

MONDAY, FEBRUARY 12, 2024
PUBLIC HEARINGS

The Chair opened the Public Hearing for Resolution No. R-13-24 at 7:15 p.m.

7:15 P.M. - RESOLUTION NO. R-13-24 – A RESOLUTION TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY RUTH ANN KELLER, TRUSTEE, TO HAVE CERTAIN LAND OWNED BY HER LOCATED AT 32135 DETROIT ROAD PERMANENT PARCEL NO. 10-04-00-027-102-025, DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT AND DECLARING AN EMERGENCY

There being no comments, the Public Hearing for Resolution No. R-13-24 was closed at 7:16 P.M.

The Chair opened the Public Hearing for Ordinance No. 5-24 at 7:20 p.m.

7:20 P.M. – ORDINANCE NO. 5-24 – AN ORDINANCE TO AMEND ORDINANCE NO. 413-68, PASSED JANUARY 15, 1969 COMMONLY KNOWN AS THE ZONING ORDINANCE OF THE CITY OF AVON, OHIO, AS AMENDED, REZONING LAND CONSISTING OF AN 0.02300 ACRE PORTION OF PERMANENT PARCEL NO. 04-00-015-108-043 FROM C-2 FRENCH CREEK/CENTRAL BUSINESS DISTRICT TO R-1 SINGLE FAMILY RESIDENTIAL DISTRICT

Bill Greaney, 36363 Detroit Road, Avon, Ohio, representing Misencik Funeral Home, stated that as he spoke at the last meeting, the setback for building from Commercial to Commercial is zero ft. as far as a building that was to be proposed for the land he purchased in the current Funeral Home land. The Law Director met with the applicant and they think that 20 ft. would be a sufficient setback. Mr. Greaney said he does not think that 20 ft. is a fair setback. It is zero ft. now and to be conforming is normally 30 ft. He would say at least 15 ft. but he was asking for a 10 ft. setback. He thinks that is fair because it would inflict on a lot of their land if they have to abide by that setback. So he is asking for 10 ft. and that would be plenty so that they could still get around the building or for anything that they would put up for fire or anything like that and he thinks that 10 ft. is very adequate.

Mr. Fischer asked Mr. Greaney if he had had a chance to talk with the Law Director this week and Mr. Greaney said, yes, he did but in the subsequent meeting they did not agree to what we had discussed.

Christine Misencik, 2209 Holly Lane, Avon, Ohio, stated that they understand that Mr. Greaney has shared some information with Council at the past meeting held February 5, 2024, regarding the rezoning of their property located at 2209 Holly Lane. They were unable to attend but they would like to restate the facts for your consideration from their point of view prior to the vote. They are requesting a positive vote to amend Ordinance No. 413-68, passed January 15, 1969, commonly known as the Zoning Ordinance of the City of Avon, to rezone a portion of Permanent Parcel No. 04-00-015-108-043 from C-2 French Creek/Central Business District to R-1 Single Family Residential District for their existing family home.

Mrs. Misencik continued as follows: “The original intention was for this parcel to be zoned completely Residential when the parcel was split back in late 1990. The attached exhibits which I have here and I have provided for all of you to review prior to the meeting were clearly marked Residential to the south and Commercial to the north. For whatever reason, there was an oversight on the Zoning Map and the Zoning Map was not updated and the zoning line of today did not catch up to the parcel. We are not here to point fingers or place blame for the oversight. We are here for one reason and one reason only: to request a correction to the Zoning Map and protect the interest of the property for us as well as for future property holders of this parcel. Mr. Greaney stated that this was because we originally had a smaller lot and requested more land; however, the fact is that we never requested more land. As stated by Marilyn Misencik at the Planning meeting held 11-15-23, Marilyn and Joseph, her husband, who were the owners of the property at the time, decided to move the lot further north by 60 ft. prior to ever transferring the title into our names, Joseph and Chistine. The result was a larger parcel for us but this was done as Marilyn quoted, ‘They (the Funeral Home) did not need it and they already had their parking lot at the Funeral Home and it would just have been wasted land at the time.’ It had absolutely nothing to do with the size of the house to be built or the positioning of the home on the lot as Mr. Greaney has speculated. Mr. and Mrs. Greaney were never involved in this transaction nor were they ever privy to the transaction at the time.

In 1998, to allow for our residential home to be built, the property was again surveyed by JAR Engineering with the Commercial and Residential lines clearly marked as I have noted in the exhibits. The plot plan was stamped and approved by the City Engineer of Avon on 1-29-99. The lot lines Residential to Commercial mirrored the plot plan approved on 3-27-96. Building permits were issued, a title commitment was issued, home insurance was put in place, and a residential home was constructed. All of these never would have occurred if it was not under the understanding that this was a completely residential parcel.

