

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: IA

Title:

Presentation of a recommendation for the Partial Release of Executive Session Minutes from the Government Operations Committee and Government Services Committee.

Presenter:

Mark Koenen, City Administrator

Meeting: City Council

Date: October 21, 2019

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

This is a request to approve the partial release of the executive session minutes as listed below. The minutes have been reviewed and approved for release by legal counsel.

Government Operations

- October 15, 2018 (Partial release, section 2)

Government Services

- March 28, 2016
- April 23, 2018 (Partial release, section 2)

Attachments *(please list):*

Executive Session Minutes for Release (partial)

Recommendation/Suggested Action *(briefly explain):*

Presentation of a recommendation for the Partial Release of Executive Session Minutes from the Government Operations Committee and Government Services Committee.

July 2019 - Executive Session Minutes for Release

City Council

None

Government Operations

- October 15, 2018 (Partial release, section 2)

Government Services

- March 28, 2016
- April 23, 2018 (Partial release, section 2)

Planning and Development

None

**EXECUTIVE SESSION MINUTES
CITY OF ST. CHARLES, IL
GOVERNMENT OPERATIONS COMMITTEE MEETING
MONDAY, OCTOBER 15, 2018**

Members Present: Stellato, Silkaitis, Payleitner, Turner, Gaugel, Vitek, Bessner

Absent: Lemke, Bancroft, Lewis

Others Present: Mayor Ray Rogina, Atty. John McGuirk, City Administrator Mark Koenen, City Clerk Chuck Amenta, Director Chris Minick, Director Rita Tungare

1. Call to Order - The session was convened by Ald. Turner at 7:48 p.m.

2. Property Acquisition

Koenen – 37W370 Route 38 (Parent Petroleum)

There are two items on property acquisition tonight; the first one was summarized in a memo that Rita Tungare sent out for me on Friday which dealt with Parent Petroleum. They are a property owner on the north side of Route 38. There were some pictures in your packet. There is some history with that parcel going back to the Miller annexation with regard to roadway and transportation improvement, and it was again invigorated with a conversation more recently with Bricher Commons. They are planning to move their business, sell their site, and move to Aurora. The owners of Parent Petroleum remembered that at a prior point in time they had a conversation with the City concerning land acquisition for a roadway extension. The City would like to have a roadway extended to the west side of their property, half on the fairgrounds and half on Parent Petroleum. No one was really ready to advance the project at that point in time. They came back to us now asking if we're still interested, and if we are, they would like to sell us the property. They had had a similar conversation with the Fair Board and that Board they aren't interested in acquiring more land. I will tip my hat and suggest that maybe there might be another opportunity to acquire that right-of-way for a roadway extension in the future pursuant to an annexation agreement. Parent Petroleum is in rural Kane County, it is not in the City of St. Charles, perhaps through an annexation agreement we would get a dedication, at that time, when it is necessary. They did ask that we bring it forward, and so being business friendly, we said we would love too, and here we are.

Stellato –

I agree with you 100% when a development comes on the table, we move.

Tracey Conti, Deputy City Clerk

**EXECUTIVE SESSION MINUTES
CITY OF ST. CHARLES, IL
GOVERNMENT SERVICES COMMITTEE
MONDAY, MARCH 28, 2016**

Members Present: Chairman Turner, Aldr. Payleitner, Aldr. Lemke, Aldr. Krieger, Aldr. Gaugel, Aldr. Bessner, Aldr. Lewis

Members Absent: Aldr. Stellato, Aldr. Silkaitis, Aldr. Bancroft

Also Present: Mark Koenen, City Administrator; Peter Suhr, Director of Public Works; AJ Reineking, Public Services Manager; Dave Kintz, Deputy Police Chief; Joseph Schelstreet, Fire Chief; John McGuirk, Legal Counsel; Kristi Dobbs, Recording Secretary

1. Call to Order

City Administrator Mark Koenen convened the meeting at 7:59 p.m.

