

# **CITY OF BATAVIA – BUSINESS MINUTES**

## **APRIL 8, 2013**

The regular business meeting of the City Council was held Monday, April 8, 2013 at 7:00 PM in the Council Chambers, One Batavia City Centre, Batavia, New York, with Council President Buckley presiding.

Present were Council President Buckley and Councilpersons Pacino, Briggs, Cipollone, Canale, Doeringer, Hawley, Christian and Russell.

Council President Buckley called the meeting to order at 7:00 PM. Councilperson Hawley led the Lord's Prayer and the Pledge of Allegiance.

The minutes from the March meetings were approved.

The Council President assigned the regular agenda items.

\* \* \*

### **Public Hearing**

None.

\* \* \*

### **Communications**

None.

\* \* \*

### **Council President's Report**

Council President Buckley announced the City's Earth Day Event would be held on Saturday, April 20<sup>th</sup> at Austin Park from 9:00am – 12:30pm.

Council President Buckley announced that the next regular City Council Conference Meeting would be held on Monday, April 22, 2013 at 7:00 PM at the City Hall Council Board Room, 2<sup>nd</sup> Floor, City Centre.

\* \* \*

### **City Attorney's Report**

Nothing to report.

\* \* \*

### **City Manager's Report**

Mr. Molino noted there was nothing specific to report.

\* \* \*

### **Committee Reports**

Councilperson Hawley noted that the Youth Banquet was Tuesday, April 16<sup>th</sup> at 6:00pm at Terry Hills. Councilperson Christian noted that she had met with Councilperson Hawley and Bob Bialkowski regarding the Memorial Day Parade.

\* \* \*

### **Public Comments**

None.

\* \* \*

### **Council Responses to Public Comments**

None.

\* \* \*

### **Unfinished Business**

None.

\* \* \*

### **New Business**

**#37-2013**

### **RESOLUTION TO APPOINT MEMBERS TO VARIOUS CITY COMMITTEES/ BOARDS**

#### **Motion of Councilperson Briggs**

**WHEREAS**, certain vacancies exist on various City Committees/Boards.

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Batavia that the following appointments be made:

#### **Youth Board**

James Spading

December 31, 2014

**Seconded by Councilperson Russell and on roll call approved 9-0.**

\* \* \*

**#38-2013**

**RESOLUTION TO DISCONTINUE THE PUBLIC USE AND TO AUTHORIZE THE COUNCIL  
PRESIDENT TO SIGN AGREEMENTS FOR THE SALE OF THE PROPERTIES SOLD AT  
AUCTION ON MARCH 16, 2013**

**Motion of Councilperson Doeringer**

**WHEREAS**, the City foreclosed on 339-341 Ellicott Street, 10 Swan Street, and 61 Oak Street for non-payment of property taxes; and

**WHEREAS**, ads were placed in the Batavia Daily News and documentation was sent to Bontrager Real Estate & Auction Service, Inc. regarding the properties; and

**WHEREAS**, a Public Real Estate Auction was held at Bontrager's Auction Center on March 16, 2013 at 10:00 a.m.; and

**WHEREAS**, the highest bids received for the three auctioned properties are as follows:

<u>Property</u>	<u>Highest Bidder</u>	<u>Highest Bid</u>
1) 339-341 Ellicott Street	David Fasano / Superior Process Service, Inc.	\$44,500.00
2) 10 Swan Street	Ronald Viele / 61 Swan St of Batavia Inc.	\$72,000.00
3) 61 Oak Street	Tom Englerth / E Properties	\$41,000.00

**NOW THEREFORE, BE IT RESOLVED**, by the Council of the City of Batavia, that it discontinues the public use of said properties and authorizes the City Council President to sign all necessary and appropriate closing documents, including Quit Claim deeds, to convey the property to the highest bidders for all three properties, subject to purchasers' execution of Contracts of Sale that are satisfactory to the City Attorney's Office.

**Seconded by Councilperson Christian and on roll call approved 9-0.**

**Discussion** – Councilperson Christian noted that Ron Viele had done an exceptional job on Swan St and that Dave Fasano would be putting in an Italian restaurant at the old Green Wolf Pub.

\* \* \*

**#39-2013**

**A RESOLUTION AUTHORIZING REFUNDING BONDS OF THE CITY OF  
BATAVIA, GENESEE COUNTY, NEW YORK, IN THE AMOUNT OF \$4,050,000 TO  
ADVANCE REFUND THE REMAINING OUTSTANDING CITY OF BATAVIA  
GENERAL OBLIGATION SERIAL BONDS, 2005 SERIES A, AND TO ADVANCE  
REFUND THE REMAINING OUTSTANDING CITY OF BATAVIA GENERAL  
OBLIGATION SERIAL BONDS, 2005 SERIES B, BOTH AS MORE SPECIFICALLY  
DESCRIBED HEREIN**

**Motion of Councilperson Canale**

**WHEREAS**, as more specifically described hereinafter the City of Batavia issued its \$3,600,000 General Obligation Serial Bonds, 2005 Series A (Construction of various buildings within the City), dated November 10, 2005 (the "Series A Bonds") and its \$875,000 General Obligation Serial Bonds, 2005 Series

B (Construction of various buildings within the City), dated November 10, 2005 (the "Series B Bonds") (both the Series A Bonds and the Series B Bonds jointly referred to as the "Prior Bonds"); and

