

**MINUTES OF THE WORK SESSION OF THE COUNCIL OF THE
CITY OF AVON, OHIO HELD MONDAY, DECEMBER 18, 2023
IN THE COUNCIL CHAMBERS OF THE MUNICIPAL BUILDING
AT 7:33 P.M.**

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

ABSENT: Council-at-Large – Tammy Holtzmeier

1. [ORDINANCE NO. 127-23](#) – ESTABLISHING COMPENSATION FOR FULL AND PART-TIME CITY ADMINISTRATIVE POSITIONS NOT COVERED BY ANY COLLECTIVE BARGAINING AGREEMENT FOR THE YEAR 2024 Mayor Jensen

The Third of Three Readings of Ordinance No. 127-23 will be at
the Regular Meeting Immediately Following this Work Session

Mr. Gasior advised this piece of legislation was amended to add the salary of the Victim Advocate position. He said he would talk more on the position of Victim Advocate when they get to agenda item no. 11., Ordinance No. 137-23.

2. [ORDINANCE NO. 128-23](#) – ESTABLISHING COMPENSATION FOR FULL AND PART-TIME CITY LEGISLATIVE POSITIONS NOT COVERED BY ANY COLLECTIVE BARGAINING AGREEMENT FOR THE YEAR 2024 Mayor Jensen

The Third of Three Readings of Ordinance No. 128-23 will be at
the Regular Meeting Immediately Following this Work Session

3. [ORDINANCE NO. 129-23](#) – AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE LETTER AGREEMENT DATED JUNE 27, 1990, WITH THE CITY OF NORTH RIDGEVILLE REGARDING SANITARY SEWER USAGE FEES FROM RESIDENTS OF COUNTRYSIDE ESTATES # 1 Mayor Jensen

The Third of Three Readings of Ordinance No. 129-23 will be at
the Regular Meeting Immediately Following this Work Session

4. [ORDINANCE NO. 130-23](#) – AUTHORIZING THE MAYOR TO EXECUTE A GRANT AWARD AGREEMENT TO PARTICIPATE IN THE STATE CAPITAL BUDGET GRANTS PROGRAM TO ASSIST WITH THE ACQUISITION OF LAND FOR PUBLIC USE Mr. Presley

The Third of Three Readings of Ordinance No. 130-23 will be at
the Regular Meeting Immediately Following this Work Session

5. [ORDINANCE NO. 131-23](#) – RATIFYING THE MAYOR'S EXECUTION OF AN AGREEMENT WITH LORAIN COUNTY PUBLIC HEALTH TO PROVIDE CERTAIN PHASE II STORMWATER SERVICES IN THE CITY OF AVON Mr. Cummins

The Third of Three Readings of Ordinance No. 131-23 will be at
the Regular Meeting Immediately Following this Work Session

6. [ORDINANCE NO. 132-23](#) – REAPPRIORATIONS Mr. Presley

The Third of Three Readings of Ordinance No. 132-23 will be at
the Regular Meeting Immediately Following this Work Session

Mr. Presley added that these will be the final appropriations to get all of the funds and accounts in order for audit purposes.

7. ORDINANCE NO. 133-23 – AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH CHAGRIN VALLEY ENGINEERING, LTD AND ESTABLISH THE COMPENSATION FOR THE CITY ENGINEER FOR 2024 Mayor Jensen
The Third of Three Readings of Ordinance No. 133-23 will be at the Regular Meeting Immediately Following this Work Session
8. ORDINANCE NO. 134-23 – ESTABLISHING 2024 COMPENSATION FOR THE DIRECTOR OF LAW OF THE CITY OF AVON Mayor Jensen
The Third of Three Readings of Ordinance No. 134-23 will be at the Regular Meeting Immediately Following this Work Session
9. ORDINANCE NO. 135-23 – TO ACCEPT ALEX W. BOCCABELLA'S WAIVER OF COMPENSATION DURING HIS TENURE ON THE CITY OF AVON'S TREE COMMISSION Mr. Gasior
The Third of Three Readings of Ordinance No. 135-23 will be at the Regular Meeting Immediately Following this Work Session
10. ORDINANCE NO 136-23 – AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH LJB ENGINEERING TO PERFORM BRIDGE ENGINEERING SERVICES FOR THE DESIGN AND CONSTRUCTION OF TWO NEW PEDESTRIAN BRIDGES OVER FRENCH CREEK ALONG STATE ROUTE 83 AS PART OF THE LOR-83-(AVON) SIDEWALK PROJECT Mr. Cummins
The Third of Three Readings of Ordinance No. 136-23 will be at the Regular Meeting Immediately Following this Work Session
11. ORDINANCE NO. 137-23 – AMENDING §256.04 AND §256.98 OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO CREATE THE PERMANENT PART-TIME, UNCLASSIFIED POSITION OF VICTIM ADVOCATE AND TO ADOPT THE NEW CLASSIFICATION SPECIFICATION FOR SAME Mr. Gasior
The First of Three Readings of Ordinance No. 137-23 will be at the Regular Meeting Immediately Following this Work Session

