

AVON PLANNING COMMISSION REGULAR MEETING MINUTES 1-20-21

MINUTES OF THE PUBLIC HEARING HELD ON WEDNESDAY, JANUARY 20, 2021 IN COUNCIL CHAMBERS OF CITY HALL

The Public Hearing was opened by Chairman Carolyn Witherspoon at 7:06 P.M.

PRELIMINARY PLAT FOR A NEW 20 HOME SUBDIVISION, AUTUMN GROVE, TO BE LOCATED ON THE SOUTH SIDE OF RIEGELSBERGER ROAD, WEST OF JAYCOX ROAD.

Mayor Jensen asked the Chairman if the City Engineer could make a presentation to show everybody how we got to this place and then have Mr. Hoffman continue after that and the Chairman agreed.

Ryan Cummins, City Engineer, stated that it is his role to review the various plans that come in for stormwater management, roadway design, etc. This particular project has been around for a number of years and has had several different iterations. There has been a lot of work both on the developer's side and the City side analyzing, reviewing, and making sure that they try to have the developer put the best project forward for consideration. So he thought it might be good just to kind of summarize everything the City sees relative to this project.

Mr. Cummins said that this property on Riegelsberger Road is just over 18 acres in size. The original proposal in 2016 or 2017 had 28 proposed home sites. It had 0 acres of compensatory storage. Mr. Cummins then explained compensatory storage. He stated that there was a very large storm in 2014 and there was a considerable amount of flooding in the area and also throughout the City of Avon. In response to that, in 2015, the City made a series of changes to its Codified Ordinances relative to stormwater drainage. One of those aspects was a notion called "compensatory storage" and what that entails is if a developer is proposing to do a project that impacts a FEMA-designated 100-year flood plain, which this property does, for every shovelful of dirt that they want to put on that property to do their development, they have to create 2 shovelfuls of void somewhere else adjacent to the stream within the project area to offset that. So that notion is called compensatory storage, and the developers became subject to that during this review. Initially, they did not show any of that. They did not show any drainage off from the project frontage. They are required to put a new storm sewer system along the proposed frontage of the development but at that time they did not propose anything down Riegelsberger Road. They had no buffers on either side east or west right up to existing homes and planned on taking out some of the existing tree line on the east side. So that is where we started.

Mr. Cummins said that the current proposal has gone from 28 proposed houses down to 20. We now have 12.3 acre ft. of compensatory storage and he pointed out that area on the map, the area outlined in blue on the right side or the east side. Basically they are proposing to dig that area out and create those 2 shovelfuls of dirt, of volume, at that end in exchange for being able to fill in some of the eastern end of what they are proposing. So they are going to put some fill in that place but then they are going to create twice as much void right next to it to more than offset it. Also, through the discussions about the best way to develop this parcel, they are proposing to

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install a little over 1,100 ft. of 24" storm sewer from the subject parcel to the east towards French Creek.

There is a relatively new portion of 24" storm sewer that comes from French Creek the first few hundred feet. After that it is an older system; it is disjointed and different sizes. So this would create new drainage away from this property all the way over to French Creek. Also, the compensatory storage is pulled back from that tree line so it will maintain that existing eastern tree line and they are proposing an evergreen tree buffer along the western side adjacent to that existing home on the western side.

Mr. Cummins stated that, along the way, the City did pursue possibly purchasing the property. It was evaluated with the potential use of being parkland. The approximate purchase price would have been a little over \$800,000 but in the end the seller was unwilling to sell. Mr. Cummins believed he had contractual agreements with the developer but the City did try. It is also important to point out that if it was going to be developed into parkland, we would have easily spent over another \$1 million dollars creating the fields and the parking, extending the sanitary sewer for restrooms, extending water lines, etc. So it would have been quite an endeavor for the City to turn it into a park. There would have been soccer fields and baseball fields and looking at the use of those, it would have been necessary to have parking for well over 150 cars and that would have resulted in peaks of traffic that are pretty significant. As it is currently proposed, for the 20 homes, it is estimated that at the peak hours in the morning and evening, there would only be about 25 vehicles coming and going.

Mr. Cummins noted the infrastructure to be installed by the developer: extending the storm sewer along Riegelsberger Road east of the site and installing 1,600 ft. of storm sewer along the frontage of the site. They will also be extending the sanitary sewer along the frontage of the site. Avon has an ordinance where if the developer extends that sanitary sewer, if there is an existing home along the way, the developer has to install the connection to that right of way. He does not install to the house but extends the connection from the mainline that the developer is putting in to the right of way in the direction of the existing home. In this case, there are three such homes. The developer would put in new concrete sidewalks along the frontage. Anything that they touch or disturb doing their development, they will have to repair or replace in kind. And all of this would be done at no cost or assessment to any of the existing property owners adjacent to it.

Mr. Cummins said an important thing to keep in mind is the flooding in the area. The proposed development is directly adjacent to French Creek, just downstream of where Mills Creek comes into play. Remember that this site is 18 acres in size. The watershed of French Creek as it gets to Riegelsberger Road is over 11,500 acres in size. So when we have a 100-year event, what the developer is proposing here and they have done the analysis to back it up, is that their site would be neutral. It will make it a little bit better because of the compensatory storage but it definitely does not make it any worse. Again, they are working on something that is 18 acres in size; you have an 11,500 acre watershed coming right by it. The things that they are doing by adding the compensatory storage and handling the drainage along Riegelsberger Road, creates a project that is stormwater-neutral. The developer has prepared these calculations and City has had them reviewed, but in the end, those calculations also have to go to FEMA and be reviewed by FEMA and get FEMA's approval before they can actually move forward with the project.

