

CITY OF BATAVIA – BUSINESS MINUTES

FEBRUARY 11, 2013

The regular business meeting of the City Council was held Monday, February 11, 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, Canale, Cipollone, Doeringer, Hawley, Christian and Russell.

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

The minutes from the January meeting were approved.

The Council President assigned the regular agenda items.

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Executive Session – Litigation

MOTION TO ENTER EXECUTIVE SESSION

Motion of Councilperson Russell

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 Briggs and all of Council approved.

Open meeting resumed at 7:50pm. George Van Nest, City Attorney, explained the rules of the public hearing to the public and noted that Council was prohibited from being lobbied to about any particular vendor and that comments should be confined to the topic of the public hearing. He asked them not to try to lobby on behalf of any one vendor.

Public Hearing

- 1.) Ordinance #001-2013 – 2013/2014 Budget

Motion to open by Councilperson Christian, seconded by Councilperson Russell and all of Council was in favor. There were no speakers. Motion to close by Councilperson Russell, seconded by Councilperson Briggs and all of Council was in favor.

2.) Local Law No. 2 of the Year 2013 – Establish New Water Rates, Meter Fees and a Capital Improvement Fee

Motion to open by Councilperson Cipollone, seconded by Councilperson Doeringer and all of Council was in favor.

Carol Grasso, 45 Oak St, noted that the City took water out of the Tonawanda Creek for 200 years for free and now the City wants another raise on water charges. She stated that there were so many things Council kept doing wrong.

Motion to close by Councilperson Hawley, seconded by Councilperson Russell and all of Council was in favor.

3.) Local Law No. 3 of the Year 2013 – Amend the Solid Waste Chapter of the Batavia Municipal Code

Motion to open by Councilperson Cipollone, seconded by Councilperson Christian and all of Council was in favor.

Blake Elliott, 33 Ellicott Ave, noted there was a lot of misinformation being circulated but the proposal put forth \$1.2 million savings over five years and he didn't think trash needed to be part of the tax base. He noted that the people at the meeting were not all of Batavia, the bid went out, responses reviewed, the process was fair and the bidding process was the best form of benchmarking. He noted that ARC said there were other jobs for the people who may lose their job from the loss of the contract, it was a business issue and ARC was already subsidized. He reiterated that the proposal was fair and the bidding process was fair and just

Bob Bialkowski, 16 Union St., asked Council to listen to what the majority wanted and to represent the community.

Maidul Khan, 212 Naramore Dr., noted that all people always heard was tax and spend and finally they found someone to cut the taxes. He thought that was unheard of and he commended Mr. Molino for coming up with the proposed solution. He felt we could use some tax relief, liked the idea of the user fee, and it was an incentive for him to save money on trash. Dr. Khan felt that it was a fresh idea that you would pay more if you generated more trash.

Tom Houseknecht, 61 Ellicott Ave., noted he was a commercial property owner who would stand to benefit from the change but the fact sheet proclaimed that 90% of people would experience a decrease in taxes. He wondered who prepared the fact sheet, felt it

was a flawed analysis and that the facts presented were inconsistent. He felt that a majority of the homes would pay more, Council and the taxpayers were being misled on the figures and asked Council to do the right thing.

Jim Rosenbeck, 13 Lewis Ave., felt that the City didn't need to own the trash totes and they could be purchased individually at a cheaper cost. He felt that many residents would pay more and the City shouldn't mandate residents to participate.

Paul Mobley, 26 Williams St., was an employee of ARC and read a letter from his mom. She thought the City would be putting many handicapped people out of work and even if the taxes went down, homeowners would still not save.

Charles Greene, 4 Soccio St., never thought he would see the day when he would have to buy a service from a company he never heard of resulting in the City having to take out \$500,000 in bonds and he wanted to see the trash stay the way it was.

Katie Baynes, 64 Walnut St., decided to send her comments in a letter because of the advice of the City Attorney.

Rebecca Oshlag, 224 East Ave., noted that there were few jobs and even fewer employers for people with disabilities. She stated that it was a human thing to work and Batavia was probably the only City in the US having a waste management system the way we had it and it wasn't clear how the whole process happened. She felt they were not dealing with solid economic information to base their decisions on and felt the majority of the people supported the way it was because it enabled a specific service provider. She asked Council to listen to the concern and hearts of the people.

Jeff Oshlag, 224 East Ave., noted that Council was supposed to govern at the lowest possible cost but solely lowering the taxes misses another important function of government. He asked Council to listen to the people who put them in office and reject all current bids.

