

CITY OF BATAVIA

DATE: January 9, 2013
TO: Community Development Committee
FROM: Scott Buening, Community Development Director
SUBJECT: Discussion of Land at the Northeast Corner of Wilson Street and Kirk Road

Background and Analysis

The property at the northeast corner of Wilson Street and Kirk Road was deeded to the City in November of 2010. There had been development proposals on this land but due to various circumstances, the property owner instead elected to deed the property to the City. There was a deed restriction on this land that prohibited selling it before November 30, 2012; however this restriction has now lapsed. The property is approximately 6.0 acres in size and is zoned CC Community Commercial. About 25% of the property has wetland on it, mostly on the eastern and northern parts of the property. The property generated approximately \$30,000 in annual property tax revenues for all taxing bodies before it was filed as an exempt property.

Staff has been discussing the property and what should be done with it. Staff feels that the highest and best use would be to sell the property and to get it back on the tax rolls as commercial property. The best case scenario would be for this to be redeveloped with a gas station as there are few such facilities in this area. Local trucks could benefit from such a facility on the way to the industrial parks to the north. That type of use is a permitted use in this district. However, there are a number of other uses that may fit well on this property, with a target towards sales tax generating uses.

That being said, the CC Community Commercial zoning has a number of uses that are permitted that may or may not be desirable for future uses. Many of these consist of service uses that will not generate sales taxes. Our suggestion would be to impose a deed restriction to prohibit certain uses that are currently permitted in the CC district. The deed restriction should be crafted such that the City could release the restriction if a future use seems to be acceptable in the future.

There are essentially two ways that the land can be sold. The first and most common way is to put out an advertisement to receive bids on the land. The highest bid received then will be the successful bidder and the land can be sold to that party. This usually yields the best price for the land, but can be cumbersome when there is someone specific interested in the land. This requires $\frac{3}{4}$ of the corporate authorities to approve the sale.

The other option is to have an appraisal made of the land value in an open market sale. The appraisal is required to be available for public inspection. There is a resolution passed to authorize the sale, and can be done either internally by staff, through a licensed real estate broker or public auction. The City can then sell the land to an interested party provided that their offer is at least 80% of the appraised price. Due to the nature of this land, this seems to be the preferable way to sell the property.

Recommendation

Staff recommends the following for this property:

1. Discuss the possible uses that should be restricted (if any) and direct staff to come back to the CDC with a proposed list and deed restriction document. Said restriction would be releasable upon City Council approval.
2. Direct staff to proceed with putting the property on the market by obtaining an appraisal for the land and posting a sign advertising the parcel for sale.

Attachments:

1. Deed
2. Clean Use List for CC-Community Commercial District
3. Redlined Use List for CC-Community Commercial District
4. Wetland Map of Property

Cc: Mayor & City Council
City Administrator
City Attorney
Press
File



2010K082857
SANDY WEGMAN
RECORDER - KANE COUNTY, IL

RECORDED: 12/7/2010 12:44 PM
REC FEE: 35.00 RHSPS FEE: 10.00
PAGES: 7

**SPECIAL WARRANTY DEED
Limited Liability Company to
Municipal Corporation**

CTSA3483046 DBK 1af1

UNOFFICIAL

BY THIS SPECIAL WARRANTY DEED (the "Deed"), executed and delivered by BCP Realty, L.L.C. and JCC Realty, L.L.C., both being limited liability companies created and existing under and by virtue of the laws of the State of Illinois ("Grantor") to the City of Batavia, an Illinois municipal corporation ("Grantee"), Grantor, for and in consideration of Ten and 00/100 Dollars, and other good and valuable consideration, in hand paid, and pursuant to authority given by the members of said limited partnership, GRANT, BARGAIN, SELL and CONVEY to Grantee, the following described land situated in the County of Kane in the State of Illinois, to wit:

See attached Exhibit "A"

together with all tenements, appurtenances, right of ways, privileges, licenses and easements thereunto belonging, if any.

Grantor covenants with Grantee, its successors and assigns, that the granted premises are free from all encumbrances made by Grantor, and that it does warrant and will defend the same to Grantee, and its successors and assigns, forever, against the lawful claims and demands of all persons claiming by, through or under Grantor, but against none other; provided, however, that the real property described above is conveyed subject to, and there are excepted from the limited warranty covenants of Grantor, all of the following: (i) general real estate taxes and assessments (whether general or special) not yet due and payable at the time of closing, if any; (ii) those easements, restrictions, encumbrances and matters set forth on Exhibit "B" attached (the "Permitted Encumbrances"); (iii) liens and encumbrances arising out of the acts of Grantee; and (iv) the deed restriction set forth on Exhibit "C".