The home has remained on this parcel for the last 23 years. Nothing was changed “last minute” as Mr. Greaney has alluded to. The home was positioned on the lot and approved according to proper City procedures. It may have been adjusted from time to time while we went through the process of building but that had to do with allowing for easements that changed to benefit the Funeral Home for water and suchnot.

As Mr. Greaney has stated, he took it upon himself to investigate and make sure we were paying taxes on the entire parcel under Residential rates, further proving that everyone, even the County, was under the assumption that the entire parcel was properly rezoned Residential. Every shred of evidence that exists shows that this parcel was clearly meant to be fully zoned as R-1. It does not even make sense that a City would have a parcel planned where the dividing line runs directly through the center of a home, splitting it into Commercial and Residential. There is not even a zoning code that would allow for this exception.

So you can clearly see the intent was for it to be fully R-1. The original owner of the land, Marilyn Misencik, was present at the Planning Meeting on 11-15-23 and stated on record that the original intent was for this parcel to be zoned R-1 at the time of the lot split.

The Funeral Home that is bordering the property has also operated under the assumption, with no adverse impact to their business, that the lot line was Residential to Commercial for the past 23 years. This is evident as the proper Commercial to Residential setbacks were put in place on the

northern bordering line when the parking lot addition was completed as you can see in the plot plan that I presented to you. For the past 23 years everyone, including Mr. and Mrs. Greaney, have abided by the proper setbacks, assuming a Residential to Commercial boundary. It was not until Mayor Jensen brought it to everyone's attention during the planning for the ABC Brewery that the City Zoning Map was never brought up to date to match the property line. It was at this point that we immediately asked the City to please correct the Map, knowing that if something disastrous would occur, we would not be able to rebuild until the zoning was corrected. We assumed this would be an easy task, as all the research and historical data show the original intent is for it to be zoned R-1 and the obvious thing to do would be to correct the Zoning Map.

The City did extensive research, pulling every lot split that was done in the past and was able to provide the data showing the line clearly marked Residential to Commercial. You can clearly follow the City's timeline and if you need more information, Pam Fechter can provide it.

In 1996, it was rezoned for the Funeral Home – lot line shown on plot map Residential to Commercial.

1998, rezoned to build a home – lot line shown Residential to Commercial.

2005, rezoned – the barn was added – lot line shows the same as previous – Residential to Commercial. Proper setback to 35 ft. honored.

2009, rezoned – additional parking and addition to the south side of the barn – lot line shows same as previous – Residential to Commercial. Proper setbacks of 35 ft., additional evergreen trees for green space and 10 ft. for parking all were honored. The map is stamped as received by the City 7-20-2009.

Every time something was changed, the same map showing the lot lines, Commercial to the north and Residential to the south, were used. Even the most recent request for an amendment to the Special Use Permit submitted by William Greaney on 11-29-23 to construct a fence used the plot plan map clearly stating the boundary Commercial to Residential and even highlighted the boundary with a yellow marker.

For Mr. and Mrs. Greaney to try and take advantage of the oversight by the City for their personal gain and to have relentlessly tried to cause a high degree of emotional distress and mental anguish to the current residential property owners located at 2209 Holly Lane, as well as threatening the City with legal action, all while claiming 'he loves this City', is purely reprehensible.

Furthermore, offering to buy and cook the Council steaks and pre-arrange their funerals for their support seems, at the very least, quite out of line as well as unethical.

Once again, I would like to restate that this is clear and obvious that the original intent of the parcel was to be zoned R-1. It would be clearly impractical for it to be zoned any other way. It just makes common sense it would be zoned fully Residential.

The Planning Commission, on 12-20-23, after much consideration, extensive research, and carefully listening to both sides, has unanimously given the positive recommendation to City Council to rezone a portion of the Permanent Parcel for our existing family home. It is even stated

in the notes where Mayor Jensen indicated that the reason that the Planning Commission is recommending the rezoning was because that was intended zoning. Even though there was some opposition from Mr. Greaney. Mayor Jensen stated they are trying to help both parties and allow Mr. Greaney to install a fence on the Funeral Home property and the parcel with the house to be rezoned to all Residential and he felt that this takes away any argument that the City is harming either of the owners.

We did not oppose the amendment of the Special Use Permit to construct a fence. We stood silent when this came up. This was done under the understanding that this was the compromise to allow for the rezoning of our property to entirely R-1 zoning. The fence actually kind of harmed me a little because it blocks where I have walked to work for 21 years.

So we are asking you, respectfully, please do the right thing; please give us a positive vote and rezone our property 100% Residential. Thank you.”

There were no further comments and the Chair closed the Public Hearing for Ordinance No. R-5-24 at 7:33 p.m.

