

**MINUTES OF THE WORK SESSION OF THE COUNCIL OF THE
CITY OF AVON, OHIO HELD TUESDAY, JANUARY 16, 2024
IN THE COUNCIL CHAMBERS OF THE MUNICIPAL BUILDING
AT 7:30 P.M.**

PRESENT: Council Members: Council-at-Large – Mary Berges; 1st Ward – Jennifer Demaline; 2nd Ward - Dennis McBride; 3rd Ward -Tony Moore; Council-at-Large – Michelle Patton; 4th Ward - Scott Radcliffe; Council-at-Large and Council President – Brian Fischer; Mayor – Bryan Jensen; City Engineer – Ryan Cummins; Planning/Economic Development Coordinator – Pam Fechter; Law Director – John Gasior; Finance Director– Steve Presley; Safety/Public Service Director – Duane Streator; Clerk of Council – Barbara Brooks

1. **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** Mayor Jensen

The Second of Three Readings of Ordinance No. 2-24 will be held on Monday, January 22, 2024

Mayor Jensen advised as was discussed there is a half rate increase in terms of what the pass through was for the water rates charged Avon by Avon Lake Regional Water. He said there would be a letter in the water bill letting the users know that this increase is coming and would not be effective until the following bill.

2. **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** Mayor Jensen

The Second of Three Readings of Ordinance No. 3-24 will be held on Monday, January 22, 2024

Mayor Jensen advised the increase is a straight pass through of the 4% increase that Avon is being charged by North Ridgeville for sanitary sewer for both of these years. He said there would be a letter in the sanitary sewer bill letting the users know that this increase is coming and would not be effective until the following bill.

3. **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 & 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** Planning Referral

The Second of Three Readings of Ordinance No. 4-24 will be held on Monday, January 22, 2024

A Public Hearing will be held on Monday, February 12, 2024 at 7:25 p.m.

Ms. Fechter had no comments.

4. **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** Planning Referral

The Second of Three Readings of Ordinance No. 5-24 will be held on Monday, January 22, 2024

A Public Hearing will be held on Monday, February 12, 2024 at 7:20 p.m.

Ms. Fechter had no comments.

5. ORDINANCE NO 7-24 – TO AMEND SECTION 210.01(e)(7)(A)(1) & (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

Tom Fattlar, Aquatic Facility Manager

The Second of Three Readings of Ordinance No. 7-24 will be held on Monday, January 22, 2024

Mr. Presley advised he believes the information requested, by Council Member Demaline has been presented. If not, Mr. Fattlar was here to answer any additional questions relative to pool financial information or attendance.

Mayor Jensen said to give you a little bit of history, most on Council realize that what we do is we sit down each year, to come up with what we feel is a fair increase, if there is an increase. In the past, Council has not been interested in sitting through those Administrative meetings, which they always can, or they can call a committee meeting to talk about the pool rates. They, as an Administration, go over it together to discuss where they would like to be. He said they try to keep the proposed increase within a reasonable amount and try to come up with ways to operate the pool and yet not lose money. Mayor Jensen stated the pool is a service that we provide to our residents and as most of Council knows, the pool is paid for with a recreation tax approved by the voters and none of it is through real estate tax. He advised they try to come as close to breaking even as possible with the operation of the pool, but that is not always the case, depending on the weather and depending on the year.

Mr. Fattlar, the Aquatic Facility Manager, advised he started with the pool in 2014, as they were building it and 2015 was the season that the pool first opened. The pool broke ground in January 2015, so the first year pricing was a little bit of a challenge since they were going to open mid-season. They had to have a strategy to attract pool passholders, as opposed to people just taking advantage of the daily admissions and seeing what the weather was that day. He said it was a good start to getting the clientele there. Usually there is a 12- or 13-week season, but that year they had a 5 or 6 week season. So, it transcended into the following year to provide a discount and the whole philosophy of having a renewal pricing. So if people renewed their annual pass from one year to the next, they got a discount and they also had an early bird discount. Mr. Fattlar said if they look at the pool pass pricing, that base price is frequently not used as the main dollar amount for generating revenue. But that happens if someone does not take advantage of getting an early pricing discount and providing them with what they know is going to be a good season prior to figuring out what the weather is going to be in June. So, they look at that as a base price and then discount off of that with the largest discount being a pure renewal. So, they get a good return of people that enjoy coming to the pool. When determining the pool pass pricing, they have to look at what the daily admission price is. So that is generally between 8 and 12 visits. And as you can see with the daily admissions, those are ranked according to what your age is and things of that nature. So, that all comes together in looking at what our recommendations would be and tweaking things as we go along.

Mr. Fattlar said remember that in 2020, we had Covid. That also threw a wrench into things, and there were some adjustments and they had to adjust languages and some different things along the way that have produced a little bit of revenue to offset expenses but not drastically changing their approach to serving the residents. One item is a friendship pass that came into existence in 2020. They put a limit on the number of nonresidents that they will make available to sell a pass. And those can be the residents' grandkids or something of that nature. So, it ties into trying to serve a variety of people. So the friendship pass to the extent of about 150 or 200 people, if they all came on the same day, would be kind of a blip as it would not impact anybody else's visits to the facility. So, it's just another little additional revenue source. He said they also have done some other pricing things along the way. They rent the pool to swim teams and they produce some revenue that way. We also have revenue generation from "Learn to Swim" and concessions. If they compare Avon's facility to some other facilities in the area, Avon's reflects a net, not a gross on those different revenue gains. As they got into 2023, they knew the pricing had to increase a little bit because they were seeing a lot of pressure on our lifeguard rates and staffing and inflation was dramatically increasing with things being tied to the minimum wage increasing. So we have shown and asked for some additional increases going into this year to just reflect that kind of pressure. Mr. Fattlar

stated they also look at what the other communities are doing. And we are kind of in the middle of the road and he reminded Council that they have to look at what you're comparing, because the base rate compared to base rates or discounts all come into bearing. He said Westlake tends to have the highest rates and Avon Lake tends to have the lowest rates. Mr. Fattlar advised it all balances out depending on how you get to those numbers and what numbers are being talked about and how many people. He said all the neighboring communities compare with one another and they all try to stay within some type of range to get good value.

