

**MONDAY, JANUARY 8, 2024  
PUBLIC HEARING  
7:25 P.M.**

**RESOLUTION NO. R-1-24 – A RESOLUTION TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY KILDEER LANE PROPERTIES, LLC (THOMAS DEMALINE), TO HAVE CERTAIN LAND OWNED BY IT LOCATED AT 4676 CENTER ROAD, PERMANENT PARCEL NO. 10-04-00-013-000-037, DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT AND DECLARING AN EMERGENCY**

There being no comments, the Public Hearing for Resolution No. R-1-24 was closed at 7:26 P.M.

**MINUTES OF THE REGULAR MEETING OF THE COUNCIL  
OF THE CITY OF AVON, OHIO, HELD MONDAY, JANUARY 8, 2024  
IN THE COUNCIL CHAMBERS OF THE MUNICIPAL BUILDING  
AT 7:30 P.M.**

The Chairman, Council President Brian Fischer, called the meeting to order and stated that our guests from Westlake City Schools will come up and lead us in the Pledge of Allegiance.

**PRESENT:**

Council Members: Council-at-Large Mary Berges; 1<sup>st</sup> Ward – Jennifer Demaline; 2<sup>nd</sup> Ward – Dennis McBride; 3<sup>rd</sup> Ward – Anthony Moore; Council-at-Large Michelle Patton; 4<sup>th</sup> Ward – Scott Radcliffe; Council-at-Large and Council President – Brian Fischer; Mayor - Bryan Jensen; City Engineer – Ryan Cummins; Law Director – John Gasior; Finance Director – Steve Presley; Safety/Public Service Director – Duane Streater; Assistant Clerk of Council – Gail Hayden

ABSENT: Planning and Economic Development Coordinator – Pam Fechter

**APPOINTMENTS TO COMMITTEES OF COUNCIL**

Mr. Fischer stated that one of his most important jobs as Council President is to appoint Committees of Council, and to appoint Council Representatives to Boards and Commissions. He thanked everyone for talking to him this week and noted that he had passed out copies of all of his assignments to everybody. He said that what he tries to do is to put everybody in positions based on their strengths and where he thinks is best for the City. He said that he was not going to go through all the announcements; they will be posted on the City website and if anybody has any questions about his appointments, please do not hesitate to call him.

The Council President's appointments to Committees of Council for a two-year term, from January 1, 2024, to December 31, 2025, are as follows:

**Economic Development Committee**

Chair: Michelle Patton

Members: Tony Moore and Scott Radcliffe

**Finance Committee**

Chair: Tony Moore  
Members: Dennis McBride and Scott Radcliffe

**Legal Committee**

Chair: Dennis McBride  
Members: Jennifer Demaline and Brian Fischer

**Parks & Recreation Committee**

Chair: Mary Berges  
Members: Jennifer Demaline and Brian Fischer

**Safety Committee**

Chair: Scott Radcliffe  
Members: Brian Fischer and Michelle Patton

**Service Committee**

Chair: Jennifer Demaline  
Members: Tony Moore and Mary Berges

**APPOINTMENTS OF COUNCIL REPRESENTATIVES TO BOARDS AND COMMISSIONS**

The Council President’s appointments of Council Representatives to Boards and Commissions for a two-year term, from January 1, 2024, to December 31, 2025, are as follows:

|                                             |                   |
|---------------------------------------------|-------------------|
| <b>ADA Review Board</b>                     | Dennis McBride    |
| <b>French Creek Development Association</b> | Tony Moore        |
| <b>Lorain County Community Alliance</b>     | Michelle Patton   |
| <b>Lorain County Office on Aging</b>        | Jennifer Demaline |
| <b>Senior Citizens’ Advisory Commission</b> | REPEALED          |
| <b>Planning Commission</b>                  | Scott Radcliffe   |
| <b>Tree Commission</b>                      | Mary Berges       |

**CORRESPONDENCE**

The Clerk stated that we have received a notice from the Ohio Division of Liquor Control of a request from Meijers Stores for a new C-1/C-2 permit. C-1 is beer only in original sealed containers for carry-out only until 1:00 a.m. C-2 is wine in certain pre-packaged mixed drinks in sealed containers for carry-out only until 1:00 a.m.

