

CITY OF BATAVIA – CONFERENCE MINUTES

MONDAY, APRIL 28, 2014

Present were Council President Hawley and Councilpersons Canale, Doeringer, Briggs, Pacino, Deleo, Jankowski, Christian and Cipollone.

Call to Order

Council President Hawley called the meeting to order at 7:00 PM. Councilperson Briggs led the Invocation and the Pledge of Allegiance.

Public Comments

Jim Rosenbeck, 13 Lewis Ave, was concerned with the rule of law being replaced by administrative action. He had concerns about the inability to explain the chain of duties for Sally Kuzon, the State Comptroller's audit, and an audit advisory committee with members outside the City. He told Council that denying or minimizing the mistakes only made them look bad and was just asking for transparency. He noted the Council was going to take more money from the people but provide less service and stated that just because Mr. Molino says something is alright, it is their responsibility to make sure it happens. He asked Council to change their pattern of behavior, was looking to them for honesty, and asked them not to be sled dogs.

John Roach, 116 Grandview Terr, noted that he got a chance to see the explanation as to why City residents were not on the audit advisory committee. He explained that the legal bills were not grouped by subject in the budget and that made it hard to see how much was paid for each item. He also asked who audits the legal bills.

Council Response to Public Comments

Councilperson Christian asked how Mr. Roach got an explanation of the audit committee. Mr. Molino noted that it could be from the website where the agendas are posted along with the supporting documentation. Councilperson Pacino noted that the things in the paper were very amusing but not necessarily true or what really happened. She noted that per the Charter, subordinate officers and employees are appointed by their department head, which in the case of the assistant city manager, would be Mr. Molino. She explained that Mr. Molino didn't need to have a hiring committee or anyone's help in choosing an assistant but he chose to have their help and she thought that was a good thing because he is not running the sled. She felt that there was plenty of other things to do beside figuring out if the word should be "and" or "or." She noted that she was tired of the nonsense and suggested being a Council and run this City. Councilperson Canale noted that the City responded to the State Comptroller's audit and respectfully disagreed with the findings. He noted that executive session will always be because it needed to be. He felt that Mr. Molino was running a very tight ship just like Mr. Prospero remembered Ira Gates doing years before and felt Mr. Prospero's comments were accurate. He felt if the City was going to have a city manager to run the city then we should let him run the city and Council would oversee that. He noted that, regarding the audit committee, the

City was allowed to go outside the City to fill positions. Councilperson Canale stated that they were elected officials, asked the public to give them the respect and trust to make decisions, that everything that goes on in the City couldn't be discussed publicly, and he appreciated when constituents called or e-mailed him for answers. Councilperson Jankowski agreed with some of Mr. Rosenbeck's comments, felt that since they were told the assistant would be doing jobs the City Manager didn't have time to work on and would be working in his capacity if he was out, that Council should have a large say as to who appoints the assistant. He felt that there needed to be more open government and didn't see anything in the Charter saying they if they couldn't get people from they City they could violate the Charter and get people from outside the City to be on a committee. He suggested they look a little harder. He apologized for being duped into being part of the two laws that were broken which were the Charter and the open meetings law. Councilperson Briggs asked who reviewed the legal fees. Mr. Molino noted that he looked them over, they were organized by category and if there were questions, he brought them up with the City Attorney. Councilperson Deleo noted that he wouldn't use executive session to suppress the rights of the people. Councilperson Christian asked Mr. Van Nest if they had broken any laws. Mr. Van Nest noted that the audit advisory committee was an agenda item so suggested discussing that later on. Mr. Van Nest noted that with regards to the open meeting law, executive sessions were called very narrowly and are held only when necessary. He noted that, unlike other governments, the City of Batavia didn't have one at every meeting. Councilperson Doeringer asked what the procedure was for a FOIL request. Mrs. Parker explained how the FOIL processed worked with regards to response time and what could be requested.

Communications

The MS Society requested to hold a walk on Sunday, May 4th beginning and ending at Dwyer Stadium. Registration was to begin at 9:00am and the race was scheduled to start at 10:00am. Council approved.

The Batavia Business Improvement District submitted their application for a public market on Thursdays from June 19th to September 25th from 9:00am – 3:30pm in the parking lot at Alva and Bank Streets. Council approved.

Batavia Development Corporation (BDC) Presentation

Julie Pacatte presented the annual update to Council. She showed action plan priorities, measures of success, what was done in 2013 and plans for 2014. Council President Hawley noted that if anyone was interested in participating on the Centennial Celebration committee to get an application online or in the Clerk's office and submit to the Clerk's office.

Water Fund Capital Improvement Reserve

Lisa Neary noted that the state and local auditors recommended that the City formally establish a water fund reserve. She noted that money had been set aside but no reserve was ever formally established. Councilperson Jankowski asked if doing this would be in compliance with the law and could the City do this. Mrs. Neary noted that the City

would not be in compliance by not establishing the reserve. Council agreed to move the item to the next business meeting.

Capital Infrastructure Project No. 2014-1

Sally Kuzon noted that May 5th would be the opening for the competitive bids, the project would begin in June and end in October. She noted that the project was in addition to others that were in the budget but was bundling to get a better price. Councilperson Cipollone noted that a section of Richmond Ave from State St to Park Rd was already splitting and wondered if the company who did that work would be considered for future work. Ms. Kuzon noted that the road was a concrete road and the weather caused it to shift and there may need to be total road reconstruction to correct the problem. Council agreed to move the item to the next business meeting.

