

CITY OF BATAVIA BUSINESS MINUTES AUGUST 19, 2013

The regular business meeting of the City Council was held Monday, August 19, 2013 at 7:00 PM in the Council Chambers, One Batavia City Centre, Batavia, New York, with Council President Pro Tem Pacino presiding.

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

Council President Pro Tem Pacino called the meeting to order at 7:00 PM. Councilperson Briggs led the Lord's Prayer and the Pledge of Allegiance.

The minutes from the July meetings were approved.

The Council President Pro Tem assigned the regular agenda items.

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Communications

Justice for Children Advocacy Center requested to hold a 5K run/walk on Saturday, September 28th. Registration would begin at 8:00am, the race would begin at 9:00am and they requested to close Bank St from 8:00am – 2:00pm from Washington to Main St. Council approved.

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Council President's Report

Council President Pro Tem Pacino announced that the next regular City Council Business Meeting would be held on Monday, September 9, 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 that they continued to work on a variety of matters such as foreclosures, FOILs, code enforcement, litigation, subpoenas, and tax issues.

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City Manager's Report

Mr. Molino noted that the TEP grant was finalized for the proposed pedestrian/bike trail in conjunction with the Town of Batavia and that there had been a lot of positive feedback about the project.

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Committee Reports

It was noted that Councilpersons Cipollone, Christian, and Hawley and Mr. Molino had met with various groups regarding the neighborhood issues discussed at an earlier meeting.

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Public Comments

John Roach, 116 Grandview Terrace, felt that the \$10,000 the City was considering spending on dumpster enclosures was actually taxpayers money and that cost should be covered by the businesses benefiting as stated in the City code. He said if Council didn't want to enforce the code then it should be changed but he didn't see any wiggle room with the wording of the code. He noted that businesses didn't want to subsidize residents for their garbage pickup so he didn't think residents should subsidize businesses for the dumpster enclosure.

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Council Responses to Public Comments

None.

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Unfinished Business

Councilperson Cipollone noted that he had been past Park Rd and noticed work being done. He asked if Council could get an update from the Town as to the plan for the Park Rd property. Mr. Molino said he could get that from the Town.

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New Business

65- 2013

RESOLUTION APPROVING THE DESIGNATION AND APPOINTMENT OF THE CITY CLERK AS THE INDIVIDUAL TO WHOM NOTICES OF CLAIM WILL BE SENT WHEN RECEIVED BY THE SECRETARY OF STATE

Motion of Councilperson Briggs

WHEREAS, the Governor signed the Uniform Notice of Claim Act into law on December 17, 2012; and

WHEREAS, the law became effective on June 15, 2013 amending New York's General Municipal Law to allow notices of claim against cities and villages to be served on the New York Secretary of State as agent for New York's public corporations; and

WHEREAS, the cities should adopt a resolution approving the designation and appointment of the individual to whom the Secretary of State must mail notices of claim; to provide the State a name where notices can be sent and where one half of the \$250 fee can be sent;

NOW, THEREFORE, BE IT RESOLVED that to keep procedures consistent and to provide the State with a name where notices can be sent and where one half of the \$250 fee can be sent, the Batavia City Council does hereby approve the City Clerk as the receiver of notices of claim as sent by the Secretary of State, and

BE IT FURTHER RESOLVED that the City Clerk of the City of Batavia is hereby directed to complete the Certificate of Designation of Notice of Claim online immediately upon approval of this resolution.

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

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#66-2013

RESOLUTION TRANSFERING \$40,000 TO THE GENERAL FUND PARKING LOTS BUDGET

Motion of Councilperson Christian

WHEREAS, in 2011 the City of Batavia received a \$450,000 grant from the New York Main Street Program to assist downtown property owners in the Main/Jackson/Center Street area with interior and exterior renovations and façade improvements; and

WHEREAS, the goal of the program was to assist at least 20 commercial units and 10 residential units utilizing \$400,000 of grant funds; and

WHEREAS, the City in partnership with the Batavia Development Corporation has received over \$2 million of private investment interest for grant funds; and

WHEREAS, \$25,000 of grant funds is designated for capital street scape improvements and that after thorough review, City staff has recommended that a split-face block dumpster enclosure in the Center Street parking lot be built with the designated street scape funds and that the City also mill and blacktop the remainder of the parking lot; and

WHEREAS, the additional work for improving the parking lot is consistent with the City's adopted Parking Lot Capital Plan and will require a one-time expenditure of \$40,000 of additional funds to complete; and

WHEREAS, for the fiscal year ending March 31, 2014 the City of Batavia is expected to receive \$346,334 in Video Lottery Terminal (VLT) aid; and

WHEREAS, in prior years the City Council has authorized the use of VLT aid for debt service reduction, reserve fund contributions and capital projects;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Batavia authorizes the transfer upon receipt \$40,000 of VLT aid to the General Fund Park Lots budget 001.5650.0423 to complete the dumpster enclosure and milling and blacktop overlay capital project for the Center Street parking lot; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the transfer of funds to is consistent with the City's Strategic Plan in achieving Key Intended Outcome's identified under the Financial Health and Economic Development and Job Creation strategic priorities.