There were no questions or concerns from Council.

**MINUTES OF THE WORK SESSION OF COUNCIL HELD MONDAY, DECEMBER 18, 2023**

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to dispense with the reading of the minutes of the Work Session of Council held Monday, December 18, 2023, and to approve said minutes as published, and the vote was: Ms. Berges, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

MINUTES OF THE REGULAR MEETING OF COUNCIL HELD MONDAY, DECEMBER 18, 2023

A motion was made by Mr. McBride and seconded by Mr. Moore to dispense with the reading of the minutes of the Regular Meeting of Council held Monday, December 18, 2023, and to approve said minutes as published, and the vote was: `Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes.”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

MINUTES OF THE ORGANIZATIONAL MEETING OF COUNCIL HELD TUESDAY, JANUARY 2, 2024

A motion was made by Mr. McBride and seconded by Mr. Moore to dispense with the reading of the minutes of the Organizational Meeting of Council held Tuesday, January 2, 2024, and to approve said minutes as published, and the vote was: Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes.”; Mrs. Demaline, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

ORDINANCE NO. 1-24 – GRANTING A SPECIAL USE PERMIT TO CCT AVON II, LLC TO AUTHORIZE THEIR TENANT, CARICO, LLC, d.b.a. CARIBOU COFFEE TO CONSTRUCT A 778 SQ. FT. RESTAURANT WITH NO INDOOR SEATING, A DRIVE-THRU AND AN OUTDOOR SEATING AREA, TO BE LOCATED AT 35091 CHESTER ROAD

The Clerk read Ordinance No. 1-24 by title only, entitled:

**AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO CCT AVON II, LLC  
TO AUTHORIZE THEIR TENANT, CARICO, LLC, d.b.a. CARIBOU COFFEE  
TO CONSTRUCT A 778 SQ. FT. RESTAURANT WITH NO INDOOR SEATING,  
A DRIVE-THRU AND AN OUTDOOR SEATING AREA,  
TO BE LOCATED AT 35091 CHESTER ROAD  
AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Ms. Berges to suspend the rules and act on Ordinance No. 1-24, and the vote was: Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes.”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to adopt Ordinance No. 1-24, and the vote was: Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes.”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

ORDINANCE NO. 2-24 – TO AMEND SECTION 1040.01(a) OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO INCREASE THE RATES CHARGED FOR WATER SERVICE IN THE CITY OF AVON FOR THE YEARS 2024 AND 2025

The Clerk read Ordinance No. 2-24 by title only, entitled:

**AN ORDINANCE TO AMEND SECTION 1040.01(a) OF THE  
CODIFIED ORDINANCES OF THE CITY OF AVON TO INCREASE  
WATER RATES FOR YEARS 2024 AND 2025  
AND DECLARING AN EMERGENCY**

The Chair declared this to be the first of three readings of Ordinance No. 2-24.

ORDINANCE NO. 3-24 – TO AMEND SECTION 1042.02(i) OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO INCREASE SANITARY SEWER RATES FOR THE YEARS 2024 AND 2025

The Clerk read Ordinance No. 3-24 by title only, entitled:

**AN ORDINANCE TO AMEND SECTION 1042.02 (i) OF THE  
CODIFIED ORDINANCES OF THE CITY OF AVON TO INCREASE  
SANITARY SEWER RATES FOR YEARS 2024 AND 2025  
AND DECLARING AN EMERGENCY**

The Chair declared this to be the first of three readings of Ordinance No. 3-24.

