

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

### MINUTES OF THE PUBLIC HEARING HELD ON THURSDAY, JANUARY 21, 2021 IN COUNCIL CHAMBERS OF CITY HALL

The public hearing was opened by Chairman Carolyn Witherspoon at 6:08 P.M

#### PRELIMINARY PLAT FOR A NEW 37 HOME SUBDIVISION, GRANDE ESPLANADE ESTATES TO BE LOCATED ON THE EAST SIDE OF NAGEL ROAD, NORTH OF MILLS ROAD.

Pete Restivo of 4061 Nagel Road, who is the developer of Grande Esplanade, stated he would like to entertain questions from those present and then he hoped they could move forward with approval of the preliminary plat.

Al Piatak of Euthenics Inc., consulting engineers, located at 8235 Mohawk Drive, Strongsville was present with Mr. Restivo.

Allison Baldi of 32320 Mills Road asked what were the plans to manage the flooding that happens in that area by the golf course since that is a very swampy area and the homes in that area already deal with a lot of water damage.

Mr. Restivo advised there were several property owners who were at the various meetings that were invited to send him videos or pictures for them to review. He said the list of those contacted was created by those who provided comments at previous meetings. Mr. Restivo stated they found out a few things as that is a very unusual area. He said the area is more to the east which is the righthand side of the preliminary plat that Mr. Restivo placed on the overhead screen. Mr. Restivo explained south of that area is a woodlands area and a very large ditch that runs parallel. When Mills Creek gets over inundated the water can jump in more than one place and when that happens it creates some real challenges for Avon. He advised North Ridgeville does not create that water, it gets sent to them and part of what North Ridgeville does is send it to Avon and Avon then has to deal with it and in most situations, it works pretty well. Mr. Restivo stated when they went out and looked at the various backyards in that area, there is a place where the ditch comes in right through the middle of the woods and the water dissipates everywhere. He said when the ditch gets full the water wants to go westward into these neighboring backyards. Mr. Restivo pointed out the area on the preliminary plat. He stated what they have done is channel that water into a long narrow lake approximately 60'-70' wide so that water will not come into those backyards any longer because it has been rerouted and that is a part of what happens in development. Mr. Restivo advised there is a theory that developers are bad and that they do bad things and while he did not know about other developers, the developers he has worked with in the past do not do that and he does not do that. He explained this design accommodates that issue and while nothing can prevent flooding 100%, with most high-volume events this will manage that water much more efficiently and move it away from their property and that is what this plan does.

Kristin Whiteman of 32100 Mills Road advised her property was not visible on the map being displayed, but she has had issues with water and the concerns associated with that. She said there is also a ditch that flows next door to her property. Ms. Whiteman stated she was not only concerned about water and flooding, but a lot of her surrounding neighbors have flooded as well. She said she was also concerned with sewer taps and storm sewers. Ms. Whiteman asked where this subdivision would be tapping in whether it would be Avon sewers or North Ridgeville's. She explained she is on the east side of Nagel, approximately 1,000 feet from the Westlake line. Ms. Whiteman advised she addressed this concern originally and no one has come out to her property and no one spoke with her about it.

Mr. Restivo advised they came out on several occasions and if they missed someone it certainly was not for lack of trying, but they can still go out and look at her property. He stated they want people to take pictures

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

and videos of these occurrences because it is a lot easier to see the damage because it never seems to fill up the same way twice, but they know at a certain point it was going to be bad. Mr. Restivo reiterated where that water jumps now, they created a channel that puts that water right into that lake. He advised Ms. Whiteman that he did not want to speak out of turn, and they could have someone come out and look at her property, but he was speculating that she should be able to receive some help. Mr. Restivo said there was one property that was the low point and they fixed that issue. Mr. Restivo asked Ms. Whiteman to leave her contact information with him and they would have someone come out and look at her property.

Mayor Jensen suggested she leave her contact information with the Planning Coordinator as she would help facilitate that meeting.

John Slagter, Attorney representing several of the adjacent property owners to this proposed subdivision: Carnegie Management Development Corporation, Georgia Properties Limited Partnership, Caravon Golf Company LLC and Carnegie Residential Development Corporation. He advised those entities, three of which are adjacent property owners, have concerns about this proposed preliminary plat and its development. Mr. Slagter stated to begin with the first few speakers tonight demonstrate that there are a lot of unanswered questions and concerns that still have not been addressed. He said the developer has indicated that he was going to go out and speak to these individuals and they do not know about the development of those issues otherwise.