Mr. Gasior advised the City will be hiring a Victim Advocate and this Ordinance adopts the Classification Specification for the position and puts it in Avon's Codified Ordinances under Section 256.04 and 256.98. He said in the next Ordinance No. 138-23, Council will establish a compensation range.

Mr. Fischer asked what the duties of the Victim Advocate would be.

Mr. Gasior advised it is listed in the Exhibit A, which is the Class Spec, but he introduced Kathleen Rednour to come and explain further as she was in the audience. He said once all of this is in place, Mayor Jensen will be hiring her as our Victim Advocate at Avon Lake Municipal Court as well as our local Police Department.

Kathleen Rednour advised she worked for the City of Elyria for fifteen years and then the County Prosecutor for ten years and the City of Lorain for approximately four months. She said she is now working part-time for Avon Lake. Ms. Rednour stated she has a master's degree in social work from Case Western Reserve. She advised since 2017 when Marcy's Law passed, the legislature has been working on what exactly that means and what are the victim's rights and what is the responsibility as courts and police departments ensure that victims are aware of their rights and that their rights are seen and heard. Ms. Rednour said since she has been in Avon Lake, the biggest question is that now they have to have forms signed that victims are aware that they have rights. She stated some of those rights are making sure that they are notified about court proceedings and making sure that they are aware of what is happening in the case. Ms. Rednour advised the major question is, "Who does that?" and that is where the Victim Advocate

comes in. She said she explains to victims their rights and makes follow-up calls and victims call her with their questions. Ms. Rednour stated in all these years that she has been doing victim work she has made herself available 24/7 as many people call in the evenings when they are home from work and the courts are not open in the evenings. She advised people call her wanting their questions answered in real time and that is her role as a Victim Advocate.

Mr. Gasior said she also has worked with the Avon Police Department and that she has let them know that she is available to them. He stated most of the victims that Ms. Rednour will be working with in the municipal court level are probably the first-degree misdemeanor victims such as domestic violence and those type of assaults and sometimes victims of theft.

Ms. Rednour advised she does roll call training with the Police Departments as those laws change. She said it could be any kind of victim on any kind of criminal case.

Mr. Gasior explained that Marcy's Law changed the scope of what the Victim Advocate needs to do, and this is something that Police Chief Fischbach has talked to him about and the County Prosecutor Richard Kray told him that Ms. Rednour was at the court doing a fantastic job for Avon Lake while also helping Avon in the process without compensation. He said the package was put together to create the position and hire a Victim Advocate and as he pointed out earlier in Ordinance No. 127-23, the yearly salary is listed for just under \$25,000. Mr. Gasior stated he believes Ms. Rednour is going to do a great job for the City and everyone has spoken highly of her to him.

Ms. Rednour added that she also does neighbor mediations and has done them throughout the years. She said if there is a neighbor dispute and the Police Officers get called out two, three and even four times it ties up their time and it does not amount to a criminal offense, so she goes in and does mediations with the neighbors to minimize the use of police and she has done mediations since 1997 for many departments in the County.

Mr. Gasior advised when Council reads the Class Spec that is attached as Exhibit A to Ordinance No. 137-23, there is a little bit more detail about the position. He said as they go to item no. 12, which is Ordinance No. 138-23, the pay range; the salary is on the lower end of that pay range and he did not see a problem with approving it.

Mrs. Demaline thanked Ms. Rednour for being here and said that she is going to be doing some important and impactful work in our community and she thanked her for that. She said the classification specification listed the FLSA (Fair Labor Standards Act) status as non-exempt, which is generally an hourly position, but the pay is listed as an annual salary. Mrs. Demaline asked for some clarity on that.

Mr. Gasior advised he believes that was intended to be cleaned up and they just failed to do that. He said the Victim Advocate is a salaried employee so to the extent that there is a conflicting language, and the conflicting language would be held for naught. Mr. Gasior stated in the future they could make the position hourly should Ms. Rednour not be working for us any longer and then the salary would be meaningless. He advised he does not know if Clemans-Nelson was trying to cover two ends of the spectrum in one Ordinance or not.