ORDINANCE NO. 4-24 – TO AMEND ORDINANCE NO. 413-68, PASSED JANUARY 15, 1969, COMMONLY KNOWN AS THE ZONING ORDINANCE OF THE CITY OF AVON, OHIO, AS AMENDED, REZONING TWO PARCELS OF LAND CONSISTING OF APPROXIMATELY 16.93 ACRES OF LAND LOCATED AT 34925 CHESTER ROAD, PERMANENT PARCEL NOS. 04-00-021-000-255 AND 04-00-021-000-266 FROM C-4/O-2 GENERAL BUSINESS/PLANNED OFFICE RESEARCH OFFICE PARK TO C-4/O-2/M-1 GENERAL BUSINESS/PLANNED OFFICE RESEARCH OFFICE PARK/GENERAL INDUSTRIAL OVERLAY

The Clerk read Ordinance No. 4-24 by title only, entitled:

**AN ORDINANCE TO AMEND ORDINANCE NO. 413-68, PASSED  
JANUARY 15, 1969, COMMONLY KNOWN AS THE ZONING ORDINANCE  
OF THE CITY OF AVON, OHIO, AS AMENDED, REZONING TWO PARCELS  
OF LAND CONSISTING OF APPROXIMATELY 16.93 ACRES OF LAND  
LOCATED AT 34925 CHESTER ROAD, PERMANENT PARCEL NOS.  
04-00-021-000-255 AND 04-00-021-000-266 FROM C-4/O-2 GENERAL  
BUSINESS/PLANNED OFFICE RESEARCH OFFICE PARK TO  
C-4/O-2/M-1 GENERAL BUSINESS/PLANNED OFFICE RESEARCH OFFICE  
PARK/GENERAL INDUSTRIAL OVERLAY**

The Chair declared this to be the first of three readings of Ordinance No. 4-24.

A Public Hearing will be held for Ordinance No. 4-24 on Monday, February 12, 2024, at 7:25 P.M.

ORDINANCE NO. 5-24 – TO AMEND ORDINANCE NO. 413-68, PASSED JANUARY 15, 1969, COMMONLY KNOWN AS THE ZONING ORDINANCE OF THE CITY OF AVON, OHIO, AS AMENDED, REZONING LAND CONSISTING OF AN 0.02300 ACRE PORTION OF PERMANENT PARCEL NO. 04-00-015-108-043 FROM C-2 FRENCH CREEK/CENTRAL BUSINESS DISTRICT TO R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT

The Clerk read Ordinance No. 5-24 by title only, entitled:

**AN ORDINANCE TO AMEND ORDINANCE NO. 413-68, PASSED JANUARY 15, 1969, COMMONLY KNOWN AS THE ZONING ORDINANCE OF THE CITY OF AVON, OHIO, AS AMENDED, REZONING LAND CONSISTING OF AN 0.02300 ACRE PORTION OF PERMANENT PARCEL NO. 04-00-015-108-043 FROM C-2 FRENCH CREEK/CENTRAL BUSINESS DISTRICT TO R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT**

The Chair declared this to be the first of three readings of Ordinance No. 5-24.

A Public Hearing will be held for Ordinance No. 5-24 on Monday, February 12, 2024, at 7:20 P.M.

ORDINANCE NO. 6-24 – EXTENDING THE TEMPORARY MORATORIUM ON THE FUTURE DEVELOPMENT OR CONSTRUCTION OF ANY HOTEL, MOTEL, EXTENDED STAYS, BOARDING HOUSES OR THE LIKE WITHIN THE CITY OF AVON

The Clerk read Ordinance No. 6-24 by title only, entitled:

**AN ORDINANCE EXTENDING THE TEMPORARY MORATORIUM ON THE FUTURE DEVELOPMENT OR CONSTRUCTION OF ANY HOTEL, MOTEL, EXTENDED STAYS, BOARDING HOUSES OR THE LIKE WITHIN THE CITY OF AVON AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to suspend the rules and act on Ordinance No. 6-24, and the vote was: Mr. Radcliffe, “yes”; Ms. Berges, “yes.”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Ordinance No. 6-24, and the vote was: Ms. Berges, “yes.”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