Roger Martin, 309 East Ave., felt the City shouldn't get into the trash business. He noted that last fall Council went door-to-door asking constituents for their support and he suggested doing the same now asking how they felt about the trash proposal. He asked that they show compassion and consideration for all their neighbors.

John Mortellaro, 3 Carolwood Dr., noted he heard everything he was going to say but felt Mr. Molino was making all the decisions and wondered what Council was doing. He noted that Mr. Molino brought up the trash proposal, he was getting paid more than he should be, the City should go back to a mayoral form of government and he had never seen so many people so angry and it was because something wrong was being done. He asked Council to go back and start over again but heard that they couldn't. He appreciated Council's work but wanted them to listen to the people.

Carol Grasso, 45 Oak St., thanked Council President Buckley for doing the right thing, felt Tom's comments were the best ever, and told Council if they ever cared about the community to do the right thing and table the trash thing. She asked that they work with ARC, don't give money to another state, and felt totes were an accident waiting to happen. She couldn't imagine where the bins would go and wondered why the City Manager didn't have a public workshop about the issue. She noted they had about 1,000 signatures against the change.

Jennifer Elmore, 148 Walnut St., noted that she only came to meetings when she had to. She asked what happens when her tote gets broken by the trucks on Rt 98 because she was not paying for another tote. She didn't want them and she would return it because they were too big and bulky. She noted that anyone with a house assessed at less than \$97,000 would pay more and she wasn't going to pay for it.

Tricia Dieck, 395 Garden Dr., felt like the people hadn't been heard. She agreed that the current system wasn't equitable but neither was the proposed system and the current system wasn't broke. She asked Council not to disguise it as a huge tax savings, felt the information had been misrepresented from the beginning and that Council was being irresponsible because they were not listening to the residents. She noted that the City Manager was there to guide Council and thanked Councilpersons Hawley and Buckley for voting down the proposed ordinance.

Lynn Heintz, 15 Tracy Ave., didn't like the new deal, felt the old one was not broken so it didn't need fixing. He felt it was going to take money out of his pocket and noted that nothing was being done about people taking scrap from people's front yard when they put it out for collection.

Robert Houseknecht, 30 Bogue Ave., agreed with everyone's comments, asked Council to respect the people's wishes and suggested Council go to their wards and ask what the people want.

Dave O'Geen, 256 East Ave., noted that the proposed trash fact sheet showed a savings of \$0.11 per day and he was ashamed to be a part of a community that would lay off disabled citizens to save so little. He noted that the people had spoke and they wanted to pay \$0.11 per day to keep the system as it was. He requested that Council throw out all existing bids and create a win/win situation.

Ed DeJaneiro, 104 River St., admitted it was a touchy subject dealing with a quality of life issue but asked why the City would change from the excellent service they had. He noted there were storage concerns and people's ability to wheel the carts. He asked that Council keep the local job.

Mary Ellen Wilber, 205 Liberty St., asked if the proposal was put before Council because there were five new Council members. She was concerned with going to the tote system

without some forethought. She noted that the taxpayers had to pay for the totes but they wouldn't own them and felt they really needed to take a look at the proposal.

Janet Saile, 50 Kingsbury Ave., noted that she loved the City, respected ARC and they respected the City. She noted that what Council was doing was not respectful and wanted to keep ARC doing the trash collection.

David Meyer, 239 Ross St., was displeased with the proposed changes to solid waste. He didn't want the tote system and asked what they were supposed to do with their current trash cans. He noted that giving him another container wouldn't make him recycle more but did like the idea of people paying for their fair share. He wondered why the City felt it had to be in the trash business. He suggested letting home owners make their own arrangements for trash disposal.

John Roach, 116 Grandview Terr., suggested getting out of the trash business altogether.

Bill Cox, 109 Elm St., felt that failing to pass the new proposal was a step backwards and an opportunity to reduce taxes was unheard of. He noted that Council represented all citizens and saving \$1.2 million was for the citizens. He noted that all large decisions were controversial but wanted Council to keep their promise to lower taxes because it was absolutely the right thing to do. He noted that nothing significant was done without some pain.

Dierdre Pehrson, 17 Franklin St., heard a lot of things since it started and realized it was an emotional issue. She didn't think it was saving people money and hoped that Council would really look at the people they represented and make the right decision.

Frank Spiotta, 9 Gateway Dr., felt the proposal wasn't good, taxes weren't going down because the money was just moving somewhere else, and it wasn't saving anyone any money. He suggested talking about it before making a decision because there were still a million questions.