Permanent Real Estate Index Number(s): 12-24-126-003-0000 (affects part of the property); and
12-24-126-046-0000 (affects part of the property)

Address of Real Estate: Northeast corner of Kirk Road and Wilson Street, Batavia, Illinois

Chicago Title Insurance Company
1795 West State Street
Geneva, IL 60134

cas

7

45 -

Dated: November __, 2010

BCP Realty, L.L.C.
an Illinois limited liability company

By: [Signature]
Manager

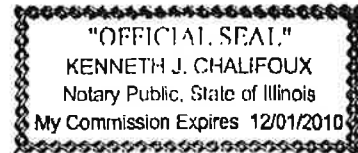
JCC Realty, L.L.C.
an Illinois limited liability company

By: [Signature]
Manager

STATE OF ILLINOIS)
COUNTY OF COOK (LAKE) ss.

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY, that Bill Anest and Peter Anest, personally known to me to be the Managers of BCP Realty, L.L.C. and JCC Realty, L.L.C., and personally known to me to be the same persons whose names are subscribed to the forgoing instrument, appeared before me this day in person and acknowledged that as such Managers, that they signed and delivered the said instrument, pursuant to authority given by the members of the limited liability companies, as their free and voluntary act, and as the free and voluntary act and deed of said limited liability companies, for the uses and purposes therein set forth.

Given under my hand and seal this 30th day of November, 2010



[Signature] (Notary Public)

EXEMPT UNDER PROVISIONS OF PARAGRAPH E, SECTION 31-45, REAL ESTATE TRANSFER TAX LAW

DATE: November 30th, 2010

[Signature]
Signature of Grantor, Grantee or Representative

Prepared by:

Mitchell M. Iseberg,
180 N. LaSalle Street #2900
Chicago, IL 60601

After Recording, Mail To:

John Noble
c/o John Noble
City Attorney
City of Batavia
100 North Island Avenue
Batavia, Illinois 60510

Grantor's Address +
Name and Address of Taxpayer:
City of Batavia
100 North Island Avenue
Batavia, Illinois 60510

Unofficial

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL ONE:

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 13 AND PART OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF ARTHUR T. MCINTOSH'S WOODLAND HILLS; THENCE NORTH 0 DEGREES 26 MINUTES 00 SECONDS WEST ALONG THE EAST LINE EXTENDED NORTHERLY OF SAID WOODLAND HILLS AND ALONG THE CENTER LINE OF KIRK ROAD 577.82 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF BURLINGTON NORTHERN, INC. (FORMERLY CHICAGO, BURLINGTON AND QUINCY RAILROAD) BEING 50.0 FEET SOUTHERLY OF THE CENTERLINE (MEASURED AT RIGHT ANGLES THERETO) OF SAID RAILROAD; THENCE NORTH 73 DEGREES 07 MINUTES 14 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE 291.15 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING NORTH 73 DEGREES 07 MINUTES 14 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE 221.54 FEET; THENCE SOUTH 0 DEGREES 26 MINUTES 00 SECONDS EAST PARALLEL WITH SAID EAST LINE EXTENDED NORTHERLY 673.77 FEET TO THE CENTER LINE OF WILSON STREET; THENCE WESTERLY ALONG SAID CENTER LINE 212.92 FEET TO A LINE DRAWN SOUTH 0 DEGREES 26 MINUTES 00 SECONDS EAST FROM THE POINT OF BEGINNING; THENCE NORTH 0 DEGREES 26 MINUTES 00 SECONDS WEST 624.42 FEET TO THE POINT OF BEGINNING IN CITY OF BATAVIA KANE COUNTY, ILLINOIS.