2. Project Discussion

Mr. Koenen: This Executive Session has to do with a problem project that I shared with you about six weeks ago and it relates to the Woods of Fox where there was some apparent damage on City owned property. We were alerted to that from the neighbor who called the Police Department. In turn, Public Works got involved because they are the keeper of the woods. Peter and his team are going to present their findings.

Mr. Suhr: In January, Public Works and the Police were called about tree damage in the Woods of Fox Glen Subdivision. It was determined that several trees on City property were damaged, more specially 98 trees in varying size and species were cut down or girdled and left standing dead. If you don't know, girdling is basically a process by which a chain saw is cut around the base of the tree and over a year it starves the tree of nutrients and water and ultimately dies and falls down. As a follow up to the investigation, the Police Department found and talked to the offender who admitted to cutting and damaging the trees.

Since then, the Public Works Department hired a professional arborist to prepare a comprehensive assessment of the damage; they included a site evaluation, damage control efforts, possible code violations and replacement options for reforestation. Legal counsel has seen all the information and will weight in and the Tree Commission has also been informed and given a copy of the report we received from our consultant. Beyond that, no arrests or any other action has been done to date so we are looking for your guidance on this issue. We have gone out and put no trespassing signs in the area.

Our arborist and consultant have classified this as a floodplain forest which typically occupies low lying areas adjacent to a stream or river and is subject to period flooding and cycles of erosion. Norton Creek runs through this property and occasionally floods. After Police and Public Works responded to the neighbor, our consultant assessed that there was a poor and unpermitted attempt at an ecological restoration. There were piles of debris and logs and even some burn piles. Trees varied between six and 20 inches in diameter and there was some brush under six inches, but our Ordinances defines a tree of six inches or more so our consultant only looked for those particular trees. Various species were identified. The area is a wetland and floodplain forest that is defined by the National Wetland inventory of 1987 and contains mapped hydric soils by the Natural Resource Commission as well.

Aldr. Lemke: What is the definition of hydric soil?

Mr. Suhr: Muddy, swampy; fits the wetland definition. One thing our consultant identified is that they girdled these trees, which is recognized process for deforesting, but they did it wrong. To properly girdle a tree, it should be from waist height on the tree and this was cut much lower than that. Also the depth of the cut is between one and two inches and these have been girdled between two and four inches in some cases. That is an important factor from safety; with the trees girdled as much as they were, it causes safety problems due to wind conditions, etc.

Aldr. Lewis: Over what period of time did this take place?

Mr. Suhr: Over several years, and the fresh piles were within six months.

Aldr. Bessner: Are there still a lot of trees in that area?

Mr. Suhr: The area on our property, especially to the north and west is still wooded and has not been impacted. Deputy Chief Kintz suggests this process has happened over years and that tends to be to the east and south.

Aldr. Bessner: Is there still a perimeter of heavy forestry?

Mr. Suhr: Yes.

Aldr. Lemke: Does this affect property outside St. Charles?

Mr. Suhr: Our target zone is our property, but I think it's safe to say it went over the boundary line into Wayne.

Aldr. Gaugel: Have we notified Wayne?

Mr. Suhr: We have not done that yet.

Deputy Chief Kintz: This extends to the back yard of the person we are talking about. He has significant property that goes to the north side of his house into our property, so what he was doing on the City property; he was also doing on his own in that area.

Mr. Suhr: Our arborist recommends that we remove the girdled trees because they feel that is a safety and liability issue. So the Public Works Department has already started to do so with our own forces. It's hard to get to, so I think the risk of liability is low. However, there is evidence of hiking trails; hence the reason for the no trespassing signs and our immediate action to remove the girdled trees. Our arborists are recommending that we reforest this area. We provided all the detail to the Tree Commission and of course they were fairly upset about the situation. They focused on the high quality trees that were cut down, and they also recommend reforestation of this area; all but one of the Tree Commissioners that they would be in support of penalties to the offender to the extent of our Ordinance.