**WHEREAS**, there is currently outstanding principal on the Prior Bonds in the aggregate amount of \$3,770,000, consisting of outstanding principal on the Series A Bonds in the amount of \$3,015,000, and outstanding principal on the Series B Bonds in the amount of \$755,000, as set forth at Exhibit A hereof which is made a part hereof; and

**WHEREAS**, a financial plan for the refunding of the remaining outstanding Prior Bonds (the "Refunding Plan") has been prepared and is annexed hereto and made a part hereof at Exhibit B; and

**WHEREAS**, the CITY OF BATAVIA, in the County of Genesee, by its City Council has determined that the City would realize a net present value debt service savings of not less than 5% by issuing refunding bonds to retire the outstanding Prior Bonds at their earliest permissible redemption date as hereinafter set forth as required by Section 90.10 of the Local Finance Law; and

**WHEREAS**, it would in the public interest to refund all or a portion of the Prior Bonds by the issuance of refunding bonds pursuant to Section 90.10 of the Local Finance Law; and

**BE IT RESOLVED**, by the affirmative vote of not less than two-thirds of the total voting strength of the City Council of the City of Batavia, Genesee County, New York, as follows:

Section 1. A series of Refunding Bonds to be identified as the City of Batavia Refunding Bonds – 2013 in an amount not to exceed \$4,050,000 (the "Bonds") is hereby authorized pursuant to Section 90.00 of the New York State Local Finance Law (the "Local Finance Law"), for the object or purpose of refunding all or a portion of the Prior Bonds as further provided hereinafter at Section 12.

Section 2. The Prior Bonds, were authorized pursuant to Bond Resolution No. 077-2005 adopted by the City Council on September 12, 2005 for construction of a new City Hall and related, ancillary facilities (the "City Hall Project"), at a cost not exceeding \$5,100,000.

Section 3. Pursuant to applicable subsections of Local Finance Law ("LFL") Section 11.00(a)(11), the maximum period of probable usefulness for the City Hall Project at the time the Prior Bonds were issued was 30 years (LFL Section 11.00a.11.(a)).

Section 4. It is hereby determined that:

A. The maximum amount of the Refunding Bonds authorized to be issued pursuant to this resolution does not exceed the limitation imposed by Section 90.10(b)(1) of the Local Finance Law;

B. The last installment of the Refunding Bonds will mature not later than the expiration of the maximum period of probable usefulness of each of the objects or purposes for which the Prior Bonds were issued, or in the alternative, the weighted average remaining period of probable usefulness of the objects or purposes (or classes of objects or purposes) financed with each series of the Prior Bonds or the weighted average remaining period of probable usefulness of all objects or purposes (or classes of objects or purposes) financed with all the Prior Bonds, in accordance with the provision of Section 90.10(c)(1) of the Local Finance Law; and

C. The estimated present value of the total debt service savings anticipated as a result of the issuance of the Refunding Bonds, computed in accordance with the provision of Section 90.10(b)(2)(c) of the Local Finance Law, is as shown in the Refunding Financial Plan described in Section 5 hereof.

Section 5. The Refunding Financial Plan for the refunding authorized by this resolution showing the sources and amounts of all moneys required to accomplish such refunding, the estimated present value of the total debt service savings and the basis for the computation of the aforesaid estimated present value of total debt service savings, is set forth in Exhibit B which is attached hereto and made a part of this resolution. The Refunding Financial Plan has been prepared based upon the assumption that the Refunding Bonds will be issued in the aggregate principal amount of \$4,050,000 and that the Refunding Bonds will mature, be of such terms, and bear interest as set forth in Exhibit A.

Section 6. The plan for refunding calls for the retirement on or after May 10, 2013 (the "Redemption Date") of the Prior Bonds set forth on attached Exhibits A and B.

Section 7. The faith and credit of the City of Batavia, Genesee County, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in every year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year.

Section 8. All other matters except as provided herein relating to the bonds herein authorized including the date, denominations, maturities and interest payment dates, within the limitations prescribed herein and the manner of execution of the same, including the consolidation with other issues, and also the ability to issue bonds with substantially level or declining annual debt service, shall be determined by the City Manager, as the Chief Fiscal Officer of the City. Such bonds shall contain substantially the recital of validity clause provided for in Section 52.00 of the Local Finance Law, and shall otherwise be in such form and contain such recitals, in addition to those required by Section 51.00 of the Local Finance Law, as the City Manager shall determine consistent with the provisions of the Local Finance Law.

Section 9. The validity of such bonds may be contested only if:

- 1) Such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or
- 2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or
- 3) Such obligations are authorized in violation of the provisions of the Constitution of the State of New York.

Section 10. The City hereby determines that the issuance of the Bonds is an action that will not have a significant effect on the environment and, therefore no other determinations or procedures under the State Environmental Quality Review Act ("SEQRA") are required.

Section 11. This resolution shall be published in full in the official newspaper of the City, which is hereby designated as the official newspaper of the City for such purpose, together with a notice of the City Clerk in substantially the form provided in Section 81.00 of the Local Finance Law.