Mr. Radcliffe asked if the salary would take precedence since the employee is a salaried employee.

Mr. Gasior said yes, they could see that the pay was established in the pay Ordinance.

Mr. Radcliffe asked if a small update should be made instead.

Mr. Gasior stated they could strike the word from the Class Spec. He said if that is what they want to do he would instruct the Clerk to make that update since there is not a week in between meetings to make revisions and pass it as amended.

Mrs. Demaline asked if it would be amended to be FLSA status Exempt.

Mr. Gasior answered yes if that is how they want to amend it. He said he did not write this legislation, it was Clemans-Nelson, and they are the legal firm that is used for this type of labor description. Mr. Gasior stated from the City's perspective the Victim Advocate is a salaried employee and is not a part of any bargaining unit.

Mr. McBride felt Clemans-Nelson boils everything down like everyone is an hourly employee and they have been using that same form for as long as he can remember. He agreed it should be amended.

Mr. Gasior said in looking at Avon Lake's legislation for this position they listed it as FLSA status Exempt for the same job. He stated he would do whatever Council feels comfortable with because he is not prepared tonight to address the issue.

Mrs. Demaline stated she did not know enough about the position to give a solid answer if it should be Exempt or Non-Exempt, but for clarity and consistency in the two Ordinances it should be amended and call it Exempt. She said if it needs reevaluated later then they can do that at that time.

Mr. Gasior advised that would be good so that Ms. Rednour can begin with the first pay period in 2024. He said she has been working for the City already without pay and to be fair he would like to get her on the payroll and if any corrections need to be made, they can be made at the January 8th meeting.

Mrs. Demaline agreed and said that was fine with her if the rest of Council was in favor.

It was clarified that the FLSA status would be amended to state Exempt to bring consistency to the Ordinances.

12. ORDINANCE NO. 138-23 – TO ESTABLISH A RANGE OF COMPENSATION FOR THE UNCLASSIFIED, PART-TIME POSITION OF VICTIM ADVOCATE FOR THE CITY OF AVON Mr. Gasior

The First of Three Readings of Ordinance No. 138-23 will be at
the Regular Meeting Immediately Following this Work Session

Mr. Gasior advised the range is established in this Ordinance for the position. He said in the Exhibit A to Ordinance No. 127-23 the salary has been selected within that pay range. Mr. Gasior stated if any changes need to be made, they could do so at the beginning of the year.

13. ORDINANCE NO. 139-23 - AUTHORIZING THE MAYOR AND/OR HIS DESIGNEE(S) TO ENTER INTO A MEMORANDUM OF UNDERSTANDING TO AMEND THE JANUARY 1, 2022 THROUGH DECEMBER 31, 2024 COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF AVON AND THE AMERICAN FEDERATION OF STATE, COUNTY, & MUNICIPAL EMPLOYEES ("AFSCME" or "UNION")

Mayor Jensen

The First of Three Readings of Ordinance No. 139-23 will be at
the Regular Meeting Immediately Following this Work Session

Mayor Jensen advised this is a housekeeping issue related to the Planning and Zoning Secretary. He said there was an ongoing practice for years, but it was not memorialized with the union, and he indicated this MOU will take care of that and be consistent with all the areas.

Mrs. Demaline asked to clarify if this is an existing MOU on call-in pay and only section 1 (a) & (b) the italicized bold was new or was the entire MOU new.

Mayor Jensen advised previously when the Planning and Zoning Secretary came in for evening meetings, the person in that position was automatically paid a minimum of an hour and a half of overtime. He said if that person worked an hour and a half, they were paid an hour and a half of overtime, but if that person

worked less than an hour and a half of overtime they were still paid an hour and a half of overtime. Mayor Jensen stated that was never memorialized in the contract even though others in that position always got paid that way. He advised since it was not written anywhere, they wanted Council to memorialize that in this MOU so that the practice could continue.

Mr. Gasior advised the italicized bold subsections are brand new.

Mrs. Demaline clarified those sections (1), (2) and (3) are existing and the subsection (a) and (b) are being added under section (1).

Mr. Gasior, Mayor Jensen, and Mr. Streator confirmed that to be correct.