Don Koziol, 13 Franklin St., wanted Council to vote it down, referenced the penalty for not obeying the new law, and wondered what the definition was of abusing totes. He noted that he would have to pay money to exchange his tote if he wanted a bigger one than originally requested and didn't think it was a friendly community if they charged \$100 to deliver the new tote if you didn't want to get it yourself. He also wondered how the truck would get around cars that were parked on the streets.

Rocco Tenebruso, 4 Wood St., noted that what people said came from their hearts and wished Council would go out and look at ARC's new facility, which was very impressive. He also didn't know how the new company would operate with all the snowstorms.

Motion to close by Councilperson Russell, seconded by Councilperson Briggs and all of Council was in favor.

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Communications

Kiwanis wanted to have their Easter egg hunt on Saturday, March 30th from 8:00am – 12:00pm in Centennial Park. Council approved.

The MS Society requested to have their walk event on Sunday, May 5th from 7:00am – 2:00pm. It would start and end at Dwyer Stadium and there would be 1, 3 or 6 mile walks. Funds raised would support local programs and services. Council approved.

Brooks Hawley and Rosemary Christian submitted the application for the Memorial Day parade on Monday, May 27th at 10:00am on East Main St from East Town Plaza to Liberty St. They were looking for any veterans to participate. Council approved.

Resurrection Parish submitted an application for a parade on Saturday, June 8th at 6:30pm on East Main St from Harvester to Liberty St. Council approved.

The American Cancer Society requested to have Relay for Life on Saturday, August 24th from noon to midnight at Vandetta Stadium. They also requested to have purple ribbons on poles and trees in the downtown area. Council approved.

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Council President's Report

Council President Buckley announced that the next regular City Council Conference Meeting would be held on Monday, February 25, 2013 at 7:00 PM at the City Hall Council Board Room, 2nd Floor, City Centre.

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City Attorney's Report

Mr. Van Nest noted there was nothing specific to report.

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City Manager's Report

Mr. Molino noted there was nothing specific to report.

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Committee Reports

None.

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Public Comments

None.

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Council Responses to Public Comments

Councilperson Christian noted that she was not getting kickbacks from Allied as was insinuated. Councilperson Cipollone noted that someone said Mr. Molino was spoon-feeding them. He stated that all the information was presented to Council and they decided. He heard people saying they were misleading the public about the savings but he noted that about 60% would save based on a simple analysis he did. Councilperson Briggs noted that a lot of people had unanswered questions and wondered if there could be a question and answer session. Councilperson Pacino noted that there were a lot of comments that people didn't understand and felt they needed to sit in one room and say things in simple language to explain. Councilperson Christian noted that she had sat through more city managers than anyone else and felt that Mr. Molino had done a splendid job. She noted that he had gotten them out of debt in addition to helping them make many other major decisions and felt that everyone worked hard for their constituents. Mr. Molino noted that there were at least 25 incorrect statements made by the public and felt the City was programmatically within reason to move forward. He noted it wasn't a debate regarding haulers or who was right.

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Unfinished Business

None.

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New Business

#5-2013

RESOLUTION TO ADOPT LOCAL LAW NO. 1 OF 2013 ENTITLED A LOCAL LAW TO AMEND SECTION §134 BY ADDING §134-20 OF THE CODE OF THE CITY OF

BATAVIA TO ALLOW REVOCATION OF LICENSE FOR PEDDLING AND SOLICITING

Motion of Councilperson Briggs

WHEREAS, an amendment of the City Code requires the adoption of a Local Law; and

WHEREAS, a public hearing on this proposed Local Law was held on January 14, 2013 before this Council, pursuant to public notice duly published in *The Daily News*.

NOW, THEREFORE, BE IT RESOLVED, that proposed Local Law No. 1 of 2013 entitled a **Local Law to Amend Section §134 By Adding §134-20 of the Code of the City of Batavia to Allow Revocation of License for Peddling and Soliciting** be and the same is hereby enacted by City Council of the City of Batavia, New York.

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

**LOCAL LAW NO. 1 OF THE YEAR 2013
CITY OF BATAVIA**

A LOCAL LAW TO AMEND §134 BY ADDING §134-20 OF THE CODE OF THE CITY OF BATAVIA TO ALLOW REVOCATION OF LICENSE FOR PEDDLING AND SOLICITING

Be It Enacted by the City Council of the City of Batavia, New York as follows:

Section 1. § 134-20. [Revocation of license.

The City Clerk may, at any time, for a violation of this or any other ordinance or any law, revoke a license. When a license shall be revoked, no refund of any unearned portion of the license fees shall be made. Notice of such revocation and the reason or reasons therefore in writing shall be served by the City Clerk upon the person named in the application or by mailing the same to the address given in the application.]