Section 12. The principal amount of the Bonds, along with moneys which together with the interest earned from the investment of certain proceeds of the Refunding Bonds does not exceed an amount sufficient to pay the sum of (a) the principal amount of the Prior Bonds, which is outstanding as of the date of issue of the Bonds, (b) the aggregate amount of unmatured interest payable on the Prior Bonds to, and including, either the date or dates such bonds mature or, if such bonds are to be called for redemption prior to their maturities, the date or dates set for such redemption in accordance with the refunding financial plan,

(c) redemption premiums, if any, payable on the Prior Bonds as of such redemption date or dates, (d) costs and expenses incidental to the issuance of the Refunding Bonds, including Bond Counsel fees, the development of the refunding financial plan, fees and costs of the Financial Advisor of the City, and of executing and performing the terms and conditions of the escrow contract and all fees and charges of the escrow holder, and (e) the premium or premiums of municipal bond insurance or other form of credit enhancement facility or facilities for the Bonds or any portion thereof.

Section 13. The proposed maturity dates of the Bonds will not extend beyond the final maturity date of the Prior Bonds, as more particularly set forth hereinafter at Exhibit B.

Section 14. The City Manager, as the Chief Fiscal Officer of the City, shall file with the finance Council a certificate, which shall be final and conclusive upon all parties, setting forth the present value of the total debt service savings to the issuer resulting from the issuance of the Refunding Bonds computed in accordance with the provisions of § 90.10(b)(2)(a) of the Local Finance Law, except that the actual amount, rather than an estimate, of the amount of accrued interest to be paid on such bonds shall be used in determining the effective interest cost thereof.

Section 15. The City elects to call in and redeem such portion of the bonds to be refunded as is to be called for payment prior to the date of their maturity in accordance with Section 16 hereof. The escrow holder is hereby authorized and directed to cause notice of such call for redemption to be given in the name of the City in the manner and within the times provided by Section 53.00(a) of the Local Finance Law.

Section 16. The City Manager, as the Chief Fiscal Officer of the City, is hereby delegated the duty to contract on behalf of the City with a bank or trust company located and authorized to do business in this state for the purpose of having such bank or trust company act as the escrow holder of the proceeds, inclusive of any premium, from the sale of such Refunding Bonds, together with all income derived from the investment of such proceeds, and any other moneys to be provided by such issuer to effectuate the refunding financial plan.

Section 17. This Resolution shall take effect immediately upon the adoption hereof.

\* \* \* \* \*

#### **EXHIBIT A**

**SUMMARY OF PRIOR BONDS – see attached**

#### **EXHIBIT B**

**PLAN OF REFUNDING – see attached**

**Seconded by Councilperson Russell and on roll call approved 9-0.**

\* \* \*

**#40-2013**

**RESOLUTION TRANSFERRING FROM THE EMPLOYEE BENEFIT ACCRUED LIABILITY  
RESERVE AND TO AMEND THE BUDGET**

**Motion by Councilperson Hawley**

**WHEREAS**, pursuant to General Municipal Law 6-p, the City of Batavia has an established Employee Benefit Accrued Liability Reserve fund for payment of accrued benefits due to employees upon termination of the employees' service; and

**WHEREAS**, the City of Batavia for the fiscal year ending March 31, 2013 has approximately \$311,335 of Employee Benefit Accrued Liability Reserve; and

**WHEREAS**, the City of Batavia for the fiscal year ending March 31, 2013 received state assistance ("VLT" compact money) as an eligible city in which a video lottery gaming facility is located, in the amount of \$284,000; and

**WHEREAS**, the City of Batavia for the fiscal year ending March 31, 2013 will have had employee retirements/terminations from employment with payable accrued employee benefits totaling \$416,688.60; and

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Batavia that the City Manager is hereby authorized to make the following budget transfers:

Effective March 31, 2013, the following transfers are hereby approved:

Increasing expenditure accounts:

Police Department	001.3120.0100	\$132,348.02
	001.3120.0101	\$ 2,228.97
	001.3120.0102	\$ 6,353.89
	001.3120.0103	\$ 4,542.76
Fire Department	001.3410.0100	\$233,425.21
	001.3410.0101	\$ 7,197.52
	001.3410.0102	\$ 11,889.46
	001.3410.0103	\$ 7,217.83
	001.3410.0104	\$ (1,171.06)
	001.3410.0418	\$ 193.17
Street Maintenance	001.5110.0100	\$ 4,272.00
	001.5110.0101	\$ 85.44
	001.5110.0103	\$ 1,093.26
Water Distribution	002.8340.0100	\$ 538.84
	002.8340.0103	\$ 332.91
Medical Insurance – In Lieu of	001.9060.0807	\$ 2,425.16

Increasing revenue account:

Appropriated Employee Benefit Accrued Liability Reserve	001.0001.0511.2109	\$311,335.00
VLT	001.0001.2725.0000	\$101,638.38

**Seconded by Councilperson Briggs and on roll call approved 9-0.**

**Discussion** – Council President Buckley confirmed that the transfer would take everything out of the reserved and Mr. Molino agreed and noted it would have to be built up again over the next few years.