Mr. Slagter advised he wanted to identify the documents that have been received by the City in the last 48 to 72 hours that have been received by him today for the most part. He stated there is the City's analysis and report of January 19, 2021 from Ryan Cummins, City Engineer, where it lists his concerns and issues as it relates to this development. Mr. Slagter said there are questions that are being asked of the developer within that report of Mr. Cummins. Additionally, on January 20, 2021, that is the date of this updated plan, there apparently have been some changes and modifications to the proposed preliminary plat. He advised they have a report from Euthenics dated January 21, 2021 and they also have a January 20, 2021 memo from Gerald Phillips, the attorney for Mr. Restivo, one of the multiple memos that he wrote. One of the memos included a proposal and somewhat of a demand that the City take Mr. Slagter's clients' property by eminent domain. He stated Mr. Phillips cites a multitude of cases, which is not unusual in the three or four memos he has seen so far, but he does not cite one of the pivotal Ohio Supreme Court cases on eminent domain known as Norwood versus Horney. Mr. Slagter said in that case, the Supreme Court of Ohio said it is illegal for a governmental body to take property for the benefit of a private individual. He felt they all know why Mr. Phillips did not cite that case because that is exactly what they are proposing the City do here. Mr. Slagter stated Mr. Restivo is proposing taking his clients' property for their own personal benefit when there is no need or necessity for that access point.

Mr. Slagter advised he appreciates that Mr. Restivo says that previously developers that they have worked with followed the rules and that Mr. Restivo follows the rules; however, he has concerns about that comment by him because there was activity on this property where the property was de-stumped and there were ditches dug on the property that channeled water to his clients' property. Mr. Slagter stated he objected and identified to the City that they believe that those activities violated the City's own codes and ordinances and the City has never enforced that. He said there are all the concerns about the water, but there has never been any action taken by them or against them. Mr. Slagter advised rather than come up with a storm water prevention plan, which is typically done in most communities when there is any kind of activity like this, that would disturb soil or otherwise or give the ability of a wetland consultant to look at the vegetation that exists on the property. He said before that could be done, this developer (Mr. Restivo) removed and clear cut the property, channeled water toward his clients property into drainage systems on his clients property and when that issue was identified with the City no action was taken. Mr. Slagter stated the developer's attorney, Mr. Phillips, created what is known as a storm water maintenance application that he submitted to the City. He advised he looked through the entire City of Avon Code and called the City Law Director

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

and called the Planning staff and asked where the process was for approval of this and nowhere in the Avon Code does this concept even exist. Mr. Slagter continued by saying that it appears that somehow Mr. Phillips made it up unless someone could point out where it exists in the Code. He said it was nowhere as he did a search of Avon's entire Code and he identified these concerns and these issues six months ago and nothing has happened as it relates to that. He said so when Mr. Restivo indicates that they can trust him and not to worry that he is going to take care of it and that this is what they as developers do that they follow the rules, he highly doubts that.

Mr. Slagter said he has another memo by Mr. Phillips that was handed to him that came into the City at 2:24 this afternoon. Mr. Slagter stated apparently there have been some concerns raised about the length of the roadway as it could cause traffic or other issues and Mr. Phillips apparently is claiming that the City has no authority as a Planning Commission to demand that the road be any less in length than 1500 feet. He said that is Mr. Phillips legal opinion that he provided to the City because "the purpose of which is to provide you legal assistance, guidance and advice and consultation". Mr. Slagter stated that Mr. Phillips is saying the City has no authority to even do this, but that it has to go to Council to pass legislation. He advised he would imagine, Mr. Gasiar, that is a prominent practice that this Planning Commission body has done when looking at street layouts when they do a preliminary development plan or otherwise and it was typically done in other communities, but apparently it is illegal. Mr. Slagter said that is what they found out today, just a few hours ago and this is just one of a multitude of memos the City has received in the last 48 hours. He stated from his own perspective, what he is asking this body to do and they do have the authority to do it, is that if Mr. Restivo wants to develop the property, his clients' have no issue with it as long as it is done according to the laws that protect adjacent property owners. Mr. Slagter advised these laws not only protect his clients', who have invested millions of dollars in developing their property, but also the rest of the neighbors. He said just from a cursory review of this plan, they have significant issues. It appears on its face from a development perspective that it looks almost like a moat, that has been created in terms of where they are placing the water. The location of that area and water seems to make no sense because Mr. Restivo wrote a letter when they were coming in for approval of phase 15 or 16 in Red Tail of how dangerous St. Theresa Blvd was because of all the golfers in the area and how could they have carts driving down this street as it is a dangerous area with all the golf carts, golfers and golf balls. Mr. Slagter advised that Mr. Restivo wrote a letter to the City that talked about that and now he wants to connect and add more traffic to this allegedly dangerous area. He said that Mr. Restivo is proposing placing the homes next to the fairway where with proper planning and a proper time period which allow people like his clients' to comment and the neighbors to comment and also to double check and confirm that the recommendations that are being made by Mr. Restivo are proper.

