

CITY OF BATAVIA BUSINESS MINUTES NOVEMBER 9, 2015

The regular business meeting of the City Council was held Monday, November 9, 2015 at 7:00 PM in the Council Chambers, One Batavia City Centre, Batavia, New York, with Council President Hawley presiding.

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

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

The minutes from the October meetings and draft monthly financial statements from September were approved.

The Council President assigned the regular agenda items.

* * *

Communications

The Batavia Business Improvement District submitted an application for Christmas in the City on Friday, December 4, 2015 from 5:00 – 9:00pm on Main St. There will be a parade, horse and wagon ride, and other events in the downtown area. Council approved.

* * *

Council President's Report

Council President Hawley announced that the next regular City Council Conference Meeting would be held on Monday, November 23, 2015 at 7:00 PM at the City Hall Council Board Room, 2nd Floor, City Centre.

Councilperson Pacino presented a proclamation to past and present members of Batavia High's Z Club, a division of Zonta, for their work to improve the status of women all over the world and their accomplishments as an organization.

* * *

City Attorney's Report

Mr. Van Nest noted that there was nothing specific to report at that time.

* * *

City Manager's Report

Mr. Molino noted that there was nothing to report at that time.

* * *

Committee Reports

Councilperson Pacino noted that the parade for Christmas in the City was at 7:00pm and encouraged Council to be in it. Council President Hawley noted that he had been asked to judge the floats in the parade. He also noted that Batavia Housing Authority had a new executive directed and it was Nathan Varland.

* * *

Public Comments

Laurie Oltramari, BID director, wanted to formally introduce herself and thanked those who had welcomed her already. She also asked Council to consider allowing seasonal overnight parking and provided a list of similar municipalities who allowed the parking.

Chris Connelly, 137 Pearl St, noted that he was deeply troubled by an infringement on our freedom. He noted that on October 29th he had received a parking ticket for parking his vehicle on his front yard and that he tried to get it dismissed. He noted that per the City Code the fine is not to exceed \$10 so wondered why he was being charged \$25 or up to \$50 if it's late. He didn't believe people should be charged for parking on the own property and it needed to be corrected.

* * *

Council Responses to Public Comments

Councilperson Jankowski remembered an amendment officially raising the fee from \$10 to \$25 because the tickets needed to be reprinted. Mr. Molino noted that he would review the section of the code that was amended, explained that prohibiting front yard parking was a legitimate restriction within the zoning code, and it was allowed to be imposed by municipalities. Mr. Molino also noted that it was an aesthetic issue and there were methods for people to get amendments from the Zoning Board of Appeals. Councilperson Canale asked Mrs. Oltramari what time frame she meant by seasonal. She noted that it would be from May – October that she would like to have overnight parking. Councilperson Jankowski noted there were three cleaning activities that take place at night which was why vehicles weren't allowed to park on the streets overnight. Councilperson Christian thanked Mr. Connelly for his service and hoped that he would follow up with Mr. Molino on potential exemptions. Councilperson Jankowski asked if the City had considered remote on/off for ballfield lights. Mr. Molino noted he hadn't looked into it yet but would during budget time.

* * *

Unfinished Business

Councilperson Deleo noted that he checked with Batavia Downs and they would be happy to have the rocket car displayed at their location if necessary.

* * *

New Business

#84-2015

A RESOLUTION TRANSFERRING \$200,000 FROM ASSIGNED FUND BALANCE TO THE FIRE CAPITAL EQUIPMENT RESERVE FUND

Motion of Councilperson Cipollone

WHEREAS, pursuant to General Municipal Law 6-c the City of Batavia has an established Capital Equipment Reserve Fund; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2015 had assigned General Fund balance for funding various reserves; and

WHEREAS, the City of Batavia recently purchased a new fire engine/pumper to replace Engine 14 which was 22 years old and said purchase was done exclusively with reserve funds; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2015 has a fire engine/pumper (Engine 12) which is 13 years old and a ladder truck (Ladder 15) which is 20 years old; and

WHEREAS, the Fire Department is presently conducting a vehicle needs analysis on existing apparatus that will be used to determine what is needed for the Fire Department to be efficient and effective in the future; and

WHEREAS, within the next several years the City will be faced with replacing or refurbishing Engine 12 or Ladder 15; and

WHEREAS, the City Council is desirous of transferring \$200,000 of assigned General Fund balance to the Capital Equipment Reserve Fund for fire equipment to assist with future equipment replacement and improvements; and

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Batavia does hereby transfer \$200,000 from the assigned General Fund balance to the Capital Equipment Reserve Fund; and

BE IT FURTHER RESOLVED, that the transfer of funds to the Capital Equipment Reserve Fund is consistent with the City’s Strategic Plan in achieving Key Intended Outcome’s identified under the Well Managed City.