Section 2. Effective Date

The foregoing amendment shall become effective immediately.

Additions designated as [brackets]

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**#6-2013
RESOLUTION TO APPOINT MEMBERS TO VARIOUS CITY COMMITTEES/
BOARDS**

Motion of Councilperson Pacino

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

Christopher Sputore	December 31, 2015
Beverly Hoy	December 31, 2015
Councilperson Pierluigi Cipollone	December 31, 2013
Councilperson Brooks Hawley	December 31, 2013

Historic Preservation Commission

Sharon Burkel	December 31, 2015
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Seconded by Councilperson Briggs and on roll call approved 9-0.

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#7-2013

RESOLUTION TO AMEND THE 2012-2013 BUDGET TO REFLECT THE RECEIPT OF \$14,126 FROM NEW YORK STATE ARCHIVES GRANT

Motion of Councilperson Cipollone

WHEREAS, the City received \$14,126 from the New York State Archives for Document Conversion and Access; and

WHEREAS, to properly account for the expenditure of this money, a budget amendment needs to be made.

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Batavia that the City Manager be and hereby is authorized to make the following budget amendments to the 2012-2013 budget to undertake the projects of “New York State Archives Grant”:

Effective immediately, amend the 2012-13 budget by increasing expenditure accounts
1.1325.0423.1136 by \$14,126

and increasing revenue account
1.1.3060.1136 by \$14,126

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

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#8-2013

RESOLUTION AUTHORIZING AGREEMENT WITH NEW YORK STATE DEPARTMENT OF TRANSPORTATION FOR DESIGN, RIGHT-OF-WAY ACQUISITION, AND RIGHT-OF-WAY INCIDENTALS ASSOCIATED WITH THE RECONSTRUCTION OF CEDAR STREET FROM ROUTE 5 (MAIN STREET) TO ROUTE 63 (ELLICOTT STREET)

Motion of Councilperson Christian

WHEREAS, a project for the Reconstruction of Cedar Street from Route 5 (Main Street) to Route 63 (Ellicott Street), City of Batavia, Genesee County, P.I.N. 475437 (the “Project”) is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 80% Federal funds and 20% non-Federal funds; and

WHEREAS, the City of Batavia desires to advance the Project by making a commitment of 100% of the non-Federal share of the costs for Design and R.O.W. Acquisition, and R.O.W Incidentals.

NOW THEREFORE, the City Council, duly convened does hereby resolve that the above-referenced Project is approved; and

IT IS FURTHER RESOLVED, that the City Council hereby authorizes the payment in the first instance 100% of the Federal and non-Federal share of the cost of Design, R.O.W. Incidental and R.O.W Acquisition for the Project or portions thereof; and

IT IS FURTHER RESOLVED, that the sum of \$424,000 is hereby appropriated and made available to cover the cost of participation in the above phase of the Project; and

IT IS FURTHER RESOLVED, that in the event the full Federal and non-Federal share of the Project costs exceeds the amount appropriated above, the City Council shall convene as soon as possible to appropriate said excess amount immediately upon notification by the New York State Department of Transportation thereof; and

IT IS FURTHER RESOLVED, that the Council President be and is hereby authorized to execute all necessary agreements, and the Director of Public Works is authorized to execute certifications or reimbursement requests for Federal aid and/or Marchiselli aid on behalf of the City Council with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the municipality’s first instance funding of Project costs and permanent funding of the local share of Federal aid and State aid eligible Project costs and all Project costs within

appropriations therefore that are not so eligible; and

IT IS FURTHER RESOLVED, that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project; and

IT IS FURTHER RESOLVED, that this resolution shall take effect immediately.

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

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#9-2013

RESOLUTION TO REFER A PROPOSED AMENDMENT OF THE ZONING MAP OF THE CITY OF BATAVIA TO THE PLANNING AND DEVELOPMENT COMMITTEE

Motion of Councilperson Doeringer

WHEREAS, the City of Batavia has received the attached Petition to amend the zoning map of the City of Batavia at 665 East Main Street, SBL No. 85.013-1-23, from the current zoning of R-2 Residential District to I-1 Industrial District; and

WHEREAS, Section 190-51 of the Batavia Municipal Code provides that the City Council may from time to time make zoning map amendments after review and report by the City's Planning and Development Committee; and

WHEREAS, in accordance with Section 190-51 if the Planning and Development Committee fails to file a report within 30 days after referral from City Council, the proposed amendment is deemed approved, and the City Council may proceed in addressing the re-zoning request; and

BE IT RESOLVED that the Petition to amend the zoning map related to 665 East Main Street is referred to the Planning and Development Committee for review, analysis and recommendation; and

BE IT FURTHER RESOLVED that the Planning and Development Committee shall report back to the Council on its recommendation regarding the proposed amendment to the zoning district map; and

BE IT FURTHER RESOLVED that the Planning and Development Committee shall take necessary steps to review and report back to Council regarding this matter within thirty days of the date of this referral.