Mr. Slagter continued by saying we need to make sure that the experts that are providing Mr. Restivo with traffic reports are experienced traffic consultants, which he did not know whether they are or not. He stated most of these documents have been provided to him within the last 24-48 hours and he is asking this body to wait on approving this tonight to allow them proper time to review the documents. He said they have significant concerns from what they have seen so far as there is a multitude of other concerns and issues that they have. Mr. Slagter stated the fact that they have seen historic conduct where the rules have not been followed and there have been interpretations of the City's Code that they do not believe are consistent with what they understand to be the law based on Mr. Restivo's practice in the past and they have significant concerns about that.

Mr. Slagter said finally, it looks like a separate connection of this property to Mills Road is proposed in phase 2 so there no need to connect this property to St. Theresa Blvd., which is on his clients' property and would necessitate takings unless Mr. Restivo picked up the phone and called his clients to ask them whether they would be willing to allow that to occur. Mr. Slagter added which has not happened despite the fact Mr. Restivo said on multiple occasions that he was going to do that. In conclusion, He asked that this matter be

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

continued to a time when all of them have appropriate time to review and consider all the different issues that have been raised by the City's own experts and consultants and reviewing the responses giving them and the neighboring property owners an appropriate amount of time to do so. Mr. Slagter advised the City clearly has the authority to do that and they respectfully request that this not be voted on tonight for the preliminary plan to be approved.

Mr. Restivo said this is simple and the City has had the plans since October and they could look at it until the cows come home, it does not change the plan. It is an excellent plan and it has been reviewed by three different sets of engineers. He advised all the issues have been resolved or are specious. Mr. Restivo stated the idea at the end of the day are three things as they put together a completely professional crew, all local people, with 300 years of experience doing business in Avon. He advised they have flooded three times this year and it was going to keep flooding unless they do something about it and these types of projects are opportunities to stop the flooding. Mr. Restivo stated they have reached out to these neighbors and if they reach out now, they will still go out with them and look at their property. They have been diligent about that and if more people want to talk about it, they are glad to do it. He advised this is the fourth time he has been here for acceptance of a preliminary plat. Mr. Restivo asked how much more were they going to put him through. He said he is a fair guy and he crosses the "T's" and dots the "I's" and nothing done here was inappropriate. Mr. Restivo stated they have a beautiful plan in front of them and he has imported wealth into Avon and after 27 years he was not going to apologize for it and he was not going to back down. He advised he did it for his previous managing partners and he will do it for his new partners, but mostly he does it for the City because he lives here. Mr. Restivo stated he sent Mr. Slagter the video that shows all the drains along his property that were plugged and flooded it and they are not pressing that issue until they get this resolved and they are hoping it can be a civil matter. He said if Mr. Slagter's clients are inviting him to a meeting to discuss this he would go, but it has nothing to do with the City and this preliminary plat stands on its own and the engineering is excellent and it is a good plan and it should be approved.

Victor Beltz of 32350 Mills Road said he was not planning on speaking when he arrived tonight, but he decided he would like to make a statement. He stated for at least 12 years he has gotten water in his basement. He advised this past Memorial Day was the breaking point for him and he called Fox 8 I-Team and they came out to his house and did a news story. Mr. Beltz stated for years he heard from North Ridgeville telling him that it is Avon's responsibility and Avon tells him that it is North Ridgeville's responsibility. He said for 12 years he was very good at maintaining the water in his basement and he never knew what the solution was going to be whether it was Avon or North Ridgeville that was going to fix it. Mr. Beltz advised he finally took it upon himself to call KMU Trucking & Excavating to dig up his front yard and he paid about \$12,000 in excavating and sump pumps etcetera to try to alleviate this flooding that he constantly has had for the past 12 years. He said he had cameras installed in his basement so that when he goes on vacation he can see if there is water present and he has weather alerts on his phone so he can call his neighbor to check on his basement if he is away. Mr. Beltz stated it has been very stressful and this does not make him feel any better and if this is approved that will probably be it for him living in Avon as he would probably just pick up and head somewhere else. He advised that is how passionate he is that this is not going to work. Mr. Beltz stated he has reached out via email and did not get a response. He said he has had nobody come to his house or his property and all this talk about doing things to help the neighbors; they have done nothing for him. Mr. Beltz advised building a moat or whatever it is they are talking about just makes him want to call a realtor and say he is done. He said getting water in your basement is the worst possible scenario for a homeowner, especially with kids. Mr. Beltz stated he does not see how this development fixes that problem as he thinks it worsens it.

