

SPECIAL BUSINESS MEETING MINUTES

CITY OF BATAVIA

JANUARY 8, 2018

The special business meeting of the City Council was held Monday, January 8, 2018 in the Council Chambers, One Batavia City Centre, Batavia, New York, with Council President Jankowski presiding.

Present were Council President Jankowski and Councilpersons Pacino, Briggs, Christian, Canale, Tabelski, McGinnis and Viele. Councilperson Bialkowski was not in attendance.

Council President Jankowski called the meeting to order at 8:06 PM immediately following the special conference meeting.

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#4-2018

A RESOLUTION TO AUTHORIZE THE CITY COUNCIL PRESIDENT TO EXECUTE AN AGREEMENT WITH 40 BATAVIA CENTRE, LLC and JC PENNEY CORPORATION INC. TO RESOLVE EXISTING LITIGATION SURROUNDING THE BATAVIA CITY CENTRE MALL

Motion of Councilperson Christian

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. (“Penney”) 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, including 40 BATAVIA CENTRE, LLC, Penney’s landlord, although the scope, extent and expiration of the obligations and covenants are contested by the parties; and

WHEREAS, the City and Merchants Association have approved and executed a Settlement Agreement to resolve litigation captioned Batavia City Centre Merchants Association, Inc. v. City of Batavia; Index No. 58726; and City of Batavia v. Batavia City Centre Merchants Association, Inc., Index No. 63563

WHEREAS, the City has discussed execution of the Settlement Agreement and related documents with 40 BATAVIA CENTRE, LLC and Penney and certain concerns have been raised about operations of the Mall and parking;

WHEREAS, the City, 40 BATAVIA CENTRE, LLC and Penney are willing to enter an agreement to address further user fee rates, parking and termination of the 1987 Settlement Agreement; 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 entrance into the Agreement with 40 BATAVIA CENTRE, LLC and Penney will further settlement of the two Lawsuits in accordance with the Settlement Agreement and is in the best interests of the City of Batavia as it will end protracted 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 an Agreement with 40 BATAVIA CENTRE, LLC and J.C. Penney Corporation, Inc., 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.

Seconded by Councilperson Viele and on roll call approved 8-0.

Discussion – Mr. Molino noted that this was the settlement agreement with JC Penney’s and 40 Batavia Centre and the easement was for access to the loading dock. Mr. Van Nest noted that there was one more merchant that would be heard by the court on Wednesday, January 10th.

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#5-2018

**A RESOLUTION TO AUTHORIZE THE CITY COUNCIL PRESIDENT TO EXECUTE
AN EASEMENT AGREEMENT WITH 40 BATAVIA CENTRE, LLC AND J.C.
PENNEY CORPORATION, INC.**

Motion of Councilperson Tabelski

WHEREAS, 40 Batavia Centre, LLC a Delaware limited liability company (“40 Batavia Centre”) and J.C. Penney Corporation, Inc. (f/k/a J.C. Penney Company, Inc.), a Delaware corporation (“Penney”) is desirous to obtain an access easement for ingress and egress for vehicles and pedestrians over a portion of City property for access to and usage of a driveway to the property address 40 Batavia City Centre maintaining existing encroachments related to 40 Batavia City Centre; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia to hereby authorize the City Council President to execute the easement with 40 Batavia Centre and Penney as set forth in “Attachment A” below.

Seconded by Councilperson Christian and on roll call approved 8-0.

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Meeting Adjourned at 8:12 PM.

Respectfully submitted,

**Heidi J Parker
Clerk-Treasurer**