Mrs. Demaline thanked Mr. Fattlar for being here and for all of his efforts in running the pool and her family enjoys spending time there in the summer. She said in one of Council's packets, there was included the 2017 season summary, and it looked like it was prepared for the 2018 budget. Mrs. Demaline said she was looking for something similar to that for the 2023 season.

Mr. Presley advised that has not come out yet. He said what Mr. Fattlar did was look at that 2017 summary and then he prepared some information off the 2023 usage, and he believes that Mr. Fattlar shared that information with Council.

Mr. Fattlar said he has not spoken to Mrs. Demaline.

Mrs. Demaline said she did not receive anything similar to that in her packet.

Mr. Presley apologized and said he misunderstood, and it is completely his fault for not forwarding what Mr. Fattlar completed.

Mr. Fattlar stated he has some general overviews that they do at the conclusion of the year. And their year really doesn't end until December because they sell some pool passes over the Christmas holiday so the numbers change. But at the end of the swim season, the gate admissions do not reflect the total number of attendances well, because there are a number of swim teams and swim lessons and other activities that generate numbers, turnstile clicks, but does not come through the cash register. So, they look at all that and then add that information together and just produce some numbers to help reflect that.

Mrs. Demaline said in 2023 it had all of the head count and the funds generated, but it does not show what that was as far as the percentage of actual revenue and as a percentage of the 2022 budget. She stated what she was looking to see was where they were on revenue versus the expenditures for the 2023 season.

Mr. Presley advised the revenues minus expenditures left them a little ahead overall. But to please understand that includes a transfer from the General Fund to offset some of the operations, which has been done for every year since the pool has been open. He said he just forwarded to Mrs. Demaline, Mr. Fattlar's report and he apologized and he understands she does not have time to look at it right that moment, but she could look at it before the vote next week.

Mrs. Demaline thanked Mr. Presley and advised she has concerns about raising the rates and she was wondering when the last time was that they raised the daily admission rates for a resident, guest, and student. She asked if she is correct in stating that in 2021 those rates were raised \$1 each.

Mr. Fattlar said he believes that is correct. He stated the resident rate and the ITW (income tax worker) daily admission was increased \$1 and the guest rate was increased \$1 at that point in time; so they went from \$6 to \$7 for an adult rate, for example. And from \$7 to \$8 for the guest fees. He said that was Ordinance No. 94-20 that was passed for the 2021 season.

Mrs. Demaline said she believes last year there were adjustments to the season pass prices.

Mr. Fattlar stated adjustments were made to the base rate and not to the Renewal or the Early Bird rate. He said they also adjusted the Friendship Pass.

Mrs. Demaline advised she knows there was some record inflation in 2023, but that has been cooling off and without seeing financials that actually show there is a strong need to increase these daily rates, she has some strong concerns about increasing the admission rate for the pool because she does not have any financials to support that. She said they focus on tax funds and she understands there is a recreation tax, but she has some concerns with increasing the rates.

Mayor Jensen advised when they recommend an increase in pool rates especially if it is the daily rate, what they try to do is offset what is being subsidized. He explained they tried to suggest an increase in whole dollars so as not to create too much of a problem for the cashier at the pool. Mayor Jensen stated they also try to encourage people to get an annual pass by keeping that very reasonable. He indicated the daily rates do not increase revenue by a lot and the annual pass pays for itself once the user attends more than 10 times in a season. Mayor Jensen advised there are a lot of people who renew their pass rates through the Early Bird and take advantage of those discounts. He said because of the expenses of the pool they are trying to lower the amount that the General Fund subsidizes the pool, but that is always going to be there. Mayor Jensen stated just like with other programs the City offers, the City expends a lot of money on programs that do not necessarily pay for themselves, and they have some flexibility in the budget to be able to do that. He advised the City also receives some revenue from companies that advertise at the pool. Mayor Jensen reiterated that if they look at the season pass rates, they have gone up a relatively small amount and the daily admission rates have gone up by \$1 increments, which they do not feel is a significant increase and the hope is that it encourages people to purchase a season pass.

Mrs. Demaline advised she is interested in what criteria was used to identify the new rates. She said for example, a resident family pack for four people increased by \$20, but the Early Bird rate went up a bit more than that. Mrs. Demaline asked if the proposed increase was a percentage based on the current rates. She said she was interested in learning more about how they came up with the rates.

Mr. Fattlar advised the Friendship Pass rates significantly differ as that is typically a non-resident fee used to generate some additional revenues so that offsets the need to raise rates that apply more to the residents. He said the percentage in the increase in rates for residents is a discount, so the base rate increased last year slightly and slightly more for this year to reflect the idea that the City is going to need to generate additional revenues as the facility starts to plateau as far as attendance is concerned.