Mr. Cummins concluded by saying, so those were some of the highlights of the project and what the back and forth has resulted in. He said he was more than happy to answer any questions. The developer and his engineer were there as well and they would also be happy to answer any questions.

Stephanie Xenos, 3825 Jaycox Road, asked about the storm sewer that is coming in in the front. How is that going to be connected to other storm sewer lines to their houses? Mr. Cummins responded that that blue rectangle, the compensatory storage, in the northeast corner of that, there will be an outlet structure and that outlet structure will be connected to the 24" storm sewer which will run from that point all the way to French Creek. Ms. Xenos said, so it will go nowhere near Kensington and nowhere near Jaycox? There is no connection to Jaycox or no connection to Kensington or the west side of Riegelsberger? Mr. Cummins said that was correct; the homes along Riegelsberger Road that have drains that come out to the current existing storm sewer along Riegelsberger, those will be picked up and brought in to the new storm sewer but the storm sewer does not extend into Kensington and does not go to Jaycox.

Ms. Xenos stated that anybody who is near the creek has to have FEMA unless you have lived in that house for years so in order for her to sell her house she has to be on FEMA or the people who move in have to be paying \$2,000 - \$4,000 a year to FEMA for flood insurance. She cannot raise her property to get off FEMA. Her lot is about an inch and a half to what FEMA says is the flood zone but that could change. The developers that are going to be building there – are they going to be in the flood zone? Or are they going to have the right to build that land up so they are not in a flood zone so selling those 20 houses is not a problem like it is going to be for her when she wants to sell her house. She said she cannot sell it, because if you are going to choose a house aren't you going to choose one where you do not have to pay money every year? The developer gets to lift that property up and sell those houses no problem but she cannot do that for hers. Mr. Cummins said that it deals with the lowest elevation of the lowest level of your home. Ms. Xenos said that FEMA has come twice to measure hers and the next thing she knows is that she is an inch and a half above it.

Mr. Cummins said that, generally, as a homeowner you would have a surveyor do that and Ms. Xenos said that she did have a surveyor and he submitted the paperwork to FEMA. Mayor Jensen asked, so you were not in the flood plain and he surveyed it and now you are? Ms. Xenos answered, yes, she was in the flood plain and the first 10 years she had to pay flood insurance and after you are in your house for so long, FEMA lets you stop paying and now she gets flood insurance through her homeowners insurance. But she wanted to have it surveyed so when she wants to sell her house she could put in her sale that she is not in the flood zone. So she is an inch and a half off but if they reevaluate it when they bring in these other homes, who is going to want to buy her house if it is in a flood zone when they are going to be building these houses up? Because that is a flood zone; when it rains, that fills up then she knows her house is going to fill up and that is what she watches for. Mayor Jensen said that area that Ms. Xenos was talking about is not going to get filled in. It is going to be farther down the road where it would get filled in and the developer has to do the 2 to 1 compensatory storage. Mr. Cummins stated that

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at the eastern end, the developer is going to basically dig a hole for a pond so what was creating the flood plain before now is in that new pond.

Ms. Xenox stated that the property across from that eventually will be bought and houses will be built there too so now you have 25 cars in and out of this development and you might have another 60 houses in and out there. At what point in Avon are you going to stop building and start correcting some other things like sidewalks and sewers. The schools are getting crowded with more and more students. You have all these houses being built; can we handle this? She has seen N. Olmsted and how they do not even have any green areas anymore. Mayor Jensen stated that we look at that all the time. The Planning Commission is here to look at what is presented to us; we have to look at the codes, etc. if someone has a piece of property that they want to develop. This body only has so much control. If someone comes in and brings all their information to us, by law we have to say either yes or no.

Ms. Xenos asked if the City does not have the right to limit the percentage of the City that can be built and the percentage to be saved. Mayor Jensen responded that the only way the City can do that is to buy property. His goal, as Mayor, is to continue to find pieces of property that are for sale and contact the owners to see if there is interest. But again, for a development it is incumbent upon the builder to do everything that has to be done to make sure that it can be developed. As everybody is aware, we have been in court already for the piece of property over on the other side of Riegelsberger Road. We bought a piece of property over there. We just bought property over against Avon Isle where there is a big wooded area and we are working with the Metro Parks on that. So that will not be developed. But again, people have a right to sell their property. We try to do the best we can. For this development there will be improvements such as a new storm sewer plus sanitary sewer all along the frontage. The Mayor added that he just met with the Metro Parks the other day because the property over by Kensington has been sitting and the Metro Parks committed to do some work which still has not been done. We are going to do work to add more storage over there. We have done some improvements along the French Creek and there are also other things that we are looking at doing to alleviate flooding in the Kensington development.

Ms. Xenos said let's say this development is built and we get a storm –not a 100-year storm – and we flood again over there. Mayor Jensen stated if we get **a** storm you are not going to flood over there but if we get **the** storm (100-year), you are going to flood over there. Ms. Xenos said she begged to differ and she talked again about all the water that had come into her yard and her neighbors' yards. Her fear is that we are going to keep building and nothing is being done for her or her neighbors. Mayor Jensen said, and that is why we made some of the changes that we did in terms of what was allowed. What was allowed before he was Mayor is completely different from what is allowed now. Ms. Xenos asked if there was a way to fix what was here before the Mayor was here. People like her who came before he was Mayor are stranded. She said she was just trying to fix it so everybody was happy and not just one little set of people for 20 houses.

