

## AVON PLANNING COMMISSION REGULAR MEETING MINUTES 2-16-22

### MINUTES OF THE REGULAR PLANNING COMMISSION MEETING HELD ON WEDNESDAY, FEBRUARY 16, 2022, 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; Duane Streater, Safety Director and Jill Clements, Secretary.

#### MINUTES OF THE REGULAR MEETING-JANUARY 19, 2022

A motion was made by Mr. Malloy, seconded by Mayor Jensen to dispense with the reading of the minutes of the Regular Meeting held on January 19, 2022, and to approve the said minutes as published. The vote was: 4 "AYES" and 1 "ABSTAIN" Mr. Fitch. The Chair declared the motion passed.

#### ADDITIONS/DELETIONS

Ms. Fechter asked that item #11A be added to the agenda- Executive Session to discuss potential litigation.

A motion was made by Mr. Malloy, seconded by Mayor Jensen to add agenda item 11A Executive Session. The vote was: "AYES" All. The Chair declared the motion passed.

A motion was made by Mr. Malloy, seconded by Mayor Jensen to approve the amended agenda. The vote was: "AYES" All. The Chair declared the motion passed.

#### CONCORD VILLAGE-FOURTH PRESENTATION-REZONE

Jason Friedman is requesting approval and the recommendation to Council for approval of taking 7.89 acres and rezoning that from M-1 to R-3 leaving the remainder 4.20 acres M-1 for proposed Concord Village Phase 3 to be located on the north side of Chester Road.

Jason Friedman says this is the fourth presentation of Concord Village Phase 3 as there have been several conversations with the staff and have made efforts because of the last meeting to accommodate some changes they hope this Commission will be comfortable with and allow for approval. Mr. Friedman shows the drawing and says they previously submitted a plan for townhomes with 78 units and they have revised the plan and it is now for 72 units which is well below the allowable density for units. Mr. Friedman says this plan incorporates open space with additional area on the east side. They have added additional parking and have a traffic calming island with parking on both sides. They also added some parking throughout the open space with the reduction of units. Mr. Friedman says on the north side of the development you will see a cul de sac that is larger to accommodate service vehicles and fire trucks. The stub street is a proposed emergency access, gated street that connects to the neighboring parcel on American Way. Mr. Friedman says they moved some of the buildings around and they tried to alternate the 4 and 5 buildings to add a little variation. The proposed plan will be the same style as phase two and the idea is to have it consistent within the neighborhood. Mr. Gasior says there was a discussion a while back about a stub to the west and it was down where Phase 2 and Phase 3 meet. Mr. Gasior says there is no stub on the map and wants to know if he wants to address that issue. Mr. Friedman says there was some interest in possibly putting in a stub street at the beginning of Phase 3 and they, Mr. Friedman says to be clear Phase 2 is completely sold out. He does not own that property or have the rights to provide a stub street at that location. Mr. Friedman says he does not have the ability in the condominium documents to provide legal access to the connect to Phase 2 private street. Jordan Burns says it was brought to their attention after they proposed this plan that there was interest in a stub street. Mr. Burns says there are constraints under the condominium association for phase 2 that really does prevent the location of that stub or the use of the existing private street through phase 2 to Chester for that purpose. Mr. Burns says if the desire for that was to allow for traffic to go to the north once a connecting street to the north of the property was constructed. They have a different but practical concern that this is private street with homes

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about 30 feet off the edge of pavement and they don't know what volume of traffic that stub street if it was connected to an adjacent development would carry. We would be concerned about the prospect of opening the private street to a volume of traffic. Mr. Burns says they are also concerned as the zoning is the first thing on the agenda followed by the plan and we jumped into the plan first as that is where the changes were made since the last meeting. Mr. Burns says as they try to emphasize to the Planning Commission in other meetings, part of the reason they are seeking the rezoning of this is there is an existing sewer line and sewer service that terminates at the western boundary of this property, it does not extend to the west. Service would need to be provided in some manner to the west, they anticipate that this likely to happen but not from this side of the property but from west to east. Any development of the property adjacent to theirs to the west, it would inhibit development from where that stub street would be located. They don't see the need for that stub street as it doesn't serve for the City's ultimate purpose to ensure that residential development happens in an orderly fashion and that not be encouraged. Mr. Burns says providing access from an adjacent property onto a private street, they don't have the ability to provide. Mayor Jensen says that would connect into R-3 where they are at there. Mr. Burns says yes, it would but that R-3 property is not serviced by sewer. Mayor Jensen says at some point it will. Mr. Burns says it may or may not be developed in that manner. Mayor Jensen says there are bowling alley parcels all the way to the west so asking to put the stub there would allow residents to take from that development there in terms of phase 3 and 2 if we could put a light further down there, it would allow them to go through the next development if agreements are signed by both parties as they develop could allow traffic to take that roadway and go to a light to access onto Chester Road. Mr. Burns says again the problem is they don't control Phase 2. Mayor Jensen says you control Phase 3, and we are not asking you to put it on Phase 2, but on Phase 3. Mr. Burns says if traffic were invited to go through Phase 2, they can't be in that position. Mayor Jensen says than Phase 2 can't go to Phase 3. Mr. Burns says Phases 2 and 3 are related under the condominium documents. Mayor Jensen says you can't amend that document. Mr. Burns says not Phase 2 documents, Phase 3 could but they can't control traffic through Phase 2, that's the problem.