14. RESOLUTION NO. R-34-23 – ACCEPTING THE REVISED AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AFTER THE NOVEMBER 7, 2023 GENERAL ELECTION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR

Mr. Presley

The Second of Three Readings of Resolution No. R-34-23 will be at
the Regular Meeting Immediately Following this Work Session

Mr. Presley advised this is adding the result of the November election which renewed the Parks and Recreation property tax levy.

15. RESOLUTION NO. R-35-23 – IN SUPPORT OF AN APPLICATION SEEKING GRANT FUNDING FROM THE OHIO URBAN FORESTRY GRANT PROGRAM (OHIO DEPARTMENT OF NATURAL RESOURCES) TO PROVIDE MONETARY SUPPORT FOR ACTIVITIES SPONSORED BY THE AVON TREE COMMISSION

Mayor Jensen

The First of Three Readings of Resolution No. R-35-23 will be at
the Regular Meeting Immediately Following this Work Session

Mayor Jensen advised this is a grant application that the Tree Commission would like to apply for. He said they have some letters of support from different organizations, and they are asking Council to pass it tonight as the deadline to apply is the end of December and this Resolution has to be included with the application.

Mrs. Demaline asked the amount of the initial grant.

Mr. Gasior advised they are applying for \$50,000 and his understanding is that \$50,000 is the maximum amount that can be applied for.

Mrs. Demaline asked who is writing the grant.

Council Elect Mary Berges advised Tree Commission Members: Rick Varga, Matt Smith and herself are primarily working on the grant along with John Traxler. She said they are not done with the application yet and the deadline is December 29, 2023. Ms. Berges stated they have a good portion of it done and they have letters of support from the Avon Senior Center Coordinator, the Avon School Board Superintendent, one of the Avon School Board Members, and the President of the Garden Club. She advised they are very strongly written letters supporting the grant.

Mrs. Demaline advised that is fantastic and that is a large undertaking for the Tree Commission, and she thanked them for that kind of commitment.

Ms. Berges said she would keep Council updated as to whether the grant is awarded.

- 15a. DEMAND FOR CERTIFICATE IN LIEU OF ENDORSEMENT OF APPROVAL OF A FINAL SUBDIVISION PLAT FOR GRANDE ESPLANADE (ST. THERESA BLVD CONNECTION) BY H-9 LLC

Mr. Gasior

Mr. Gasior advised Mr. Phillips is in the audience tonight and he invited Mr. Phillips to the podium if he wished to make any public comments since it is his letter dated December 15, 2023, that prompted this item to be added to the agenda tonight.

Gerald W. Phillips, 461 Windward Way, Avon Lake said on Friday he drafted a letter and sent it to the Clerk of Council, Barbara Brooks.

Mr. Gasior confirmed that all of Council received that communication.

Mr. Phillips stated the letter basically says and he quoted the law is that they need to grant the certificate and he cited the various cases. He noted a recent Supreme Court case, the Wesolowski case, that said technically any city has to act on a subdivision within 30 days under Ohio Revised Code 711.09(C) and if they do not do something it is automatically approved, and a certificate has to be issued. Mr. Phillips advised so he made a demand for Mr. Gasior to follow the law and issue the certificate.

Mr. Gasior asked when the 30 days begins, was it from December 15, 2023?

Mr. Phillips answered no, it was from the day that the subdivision final plat was filed.

Mr. Gasior asked when that happened.

Mr. Phillips said well, it was filed on October 20, 2020. He said the City sat on it for 3 years and 56 days.

Mr. Gasior asked if that was the date it was filed with the Planning Commission.

Mr. Phillips answered yes, and the Planning Commission.... No, it was filed with the Planning Commission and then it was referred to Council and they got it subsequently, but Council is the final say-so on it. He said if they have a two-step process it does not matter, they still have to do it within 30 days.

Mr. Gasior asked Mr. Phillips if he knows when Council got it.

Mr. Phillips said he would have to look.

Mr. Gasior said he is going to ask that Council enter into Executive Session so that he can discuss with them this threat of imminent litigation if they do not go forward and grant this certificate in lieu of endorsement. He advised he would like to share with Council some of his views on what happened here. Mr. Gasior said he thinks the first filing of anything in this case involving Esplanade probably took place right at the time the pandemic started if he is not mistaken or just before and things moved rather slowly because of the pandemic. He stated his file consists of boxes of documents that include minutes of meetings, plats, engineering comments, and so on. Mr. Gasior advised as Mr. Phillips pointed out there is a State Statute that impacts the filing of final plats and there is a court case "Wesolowski vs. Broadview Heights", and he has been able to review and go over not only ORC 711.09 but also looked at 711.101 and he read the Wesolowski case and he talked to some attorneys that have been personally involved in it.