ORDINANCE NO. 7-24 – TO AMEND SECTION 210.01(e)(7)(A)(1) AND (2) OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO ESTABLISH RATES FOR THE USE OF THE CITY’S AQUATIC CENTER IN THE YEAR 2024

The Clerk read Ordinance No. 7-24 by title only, entitled:

**AN ORDINANCE TO AMEND SECTION 210.01(e)(7)(A)(1) AND (2) OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO ESTABLISH RATES FOR THE USE OF THE CITY’S AQUATIC CENTER IN THE YEAR 2024**

## **AND DECLARING AN EMERGENCY**

The Chair declared this to be the first of three readings of Ordinance No. 7-24.

Mrs. Demaline stated that she had requested the Administration to send them a little bit more information on the 2023 summary from the pool and when we last increased the daily admission rates for residents, visitors and students. She thanked the Mayor for working on that and knows that is forthcoming and said if that could be sent to all of Council so we could all review it, that would be great. She added and thank you for putting this on first reading tonight.

Mayor Jensen said that he knows that Mrs. Demaline stated last week that she was new to seeing these rates. The Mayor said that Mr. Moore, Chair of the Finance Committee, had suggested that we might meet with Mrs. Demaline by herself with Tom Fattlar, the Aquatic Facility Supervisor, and the Mayor thought that would make it just a little bit easier to catch Mrs. Demaline up on the past year's history along with why we moved the rates. Then if Mrs. Demaline had more questions, Mr. Moore said that he would be more than happy to talk about bringing it back to Committee but did not feel it was necessary at this point to have a Committee meeting just for the rate increase. Mayor Jensen said to Mrs. Demaline, so if that is ok with her, we will set something up with her, the Finance Director, himself, and Mr. Fattlar.

Mrs. Demaline said that we have two other new members of Council that may be interested in that as well. Mayor Jensen said if they want to be a part of that, we can do that. He did not notice that they had any questions at this point but we can find that out and decide. Mrs. Demaline asked if it was possible for Mr. Fattlar to come in and talk to the Committee as a Whole? Mayor Jensen said if she wanted that, that is fine; it is just going through the process of what we did each year so he did not know if that is what Mrs. Demaline wanted or just wanted this year's rates. Mrs. Demaline said she is just looking for an overall recap of 2023 and then a better understanding of when we last increased the daily admission rate. Mayor Jensen said, ok, he would have Mr. Fattlar come in next week then for the Work Session.

RESOLUTION NO. R-1-24 – TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY KILDEER LANE PROPERTIES, LLC (THOMAS DEMALINE), TO HAVE CERTAIN LAND OWNED BY IT LOCATED AT 4676 CENTER ROAD, PERMANENT PARCEL NO. 10-04-00-013-000-037, DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT

The Clerk read Resolution No. R-1-24 by title only, entitled:

**A RESOLUTION TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY KILDEER LANE PROPERTIES, LLC, (THOMAS DEMALINE), TO HAVE CERTAIN LAND OWNED BY IT LOCATED AT 4676 CENTER ROAD, PERMANENT PARCEL NO. 10-04-00-013-000-037, DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mr. Moore to suspend the rules and act on Resolution No. R-1-24, and the vote was: Mrs. Demaline, "yes"; Mr. McBride, "yes"; Mr. Moore, "yes"; Ms. Patton, "yes"; Mr. Radcliffe, "yes"; Ms. Berges, "yes"; Mr. Fischer, "yes".