Kevin Hoffman of Polaris Engineering and Surveying says that he wants to point out that location on the phase line would be very difficult. Mr. Hoffman says if you drive back there, its way in the air, they lifted everything up to get gravity sewer. He says the fall off the back of the houses is 6-7 feet and then they will make the grade change as they have a pump station in the back and there will be about a 6 feet of road grade change. Mr. Hoffman says that location, engineering wise would be difficult especially with the existing building there, it wasn't designed for that on the phase line. Mayor Jensen says you're going to have a grade change from the existing to the new. Mr. Hoffman says yes, with engineering standards, it will come back down to the existing grade of the surrounding properties. If you drive thru there now, the homes on the west are elevated as they needed that gravity sanitary sewer for phase two. Mr. Friedman says to add, the commission should know his willingness to hear many requests for changes and they have accommodated in any way he can, this one from a technical standpoint is difficult to do. Mayor Jensen says we have legal counsel hear tonight and will address that in our executive session to see if that is possible. Mayor Jensen doesn't necessarily agree with that but it's part of the discussion. Mayor Jensen asks if the whole west side of the property is going to be elevated different than what the existing is on the other side of that to the west? Mr. Hoffman says it will be closer to the existing grade that is there now between both west and east. They have a pump station, so they don't have to elevate. Mr. Hoffman says from a site distance and safety, it would be difficult then go back to the west, you will need to make up that difference. Mayor Jensen asks Mr. Cummins what kind of elevation it would change knowing Phase 2 is to the edge of Phase three. Mr. Cummins says it would likely take 150-200 feet to bring that grade back down to the adjacent grade if its 6 feet. Mr. Hoffman says engineering wise, it's a bit of a practical difficulty. Mr. Cummins says if he understands correctly if you're going to the north, it will be a gentler transition as the road will be falling in elevation. Mr. Hoffman says yes, they will do it with ODOT standards for vertical curves. Ms. Fechter asks Chairman Witherspoon if the resident in the audience can address the body about this plan. She says she was going to have him come up in Comments and asks if

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she would be opposed to him coming up now to present. Chairman Witherspoon has no objection and asks that it stay within 5 mins or so.