The Chair opened the Public Hearing for Ordinance No. 4-24 at 7:33 p.m.

7:33 P.M. – ORDINANCE NO. 4-24 – AN ORDINANCE TO AMEND ORDINANCE NO. 413-68, PASSED JANUARY 15, 1969 COMMONLY KNOWN AS THE ZONING ORDINANCE OF THE CITY OF AVON, OHIO, AS AMENDED, REZONING TWO PARCELS OF LAND CONSISTING OF APPROXIMATELY 16.93 ACRES OF LAND LOCATED AT 34925 CHESTER ROAD, PERMANENT PARCEL NOS. 04-00-021-000-255 AND 04-00-021-000-266 FROM C-4/O-2 GENERAL BUSINESS/PLANNED OFFICE RESEARCH OFFICE PARK TO C-4/O-2/M-1 GENERAL BUSINESS/PLANNED OFFICE RESEARCH OFFICE PARK/GENERAL INDUSTRIAL OVERLAY

There being no comments, the Chair closed the Public Hearing for Ordinance No. 4-24 at 7:34 p.m.

**MINUTES OF THE REGULAR MEETING OF THE COUNCIL
OF THE CITY OF AVON, OHIO, HELD MONDAY, FEBRUARY 12, 2024
IN THE COUNCIL CHAMBERS OF THE MUNICIPAL BUILDING
AT 7:34 P.M.**

The Chair, Council President Brian Fischer, called the meeting to order and led in the Pledge of Allegiance.

PRESENT:

Council Members: 1st Ward – Jennifer Demaline; 2nd Ward – Dennis McBride; 3rd Ward – Anthony Moore; Council-at-Large Michelle Patton; 4th Ward – Scott Radcliffe; Council-at-Large and Council President – Brian Fischer; Mayor - Bryan Jensen; City Engineer – Ryan Cummins;

Planning and Economic Development Coordinator – Pam Fechter; Law Director – John Gasior; Finance Director – Steve Presley; Safety/Public Service Director – Duane Streator; Clerk of Council – Barbara Brooks

ABSENT: Council-at-Large Mary Berges

MINUTES OF THE WORK SESSION OF COUNCIL HELD TUESDAY, JANUARY 16, 2024

A motion was made by Mr. McBride and seconded by Mr. Moore to dispense with the reading of the minutes of the Work Session of Council held Tuesday, January 16, 2024, and to approve said minutes as published, and the vote was: Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

MINUTES OF THE REGULAR MEETING OF COUNCIL HELD MONDAY, JANUARY 22, 2024

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to dispense with the reading of the minutes of the Regular Meeting of Council held Monday, January 22, 2024, and to approve said minutes as published, and the vote was: Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

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

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

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

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

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Ordinance No. 4-24, and the vote was: Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

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

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

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

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

Mr. Gasior stated that, as Council can see, on their agenda, there could be an amendment to this Ordinance tonight. It was distributed to them over the weekend and what that amendment does is it identifies two setbacks if Council were to approve the rezoning. He said that he knows that everybody has heard from both sides, Mr. Greaney on behalf of Misencik Funeral Home and Christine Misencik, the residential property owner.

Mr. Gasior said that he and Ms. Fechter met with both parties individually last week and he also talked briefly with the City Engineer and with the Fire Department about the distance that would be safe for a vehicle to get around a building and we proposed a 20 ft. setback. The importance of that 20 ft. setback is this: if Council were to rezone this property R-1, which is the request, it would be a 35 ft. setback from the property line for a building, and a 10 ft. setback for parking. As Mrs. Misencik pointed out, there has already been a recognized 10 ft. setback for parking and he believed a 35 ft. setback for a building although no buildings have been constructed there except for the garage. And the property line has always been identified as the zoning line. There were a couple of Special Use Permits granted back in 2005 and 2009 and the drawings that were submitted at that time indicated that the property line north of the property line was C-2 and south of the property line where the Misenciks’ home is, was R-1.

Mr. Gasior said that we know that that was never rezoned. You can call it an oversight or whatever you want to call it but he does not believe it was deliberately not rezoned. He thought that Mr. Resar, when he was laying out the property lines and stakes, etc. identified where they were going to split the lots. They were going to keep the C-2 to the north and have the R-1 to the south, with an access off from Holly Lane and they did that but they never went back to Council to take care of about 60 ft. of C-2 property that still existed on the lot that was now Mr. Misencik’s. That condition stayed that way until just recently at the end of 2023 when it was brought to everyone’s

attention and that is when Mr. Misencik came forward and asked to have that last 60 ft. rezoned. Basically he was saying it should be corrected.