The vote was 7 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Resolution No. R-1-24, and the vote was: Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mrs. Demaline, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

**RESOLUTION NO. R-2-24 – TO ADVERTISE FOR BIDS FOR THE LONG ROAD PAVEMENT RESURFACING PROJECT**

The Clerk read Resolution No. R-2-24 by title only, entitled:

**A RESOLUTION TO ADVERTISE FOR BIDS FOR THE  
LONG ROAD PAVEMENT RESURFACING PROJECT  
AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to suspend the rules and act on Resolution No. R-2-24, and the vote was: Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Ms. Berges to adopt Resolution No. R-2-24, and the vote was: Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

**RESOLUTION NO. R-3-24 – TO ADVERTISE FOR BIDS FOR THE SCHWARTZ ROAD PAVEMENT RESURFACING PROJECT**

The Clerk read Resolution No. R-3-24 by title only, entitled:

**A RESOLUTION TO ADVERTISE FOR BIDS FOR THE  
SCHWARTZ ROAD PAVEMENT RESURFACING PROJECT  
AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to suspend the rules and act on Resolution No. R-3-24, and the vote was: Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Resolution No. R-3-24, and the vote was: Ms. Berges, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

RESOLUTION NO. R-4-24 – AUTHORIZING THE CITY OF AVON’S DIRECTOR OF FINANCE TO ENTER INTO AN AGREEMENT WITH THE LORAIN COUNTY AUDITOR AND COUNTY TREASURER’S OFFICE FOR ACH AND ELECTRONIC TRANSACTIONS

The Clerk read Resolution No. R-4-24 by title only, entitled:

**A RESOLUTION AUTHORIZING THE CITY OF AVON’S  
DIRECTOR OF FINANCE TO ENTER INTO AN AGREEMENT  
WITH THE LORAIN COUNTY AUDITOR AND COUNTY TREASURER’S  
OFFICE FOR ACH AND ELECTRONIC TRANSACTIONS  
AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Ms. Patton to suspend the rules and act on Resolution No. R-4-24, and the vote was: Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Resolution No. R-4-24, and the discussion was:

Mr. Radcliffe asked Mr. Presley if this was new this year for the ACH transactions that he sends and Mr. Presley said, yes, it is. He added that they have forever been sending out warrants through the mail and this will allow for a much faster, streamlined process.

The vote was: Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mrs. Demaline, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

REPORTS AND COMMENTS

MAYOR JENSEN requested that a Safety/Finance Committee meeting be held on February 5<sup>th</sup>. He is going to bring the Fire Department in to talk about the training tower and also plans that we may have for the future. Mr. Radcliffe asked the Mayor what time he would like to set for the meeting and the Mayor said that we would probably need an hour. The discussion on the training tower will not be long but the overview of what is going on within the Department may take some time. It was agreed to set the time at 6:30 P.M. for the Safety/Finance Committee meeting to be held on February 5<sup>th</sup> before the Regular Work Session.

**COUNCIL MEMBERS:**

MS. BERGES, AT LARGE, had no comments.

MRS. DEMALINE, WARD 1, said she was pleased to be the Service Committee Chair again for this term.

MR. McBRIDE, WARD 2, thanked Mr. Fischer for the Committee assignments.

MR. MOORE, WARD 3, had no comments.

MS. PATTON, AT LARGE, had no comments.

MR. RADCLIFFE, WARD 4, gave a quick thank you to the Service Department. He noticed that after last week's discussion, there was filling in along the roads there so that is much appreciated.

MR. FISCHER, AT LARGE, reminded Council that next week's Council meeting will be held on Tuesday, January 16, 2024, as Martin Luther King Day is observed on Monday, January 15<sup>th</sup>.

#### DIRECTORS/ADMINISTRATION:

MR. CUMMINS, CITY ENGINEER, had no comments.

MS. FECHTER, PLANNING/ECONOMIC DEVELOPMENT COORDINATOR, was absent.

MR. GASIOR, LAW DIRECTOR, had no comments.

MR. PRESLEY, FINANCE DIRECTOR, had no comments.

MR. STREATOR, SAFETY DIRECTOR/PUBLIC SERVICE DIRECTOR, had no comments.

#### AUDIENCE COMMENTS:

Gerald W. Phillips, 461 Windward Way, Avon Lake, wished everyone a belated Merry Christmas and a Happy New Year.