Mr. Cummins showed a picture of French Creek just a bit to the north and the bend in Jaycox Road, where the property is that is owned by the Metro Parks. Initially the stream just came

straight across that property. We worked with a local contractor who had the need for some dirt and we made arrangements with the Metro Parks and they took about 20,000 yards of material out of there. Right after that, we had a sizeable storm so what we did was we created additional flood plain. We just had a meeting with the Metro Parks last week and they are on board with making that bigger and eventually doing something similar to it at the south end of that property. A major

obstruction was discovered after the 2014 storm that was downstream of this and it was removed. Over time we have been making efforts to get these kind of large-scale projects in place and make them bigger where we can, so those are the things that are going to help the existing residents. We just finished the analysis about the retention basin for Kensington that the Mayor talked about and will now start making efforts to put that change in place. That should be another piece of the solution. Mr. Cummins said he has been the City Engineer since 2015 and he can tell you there has been consistent thought and effort to try to figure out ways to improve the flooding problems.

There was some discussion about the bridge that North Ridgeville is going to replace and Mr. Cummins clarified that the Mills Road bridge, the French Creek Bridge, is currently a 26 ft. span and the proposed bridge will be a 26 ft. span. What they are doing is they are making it longer so that there can be sidewalks adjacent to the road. It is not going to be wider to allow more water through; it is the same span and we have had many discussions with North Ridgeville and they assured that was the case.

Dave Sommers, 35388 Riegelsberger Road, stated that he is across from the subject property. First of all, he commended the Mayor and his staff with regard to that Mills Road Bridge. North Ridgeville put a lot of effort into trying to widen that. The water problems that we have are not all in Avon; they are clearly coming from North Ridgeville where the unabated growth has been occurring. So digging in, threatening to take legal action if you had to to keep that open was a big deal so they should be commended for that. Mayor Jensen said that North Ridgeville's claim was that it was not going to make a difference and they showed engineering that showed there was no significant increase but we knew that bridge was the only kind of choke point right there that backs that up through there and we were not taking any chances, especially with all the money we spent to get this piece of property and try to make some changes. We would be doing it all for nothing.

Mr. Sommers said that he had questions for the property update at Jaycox Road and Riegelsberger Road, the 57 acres that the City bought and then sold to the Metro Parks. He talked to Jim Zimmick, the Metro Parks Director, about a year and a half ago after he tried to figure out what was going on with the property. Whatever happens with that piece of property is critical to what the City's flooding problems are. And right now, after our conversation, his statement to me was it is nowhere; 4 years after we bought it, it is nowhere.

Mayor Jensen said that Mr. Zimmick was ready to go to court with FEMA and as we discussed with him, to us that does not work anymore. We made a commitment when it happened that we were going to do something and so that is why he and Mr. Cummins sat down with him and said that we have to come up with our plan. His original plan was just to leave the property the way it

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was and not add anymore storage and then they were going to run some things through there for clean water and even make wetlands there. We said that would not work and so we, with his approval, have committed on the other side where you see the one area, to double that size and get that done this year

Mr. Sommers stated, but make no mistake, we are not talking about 5-year storms. His property is now impacted; the water is flowing back, flowing up out of the ground. His neighbor's whole back woods now floods as a result of this work and that is the only change. He has the plan from

the Metro Parks. They own the property; the City does not have control of it. Mayor Jensen said that we still have some legal pressure that we can put on because he made commitments. Mr. Sommers said, but they can take you to court, too, if you want to do something that is not in line with what they want. In their plan from 2016, nowhere in the objective was flood water retention. What they want to do is rebuild a stream and put the stream back to normal. They want it to curve and bend so it slows the water flow down. When that water slows down, it is going to back up right to Ms. Xenos and the others and then what will happen is what happened in 2014. Where Mills Creek jumps in, it will jump over and go right behind the houses on the south side of Riegelsberger and make a right turn right through the subject property. There is no hole that they are going to be able to dig there that is going to be able to hold the water that came through there. Nobody went to measure how much water came through. So he is very interested in the legal right that we have with this property because only one place in their plan was floodwater called a local priority. Also, within their plan, they will not know for a period of 10 years if what they plan to do to that property will actually work.

Mayor Jensen said that the City had those plans and we came back to them and said that would not work. We said that we were not going to allow them to put those plans in and they have changed that. Mr. Sommers said, but they own the property; we do not. We gave up a lot of rights to it when we sold it to them. Mayor Jensen stated that we have not had an issue with them yet although he was not saying that we will not. Part of the problem that we had in Kensington there, was that the water, as it crossed behind Mr. Sommers' property and went into Queen Anne's, was held up because it could not go anywhere because it was headed toward the retention and the retention was surcharged. The water in basements was just circulating because it had to wait to get released and it sat there for almost two days because the street was the retention. It could not get to the pond and so even as the creek receded, the water still sat, waiting to get into the retention. Those are the changes we have to make to open that up and release all that so the water can get through and then the water behind Mr. Sommers' house would go through and get out but if it is backed up it is not going anywhere.