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

* * *

#85-2015

A RESOLUTION TRANSFERRING \$50,000 FROM ASSIGNED FUND BALANCE TO THE PUBLIC WORKS CAPITAL EQUIPMENT RESERVE FUND

Motion of Councilperson Briggs

WHEREAS, pursuant to General Municipal Law 6-c the City of Batavia has an established Capital Equipment Reserve Fund; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2015 had assigned General Fund balance for funding various reserves; and

WHEREAS, since the development of the Equipment Replacement Plan (ERP) in 2011 the City has replaced 20 pieces public works equipment, valued at over \$2 million.

WHEREAS, the City has made significant strides in improving the fleet over the past several years, however for the fiscal year ending March 31, 2015 the remaining fleet remains in poor shape, very old and is fully depreciated; and

WHEREAS, the City Council is desirous of transferring \$50,000 of assigned General Fund balance to the Capital Equipment Reserve Fund for public works equipment to assist with future equipment replacement and improvements; and

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Batavia does hereby transfer \$50,000 from the assigned General Fund balance to the Capital Equipment Reserve Fund; and

BE IT FURTHER RESOLVED, that the transfer of funds to the Capital Equipment Reserve Fund is consistent with the City's Strategic Plan in achieving Key Intended Outcome's identified under the Well Managed City strategic priority.

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

* * *

#86-2015

A RESOLUTION TRANSFERRING \$100,000 FROM ASSIGNED FUND BALANCE TO THE DWYER STADIUM REPAIR RESERVE FUND

Motion of Councilperson Canale

WHEREAS, pursuant to General Municipal Law 6-d the City of Batavia has an established Dwyer Stadium Repair Reserve Fund; and

WHEREAS, the reserve fund was established for the purpose of replacing or making major repairs to capital improvements and equipment for Dwyer Stadium; and

WHEREAS, it has been nearly 20 years since major capital improvements have been made to Dwyer Stadium; and

WHEREAS, in 2015 a 5-year capital plan was developed with the current operator of the stadium and was adopted by City Council with the 2015/16 budget; and

WHEREAS, the most significant expenditure (over \$200,000) on the capital plan is a roof replacement for the main building and dugouts, and with consistent contributions to the Dwyer Stadium reserve fund, most of the improvements can be completed within the adopted capital plan

WHEREAS, the City Council is desirous of transferring \$100,000 of assigned General Fund balance to the Dwyer Stadium Repair Reserve Fund to make future repairs and improvements to Dwyer Stadium; and

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Batavia does hereby transfer \$100,000 from assigned General Fund balance to the Dwyer Stadium Repair Reserve.

BE IT FURTHER RESOLVED, that the transfer of funds to the Dwyer Stadium Repair Reserve Fund is consistent with the City's Strategic Plan in achieving Key Intended Outcome's identified under the Well-Managed City and Steward of City's Physical Assets strategic priorities.

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

* * *

#87-2015

A RESOLUTION TRANSFERRING \$300,000 FROM ASSIGNED FUND BALANCE TO THE PUBLIC FACILITIES CAPITAL RESERVE FUND

Motion of Councilperson Deleo

WHEREAS, pursuant to General Municipal Law 6-c the City of Batavia has an established Public Facilities Capital Reserve Fund for purposes of construction, re-construction, repair or replacement of public facilities; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2015 had assigned General Fund balance for funding various reserves; and

WHEREAS, with any building, regular maintenance and capital improvements are necessary in order to preserve the functionality of a building and avoid significant or possible catastrophic repairs due to neglect and that consistent improvements to City facilities will be ongoing and reserve funds will be necessary to absorb any planned or emergency improvements in the future; and

WHEREAS, the City has conducted a space needs assessment of the Police Department and received a recommendation from a citizen appointed Task Force on next steps for replacing the Police Station and other City facilities remain in disrepair and are in need of improvements. As part of the City's strategic plan, City staff has been preparing a list of improvements for the Bureau of Maintenance and Fire Station that will then be incorporated into a capital plan along with other City facility improvements for future years and presented as part of the 2016/2017 budget; and

WHEREAS, in preparation of these upcoming expenditures City Council has committed funding to the Public Facilities Capital Reserve Fund over the past four years, and continuing with additional commitment of reserve funding will provide the City with greater financial capacity to handle future improvements; and

WHEREAS, the City Council is desirous of transferring \$300,000 of assigned General Fund balance to the Public Facilities Capital Reserve Fund to assist with future construction, replacement and improvements of public facilities; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia does hereby transfer \$300,000 from the assigned General Fund balance to the Public Facilities Capital Reserve Fund.