Matt Watson, 1456 Chenin Run is a resident of Phase 2, moved in in June. Mr. Watson thanks the Commission for allowing him to present and wants to talk about the plan quickly. Mr. Watson says everything he is talking about tonight was based on the old plan and thanks the developer for making some improvements so some of the comments don't apply now. Mr. Watson says if you look the Phase 3 plan, and a lot of the residents didn't know this was an option. He says he just moved in in June and he had no clue, it was never presented to them in marketing or sales. He says he isn't here to fight or argue, it's to bring up some points to see if those can be heard. Mr. Watson says the updated plan does address of them which is good to see. Mr. Watson says there are standard details in a city, and he realizes this is private development. Mr. Watson gives an example of French Creek Reserve which is also a private development and says they use concrete walks, concrete road, and have a nice entry sign with generally good aesthetic to it. Mr. Watson says it's a private development still using the public standards for development. Mr. Watson talks about the entry sign, landscaping, concrete roads, street trees. Mr. Watson says true or false, Concord Village standards are substandard to other private communities in Avon. Mr. Watson believes that is true, phase one has concrete, phase two is asphalt, with one single walk on the eastern side, there are no street trees. He continues to say this may in the works when things are complete but there are no trees or landscape around the basin. Mr. Watson says he did a quick estimate using the lower standards with no curb, not having concrete, not having proper signage the developer saved a quarter million dollars easily on the low end by not using a higher standard. Mr. Watson says he is not saying this money must be given back to the residents, but he did a resident survey, and they have a lot of concerns. He continues to say timeline of Phase 3 construction, that was never presented to them, the road is going to remain in poor condition for 2 plus years. Mr. Watson asks when Phase 3 will be done, is there a Phase 4 they don't know about there's a lot of talk about connection to the west. The property is cleared already, is there a deal in place, all these things a lot of time. Mr. Watson says the greenspace design itself with the location and the amenities within in it and the lack of parking which is already an issue in Phase 2. Mr. Watson says they are asking can they get more landscape, a higher end playground or dog park, walking trails, maybe a little party room and additional parking which has been addressed. Mr. Watson says they know the plan says dog park. What will that be, turf, 4' chain link fence, that's it, can they get a little more. Mr. Watson asks can they get proper signage at the main road, now they have none, again this might be in the works along with some screening of the electrical panels, can they get a trail around the basin, he is just proposing questions. Mr. Watson asks if they can get a small pavilion or possible frame structure on slab for a party room, they are not asking for all of it, but can they get a few of these things. Mr. Watson says the green space location, can it be centralized with phase 2, what about us. They centralized it with Phase 3, but can it be moved to the south and east which they have addressed in the current plan, they added parking with the units and the green space, which was what they were thinking. Mr. Watson says with the big snowstorm, there is no nowhere to plow snow, it's an issue people don't think about, theres nowhere to push the snow and it sits in their driveways. He thanks the city for considering and ways the residents are scared about the location of the greenspace, they would potentially like less green space if it was just on the eastern side of the development and not the western. Mr. Watson says they have real concerns that they are going to use the green space for an eventual tie into a phase four. Mr. Watson says we all know greenspace isn't greenspace if developers can take it, they will and one of his concerns is it's a future stub for 200 more units.

Mayor Jensen says Mr. Friedman mentioned earlier that he is willing to work with the city and that is why some of the things they added are there. Mayor Jensen says we have another lawyer with us to make sure we try to protect residents from of phase four going to the west of that. No decision will be made tonight because we want to make sure we can continue to protect that area for what's best. Mr. Friedman says this is a new resident who bought into the development, and he is right about a few things, its not finished. Mr. Friedman says there still buildings being built, grass that needs to be grown, it will be a finished

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development when it is finished. Mr. Friedman says one of the advantages of him being part of Phase 3, he is there, and he will help work with the association. Mr. Friedman says he owns 24 of the townhomes in Phase 1 so he is there and will stay on top of the construction. Each Phase has their own associations but there is one management company that is responsible for both now and will be as well for Phase 3. Mr. Friedman says as far as the snow goes, he wasn't surprised with the issues they had, everyone had issues. Mr. Friedman says the improvement they are proposing seem to accommodate for some issues. The reality is he can't do anything about Phase 2, but he can talk to the management company to talk to the association which is the residents to come up with a plan. Mr. Friedman says his focus is Phase 3, he can only control what he controls. Mr. Friedman says he will with work to improve the entrance way, he wants people to be happy and will do what he can to make it right.

Mr. Gasior says we will go into executive session after comments to discuss possible litigation depending on how the panel will vote. Mr. Gasior says it would be premature to act on this tonight and would recommend they declare this fourth presentation.

Chairman Witherspoon declares this to be fourth presentation.

**CONCORD VILLAGE-FOURTH PRESENTATION-AMEND GENERAL DEVELOPMENT PLAN**  
Jason Friedman is requesting approval of amending the General Development plan for Concord Village to include Phase 3, 72 new units to be located on the north side of Chester Road.

Chairman Witherspoon declared this to be fourth presentation. Mr. Gasior says this is a reduction in the number of units from the previous plan that was submitted back in December or January.

**FIELDSTONE LANDING SUBDIVISION-FIRST PRESENTATION-FINAL PLAT**  
Chuck Szucs of Polaris Engineering is requesting approval of the final plat and the recommendation to Council to create a Subdivider's Agreement for a 44 new single family home subdivision to be located north of Schwartz Road, west of Stone Wheel Run Street.