Mike Bramhall of Bramhall Engineering & Surveying Company at 801 Moore Road advised approximately 3 years ago he was contacted by Pete Restivo because Mr. Restivo knew he was working on a flood model in North Ridgeville and that he put together the one in Avon. He said they predicted the 2014 flood back in

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

2008 when it was mapped out. Mr. Bramhall stated he is passionate about flood modeling over the last 25 years that he has owned his company that he started here in Avon. He advised when he first started with the City, Dan Stringer, the Law Director at the time, advised him as a 26-year old City Engineer that he better learn how to spell FEMA and that was the best advice and he has learned a lot. Mr. Bramhall stated when he was the City Engineer, he made the Red Tail developers do a lot of flood modeling and made them go through the FEMA process and there were a lot of map revisions and he was not a popular guy. He said Mr. Restivo knew this was a passion to him and this is what he works on a lot. Mr. Bramhall advised they are in the middle of a \$4,000,000 State grant project in North Ridgeville for a regional flood control project on Mills Creek. He said it is going to take many of those kinds of projects as this is a problem that has existed for decades if not longer. Mr. Bramhall stated he knows the situations that the people have spoken of tonight. He said he was out by Mr. Beltz' property when the water cascaded over the road and it was bad. Mr. Bramhall advised the problem is not going to go away quickly, but what it takes is for developments to do more than just offset their adverse impact because even if they have retention ponds there is still more water that is not getting soaked into the ground. He said that leaves you with two scenarios and those are; build or build responsibly.

Mr. Bramhall advised the current City Engineer crosses every "T" and dots every "I" and as much of a pain as that is to him sometimes, he agrees with what he is doing because he is safeguarding the residents. He said they have had their differences, but he respects the job Mr. Cummins is doing. Mr. Bramhall stated they have added extra detention in this proposed plan. He advised he met with the residents on Countryside and the further east they are, the more they can be helped, but the ones that are closer to Mills Creek they cannot help them because the creek comes up and it is going to take three or four of those large detentions that he mentioned that they are working on upstream south of Center Ridge Road to do something. Mr. Bramhall said the second phase of this project has a basin that is almost the size of the one his company is doing on the \$4 million project and that is what Mr. Restivo hired him to design. He advised while they were working on this project, the flooding situation came up and how to abate it came around. Mr. Bramhall stated he has studied this land, he personally surveyed it and some of the water that flows through there right now goes north and goes into an existing storm sewer system. He said he was the City Engineer when the Red Tail Development came in and they were proposing to bring in 7-9 feet of dirt, which they did for that fairway and it built a clay dam for the water. They had to put drains in to accept the little bit of water that was coming from this site.

Mr. Bramhall advised he was hired by Mr. Restivo to go out and survey because the drains were filled with concrete. He did not want to get into the business dealings between Mr. Slagter's client and his client, but as an engineer he has never seen anything like that in 25 years: pipes filled with concrete and it dams up the water making the field flood and eventually it heads south where it affects the property owners on Countryside. He said he prepared an exhibit and this body has a copy and it was shared with the City Service Director, Mr. Farmer, as well and the last thing he wants to do is get in the middle of that situation.

Mr. Bramhall advised this first phase has access to detention capacity, it does provide relief for the first two-thirds of the properties north of Countryside where the water instead of flowing in their backyard like a river going toward the west is going to have a more convenient place to flow over there. He agreed there was still a chance for water to flow in that area, but it would be greatly reduced, and it would be a lot less frequent. Mr. Bramhall said he was very familiar with Ms. Whiteman's property because when they did the survey that was a long dispute with all those bowling alley lots and Mr. Restivo wanted to know what the solution was and they talked with Mayor Jensen and in the second phase of this development there is going to be a regional basin that they are proposing and that is what he is currently designing. He advised he only wanted to speak to the stormwater issues and Mr. Restivo has an engineer designing the subdivision and he hired Bramhall Engineering above and beyond that to make sure the stormwater management was being done properly and that it is bringing something of value to the City.

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

Mayor Jensen asked Mr. Bramhall if what he was saying was that in phase 2 there was going to be a bigger retention basin to which Mr. Bramhall replied, "yes sir". He asked if it would be as big as the basin that they are working on in North Ridgeville.

Mr. Bramhall advised Mr. Restivo has agreed to using 45 acres and they are taking advantage of the fact that Mills Road drops 5' with the first 700' going north. He explained they need that kind of drop because once they get on the pool table then the basin is already full before it starts to rain. He stated unfortunately, Mr. Beltz' site is about 3-4' higher than this site so his property was located upstream, and that is a problem. Mr. Bramhall advised he is willing to share what he has learned over the last 25 years in working in this community. It was noted, the properties Mr. Bramhall was referring to were located on the north side of Mills Road east of Countryside Estates Subdivision.