\* \* \*

**#41-2013**

**RESOLUTION ESTABLISHING A COMMUNITY GARDEN COMMITTEE AND APPOINT MEMBERS TO THE COMMUNITY GARDEN COMMITTEE**

**Motion of Councilperson Pacino**

**WHEREAS**, community gardens are any piece of private or public land where plants are grown and maintained by a group of individuals in the community. Community gardens often produce food for individual consumption, but may produce food for sale, be designed for beautification of the community, or be used for education purposes; and

**WHEREAS**, community gardens make a significant contribution to the civic and cultural life of communities and create gathering places that bring people together across boundaries of age and ethnicity; and

**WHEREAS**, community gardens provide access to healthy, culturally specific food for people of all economic backgrounds, allowing residents to improve nutrition and lower food costs; and

**WHEREAS**, community gardens serve as a tool to fight obesity by positively contributing to the physical activity of participants, increasing access to nutritional foods, and serving as an important environmental and health educational tool; and

**WHEREAS**, community gardeners and their children eat healthier, more nutrient-rich diets than do non-gardening families; and

**WHEREAS**, community gardens contribute to the preservation, access to, and use of open space, vacant lots and public parks; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Council of the City of Batavia establishes the Community Garden Committee and that the following appointments be made to this Committee:

**Term Expires**

Bob Gray	December 31, 2014
Carol Boshart	December 31, 2014
Denise Young	December 31, 2014
Matt Gray	December 31, 2017
Jayne Shearing	December 31, 2017
Brent Dahlhaus	December 31, 2017
Jan Beglinger	December 31, 2017

**Membership** - There shall be a Community Garden Committee whose nine (9) members shall be appointed by the City Council.

**Term and Appointment** - The terms of office of the Community Garden Committee shall be for four (2) years. Initially, four (4) members shall be appointed for two (2) years and five (5) members shall be appointed for four (4) years. After the first term, all members shall be appointed for four (4) years. The terms shall commence immediately and terminate on December 31 of each year. Any vacancy occurring in the office of a member shall be filled by appointment for the unexpired term.



Duties - The Committee shall provide such advice as to assist the City Council in developing strategies for creating developing, and overseeing the continued operation of a Community Garden located at the Youth Bureau, and any future locations should they be designated by City Council.

**Seconded by Councilperson Christian and on roll call approved 9-0.**

**Discussion** – Councilperson Christian thought it was a great idea and wanted to donate money from her next check for a family to have a plot.

\* \* \*

**#42-2013**

**RESOLUTION TO CREATE A SUBORDINATION POLICY FOR THE CITY'S CDBG HOUSING GRANT PROGRAM**

**Motion of Councilperson Cipollone**

**WHEREAS**, the City awarded loans and grants through the 2010 Community Development Block Grant and is desirous of developing a Subordination Policy to handle possible Subordination requests;

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Batavia hereby approves Attachment "A" as the Residential Rehabilitation Program Policy on Subordination and authorizes the City Manager of the City of Batavia to execute Subordination Agreements on behalf of the City for the Residential Rehabilitation Program.

**Seconded by Councilperson Hawley and on roll call approved 9-0.**

ATTACHEMENT "A"

**City of Batavia**

**Residential Rehabilitation Program  
Policy on Subordinations**

**Background**

**The City of Batavia has received grants under the Community Development Block Grant (CDBG) Program to provide assistance to eligible homeowners to enable them to make improvements to their properties. As a condition of receiving of this assistance, the homeowners are required to repay some or all of the grant award if the property is sold, transferred or foreclosed upon within five (5) years following the completion of the improvements to the property. In addition, the deferred loan (if any) is also subject to repayment upon the sale or transfer of the property. A Note and Mortgage is executed by the homeowner and filed as a lien (second mortgage) on the property by the City.**

Under the terms of the Residential Rehabilitation Program, the full amount of the grant award is subject to repayment if the property is sold or transferred within the first year after the completion of the improvements. The amount of the grant that is subject to recapture declines 20 percent per year over the remaining four years of the recapture period.

Within the five-year grant recapture period or the loan recapture period, a homeowner may seek new financing or additional financing for a variety of purposes, including:

- Refinancing the existing first mortgage in order to obtain a better interest rate or other terms
- To make improvements to the property
- To consolidate other consumer debt

The new lender may refuse to provide a new loan unless the City agrees to subordinate its lien to a new first or second mortgage. As a result, it is in the City's interests to establish a policy regarding subordination requests.

### **Policy for Subordination Requests**

The City will consider subordination of its lien on a property to a new or refinanced debt provided by another lender only if one or both of the following conditions are met:

- a. The new loan will be used to make improvements to the property.
- b. The new loan refinances an existing mortgage in order to reduce the interest rate, or provide other terms to the benefit of the homeowner.

The City will not consider subordination of its loan to new debt that will be used to: pay off credit card or other consumer debt; provide cash out to the borrower for non-house related expenses; or, to cover the cost of excessive loan processing or other financing charges.

### **Additional Conditions**

The following conditions must also be met with regard to subordination requests:

1. The total of all debt that is equal or superior to the City's lien cannot exceed 100 percent of the appraised value of the property. That is, the new debt, plus the balance of any other superior debt cannot exceed 100 percent of the appraised value of the property at the time of the request.
2. The grant assistance provided under the homeownership program does not have to be repaid unless the property is sold, transferred or foreclosed on within 5 years from the date of purchase. The grant award is forgiven in stages, beginning in the second year after completion of the improvements. As a result, the grant award may be partially unsecured by equity in the property following subordination.
3. The subordination clause may not include a clause stating that the subordination applies to the current request as well as any future renegotiation of the new loan. A separate subordination request must be considered each time new debt or refinancing is proposed.
4. Approval of the subordination request is not automatic and the City reserves the right to refuse to subordinate its lien to other debt on the property.

### **Documentation Required to Support the Subordination Request**

**In order to consider the subordination request, the City must receive the following information:**

- A copy of a summary of the appraisal of the property, including the date, name of the appraiser and the appraised value.
- Information concerning the dollar amount of the proposed new loan and a breakdown of its intended uses.