Seconded by Councilperson Doeringer and on roll call failed, 2-6. Councilpersons Canale and Doeringer were in favor of the resolution.

Discussion – Councilperson Hawley made a motion to separate the parking lot project from the cost of the dumpster enclosure and table the dumpster project until the \$10,000 could be further discussed at the next meeting with all nine members present. Councilperson Christian seconded the motion. Councilperson Russell stated that if the only reason to table the resolution was to have nine people voting then he wasn't in favor of tabling. Councilperson Christian noted that she didn't want to go against the code, didn't want taxpayers to have to pay for it and wanted to discuss it with the businesses first. Mr. Molino noted that the code said it was a city action, not a request by the businesses, and based on city requirements. Councilperson Cipollone agreed with Councilperson Christian that it wasn't fair for the rest of the city to pay for the enclosures and wondered if there was a downgrade to keep the cost within \$25,000 so the grant could cover the entire cost. Councilperson Doeringer confirmed that if a dumpster was on a parking lot the business had to pay a fee and Mr. Molino noted the cost was \$100 per year. Councilperson Russell suggested voting, if the resolution failed, separate it at that time. Councilperson Cipollone reminded Council that they didn't have to do the parking lot because it was planned for future years but it was recommended to do this year to be in conjunction with the dumpster

project. Councilperson Hawley said he was in favor of the parking lot but not the dumpster enclosure but he didn't want the entire resolution to disappear if it was voted down. Councilperson Canale asked what the VLT money was for and if it could be used for downtown improvements. Mr. Molino explained that it was a formula for hosting a gaming facility to be used as seen fit. He noted that it had been used for other capital projects, debt payment and funding reserves but it wasn't in the budget as a revenue because it wasn't guaranteed funds. Councilperson Christian noted that she would like to see the VLT money used for sidewalks or to reduce taxes, not for dumpster enclosures. Councilperson Cipollone felt that even though it was only \$10,000, it should be used to offset an expense down the road and not to benefit four businesses. Councilperson Russell noted that he wasn't opposed to using the money if it benefited all of the City but not comfortable with it benefiting just four businesses.

Council voted to separate the projects and on roll call failed, 4-4. Councilpersons Hawley, Pacino, Briggs and Christian voted to separate the projects.

Mr. Molino asked if Council still wanted to consider the dumpster enclosure project by either trying to reduce the cost to \$25,000 or charge back the businesses the \$10,000. Council agreed to move forward by trying first to get the cost down. Councilperson Hawley noted that he didn't think it was fair to charge the businesses if they didn't even get a vote. Councilperson Briggs felt that they had to pay their share, they shouldn't be given the choice, it was in the code and that was how it is if Council wanted to proceed. Councilperson Russell noted that it had been in the code since the 1990's, wondered why it was even being discussed since there hadn't been any complaints from the businesses, and it probably wouldn't be the code they were opposed to but rather the effect it had on them.

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#67-2013
RESOLUTION TO ENTER INTO AN AGREEMENT WITH
M. L. CACCAMISE ELECTRIC CORP.
FOR THE CEDAR STREET RECONSTRUCTION ELECTRICAL CONTRACT
PIN 4754.37

Motion of Councilperson Doeringer

WHEREAS, a Project for the Reconstruction of Cedar Street City of Batavia, P.I.N. 4754.37 (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 has previously agreed to advance the Project by administering the work; and

WHEREAS, a competitive bid was made by M. L. Caccamise Electric Corp., (721 Portland Ave, Rochester, NY 14621) for the value of \$74,186.00 to do the electrical portion of the project.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Batavia that the City Council President is hereby authorized on behalf of the City to execute an agreement with M. L. Caccamise Electric Corp. for Cedar Street Reconstruction Electrical Contract.

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

Discussion – Councilperson Russell asked Ms. Kuzon if she was concerned with the \$25,000 price difference between the lowest bidder and the next bid. She noted that New York State concurred that the low bid was a good price.

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#68-2013
RESOLUTION AUTHORIZING AGREEMENT WITH NEW YORK STATE
DEPARTMENT OF TRANSPORTATION FOR PE/DESIGN,
R.O.W. INCIDENTALS, R.O.W. ACQUISITIONS, AND CONSTRUCTION/CI/CS
ASSOCIATED WITH THE RECONSTRUCTION OF CEDAR STREET FROM ROUTE
5 (MAIN STREET) TO ROUTE 63 (ELLICOTT STREET)

Motion of Councilperson Canale

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 PE/Design, R.O.W. Incidentals, R.O.W. Acquisitions, and Construction/CI/CS.

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 PE/Design, R.O.W. Incidentals, R.O.W. Acquisitions, and Construction/CI/CS for the Project or portions thereof; and

IT IS FURTHER RESOLVED, that the sum of \$3,851,000 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 Christian and on roll call approved 8-0.

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Meeting adjourned at 7:40 PM.

Respectfully submitted,

**Heidi J. Parker
Clerk-Treasurer**