Mr. Sommers said that the water is coming from right over the subject property. He does not believe the subject property, the 18 acres, is in a flood zone. Mr. Cummins said it is not in the mapping but by elevation of the ground surface, it is within the 100-year flood plain. Mr. Sommers said, but that will get fixed if dirt gets moved around is his understanding and Mr. Cummins said that was correct. Mr. Sommers said it is not helping having North Ridgeville water coming here when it jumps over the back and comes through. Mr. Cummins said that fixing the problem is contingent upon the Metro Parks and those types of efforts that we have been actively pursuing with the Metro Parks and they have been a willing participant. They still

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have their plan but we have made some progress and we have the green light to do some more. Mr. Sommers said that he understands that but he just wants Ms. Xenos to know that she is in the flood plain and the 20 proposed homes are not; they are not going to pay FEMA any money for that so again, he was going to go back to the Metro Parks property. He really appreciates what is being done now but people change. In the next election maybe the Administration will change and their relationship with the Metro Parks may not be as good. But the residents are still here and having something done with that property is critical for this whole area and we do not know. There has to be a 10-year monitoring to know whether the Metro Park's plan worked. Mr. Cummins said that is correct.

He thought their plan was focused on water quality and so they basically want to move some dirt around and get to a different plan. Mr. Sommers noted that nowhere in their plan were they measuring whether the flood waters were going to be diverted. Mr. Cummins said that the Army Corps will require it to be monitored for 10 years to make sure of the flood control but you do not have to wait 10 years to see if what we dug out has made an improvement. You can see that every time it rains. Mr. Sommers said, but the City does not own it and if there is a different City Administration and the Metro Parks say they are really interested in returning this stream to its natural state, how do we know if this works? Mr. Cummins said that the City still has jurisdiction over grading within the City. Mr. Sommers asked, within this property? Mr. Cummins answered, that is correct, the City has jurisdiction over a flood plain so there are mechanisms. Again, it has been a positive relationship thus far with the Metro Parks but there are mechanisms that the City can employ to say we do not want a certain plan or that plan is detrimental to us. Mr. Sommers said, say you put those plans in place, how do you know they are going to work? How do you know when the Metro Parks finishes what they want to do that it is going to work? Mr. Cummins responded that we will see the plans. The engineering portion of it is all reflected in plans that they have to produce. Mr. Sommers stated that the key is that time has to pass; you have to have storms to figure out whether it is going to work. Right now you are going to look to approve a plan without ever knowing if any of this is going to work. Whatever change you get made to this, you really need to see if it is going to work and you are going to allow 20 families to buy homes in an area where you are not going to be sure that this is going to work.

Mayor Jensen stated that what this Board has to decide is whether this development is going to have an impact. And the one piece that is still left is that FEMA has to look at it and if they say there is no impact from this development, then this Board will not have a reason to say we cannot allow it. Mr. Sommers stated that the City cannot tell the developer, we think you are not going to create a problem without saying, you might have a problem if you do not fix this. Mr. Sommers said he hears it said that the developer has met all the requirements so the City cannot stop the development but he said, it can be stopped. Mayor Jensen said there is a legal obligation that this body has to vote in favor of it if everything that the builder show us is correct, and if FEMA looks at the same thing and says it is. Mr. Sommers said that this Planning Commission can deny this plan; they did it once where they actually approved the plan on that property and then withdrew. Mayor Jensen said, and then we were in court. Mr. Sommers said his point is, they can go to court. They can protect the residents by saying we are going to disapprove this because we do not know how this is going to turn out; we do not want to have 20 families five years from now with flooded basements. Mayor Jensen said if we go to court and

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we lose there are damages again. It is all going to be based on what you present in court. He said that it still pains him that we paid the amount of money that we did for that land. Now to correct that, the thing is to make sure that we use that piece of property to the best of our ability and that is why we are working with the Metro Parks to do these things to have more retention in those areas. That is more of a correction than spending another \$200,000 in legal fees. That is a better use of taxpayers' money than to say we are going to be back in court again to argue engineering because that is what it is. When we were in court before, the biggest thing the judge kept looking at was the engineering.

Mr. Sommers said that we know exactly where the water track from the last flood went. It goes right through the property and based on that, with no solution yet, this group can say we are not

going to approve the plan because we do not want to put the next 20 families in a flooding situation. Mayor Jensen said that we have pictures to show where the water went to and there is a solution: the 2 to 1 compensatory storage and that is where the retention is. He understands Mr. Sommers' passion because he feels the same but we went through it once and it was painful to do that. Mr. Sommers said they are not going to correct flooding that is coming from upstream. It is not this property, it is upstream and 2 to 1 compensatory storage is not going to stop the amount of water that comes through there when that storm hits.

Mr. Sommers asked, with regard to the three homes and the sewer tie-in, is there a regulation that those homes have to tie in? Mr. Cummins said that becomes a matter with Lorain County; if the sewer is within a certain distance of the home, then he thought that there was a time frame that is established to tie in and they are very generous in working with people about tying in.

Mr. Sommers then asked, from a voting standpoint, is there a conflict of interest policy for this group? For example, if he is the owner of property on the other side of the road and he sits on this group, is he allowed to vote or is that a conflict? Does he excuse himself from voting and from discussion? Mr. Gasior answered, yes. Mr. Sommers said, so there is a conflict policy and Mr. Gasior said, yes. Mr. Sommers asked if legal looks at this and then tells a person when they have a conflict. Mr. Gasior said, no, legal does not do that. He said he would answer the question when someone would come to him and they explain the whole fact pattern and then he can give them an opinion, but if no one comes to him, he does not seek it out. Mr. Sommers said, so there is a conflict policy but you are not sure... Mr. Gasior stated that everybody was aware of it; no one wants to violate it.