- If the loan proceeds will be used to refinance the existing first mortgage, information concerning the new interest rate and terms and proposed changes in the monthly payment.
- If the loan proceeds will be used to make improvements to the property, a description of the proposed improvements and a written quote from a contractor must be provided. (NOTE: If the subordination request is approved, the City will require proof that the proposed improvements have been completed.)
- A summary of the current balance of any other existing mortgage that will be superior to the City's mortgage.

These documents should be sent by mail or fax to:

City Manager  
City of Batavia  
One Batavia City Centre  
Batavia, NY 14020

585-345-6330  
585-343-8182 (fax)

City Attorney  
City of Batavia  
One Batavia City Centre  
Batavia, NY 14020

585-345-6330  
585-343-8182 (fax)

## **Review Process**

The subordination request will be reviewed by the City Manager and City Attorney to determine whether the proposal meets the City's requirements. If acceptable, the City Manager will execute the City's subordination agreement. Instructions for the return of the signed agreement should be included in the lender's transmittal of the subordination request and related documents.

## **Release of Information Concerning the Rehabilitation Assistance**

**Lenders seeking information concerning the status of any homeownership assistance grant award must provide a copy of an authorization for the release of credit information, signed by all owners of the property. This authorization may be mailed or faxed to the City Manager. Lenders should specify the information sought.**

## **Appeals and Exceptions**

Homeowners who are denied subordination requests may appeal the decision to the City Council and should contact the City Manager to initiate the process. The City Council may grant appeals or approve exceptions to this policy, if deemed to be in the best interests of the homeowner and the City.

## **Questions**

Questions should be directed to the City Manager at the address shown above.

# SUBORDINATION AGREEMENT

Date: \_\_\_\_\_

The Parties agree as follows:

Parties: Holder(s) of Existing Mortgage (Holder) - City of Batavia  
Address: One Batavia City Center  
Batavia, NY 14020

Mortgagee in the New Mortgage (Mortgagee) --  
Address: \_\_\_\_\_

1. **The Property**

The property at \_\_\_\_\_, Batavia, NY is described as follows: See attached Schedule "A".

2. **Existing Mortgage**

The Holder now owns and holds the following mortgage:

Mortgage in the sum of \$ \_\_\_\_\_ given by \_\_\_\_\_ to the City of Batavia dated \_\_\_\_\_ and recorded on \_\_\_\_\_ in Book \_\_\_\_\_ of Mortgages at page \_\_\_\_\_ thereafter.

3. **New Mortgage**

The owner of the property is about to sign and deliver to the Mortgagee a new mortgage covering the property in the sum of \$ \_\_\_\_\_, said property which is more fully described in the new mortgage and set forth above in Schedule "A".

4. **Subordination**

The Mortgagee will not accept the new mortgage unless the existing mortgage is subordinated to it in exchange for \$1.00 and other good and valuable consideration and to induce the Mortgagee to accept the new mortgage, the Holder agrees to subordinate the lien of the existing mortgage to the new mortgage.

The existing mortgage lien shall be subordinated to the amount secured by the new mortgage, interest and advances already paid or to be paid in the future under the new mortgage. Examples of the advances are brokerage commissions, fees for making the loan, mortgagee recording tax, documentary stamps, fees for examination of titles and surveys. Advances may be paid without notice to the Holder. The maximum amount of the lien of the existing mortgage that is subordinated is the amount secured by the new mortgage and interest.

5. **Oral Changes**

This agreement cannot be changed or ended except in writing signed by the Holder and the Mortgagee.

6. **Who is bound**

If there is more than one Holder, each shall be separately liable. The words "Holder" and "Mortgagee" shall include their heirs, executors, administrators, successors and assigns. If there is more than one Holder and Mortgagee, the words "Holder" and "Mortgagee" used in this Agreement includes them.

7. **Signature**

The Holder states that the Holder has read this Agreement, received a completely filled in copy of it and has signed this Subordination Agreement as of the date at the top of the first page.

Witness

Holder

\_\_\_\_\_  
City Manager  
City of Batavia  
One Batavia City Centre  
Batavia, NY 14020

STATE OF NEW YORK:

COUNTY OF GENESEE: ss:

CITY OF BATAVIA:

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me, the undersigned, a notary public in and for the state, personally appeared \_\_\_\_\_, personally known to be, or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**Record and Return to:**

\* \* \*

**#43-2013**

**A RESOLUTION APPROVING THE EXECUTION OF AN UNDERTAKING  
AGREEMENT WITH THE NEW YORK STATE DEPARTMENT OF  
TRANSPORTATION FOR WORK PERMITS**

**Motion of Councilperson Christian**

**WHEREAS**, it is necessary to obtain work permits from the New York State Department of Transportation (NYSDOT) for work performed on State highways; and,

**WHEREAS**, this process is facilitated by having in place an undertaking agreement with NYSDOT;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Batavia Council hereby authorizes the Council President to execute an Undertaking Agreement with the New York State Department of Transportation for work permits.