BE IT FURTHER RESOLVED, that the transfer of funds to the Public Facilities Capital Reserve Fund is consistent with the City's Strategic Plan in achieving Key Intended Outcome's identified under the Well-Managed City and Stewards of City's Physical Assets strategic priorities.

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

* * *

#88-2015

A RESOLUTION TRANSFERRING \$200,000 FROM ASSIGNED FUND BALANCE TO THE CAPITAL SIDEWALK RECONSTRUCTION RESERVE FUND

Motion of Councilperson Christian

WHEREAS, pursuant to General Municipal Law 6-c the City of Batavia has an established Capital Sidewalk Reconstruction Reserve Fund; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2014 had assigned General Fund balance for funding various reserves; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2015 has approximately 60,770 linear feet of sidewalk, or 16% of the City's sidewalk network, that needs to be replaced within the City limits; and

WHEREAS, in 2014 the City received a Transportation Alternatives Program (TAP) grant for \$720,657 to complete approximately 12,300 linear feet of sidewalk improvements along pedestrian routes to City schools and the grant requires a local match of \$240,000; and

WHEREAS, the City Council is desirous of transferring \$200,000 of assigned General Fund balance to the Capital Sidewalk Reconstruction Reserve Fund to assist with future replacement and improvements of City sidewalks; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia does hereby transfer \$200,000 from the assigned General Fund balance to the Capital Sidewalk Reconstruction Reserve Fund.

BE IT FURTHER RESOLVED, that the transfer of funds to the Capital Sidewalk Reconstruction Reserve Fund is consistent with the City's Strategic Plan in achieving Key Intended Outcome's identified under the Well-Managed City and Stewards of the City's Physical Assets strategic priorities.

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

* * *

#89-2015

A RESOLUTION TRANSFERRING \$25,000 FROM ASSIGNED FUND BALANCE TO THE ADMINISTRATIVE SERVICES EQUIPMENT AND SOFTWARE RESERVE FUND

Motion of Councilperson Cipollone

WHEREAS, pursuant to General Municipal Law 6-c the City of Batavia has an established Administrative Services Equipment and Software Reserve Fund; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2015 had assigned General Fund balance for funding various reserves; and

WHEREAS, in March 2015 the City Council created the Administrative Service Equipment and Software Reserve to assist with upgrading and meeting the City's information technology and records management needs to include, but not limited to, replacing antiquated software utilized by the City, some more than 30 years old and operating on a Disk Operating System (DOS) platform; and

WHEREAS, the City is currently beginning a tax collection, utility billing and payroll upgrade of the existing system and in upcoming years will be looking to upgrade all financial software including accounts payable, accounts receivable and general ledger; and

WHEREAS, considering these upgrades are similar to capital purchases, utilizing reserve funds will allow these improvements to take place without impacting the City's operating budget; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia does hereby transfer \$25,000 from the assigned General Fund balance to the Administrative Services Equipment and Software Reserve Fund.

BE IT FURTHER RESOLVED, that the transfer of funds to the Administrative Services Equipment and Software Reserve Fund is consistent with the City's Strategic Plan in achieving Key Intended Outcome's identified under the Well-Managed City strategic priority.

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

* * *

#90-2015

A RESOLUTION TRANSFERRING \$1,000,000 FROM ASSIGNED FUND BALANCE TO THE SEWER FACILITY RESERVE FUND

Motion of Councilperson Deleo

WHEREAS, pursuant to General Municipal Law the City of Batavia has an established Sewer Facility Reserve Fund for purposes of improving the sewer plan and sewer facilities; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2015 had assigned fund balance; and

WHEREAS, the Sewer Facility Reserve Fund was created in 1963 and encompasses a broad scope of sewer infrastructure improvements, to include but not limited to, sewer line replacements, sewer lining, sewer plant upgrades and general sewer facility and collection system upgrades; and

WHEREAS, in 2014 the City negotiated and executed an unprecedented sale of sewer capacity to the Town of Batavia, selling 500,000 gallons per day (gd) of sewer capacity for just over \$2,000,000; and