Our consultants say quite simply that 98 trees were removed and 98 trees should be replaced, at least; they identified that this area can probably handle an additional 50 trees. They want to reforest with a variety of trees that would quickly adapt to current conditions and they have provided us with a list of those species that does not include any ash trees. There are ecological considerations and they are the reasons for reforestation. Trees help maintain the equilibrium of the flood stage. Currently the area without the trees could experience more flooding than it did with the trees. During a flooding event, the trees reduce the water speed. These trees would be best to be planted in spring; we missed that opportunity this year, but if we were going to reforest, we recommend spring 2017. The replacement cost for the 98 trees is approximately \$21,000.

Deputy Chief Kintz: This happened to be a matter of the right officer working the right beat and assigned to the right call, because the officer who responded to this knew what girdling was, does this as a business on the side, so he already knew all these terms. The people who called Police explained the situation, the officer talked to the homeowner at the time, it was just the wife at home. Where this person lives is on Nelson Road which is off of Country Club Road, goes to the north to a cul-de-sac. The wife said that he had been doing this for several years, and the intent was to return it to Savannah Grassland. There wasn't malicious intent, they thought they were doing something good. The officer left his contact information with the wife and then talked to the husband. The husband is 78 years old, an accomplished attorney and again, has been doing this to try to return it to grasslands. He was not only doing it on his property, but extended it to City property.

In canvassing the neighborhood, it sounds like everyone in the area makes use of the property, both on the St. Charles and the Wayne sides. The person responsible is sorry, but he thought he was doing something right.

Aldr. Bessner: He did not for a moment think he should get permission or shouldn't do this?

Deputy Chief Kintz: I'm not sure he realized he was on City property, although he knew it wasn't his property.

Mr. Suhr: Our Ordinance language is Section 12.2 Trees and Shrubs and unauthorized tree removal and also Section 9.48, miscellaneous offenses which addresses unauthorized open burning. Possible penalties from the Ordinances are \$750 for each offense. If we look at every single tree as a single offense, then \$750 multiplied by 98 trees is \$73,500. I think the Ordinance also addresses collecting for replacement value of a tree, and we have already mentioned that value is about \$21,000.

There are possible burning fines; I did talk to Chief Schelstreet about it and in his world, it's not as simple as an Ordinance. He tends to take each case in sequence and there is a first offense, a second offense and an adjudication process. We are not there, recognizing they haven't received a phone call in regards to a burn in that area, there is only evidence.

Fire Chief Schelstreet: I would need a complainant, and in this case, the City could be the complainant, however, as we have dealt with this in the past – we do take this seriously and we do take people to adjudication.

Mr. Suhr: It's not in our Ordinance, but we want to keep in mind the cost of the consultants' report which was \$1,400 and perhaps legal fees if we are talking about a total package of costs associated. The trees that are being removed are being done by staff, so that is more of an internal cost to us.

Attorney McGuirk: We certainly could take him to adjudication. One of the problems with that is I'm not sure how far our hearing officer views these things. There is a statute in the Ordinance of \$50,000. He could probably take the position that is the top end for him. As far as the \$73,500, that would be beyond his authority. The Police Department can bring forth criminal action; this is criminal damage to property and rises to some fashion of a felony. There is also a civil remedy, we can bring an action against him – there is a wrongful precut statute in Illinois and that carries significant repercussions. There are a lot of options, it's just a question of what you want to do. Our tree expert is saying that this guy was improperly on City property, he may have felt he was doing an environmental project, he recognizes he did something wrong, so we can try to work with him to resolve this in a fair way to the City, because this is going to cost us a significant amount of money.

Aldr. Bessner: Are any of these options cut and dry, or can this turn out to be a \$200,000 process?

Attorney McGuirk: No, our adjudication process is streamlined. We are not involved in that, it's a staff level situation. The draft of violations goes in front of the officer and he renders his decision.

