



**BATAVIA CITY COUNCIL
SPECIAL BUSINESS MEETING**
(Before the Conference Meeting)

**City Hall - Council Board Room
One Batavia City Centre
Monday, February 27, 2017**

AGENDA

- I.** Call to Order
- II.** Invocation – Councilperson Viele
- III.** Pledge of Allegiance
- IV.** Executive Session...Litigation Matters
- V.** Assignment of Agenda Items
- VI.** New Business
 - #22-2017 A Resolution to Authorize the City Council President to Execute a Settlement Agreement with Batavia City Centre Merchants Association, Inc. to Resolve Existing Litigation Surrounding the Batavia City Centre Mall
- VII.** Adjournment

MOTION TO ENTER EXECUTIVE SESSION

Motion of Councilperson

WHEREAS, Article 7, Section 105(1)(d), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...proposed, pending or current litigation...".

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia, that upon approval of this Motion, the City Council does hereby enter into Executive Session.

**Seconded by Councilperson
and on roll call**

#22-2017

**A RESOLUTION TO AUTHORIZE THE CITY COUNCIL PRESIDENT TO
EXECUTE A SETTLEMENT AGREEMENT WITH BATAVIA CITY CENTRE
MERCHANTS ASSOCIATION, INC. TO RESOLVE EXISTING LITIGATION
SURROUNDING THE BATAVIA CITY CENTRE MALL**

WHEREAS, the Batavia City Centre Mall was constructed as a retail shopping mall in 1975 in which the outlying parcels were sold to individual private owners for use as stores ("the Mall"); and

WHEREAS, the Batavia City Merchants Association (hereinafter "the Merchants Association") was formed shortly thereafter and is comprised of owners and tenants of parcels at the Mall in Batavia, New York; and

WHEREAS, the City of Batavia (hereinafter "the City") owns the concourse at the Mall, sidewalks and adjoining municipal parking lots; and

WHEREAS, starting in 1975 a series of agreements were entered by the developers, City, Merchants Association, parcel owners and JC Penney Company, Inc. to address operation, maintenance and development matters at the Mall; and

WHEREAS, the Mall agreements include the Development and Operating Agreement for Developers Within the Genesee Country Mall Area of the Jefferson Plaza Urban Renewal Project N.Y.R.-210, dated August 27, 1975; Common Facilities Agreement, dated June 29 1978; and August 21, 1987 Settlement Agreement, (hereinafter "the Agreements"); and

WHEREAS, the Agreements purport to establish certain rights, responsibilities, maintenance, and maintenance fee obligations, as well as rights to use the Mall concourse, parking lots and sidewalks by the City, Merchants Association and parcel owners, although the scope, extent and expiration of the obligations and covenants are contested by the parties; and

WHEREAS, the Merchants Association commenced an action captioned Batavia City Centre Merchants Association v. City of Batavia, Index No. 58726, Supreme Court, Genesee County by service of a Summons and Complaint, then Amended Complaint upon Defendant seeking recovery for alleged damages in connection with the repair of the concourse roof, silos and skylights, certain alleged past and future maintenance fees from the City; and

WHEREAS, the City has appeared in the Lawsuit and served an Answer with defenses and Counter-claims; and

WHEREAS, the City commenced a second action captioned City of Batavia v. Batavia City Centre Merchants Association, Inc., Index No. 63563, Supreme Court, Genesee County by service of a Summons and Complaint seeking termination of a purported lease of the concourse, past and future rents for the concourse and establishment of a fair market value lease for the City-owned concourse; and

WHEREAS, the Merchants Association appeared in the second Lawsuit and Served an Answer;

WHEREAS, following the close of discovery, summary judgment motions and a Decision and Order by the Court, in the first Lawsuit, a large portion of the claims and all claims in the second Lawsuit remain pending and would require trial; and

WHEREAS, after consultation and direction from the Court the two actions were referred to commercial mediation before a private mediator in an effort to resolve the multiple pending claims in the two Lawsuits and address the future relationship of the City, Merchant Association and parcel owners at the Mall; and

WHEREAS, after multiple mediation sessions and considerable negotiation and compromise the City and Merchants Association entered into a Settlement Term Sheet on December 20, 2016 addressing the material settlement matters between the parties and future relationship at the Mall; and

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that after due deliberation and consideration the City Council finds that settlement of the two Lawsuits in accordance with the Settlement Term Sheet is in the best interests of the City of Batavia as it will end litigation and discord amongst the City, Merchants Association and owners and promote repairs and redevelopment of the Mall; and

NOW THEREFORE, BE IT FURTHER RESOLVED, by the City Council of the City of Batavia that settlement of the Lawsuits is in the best interest of the City of Batavia as it will address ongoing disputes regarding ownership, operation, maintenance and maintenance fees at the Mall; and

NOW THEREFORE, BE IT FURTHER RESOLVED, by the City Council of the City of Batavia, authorizes the City Council President to sign a Settlement Agreement, as well as, all necessary and appropriate documents in form and terms satisfactory to the City Attorney's Office to resolve the pending Lawsuits between the parties and future relationship at the Mall; and

NOW THEREFORE, BE IT FURTHER RESOLVED, that additional approvals will be required of City Council in connection with the settlement, including adoption of a user fee law and funding authorizations which will be separately requested of City Council in due course.