Keith Riegelsberger, 3259 Napa Blvd. stated that he was the owner of the property across the street and it has been in his family since the late 1800's. He asked if the sidewalk would only be on the south side and only go as far as the development or would it go all the way to Rt. 83? Mayor Jensen said that at this point, unless Council decides that it wants the sidewalk to go all the way to Rt. 83, it is just this development. Mr. Riegelsberger asked, and just on that side of the road? Mayor Jensen, said yes. Mr. Riegelsberger said his second question was in regard to sanitary sewer. They talked about the sewer extension but that was for storm sewer. He did not hear any mention of sanitary sewer. Mayor Jensen said that there is sanitary also that will go to the three houses that were recently built and then the Health Dept. may request that it goes further but our intention is to go only to the edge of the property. Mr. Riegelsberger asked, so if

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there is a request that it goes further, would the homes on the north side, meaning his property, have to tie into it or anybody that lives on the north side? Mayor Jensen said if there is a house across from the development, it would be sent across to that piece of property. Mr. Riegelsberger said, so right now, there is no assessment to any homeowners on either side Riegelsberger and the Mayor said that was correct. Mr. Riegelsberger said when the City approved the Wyndemere development his father complained bitterly because they allowed the developer to build the land higher than the farmland that they own next to it and it flooded the back end of their property. His concern, having grown up across the street from the property for the proposed development, is that it has been a mosh pit since before he was born, and it has been a mosh pit and a flood plain since. His concern is that the developer is going to have to bring in topsoil to raise it up and even though you are going to have a retention pond and storm sewer, his fear is that the water has been running across

the street and you are going to flood him from the south side coming over to the north side. Even with the retention pond or additional storm sewer, what guarantee does he have that the raised elevation will not do the same thing to him that was done to them with Wyndemere?

Mayor Jensen responded that there will be storm sewer all across that same piece of property. Just where you see all those trees there are tiles in there; new storm sewer will be put in there. Mr. Cummins added that there will be storm sewer along Riegelsberger Road itself and there will also be storm sewer along the southern edge of this property where the adjacent land water flowing north to this property would be intercepted and then routed into the pond area which then connects into the new storm sewer. Mr. Riegelsberger asked if they felt that is sufficient to haul the water away so it is not going to come across and flood him from south to north? Mr. Cummins said, that is correct. Again, the 100-year flood plain is still going to be the same so if your property has any 100-year flood, it is still going to get there but the normal storms will be collected in those manners and conveyed without any impact. Mr. Riegelsberger said the reason he asked is that Avon allowed Wyndemere to build above them and drop water on their property and he and his father did not think that was right and he did not want to see the same thing happen here where they build up a grade such that he gets flooded with water from this development.

Mr. Cummins stated that, unfortunately, the City has requirements about drainage systems and the like and drainage systems require an elevation to work properly and in Avon the land is very flat so that almost requires that some amount of fill needs to be brought in so that things can drain properly. But when you do that, you have to take care of the edges and maybe they did not do that with Wyndemere.

Mr. Riegelsberger said that his great grandfather tiled their property and the tile ran down to the little storm ditches that are on Jensen's property and it ran over to the creek that runs under Rt. 83 by Jensen's property. Those tiles have since been plugged up and their farm that is 100% sandy soil, not in the flood plain and never flooded, now gets large pockets of flooding from the developments that have sprung up around it and from the plugging up of the tiles. He has been told by the neighboring owner that he is not allowed to go unplug that to keep the water going into a sanitary ditch that was built for that very purpose

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Mr. Cummins stated that the City does have some ordinances about common, unnamed ditch watersheds. Certainly Mr. Riegelsberger can fix whatever issues are with the tiles from his property. If he sees that an adjacent property owner has not been maintaining that system it could turn into a civil matter between the two or you could work together in a way to solve it. Mr. Riegelsberger said that those ditches that he talked about on his property were dug more than 60 years ago. Mr. Cummins said that all those things need to be maintained and the tile needs to be maintained. Mr. Riegelsberger said, but the point is that they will not let him do it so now that he has water pockets that form on the farm that were never there before, he is just afraid of what the development is going to do when they raise the land. Mr. Cummins said that he may want to talk to an attorney. If an adjacent property owner is doing something that is disturbing an existing drainageway and is causing him harm, he may have a civil action and can force that that be corrected. Mayor Jensen stated that Mr. Riegelsberger's biggest problem is going to be when he ever wanted to develop his property that it could be considered wetlands because the tile has been

plugged so long. We have seen that all throughout Avon – that farmland that was always farmland, when the tile got plugged that whole area around where it was plugged was considered wetlands after. So it needs to be opened. Mr. Riegelsberger again stated his concern because of what happened with the Wyndemere situation and Mayor Jensen said that if Wyndemere were developed today, there would be a lot more restrictions and ways they would have carried the water. We have seen that what is there now is inadequate but at the time it was built, that was what the Code was and that is what it allowed. Since that point, we have more retention everywhere that houses are built.

Kathleen McNally, 3964 Center Road, stated that it was said this development would have little impact. It already has had impact on the other residents on the street. This piece of property will impact many people and she asked why the City does not have the right to reject this development. Mayor Jensen said that we have laws in place and as long as those laws and our Code are followed, we have to allow property owners their rights. If you take those rights away, they can take you to court and say that you have damaged their property by not allowing them to develop it. Ms. McNally asked why doesn't the City change the laws and put a moratorium on building until problems are fixed? You have to fix the problems and you are relying on information or the goodwill of the Metro Parks to fix a problem that is already here. Mayor Jensen asked what she meant by "fixing a problem" and Ms. McNally said, the flooding.