Mr. Gasior said that he presented to Planning Commission a very simple, straightforward Ordinance to rezone the property. That got a lot of blowback from Mr. Greaney who operates the Funeral Home and of course his concern was expansion of the Funeral Home and of the parking lot and the setback problems that would be created for him if he had to go up against Residential as opposed to the existing Commercial on Joe Misencik's property where the house is. We pointed out that the setback for a building would be 35 ft., setback for parking would be 10 ft. and we pointed out that those setbacks had been honored in 2005 and 2009. Mr. Greaney indicated that he had not become the owner of the Funeral Home until sometime around 2008 or 2009 so he never had to really concern himself with that setback.

Mr. Gasior stated that what they tried to do after meeting with both parties was to come up with a reasonable compromise and the 20 ft. that he identified in the new Ordinance that he presented to Council over the weekend would be the building setback that would be created just for this parcel and a 5 ft. parking setback; 5 ft. is the parking setback for Commercial C-2, up against Commercial C-2 so we were going to fully honor the C-2 to C-2 parking setback and not go to 10 ft. but we were going to compromise and say 20 ft. for a building. He explained that to Mr. Greaney and he was not thrilled with that. He offered 18 ft. but again talking to the other side, they were adamant about 25 ft. A compromise had to be made and he guessed it fell upon the City to try and make that compromise and explain it to Council here tonight. 20 ft. gives adequate room for vehicles to move around a building if a building is constructed, the 5 ft. parking setback was not a problem because Mr. Greaney had installed a 6 ft. fence around the property and so whether a car parked 10 ft. or 5 ft. probably would not matter. He also explained to Mr. Greaney that if something extraordinary were to happen and he needed a little bit more room than the 20 ft., he would have an opportunity to present an issue of a variance to our Board of Zoning Appeals and try to make the case that with the history of the property, maybe the Board of Zoning Appeals would consider a practical difficulty and give him a few more feet if the circumstances arise where he would want to construct a building and that building would encroach on that 20 ft. setback. Mr. Gasior also pointed out that the adjacent old Gerber property is C-2 property and Mr. Greaney could place his building right up on that property line to the west. And that would leave plenty of room between him and Mr. Misencik.

Mr. Gasior said, so there is a lot of room in this area and we had to make a compromise. We had to draw a line somewhere so what you have in front of you tonight is a 20 ft. line for a building setback. He does not think there is any dispute about the 5 ft. setback for parking. He said that now he was going to put the ball back in Council's court because they have heard tonight that Joe and Christine Misencik would probably not want any relief given. They would want to maintain that 35 ft. setback if the property is rezoned Mr. Greaney has indicated that he would want something probably less than 20 ft. Mr. Gasior said he does not think that either party disputes the fact that the property should be rezoned. He thinks the only question for Council here tonight is what they want to put down as the building setback; they have any number of options there between 15 ft., 18 ft., up to 35 ft. He put down 20 ft. because he thought that the Misenciks were good with that, Mr. Greaney was good with 18 ft. and Mr. Gasior figured that the 2 additional ft would not hurt and that is where you have it.

Mr. McBride said that, assuming they are going to make a motion because the property should be rezoned, he had a couple questions for the representatives from the Fire Department who are here tonight. How wide is a fire truck and how much space do they need, not that they would ever put a fire truck between a fence and a building but....Mr. Gasior said that he thought that Mr. Cummins, the City Engineer, is more familiar with the program, Auto Turn, to answer those questions. Mr. Cummins said that, obviously, fire trucks are legal vehicles that travel down the roadway and are wider than a normal vehicle, but a 12 ft. lane is certainly accommodating to a fire truck. He thought that the extra couple of feet on either side allows some room to operate, not just to drive the truck but you have to get out of the truck, and potentially move around it, so that was the genesis for having a little bit of extra feet on either side to operate.

Mr. Radcliffe stated, so we have the option now of either the non-amended version of the Ordinance without the 20 ft., with the standard setbacks or the amended version with the compromise of 20 ft. on the one, and 5 ft. on the other. His question is, where is the harm in holding the potential amended changes to some point in the future? It seems like we are setting a precedent in making changes for something that is not there and may or may not come, that would normally go to the Board of Zoning Appeals. Wouldn't that be where this would normally start? Why is Council being asked to put the setbacks into the amendment for this rezoning at this point? He is not sure that he sees the necessity right now. This should be rezoned and he understands the compromise but he is not sure that he sees the precedent for doing it tonight as part of the rezoning.