PARCEL TWO:

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 13 AND PART OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF ARTHUR T. MCINTOSH'S WOODLAND HILLS; THENCE NORTH 0 DEGREES 26 MINUTES 00 SECONDS WEST ALONG THE EAST LINE EXTENDED NORTHERLY OF SAID WOODLAND HILLS AND ALONG THE CENTER LINE OF KIRK ROAD 577.82 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF BURLINGTON NORTHERN, INC. (FORMERLY CHICAGO, BURLINGTON AND QUINCY RAILROAD) BEING 50.0 FEET SOUTHERLY OF THE CENTERLINE (MEASURED RIGHT ANGLES THERETO) OF SAID RAILROAD FOR A POINT OF BEGINNING; THENCE NORTH 73 DEGREES 07 MINUTES 14 SECONDS EAST ALONG SAID SOUTHERLY RIGHT OF WAY LINE 291.15 FEET; THENCE SOUTH 0 DEGREES 26 MINUTES 00 SECONDS EAST PARALLEL WITH SAID EAST LINE EXTENDED NORTHERLY 624.42 FEET TO THE CENTER LINE OF WILSON STREET; THENCE WESTERLY ALONG SAID CENTER LINE 281.59 FEET TO A LINE DRAWN SOUTH 0 DEGREES 26 MINUTES 00 SECONDS EAST FROM THE POINT OF BEGINNING; THENCE NORTH 0 DEGREES 26 MINUTES 00 SECONDS WEST 577.82 FEET TO THE POINT OF BEGINNING, IN CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

EXHIBIT "B"

PERMITTED ENCUMBRANCES

1. RIGHTS OF WAY FOR DRAINAGE TILES, DITCHES, FEEDERS, LATERALS AND UNDERGROUND PIPES, IF ANY.
2. RIGHTS OF THE PUBLIC, THE STATE OF ILLINOIS AND THE MUNICIPALITY IN AND TO THAT PART OF THE LAND, IF ANY, TAKEN OR USED FOR ROAD PURPOSES.
3. COUNTY OF KANE RESOLUTION RECORDED MAY 22, 1974 AS DOCUMENT 1298985 THAT KIRK ROAD IS FREEWAY WITH ACCESS LIMITED.
4. TERMS, CONDITIONS AND PROVISIONS CONTAINED IN AN EASEMENT AGREEMENT RECORDED JANUARY 19 2006 AS DOCUMENT 2006K006980 GRANTING A EASEMENT FOR DRAINAGE OVER, UNDER AND ACROSS THAT PART OF THE LAND FALLING WITHIN THE LAND DESCRIBED IN EXHIBIT C-1 ATTACHED THERETO AND DEPICTED IN EXHIBIT C-2 ATTACHED THERETO.
5. TERMS, CONDITIONS AND PROVISIONS CONTAINED IN EASEMENT AGREEMENT FOR INGRESS AND EGRESS, RECORDED AUGUST 23, 2002 AS DOCUMENT NUMBER 2002K104261 MADE BY AND BETWEEN THE PAUL J. SALCE FAMILY TRUST DATED DECEMBER 19, 1999 AND COMMUNICATIONS SERVICES INC.

EXHIBIT "B"

DEED RESTRICTION

GRANTEE, ITS SUCCESSORS AND ASSIGNS, OR ANY OF THEM, SHALL NOT SELL OR OTHERWISE DISPOSE OF THE ABOVE DESCRIBED PROPERTY PRIOR TO NOVEMBER 20, 2012.

Unofficial

RECORDER - KANE COUNTY, ILLINOIS

PLAT ACT AFFIDAVIT - METES AND BOUNDS DESCRIPTION

STATE OF ILLINOIS

COUNTY OF KANE } SS.

Jennifer Brower @ Chicago Title Insurance Co., being duly sworn on oath, states that she resides at 1795 W State St. Geneva, IL 60134

And further states that: (please check the appropriate box)

A. [X] That the attached deed is not in violation of 765 ILCS 205/1 (a), in that the sale or exchange is of an entire tract of land not being a part of a larger tract of land; or

B. [] That the attached deed is not in violation of 765 ILCS 205/1 (b) for one of the following reasons: (please circle the appropriate number)

Please circle the number of the paragraph which is applicable to attached deed.

- 1. The division or subdivision of land is into parcels or tracts of five acres or more of size which does not involve any new streets or easements of access;
2. The division of lots or blocks of less than one acre in any recorded subdivision which does not involve any new streets or easements of access;
3. The sale or exchange of parcels of land between owners of adjoining and contiguous land;
4. The conveyance of parcels of land or interests therein for use as right of way for railroads or other public utility facilities and other pipe lines which does not involve any new streets or easements of access;
5. The conveyance of land owned by a railroad or other public utility which does not involve any new streets or easements of access;
6. The conveyance of land for highway or other public purposes or grants or conveyances relating to the dedication of land for public use or instruments relating to the vacation of land impressed with a public use;
7. Conveyances made to correct descriptions in prior conveyances;
8. The sale or exchange of parcels or tracts of land following the division into no more than two parts of a particular parcel or tract of land existing on July 17, 1959, and not involving any new streets or easements of access;
9. The sale is of a single lot of less than five acres from a larger tract when a survey is made by an Illinois Registered Land Surveyor; provided this exemption shall not apply to the sale of any subsequent lots from the same larger tract of land, as determined by the dimensions and configuration of the larger tract on October 1, 1973, and provided also that his exemption does not invalidate any local requirements applicable to the subdivision of land.