Mr. Phillips interjected, "so have I".

Mr. Gasior said Attorney Majeed Makhoulf is also working on a matter with the City and he had a chance to talk to him. He stated it is an interesting request and again he would like to talk to Mr. Phillips and his client about the request because he is not quite sure what he really achieves by having a final plat recorded in this case without having any improvements.

Mr. Phillips said well that is what he wants, and he would take care of the eminent domain. He stated he made a taxpayer demand a long time ago about exercising your rights.

Mr. Gasior advised he knows they responded to that.

Mr. Phillips said no, you did not. Not that one.

Mr. Gasior said well, we responded to one in the past.

Mr. Phillips stated Mr. Gasior did not respond to the taxpayer demand for eminent domain. He said the only taxpayer demand Mr. Gasior responded to recently is when he hired the law firm of Dooley Gembala and there is no Ordinance authorizing them to be hired. Mr. Phillips advised he mentioned at the last meeting that Mr. Gasior basically hired somebody without Council authority.

Mr. Gasior advised they can get to all of that at a later date.

Mr. Phillips said he just wants the certificate. The question is, are you going to issue it or not?

Mr. Gasior said he is going to talk to Council in Executive Session about all of the ramifications of Mr. Phillips' request and they will have to see what Council decides to do. He said to Mr. Phillips, "I have to ask, and you do not have to answer, what do you achieve by having the final plat?"

Mr. Phillips answered, "I achieve everything".

Mr. Gasior asked, "Who is going to put in the improvements?"

Mr. Phillips said, "my client".

Mr. Gasior said, "pursuant to what rules and regulations? Are you going to follow any rules and regulations?"

Mr. Phillips said, "sure. We will follow the rules."

Mr. Gasior asked how high the streets were going to be.

Mr. Phillips said, "hey, you have the plat now. It has been stalled by your engineer based on some de minimis water phony baloney argument that 7% of the water is going onto Carnegie's property when 63% of the water that was going there before is being retained. And there is absolutely no reason for your engineer not to approve that based on the storm water".

Mr. Gasior said he remembers they talked about it.

Mr. Phillips said, "It is just phony baloney. You have an engineer that has been holding a project hostage. We are not going to tolerate that anymore. I told you. I gave you a warning, John, and not because we have been friends."

Mr. Gasior advised he recalls a meeting he believes was in April of 2022 where a plan was presented and of course there are two plans out there; one that goes to St. Theresa Boulevard and requires the appropriation of land where a sanitary sewer goes to St. Theresa Boulevard and then there is a plan where a sanitary sewer comes down Nagel Road.

Mr. Phillips said yes, there is preliminary plan approval for the Nagel Road option.

Mr. Gasior said exactly, except that there was a condition placed upon it and that was to resolve the issue with the storm water. And that minor storm water problem that Mr. Phillips referred to as minor. Then he thinks what happened was Mr. Restivo began litigation against Carnegie Development over that because the drains there plugged, or they were not plugged. The City ended up in court all through the summer of 2022 and tried to resolve that issue. Your client was trying to resolve the storm water issue and actually went to court to try to get it resolved.

Mr. Phillips said, "but your engineer could have approved the plan as-is, but he hasn't".

Mr. Gasior stated nobody has made any demands up to this point.

Mr. Phillips answered, "well you will get one on the storm water very shortly".

Mr. Gasior advised he is just saying that this all goes back over 18 months.

Mr. Phillips interjected, "no, it goes back 4 years that this City has held up my client. There are only 2 subdivisions that ever had a reserve strip; Smitek's and my client. And you took eminent domain to take care of Smitek. Not ever of all the subdivisions. Now, you tell me why there is that discriminatory treatment. And it is bad faith".

Mr. Gasior said he is just going to say that if there is a devil's strip...

Mr. Phillips interjected, "there is".

Mr. Gasior said if there is a devil's strip...

Mr. Phillips said, "don't say if, there is one".

Mr. Gasior said if there is a devil's strip between Mr. Phillips' client's property, Mr. Restivo, and Carnegie's property; Mr. Restivo put in Red Tail No. 16.

Mr. Phillips said, "no, Carnegie did".

Mr. Gasior stated Mr. Restivo worked for Carnegie Development, and he knew.

Mr. Phillips said, "your engineer approved it, your engineer approved it. He had no business approving it. He should have made the adjustment, and he did not".