Mr. Gasior said if you go with version number 1 and then you rezone the property, the setbacks are going to be 35 ft. for a building, 10 ft. for parking (normal code) and you are free to do that. That is the way it was originally proposed and we knew from the comments that have been made at last week's meeting and of course followed up tonight and then from his conversation with both parties with Ms. Fechter over the week, we thought that 20 ft. was going to be a number that both parties would (reluctantly) agree to. Mr. Greaney wanted to go to 18 ft., actually 15 ft. or 18 ft., and the Misenciks did not like the idea of going to 20 ft. but they could not go to 18 ft. They would just not agree on 18 ft.; they said 20 ft. So given the fact that we were that close, we were 2 ft. off, he just went with the larger setback and of course to your point, if somebody needs to encroach into that 20 ft., they could certainly get a variance to do that. They could at least apply for a variance to do that. And again they could apply for a variance if Council leaves the setback at 35 ft., assuming you are going to rezone the property.

Mr. Radcliffe said he was just not sure of the benefit of putting it in right now when there are no plans of building. We have our zoning code and there is a lot of history on this and he gets it but.... Mr. Fischer said that he saw what Mr. Radcliffe was saying but he thought that last week when Mr. Greaney was here, we did ask if he could meet with the Law Director to come up with a compromise and that is what he came up with but he saw what Mr. Radcliffe was saying. Mr. Radcliffe said, right, he just did not see the reason for the compromise now.

Mr. McBride stated that Mr. Radcliffe makes a good point. Mr. McBride believes the Funeral Home did purchase additional property from Gerbers or ABC Brewing and spent money whether it was for parking or a building and both parties are in this position because at some point, the City's Zoning Code was not correct. We could require Mr. Greaney to go through a variance next year or sometime in the future and Mr. McBride thinks if it were all of the current Council and current zoning members then, that memory is there and it would be a done deal probably up to 20 ft. but that said, we could all be gone at the end of our current terms and a future variance would

not be as certain, Mr. McBride said that he thought it is probably fair to allow in this Ordinance what that setback should be. Whether the surveyor followed through or not, they built a house across a zoning line and yes, the site plan may have said it was all the same Zoning District but nobody checked the Zoning Map? That is standard procedure in his estimate. Mrs. Misencik stated she is not pointing fingers and it does not matter whose mistake it was, we are cleaning it up now. He would just recommend that we go with the amended version of the Ordinance.

Mrs. Demaline asked Mr. Greaney if he had recently purchased more property from the adjacent property that was once owned by Gerbers? Mr. Greaney said, yes, approximately 21 months ago he purchased .66 acres. Mrs. Demaline then asked, and when you purchased that, what was your understanding of the zoning of that property that you purchased? Mr. Greaney said that he obtained the records from the City and it shows where the zoning stops. Mrs. Demaline asked to see the records and Mr. Greaney gave them to her. She asked him to show her what he recently purchased. Mr. Fischer asked the Clerk to display the document on the overhead screen. Mr. Greaney pointed out the Funeral Home and indicated the property that he purchased.

Mrs. Demaline asked Mr. Greaney when he purchased that land, what was his understanding of the zoning of the property on Holly Lane that is in question? Mr. Greaney said when we originally purchased it, we never really had to look at how it was zoned at first. His wife was working at the Funeral Home more than he was. He worked for the railroad at the time and he came into the Funeral Home a few years later but when we originally purchased it we were always under the assumption that it was vacant land behind us, that Commercial part but it really did not come up to him. We knew that there was a home there of course and we thought that maybe they figured they did all the right records but earlier when it came up about the rezoning they said they did not add land to it. It was always Mrs. Misencik's intention. What throws that whole idea off is that right here where the zoning line is, is where the original pins are and they are still there. So it was originally...it was zoned that way. And as far as the house was supposed to face Holly Lane? He went to the builder and he did not really know but he went to the architect and he said something happened there but he did not remember from that long ago, but he had to hire a draftsman to reverse the house in order to fit on the land. Now why would you build a house that faced the back of a garden center and not Holly Lane? The only thing we could come up with was because the house got bigger but otherwise all the other homes face Holly Lane. This was the only one at the time that it was built that faced an empty garden center.

Mr. Moore noted that this 20 ft. setback sounds like it would be an agreement and he asked Mrs. Misencik if she was in favor of the 20 ft. setback. He said that Mr. Greaney was saying maybe 20 ft., then he said 18 ft., 15 ft., and 10 ft. He asked Mr. Greaney what he was saying and Mr. Greaney responded that he did not know that it was 35 ft. He was told originally that it was 30 ft. and he just thought that half is 15 ft. He would prefer nothing but now hearing 35 ft., he is ok with even the 20 ft. To make this purchase of this other land, all it does is take away our land. It was probably intended to be zoned that way but it was not and it is going to take away on one side 281 ft. and on the other side 35 ft. of commercial land and we do not have that much there as it is.

