed and he is not asking the Committee to extend the overall length of the project. We would want to amend those dates we have missed so far.

The Committee discussed the four options presented by Attorney Silverman, amending the schedule, consequences if the conditions are not met, liquidated damages per day, the pandemic and its effect on materials, time left on the Tax Increment Financing (TIF) district, termination, and setting a proposed amendment for liquidated damages.

Malay stated that we are coming up on five years. We are talking about doing a fourth agreement now. We have a different Council. The last vote when it was seven to seven there were four council members that are no longer here. We are elected to represent the people in this town. He thinks that it is only right that we have a vote on this with the new Council because he would hate to see the largest project go forward where the majority of the Council, who represents the interest of the people, does not adhere to. He does not have confidence that this will not come back with a fifth agreement. He questioned how many red flags do we need here. The new Council has to agree with what we want. Beck agreed and questioned what kind of teeth could we put into the next deadline. She asked if we could create a termination clause if they miss the January 5th date. Newman stated that we could put in a liquidated damages provision to they could pay for the additional time to meet the deadline and if they did not want to pay and the agreement would automatically terminate at that point. Or they could pay the penalty and get the additional period of time. Newman discussed termination clause and default clause with the Committee. The termination clause applies prior to construction beginning and the default clause applies once construction begins. The termination clause is if we want to terminate for no cause than we are responsible for the developer's cost back to the first amendment. If we want to terminate for cause because they have missed a deadline prior to transfer of the development property then we provide them notice and they have the opportunity to cure within 30 days and if it takes longer than 30 days then they have to show reasonable progress towards completion.

Motion: To direct staff to create a proposed amendment to the RDA for One Washington Place with the four drop dead dates in the far right hand column of 1/5/22, 3/6/22, 4/9/22 and the second 4/9/22. If any of those things are not met there is a no cure termination clause within that. Liquidated damages to start on the completion dates listed in the green section of \$1,000 a day with those dates.

Maker: Wolff

Second: Knopp

Roll Call Vote: **Aye:** Wolff, Leman, Ayazi, Uher, Cerone, Vogelsinger, Miller, Russotto, Knopp, Baerren, Chanzit, Solfa
Nay: Beck, Malay
12-0 Vote, 2 Absent, Motion carried.

15. Project Status

Newman reported on the following:

- Houston Street will be closed for the block party and Windmill City festival. Water Street will be opened between Wilson Street and First Street.
- The virtual meeting for the alternative concepts for dam removal will be held on September 15, 2021 from 7-9pm. There will be a Plan Commission meeting that night as well. September 25, 2021 will be an in-person meeting at the Peg Bond Center.
- The Park Board will be having a special meeting to discuss the alternatives that have been proposed and they are inviting Hitchcock Design Group to that meeting. City Council has the opportunity to discuss this amongst ourselves or we could wait until we receive feedback from the public commentary. Chair Wolff stated he would like to have the meeting after public comment. Uher and Miller agreed.
- Mahoney Creek Watershed Planning Public Meeting has been planned for November 16th prior to the COW meeting. This meeting would give the public the opportunity to provide feedback.
- The roadway resurfacing is underway.
- Sidewalk gaps have been completed as much as possible between Main Street and Batavia Avenue.
- The in-house social worker who has been working at the Batavia Police Department part-time since June has had positive feedback thus far.
- August 17th Michelle Langston has been promoted to Police Sergeant.

16. Other

There were no others discussed.

17. Executive Session: Setting the Price of Land for Sale (SCB)

Due to the late hour, the Executive Session was tabled until next week's COW meeting.

18. Adjournment

There being no other business to discuss, Chair Wolff asked for a motion to adjourn the meeting at 11:35pm; Made by Knopp; Seconded by Miller. Motion carried.