Mayor Jensen advised Mr. Bramhall realizes too that it will make a difference with some of the smaller rainfalls, but with some of the major rainfalls it was still going to flood. He said there is just not enough land there to make a big impact although it will make some impact. Mayor Jensen stated they know where the floodplain areas are and where all the water is coming from as there are more acres than all this proposed retention can handle when the water comes over the road from North Ridgeville but he was not blaming North Ridgeville. He advised they have said before that all they try to do is make a little difference each time they move forward with these approvals. Mayor Jensen said when the rain events are ending this will help get rid of a lot of water a lot quicker, but it is still a challenge.

Mr. Bramhall advised yesterday in a meeting with the Mayor of North Ridgeville, Kevin Corcoran, they were asked to put together a master stormwater management plan that made sense for both communities of Avon and North Ridgeville. He responded that they needed to get the City leaders together because the blaming game does not work. Mr. Bramhall felt there is a great opportunity going forward.

Mr. Slagter advised as it relates to the requirements that are to be a part of the preliminary plat and the application, any easements and streets are required to be shown. He said there is no easement that exists for this access to his clients' property. Mr. Slagter stated he is representing to Mr. Restivo that his clients are willing to sit down and talk to him about it. He said he knows that Mr. Restivo has had conversations about doing that over the last six months and it has not happened. Mr. Slagter advised the fact is that consideration of that access is something that his clients have not been approached on and before the City would take any type of appropriate action, he felt it should be something that is considered. He thinks that would be proper because there is no need for that access point because they have a secondary access point already proposed. He said Mr. Restivo talks about, in one of his memos, that this is a legal reserve strip but that is not the case at all. Mr. Slagter stated he knows this because he has been involved in this in the past with different clients where they are kept 15-20' away from the edge of the property line and it cut off completed access to the adjacent property line and that was a typical reserve strip and there is an intent that it is being cut off. He said if they look at how his clients property has been developed from the plan back in 1998, it shows the access point and the street coming around and there is no separate cutoff because this is access to what will be phase 17 of Red Tail. Mr. Slagter advised more recently they could see that St. Theresa Blvd comes around to access the rest of the proposed phase 17 and the homes that are going to be there. He said even though Phase 15 of Red Tail received approval from this body they showed this street coming through and it is not a cul-de-sac coming through and it was not a reserve strip, but it is an access point to a future phase of Red Tail. Just like Mr. Restivo has his for his proposed next phase. Mr. Slagter stated the allegation is that somehow there is a legal reserve strip there and that something was done inappropriately, and Mr. Phillips' memo is completely wrong and misleading. He said that issue and having that connection and not having approached the property owners about it and not having an easement in place or proposed and apparently according to the footnote, it is not any type of official action that is appropriate. Mr. Slagter appealed to the Planning Commission that before this plan gets approved showing that access point, he felt

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

this issue needs to be ironed out. He requested that a decision not be made on this plan until there is further information.

Mr. Restivo said he has been involved with Red Tail for 27 years and that road is still not going to connect as the road Mr. Slagter is talking about is a very hard road to connect. Mr. Restivo advised what Mr. Slagter is strongly suggesting is that somehow he is going to move thousands of feet of road northward and eventually make the loop. That is all Mr. Slagter is talking about because he is not talking about connecting to anything, but he is talking about making a big circle and if you look at Red Tail it is a bunch of big circles as that is how it was designed. He said what is in the middle of those big circles are golf course fairways. Mr. Restivo said that Mr. Slagter's client has a nice piece of land and nothing he is doing prevents them from developing that land as they could do so whenever they want as they have had 27 years to do it, but it is not going to connect to anything. He advised if they measure the distance from the cul-de-sac created on St. Marie Court, on Samuel James Lane and all these various cul-de-sacs they are a lot longer than what the City normally has. Mr. Restivo said planning in Avon is excellent, and if you pay attention to what is going on it is simple to connect stuff. He stated it has always been the dream to connect Schwartz Road all the way to Mills Road. Mr. Restivo advised the City code is laced with the words interconnectivity and City officials have been creating a beautiful city piece by piece like a beautiful puzzle and they have to be connected and this is one piece that is going to be connected and then it will connect them down to Mills Road. He said they connected Napa Boulevard going north about 15 years ago and there was no big fight with the City, they just did it. He said cities have to go about their business of connecting roads. If they look at some of the most strongly written roads at ODOT they are about these takings and no one is allowed to stop this normal, appropriate, interconnectivity planning that all growing cities have to have. It is just the nature of these cities. He asked what if every subdivision was not interconnected. Mr. Restivo added they were not just connected in the north, but Carnegie is connected way over to Jaycox Road and all that traffic comes into Jaycox Road and it is the most necessary east west thoroughfare for traffic all the way from SR83 to Nagel Road. He advised if they would not have connected Schafer's project with their project then it was never going to happen. Mr. Restivo said the Smittek projects west of SR83 all connect and that is just the way that it is, and they were not asking for anything crazy. He stated the connection belongs there and nothing about that connection prevents Mr. Slagter's clients from doing their plans. Mr. Restivo advised right now this plan speaks for itself and it will do nothing to hurt Red Tail and it alleviates traffic patterns and is consistent with interconnectivity and allows secondary arteries for people to travel. He stated any issues they want to bring up could be brought up during the final approval as he felt they were entitled for preliminary approval. The preliminary plan allows them to go forward and one of the reasons they have been waiting to have the meeting regarding the reserve strip is assuming they have preliminary plans. He said accept it or reject it and they will take it from there.