Deputy Chief Kintz: In our conversations with the homeowner, he has expressed his willingness to work with the City to try to make this right. We have not had any discussions with him about these costs and the ramifications; it was just a very simple conversation. He is obviously very contrite when it comes to that.

Aldr. Lewis: I think there are two issues; the first is the property itself. Just to be clear, in your minds, the property is best the way it was, not the way he was trying to make it?

Mr. Suhr: That is correct.

Aldr. Lewis: Even with the ash trees?

Mr. Suhr: Yes, we would have left those.

Aldr. Lewis: I think we should work with the homeowner to come to a resolution.

Mr. Koenen: Quite frankly, the damage has been done. I would suggest we look at how we can be the best stewards of the property, now that we have this issue to deal with. The consultant identified how we can be good stewards; how do we now manage the situation to prevent soil erosion and try to stabilize the ground? He has developed a plan and if I'm not mistaken it was in the \$50,000 range. I think that is what we need to be talking about with the gentleman. For me, it's a question of how do we fix the wrong?

Aldr. Lemke: There are places that we would accept a prairie grass where mowing is inappropriate. But there is no reason to think that this wouldn't be a proper forest. If we multiply the \$750 to each tree, we are being unduly vindictive, but maybe there is a number we want to come to. However, there is no way I will accept that he gets to put in prairie grass.

Chairman Turner: Why don't we call the guy and tell him what it will cost to replace the trees, \$21,000, and figure out your labor. Maybe we can get away with the \$50,000 in adjudication so it doesn't go through the courts. Let's just get it reforested. I don't want to take legal action if we don't have to.

Aldr. Krieger: If somebody representing the City was to explain to the gentleman and explain the cost of the reforestation and stabilization and we aimed for \$50,000; if we had to settle for \$45,000 that would be ok. I want it made very clear that this was not to continue anywhere near the City of St. Charles. I don't want this to become a huge court case, but at the same time I want him to realize he has done wrong and we deserve to have the area restored. We just spent a lot of money keeping Norton Creek cleaned up and I would hate to see that go right back to mud.

Fire Chief Schelstreet: The thing that alarmed me the most is that this gentleman is 78 years old and he is out there by himself with a chainsaw. If you consider the remoteness of this area, for me to get my people out there to get him if we know that he's down, would be a real

challenge. I would support the posting of some messaging to folks saying by the time we find you, it may be an unpleasant outcome.

Mr. Koenen: I would suggest you provide us with an easement so we have access in the future which will satisfy some of our goals.

Aldr. Lemke: If he is willing to settle somewhere in the middle, that saves us from taking this to adjudication.

Chairman Turner: Aldr. Lemke, are you suggesting that we present him with the cost rather than going through adjudication? Attorney McGuirk, will that work or not?

Attorney McGuirk: Of course, you can always settle with him.

Aldr. Lewis: Is there any possibility of community service in lieu of a fine? He pays for restoration and then restitution?

Mr. Koenen: I would suggestion he pay the fine rather than provide service.

Aldr. Payleitner: Would \$50,000 cover all our expenses?

Mr. Suhr: I think the estimates are about \$22,000 for reforestation. We certainly have legal costs, \$1,400 for the report that has been done. The one unknown is the work effort to remove the trees. That is all being done internally, so as Chairman Turner suggested, we perhaps find that calculation of our hours that we put into this and our hours to have the girdled trees removed which can be part of the formula.

Aldr. Payleitner: I'm ok with passing on the fine since the gentleman is remorseful. But I think there should be no trespassing signs.

Aldr. Bessner: Does the cost removal of trees that are already down and logs that are cut or burned or will those just stay?

Mr. Suhr: Based on the consultants' report, if we just them rot away in this particular area, that is a fine solution.

Aldr. Bessner: I know there is a report, but do you think the reforestation is absolutely necessary?

