

**Transcript for Testimony to
Batavia Plan Commission
Public Hearing, Amendment to the Text of the Zoning Code
June 3, 2015**

I am [REDACTED] a Batavia resident of 22 years.

I begin by telling you that I have spent many hours into studying and evaluating Batavia's Comprehensive Plan and Zoning Code, so I come to you with a knowledge base that is factual and thorough. And I represent hundreds of other residents who feel the same way I do here.

As you know, Keep Batavia Neighborhoods is the group who led the opposition to Missner Group's industrial park at Kirk and Wind Energy last summer. I have heard that Missner Group was very disgruntled with Batavia Staff about the entire development process. The fact is that Keep Batavia Neighborhood's whole focus for opposition was that a 55 acre industrial park would greatly diminish the character of Batavia's far east side neighborhoods and decrease our property values. Yet City Staff never acknowledged that in any of their communications - ever.

And because City Staff erroneously and sloppily evaluated (and too late) Missner's proposal relevant to the conformance of the Comp Plan, Missner Group was dragged through meetings and incurred expense without a positive outcome for them. This does not sit well for future developers doing business with Batavia. Note that the new "initial land use" review that is proposed by Staff tonight, section 5.201 will do nothing, I repeat nothing to avoid the issues stated here. That new pre-review process is just silly and is totally useless to address the real issues. A sparse 30 minutes of input from residents who are not provided with any details of a proposed development project will quickly get eaten up with useless speculation and rambling.

Bottom line, City Staff wants ALL of the control in a development process by proposing the following Section 5.803E change and Section 5.105N addition.

The fact is that Batavia residents, because City Staff did not do the requisite, mandated Staff Report described in the current Zoning Code 5.803E, were denied the right, let me repeat, DENIED THE RIGHT to understand if and how the development proposal conformed or not to the Comp Plan before residents had their say at the Public Hearing. Mr. McGrath has openly admitted to City Council that Staff didn't have to write that report required in 5.803E for the Missner project since Staff should be able to do whatever they wanted, even if it violated the Zoning Code. If Staff had done their job and followed the Zoning Code like they were supposed to, the development process would have been fair to both the citizens and developer. Instead, Staff willfully and knowingly broke the law and took away from residents what was due to us.

These are 3 problems, all of equal importance, with the Staff's proposed changes to Code 5.803E:

1. They have taken out all requirements of what the Report should include, Although it states that they are still required to write a report, by how it is written, they could write a report about anything..a missing dog, how blue the sky is, and that would suffice, since they are proposing that the report "may" address the Comp Plan conformance but it's implied that it may not.
2. Staff wants this report AFTER, not BEFORE the public hearing. But citizens should have a right to know what rationale Staff is using for the Comp Plan conformance before the Public Hearing, shouldn't they?
3. Staff wants this report, if they do write something, to only address relevant goals and policies, vs "all" goals and policies. Note that staff was significantly wrong about how they addressed the conformance of many goals and policies for the Missner project; they were sloppy about their evaluation of what does conform and what doesn't. Residents deserve to see a thorough, comprehensive evaluation so that we can understand totally.

The proposed changes to this Code allow Staff to hold complete control over Batavia citizens, without allowing any recourse of what they said were their opinionated justifications, which in many cases are wrong, about conformance to the Comp Plan.

Please do not approve the proposed changes to Code 5.803E, since it unfairly takes away any power from Batavia citizens and rather puts all the power in the hands of Batavia Staff, who have proven to be error-prone and opinionated, rather than factual, to the detriment of Batavia citizens.

Additionally, in Zoning code 5.105 (N), a newly added proposed code, allows the Community Development Director to "Waive irregularities in the development review process". This allows the Director free reign to make any interpretation about what an irregularity is and then waive it. IF there are going to be irregularities, then they should be stated in the Zoning Code. Please do not allow this addition; it will give even more power to City staff, with Batavia citizens again being overridden by Staff without citizens being given a fair shot.