Mrs. Misencik said, in response to the setbacks, as the property is, we are talking about 60 ft. of setbacks. The remainder of the parcel that comes all the way down their front yard to Holly Lane, is already Residential so Mr. Greaney is not losing any setbacks as it is already Residential, 35 ft. and 10 ft. parking. So we are discussing about 60 ft. that he is afraid that he is going to lose and make his property worthless over 60 ft. of a setback. So her thought is, we do not even know what

is going to be built there. Is it a two-story building, a parking lot, is the property going to be sold as he alluded to last week? We do not really know so once we do know, we are very inclined to discuss what a reasonable setback is at that time, but that reasonable setback is going to be determined by what is being actually put on that piece of property.

Mr. Gasior stated, to sum this up, he and Ms. Fechter met with both of these parties last Wednesday. Mr. Greaney was at 18 ft., Mr. Misencik said 20 ft. and given that we were arguing over 2 ft., he just said he was going to draw this up at 20 ft. and put it in front of Council and he does not think anybody's feelings are going to be hurt one way or the other. So Council can go 18 ft. or 20 ft. or go nothing. They have three choices. But his recommendation is that 20 ft. seems to be the one that would work the best. They have to remember that Mr. Greaney could put a building up right up on the western property line and be, he does not know how many feet away from the Misenciks' residential property. So there is plenty of room in there for a building. On the north side it might be a little different but on the north side there is already a parking lot installed there and he has made the appropriate setback there. And we are even saying that he could tighten that up to 5 ft. as a compromise here. So Mr. Gasior said he thinks that what he drew up and gave to Council over the weekend is really a fair compromise that we came to after meeting with both parties and explaining everything to them.

Mayor Jensen stated that his name was brought up quite a bit in the discussion this evening. The thing that they looked at when it was going through to be rezoned was that the property was half Commercial, half Residential. No one disagreed with that. We looked at whatever mistakes were made. He would ask Council to look at this tonight and vote either "yes" or "no" on the 20 ft. but let's get this out of the way. He does not think there is a reason not to pass it but make a motion and vote on it. As Mr. Gasior said, the right thing to do is rezone it, make sure it is right. The Mayor said he thinks the 20 ft. is adequate; it can always be changed later but let's move on. We spent half an hour rehashing a lot of things and he thought that it can be resolved by just voting "yes" for the 20 ft. The rezoning is out of the way and the Misenciks are in a good position now in case something happens with their house and he thought in the initial conversation even early in Planning, that 20 ft. was acceptable to both sides at that time so he thought the right compromise is rezone it, and leave Mr. Greaney with the 20 ft.

A motion was made by Mr. McBride and seconded by Mr. Moore to amend Ordinance No. 5-24 by stating in Section 2, "In addition, the side yard and rear yard setbacks on the adjacent parcel No. 04-00-015-108-048 shall be twenty (20') feet for a building and five (5') feet for parking all of which is set forth in Exhibit A", and the vote was: Ms. Patton, "yes"; Mr. Radcliffe, "yes"; Mrs. Demaline, "yes"; Mr. McBride, "yes"; Mr. Moore, "yes"; Mr. Fischer, "yes".

The vote was 6 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Ordinance No. 5-24 as amended, and the vote was: Mr. Radcliffe, "yes"; Mrs. Demaline, "yes"; Mr. McBride, "yes"; Mr. Moore, "yes"; Ms. Patton, "yes"; Mr. Fischer, "yes".

The vote was 6 for and 0 against and the Chair declared the motion passed.

ORDINANCE NO. 14-24 – TO AMEND THE SPECIAL USE PERMIT GRANTED TO AVON LOCAL SCHOOL DISTRICT TO ALLOW FOR THE CONSTRUCTION OF A NEW DRIVEWAY AT THE AVON HIGH SCHOOL LOCATED AT 37545 DETROIT ROAD

The Clerk read Ordinance No. 14-24 by title only, entitled:

AN ORDINANCE TO AMEND THE SPECIAL USE PERMIT GRANTED TO THE AVON LOCAL SCHOOL DISTRICT TO ALLOW FOR THE CONSTRUCTION OF A NEW DRIVEWAY FROM DETROIT ROAD TO AVON HIGH SCHOOL LOCATED AT 37545 DETROIT ROAD AND DECLARING AN EMERGENCY

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to suspend the rules and act on Ordinance No. 14-24, and the vote was: Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to adopt Ordinance No. 14-24, and the vote was: Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

ORDINANCE NO. 15-24 – GRANTING A SPECIAL USE PERMIT TO NWQ JAYCOX I-90, LLC TO ALLOW FOR THE CONSTRUCTION OF AN OUTDOOR RECREATION AND ENTERTAINMENT FACILITY THAT INCLUDES OUTDOOR SEATING TO BE LOCATED ON CHESTER ROAD PPN 04-00-021-000-306