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

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#10-2013

RESOLUTION TO INTRODUCE AN ORDINANCE AMENDING CHAPTER 190 ENTITLED “ZONING” OF THE CITY OF BATAVIA MUNICIPAL CODE TO AMEND THE ZONING MAP OF THE CITY OF BATAVIA AND TO SCHEDULE A PUBLIC HEARING

Motion of Councilperson Hawley

BE IT RESOLVED that a proposed Ordinance entitled “**AN ORDINANCE AMENDING CHAPTER 190 ENTITLED “ZONING” OF THE CITY OF BATAVIA MUNICIPAL CODE TO AMEND THE ZONING MAP OF THE CITY OF BATAVIA**” is introduced before the City Council of the City of Batavia, New York; and

BE IT FURTHER RESOLVED that copies of the aforesaid proposed Ordinance be laid upon the desk of each member of the City Council; and

BE IT FURTHER RESOLVED that the City Council hold a public hearing on said proposed Ordinance at the City Hall, One Batavia City Centre, Batavia, New York, at 7:00 P.M. on Monday, February 25, 2013; and

BE IT FURTHER RESOLVED that the City Clerk publish or cause to be published a public notice in the official newspaper of the City of said public hearing at least five days prior thereto.

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

ORDINANCE #2-2013

AN ORDINANCE AMENDING CHAPTER 190 ENTITLED “ZONING” OF THE CITY OF BATAVIA MUNICIPAL CODE TO AMEND THE ZONING MAP OF THE CITY OF BATAVIA

SECTION 1. AMENDMENT OF THE ZONING MAP OF THE CITY OF BATAVIA TO REZONE PREMISES FROM AN R-2 DISTRICT TO AN I-1 INDUSTRIAL DISTRICT

PREMISES BEING MORE RECENTLY DESCRIBED AS ALL THAT TRACT OF PARCEL OF LAND, situate in the City of Batavia, County of Genesee and State of New York, known and distinguished as the south middle part of Lot No. 10, Section 8, Township No. 12, Range 1 of the Holland Land Company’s survey, bounded and described as follows:

BEGINNING on the south bounds of the Erie Railroad Company's land at the northwest corner of the premises conveyed by David Stewart and wife to Philip Hartnell by deed dated May 19, 1866, and recorded May 19, 1866, in the Genesee County Clerk's Office in Liber 120 of Deeds at Page 313; thence easterly along the southerly bounds of said railroad company's land 447.35' to lands formerly owned by James Crabb; thence south parallel with the east line of said lot and along said Crabb's west bounds 458.02' to the Genesee Road, now called East Main Street; thence west along the north bounds of said road 298.30'; thence northerly at right angles with the northerly bounds of said East Main Street and along the easterly bounds of a parcel of land conveyed by The Batavia Barracks Corporation, Inc. to Fred A. Coolidge and others by deed dated February 1, 1921, recorded February 1, 1921, in Liber 246 of Deeds, page 48, Genesee County Clerk's Office, 133.67 feet to the northeasterly corner of said parcel so conveyed to said Coolidge and others; thence westerly parallel with the northerly bounds of said highway 172.50 feet to the westerly bounds of the premises so conveyed by Stewart to Hartnell; thence northerly along said premises and along the premises conveyed to Norman F. Miner by Marshfield Burt and wife by deed dated October 1, 1840, recorded June 23, 1868, in Liber 124 of Deeds, page 361, Genesee County Clerk's Office, 246.60' to the place of beginning.

The Zoning Ordinance of the City of Batavia, New York, dated and adopted July 25, 1973, and the Zoning Map of the City of Batavia, New York, dated and adopted September 24, 1973 (Said map being part of said Ordinance), as amended, are hereby further amended for the purpose of re-zoning the premises hereinafter described from an R-2 District to a I-1 District:

SECTION 2. EFFECTIVE DATE

This Ordinance shall take effect immediately after the date of passage and in accordance with law.

Deletions designated by ~~strikeout~~
Additions designated by [brackets]

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Meeting adjourned at 9:45 PM.

Respectfully submitted,

**Heidi J. Parker
Clerk-Treasurer**