Youth Bureau Operating Agreement

Mr. Molino noted that in 2010 the City entered into a shared services agreement with the County. He noted that the agreement was up for renewal and suggested renewing for another four years. He stated that the arrangement had worked out very well. Councilperson Jankowski asked Mrs. Sikorski if it was a good arrangement and she stated that it was. Councilperson Cipollone noted that Jocelyn, Toni and their staff had done an excellent job and should be commended for the work they do. Council agreed to move the item to the next business meeting.

Brownfield Opportunity Area (BOA) Plan Acceptance

Mr. Molino noted that in 2011 the City received a \$266,000 grant to start a BOA plan, there were three steps to the grant and the City is ready for the third step. He explained that Council needed to accept the plan so the City would move onto step 3. Mr. Molino recommends accepting the plan. He suggested a public hearing even though one was not required, at the May 27th meeting and for Council to vote on the plan at the June 9th meeting. Councilperson Doeringer asked where the funding for the SEQR was going to come from. Mr. Molino noted that for the most part a lot of the work had already been done so it should be too involved. It was noted that the State required the City do the SEQR because it was the lead agency. Councilperson Christian asked if the cost would come to Council before they agreed. Mr. Molino noted that he was just proposing acceptance of the plan for step 2 and the SEQR was part of step 3. Councilperson Cipollone clarified that Council would be notified prior to any money being spent and Mr. Molino agreed.

40-52 Ellicott Street

Mr. Molino noted that developing the area would increase the value of the properties around it as well, the property had gone through bankruptcy, and had been part of the City's foreclosure process but the City hadn't taken it over because of potential environmental concerns. Mr. Molino noted they were trying to get into the Brownfield Cleanup Program (BCP) and recommended passing a resolution transferring the RFP process to the BDC if a preferred developer is identified. Council agreed to move the

item to the next business meeting.

Ward Boundaries

Mr. Molino explained that the Charter required a review of the ward populations after each census and if certain shifts existed the ward boundaries would have to be redefined. He noted that Wards 2, 3, and 4 changed more than 10% requiring redefinition. He noted that he tried to limit the changes as much as possible and not to change the legislative districts. He showed Council the potential changes, noted he looked at a variety of possibilities and the proposed change was the most simplistic. He noted that boundary changes had to be on the general election because it was a Charter change. Mr. Molino explained that the boundary changes would take effect 1/1/15 for ward elections after that date. Councilperson Doeringer asked if everyone voted or just residents in the affected wards. Mr. Molino noted that everyone voted because it was a Charter change. Council agreed to move the item to the next business meeting.

Historic Preservation Commission Appointment

Mr. Molino noted that an appointment was needed for Historic Preservation. Council agreed to move the item to the next business meeting.

384-e Retirement Benefit to Firefighters

Mr. Molino explained that there was a window for them to move members from 384-d to 384-e as part of their collective bargaining agreement. He noted that Council would have to pass a resolution opening the window. Councilperson Cipollone confirmed that there was no option other than doing the paperwork and Mr. Molino agreed. Councilperson Jankowski asked when the window opened. Mr. Molino stated that they would have a one year window and they can request that it be opened each year. Councilperson Pacino asked how many people they were talking about and Mr. Molino noted that it was 10. Council agreed to move the item to the next business meeting.

Audit Advisory Committee

Mr. Molino noted that there was a question about members of committees and that they never had enough applicants to fill the audit advisory committee because there were different qualifications than other committees. He noted that the committee was proposed by the auditors in 2007/2008 and the members needed to have a public finance or public accounting background. He noted that there hasn't been the interest from the community to be on the committee and so non-city residents have been appointed. He noted there had not been any concern from prior councils but he could re-advertise to see if there were any interested city residents. Mr. Molino explained that if no one applies or no one is qualified, they are authorized to appoint non-city residents. Councilperson Jankowski asked if that committee was run by Council like the other committees, namely Councilpersons Pacino and Briggs. They both responded that it was not. Councilperson Jankowski asked where in the Charter were they authorized to violate the Charter and fill the committee with non-city residents. Mr. Van Nest noted that the courts have allowed municipalities to fill committees with non-residents and that the City would not be forced

to fill a board with unqualified individuals. Councilperson Christian noted that she didn't have a problem with it whatsoever and her and other Councilmembers recommended Ms. Saville who is not a City resident and felt that they certainly did not break the law. Councilperson Jankowski noted that other boards had term limits and wondered if it applied to the audit advisory committee as well. Mr. Molino noted that it could apply. Councilperson Pacino asked if there were things the average person wouldn't know if they were on the committee. Mr. Molino said they would need an understanding of municipal or government accounting. Councilperson Jankowski asked why he didn't get helpful information on the topic until two weeks after it was discussed so a position could be defended. Mr. Molino noted that if anyone had any questions, they could always call him and he would sit down and explain what was found which was done with a few Councilmembers. Councilperson Brooks asked to take off the two non-residents and advertise for qualified candidates. Mr. Molino noted that the two non-residents couldn't be taken off without a resolution but would advertise for the committee.

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Executive Session ... Collective Negotiations and Employment Matters

MOTION TO ENTER EXECUTIVE SESSION

Motion of Councilperson Pacino

WHEREAS, Article 7, Section 105(1)(e), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...collective negotiations pursuant to article fourteen of the civil service law...".

WHEREAS, Article 7, Section 105(1)(f), of the Public Officer's Law permits the legislative body of a municipality to enter into Executive Session to discuss "...the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation..."; and

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 Christian and on roll call approved 9-0.

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Conference Meeting adjourned at 9:00 PM.

Respectfully submitted,

**Heidi J. Parker
Clerk-Treasurer**

04/28/2014