Jim Gamila says that Mr. Szucs is working with Pam and Ryan to make some changes to allow them to make their second presentation, but he would be happy to answer any questions. Ms. Fechter says Mr. Gamila is correct, his group has been working very close with staff and they have been challenged to verify somethings and they have done that, there are a few things that they are working on. They wanted to present the subdivision and is confident that they will be back next month for vote. Mr. Gasior asks if the name has been changed. Mr. Gamellia says the street name has been changed but the subdivision is the same.

Chairman Witherspoon declares this first presentation.

**T-3 REALTY 2-FIRST PRESENTATION- LOT SPLIT**  
Mike D'Andrea of T-3 is requesting taking a 9.194 AC parcel and splitting it into 2 to create Block J1 being 5.7068 AC and Block J2 being 3.4872 AC located at 1965 Recreation Lane.

Ms. Fechter says Mr. D'Andrea is in front of us because he is moving into phase two and they would like to take the same lot split and change the name. Ms. Fechter says her, and Mr. Cummins have looked over it and ask that it be contingent while they work to finalize easement agreements.

A motion was made by Mr. Malloy, seconded by Mayor Jensen to suspend the rules. The vote was: "AYES" All. The Chair declared the motion passed.

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A motion was made by Mr. Malloy, seconded by Mayor Jensen to approve taking a 9.194 AC parcel and splitting it into 2 to create Block J being 5.7068 AC and Block J2 being 3.4872 AC located at 1965 Recreation Lane contingent upon final engineering. The vote was: "AYES" All. The Chair declared the motion passed.

### CONGREGATE CARE MORATORIUM DISCUSSION

Mr. Gasior says he had a chance to review our code on congregate care and when they made the changes in 2015 were made the changes that were addressed had more to do with location of congregate care facilities in the city but what they need to look at now is the impact of our ability to service the city. Mr. Gasior says we have one facility come in before the moratorium was based and the special use was approved but one of the conditions of the special use permit was to adopt and attach a nonemergency protocol. Mr. Gasior says that is what we are going to is somehow codify that requirement to include a nonemergency protocol. The big thing is how do you enforce it, fee it in the event our squad is getting called out and then is forced to transport to the hospital. These nursing homes have presented this over the year they become more and more prevalent and that is why the moratorium was put on. Mr. Gasior says we think we are good with the number of units, number of beds, it this nonemergency transport that is a problem. Mr. Streater says that is correct, it's been increasing that they are called to transport patients and the emergency nature of it becomes into question. Mr. Streater says it's a lot easier because of the privatized ambulance services that are used just aren't available, so they end up using the city. Mr. Streater says the last few months of covid it also created a problem with emergency rooms, and they are looking at new protocols with the emergency rooms. The hospitals recognize this is a problem also and the more we build these facilities the more they will use our services to help them. Mr. Gasior says we talked about maybe the requirement of a nurse or doctor on site to triage these cases to try to come up with ways to take care of the patients at the facility without the need to transport. Mr. Gasior says you can raise the price of the transport but it still not a deterrent because insurance will pay the price, that problem isn't being solved that way. Mr. Gasior says Mr. Coyne an attorney with Mansour Gavin is here to help us with some ideas. Mayor Jensen says today they have had 14 calls, 7 of them to nursing home facilities, not saying that they are nonemergency when go through it half of them are to those facilities. Ms. Fechter adds after the approval of Beehive Homes, we currently have about 900 beds within the City of Avon between nursing homes, assisted living and rehab facilities. Mr. Gasior says we would like to get something together before the moratorium is over.

Mr. Coyne says they did look at it and about 33% of your calls are to these facilities and some of them are ran with different business models. Some rent the facilities, some sub out the staff, may or may not have doctor in their facility and at night they could minimally be staffed. Mr. Coyne says you do have occurrences when someone needs serious health care incident when they need to be taken to an emergency room, so they call. Mr. Coyne says there are occasions when someone falls out of bed, or someone needs help, and they call, and we provide those services. He says really that should be done by the provider and it might be putting someone back into bed and they leave. Mr. Coyne says the problem with that is for any kind of medical treatment provided by the EMT when they don't transport is not covered by Medicare or Medicaid, there is no insurance for that. Some of the private insurance companies do provide reimbursement. What you can look at doing and what is done in other communities is that you would have an additional charge to the facility on occasion when those types of calls are made. If you make the run and there is no transport you can charge them, that is something to look at for the recovery of cost and still provide for the facilities. Mr. Coyne says talk has been if you can impose staff requirements but that could get tricky with the state, but you could do a non-transport fee. Each facility may try to handle that differently they can charge the resident or pay it themselves or turn it over to an insurance company. It is something to consider since you have nine facilities, and he hates to say it, but your location could give you more proposed facilities since land is still available.