Mr. Gasior said if they go back to 1997 or 1998 when Red Tail, Carnegie Development was conceived, Pete Restivo worked for them and the preliminary plat for the Red Tail subdivision never contained a stub to the south. And that is the plat that was presented when No. 16 came in, when No. 17 came in and No. 18 has not come in yet.

Mr. Phillips said, "the City was made aware that it is an illegal reserve strip. Go look at your Codified Ordinances. It basically says reserve strips are prohibited. Pretty straight forward. And you never allowed one ever".

Mr. Gasior said he wanted to point out that the reserve strip was never on the preliminary plat.

Mr. Phillips said, "blame your engineer for not checking it. There are other errors that he made too about going down Lear Nagel Road with the sewer on the basis that you could not connect sewers with St. Theresa Boulevard because it was not deep enough. He (City engineer) is wrong on that, and he is covering it up and that will be made known pretty quick".

Mr. Gasior said he did not know about that. The issue in front of them is this demand.

Mr. Phillips stated, "That is what it is. You go into Executive Session, and you will make your decision and based on your decision I am going to advise my client accordingly".

Mr. Gasior advised he does not think there is any decision that is going to be made. He said he wants to advise Council as to what Mr. Phillips is asking and he wants to give them his opinion and he wants to answer their questions that they may have about what he (Mr. Phillips) is saying in this letter. Mr. Gasior stated when they come out of Executive Session and believes they will start the Regular Meeting and there will either be an action taken by Council to authorize the issuance of the certificate in lieu of endorsement or there will not be. That will all probably depend on what Council feels they need to do based on what he explains.

Mr. Phillips said he just hopes everyone on Council has read the letter. It is not that complicated. They do not have to be a genius or a lawyer to understand it. He stated if they are done with that, he has other comments.

Mr. Gasior asked if he was done with this topic.

Mr. Phillips said he was done with this unless anyone had any questions for him.

There were no questions for Mr. Phillips. It was decided to go into Executive Session after reports and comments.

Mr. Phillips added that Mr. Gasior asked how long it has been there and he said he could show him on a time schedule all the delays and how many submissions. On this final development he believes there were 14 submissions, and they keep getting pages and pages of comments; new items, old items, things have changed. He said they had a problem of even getting a street design on this as it changed 4 times, and it went back to the original.

Mr. Gasior advised he understands what Mr. Phillips is saying and added that he lived all of it, so he was not telling him anything that he does not know. He said he disagrees with the way that he characterized it or de-characterized it, but he was not mentioning anything that he does not know.

16. REPORTS AND COMMENTS

MAYOR JENSEN had no comments.

COUNCIL MEMBERS:

MRS. DEMALINE, WARD 1 requested that when the Council President was considering appointments to Council Committees for the upcoming Organizational Meeting for 2024 that she be considered to again serve as the Chair of the Service Committee. She said she has enjoyed being the Chair of the Service Committee and they were straddling some progress that has been made in 2023 on the Sidewalk Program and looking forward into 2024 in the midst of that, so she was requesting that she be considered being retained as the Chair of the Service Committee.

MRS. HOLTZMEIER, AT LARGE was absent.

MR. MCBRIDE, WARD 2 had no comments.

MR. MOORE, WARD 3 had no comments.

MR. RADCLIFFE, WARD 4 had no comments.

MR. WITHERSPOON, AT LARGE had no comments.

MR. FISCHER, AT LARGE had no comments.

DIRECTORS/ADMINISTRATION:

MR. CUMMINS, CITY ENGINEER had no comments.

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

MR. GASIOR, LAW DIRECTOR had no comments.

MR. PRESLEY, FINANCE DIRECTOR had no comments.

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

AUDIENCE:

Gerald W. Phillips of 461 Windward Way, Avon Lake asked Mrs. Demaline if Carnegie's sidewalks were going to be added to the 2024 Sidewalk Program and if not why?

Mr. Fischer advised they were still scheduled to have some further committee meetings on that.

Mr. Gasior said he was going to point out that the sidewalk program has not been finalized as of yet. He said he thinks at the next meeting that is called to deal with the 2024 sidewalk program that perhaps Mr. Phillips might want to show up at that meeting.

Mr. Phillips said he already gave Barbara Brooks, Clerk of Council, the Sunshine Law notification that he wants to be notified of a number of meetings, so she is aware that he needs to be notified. He added that the Clerk has been very good about doing that, so he expects to be notified.