Ms. Baldi stated she is concerned about a different connection that she sees already being constructed and she is curious if it is related to this project. She pointed to the plat saying there is a line between this property and her property where trees have already been taken down. Ms. Baldi asked if this is what they were referring to or were they talking about something else.

Mr. Restivo said no, the one to the north.

Mayor Jensen advised the discussion was related to the one by the golf course.

Ms. Baldi advised she is concerned about this one by her property and she asked how large that is going to become and how much of an interference that is going to be. She said she does not want her child wandering into a roadway that is right next to her yard. Ms. Baldi stated she has not really seen a plan as to what that is going to become, she just looked out her window and saw that more trees were coming down over the past year.

Mayor Jensen said there is not anything currently in front of Planning Commission regarding that area.

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

Ms. Baldi stated her concern is what happens to that road that is being used for construction vehicles. She asked if it would go away after construction and will they plant trees back in its place or was there going to be a lot of traffic in and out of there.

Mr. Restivo advised he could talk with her specifically about that once there is a final plat; he said it is conceptual right now.

Ms. Baldi advised her concern is that this project would be approved before she knows whether she would need to invest in a fence based on what is going to be located there.

Mayor Jensen advised when it comes before Planning, that is when she could come back and it could be worked out with the developer where the developer could be asked to install a fence or some kind of a buffer.

Chairman Witherspoon closed the public hearing at 6:58 P.M.

### MINUTES OF THE SPECIAL PLANNING COMMISSION MEETING HELD ON THURSDAY, JANUARY 21, 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; and Rick Schneider, Zoning Enforcement Officer; Barbara Brooks, Acting Secretary.

#### GRANDE ESPLANADE SUBDIVISION-FIRST PRESENTATION-PRELIMINARY PLAT

Vince Bobkovich of Euthenics, is requesting approval for proposed Preliminary Plat for a new 37 home subdivision Grande Esplanade to be located on the east side of Nagel Road, north of Mills Road

Mr. Cummins advised there has been a lot made about the Countryside Estates Subdivision and how much flow is coming that way. He said the applicant has a very nice exhibit on page 7 of the preliminary plan that shows currently just over 1.6 acres flowing to the south at various locations. Mr. Cummins stated if this plan is accepted that acreage will get reduced to .36 so it will go down by about 1.2 acres. He advised other than that there is not any connection or anything along Countryside Estates property line that will accept any other flow. Mr. Cummins said they do have a mound in place there and Countryside Estates has a direct connection to Mills Creek at its western end. He agreed that development is the way to improve stormwater concerns and this project, if approved, would be no different. Mr. Cummins stated it does require detention, but he is less optimistic about its overall potential impact in helping Countryside Estates because they are individual. He advised he is not saying that as a negative against Grande Esplanade, he just thinks that the way they are set up that they are distinct in how they will operate. Mr. Cummins said he wanted to clarify, as there have been statements made in past meetings and then there was an exhibit B sheet provided showing excess storage, that the City Codes require them to detain water through the 100-year storm and then they also require 1' of freeboard above that. He stated only above the 1' would that be in a sense, extra storage. Mr. Cummins advised the way this sheet is depicted in basins A through D, for example, of 5.52 acre feet was not really the case. He explained that what is above the freeboard, what is above what is required by the Code, is really about 1.2 acre feet. Mr. Cummins agreed it is more, as it is about a 14% increase over what is required, but in looking at exhibit B there is the indication that it is 50% more and he disagrees with that assertion. He said as far as the couple of residents that talked about flooding, those are in the future phase area (phase 2), but in this particular phase the vast majority of the stormwater actually flows out to Nagel Road and would not be contributing to their current issues. Mr. Cummins stated with future phases, when those are developed as again development does bring opportunities to correct those types of drainage

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

problems, and he felt it would be very critical at that point, as Mr. Bramhall alluded to, to use that to take advantage and see about correcting some of those issues.