**Seconded by Councilperson Briggs and on roll call approved 9-0.**



## UNDERTAKING

For the benefit of  
The New York State Department of Transportation  
In connection with work affecting state highways  
(For use by New York municipalities and federal agencies)

WHEREAS, the undersigned \_\_\_\_\_ ( Municipality, County, Town, City or Village, or any agency of the federal government, hereinafter referred to as "Permittee") from time to time receives permits from the New York State Department of Transportation (hereinafter referred to as the "NYSDOT") and otherwise conducts activities and operations upon highways and/or within right-of-way controlled by the State of New York for such purposes as the obstruction, installation, construction, maintenance and/or operation of facilities; and

WHEREAS, Permittee's access and operation upon state right-of-way is conditioned upon compliance with Highway Law Sections 52, 103, 203 and/or 234, including the conditions that Permittee assume all responsibility for (a) the temporary control of all modes of traffic (including motorized and non-motorized travel) affected by Permittee's operations, (b) complete restoration of state facilities to their condition prior to permitted use or activity, and (c) all claims, damages, losses and expenses,

NOW, THEREFORE, in relation to all operations and/or actions undertaken within state right-of-way, Permittee hereby agrees to the following terms and conditions:

1. Permit Applications. Excepting only activities undertaken to protect public safety because of emergency conditions or incidents, Permittee shall provide timely written notice to NYSDOT of operations or activities affecting state right-of-way. Under normal circumstances, a minimum of five business days notice shall be provided. Notification of emergency activities shall be provided to NYSDOT as soon as practicable after the activity. The Permittee shall apply for project-specific permits for activities not allowed under any existing annual permit. Such application shall identify proposed project locations, desired dates/hours, proposed work/activities, traffic control, and site restoration

2. Applicable Rules, Regulations & Conditions. Permittee shall comply with all of the laws, rules and regulations applicable to construction, maintenance activities and operations and shall further comply with such terms and conditions that may be imposed by NYSDOT in connection with permitted activity or operations. Temporary Traffic Control, highway safety appurtenances, and restoration of state facilities shall be completed in accordance with NYSDOT regulations and standards.

3. Site Restoration. Permittee shall, at its own expense, promptly complete the work allowed under each permit and, within a reasonable time, restore State property damaged by its work/activities to substantially the same or equivalent condition as existed before such work was begun as determined by the Commissioner or his/her designee. In the event that the Permittee fails to so restore damaged State property within what the Commissioner deems to be a reasonable time, the Commissioner, after giving written notice to the Permittee, may restore the property to substantially the same or equivalent condition as existed before the Permittee's work/activities, in which case, Permittee agrees to reimburse the reasonable expenses in connection therewith.

**4. Payment & Release of Liens.** Permittee shall be responsible for the payment of all costs and materials relating to its work in the public right-of-way, and agrees to defend and save harmless NYSDOT against any and all lien claims made by persons supplying services or materials to Permittee in connection with Permittee's work.

5. Indemnity. In addition to the protection afforded to NYSDOT under any available insurance, NYSDOT shall not be liable for any damage or injury to the Permittee, its agents, employees, or to any other person, or to any property, occurring on the site or in any way associated with Permittee's activities or operations, whether undertaken by Permittee's own forces or by contractors or other agents working on Permittee's behalf. To the fullest extent permitted by law, the Permittee agrees to defend, indemnify and hold harmless the State of New York, NYSDOT, and their agents from and against all claims, damages, losses and expenses, including but not limited to, claims for personal injuries, property damage, wrongful death, and/or environmental claims and attorney fees arising out of any such claim, that are in any way associated with the Permittee's, activities or operations under any and all permits issued using this Undertaking.

FURTHERMORE, Permittee hereby warrants that the obligations of this Undertaking are backed by the full faith and credit of Permittee. Permittee may insure or bond any of the obligations set forth herein, or may rely upon self-insurance, budgeted funds, or funds for general operations.

This Undertaking shall be applicable to all permitted activities and operations undertaken after the date of execution and work initiated while this Undertaking is in effect. This Undertaking may be revoked by the Permittee or rejected by NYSDOT upon thirty days written notice but will continue to apply to all permitted activities/operations that were permitted by virtue of this Undertaking. Unless terminated for the purpose of future activities/operations, this Undertaking shall have a term of twenty (20) years and shall be kept on file to facilitate the issuance of future permits to which it will apply.

IN WITNESS WHEREOF, \_\_\_\_\_ (Municipality-County, Town, City, Village or federal agency) agrees to the terms of this Undertaking, and has caused its execution by the authorized officer or employee (attach Resolution of Approval).

\_\_\_\_\_  
Authorized \_\_\_\_\_ Agent Date

\_\_\_\_\_  
Print Name/Title

\_\_\_\_\_  
Address Phone number

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address

e-mail

NYSDOT PERM 1

(rev. 2/12)

\* \* \*

**#44-2013**

**RESOLUTION TO AMEND THE PARK PAVILION RESERVATION & PARK RULES**

**Motion of Councilperson Hawley**

**WHEREAS**, the City of Batavia provides pavilions for use and rental by residents between the months of May 15<sup>th</sup> thru October 1<sup>st</sup>; and

**WHEREAS**, residents must complete a permit application requested for screening purposes and to ensure the events permitted by the City are appropriate for the surrounding neighborhoods.

**NOW THEREFORE, BE IT RESOLVED**, that the City Council of the City of Batavia hereby approves Attachment "A" as the Park Pavilion Reservation & Park Rules to be followed by all users of City pavilions and parks.

**Seconded by Councilperson Cipollone. After discussion, motion to table by Councilperson Doeringer, seconded by Councilperson Christian and on roll call approved 6-3. Councilpersons Cipollone, Briggs and Council President Buckley voted no to table the item.**

Attachment "A"

**CITY OF BATAVIA  
PARK PAVILION RESERVATION & PARK RULES**

- City Parks are open from May 15<sup>th</sup> thru October 1<sup>st</sup>. Park hours: 7:00 a.m. to dusk.
- Pavilion reservations will be accepted after January 1<sup>st</sup> of each year. Pavilion reservations become valid only upon receipt of a \$25.00 fee. Reservations are for the pavilion only and all other park facilities remain open to the public.
- All permit holders should have their permit with them the day of the event.
- Must be 21 years of age or older to reserve park facilities.
- No more than **TWO (2)** reservations per month will be issued to the same person or organization. Any event open to the public requires an event application through the City Clerk's Office.