Mr. Phillips said if they look at their City Charter, Article IV, Section 8 that it basically says all Council Meetings shall be open to the public. He said there have been cases that have indicated that language prohibits them from going into Executive Session. Mr. Phillips stated also, he asked for minutes from Executive Sessions, and he was told that you do not keep them, but he believes they are required under the Sunshine Law.

Mr. Phillips stated he had some comments on a couple of pieces of legislation. The engineer's compensation ordinance: if they look at it, the engineer gets compensated in a number of various ways in case Council was not aware. Mr. Cummins gets a salary, and the City contributes 14% to PERS on his behalf. In the contract Section One deals with public improvements and those are compensated pursuant to Section Three on a sliding scale based on the size. Section Two deals with his salary so any items in Section Two covers salary of \$59,000. If they read in Section Three there is "supplemental services not Included within the fee schedule" and it lists a mess of things such as wetland delineation, stormwater, Army Corps, Ohio EPA, surveys, topographical surveys. There are a lot of things that are billed separately and individually that are not covered in the other sections. At the end of page three there is another hourly section that covers items that are not covered and are billed on an hourly basis. In his opinion, a lot of the items that are supplemental or additional, there is incentive for the engineer to drag on approval of subdivisions so that he makes more fees. He said they could look at how much the engineer has been paid from 2015 through 2023 and it was \$12 million. Mr. Phillips asked if anyone on Council was aware that it is \$12 million.

Mr. Phillips said next is the Law Director's compensation. He said besides his salary of \$126,000 he gets 14% from the PERS and there is a PERS pickup, which to his recollection was not in any of the previous Ordinances that he has.

Mr. Gasior said it was since removed.

Mr. Phillips stated Ms. Demaline asked about it and Mr. Gasior gave an incorrect answer last time because it is a pickup which means the City was going to pay your 10%.

Mr. Gasior said no.

Mr. Phillips said he was here, and he heard it so do not deny it.

Mr. Gasior said he knows that, and he was not denying it. He stated they have to go back and look at an Ordinance that was passed in 2007 to understand why the word "pickup" were in there. Mr. Gasior said he understands what the common meaning of pickup is, but if he read that Ordinance, he would understand why the word pickup was there.

Mr. Phillips said all previous Ordinances, at least as far back as he has copies, do not have pickup in them, you were not getting a pickup. He stated this is the first time that he has seen the pickup in an Ordinance since 2010. So, for 14 or 15 years it was not there.

Mr. Gasior advised it was there in 2002 and it was there subsequent to that and in 2008 when the City changed its Ordinance on the concept of pickup, it was taken out.

Mr. Phillips asked why it was put in now when it was not put in for the last 14 years, because it is extra compensation. He said it was asked if that meant you were getting paid more and the answer was no.

Mr. Gasior said that he could tell him that it probably was just because someone used the wrong template.

Mr. Phillips said they should check on how much Mr. Gasior and his firm have received over the last few years as he believes it is in excess of \$3 million. He stated they could have a Law Department for a lot cheaper than Mr. Gasior.

Mr. Gasior asked Mr. Phillips if he was trying to get him fired right before Christmas.

Mr. Phillips said David Harburger, who used to be the Law Director in Westlake, he made sure he did not have that position.

Mr. Gasior advised that was a different situation, Jerry. Merry Christmas to you.

Hannah Smith, an attorney with Tucker Ellis, LLP located at 950 Main Avenue, Cleveland advised she represents Carnegie Residential Development Corporation as well as Caravon Golf Company Ltd. She said she is here on behalf of her clients who are the owners of property adjacent to the proposed development, Grande Esplanade in Avon. Ms. Smith advised she would not be talking about the other issues that may be between Mr. Restivo and her clients, but only about this issue before Council tonight. She stated on behalf of her clients they would like to advise that they object to this "Taxpayers Demand". Ms. Smith said they actually submitted today, even though the letter came within one business day, a letter that demonstrates their legal basis for the objections as well as a number of other issues to Council based on this "Demand" submitted by Mr. Phillips on behalf of Mr. Restivo or H-9, LLC, the company with Mr. Restivo. She advised while that detailed objection is there for Council, she is going to outline a couple of the topics here for the public. Ms. Smith said given her clients location, which is adjacent to the proposed development, the history is that there are numerous plats, numerous plans, a lot of comments that have been submitted by Mr. Restivo and/or his myriad of attorneys that he has had represent him over time. She stated one of the suggestions would take land that is actually owned by her clients in those early iterations and her clients concern is that this is a unilateral demand that the City approved despite this history. Ms. Smith advised one of the objections they have is that it is really unclear what plat and plan Mr. Restivo is thinking about to try and have the City approve. She said she knows that Mr. Phillips has said that October 2020