Mayor Jensen said one other thing they look at is that the pool season will be longer in 2024 because of when school will be out of session in 2024-2025 and they try to take that into consideration. He said a percentage off the base rate is where the discount is figured.

Mrs. Demaline advised she is interested in learning a little bit more about the methodology as they are proposing that the four-person annual rate be increased by \$20, but the Early Bird rate is being raised by \$32. She pointed out that the resident season pass for four people is being proposed for an increase from \$264 to \$284, but the Early Bird rate is being proposed for an increase from \$224 to \$256 for a season pass. Mrs. Demaline asked where they came up with the increases for the new rates.

Mr. Fattlar advised the renewal of the existing passes would be a 17 percent discount and he believes the Early Bird would be a function of a discount that should be a percentage off the regular rate. He said that is the process and that is how it was evaluated and made their recommendations. Mr. Fattlar stated the Friendship Pass came into existence around 2020 and it has been very popular and they have proposed \$5 increments to that rate structure.

Mayor Jensen invited Mrs. Demaline to be a part of the discussions within the Administration when these rate increases are discussed each year. He advised they are more than willing to sit down and go over their proposed rates before they come before Council. Mayor Jensen stated the Friendship Pass is for

those who do not live or work in the City of Avon and they offer a limited number of those passes and they sell out of them quickly each season. He said they are not trying to discourage people from getting that pass, but they want to make sure that the residents have the better availability and the non-residents do not mind paying to have the ability to use Avon's pool. Mayor Jensen indicated he was happy to go over these rates with Mrs. Demaline and Mr. Fattlar and Mr. Presley before next week's vote. He advised they are always transparent in terms of what they do and how they do it.

Mr. McBride reminded Council to keep in mind that no matter how much these rates go up this year, that these rate increases were developed before the City received the rate increase for water service from Avon Lake so that is another factor to consider. He said it sounds like if they raise certain rates like the Friendship Pass rates, that the City is not really making money, but they are helping to offset what could become a potential loss as the City's expenses go up to operate the pool.

Mr. Presley advised they also have to look at competing with other markets as minimum wage is going up to \$10.45/hr. in 2024, but most of the pool employees are being paid more than that hourly rate. He said the City is also in a competitive position where they need to be able to go out and hire people to work at the pool and many of them have to be certified lifeguards and there is criteria associated with that certification and they have different rates for every year that they come back because the City tries to motivate them to stay with us for 2-4 years while they are going through school. Mr. Presley stated it is not just the City trying to make money and offset some of the cost of the pool chemicals, but it is also personnel and trying to attract them to make sure the City has enough staff to keep the entire pool open.

Mr. Fattlar advised as an example, in 2021 the City paid \$10.50/hr. for a first-year lifeguard and in 2024 they will pay \$13.59/hr. for a first-year lifeguard. He said then there is a formula of what the employee will earn based on the number of years they are retained with the City so there is a scale.

Mrs. Demaline advised that is exactly the kind of information that she was looking for; more information as to why the City is increasing its rates for the pool. She said when the residents ask why the rates are being increased again, she can answer them by letting them know that the Finance Department and the Pool Manager worked together and gave Council a good summary of all these things such as minimum wage and the like. Mrs. Demaline stated she is fully aware of how to staff a pool and she knows it is challenging and it is becoming even more challenging. She advised those are the kinds of things she is looking for in this discussion and she thanked them for giving a little more insight to Council.

Mr. Fattlar advised minimum wage has increased dramatically the last two years so that is a large part of it. He said they also take good care of the pool and put money back into the maintenance of it and he could go into a very detailed list of what that includes. Mr. Fattlar stated they just installed five new/refurbished pumps, did annual maintenance to the slides, painted the pool and caulked it and he reminded Council that the pool is 9-10 years old. He added that when visiting the pool, because they have kept up on the maintenance, most people would agree that the pool still looks new. Mr. Fattlar said that has been their approach and there are some costs to doing that. He stated they have also done some improvements to the "toys" that attract the families and make them want to return from year to year. Mr. Fattlar advised last year they installed an Aqua-Zip and a couple of years before that they added more spray ground equipment for the littlest visitors. He said those all contribute to the cost of maintaining the pool.

Mr. McBride advised he remembers the year they had to dramatically increase the hourly rate for lifeguards because there was concern that they would not be able to staff the pool adequately.

Mr. Fattlar agreed and said that was in 2021 because of the pandemic and a lack of lifeguards because there were no classes being held to certify them.

Mr. McBride said it might be nice to have a summary and when they set up the pool originally the City was not really looking to make a profit, but they did not want to "lose their shirt" either. He stated it would be nice to show historically how much the General Operating Fund has subsidized the operation of the pool.

Mr. Fattlar advised one of the offsets that has not been mentioned are the sponsorships. He said the sponsorships became part of the arrangement in 2015 and it was still very strong until a few years ago and it started to slack off as the facility aged. Mr. Fattlar stated all of those things are the items that become involved in evaluating what they think the revenue is going to be, but nothing beats the weather. He said the weather determines what they do from year to year. Mr. Fattlar advised next year the season is going to be a little bit longer and this past season, school was out of session in June and went back a week early so the pool season was impacted by that. He said this year the school recess begins the Wednesday after Memorial Day and they return around August 24, 2024, which will stretch their season a little bit if they get good weather. Mr. Fattlar stated June 2023 was awful weather for the pool as it did not promote swimming at all and if they did not offer the different discounts and try to get annual passes purchased upfront, it would have been an even tougher year.