Mr. Phillips then said that the first thing he would like to do is address and clear up some false and misleading statements contained in the Tucker Ellis letter that was presented at the Council meeting on December 18, 2023.

Mr. Phillips said that the first item was a false allegation that if you approve the Final Subdivision Plat for Grande Esplanade, that that would be a taking of the land of the reserve strip in Subdivision No. 15. That is so absurd, he does not know why he even has to address it.

Mr. Phillips said that the second point that they made is, the Wesolowski case and ORC 711.09(C) do not apply because City Council is not a Planning Commission. Well, Avon is a Charter City and a Charter City can adopt their own procedures and if you look under ORC 711.09(C), the language clearly talks about a Platting Commission – Platting- and all you have to do is go to your Codified Ordinance 1224.05(d). It gives the powers and duties of City Council – (d): “confirm or reject all final plats for major subdivisions including the financial guarantees for required improvements.” Your City Charter under Home Rule, gives you, the City Council, the ability and

it basically labels you as the Platting Commission because you are the final step in approving a final plat so Carnegie and Cory attorneys are again absolutely false and they are trying to mislead the City.

Mr. Phillips said that the third point in their letter, they talk about the fact that 711.09(C) does not apply because the City of Avon has a two-step approach. The Planning Commission is a recommending body and City Council is the final authority on plats. Unfortunately, they ignore the case of State ex R.L. Hawk for the City of Troy, which had a two-step process and in that decision, they rejected the fact that there is a two-tier system has any affect on 711.09(C). All that means is that you have to get both tiers within 30 days. They cite the Supreme Court case of English, which rejected that and adopted that the two-step process is applicable by that statute and the Wesolowski case also endorsed that. So those three premises that they tried to mislead Council on are just entirely false.

Mr. Phillips said that he met with Law Director John Gasior a few days after December 18<sup>th</sup> and spent an hour and a half with him. Mr. Gasior had a couple questions and he intends to answer those. Mr. Gasior did not know what date the Grande Esplanade plats – Preliminary and Final – were submitted to Planning Commission, the first date that involves the St. Theresa connection. There are other submittals that deal with Lear Nagel, but Mr. Phillips’ demand is only about the St. Theresa connection. The Preliminary Plat first was submitted on November 19, 2019. The second submission January 3, 2020, February 12, 2020, March 25, 2020, May 19, 2020, September 22, 2020, December 23, 2020, January 20, 2021, and it was finally approved on March 8, 2021, 474 days after it was initially submitted – one year and 109 days. Now the Final Subdivision Plat was first submitted on October 20, 2020, January 28, 2021, February 11, 2021, May 20, 2021, August 10, 2021, January 6, 2022, March 2, 2022, March 17, 2022, April 14, 2022, May 6, 2022, May 13, 2022, September 13, 2022, and July 4, 2023, and it still has not been approved because of some phony baloney argument that because they only have 7% of the water still going and traversing the property when they reduce 63% because City Engineer Ryan Cummins cannot read the Stormwater Management Code that says “preconstruction runoff.” If you reduce it, that is what you do and you have a retention with the one freeboard which the plans show that there is one freeboard and why he is holding it up Mr. Phillips does not know. But that is three years and 80 days and we still do not have an approval.

Mr. Phillips said that, during the meeting, he and Mr. Gasior talked about the issue of whether or not, and he believes it could be, the City of Avon can approve the Plat separately and the Subdivider’s Agreement separately. They do not have to be in the same Ordinance. Proof of that is 1244.11(f)(g). (f) says “Within 180 days after final approval by Council, the subdivider shall file the final plat for record in the office of the County Recorder. If such plat is not filed with the Recorder within 180 days, the approval of the City shall be void, except where the developer has entered into an agreement with the City to install the improvements prior to the filing of the plat for record. In that event, the 180-day period shall commence after the time set for completion of the improvements elapses.” (g) says “Approval of the plat by Council shall not constitute acceptance by the City of the dedication of any street or public way or ground.” Mr. Phillips stated that you read those two sections and it clearly says you can do them separately and you do not have to have them combined. Mr. Phillips said that he requested of John Gasior that he wants the Final Subdivision Plat for Grande Esplanade approved. He expects it to be on the Work Session next week and he expects it to be approved on January 22<sup>nd</sup>.