In the Missner case, Staff did not do this requisite report in 5.803E before the Public Hearing as the current zoning code requires, but then they did do a report, albeit it sloppy and error-ridden, afterwards. What our legal counsel and outside professional city planners found after reviewing the Staff's report for the Missner proposal, was that the report was laden with mistakes, and speculative and opinionated about conformance, without much factual basis. Just check out the report that was done on March 28, 2014 memo from Straussman for many, many examples of this.

Take this example of Comp Plan review that Staff did for the Missner Project. The first Land Use Goal in the Comp Plan states to "*Maintain Batavia an attractive place to live, work, shop and play*". Staff's written evaluation states that "*Missner's land use provides potential to play and shop*". *If something only provides potential, then it doesn't really conform, does it?* Yet Staff infers that it does conform. Plus I ask you, the only sure indication of what Missner would build on this site was a huge industrial park, so where was any proof that there would be a place to play? In the trucks or loading docks of the proposed industrial park?

Another very important example is in the Economic Development element. Goal 1, Policy e. To recap, it states that *business owners balance increased commerce with protection of property values and neighborhood character*. Staff's evaluation, which implied conformance, stated "*City will require Missner...to protect adjacent properties*". Note that Staff's evaluation is so unrealistic and just plain senseless. In Missner's case, how exactly in the real world, would Staff require Missner to protect the affected Batavia and Aurora property values and neighborhood character when a 55 acre industrial park was built there? But Staff evidently felt that this was true. So again, not letting citizens know that this was what Staff was using as their justification for conformance, before the Public Hearing, is unfair to Batavia residents.

And, not doing a one-by-one evaluation for each and every of the 350 Goals and Policies so that residents can understand what Staff knows and doesn't know, is again unfair. Each and every Goal and Policy should be evaluated and documented.

Our request of the Plan Commission is that you do not approve the changes proposed for Comp Plan Text 5.105N, 5.201 or 5.803E as indicated on the May 28, 2015 Straussman memo, but rather take the time to understand how the changes, especially those noted here, negatively affect Batavia citizens. We would be happy to have a more detailed discussion with you about this and would be available at a future Plan Commission meeting at your convenience.

Thank you.

I now have questions for the Staff:

1. Is Section 5.803E being proposed for change to what actually occurred in March 2014 for the Missner Review, in order for Batavia Staff to make it look like they did not violate the law in March 2014?
2. Why did you propose the changes to Section 5.803E (the requisite report)? What is your rationale?
3. Why shouldn't citizens have a right to know what rationale Staff is using for the Comp Plan modifications in regards to conformance before the Public Hearing?

4. Who will decide what an irregularity is in Section 5.201?
5. Why was the Comp Plan even developed if Staff doesn't believe it is necessary to evaluate before a Public Hearing?
6. Why do you believe the Plan Commission shouldn't understand your rationale of conformance or not to the Comp Plan, before the Public Hearing?

**Batavia Zoning Code
Sections**

Referenced during the Public Hearing, Plan Commission, June 3, 2015

By

Joyce Keane, Keep Batavia Neighborhoods

Note: Proposed changes by Batavia Staff are noted in red or blue.

n 5.803: Procedures (Amendments to the Comprehensive Plan Text or Map)

- E. **Staff Report.** The Director of Community Development shall prepare a staff report and transmit it to the Plan Commission. A copy of the staff report shall be made available to the public and the applicant prior to the ~~close of the~~ public hearing. The report ~~shall~~ ~~should~~ may include a determination of whether the proposed change conforms to the relevant goals and policies of ~~each the~~ Elements of the Plan.

5.105 Community Development Director

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The Community Development Director (Director) administers the Community Development Department. The Director has the following powers and duties:

- A. Administer the Zoning Code.
- B. Provide recommendations to the City Council, appointed officials and City management on matters related to the physical development of the community.
- C. Administer the annexation process.
- D. Process, review, and make recommendations to the Plan Commission on applications for:
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- M. Approve other applications and projects as authorized by the Zoning Code.
- N. Waive irregularities in the development review process or submittal requirements.