- Limited electricity is available at the pavilions. Overloaded circuits will not be reset.
- Each park is equipped with one small grill.
- Restroom supplies must be provided by the renter.
- Picnic tables must not be removed from the pavilion.
- City provides trash cans at the pavilion. Any trash beyond the capacity of trash cans shall be carried out by the renter.
- The use of alcohol during the event must be designated and approved by the city as part of the pavilion application process.

### **THE FOLLOWING ITEMS ARE PROHIBITED FROM THE PARKS**

- Tobacco products.
- Amplified music or public address systems.
- Glass containers.
- Tents, amusement rides, air supported structures (i.e. bounce houses) or extraordinary structures/ equipment.
- Barbeque smokers and grilling pits
- Paint or paint-ball guns.
- Sale of food or drink.
- Motorized vehicles of any kind

- 
- The “contact phone number” for assistance on evenings or weekends is **345-6350**. During normal working hours call the Bureau of Maintenance at **345-6400 Option “1”**

**Discussion** – Councilperson Canale noted that he was set back that as of the day before he had talked to Paul Ohlson from Care-A-Van and the summer program was not yet established. He heard from Mr. Molino that they should be all set, the program serves the community very well and it was not acceptable to get a response from the City Manager one hour before the meeting. He felt there were still unanswered questions related to the pavilion rentals, didn’t think the changes were necessary and felt the City was reacting to a couple of situations. He noted there were already rules and regulations for the parks, felt the proposals were making it more difficult to have people rent the pavilions and use the park, and thought it was adding more government involvement when he was in favor of less with regards to the parks. Mr. Molino asked Councilperson Canale to address his issue with him ahead of time instead of during a public meeting. Mr. Molino explained that he told the Ohlsons the City would have a revamped event application that would be more detailed and they had a very positive meeting. He noted the changes in the park rules was that the applicant had to be 21 years old, there would be a limit to two rentals per month per person or it would become an event and the would limit sound systems. Councilperson Christian agreed that government shouldn’t try to control the parks and would like to see Care-A-Van go to other places in the City instead of just Austin Park.

Councilperson Doeringer asked if Council was going to handle the events on a case-by-case basis and noted the park rental and event applications were exactly the same. He wanted to table the resolution. Councilperson Russell felt there were a lot of challenges, thought people should be able to have amplified music and felt the City was restricting citizens from using the parks for what they were intended for. He wanted to see more flexibility on the application. Councilperson Cipollone saw four changes to the original permit. He noted we may want to keep the amplified music but the City wasn't doing much besides clarifying certain items. He noted that the discussion wasn't about Care-A-Van because that was an event, not a pavilion rental. Mr. Molino noted that events were separate and they all come before Council. He explained that pavilion rentals were done administratively and that the limit to amplified music was put in because of complaints. Councilperson Christian asked how the City handles Go Art's picnic in the park with thousands of people. Mr. Molino explained that was an event application every year that is approved by Council. Councilperson Russell felt there were too many questions to make a decision, noted there may still be complaints and if the noise violated the ordinances then they needed to be addressed. Council President Buckley suggested a subcommittee to come up with an amended rule sheet. Councilperson Doeringer and Russell were going to meet with Mr. Molino to address the questions.

\* \* \*

#### **#45-2013**

### **RESOLUTION ADOPTING THE CITY OF BATAVIA STRATEGIC PLAN FOR FISCAL YEAR 2013/14**

#### **Motion of Councilperson Cipollone**

**WHEREAS**, the City Council has been engaged in the development of a City of Batavia Strategic Plan in recognition of the changing needs and challenges of the City of Batavia; and

**WHEREAS**, the intent of developing a Strategic Plan is to allocate our available resources to best meet the needs of our residents, while balancing the fiscal, infrastructure and environmental factors that may affect the community in the future; and

**WHEREAS**, on January 14, 2013 the City Council was presented with the proposed City of Batavia Strategic Plan for fiscal years 2013/14 and 2014/15 which contained a Vision Statement, Mission Statement, Guiding Principles, Strategic Priorities and Key Intended Outcomes; and

**WHEREAS**, a component of the City of Batavia Strategic Plan is the Business Plan for fiscal year 2013/14 which contained ongoing and new initiatives for the upcoming fiscal year; and

**NOW, THEREFORE BE IT RESOLVED**, by the City Council of the City of Batavia:

1. The Strategic Plan includes a Business Plan identifying initiatives and projects that allocate staff resources to ensure alignment with the adopted strategic priorities of City Council; and
2. The Strategic Plan is a working document, it is non-binding, but is the first of many steps toward improving rational, long-range planning for the City of Batavia.