Mr. Suhr: That is the report we were given, and I think our internal staff is more in favor of reforestation rather than leaving it bare.

Aldr. Lewis: Is there a possibility that he won't want to do this?

Attorney McGuirk: There is always the possibility that he will say that we should do what we need to do.

Aldr. Lewis: I don't want to start building up a lot of legal fees.

Aldr. Krieger: That's when we go to adjudication.

Deputy Chief Kintz: Are all of you familiar with how adjudication works? It's done right here and the hearing officer sits where Chairman Turner is. The idea is that you don't need legal representation, so it's just preponderance of the evidence, and then a representative from Police or Building and Code present the cases, so there are no attorney costs when it comes to that. It's a very simple process. There would be more presented here than with a normal case, but it's straight forward.

Aldr. Bessner: If there is a statement or claim made by the City against this individual, what's to back it up so that it sticks?

Deputy Chief Kintz: What the hearing officer decides sticks, and if they don't pay it, it goes to collections.

Chairman Turner: Does he have to agree to this process?

Deputy Chief Kintz: No. The costs you saw up to \$50,000 is the cap for adjudication. The \$750 per tree would be if we cited him under local ordinance into branch court which is where we go for tickets, etc. If we go that way, it's a felony sentencing which is a whole different arena.

Aldr. Kreiger: I would stick to trying to negotiate; if that doesn't work, adjudication.

Aldr. Payleitner: I agree.

Aldr. Lewis: It took several years; did one of the neighbors finally have enough of it? It's odd for it to be going on for that long and for no one to report it.

Deputy Chief Kintz: I cannot explain what triggered the phone call on this one as to why now.

Aldr. Lewis: Do you know who made the call?

Deputy Chief Kintz: They would prefer to remain anonymous, but they do know who it is.

Mr. Koenen: We will proceed with your guidance and we will report back.

Chairman Turner: Is this person a St. Charles resident or Wayne?

Deputy Chief Kintz: He is a Wayne resident.

Chairman Turner: Is everyone ok with the next step?

Committee as a whole: Yes.

3. Adjournment

Moved by Aldr. Krieger; Seconded by Aldr. Bessner.

Executive Session was adjourned at 8:34 p.m.

Tracey Conti, Deputy City Clerk

**EXECUTIVE SESSION MINUTES
CITY OF ST. CHARLES, IL
GOVERNMENT SERVICES COMMITTEE MEETING
MONDAY, APRIL 23, 2018**

Members Present: Stellato, Silkaitis, Payleitner, Lemke, Turner, Bancroft, Vitek, Gaugel, Bessner,

Absent: Lewis

Others Present: Mayor Raymond P. Rogina, City Administrator Mark Koenen, City Clerk Chuck Amenta, Director Peter Suhr, Karen Young

- 1. Call to Order** - The session was convened by Ald. Payleitner at 8:15 p.m.

Koenen –

We're going to keep moving forward. We're going to push to get this done.

Moving on to the second topic, if that's ok. This is an opportunity, I love opportunities. I'm going to lead by saying that this is not in the budget. Everyone knows what our budget condition is. Dan Rowe, he used to be to sewer foreman here, he still lives and works in St. Charles as a retired guy. He came to see me and said that he found out through his church that the McKiness' are looking to sell their residence at the corner Moore and Rt. 25 (1734 Riverside Avenue). Mrs. McKiness, who is the surviving spouse, is going to be moving into an assisted, or more than just assisted, living facility. She doesn't need her property anymore. They asked Dan to make contact with the City, because he knows people at the City, to find out if the City would be interested in acquiring it. I said let us follow up on it. Mrs. McKiness power of attorney made contact with the City and actually drafted the letter that is in your packet. It indicates that they would like to sell the property to the City of St. Charles if we are willing to purchase it at \$165,000. According to the 2017 assessment value, including the land and the existing structure, and I don't know the condition of the home; they are telling me that it is worth about \$195,000. It seems like a pretty sweet deal. It backs up to the wastewater treatment plant for a continuous parcel. What I think is particularly attractive about it is that we have had some people in front of the City Council and some of you have shared concerns about the bike path crossings of Route 25 or Route 31 and there is the potential to maybe make the crossing perpendicular to the road as opposed to the current diagonal crossing. It is also along 7th Avenue Creek and part of the parcel is in the flood plain and the flood way. This parcel Karen Young has not identified as a tier 1 or tier 2 parcels as we've talked about over the past 18 months. It is far enough downstream and between the backup of the water out of the Fox River, when the river is high, and heavy flow is coming down stream via the 7th Ave Creek could create a flooding problem for this