was the submission date, but she believes if the City looks at their own records that was Covid and it was pushed back because of Covid. Ms. Smith stated some of those plans even show sewer access across her clients property even though the more recent submission is through Nagel Road. She advised it does not appear that a real final plat or plan was actually submitted or that there was even an agreement with the City. Ms. Smith said Mr. Phillips acknowledged in public comment that there were comments back and forth and that they are still ongoing with the engineer's office and the like so she feels it is common sense and straight forward that there has not been an agreement reached. She stated Mr. Restivo has been an active participant throughout all of this and Mr. Phillips has not been here for everything as Mr. Restivo has had other attorneys that have represented him throughout the course of this situation, but throughout the process this is not one where Mr. Restivo sat idly by or more importantly the City of Avon has not sat idly by. Ms. Smith advised decisions were made and the process has been going on. She said secondly, they object to the fact that this "Demand" was made within one business day and is trying to force the City of Avon to make a decision that is unclear what plat they want even though Mr. Phillips has come forward tonight when that one has not even been approved. Ms. Smith stated and there are serious concerns that this proposed plat is one that is going to take property from her clients and that taking is a growing and very serious concern for the clients and the reason she is here tonight. She advised additionally, as set forth in Attorney Tony Vacanti's letter that was submitted today on December 18, 2023, there is no provision in the Ohio Revised Code that allows for an automatic approval that would force the City Council, if City Council does not act in 30 days. Ms. Smith said that Ohio Revised Code section talks about a Planning Commission and not who has the ultimate authority in this situation, which is the City Council. She stated the Revised Code is pretty clear to her fourth point and to interpret it otherwise would lead to a very absurd and unreasonable result; or instance, in this case, taking of someone else's property and trying to force a City to ignore all of its prior processes and procedures and just approve something that no one is clear what is going on at this point. Ms. Smith concluded with thanking City Council for their time, and she wished them all a Merry Christmas and a Happy Holidays and a Happy New Year. She advised they would just ask that Council not make a split-second decision on this issue and allow time for themselves to make a decision without succumbing to this "Taxpayer Demand" that has a myriad of issues. Thank you for your time.

Gerald W. Phillips advised he would like to correct the record by saying that there is a specific final plat that has been submitted. He said it is the one that shows the St. Theresa Boulevard connection in the future. Mr. Phillips stated contrary to what Counsel for Carnegie has indicated, as he felt those statements are clearly false. He advised approving the plat with the certificate does not take the land that Carnegie owns as that would have to be something separate. Mr. Phillips said so again, Carnegie is making a statement that is false and repeatedly they have come here and made statements that are false. He stated so by approving this, they do not in essence authorize eminent domain or take any land. Mr. Phillips advised he wanted to make a final comment and said he guessed Counsel for Carnegie does not realize that under the City Charter of Avon that Council is the final authority on approving a final subdivision plan and they could look at the final Ordinance that he cited in his memorandum that City Council is in essence the "Platting" Commission too. He said if they read ORC 711.09(C) it references a Planning Commission or a Platting Commission so, in the City of Avon, City Council is the Platting Commission because they have the final say so. Mr. Phillips stated so that statement from Ms. Smith does not apply and that the Wesolowski case does not apply is completely false.

16a. EXECUTIVE SESSION: 8:34 p.m.

A motion was made by Mr. McBride and seconded by Mr. Moore to Enter Into Executive Session for the Purpose of Discussing the Threat of Imminent Litigation and invite Council Elect Berges and Council Elect Patton, and the vote was: Mrs. Demaline, "yes"; Mr. McBride, "yes"; Mr. Moore, "yes"; Mr. Radcliffe, "yes"; Mr. Witherspoon, "yes"; Mr. Fischer, "yes".

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

16b. RECONVENE: 9:05 p.m.

A motion was made by Mr. McBride and seconded by Mr. Moore to reconvene the Work Session of Council, and the vote was: Mr. McBride, "yes"; Mr. Moore, "yes"; Mr. Radcliffe, "yes"; Mr. Witherspoon, "yes"; Mrs. Demaline, "yes"; Mr. Fischer, "yes".

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

17. ADJOURN: 9:06 p.m.
There being no further business, the Work Session of Council was adjourned.

PASSED: _____

SIGNED BY: _____
Brian Fischer, Council President

ATTEST: _____
Barbara Brooks, Clerk of Council