WHEREAS, in 2014 the City Council adopted a comprehensive 10-year \$22 million water and sewer capital infrastructure plan. Included in this plan was an evaluation of the City water and sewer infrastructure needs, rating and ranking of infrastructure priorities and funding mechanisms based on projected costs and estimated revenues sources determined by water consumption and sewer volume trends. Also part of this plan were projected water and sewer rates for the next 10 years; and

WHEREAS, the City Council is desirous of transferring \$1,000,000 of assigned fund balance to the Sewer Facility Reserve Fund to assist with future construction, replacement and improvements of the City's wastewater systems as identified in the adopted capital infrastructure plan over the next ten years; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia does hereby transfer \$1,000,000 from the assigned fund balance to the Sewer Facility Reserve Fund.

BE IT FURTHER RESOLVED, that the transfer of funds to the Sewer Facility Reserve Fund is consistent with the City's Strategic Plan in achieving Key Intended Outcome's identified under the Well-Managed City and Stewards of City's Assets strategic priorities.

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

* * *

#91-2015

A RESOLUTION TRANSFERRING \$1,000,000 FROM ASSIGNED FUND BALANCE TO THE SEWAGE SLUDGE RESERVE FUND

Motion of Councilperson Canale

WHEREAS, pursuant to Article 2 of the General Municipal Law the City of Batavia has an established Sewage Sludge Reserve Fund for purposes of paying for the cost and disposal of sewage sludge by either the construction of a public facility or for the removal, hauling and disposal at a landfill or other disposal facility; and

WHEREAS, the City of Batavia for the fiscal year ending March 31, 2015 had assigned fund balance; and

WHEREAS, the Sewage Sludge Reserve was created in 1996 for purposes of building capital for the removal of sewage sludge from the City's sewer plant; and

WHEREAS, in 2014 the City negotiated and executed an unprecedented sale of sewer capacity to the Town of Batavia, selling 500,000 gallons per day (gd) of sewer capacity for just over \$2,000,000; and

WHEREAS, in 2014 the City Council adopted a comprehensive 10-year \$22 million water and sewer capital infrastructure plan. Included in this plan was an evaluation of the City water and sewer infrastructure needs, rating and ranking of infrastructure priorities and funding mechanisms based on projected costs and estimated revenues sources determined by water consumption and sewer volume trends. Also part of this plan were projected water and sewer rates for the next 10 years; and

WHEREAS, in March 9, 2015 City Council authorized the Sludge Removal Project for Secondary Pond No. 1 and the estimated cost of the project is \$2.3 million and expected to be completed by the end of 2016; and

WHEREAS, the City Council is desirous of transferring \$1,000,000 assigned fund balance to the Sewage Sludge Reserve for purposes of building capital for the removal of sewage sludge from the City's sewer plant; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia does hereby transfer \$1,000,000 from the assigned fund balance to the Sewage Sludge Reserve.

BE IT FURTHER RESOLVED, that the transfer of funds to the Sewage Sludge Reserve is consistent with the City's Strategic Plan in achieving Key Intended Outcome's identified under the Well-Managed City and Stewards of City's Assets strategic priorities.

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

Discussion – Councilperson Christian asked when it would take place. Mr. Molino noted that it would probably be in the spring and then again in 3-4 years.

* * *

#92-2015

A RESOLUTION TO AMEND THE 2015-2016 POLICE DEPARTMENT BUDGET TO REFLECT THE RECEIPT OF A POLICE TRAFFIC SERVICES GRANT

Motion of Councilperson Jankowski

WHEREAS, the City of Batavia Police Department has received a grant in the amount of \$11,000 from the New York State Governor's Traffic Safety Committee to participate in the statewide Police Traffic Services Program. The goal is to increase seat belt usage and reduce dangerous driving behaviors in an effort to reduce serious injury and death from traffic crashes; and

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

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 amendment to the 2015-2016 budget effective November 9th, 2016 to cover various traffic enforcement details card equipment purchases:

Increase expenditure accounts:

001.3120.0101.1151	\$	10,218.30
--------------------	----	-----------

001.3120.0802.1151	\$	781.70
--------------------	----	--------

Increase revenue accounts:

001.0001.0389.1151	\$	11,000.00
--------------------	----	-----------

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

* * *

#93-2015

**A RESOLUTION OF THE CITY OF BATAVIA CONSENTING TO
TRANSFER OF CONTROL OF THE CABLE FRANCHISEE**

Motion of Councilperson Deleo

WHEREAS, Time Warner Cable Northeast LLC ("Franchisee") is the duly authorized holder of a franchise, as amended to date (the "Franchise"), authorizing Franchisee to operate and maintain a cable system to serve the City of Batavia, NY (the "Franchise Authority"); and

WHEREAS, on May 23, 2015, Charter Communications, Inc. ("Charter Communications") along with its subsidiary CCH I, LLC ("New Charter") entered into agreements with Time Warner Cable Inc. ("TWC") (the ultimate parent company of Franchisee), Advance/Newhouse Partnership ("A/N"), and Liberty Broadband Corporation ("Liberty") in order to merge with TWC, the ultimate parent of the Franchisee (the "Transaction"); and

WHEREAS, TWC will merge into a subsidiary of New Charter; and

WHEREAS, Charter Communications will merge with a subsidiary of New Charter, and New Charter will assume the name Charter Communications, Inc. ("Charter"); and

WHEREAS, the ultimate control of Franchisee will transfer to Charter; and

WHEREAS, the Franchise Authority and Charter do not agree whether approval of the Transaction by the Franchise Authority is required; and

WHEREAS, Charter has filed an informational FCC Form 394 with the Franchise Authority (the "Application") requesting approval of the transfer of control; and

WHEREAS, the Franchise Authority has considered the Application and approves of the Transaction; and

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The Franchise Authority consents to the Transaction and to the corporate reorganization described in the Application.

SECTION 2. The Franchise Authority confirms that the Franchise is valid and outstanding and in full force and effect and there are no defaults under the Franchise. Subject to compliance with the terms of this Resolution, all action necessary to approve the change of control of the Franchisee to Charter has been duly and validly taken.

SECTION 3. Charter or Franchisee may (a) assign, transfer, or transfer control of its assets, including the Franchise, provided that such assignment, transfer, or transfer of control is to an entity directly or indirectly controlling, controlled by or under common control with Charter; (b) restructure debt or change the ownership interests among existing equity participants in Charter; (c) pledge or grant a security interest to any lender(s) of Charter's assets, including, but not limited to, the Franchise, or of interest in Charter, for purposes of securing any indebtedness; and (d) sell equity interests in Charter or any of Charter's affiliates.

SECTION 4. After the closing date of the Transaction (the "Closing Date"), Franchisee shall remain bound by the lawful terms, conditions, responsibilities, obligations, liabilities, and rights contained in the Franchise, including any and all pre-closing non-compliance issues identified after the Closing Date, until the Franchise is either renewed, not renewed or terminated by the Franchise Authority pursuant to federal law and regulations.

SECTION 5. This Resolution shall have the force of a continuing agreement with Franchisee, and the Franchise Authority shall not amend or otherwise alter this Resolution without the consent of Franchisee and Charter.

SECTION 6. Franchise Authority does not, as a result of the transfer of control, or by virtue of this Resolution, waive, release or otherwise limit its rights with respect to any failure by Franchisee to comply with any and all of the terms and conditions of the Franchise prior to the Closing Date.

SECTION 7. Franchise Authority's consent to the transfer of control arising from the Transaction is contingent upon the parties to the Transaction obtaining all other necessary and applicable federal governmental approvals, permits, and authorizations, and is further contingent upon Charter signing a Certificate of Acceptance of this Resolution.

SECTION 8. This Resolution shall take effect immediately.

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

* * *

**#94-2015
A RESOLUTION TO SCHEDULE A PUBLIC MEETING
REGARDING A NEW POLICE FACILITY**

Motion of Councilperson Briggs

WHEREAS, it is the desire of the City Council to have a public meeting for the residents regarding a new police facility; and

WHEREAS, the process involves holding a public meeting to provide residents with time to review information from the Police Facility Task Force and for the residents to provide feedback to the City Council; and

WHEREAS, residents are invited to attend the meeting and provide feedback to City Council to assist the City in defining priorities and opportunities for the police facility location; and

NOW THEREFORE, BE IT RESOLVED, that the City of Batavia will hold a public meeting at City Hall, One Batavia City Centre, Council Board Room, Batavia, New York at 7:00 p.m. on Monday, November 23, 2015; and

BE IT FURTHER RESOLVED, that the City Clerk publish or cause to be published a public meeting in the official newspaper of the City.