property. I'm bringing it to you tonight as a green light or a red light. Do you want us to continue exploring this? Or should we say, we can't afford it Mark.

Ald. Silkaitis –

I think that we should move to purchase. Now looking at what we spend...

Ald. Stellato –

8.6 million

Ald. Silkaitis –

All those are under budget, some by many thousands of dollars. My point is, we might be able to make up for what we budgeted for these projects and where we are under budget, we might be able to do it without adding to a budget line.

Koenen –

Chris Minick is out of the office and I haven't had that conversation with him, he's been out since last week.

Ald. Silkaitis –

If we end up under budget, that means we have extra money. I think either way we should purchase it. It is a unique opportunity and it is below the assessed value, we don't get that too often. It is a very generous price.

Ald. Stellato –

Is there any thought about developing this land?

Koenen –

This lot is large enough and based on the zoning there, Russell Colby shared with Karen Young and me that we might be able to divide it into two or perhaps three lots. Maybe we can be in the real-estate business and sell off some of the land and make a fortune!

Ald. Stellato –

Sure, piece of cake.

Ald. Bancroft –

Yeah, anyone can do it.

Koenen –

Seriously though, as an opportunity, that's why this is so exciting.

Ald. Lemke –

The concern I have is if we let this pass, then we get into a situation that someone will end up maybe being in the way of future plans. One of my questions might be; I know that we would improve the drainage under Illinois maybe by replacing

the underpass. Is there any concern about the underpass under or over 25? Any reason to think that we might have to do work in that area with that, I thought it was immediately adjacent to a culvert.

Karen Young –

The long term plan of that area may or may not take place.

Ald. Lemke –

So, we have not ruled out. It is not excess in size and it could eventually be so if we don't do this now, my feeling is that we miss an opportunity.

Ald. Gaugel –

I think the price is right. It is very intriguing from the standpoint that you can fix a couple of problems; the creek and then the crossing at the bike path right. The most intriguing thing, to me at least, you could then take the rest of it then subdivide it and get your money back or whatever you did. Even if we didn't, you're sitting on a piece of land that still has value that we could use connecting to the public works facility. I think it is a fairly easy, yeah let's go for it.

Koenen –

There will be an additional expense to it also, demolishing the house. I don't want to lose sight of that. But we don't have to do that right now. Maybe in a year.

Ald. Lemke –

We could feasibly rent it out.

Ald. Payleitner –

Please, no. Stop.

Koenen –

That could be an alternative. We did some rentals at one time, towards my earlier days of my career and it became expensive.

Ald. Lemke –

I suppose that has problems too.

Koenen –

Yes, it has problems too.

Ald. Stellato –

I talked to Laura Newman from Batavia and you know where the new gas station is on Kirk Road, that huge gas station. She said that property was actually given to the City of Batavia and they turned it around and got it ready for development and pushed off to a developer and put that really busy gas station in there.

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Koenen –

Is the guidance to move ahead? This is a green light project? Yes? We will pursue that. Thank you.

Motion to exit executive session at 8:25 by Ald. Silkaitis and seconded by Ald. Bessner

Voice Vote- In Favor – Unanimous; Opposed – None; Absent – Lewis
MOTION CARRIED

Tracey Conti, Deputy City Clerk