Mr. Phillips stated that he also went through his file to give the City kind of an understanding of how many hoops his client had to go through. Mr. Phillips said that he had to prepare a wetlands report; nobody has ever done one like that for an attorney because we were getting pushback from Mr. Cummins. It is kind of ironic because if you read his opinion, Mr. Gasior, and if you read the U.S. Supreme Court, they adopted his opinion. Also, he had to do a report on the issue of jurisdictional waters of the State of Ohio in order to satisfy Mr. Cummins in connection with one of his unreasonable demands. He prepared another legal opinion that dealt with dry swales because we had to convince him of an issue. Then he had to do an opinion on street design because even though your Codified Ordinances says you do not have to have a curved street, the Mayor and Mr. Gasior believe that you can do that, even though we showed them 10 to 20 streets that were straight. So he had to do another legal opinion besides the legal opinion from the wetland expert. The final opinion he did (and he is not the only one that opined on this issue. Steve Freeman from Boggs, Patton, basically opined the same thing as far as the street connection.) And if you read that report, the key to that is 1246.04(b)(6) – that says that “Reserve strips controlling access to streets, abutting land, water plants, sewage treatments plants or other land dedicated or it could be dedicated for public use are prohibited.” No exceptions – “are prohibited.” And we have a devil strip on Red Tail No. 15 that neither Mr. Cummins or the Law Director will acknowledge. We have two legal opinions on that and in the legal opinion, there is additional authority for the fact that those streets should connect. “Streets shall be laid out to conform to the Master Plan and the Zoning Map” 1246.05(a).... “Streets shall be laid out in relation to planned streets....” 1246.04(a).....Mr. Phillips said he was not going to belabor it; he just suggests that everybody on Council reads it.

Mr. Phillips said, finally, City Council has the authority to take that reserve strip by what is called a “quick take”. And because it is used to do for a public street, you really do not have to prove necessity. You just have to prove an inability to agree. He said they made six offers to the Corys, and they got an appraisal which he is going to deliver to Mr. Gasior and he is going to put a demand on Mr. Gasior that he proceed and put on the Work Session and pass on the 22<sup>nd</sup>, a Resolution of Intent to Appropriate. He will know by Friday when the Clerk sends him the agenda, if this Resolution is on the Work Session or not. And if it is not, you can rest assure that his client will sue the City of Avon. He is going to sue City Council, the Planning Commission, the Law Director and his firm, Mr. Cummins and his firm, and the Corys. Mr. Phillips said they have been getting bad advice and that is why he is up there - to educate every one of them because when they do have to vote on it, if Mr. Gasior puts it on, they are going to be held responsible because now they are on notice. And if Mr. Gasior is brought into that lawsuit, they are going to have to get independent counsel because they may cross claim him for his malpractice and negligence.

This concluded Mr. Phillips’ comments.

OTHER COMMENTS: Mayor Jensen advised Council that pictures will be taken again next week as the group picture that was taken last week did not come out so we are going to do a retake next week before the Council meeting.

#### EXECUTIVE SESSION: 8:10 p.m.

A motion was made by Mr. McBride and seconded by Mr. Moore to enter into Executive Session for the purpose of discussing the threat of imminent litigation and the possible purchase of property, and the vote was: Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

RECONVENE: 8:45 p.m.

A motion was made by Mr. McBride and seconded by Mr. Moore to reconvene the Regular Meeting of Council, and the vote was: Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.

ADJOURN: 8:49 p.m.

A motion was made by Mr. McBride and seconded by Ms. Berges to adjourn the Regular Meeting of Council, and the vote was: Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Fischer, “yes”.

The vote was 7 for and 0 against and the Chair declared the motion passed.