

**MINUTES**  
**September 18, 2018**  
**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 7:00pm.

**1. Roll Call**

**Members Present:** Chair Brown; Ald. Russotto, Atac, Stark, Chanzit, Wolff, O'Brien, Callahan (via phone at 7:25pm), Meitzler (entered at 7:03pm), Malay (entered at 7:08pm), Cerone (entered at 7:03pm), and McFadden

**Members Absent:** Aldermen Salvati and Uher

**Also Present:** Mayor Schielke (entered at 7:02pm); Laura Newman, City Administrator; Gary Holm, Director of Public Works; Scott Buening, Director of Community Development; Jeff Albertson, Building Commissioner; Joel Strassman, Planning and Zoning Officer; and Jennifer Austin-Smith, Recording Secretary

**2. Items to be Removed/Added/Changed**

Agenda item number five was removed from tonight's discussion. Agenda item eight was moved to be discussed in agenda item number five's place to ensure a 7:35pm start time for the Public Hearing.

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

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

**4. WWTP Construction Project Monthly Update (GH 9/13/18) PU**

Jerry Ruth, Trotter and Associates, presented on the following items regarding the Waste Water Treatment Plant construction project:

- Phase 1 Rehabilitation
  - Project Highlights
- Cost
- Estimated Progress
  - 81% Completion
- Change Orders
  - 1.08%
- Scheduling
  - Liquidated damages
- Project Photos

- Bike path redirection on Shumway Avenue and Flinn Street utilizing a four foot fence

The COW discussed the project. O'Brien asked Ruth to convey the fact that the City would rather have a functional facility rather than liquidated damages to the contractor. Ruth stated that he will have a discussion on the schedule and liquidated damages tomorrow. Stark asked about the odor and when the digester operations would be scheduled. Ruth stated that the digester operations are scheduled for November and there would be a substantial difference for the better in odor next summer due to this work. Brown stated that he would like to see an Open House scheduled for the WWTP as well as a tour for the City Council members. Holm stated that the site is currently a closed site due to safety concerns but they are planning an Open House in the future and a tour could be scheduled.

\*Alderman Callahan entered the meeting by phone at 7:25pm

**5. Discussion of Debt Issuance: Home Rule/Non-Home Rule (PC)**

This agenda item was removed from the agenda.

**6. PUBLIC HEARING: 7:35pm Annexation Agreement for Property Located at 2401 Hawks Drive and 37W405 and 37W475 Fabyan Parkway and Janet Lane Right-of-Way**

The Public Hearing was opened at 7:35pm for public comment. Seeing that there were no public in the audience for comment the Committee of the Whole (COW) moved to close the public hearing at 7:36pm.

**Motion:** To close the Public Hearing  
**Maker:** Stark  
**Second:** Chanzit  
**Voice Vote:** 12 Ayes, 0 Nays, 2 Absent  
Motion carried.

**7. Windmill Landings Annexation and Development, 2401 Hawks Drive, 37W405 and 37W475 Fabyan Parkway and Jane Lane Right-of-Way, MR JNB Batavia, LLC, Applicant (J. Strassman 9/13/18) CD**

- a. **Ordinance 18-60: Authorizing the Execution of an Annexation Agreement with MR JNB Batavia, LLC et.al. for Property Located at 2401 Hawks Drive, and 37W405 and 37W475 Fabyan Parkway, and Janet Lane Right-of-Way**
- b. **Ordinance 18-61: Amending the Land Use Map of the Batavia Comprehensive Plan for Property Located at 2401 Hawks Drive and 37W405 and 37W475 Fabyan Parkway and Janet Lane Right-of-Way**
- c. **Ordinance 18-62: Annexing and Zoning Property Located at 2401 Hawks Drive and 37W405 and 37W475 Fabyan Parkway, and Janet Lane Right-of-Way**
- d. **Ordinance 18-63: Vacating Janet Lane Right-of-Way**
- e. **Ordinance 18-64: Amending the Official Zoning Map for an MU District Planned Development Overlay District for Property Located at 2401 Hawks**

**Drive and 37W405 and 37W475 Fabyan Parkway and Vacated Janet Lane Right-of-Way**

**f. Resolution 18-104-R: Approving the Final Plat of Windmill Landings Resubdivision at 2401 Hawks Drive, and 37W405 and 37W475 Fabyan Parkway, and Vacated Janet Lane Right-of-Way**