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

* * *

#95-2015

A RESOLUTION TO AMEND THE 2015-16 BUDGET

Motion by Councilperson Pacino

WHEREAS, pursuant to General Municipal Law 6-n, the City of Batavia has an established Liability and Casualty Reserve fund; and

WHEREAS, the City of Batavia is self-insured for a \$25,000 life insurance benefit for certain employee groups; and

WHEREAS, the City Council is desirous of expending funds from the Appropriated Reserve/Insurance Reserve Account for payment of a \$25,000 life insurance benefit for the unfortunate death of a City of Batavia employee on July 31, 2015; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Batavia hereby authorize the City Manager to make the following 2015-2016 budget amendment effective November 9, 2015:

Increasing expenditure account:

Life Insurance/Insurance Reserve 001.1430.0808.2104 \$25,000

Increasing revenue account:

Appropriated Reserve/Insurance Reserve 001.0001.0211.2104 \$25,000

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

* * *

#96-2015

A RESOLUTION APPROVING THE CANCELLATION OF TAX LIENS FOR 301 BANK STREET AND 305 BANK STREET REAR

Motion of Councilperson Canale

WHEREAS, Article 11 of the Real Property Tax Law (RPTL) substantially revised the enforcement of the collection of delinquent real property taxes as well as established a procedure for the withdraw of and/or cancellation of tax lien pursuant to Section 1138 of the RPTL; and

WHEREAS, parcels addressed at 301 Bank Street (SBL No. 71.019-1-12) and 305 Bank Street Rear (SBL No. 71.019-1-15), formerly known as the Batavia Iron and Metals Co. Inc., were used to reclaim iron, metal and wire materials for sale to recycling and manufacturing firms; and

WHEREAS, both parcels were accepted into the New York State Environmental Restoration Program (ERP) administered by the New York State Department of Environmental Conservation (DEC), and

WHEREAS, after performance of a comprehensive site investigation on the parcels under the ERP program, significant environmental contamination has been identified at both parcels, and

WHEREAS, DEC has placed the Batavia Iron and Metals Site into the New York State Superfund Program as Site No. 819018 and identified the need for significant environmental remediation at both properties,

WHEREAS, the two parcels have been in in rem foreclosure for past tax years but have been withdrawn from foreclosure and is currently in the pending foreclosure proceeding for tax year 2014, and

WHEREAS, foreclosure of the City's outstanding tax liens against the two parcels poses significant liability risk to the City if it took title to the parcels prior to remediation of the site under New York State and Federal environmental laws, and

WHEREAS, existing environmental liability associated with the two parcels makes the parcels unmarketable until the parcels are remediated, but the City would have to continue to carry outstanding taxes and penalties on its ledgers, and

WHEREAS, the environmental contamination and statutory liability for any prospective purchaser of the properties makes the existing tax liens against the two parcels substantially unenforceable, and

WHEREAS, it is the recommendation of the City Manager that those properties be withdrawn from the pending foreclosure action and the existing tax liens canceled, and

WHEREAS, it is further recommended by the City Manager that these properties be declared tax exempt due to the inability to enforce tax liens through foreclosure and sale until such time as DEC completes remediation of the properties.

NOW, THEREFORE, BE IT RESOLVED, the City Council finds the existing tax liens and all related charges for 301 Bank Street (SBL No. 71.019-1-12) and 305 Bank Street Rear (SBL No.71.19-1-15) to be unenforceable as there is no practical method to enforce the liens and therefore effective March 1, 2015 are cancelled pursuant to RPTL Section 1138; and

BE IT FURTHER RESOLVED, that the a copy of this resolution shall be filed with the Enforcing Officer and the Enforcing Officer shall file a Certificate of Cancellation with the Genesee County Clerk's Office, and

BE IT FURTHER RESOLVED, the City Council finds that future tax liens against the two parcels are found to be impractical and lacking in any enforcement mechanism until DEC completes remediation of the two parcels; and

BE IT FURTHER RESOLVED, the City Council declares that 301 Bank Street (SBL No.71.019-1-12) and 305 Bank Street Rear (SBL No. 71.019-1-15) are declared tax exempt until such time both parcels are fully remediated by DEC or City Council shall otherwise determine that the parcels be placed back on the City's tax rolls, and

BE IT FURTHER RESOLVED that the Enforcing Officer shall issue a Certificate of Prospective Cancellation and file copies with the Assessor's Office and the Genesee County Director of Real Property Tax Services.

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

* * *

Meeting adjourned at 7:37 PM.

Respectfully submitted,

**Heidi J. Parker
Clerk-Treasurer**