Mayor Jensen stated that we are talking about a 100-year flood and we all know that that happens; it happened in 2014. Ms. McNally said the same issue was happening when they initially visited this development four years ago and the problem still has not been resolved. She asked where the new storm sewers were going to drain and Mr. Cummins answered, down to French Creek. Ms. McNally said, so there is going to be an impact. Mr. Cummins noted that the current system drains to French Creek as well. Ms. McNally said, but it is mostly farmland, is it not? You are talking about old tiles, an old system. Mr. Cummins said that was in regard to Mr. Riegelsberger's property which is currently undeveloped farmland which drains away from this property. Ms. McNally said, no, she was talking about the 18 acres which you say will have little impact; however it is going to have impact on the current residents. If you are allowing this

developer, what happens when that acreage across on the north side is sold? The point is you have not resolved the flood issues.

Mayor Jensen stated that you have to look at what Mother Nature gives you or what happens there. We have never had another flood that flooded the way the 2014 storm did. We do not know when a flood will come to that degree again. We all know that it is not when it was in the City of Avon; it is when it came over the roads in North Ridgeville and that is something we cannot control. We have done everything we can and with every rain since that flood, we have never had that again. No one knows if it is still a problem because we have not had that flood again. This Board has to decide if there is enough information that this development is not going to impact the other residents. Ms. McNally asked why the City could not put a moratorium on building until you have the Metro Parks cooperation.

Mr. Gasior explained that we can put a moratorium on but you have to be able to establish that you are going to be doing something during that period of time that you have a moratorium in place

that the City will benefit when the moratorium ends by having accomplished something by way of a change in the law or something like that. We did that three or four years ago and we came up with some rules and regulations about the compensatory storage and some other things. The problem is that topographically speaking, we have flat area, but we have property owners. Mr. Riegelsberger is here. He owns a large tract of land and the value of that land is based on what he can sell it for; who is going to buy it? The only people who are probably in the market to buy residential property are people who want to build homes. It is zoned residential. The difficult thing here is that we can only regulate to a reasonable degree. We can protect people that are already here to a reasonable degree. And what is that reasonable degree? Well, that is determined by the engineering. When the engineers tell us that there is not going to be water crossing over Riegelsberger Road because they have done the calculations, how do you go to court and establish that that is not true? Ms. McNally stated that the calculations that you gave were based on the 100-year flood; the in-between storms are what are bothering these homeowners. Mr. Gasior said, but you have to take your anecdotal evidence and you actually have to put it into something concrete. We have a lot of folks here who have come to meetings over the years and shown us pictures of their backyards. We are aware of it. We have pictures on these slides that show what was happening in 2014. We are trying to correct the problem but we cannot interfere with the rights of property owners.

Ms. McNally said, but why don't you put on a moratorium for 10 years? Mr. Gasior said that the longest moratorium that he was aware of that the courts have upheld was a two-year moratorium on building around Lake Tahoe, which is one of the most pristine lakes in this country and they could only get a two-year moratorium. Mayor Jensen added that this body does not have the authority to put on a moratorium; that is something that Council would have to do. Ms. McNally concluded by saying that until you figure out what is going on and the problem these people are having, you cannot allow this development. You say there is no impact but there is obviously impact on the other residents and there is impact in setting precedence.

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Bill Worden, 35291 Riegelsberger Road, stated that he lives in the first house east of the proposed development. He looks out his side window sometimes and thinks he has lakeview property because there is so much water out there in that field. If you are going to build this retention pond, he does not know that it is going to take all this water that is there, but if it does, is there some kind of aeration that is going to be in this pond so that it does not get to be a stagnated moss pit? Kevin Hoffman, Polaris Engineering said, yes, that is a City requirement and Mr. Cummins added that after we brought it up to the developer, they agreed to install it. Mr. Worden said that three or four years ago, we heard from our Law Director that if land is not suitable for building, it does not get built on. That land still is not suitable for building. He asked for the Planning Commission to consider that and say no once again.

Marge Flannery, 3816 Jaycox Road, said that she spoke with the EPA and was told that the developer does not have a permit or a permit pending and will have to have that to build. She asked if that was true; do they have to have EPA approval? Mr. Cummins said they have to get approvals for a water system, a sanitary sewer system extension and erosion control during construction. Mr. Hoffman added that they need it for wetlands and they are not disturbing any wetlands. Ms. Flannery said this whole area is considered a wetlands and you are talking about

the creek itself and the Metro Parks wanting to change the creek so it cleans the water. Where she lives, the creek was moved 40-some years ago so that the creek behind her is not supposed to be there and that is stopping the flow. So she was just saying that you really should not build this. It is just going to interfere with Mr. Riegelsberger's farming and with other houses.

Ms. Flannery said they bought their house in 2010. No one told them about flooding. At that time there was just a little trickle from the creek. The day we signed they said, by the way, you have to have flood insurance. She told of several flooding events they have suffered since. She said that this is a nightmare for people like them who live with the water issue. As Ms. McNally said, there should be a hold up until we get some issues solved. Mr. Hoffman said that, as part of the developer's application to FEMA they have to map the whole area and there is more accurate information now. There was then some discussion about FEMA's mapping of a flood plain and the updates. Ms. Flannery said she guessed she was just trying to figure out how they put you on the flood way. Her house is there; how could FEMA come in if nothing has changed and say, you are no longer on the flood way. Mr. Cummins stated that it is all in the accuracy of the mapping that they use. Ms. Flannery said there is more water now than when she moved in there 10 years ago. Every rain event, that creek just goes from nothing to surging with water. She just wants to make it so that we are caring about everybody concerned, not just herself.