6. ORDINANCE NO. 8-24 – TO AUTHORIZE THE OHIO DEPARTMENT OF TRANSPORTATION TO REVIEW AND APPROVE A POSTED SPEED LIMIT OF 45 MPH ON STATE ROUTE 254 (DETROIT ROAD) FROM SLM 2.81 (RR AT GRADE CROSSING) TO SLM 4.61 (0.12 MILES WEST OF HAYES STREET) Mr. Cummins

Mr. Cummins advised Ordinance Nos. 8-24, 9-24 and 10-24 all deal with resetting the speed limits along the Detroit Road, State Route 254, corridor throughout the City. He said this effort became necessary as part of accepting federal funds to improve the intersection of State Route 254 and State Route 83. Mr. Cummins stated during their work on that project ODOT noticed that there were several areas of the Detroit Road corridor that were generalized at one speed, but then posted at different other speeds and ODOT made a requirement for that to be corrected to receive the federal funds. He advised they then undertook a speed study of the entire corridor. He said there was a one-page summary sheet provided to Council that is separate from the Ordinances and it gives a nice summary of different sections of the corridor and what the journalized speed is and what the posted speed is. Mr. Cummins stated the ODOT calculated speed came to be from the results of utilizing ODOT and federal highway processes and characteristics of the corridor in that area taking into account the number of driveways, pedestrian traffic and the like. He advised all of this work was done in conjunction with ODOT and has been reviewed and approved by ODOT. Mr. Cummins said should City Council pass these Ordinances then the new speed limit signs would get installed and ODOT would be notified and ODOT would officially re-generalize all the sections accordingly. He stated there are three different areas; at the very west end of town is 45 mph speed, the middle section of town would be 35 mph speed and the very eastern side would be a 40 mph speed. Mr. Cummins advised each of the Ordinances reflects a different area of town. Ordinance No. 8-24 is at the Sheffield Village border at the railroad tracks, which is the western section. Ordinance No. 9-24 would be the middle section and Ordinance No. 10-24 would be the eastern section. He noted that SLM stands for Straight Line Mile, which is a way of designating where they are located on a State Route.

Mr. McBride thanked Mr. Cummins. He said when he compares the current posted limit and then sees the proposed speed limit, he felt it is long overdue as there are a couple areas that are posted much too low. Mr. McBride stated areas that have a different posted speed on opposites sides of the street was crazy.

Mrs. Demaline asked the current speed limit for the entire route denoted in the Exhibit A to Ordinance No. 8-24, the western end of the City.

Mr. Cummins advised in general that area is journalized as 45 mph and a portion is journalized at 50 mph and is currently posted at 45 mph, 35 mph and 35/25 mph. He said the calculated speed through the ODOT process is 45 mph so the speed zone request would also be 45 mph.

Mrs. Demaline asked the current speed limit near where Moon Road and Detroit Road meet.

Mr. Cummins answered he believes that to be 45 mph.

Mrs. Demaline also asked the current speed limit at the entrance to Veterans Park on Detroit Road.

Mr. Cummins answered that he believes that to also be 45 mph.

Mrs. Demaline asked if they could get a rendering separate from the Exhibit A that has the proposed 45 mph speed limit, but then also be colored coded on what the current posted speed limits are.

Mr. Cummins advised they can produce that, and they have produced that in the past and he is happy to share that, but due to the variability throughout the entire corridor that becomes quite messy to show. He said but they have a version of that and he is happy to provide it.

Mrs. Demaline said that would be helpful for her to get a little bit of a better understanding on what this looks like compared to what it is currently.

Mr. Cummins advised the one-page summary really provides a nice overview. He said it gives a description on the left-hand side of where they currently are with some addresses as well. Mr. Cummins stated it shows exactly what is journalized, what is posted, what was calculated and what is recommended.

Mrs. Demaline stated she agrees with Mr. McBride on having some consistency on what the miles per hour speed limit is, but it would be helpful to understand in a visual format where they are to what is being suggested for Ordinance No. 8-24 and Ordinance No. 9-24.

Mayor Jensen advised they originally went to ODOT for review thinking that the speed limit should be lowered and ODOT came back showing that it does not justify the need to have it at a lower speed limit. He said the legislation sounds like ODOT is suggesting these speed limits, but ODOT does not allow the City to adjust and make speed limit changes on State Routes. Mayor Jensen stated he remembers that North Ridgeville on SR 83 by the roundabout changed the speed limit to he believes 35 mph and ODOT immediately called them out and made North Ridgeville change it. He advised Mr. McBride will remember when the City tried to change the speed limit on SR 611 by the Stonebridge Subdivision and ODOT came back and said no, and that the City had to raise that rate to 45 mph. Mayor Jensen said it is a bit deceptive thinking this is a suggested speed limit because ODOT does not suggest, but the City is required to post the speed limit according to ODOT's standards.

Mrs. Demaline asked for an explanation of the relationship between the City's ability to control the speed limit versus what ODOT says.

Mr. Cummins advised the setting of speed limits is squarely the purview of the Ohio Department of Transportation. He said if the City wants to lower a speed limit, it cannot do so without ODOT's approval. Mr. Cummins stated the City may have the opportunity to raise the speed limit above what is journalized as a community, but they certainly cannot lower it. He advised the Director of Transportation at ODOT sets the criteria for the studies and the processes and how the data is collected and how much data and where and under what conditions the data is collected; it is all squarely within ODOT's purview to do that. Mr. Cummins said that authority is reflected in the Ohio Revised Code as well as on ODOT's website and processes and specifications.