Strassman reported that MR JNB BATAVIA, LLC (JNB) has submitted a proposal to:

- Annex approximately 7.3 acres of land
- Develop a 142-unit congregate living facility called Windmill Landings) for senior assisted living (118 units) and memory care (24 units), and future potential development
- Vacate the Janet Lane right-of-way

Strassman continued that the applicant and staff began discussing annexation and development of this facility in January of 2016. The Batavia Plan Commission held the public hearing/meeting for the proposed project on July 18 and conditionally recommended approval of the Comprehensive Plan and Zoning Map changes, planned development overlay, and resubdivision. The Commission also conditionally approved design review. As is customary with annexation of land for proposed development, JNB would enter into an annexation agreement with the City to specify terms of annexation and development entitlements. Specific terms of note in the agreement include:

- City annexation of the site after JNB acquires the 2401 Hawks Drive property, which we understand is expected to take place on Thursday
- Applying the MU Mixed Use zoning district with a Planned Development District Overlay (PD) with modifications to the requirements of the Zoning Code and to be developed in accordance with the approved PD plans. The modifications are spelled out in the planned development Ordinance 18-64
- Granting variations to the Subdivision Regulations with approval of the Final Plat and not applying the school and park land-cash requirements. The variations are included in Resolution 18-104-R
- Recording of a covenant to limit unit occupancy to the lease holder and primary occupant to be a minimum of 55 years of age (with a spouse of any age), and any children of the primary occupant to be a minimum of 23 years of age, and economic or physical support providers of the primary occupant that are a minimum of 23 years of age. Other occupants allowed by Federal or State law are permissible. The covenant is Exhibit C to the Annexation Agreement
- Acknowledgement that improvements will comply with 2015 International Building Code Series that is scheduled to be adopted this winter
- Vacating Janet Lane right-of-way with annexation
- Allowing additional development on the site, including up to an additional 30 congregate care units, provided total site sanitary sewer usage does not exceed a maximum population equivalent for sanitary sewer usage of 341
- Use of the McKee Tributary/Braeburn Marsh for stormwater detention as contemplated in the HARZA study that for the establishment of this facility and JNB will not object to creation of an SSA covering properties benefitted by facility.

Strassman stated staff is supportive of this proposal and has worked extensively with JNB to receive Plan Commission recommendations and Design Review approval. JNB and staff have negotiated the terms of the annexation agreement that is an Exhibit to Ordinance 18-60 to the satisfaction of both and the agreement is now ready for Council consideration.

Ordinance 18-61 would amend the Land Use Map of the Comprehensive Plan to apply the Mixed Use land use classification on the properties, including the Janet Lane right-of-way that would be vacated.

Ordinance 18-62 would annex the site and the adjacent Janet Lane and Fabyan Parkway rights-of-way and zone the property to the MU Mixed Use District, consistent with the amended Land Use Map.

Ordinance 18-63 would vacate the Janet Lane right-of-way, as specified in the annexation agreement. Ownership of the vacated area would go to JNB being owner of all the adjacent private property.

Ordinance 18-64 would amend the Zoning Map to establish the MU District PD Overlay. The Plan Commission's recommended for approval plans would be part of the overlay and these plans are exhibits to this Ordinance. The Ordinance also enumerates the Plan Commission's recommended conditions of approval and modifications to the requirements of the Zoning Code.

Resolution 18-104-R would approve the Final Plat for the Windmill Landings Resubdivision. The subdivision proposes dedication of over a half acre to KDOT for Fabyan Parkway right-of-way to provide a continuous 85 feet to the centerline of the right-way. A 15-foot wide Highway Easement is also proposed south of the right-of-way dedication to contain the proposed bicycle path. Staff feels the Highway Easement Provisions on the plat should obligate the landowner, in this case JNB, to maintain the bicycle path. The sidewalk to the east and bike path the west are in easements and the City does not maintain either. The City should not be the entity to maintain this segment of the bicycle path. JNB has agreed to remove the Easement Provisions' indemnification language that staff identified as an issue. JNB is opposed to being the entity to maintain the bicycle path.

KDOT has reviewed the proposal and is accepting of the Fabyan Parkway dedication. KDOT will require a longer Fabyan Parkway left turn lane that can be addressed as part of final engineering with the building permit.