Jeffrey Traine, 3627 Kensington Drive, said he has seen improvement in his property with drainage for the flooding and he appreciates what is being done. The night of the big storm he went to Olmsted Falls to loan his brother-in-law a sump pump. He came home at midnight and it was dry as a bone. That night about 4:30 A.M., he had 4 ft. of water in the basement. That water came right through where this property is, a giant wave of water that came across Riegelsberger Road and took a right and went through his yard. When the City announced that all the roads were clear, the kids were still swimming in front of his house. He is very happy with what the City has been doing but if you would ask him where he would not buy property to build, he

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would tell you right there. It was like a monsoon came through there. He was not there tonight for himself but he does not want 20 families to go through that.

Mr. Sommers said he had one more question that he just had to ask. Why this piece of property? Mr. Hoffman answered that he was not the developer; he was the engineer. The developer asked him to prepare plans and his calculations do make the property buildable in accordance with the City ordinances. He said that Mr. Cummins is probably one of the most thorough engineers that they deal with in all these municipalities, and he considers the best interests of all the existing residents and all the future residents so they have trust in him. Once they build they are going to build the homes up so they will be above everybody. It is not going to affect Mr. Sommers' property because of the compensatory storage so that is going to improve it.

Mr. Sommers said he thinks it is going to be a nice development but you have to do your job here and say no; you have to have the intestinal fortitude to say we might have to go to court, but you do have to have the confidence knowing that they bought the property knowing all of this. The judge is going to say, you bought this, you walked right into it, and the rights that you had with this, you knew how this was going to be. He was pretty confident that the Law Director could make that argument. Your duty is to the citizens. If he had a fiduciary duty to these people he

would vote no. Mayor Jensen responded that he had a fiduciary duty to the whole City. He said he hopes that this will be a second presentation tonight and it will give us another month to go ahead and talk to Jim Ziemnik, the Metro Parks Director, and bring back some information. He stated that he has been to court four times since he has been a Councilman and the City has never won a case because the judge always wants to split it. As he said before, if he was going to have to spend \$200,000, he would rather spend that on this project trying to make it right than he would to try and keep someone from developing it and he does not help anybody along the way. Mr. Worden said that his back yard is underwater. That water cannot go anywhere if the drain tiles are not fixed. It would be \$1 million dollars for us to take that property, maybe make it into sports fields or whatever on top of what we would have to do and that does not make taxpayers' sense if he can do something positive over here. He is going to meet with Mr. Ziemnik again and hopefully, he is going to come back next month with a plan they have worked out. Mr. Sommers said, and he wants the Mayor to be successful because if that problem gets fixed, a lot of this goes away. Mayor Jensen said, and that is why he would rather see taxpayers' dollars put into something that is going to make a positive than to fight another development. Mr. Sommers said the key here, though, is that you are setting precedence. It is not just this 18 acres, it is Mr. Riegelsberger's property, it is the Fitch property.

Mr. Gasior said if this development does not go through and the owner of that property now wants to sell 100 ft. frontages to 12, 13, or 14 people and they all want to build their own homes there, where is the water going to go? Mr. Sommers said it is not the water from the existing land; he was pretty comfortable that the size of the drainage that you put in is going to work. Mr. Gasior said, no, let's just say that 12 or 14 people buy their 100 ft. frontages and they are going to build their homes there. Now we are not going to have a retention basin, we are not going to have storm sewers, we are not going to have anything out there, so where is the water going to go? Mr. Sommers said he thought this is going to be a good development but he does not think

you can put that in there without fixing this. Mr. Gasior said we are trying to fix this; you heard the Mayor talk about that. He was just asking a simple question: where does the water go if this is not a development, if it is just 12 single-family homes that are built by 12 people? Mr. Sommers said it will go into their basements. Mr. Gasior said, but they are there. How does the City stop that? Mr. Sommers said if he was going to buy that slice of property to build a house, he was buying a piece of flooded farmland that he was going to build on and the City was going to limit how high he could build it up, he was not going to pay \$10,000 an acre for that. Mr. Gasior said, but what about the people that are not as astute as you are and they think they are buying a great piece of property and they can build their dream house there on Riegelsberger Road. There are a lot of people out there wanting to do that and the owner of the property is allowed to subdivide it. Mr. Gasior said what he was getting at is the City has to balance that possible alternative against the alternative of 20 homes, a large retention basis, and a storm sewer taking storm water. There are a lot of competing ideas about how to handle storm water and perhaps the development is the best way to do it. That is not going to be an open field forever, not in Avon.