Mrs. Demaline thanked Mr. Cummins for the clarification. She asked if this is under the purview of ODOT if it even requires councilmatic action since it is controlled by ODOT, and the ORC gives ODOT the power to do so.

Mr. Cummins advised it does. He said if the City wants to change something they can petition ODOT to change it, which is what they are doing by correcting and making everything match. He said but it has to be done in a certain manner. They cannot just say that this area is 50 mph and they think it should be 35 mph and ask ODOT to allow them to change it to 35mph. They have to be able to document and justify that is an appropriate speed. Mr. Cummins stated that is what they have done and have re-justified the entire corridor in a manner that ODOT is accepting of to set the parameters and establish the speed limits.

Mrs. Demaline asked if Mr. Cummins was able to provide information to Council directly on how they got to where they are. She inquired where did they veer in the road on a lower speed limit.

Mr. Cummins advised he is not able to provide that information. He said he does not know how or when some areas were posted or not or changed, he just does not know.

Mrs. Demaline asked what would happen if Council does not follow ODOT's strong recommendation and decides to vote down this legislation.

Mr. Cummins advised conceivably ODOT could pull any federal funding along that corridor.

7. ORDINANCE NO. 9-24 – TO AUTHORIZE THE OHIO DEPARTMENT OF TRANSPORTATION TO REVIEW AND APPROVE A POSTED SPEED LIMIT OF 35 MPH ON STATE ROUTE 254 (DETROIT ROAD) FROM SLM 4.61 (0.12 MILES WEST OF HAYES STREET) TO SLM 6.63 (MIDDLETON ROAD)
Mr. Cummins

See discussion in item no. 6.

8. ORDINANCE NO. 10-24 – TO AUTHORIZE THE OHIO DEPARTMENT OF TRANSPORTATION TO REVIEW AND APPROVE A POSTED SPEED LIMIT OF 40 MPH ON STATE ROUTE 254 (DETROIT ROAD) FROM SLM 6.63 (MIDDLETON ROAD) TO SLM 8.82 (LORAIN/CUYAHOGA COUNTY LINE)
Mr. Cummins

See discussion in item no. 6.

Ms. Berges advised regarding Ordinance No. 10-24 that she recalls that the speed limit used to be set at 40 mph and then it was changed to 35 mph and her car still thinks the speed limit is 40 mph so she will be happy to see that reconciled with her car.

9. ORDINANCE NO. 11-24 – TO AWARD A BID AND ENTER INTO A JOINT CONSTRUCTION PROJECT WITH AVON LAKE REGIONAL WATER FOR THE MILLER ROAD WATER MAIN IMPROVEMENT PROJECT
Mr. Cummins

Mr. Cummins advised Council may recall that some upgrades were done to the Miller Road Water Distribution Booster Pump Station a couple of years ago. He said that upgrade allows the City to take on more Avon Lake water supply, which is at a lower per unit rate of cost on the supply side. Mr. Cummins stated in order to do that some upgrades need made to the line from the Pump Station under the tracks over to a connection point inside Avon Lake. He advised in discussions with Avon Lake Regional Water (ALRW) about that work, Avon Lake identified some modifications of their own that they wanted to make so joint construction project plan reflect that and those plans were bid. Mr. Cummins stated the specifications were put together by ALRW and they oversaw a public bidding process and bids were opened on January 3, 2024. He said there were six bidders, and the low bidder was DRS Enterprises, Inc. and those bids were reviewed and found to be acceptable by the ALRW engineering staff and DRS Enterprises, Inc. was shown to be the lowest and best bidder by ALRW engineering. Mr. Cummins advised as such, he is asking for Council's approval to allow the Mayor to enter into a joint construction project with Avon Lake Regional Water. He stated the construction project will be managed and overseen by ALRW. Mr. Cummins said the dollar amount of the City's portion was identified in the bid documents and has been identified by quantities and by items and in the end ALRW will present an invoice to the City of Avon for those items and they will have the backing and documentation for what was installed.

10. ORDINANCE NO. 12-24 – TO AMEND THE SPECIAL USE PERMIT GRANTED TO B & L TRIO PROPERTIES, LLC (MISENCIK FUNERAL HOME, LESSEE) TO ALLOW CONSTRUCTION OF A SIX (6) FOOT FENCE ALONG THE PROPERTY LINE AT 36363 DETROIT ROAD
Planning Referral

Ms. Fechter advised William and Lucy Greaney, owners of Misencik Funeral Home, are asking for an amendment to their Special Use Permit to add a 6' fence along their southern property line. She said Mrs. Greaney is present if Council has any questions.

11. ORDINANCE NO. 13-24 – TO ACCEPT IMPROVEMENTS IN CONCORD VILLAGE NO. 3, FOR THE CONSTRUCTION/INSTALLATION OF PUBLIC UTILITIES CONSISTING OF PUBLIC WATERLINE AND ALL APPURTENANCES THERETO Planning Referral

Ms. Fechter advised the work on Chester Road has been completed and the City has been out completing its inspections of the waterline and that wrapped up today and the City is waiting for some as-built drawings. She said all deposits have been made and the applicant's share of the road improvements have been paid.

Mr. Presley confirmed he has everything he needs saying he received their maintenance bond this evening.