The Clerk read Ordinance No. 15-24 by title only, entitled:

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO NWQ JAYCOX I-90, LLC TO ALLOW FOR CONSTRUCTION OF AN OUTDOOR RECREATION AND ENTERTAINMENT FACILITY THAT INCLUDES OUTDOOR SEATING TO BE LOCATED ON CHESTER ROAD, PPN 04-00-021-000-306 AND DECLARING AN EMERGENCY

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to suspend the rules and act on Ordinance No. 15-24, and the vote was: Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. Moore and seconded by Mr. Radcliffe to adopt Ordinance No. 15-24, and the vote was: Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

ORDINANCE NO. 16-24 – GRANTING A SPECIAL USE PERMIT TO THE ISOMER GROUP, INC. TO ALLOW FOR THE CONSTRUCTION OF A McDONALD’S RESTAURANT BY GEOFFREY LEDWIDGE, FRANCHISE OWNER, TO INCLUDE A DRIVE-THRU TO BE LOCATED AT 2295 NAGEL ROAD, PPN 04-00-027-101-196

The Clerk read Ordinance No. 16-24 by title only, entitled:

AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO ISOMER GROUP, INC. TO ALLOW FOR THE CONSTRUCTION OF A McDONALD’S RESTAURANT BY GEOFFREY LEDWIDGE, FRANCHISE OWNER, TO INCLUDE A DRIVE-THRU TO BE LOCATED AT 2295 NAGEL ROAD, PPN 04-00-027-101-196 AND DECLARING AN EMERGENCY

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to suspend the rules and act on Ordinance No. 16-24, and the vote was: Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Ordinance No. 16-24, and the vote was: Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

ORDINANCE No. 17-24 – REAPPROPRIATIONS

The Clerk read Ordinance No. 17-24 by title only, entitled:

AN ORDINANCE TO AMEND AND SUPPLEMENT APPROPRIATIONS ORDINANCE NO. 120-23 AND DECLARING AN EMERGENCY

A motion was made by Mr. McBride and seconded by Mr. Moore to suspend the rules and act on Ordinance No. 17-24, and the vote was: Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Ordinance No. 17-24, and the discussion was:

Mr. Pressly stated that he would indicate that the Reappropriations do include the \$63,000 for the Fire Department safety tower bid package and also the \$125,000 for the purchase of the armored vehicle for the cities of Avon, Avon Lake, and N. Ridgeville.

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

The vote was 6 for and 0 against and the Chair declared the motion passed.

ORDINANCE NO. 18-24 – AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH O.R. COLAN ASSOCIATES, LLC TO PERFORM RIGHT-OF-WAY ACQUISITION SERVICES FOR THE STATE ROUTE 254 AND STATE ROUTE 83 INTERSECTION IMPROVEMENT PROJECT (LOR-254-05.66)

The Clerk read Ordinance No. 18-24 by title only, entitled:

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH O.R. COLAN ASSOCIATES, LLC TO PERFORM RIGHT-OF-WAY ACQUISITION SERVICES FOR THE STATE ROUTE 254 AND STATE ROUTE 83 INTERSECTION IMPROVEMENT PROJECT (LOR 254 - 05.66) AND DECLARING AN EMERGENCY

A motion was made by Mr. McBride and seconded by Mr. Moore to suspend the rules and act on Ordinance No. 18-24, and the vote was: Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to adopt Ordinance No. 18-24, and the vote was: Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

ORDINANCE NO. 19-24 – AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH C.R. ARCHITECTURE AND DESIGN TO PREPARE PLANS AND SPECIFICATIONS TO DESIGN, BID AND AWARD A CONSTRUCTION CONTRACT FOR A FIRE TRAINING FACILITY AT 36185 DETROIT ROAD

The Clerk read Ordinance No. 19-24 by title only, entitled:

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH C.R. ARCHITECTURE AND DESIGN TO PREPARE PLANS AND SPECIFICATIONS TO DESIGN, BID AND AWARD A CONSTRUCTION CONTRACT FOR A FIRE TRAINING FACILITY AT 36185 DETROIT ROAD AND DECLARING AN EMERGENCY

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to suspend the rules and act on Ordinance No. 19-24, and the vote was: Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Moore to adopt Ordinance No. 19-24, and the discussion was:

Mr. Gasior stated that he wanted to point out that the contract is not final. It is close to being final; it is just a little issue over an indemnification clause but he hopes to have the contract finalized by Wednesday. Just so Council knows, there is a strike-through on the indemnification clause and we are working on a different language.

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

The vote was 6 for and 0 against and the Chair declared the motion passed.