Affiant further states that she makes this affidavit for the purpose of inducing the Recorder of Deeds of Kane County, Illinois, to accept the attached deed for recording, and that all local requirements applicable to the subdivision of land are met by the attached deed and the tract described therein.

Signature of Affiant

SUBSCRIBED AND SWORN TO BEFORE ME

this 6th day of December, 2010.

Signature of Notary Public



Table 2.303: Land Use Regulations – Commercial Districts

Use Classification	CC	Additional Regulations
Animal Services		
<i>Animal Grooming</i>	P	
<i>Small Animal Clinics</i>	P	
Automated Teller Machine (ATM)	A	See Section: 2.305.F
Automated Teller Machine (ATM), Remote	A	See Section: 2.305.F
Banks and Other Financial Institutions		
<i>Without Drive Through Facilities</i>	P	
<i>With Drive Through Facilities</i>	P	
Banquet Facility	P	
Building Material and Home Improvement Sales and Service, Retail	P	
Business Services	P	
Carnival	T	See Section: 4.509
Child Day Care	P	
Conference Center	C	
Cultural Institutions	P	
Dry Cleaning and Laundry Outlet	P, L2	
Eating and Drinking Establishments		
<i>Bars/Taverns/Nightclubs/Lounges</i>	P	
<i>Restaurants, Full Service</i>	P	
<i>Restaurants, Limited Service</i>	P	
Entertainment and Recreation, Indoor		
<i>Large-Scale</i>	C	
<i>Small-Scale</i>	P	
Entertainment and Recreation, Outdoor	C	
Farmers' Market	A	
Food Preparation		
<i>Small-Scale</i>	P	
Funeral and Undertaking Services	C	
Garden Supply Stores and Plant Nurseries	P	
Government Offices and Facilities	P	
Haunted House	T	See Section: 4.509
Health Care Facilities		
<i>Urgent Care Facility</i>	P	
<i>Medical Offices and Clinics</i>	P	
Hotels and Commercial Lodging	P	
Instructional Services, Specialized	P	
Laboratories, Commercial	P	
Laundry Services	P	
Offices, General	P	
Over-The-Air Reception Device	P	See Chapter 4.8
Pawn Shops	P	See Title 3-5-C
Personal Services	P	
Residential, Permanent		
<i>Loft Unit</i>	P	
Retail Sales, Convenience	P	
Retail Sales, Furniture	P	
Retail Sales, General	P	
Satellite Dish Antenna, Large	P, L5	See Chapter 4.8
Seasonal Sales	T	See Section: 4.509

Table 2.303: Land Use Regulations – Commercial Districts

<i>Use Classification</i>	<i>CC</i>	<i>Additional Regulations</i>
Swap Meet, Flea Market and Auction, Indoor	P	
Swap Meet and Auction, Outdoor	T	
Tattoo Parlor / Piercing Studio	P	
Teen Nightclub	C	
Utilities		
<i>Facilities</i>	C	
<i>Well Site</i>	P	
Vehicle and Equipment Sales, Leasing and Services		
<i>Car Wash</i>	P	See Section: 4.512
<i>Commercial Vehicle/Equipment Sales and Rental; New and Used</i>	C	
<i>Fueling Facility</i>	P	
<i>Fueling Facility, Alternative</i>	P	
<i>Motor Vehicle Sales and Leasing, New and Used</i>	C	
<i>Non-Commercial Vehicle Rental</i>	C	
<i>Tent Sale, Vehicle</i>	T	
<i>Vehicle and Equipment Services, Light</i>	P	See Section: 4.509
Wireless Communication Facilities	C	

L2: Drive-through Dry Cleaning and Laundry Outlets require Administrative Design Review