12. RESOLUTION NO. R-5-24 – TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY JAMES E. AND MARY C. BRADY TO HAVE CERTAIN LAND OWNED BY THEM LOCATED AT 3332 CENTER ROAD, PERMANENT PARCEL NO. 10-04-00-014-105-063, DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT Mr. Gasior

A Public Hearing will be held on Monday, January 22, 2024 at 7:25 p.m.

Mr. Gasior advised this is a relatively routine request and the application was made by the property owner, and it must be renewed every five years to keep the land in an agricultural district and it protects them from certain assessments and things of that sort. He said he would recommend approval.

13. RESOLUTION NO. R-6-24 – TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY ROY E. MILLER, TRUSTEE, TO HAVE CERTAIN LAND OWNED BY HIM LOCATED ON CENTER ROAD, PERMANENT PARCEL NO. 10-04-00-014-107-015 CONSISTING OF 0.2 ACRES AND AT 3041 CENTER ROAD, PERMANENT PARCEL NO. 10-04-00-014-107-016, CONSISTING OF 30.63 ACRES, DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT Mr. Gasior

A Public Hearing will be held on Monday, January 22, 2024 at 7:20 p.m.

Mr. Gasior advised this is another renewal request and they have had the agricultural district designation, and it is back up for a five-year renewal.

14. RESOLUTION NO. R-7-24 – TO ADVERTISE FOR BIDS FOR AVON PARKS MOWING CONTRACT NO. 1 (THE BOARD OF EDUCATION SOCCER FIELD COMPLEX, AQUATIC FACILITY GROUNDS, FIRE STATION SITE, POLICE STATION SITE AND THE AVON POST OFFICE SITE) Mr. Streator

Mr. Streator advised Res. Nos. R-7-24, R-8-24, R-9-24, R-10-24, R-11-24, and R-12-24 were asking for authorization to advertise for bids for mowing of the City properties as in previous years with the addition of contract no. 6 for Eagle Point Park. He said the other difference this year is that it will be a one-year contract with an optional second- and third-year renewal based upon the performance of each contract. Mr. Streator advised the City has had success the last two years in doing it this way and it is a very efficient way to get the all the properties mowed in a timely manner. He said all of these areas look very nice throughout the year by having these companies maintain the properties on a regular basis for the City.

15. RESOLUTION NO. R-8-24 – TO ADVERTISE FOR BIDS FOR AVON PARKS MOWING CONTRACT NO. 2 (THE AVON ISLE, THE COMMUNITY CENTER, AVON CEMETERY, STATE ROUTE 83 RIGHT-OF-WAY IN THE NORTHWEST QUADRANT OF THE SR 83, & SR 254 INTERSECTION, STONEY RIDGE ROAD GAZEBO SITE, OLD VILLAGE HALL, AND THE SENIOR CENTER & LITTLE LEAGUE PARK COMPLEX) Mr. Streator

See discussion in agenda item no. 14.

16. [RESOLUTION NO. R-9-24](#) – TO ADVERTISE FOR BIDS FOR AVON PARKS MOWING CONTRACT NO. 3 (SCHWARTZ ROAD PARK) Mr. Streator

See discussion in agenda item no. 14.

17. [RESOLUTION NO. R-10-24](#) – TO ADVERTISE FOR BIDS FOR AVON PARKS MOWING CONTRACT NO. 4 (VETERANS MEMORIAL PARK AND ITS ENTRANCE WAY UP TO DETROIT ROAD) Mr. Streator

See discussion in agenda item no. 14.

18. [RESOLUTION NO. R-11-24](#) – TO ADVERTISE FOR BIDS FOR AVON PARKS MOWING CONTRACT NO. 5 (THE AVON CITY HALL COMPLEX INCLUDING THE AREA ADJACENT TO THE MIDDLE ROAD RIGHT-OF-WAY, THE NORTHGATE COMMUNITY CENTER SITE, NORTHGATE PARK, THE OLD COLORADO RIGHT-OF-WAY AT EATON DRIVE, AND THE CRUSHER STADIUM COMPLEX INCLUDING THE RECREATION LANE ENTRANCE UP TO STATE ROUTE 611 (COLORADO AVE.))

Mr. Streator

See discussion in agenda item no. 14.

19. [RESOLUTION NO. R-12-24](#) – TO ADVERTISE FOR BIDS FOR AVON PARKS MOWING CONTRACT NO. 6 (EAGLE POINT PARK AND ITS ENTRANCE WAY UP TO DETROIT ROAD) Mr. Streator

See discussion in agenda item no. 14.

20. REPORTS AND COMMENTS

MAYOR JENSEN had no comments.

COUNCIL MEMBERS:

MS. BERGES, AT LARGE advised in December Council approved a Resolution for the Tree Commission to submit a grant and she reported that the grant was submitted in a timely fashion with the help of Ms. Seighman, the Mayor's Administrative Assistant. She said approximately 70 grant applications have been received so she was not sure how Avon was going to do, but they should hear something near the end of January or at the latest by the middle of February. Ms. Berges stated she would keep Council posted on the status of that grant application.