Mayor Jensen advised he wanted to let everyone know that the City has no desire to take property by eminent domain as they try at all costs to not take property and they try to have people work together to try to work things out. Mayor Jensen stated there have been statements made tonight that everyone is willing to work together and he has spoken with Mr. Restivo and he has talked to Ms. Khouri and both of them have told him separately that they are more than willing to get together. He advised he knows this body feels like they are put in the middle of this and they do not want to be in the middle of this. Mayor Jensen felt Mr. Restivo and Ms. Khouri know from all their development experience that once everything gets ironed out that the City is more than willing to try to help move things along if possible, but the City does not want to be in the middle of this discourse. He said there have been statements made that there have been drains that have been filled with concrete and he felt that a meeting of the two groups together can iron out a lot of things and get a lot of things taken care of to the betterment of both parties and if there are ways to resolve those issues of what happened in the past, but this body does not want to get involved with this and does not want to go to court with either side. Mayor Jensen felt both sides need to get together and reach an agreement and it could be a positive for the City and Mr. Restivo knows that the market is right in Avon as there are a lot of people that want to move to Avon. He advised this body is asking them to get together and get things ironed out and come back next month with a plan that the Planning Commission can approve, but this back and forth must stop. Mayor Jensen stated the City is aware that both of these parties know how to do a great project as they could see that Red Tail was one of the gems of the City of Avon and they want to continue to see that moving forward, but the City does not want to be in the middle of their dispute as he felt they were all above that kind of behavior. He implored both of the parties to get together over the next 30 days and get this issue ironed out and come back to them with a plan that they can accept and is good for everyone and that includes the community.

Mr. Radcliffe advised to echo the Mayor's comments, he felt that is a wonderful idea. He said he does like the idea of having the interconnectivity between the two developments as he felt it would help with traffic flow for the City in general. Mr. Radcliffe stated he would hope this plan would include working out that this little connection at St. Theresa Boulevard would happen. He advised he also liked the idea of a loop around that was shown and he felt that needs to happen and he would implore them to try to include that in their plan they present for this project.

Mayor Jensen clarified that the City will not take it by eminent domain, but they would still like to see it connect. He said both of these parties have said they would do it and he hoped they would follow through on their promises as the City would like to see that happen.

The Chair declared this to be the first presentation and they hoped to see them at the meeting in February. No vote was taken.

### COMMENTS

Ms. Fechter thanked Mrs. Brooks for serving as Acting Secretary at tonight's meeting as they are short staffed right now.

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

### AUDIENCE

Mr. Restivo added they would wait one more month for negotiations. He said he was not disagreeing with the Mayor, but at some point, if they make a reasonable offer the other party can say, "yes" or "no" as that was up to them. Mr. Restivo stated at some point, he wants an up or down vote on this because he wants to be treated fairly as it will be the fourth time he will be coming before them for a preliminary plat approval and this has been going on for over a year. He advised there has to be some kind of an end game and assuming the other party says, "no" then he would like a vote on his preliminary plat up or down and he wanted that to be on the record now because he was not going to wait forever. Mr. Restivo stated he is a fair guy and he is easy to find.

Mr. Slagter advised they have reached out to Mr. Restivo and he has not responded.

Mr. Restivo said he could show the City the letters as there was no reaching out, but it was just harassment. He stated there was no invitation, but one harassment after another.