Mr. S said he agreed and that was a fair point. The same case was being made at Red Tail that we had to control our flood waters in a wetland area. But they did not maintain their riparian rights, they did not maintain the stream beds, they relocated things and it is one of the prime problems and reasons that the Army Corps of Engineers in 2004 said we have this flooding problem. So

what he was worried about is that same thing is going to happen again. Mr. Gasior stated that you can go back to the 60's, the 70's, the 80's and retention, the engineering; you go south of here to North Ridgeville up by the driving range on Center Ridge and there are 2,000 – 3,000 homes. Where is that water going? It is going north. You have Mills Creek with 900 homes there and where does all the water go? There is no retention pond there. Water is a big problem here and we are doing everything we can. He said he thought that the compensatory storage change that we made was significant. He and the City Engineer and the Mayor have looked at the possibility of these 10 or 12 individual lots being there with no control really. Our Building Department will be watching what is going on there and that is it. Mr. Sommers asked, but isn't it the City's obligation to protect someone from themselves who does not do their research on buying a piece of flooded farmland? Mr. Gasior responded, no, the City's obligation is to make sure that the developer follows our law and we are constantly trying to make developers do everything they can to protect the people who are already here. Because we do not want the people who are already here being flooded. Obviously, we do not want a developer to build on properties that we are going to end up having calls from 20 homeowners, asking why we let them build there. We do not want that either. You have to understand that when they produce the engineering and the numbers and they can show us that their numbers work, when we fight them, we go to court. Everybody has to understand that that land is going to get developed some way, some how.

Mr. Sommers said that he was in agreement and he thought that doing the right thing with developers is great but he has to say, he does not want the 20 flooded-basement homes until that gets fixed. That piece is the key and we talked about it before. That should have been a 50-acre dry lake that we owned and we are done. Mr. Gasior said that the idea was that we have such a

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good working relationship with the Metro Parks, the City thought that it could at least recoup one-third of the cost of what they put out to get that property at that point. Getting that 22,000 cubic yards of dirt out was something that was worked out amicably without any problem. Everybody should keep this in mind: that 18 acres out there will not remain undeveloped. It may take five years or ten years, but if the developer does not put his 20 houses there with that huge retention basin and all that storm sewer, people will come along, buy individual lots and put their home up, with no retention and no storm sewer. It is going to happen. And we have to look at what is in the best interest of the City to deal with this issue. Mr. Sommers said that he appreciates the City's relationship with the Metro Parks; that is critical and that has to be done with significant retention there.

Ms. Xenos asked how the size of the retention basin was determined and Mr. Cummins said that the size is determined by all of the area where water would be sitting and it would be the difference between the 100-year flood elevation and the ground elevation – all of that volume x 2. That is how big that that pond would be. Ms. Xenos asked why it has to go towards where the flooding is. Mr. Cummins responded that the overland flooding comes from the southeast corner so that was a good place to put it because that is the low end of the site, and everything is working its way back to French Creek. The storm sewer that we will be putting in will take it there directly. Mr. Hoffman said that water is always going to find its lowest point; their job as engineers is to make sure that it is not worse for the residents. They are providing even more compensator storage than is required so it is probably an improvement.

The Chairman asked Mr. Hoffman if there was anything he would like to add and he said that they have kind of gone over everything. He said that there was a cul-de-sac area that was approved on February 25<sup>th</sup> of last year and there were two modifications that they were requesting on lot lines on the cul-de-sac that were not at straight angles to the right of way.

The Public Hearing was closed at 9:02 P.M.

### MINUTES OF THE REGULAR MEETING OF PLANNING COMMISSION HELD ON WEDNESDAY, JANUARY 20, 2021, IN COUNCIL CHAMBERS OF CITY HALL

Present: Bill Fitch; Bryan Jensen, Mayor; Jim Malloy; Scott Radcliffe; Carolyn Witherspoon, Chairman; Ryan Cummins, City Engineer; Pam Fechter, Planning Coordinator; John Gasior, Law Director; Rick Schneider, Zoning Enforcement Officer; Barbara Brooks, Acting Secretary

### MINUTES OF THE REGULAR MEETING – DECEMBER 16, 2020

A motion was made by Mr. Malloy and seconded by Mayor Jensen to dispense with the reading of the minutes of the Regular Meeting held on Wednesday, December 16, 2020, and to approve said minutes as published. The vote was: "AYES" All. The Chairman declared the motion passed.

### REPORTS AND CORRESPONDENCE

None

### ADDITIONS/DELETIONS

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None

AUTUMN GROVE – SECOND PRESENTATION – PRELIMINARY PLAT

Kevin Hoffman of Polaris Engineering representing Garland New Homes is requesting approval of the Preliminary Plat for a new 20-home subdivision, Autumn Grove, to be located on the south side of Riegelsberger Road, west of Jaycox Road.

Mr. Hoffman said that he would be glad to answer any questions.

Ms. Fechter stated that she thought it was important that some of the process is understood. This development that is in front of us now is for a Preliminary Plat which normally is just a concept plan. We have required this developer to provide quite a bit of information that was due at final engineering, knowing how bad this area was. We wanted to make sure a lot of this work was done on the front end. If they get any sort of approval at this point for a Preliminary Plat they still have to go through FEMA for approval, they still have to come back with their engineered drawings to give even more proof of what they can and cannot do. So she just wanted this group to know that if they get an approval tonight, or next month, it does not mean they are done and it is built. It means they still have a number of steps to do and then come back to us.

Mayor Jensen stated that he would like to hold off a vote tonight until we have another month to get some other things answered and then be ready to move forward.

The Chairman declared this to be the Second Presentation.

COMMENTS

Ms. Fechter thanked Barbara Brooks for filling in for Planning Commission Secretary Jill Clements. It was an extra long meeting and she thanked Ms. Brooks for coming out tonight and helping them out.

ADJOURN

A motion was made by Mr. Malloy and seconded by Mayor Jensen to adjourn the meeting. The vote was : “AYES” All. The Chairman declared the motion passed. The meeting was adjourned at 9:06 P.M.

Transcribed by Gail Hayden, Assistant Clerk of Council

CHAIRMAN: \_\_\_\_\_

DATE: \_\_\_\_\_