RESOLUTION NO. R-13-24 - TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY RUTH ANN KELLER, TRUSTEE, TO HAVE CERTAIN LAND OWNED BY HER LOCATED AT 32135 DETROIT ROAD PERMANENT PARCEL NO. 10-04-00-027-102-025, DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT

The Clerk read Resolution No. R-13-24 by title only, entitled:

A RESOLUTION TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY RUTH ANN KELLER, TRUSTEE, TO HAVE CERTAIN LAND OWNED BY HER LOCATED AT 32135 DETROIT ROAD PERMANENT PARCEL NO. 10-04-00-027-102-025, DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT AND DECLARING AN EMERGENCY

A motion was made by Mr. McBride and seconded by Mr. Moore to suspend the rules and act on Resolution No. R-13-24, and the vote was: Mr. Moore, “yes”; Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

A motion was made by Mr. McBride and seconded by Mr. Radcliffe to adopt Resolution No. R-13-24, and the vote was: Ms. Patton, “yes”; Mr. Radcliffe, “yes”; Mrs. Demaline, “yes”; Mr. McBride, “yes”; Mr. Moore, “yes”; Mr. Fischer, “yes”.

The vote was 6 for and 0 against and the Chair declared the motion passed.

REPORTS AND COMMENTS

MAYOR JENSEN noted that they have talked about the Sidewalk Program for this year and Council has before them the list of proposed work locations. He said that, just to remind Council, any projects that were not completed last year are on the list to be completed. He will have Mr. Cummins come up with another list with the outstanding projects from last year because those have to be completed. He will also reach out to Council individually because he knows a couple of the projects are specific to certain areas where those Council members want to make sure the

full extent of that sidewalk is put in. He added that we will have this on the Work Session for next week.

COUNCIL MEMBERS:

MS. BERGES, AT LARGE, was absent.

MRS. DEMALINE, WARD 1, thanked the Mayor for the list of the 2024 Sidewalk Program. She was hoping for discussion at next week's Work Session, we could specifically talk about the status update for the property at 39016 Detroit Road. Also, she knows there were outstanding issues at 37475 Colorado Avenue. So if we could speak specifically to the status of those as well as the 2024 Program, that would be great.

Additionally, Mrs. Demaline said, we had spoken before about redistricting the Wards and she was wondering if the Mayor could provide a status update on that. Mayor Jensen said their plan is to have something before Council before the end of this year. It would go for the voting cycle next year because that is when the Wards will be up. Mr. Cummins has already said that he could perform that and so we will be moving forward with that.

MR. McBRIDE, WARD 2, had no comments.

MR. MOORE, WARD 3, had no comments.

MS. PATTON, AT LARGE, had no comments.

MR. RADCLIFFE, WARD 4, stated, in regard to No. 13 on the sidewalk list, he thought the sidewalk was going to Mills Road and not to Schwartz Road; he thought it was going all the way. Mr. Cummins said they could talk about that after the meeting.

MR. FISCHER, AT LARGE, had no comments.

DIRECTORS/ADMINISTRATION:

MR. CUMMINS, CITY ENGINEER, said that on the Sidewalk Program, he is happy to talk to any of the Council members individually to answer questions so feel free to contact him.

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

MR. GASIOR, LAW DIRECTOR, stated that he wanted to say something about the rezoning Ordinance. That whole situation began in Planning Commission back in November and the threat of litigation was brought up at every single meeting and he was just very happy that Council took the compromise position tonight and put that issue to bed. Ms. Fechter added her thank you for the rezoning because actually conversations have been going on since December of 2022. She thanked Council very much for putting an end to this chapter.

MR. PRESLEY, FINANCE DIRECTOR, had no comments.

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

AUDIENCE COMMENTS:

Dan Shimola, 1870 Jaycox Road, Avon, Ohio, stated that across the street they are proposing to put sunflowers over there, Maria's Sunflowers, and he wanted to know why they are able to do work over there without having any permits from the City. Mayor Jensen asked what permits they would need to farm and Mr. Shimola said, they put up a business sign that said, "Maria's Sunflowers" and that makes them a business. Mayor Jensen said it does not make them a business; it is just that they put a sign up. Mr. Shimola said but if they are doing it as Maria's Sunflowers, they are doing it as a business. The City gave them a permit for a sign; that makes them a business. Mayor Jensen said that a business is allowed to farm that property. Mr. Shimola said, and so, if they plant sunflowers and people stop to see them, you do not care. Mayor Jensen responded if they come and ask for a permit for people to park there then we will take control of that. If they just put the sunflowers in we will not do anything there. We have had discussions with them about having people congregate there. When they are ready to start to do something further than just farm it then we will have to have a further discussion. Mr. Shimola asked, so they are allowed to just farm it? Mayor Jensen said, yes.

ADJOURN: 8:23 p.m.

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

The vote was 6 for and 0 against and the Chair declared the motion passed.