Mary Khouri of Carnegie Residential Development located at 27500 Detroit Road, Westlake advised she wanted to be clear that with all of their entities that abut the property that Mr. Restivo is developing they have objection to it. She said they are not looking to hurt Mr. Restivo's business in any way as he moves forward. Ms. Khouri stated they are just seeking to make sure that whatever it is that Mr. Restivo puts in does not have an adverse impact on the subdivision that they have been working on for 25 years and spent millions of dollars on. She advised they have come to the hearings to be a part of the discussion because they have not had the benefit of Mr. Restivo reaching out to them. Ms. Khouri said they have not had the benefit of any of these drawings sent to them in advance. She stated they have not had anyone call them and ask if they would like to sit down and meet with their engineers etc. Ms. Khouri reiterated that none of that has happened. She advised all they get is on the final hour before a public hearing they get inundated with information that they were supposed to somehow digest, analyze and come to a constructive meeting and be professional in front of this group. Ms. Khouri stated they had to hire an attorney to represent their interests because of situations like in May of 2019 when she had a tenant who was flooded three times, a mother of five children, and no one could live at the property. She said they cleaned up the property several times not knowing why the water was coming toward them more than usual. Ms. Khouri advised it turned out that the property had been cleared and destumped and all the water was draining toward their drainage system and flooding it and over burdening it. She said she took pictures, she did everything she thought she was supposed to do as a good citizen and a good neighbor, and she copied Mr. Restivo and there was no response. Ms. Khouri stated she then had to hire an attorney just to get people to pay attention to her and she does not feel that is right and she does not feel that is fair. She advised all of that said, yes, they did meet with the Mayor and they are happy to work with Mr. Restivo, but in order to work with Mr. Restivo, Mr. Restivo needs to reach out to them. Ms. Khouri said instead of reaching out to them, they get a letter from his attorney that is stating things like they have had conversations with the Law Director of the City of Avon to discuss eminent domain. She asked what country was she was living in?

Mayor Jensen clarified that just because a letter comes to our Law Director does not mean it automatically goes any further.

Ms. Khouri asked how she was supposed to interpret that because it was intended to intimidate and put her in a space where she needs to sit back and ask what is going on here. She said she does not understand.

Mr. Gasior advised there was no letter, it was just a conversation in a meeting. He said they have had meetings with them over this development and the City is at this point in the development because of some

## AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

of those meetings. Mr. Gasior stated it had nothing to do with Ms. Khouri until it comes to that point of whether that street to the north is going to connect. He advised the discussion has been whether Mr. Restivo was going to get that property from Carnegie Development.

Ms. Khouri asked Mr. Gasior what he was being told about that.

Mr. Gasior stated they were told, yes, do not worry about it. He said so then in the course of one of the conversations it came up as to whether the City would agree to take it by eminent domain and he believes the comment was that the City wants to see that connected and perhaps ultimately the City would take it, but he does not even know whether this subdivision is going to be approved and the Planning Commission does not know what they are going to be able to produce come final plat time if this preliminary plat is approved. Mr. Gasior advised it is always a possibility. He said Mr. Slagter referred to another development in town where there was a strip of land that the City ended up having to get involved in between two private developers in order to make the connection. He said the City believes the connection is important and they will look at it further and hopefully Mr. Restivo and Ms. Khouri will be able to resolve their differences, but they are not talking about a big piece of land and they are not talking about a buildable piece of land, but they are talking about a piece of land that is encumbered with utility easements on it to some extent.

Ms. Khouri advised everything he is saying to her is putting her in a place where she feels pressured to do this.

Mr. Gasior said she does not have to do it.

Ms. Khouri stated all she is saying is that it has been her experience that anytime they have submitted a subdivision in the past and it has demonstrated either access or going across someone else's property, before they could even get on the Planning Commission docket for a hearing, they had to demonstrate that they had either easement rights or legal rights to do so.

Mr. Gasior advised they are doing the same thing here.

Ms. Khouri said but Mr. Restivo is already on the agenda, he is here now.

Mr. Gasior said but Mr. Restivo has not been approved yet, it is a preliminary plat. He stated even if Mr. Restivo's preliminary plat were to be approved with that stub on it, his final plat may not be approved until he can show that he has the access rights to St. Theresa Boulevard.

Ms. Khouri thanked the Commission for allowing her to speak. She said she just feels that they should not have engaged the Planning Commission to do what she sees otherwise as something the City could have facilitated.

Mayor Jensen advised the City has many phone calls coming in from proposed developments when there are not more access roads in and out. He said even right now with Lions Gate, there are a lot of residents who do not want to see people in their neighborhood driving through Lions Gate and that is the reason they are always looking at other access points. Mayor Jensen stated if it should be connected through St. Theresa Boulevard, once it is connected, if they could go to Mills Road and access either direction that people would use that in through Mr. Restivo's development as much as people coming into Ms. Khouri's development. He said it could be a positive and the City does not want to be in the middle of this and he feels that cooler heads working together can get it all taken care of and the City does not enjoy being a part of it and does

AVON PLANNING COMMISSION SPECIAL MEETING MINUTES 1-21-21

not want to be a part of it. Mayor Jensen again implored both of them to work together before the next meeting.

ADJOURN:

A motion was made by Mr. Malloy, seconded by Mayor Jensen to adjourn. The vote was: "AYES" All. The Chair declared the motion passed. The meeting was adjourned at 7:16 P.M.

Transcribed by Barbara Brooks, Avon Clerk of Council