

**SPECIAL BUSINESS MEETING MINUTES  
CITY OF BATAVIA  
FEBRUARY 27, 2017**

The special business meeting of the City Council was held Monday, February 27, 2017 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, Bialkowski, McGinnis, and Viele.

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

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**MOTION TO ENTER EXECUTIVE SESSION**

**Motion of Councilperson Viele**

**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 Canale and on roll call approved 9-0.**

**Upon completion of executive session, Councilperson Canale made a motion to end executive session, seconded by Councilperson Viele and on roll call approved 9-0.**

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**#22-2017**

**A RESOLUTION TO AUTHORIZE THE CITY COUNCIL PRESIDENT TO  
EXECUTE A SETTLEMENT AGREEMENT WITH BATAVIA CITY CENTRE  
MERCHANTS ASSOCIATION, 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. 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, although the scope, extent and expiration of the obligations and covenants are contested by the parties; and

**WHEREAS**, the Merchants Association commenced an action captioned Batavia City Centre Merchants Association v. City of Batavia, Index No. 58726, Supreme Court, Genesee County by service of a Summons and Complaint, then Amended Complaint upon Defendant seeking recovery for alleged damages in connection with the repair of the concourse roof, silos and skylights, certain alleged past and future maintenance fees from the City; and

**WHEREAS**, the City has appeared in the Lawsuit and served an Answer with defenses and Counter-claims; and

**WHEREAS**, the City commenced a second action captioned City of Batavia v. Batavia City Centre Merchants Association, Inc., Index No. 63563, Supreme Court, Genesee County by service of a Summons and Complaint seeking termination of a purported lease of the concourse, past and future rents for the concourse and establishment of a fair market value lease for the City-owned concourse; and

**WHEREAS**, the Merchants Association appeared in the second Lawsuit and Served an Answer;

**WHEREAS**, following the close of discovery, summary judgment motions and a Decision and Order by the Court, in the first Lawsuit, a large portion of the claims and all claims in the second Lawsuit remain pending and would require trial; and

**WHEREAS**, after consultation and direction from the Court the two actions were referred

to commercial mediation before a private mediator in an effort to resolve the multiple pending claims in the two Lawsuits and address the future relationship of the City, Merchant Association and parcel owners at the Mall; and

**WHEREAS**, after multiple mediation sessions and considerable negotiation and compromise the City and Merchants Association entered into a Settlement Term Sheet on December 20, 2016 addressing the material settlement matters between the parties and future relationship at the Mall.

**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 settlement of the two Lawsuits in accordance with the Settlement Term Sheet is in the best interests of the City of Batavia as it will end 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 a Settlement Agreement, 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 McGinnis and on roll call approved 8-1. Councilperson Bialkowski recused himself from voting because his wife is a mall employee.**

**Discussion** – Councilperson Bialkowski hoped that the resolution to the mall would work this time and hoped it didn't become an anchor around the taxpayers' necks. Council President Jankowski wanted to put this to rest and move forward.

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Meeting Adjourned at 7:40 PM.

Respectfully submitted,

Heidi J Parker  
Clerk-Treasurer