L5: Only as a use incidental to the principal use of the property

Table 2.303: Land Use Regulations – Commercial Districts

Use Classification	CC	Additional Regulations
Animal Services		
<i>Animal Grooming</i>	▼	
<i>Small Animal Clinics</i>		
Automated Teller Machine (ATM)	A	See Section: 2.305.F
Automated Teller Machine (ATM), Remote	A	See Section: 2.305.F
Banks and Other Financial Institutions		
<i>Without Drive Through Facilities</i>	▼	
<i>With Drive Through Facilities</i>		
Banquet Facility	P	
Building Material and Home Improvement Sales and Service, Retail	P	
Business Services	▼	
Carnival	▼	▼
Child Day Care	▼	
Conference Center	▼	
Cultural Institutions	▼	
Dry Cleaning and Laundry Outlet	▼	
Eating and Drinking Establishments		
<i>Bars/Taverns/Nightclubs/Lounges</i>	P	
<i>Restaurants, Full Service</i>	P	
<i>Restaurants, Limited Service</i>	P	
Entertainment and Recreation, Indoor		
<i>Large-Scale</i>	C	
<i>Small-Scale</i>	P	
Entertainment and Recreation, Outdoor	▼	
Farmers' Market	A	
Food Preparation		
<i>Small-Scale</i>	P	
Funeral and Undertaking Services	▼	
Garden Supply Stores and Plant Nurseries	▼	
Government Offices and Facilities	C	
Haunted House	▼	▼
Health Care Facilities		
<i>Urgent Care Facility</i>	▼	
<i>Medical Offices and Clinics</i>	▼	
Hotels and Commercial Lodging	P	
Instructional Services, Specialized	▼	
Laboratories, Commercial	▼	
Laundry Services	C	
Offices, General	▼	
Over-The-Air Reception Device	▼	▼
Pawn Shops	▼	▼
Personal Services	▼	
Residential, Permanent		
<i>Loft Unit</i>	▼	
Retail Sales, Convenience	P	
Retail Sales, Furniture	P	
Retail Sales, General	P	
Satellite Dish Antenna, Large	▼	▼
Seasonal Sales	▼	▼

Deleted: P|
P

Deleted: P|
P

Deleted: P

Deleted: T

Deleted: See Section: 4.509

Deleted: P

Deleted: C

Deleted: P

Deleted: P, L2

Deleted: C

Deleted: C

Deleted: P

Deleted: P

Deleted: T

Deleted: See Section: 4.509

Deleted: P|
P

Deleted: P

Deleted: P

Deleted: P

Deleted: P

Deleted: P

Deleted: See Chapter 4.8

Deleted: P

Deleted: See Title 3-5-C

Deleted: P

Deleted: P

Deleted: P, L5

Deleted: See Chapter 4.8

Deleted: T

Deleted: See Section: 4.509

Table 2.303: Land Use Regulations – Commercial Districts

<i>Use Classification</i>	<i>CC</i>	<i>Additional Regulations</i>
Swap Meet, Flea Market and Auction, Indoor	▼	
Swap Meet and Auction, Outdoor	▼	
Tattoo Parlor / Piercing Studio	▼	
Teen Nightclub	▼	
Utilities		
Facilities	C	
Well Site	▼	
Vehicle and Equipment Sales, Leasing and Services		
Car Wash	▼	See Section: 4.512
Commercial Vehicle/Equipment Sales and Rental; New and Used	C	
Fueling Facility	P	
Fueling Facility, Alternative	P	
Motor Vehicle Sales and Leasing, New and Used	C	
Non-Commercial Vehicle Rental	C	
Tent Sale, Vehicle	▼	
Vehicle and Equipment Services, Light	▼	See Section: 4.509
Wireless Communication Facilities	C	
<p>L2: Drive-through Dry Cleaning and Laundry Outlets require Administrative Design Review L5: Only as a use incidental to the principal use of the property</p>		

Deleted: P

Deleted: T

Deleted: P

Deleted: C

Deleted: P

Deleted: P

Deleted: T

Deleted: P



SOURCE: AERIAL PHOTOGRAPH KANE COUNTY SIDWELL IMAGE, 2010

SCALE: 1" = 200'



- WETLAND 1 (1.91 ACRES)

CLIENT CITY OF BATAVIA 100 N. ISLAND AVENUE BATAVIA, IL 60510	TITLE WILSON STREET WETLAND DELINEATION	DWN.	EAM	CHKD.	PVH
		JOB# 120129			
WILLS BURKE KELSEY ASSOCIATES LTD. 116 West Main Street, Suite 201 St. Charles, Illinois 60174 (630) 443-7755	AERIAL PHOTOGRAPH				
					EXHIBIT 6