**Seconded by Councilperson Russell and on roll call approved 8-1. Councilperson Doeringer voted no.**

\* \* \*

**Meeting adjourned at 8:00 PM.**

**Respectfully submitted,**

**Heidi J. Parker  
Clerk-Treasurer**

SUMMARY OF BONDS REFUNDED

City of Batavia, NY  
2013 Financing  
REFUNDING OF 2005A USDA RD BONDS (11/10/2013 - 2032)  
REFUNDING OF 2005B USDA RD BONDS (11/10/2013 - 2035)  
INSURED (A1 UNDERLYING); BQ; CALLABLE

Bond	Maturity Date	Interest Rate	Par Amount	Call Date	Call Price
2005A USDA RD Bonds, 2005A:					
SERIAL	11/10/2013	4.250%	100,000.00	04/25/2013	100.000
	11/10/2014	4.250%	105,000.00	04/25/2013	100.000
	11/10/2015	4.250%	105,000.00	04/25/2013	100.000
	11/10/2016	4.250%	110,000.00	04/25/2013	100.000
	11/10/2017	4.250%	115,000.00	04/25/2013	100.000
	11/10/2018	4.250%	120,000.00	04/25/2013	100.000
	11/10/2019	4.250%	125,000.00	04/25/2013	100.000
	11/10/2020	4.250%	130,000.00	04/25/2013	100.000
	11/10/2021	4.250%	140,000.00	04/25/2013	100.000
	11/10/2022	4.250%	145,000.00	04/25/2013	100.000
	11/10/2023	4.250%	150,000.00	04/25/2013	100.000
	11/10/2024	4.250%	155,000.00	04/25/2013	100.000
	11/10/2025	4.250%	160,000.00	04/25/2013	100.000
	11/10/2026	4.250%	170,000.00	04/25/2013	100.000
	11/10/2027	4.250%	175,000.00	04/25/2013	100.000
	11/10/2028	4.250%	185,000.00	04/25/2013	100.000
	11/10/2029	4.250%	190,000.00	04/25/2013	100.000
	11/10/2030	4.250%	200,000.00	04/25/2013	100.000
	11/10/2031	4.250%	215,000.00	04/25/2013	100.000
	11/10/2032	4.250%	220,000.00	04/25/2013	100.000
			3,015,000.00		
2005B USDA RD Bonds, 2005B:					
SERIAL	11/10/2013	4.500%	20,000.00	04/25/2013	100.000
	11/10/2014	4.500%	20,000.00	04/25/2013	100.000
	11/10/2015	4.500%	20,000.00	04/25/2013	100.000
	11/10/2016	4.500%	20,000.00	04/25/2013	100.000
	11/10/2017	4.500%	25,000.00	04/25/2013	100.000
	11/10/2018	4.500%	25,000.00	04/25/2013	100.000
	11/10/2019	4.500%	25,000.00	04/25/2013	100.000
	11/10/2020	4.500%	25,000.00	04/25/2013	100.000
	11/10/2021	4.500%	30,000.00	04/25/2013	100.000
	11/10/2022	4.500%	30,000.00	04/25/2013	100.000
	11/10/2023	4.500%	30,000.00	04/25/2013	100.000
	11/10/2024	4.500%	30,000.00	04/25/2013	100.000
	11/10/2025	4.500%	30,000.00	04/25/2013	100.000
	11/10/2026	4.500%	35,000.00	04/25/2013	100.000
	11/10/2027	4.500%	35,000.00	04/25/2013	100.000
	11/10/2028	4.500%	35,000.00	04/25/2013	100.000
	11/10/2029	4.500%	40,000.00	04/25/2013	100.000
	11/10/2030	4.500%	40,000.00	04/25/2013	100.000
	11/10/2031	4.500%	45,000.00	04/25/2013	100.000
	11/10/2032	4.500%	45,000.00	04/25/2013	100.000
	11/10/2033	4.500%	50,000.00	04/25/2013	100.000
	11/10/2034	4.500%	50,000.00	04/25/2013	100.000
	11/10/2035	4.500%	50,000.00	04/25/2013	100.000
			755,000.00		
			3,770,000.00		

**CITY OF BATAVIA, NEW YORK  
SUMMARY OF REFUNDING RESULTS  
INSURED (A1 UNDERLYING); BQ; CALLABLE**

**REFUNDING 2005A AND 2005B RD BONDS**

Refunding Par Amount	3,925,000
Bond Arbitrage Yield	3.340490%
Escrow Yield	0.000000%
Refunded Bonds Par Amount	3,770,000
Average Coupon of Refunded Bonds	4.307012%

Net PV Savings	229,335.16
Percentage of PV Savings	6.083161%

Aggregate Budgetary Savings	308,144.16
-----------------------------	------------

Annual Budgetary Savings (March 31)

Fiscal Year 2014	22,994.16
Fiscal Year 2015	11,762.50
Fiscal Year 2016	14,400.00
Fiscal Year 2017	12,300.00
Fiscal Year 2018	15,475.00
Fiscal Year 2019	13,725.00
Fiscal Year 2020	12,300.00
Fiscal Year 2021	15,812.50
Fiscal Year 2022	19,112.50
Fiscal Year 2023	17,062.50
Fiscal Year 2024	14,950.00
Fiscal Year 2025	17,775.00
Fiscal Year 2026	15,387.50
Fiscal Year 2027	12,937.50
Fiscal Year 2028	15,287.50
Fiscal Year 2029	12,937.50
Fiscal Year 2030	11,025.00
Fiscal Year 2031	14,587.50
Fiscal Year 2032	13,487.50
Fiscal Year 2033	12,325.00
Fiscal Year 2034	1,150.00
Fiscal Year 2035	5,900.00
Fiscal Year 2036	5,450.00

**ROOSEVELT & CROSS**