

MINUTES
May 24, 2022
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 (remote), Beck (arrived at 7:02pm), Connelly, Solfa, Baerren, Leman, Ajazi (remote), Uher, Cerone, and Vogelsinger (arrived at 7:22pm)

Members Absent: Ald. Chanzit and Malay

Also Present: Mayor Schielke; Gary Holm, Director of Public Works; Anthony Isom, Assistant to the City Administrator; Scott Buening, Director of Community and Economic Development (remote); and Jennifer Austin-Smith, Recording Secretary (remote)

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

3. Items to be Removed/Added or Changed

None.

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

Wayne and Roxanne Schuka, 300 Deerpath Road, addressed the Committee of the Whole (COW). Roxanne stated that in the fall of 2019 their property was annexed into the City. This was not something they requested or wanted. They bought their five acres in 2002 with over one hundred trees and Mill Creek running through it. During the annexation process we finally reached an agreement that we could live with; we asked for, and received, the okay to continue living according to Kane County Regulations as if we were still unincorporated. Only our address and taxes changed, not our way of life. We also asked for and received the okay for that to continue with the property and not end when we sell. That time has come and now we have come into a problem. The City Council met September 24, 2019 to discuss the annexation of our property. She stated that she addressed the Council and discussed in detail what she summarized just now. Apparently, you can only make an agreement for twenty years. She stated that she was told, and why they agreed, that whoever owns 300 Deerpath Road at the end of twenty years could come back and ask for and receive a zoning variance so that the new owners could continue with their way of life.

Roxanne read from the September 24, 2019 minutes that stated 'O'Brien asked how could we assure that the variance is available to the property after twenty years. Chair Wolff suggested keeping a record of this meeting with the minutes and the video of this meeting available on

YouTube.’ Roxanne stated that we want to sell our house this summer and we have an interested buyer, however, after reading the annexation agreement (item 10 on page three) the buyer stated the language is not very clear. He is not going to buy the property unless it is clearly stated that at the end of twenty years whoever owns the property can come back and get a variance so that they could continue to abide by Kane County regulations beyond the twenty years. She spoke with Scott Buening on this matter and he stated that he does not have the authority to write such a letter on behalf of City Council, which is why we are here tonight.

Buening stated that the agreement is for twenty years and that is binding on the Council. When we had the COW meeting in 2019 there was a lot of discussion on what would happen after that. There were a number of the Committee members said that someone could come back and request deviations from the code once the agreement expires. We could not bind a future council to that because it could not be part of the annexation request. Certainly if someone comes back after twenty years and wants to make a request for that it is up to them. Wayne stated that Buening feels that the Committee cannot write something for twenty years from now but we need to have that assurance that in twenty years what you agreed to with us is going to be in place.

The Committee discussed the annexation agreement, how amending the annexation agreement would require a Public Hearing, and by statute of State Law an agreement cannot be extended past twenty years. Buening announced that he offered to discuss this with the buyer’s attorney and see if an understanding or resolution with this matter but he understands if they don’t want us to do that. Buening continued that meeting with the buyer’s attorney would help him understand the specific concern of the buyer. Buening noted that short of an annexation agreement, there is never a guarantee on zoning.

Buening stated that if we were to change the agreement to state that the owner has the right to request a variance but not guarantee it that would take time to go through a Public Hearing process to amend the agreement and that is still the property owner’s right after the agreement expires regardless. Buening stated that we agreed as a City to enter into an annexation agreement that gave you certain guarantees that were allowed under the statute. The City was not under any obligation to do that. The property was surrounded, we could have done an involuntary annexation but we did want to negotiate in good faith with you to develop this annexation agreement to provide some relief and coverage for you with issues that you had concerns with.

Cerone stated that he would like more time to review the minutes and the recording of the meeting. Buening stated that he would email the meeting recording to the COW along with the minutes. The consensus of the Committee was to have this discussion at the upcoming COW meeting on May 31, 2022.

Solfa asked for the specific concerns the potential buyer has so that we could see how to address those concerns. Chair Wolff agreed with Solfa and asked Buening to contact legal counsel for possibilities on what we could do. Wayne stated that it is the vagueness of what is going to happen at what time. What can someone do at the end of twenty years and what are they going to be granted is what they are looking for. We need to understand what a buyer is going to be faced with twenty years from now. Solfa suggested that the property owner have the potential buyer’s lawyer discuss any concerns with Buening. Wayne stated that he would talk to the potential buyer.

Ald. Vogelsinger entered the meeting at 7:22pm

5. Presentation: Progress update Water Treatment Plant

Emily Conti and Stephen Dennison, PE presented a PowerPoint presentation regarding the progress update on the Water Treatment Plant. The presentation included the following information:

- Proposed Site Plan
- Construction Progress
- WTP #2 Expansion
- Well #11 Rehab
- Well #10 Rehab
- High Service Pump Rehab
- Dualator #2 Rehab
- Misc. Site Improvements
- Next Steps
- Next Month's Forecast
- Anticipated Construction Schedule

6. Resolution 22-058-R: Authorize Professional Services Agreement with Houseal Lavigne for the Creation of a New Downtown Plan (SJ 5/17/22) CED

Jarmusz discussed the resolution with the COW. Chair Wolff observed that no one opposed to using TIF funds to make up the shortfall in what we had budgeted versus what has been proposed.

Motion: To enter into Executive Session for Personnel

Maker: Wolff

Second: Baerren

Roll Call Vote: **Aye:** Wolff, Baerren, Leman, Ajazi, Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Connelly, Solfa

Nay:

12-0 Vote, 2 Absent, Motion carried.

7. Project Status

Isom reported on the following:

- Batavia Avenue striping removal
- Design firm has been secured to work on Newspaper Boy Alley Arch
- Grading work on the west side of Kirk Road and landscape work
- City entrance sign schedule
- COW meeting on May 31st will have approvals for SSA 58 and proposed Belle Tire facility
- Economic Development conducted their second SWOT analysis meeting with members of MainStreet
- Seasonal person, Shae Burnham, has started work last week working part-time hours to assist with clerical staff. She will be here through mid-August.
- Permits for Mocha Coffee restaurant

- Winding Creek Development tree removal and fence installation

8. Other

Beck asked when the public meeting would be held for the Economic Development Session. Jarmusz answered once the feedback is received from the sessions she will be bringing it to a future COW meeting for discussion and feedback.

9. Executive Session: Probable Litigation (SCB)

Motion: To enter into Executive Session for Probable Litigation

Maker: Uher

Second: Connelly

Roll Call Vote: **Aye:** Uher, Cerone, Vogelsinger, Miller, Russotto, Beck, Connelly, Solfa, Wolff, Baerren, Leman, Ajazi

Nay:

12-0 Vote, 2 Absent, Motion carried.

The Committee entered Executive Session at 7:48pm and exited at 8:22pm.

10. Adjournment

There being no other business to discuss, Chair Wolff asked for a motion to adjourn the meeting at 8:22pm; Made by Connelly; Seconded by Uher. Motion carried.

Minutes respectfully submitted by Jennifer Austin-Smith, Recording Secretary