Strassman reported the Plan Commission noted that the proposal would allow for a quality development to provide needed elder care services in the City and for the surrounding area. The Commission was supportive of annexing the property and of the development. By votes of 5-0 the Plan Commission recommended approval:

1. to amend the Land Use Map of the Comprehensive Plan to apply the Mixed Use land use classification for the property
2. to zone the property MU Mixed Use
3. to add a Mixed Use Planned Development Overlay District, subject to conditions and modifications to the requirements of the Zoning Code as specified in Ordinance 18-64

4. of the Final Plat of Resubdivision for Windmill Landings, subject to the conditions and variations to the Subdivision Regulations as specified in Resolution 18-104-R

By 5-0 vote, the Commission approved Design Review subject to:

1. City Council approval of the proposed Comprehensive Plan and Zoning Map amendments
2. Final approval by City staff of development plans
3. Development being in substantial conformance with the planned development plans

Strassman continued that approval of all the Ordinances and the Resolution are needed for JNB to move forward with this project. Approval of the annexation agreement essentially obligates the Council to approve all the other Ordinances and Resolution. The agreement and the ordinances will be amended to reflect JNB ownership of the Hawks Drive property and may be amended per COW direction through its review tonight. The resolution to approve the plat too must be approved, and it too may be amended to accommodate a decision regarding bicycle path maintenance. The Council can decide to continue (the hearing) its review to a future date or to not approve all.

Strassman discussed the pros, cons, budget impact and staff impact with the COW as follows:

- **Pros:** Approval of would allow for annexation to close the remaining gap of unincorporated land on Hawks Drive and reduce the unincorporated gap on Fabyan Parkway. Approval also would allow the project to move forward, providing needed elder care service, adding City utility customers and potential retail customers, and adding to the City's real estate tax base. Windmill Landings would employ 90 persons when fully occupied (63 full time) and additional jobs may be created with future development of the site.
- **Cons:** Not approving the Ordinances and the Resolution would result in the property remaining in their current conditions and not subject to City of Batavia property maintenance requirements. The Janet Lane right-of-way would remain a Township road.
- **Budget Impact:** Annexation and development would add to the City's real estate tax base. Windmill Landings employees and visitors may patronize nearby business resulting in increased sales tax revenue.
- **Staff Impact:** None.

Strassman discussed the timeline for actions. JNB is requesting final Council action on the agreement at this time, with action on the other items after they acquire the property and notification of Council consideration of annexation is executed. Per State law, the City Council must take action on the Comprehensive Plan amendment no more than 90 days after the public hearing. To accomplish both, Council action on the annexation agreement and Comprehensive Plan amendment need to occur on October 1. Council action on the remaining items may take place as early as October 15. COW recommendations on all items tonight will allow for this timeline to be met.

David Smith, representing the applicant, overviewed the Windmill Landing project with the Committee and showed PowerPoint slides of the following:

- Planned Overlay aerial photo
- Landscape Plan
- Building elevations
- Materials chosen
- Windmill Landings Building Signage Elevations
- East elevation
- Rendering of the whole building
- Rendering of the building looking south
- West elevation
- Plat of Resubdivision
- Digitalized image of the fly-around of the property
- Location of possible expansion

Maintenance of the walking/bike path was discussed. Smith stated that they are willing to put in the walking/bike path and maintain it until someone takes over the maintenance east and west of their portion of the path. Whoever does maintains the path should maintain it all, whether it is the County, City or the Park District. Holm stated that he has no problem with the condition that Smith discussed and would prefer that the County or the Park District maintain the path. The COW discussed the street maintenance, sidewalks, drainage, ingress and egress. Brown asked that the sidewalks be completed on the Haines property. Buening stated that staff could look into that option.

Tracy Cass, representing the developer, noted that all the ordinances are included in the annexation agreement (exhibit e) and the vacation ordinance requires a three quarter vote of the entire City Council and that is to dedicate the road. Cass noted that he sent staff an alternate Annexation Agreement that includes the applicant acquiring the property at 2401 Hawks for their review and consideration.