Ms. Berges advised last September in the City of Beachwood, Ohio, Tony Moore, Rick Varga, Matt Smith and herself from the Tree Commission attended the Tree City USA awards. She said during a break they were walking one of the rooms at the Beachwood Community Center and the theme for that room was "Trees". A photo was placed on the overhead for all to see and Ms. Berges explained there was a tree ring on display, and it was covered with plexiglass and each ring on the tree ring represented a date in either the history of Beachwood, Ohio, or the State or something memorable. She stated this was part of Beachwood's bicentennial celebration and it is mounted and is movable as it is on a base with wheels. Ms. Berges advised they then went to Mayor Jensen and said they believe that same kind of thing would be great for the City of Avon, and they would love to do it and he agreed. She said they then had to find a tree ring and that took some time because it needs to be the right size. Ms. Berges stated they found a tree in one of our own parks and Mr. Varga has sliced several pieces and is working with it and is doing research to find out the proper varnish that is needed and the like. She advised they will be working with the Historical Society to provide dates to assign to the rings. Ms. Berges said the plan is to have two tree rings so that they can be circulated around the City such as the library, and the schools, and it could be used as a teaching tool not just about the history of Avon, but also about trees and their longevity. She stated she wanted to share that with the rest of Council as the Tree Commission is excited about this project and she would keep them posted as the Tree Commission makes progress on the tree ring project.

Ms. Berges advised they have talked about sidewalks a lot and with the recent snowfall she would like to talk about sidewalk safety. She said she talked about it with Mayor Jensen and the problem along Detroit Road especially, as the businesses have not been the best at clearing their sidewalks. A couple of years ago, they had about 4-6" of snow that never melted and if someone was trying to walk along Detroit Road, they were just walking in snow that deep and that was a problem. Ms. Berges stated the other problem was the businesses that hire snowplow operators will clear the driveways, but they tend to stack up the snow on either side of the driveway blocking the sidewalks so now there could be 8" of snow piled up. She advised during that time she would see students walking along Detroit Road by Taco Bell and Burger King and the students had to walk into Detroit Road to get around the snow piles by the driveways. Ms. Berges said in talking with the Mayor, it looks like the Zoning Enforcement Officer is the one responsible for monitoring that and making sure that businesses are keeping their sidewalks cleared and not creating large piles of snow making it difficult to walk. She asked what good sidewalks were if they cannot walk on them.

Mayor Jensen advised they were going to post a message on the LED signage at the Police/Fire stations to remind residents and businesses to clear their sidewalks the best they can.

MRS. DEMALINE, WARD 1 had no comments.

MR. MCBRIDE, WARD 2 advised it would be wonderful if businesses would clear their sidewalks, but it is not just businesses that need to do so to stop blocking their sidewalks with snow when clearing their driveways.

Mayor Jensen said the Parks Crew now has a piece of equipment that helps with clearing the sidewalks in the park areas or other City properties where there are sidewalks.

MR. MOORE, WARD 3 had no comments.

MS. PATTON, AT LARGE had no comments.

MR. RADCLIFFE, WARD 4 advised regarding the businesses and the upkeep on the sidewalks he felt in general most businesses were willing to keep their sidewalks clear of snow, although they might need a gentle reminder. He said there are letters sent out occasionally from the City reminding residents and businesses of certain requirements such as those with backflow preventers that require inspections and things of that nature. Mr. Radcliffe suggested that a summary letter could be sent to the businesses to update them on issues such as keeping their sidewalks clear of snow and landscaping maintenance and other reminders to keep their property up to Code. He stated there are new businesses and new owners of existing businesses and they may not be aware of these types of requirements and may just need a reminder. Mr. Radcliffe felt it would be a good idea to have a kind reminder go out rather than sending a notice telling them that they are in violation of a Code section.

MR. FISCHER, AT LARGE had no comments.

DIRECTORS/ADMINISTRATION:

MR. CUMMINS, CITY ENGINEER advised he and Mayor Jensen discussed sidewalks. He said a list of proposed areas for sidewalk improvement was presented back in November to Council and he has not received any input back since then. Mr. Cummins asked if that is the acceptable final list and if they should be moving forward. He stated he is happy to discuss that list with City Council separately or have a Committee Meeting or however they can get to a final decision so that they can get started.

MS. FECHTER, PLANNING/ECONOMIC DEVELOPMENT COORDINATOR had no comments.

MR. GASIOR, LAW DIRECTOR asked Council if they would consider adding an Executive Session as item no. 20a to the agenda. He said Mayor Jensen forgot to mention it, but the Mayor would like to

discuss the Purchase of Real Estate and he would like to add the purpose of discussing Pending or Imminent Litigation tonight.

MR. PRESLEY, FINANCE DIRECTOR had no comments.

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

AUDIENCE:

Gerald W. Phillips of 461 Windward Way, Avon Lake, Ohio said the Clerk should have handed out to them, a packet of information, and he would try to briefly go over it. The first two items were: "Taxpayer Demand" letters with one dated today, January 16, 2024, and one April 11, 2023. He explained that a Taxpayer Demand letter is when a resident in the community or somebody believes that the city is not performing a duty that they are obligated to perform that they can place a demand on the Law Director to bring an action to sue that governing body and force them to comply with the law. For example, the Law Director could sue City Council or make sure they take property by eminent domain that they are legally obligated to do. If the Law Director fails and the taxpayer sues and is successful, then the municipality or in this case the City of Avon would pay the attorney's fees for that taxpayer. Mr. Phillips said he was sure that Mr. Gasior remembers his former partner who has since passed away, Dan Stringer, unfortunately refused a Taxpayer Demand letter years ago and it went to the Supreme Court, and he won, and the City of Avon wrote him a nice big check. He suggested asking Mayor Smith how he remembers that incident. Mr. Phillips advised the City has forced his client to negotiate with the Khouri's because they will not exercise the eminent domain, which they are legally obligated to do. He said under no circumstances were the Khouri's going to sell that land to his client, because they want the land that his client is developing, and it is obvious that is the case. Mr. Phillips said Council has basically put his client in a situation that has incurred huge financial losses. He said his client has not been able to develop that land for four years, and he believes his clients damages are at least seven figures and greater than the Garland situation.