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Mr. Gasior says one of the ideas is the additional charge, but he doesn't have any data on that. Mr. Streator says we are at 33-34% of our calls go to these facilities and some of them are legit, you're bringing in a population that is more likely to need our services than other facilities that come in. Mr. Gasior says one of the things he was thinking of was if you take the example of a fall out of bed, he thinks the nursing home will insist on a transport because they will want to have the patient x-rayed to make sure there isn't a big injury and that is a transport. Mr. Gasior says if they can do an X-ray there, that could be helpful. Mr. Streator adds he thinks the staffing isn't available for them to care for their patients like they once did, it's easier to not staff and transport to hospital. He says as he mentioned even in the last few weeks when they have been overrunning with Covid patients, they didn't want them coming in either and they are starting to look at telemedicine and things like that, no one wants to take the liability of making the decision to transport or not. Mr. Gasior says the existing model isn't going to work for us, the change is going to have to be significant, they are bringing in the population that we need to take care of, but they are the ones making money and the cost is on us that and it should be by them. Why should we as a city not be able to take care of another call that is arising some place else, for example we don't have a squad available because someone fell out of bed, and we must transport someone for x-ray. Mr. Gasior says not to minimize that but that is something they can try to control if they spend the money. Mr. Coyne says what's the population of Avon now, it was noted it was 24,000 and he says 900 beds and a third of you calls will take care of 900 people so the proportionality of it is significant. Mr. Coyne says the business model of some of these institutions must be looked at too, especially in the off hours, they sometimes don't have the staff to assist. Mayor Jensen says that is why they want to look at different ways to do that so the patient doesn't bear the cost of that either- he would like to see their business model changed instead of charging more because we are charging them. At the time when we didn't have so many calls, it wasn't an issue, and the hospitals didn't mind it because it was more money for them, but the City and the hospital are seeing the stress. Mr. Coyne says it maybe we reach out to some of these facilities, so they are aware of our concerns because it's not fair to the rest of the population. Mr. Gasior asks is it possible to come up with a ratio of paramedics on the shift to the number of people we need to take care of in these facilities? Mr. Gasior says we have a maximum density, maybe we need another quota that says we can only handle so many as our staff can handle, if the staff doesn't go up, we can't allow any more beds. Mr. Fitch is curious since we have a bed tax on hotels, why can't we come up with a figure like a bed tax based on the number of beds in the facility? That money would offset some of the costs over time. Mr. Coyne says you will be passing that along, but Mr. Fitch says no it's for the facilities coming in. Mr. Coyne says you could do something like that. Mr. Radcliffe asks if he has any experience, we have 9 facilities and we talk about business models, any experience getting the nine facilities together where they facilitate not using the city equipment, but they have a couple staffed vehicles that goes to all of them. Mr. Coyne says he has not done and it's worth a conversation, the challenge could be the location in the city. Mr. Radcliffe says maybe that's when the city can work with all of them and have a central location or rotate it something that could maybe help. Mr. Coyne says it could be part of the permitting process, moving forward you must have an independent contract with someone to help with these. Mr. Radcliff says as part of their special use permit. Ms. Fechter says the nursing home looking to come in, she spoke with them a lot as they run several nursing homes, they are working with the Gatekeeper program, which is in cooperation with the emergency rooms, since the emergency rooms are stressed like our safety services. Is there a way to get these facilities to use them- it's more telemedicine or doctor on staff, someone who is there on staff for the triage? Mr. Coyne says that could be a possibility, but they do something similar just not at night. Mr. Coyne says from his understanding from talking to facilities typically between 9PM-6AM they are not staffed the way they should be. Mr. Gasior says we have a few things to talk about and draft as part of 1280.06 which is where it would be listed and then defined in 1222 Definitions.

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### COMMENTS

#### EXECUTIVE SESSION

A motion was made by Mr. Malloy, seconded by Mayor Jensen to enter executive session for the purpose of discussing the treat of imminent litigation. The vote was: "AYES" All. The Chair declared the motion passed.

#### RECONVENE

A motion was made by Mr. Malloy, seconded by Mayor Jensen to reconvene the regular meeting. The vote was: "AYES" All. The Chair declared the motion passed.

#### 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 8:30P.M.