**Motion:** To recommend approval of Ordinance 18-60: Authorizing the Execution of an Annexation Agreement with MR JNB Batavia, LLC et.al. for Property Located at 2401 Hawks Drive, and 37W405 and 37W475 Fabyan Parkway, and Janet Lane Right-of-Way with the Annexation Agreement amended to reflect property ownership

**Maker:** Stark

**Second:** Meitzler

**Voice Vote:** 12 Ayes, 0 Nays, 2 Absent  
Motion carried.

**Motion:** To recommend approval of Ordinance 18-61: Amending the Land Use Map of the Batavia Comprehensive Plan for Property Located at 2401 Hawks Drive and 37W405 and 37W475 Fabyan Parkway and Janet Lane Right-of-Way

**Maker:** Stark

**Second:** Brown

**Voice Vote:** 12 Ayes, 0 Nays, 2 Absent  
Motion carried.  
CONSENT AGENDA

**Motion:** To recommend approval of Ordinance 18-62: Annexing and Zoning Property Located at 2401 Hawks Drive and 37W405 and 37W475 Fabyan Parkway, and Janet Lane Right-of-Way

**Maker:** Stark

**Second:** Brown

**Voice Vote:** 12 Ayes, 0 Nays, 2 Absent  
Motion carried.

**Motion:** To recommend approval of Ordinance 18-63: Vacating Janet Lane Right-of-Way

**Maker:** Stark

**Second:** Brown

**Voice Vote:** 12 Ayes, 0 Nays, 2 Absent  
Motion carried.

**Motion:** To recommend approval of Ordinance 18-64: Amending the Official Zoning Map for an MU District Planned Development Overlay District for Property Located at 2401 Hawks Drive and 37W405 and 37W475 Fabyan Parkway and Vacated Janet Lane Right-of-Way

**Maker:** Stark

**Second:** Brown

**Voice Vote:** 12 Ayes, 0 Nays, 2 Absent  
Motion carried.

**Motion:** To recommend approval of Resolution 18-104-R: Approving the Final Plat of Windmill Landings Resubdivision at 2401 Hawks Drive, and 37W405 and 37W475 Fabyan Parkway, and Vacated Janet Lane Right-of-Way as amendment with walking/bike language to include construction and maintenance until an entity maintains the path east and west of the path

**Maker:** Stark

**Second:** Atac

**Roll Call Vote:** **Aye:** Stark, Chanzit, Wolff, Brown, O'Brien, Callahan, Meitzler, Malay, Cerone, McFadden, Russotto, Atac  
**Nay:** None  
12-0 Vote, 2 Absent, Motion carried.

### **8. Resolution 18-109-R: Ownership of the Batavia Dam (LN 9/12/18) GS**

Atac reported that at the COW meeting last Tuesday there was an attorney present who established that the City did in fact own the dam. Staff is recommending that we pass this resolution acknowledging that Batavia owns the dam.

**Motion:** To recommend approval of Resolution 18-109-R: Ownership of the Batavia Dam

**Maker:** Atac

**Second:** Stark  
**Voice Vote:** 12 Ayes, 0 Nays, 2 Absent  
Motion carried.  
CONSENT AGENDA

Holm reported on the signage and lighting project for the dam. The contractor will drill into the limestone, bracket and install the wood post. The point is to draw the public's attention to the potential hazard of the dam while keeping in mind the vistas and the views.

### **9. Project Status**

Newman reported on the discussion and consideration of Home Rule.

- A Home Rule informational meeting will be held at City Hall on October 8<sup>th</sup> at 7pm and will be filmed by BATV. There will be an opportunity to ask questions and those on the panel will be the City Administrator, Director of Finance, Chief Dan Eul and the City's Attorney Kevin Drendel.
- Factual information on Home Rule will be provided to the public.

### **10. Other**

Chair Brown stated that there is a gutter issue on the City Hall building. Newman stated that the gutters are being addressed.

Chair Brown stated that Giese Road has a dust issue that needs to be addressed. O'Brien concurred. Chair Brown suggested that some enforcement be issued and the street be swept for the residents that live there.

### **11. Executive Session: Setting the Price of Land for Sale (SCB) Purchase or Lease of Property (SCB – 2 items)**

**Motion:** To enter into Executive Session for setting the price of land for sale and the purchase or lease of property for two items  
**Maker:** O'Brien  
**Second:** Stark  
**Voice Vote:** 12 Ayes, 0 Nays, 2 Absent  
Motion carried.

The Committee entered into executive session at 8:41pm and exited at 9:12pm.

### **12. Adjournment**

There being no other business to discuss, Chair Brown asked for a motion to adjourn the meeting at 9:12pm; Made by O'Brien; Seconded by Meitzler. Motion carried.

Minutes prepared and submitted by Jennifer Austin-Smith, Recording Secretary, on September 19, 2018.