Mr. Phillips advised the next items he would like to go over are the legal opinions, dated January 20, 2021 and August 9, 2021. The January 20, 2021 is his legal opinion. He said he wanted to reference the April 11th Taxpayer Demand and after the demand there were three pages, and they could see the so-called devil strip that they were talking about. The devil strip is a sliver of acreage that should have never been allowed in his legal opinion. Last week he indicated about devil strips or reserve strips where reserve strips were controlling access to streets, abutting land, sewage, water lines, sewer lines, and any other land dedicated for public use were expressly prohibited; not conditional, but expressly prohibited. Also, in that document, there were numerous cites to Section 1246 of the Avon Codified Ordinances. In Section 1246.04(b) it talks about the fact that the dead end at St. Theresa Boulevard was never intended to be permanent, but it was part of the continuing street plan with a temporary cul de sac and that has been ignored. The fact that the termination of St. Theresa Boulevard was temporary, therefore there should be a connection and that was inconsistent with Section 1246.04(a)(17). He suggested Council go through and clearly read Section 1246 of the Avon Codified Ordinances, which is the Street Design and look at the street map where they had Napa Boulevard and they could see from that plan that it was clearly intended to have another street go from north to south to tie into Mills Road, which is what the street connection would facilitate and that is being ignored.

Mr. Phillips advised the second legal opinion is August 9th and that is Mr. Friedman. Mr. Friedman is the City's bond counsel from Squires Patton and Boggs. Mr. Friedman's opinion is consistent with Mr. Phillips opinion. He said people on Council should question why their bond counsel's opinion is contradicted by their Law Director. He stated the Law Director is ignoring the City's bond counsel's legal opinion.

Mr. Phillips advised the next item is an appraisal his client received from Mr. Jackson indicating the value of that devil's strip is \$25,000 although in theory it is probably less because they have to take a minority discount because that land is based on a developable lot and it cannot be connected with a developable lot.

Mr. Phillips advised the last item were some sections of the Ohio Revised Code that deal with eminent domain. Section 163.04 is a Notice of Intent, and it has to be given to the property owner and he

already gave that notice. Section 163.05 talks about the petition that needs to be filed. ORC Section 719.04 talks about the Resolution that the City needs to pass. Section 163.02 talks about the public use. Since the public use is for a connection of a street, there is a concept called a Quick Take, which means that it is an automatically assumed public purpose. The only thing that Carnegie and Khouri's can argue about is the fair market value. As soon as that action is filed in court and they deposit the amount of money that is based on the appraisal, the City gets immediate right to that property in order to do the public use.

Mr. Phillips advised he was not going to get up there and threaten litigation. They knew his position on January 8th and the purpose is to get them the information so that they are educated, and they know what the issues are and do the right thing. The right thing is to correct a blatant error of a reserve strip. It is the only one in the history of Avon. Mr. Smitek, a developer, had a reserve strip and it is just around the corner from where Mayor Jensen lives. Mr. Phillips said that Mayor Jensen did not want the street to go through because he did not want to be a corner lot, so the street never went through.

Mayor Jensen asked Mr. Phillips to explain that to him again why he did not want that street to go through.

Mr. Phillips said Mayor Jensen would be a corner lot if that street would have gone through.

Mayor Jensen advised no; his house is in the middle of that street.

Mr. Phillips advised anyway; the purpose is to educate. He said at some point in a deposition and lawsuit Council is going to be asked if they have ever seen this piece of paper and asked if they ever read it. If not, that was a good indication of bad faith.

Mayor Jensen said he would like Mr. Phillips to be honest about where he lives, which is in the middle of that street. He advised he has never argued any facts.

Mr. Phillips asked Mayor Jensen if he wanted that street to go through.

Mayor Jensen advised that street has to go through.

Mr. Phillips said it did not go through.

Mayor Jensen stated it will go through. He said it is on the Master Plan.

Mr. Fischer thanked Mr. Phillips.

Mr. Gasior advised he wanted to clear one thing up. He said Calfee Halter was the City's bond counsel for many years and he does not think that Squire Patton and Boggs became bond counsel until 2022.

Mr. Presley advised he believes it was with the last note issuances and then the bond issuance the City did in 2022.

Mr. Gasior advised so when Steve Friedman that opinion to H-9, LLC there was no conflict with the City because the City had not been engaged with Squire Patton Boggs and he wanted to clear that up. He said and the Mayor does not live on the corner, but in the middle of the street.

Mr. Gasior advised they would be discussing the packet that Mr. Phillips presented to Council in a few minutes in Executive Session.

No further comments were made.

20a. EXECUTIVE SESSION: 8:49 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 Purchase of Real Estate and for the Purpose of Discussing Pending and Imminent Litigation, 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.

20b. RECONVENE: 9:25 p.m.

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to Reconvene the Work Session of Council, 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.

21. ADJOURN: 9:27 p.m.
There being no further business, the Work Session of Council was adjourned.

PASSED: _____

SIGNED BY: _____
Brian Fischer, Council President

ATTEST: _____
Barbara Brooks, Clerk of Council