

**MONDAY, FEBRUARY 8, 2016 PUBLIC HEARING AT 7:25 P.M.**

**RESOLUTION NO. R-2-16 - A RESOLUTION TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY FLOYD R. AND ANN J. PORUBAN TO HAVE CERTAIN LAND OWNED BY THEM LOCATED AT 38029 DETROIT ROAD, PERMANENT PARCEL NO. 04-00-011-107-071 DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT AND DECLARING AN EMERGENCY**

The Chairman, Council President Craig Witherspoon, called the Public Hearing for Resolution No. R-2-16 to order at 7:25 p.m.

There were no comments and Mr. Witherspoon closed the Public Hearing at 7:27 p.m.

**MINUTES OF THE REGULAR MEETING OF THE COUNCIL  
OF THE CITY OF AVON, OHIO, HELD MONDAY, FEBRUARY 8, 2016  
IN THE COUNCIL CHAMBERS OF THE MUNICIPAL BUILDING  
AT 7:30 P.M.**

The Chairman, Council President Craig Witherspoon, called the meeting to order and led the Pledge of Allegiance.

PRESENT

Council Members: 1<sup>st</sup> Ward – Bob Butkowski; 2<sup>nd</sup> Ward – Dennis McBride; 3<sup>rd</sup> Ward – Mary Berges; Council-at-Large – Brian Fischer; Council-at-Large – Tammy Holtzmeier; Council-at-Large – Craig Witherspoon; Law Director – John Gasior; Acting Mayor / Finance Director – William Logan; Parks Director – Diane Corrao; Planning and Economic Development Coordinator - Pam Fechter; City Engineer – Ryan Cummins; Clerk of Council – Ellen Young

ABSENT

4<sup>th</sup> Ward – Daniel Urban; Mayor – Bryan Jensen; Service Director – Michael Farmer

MINUTES OF THE REGULAR MEETING OF COUNCIL HELD MONDAY, JANUARY 25, 2016

A motion was made by Mr. McBride and seconded by Mrs. Holtzmeier to dispense with the reading of the minutes of the Regular Meeting of Council held Monday, January 25, 2016, and to approve said minutes as published, and the vote was: Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mr. Fischer, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Witherspoon, “yes”.

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

MINUTES OF THE SPECIAL MEETING OF COUNCIL HELD MONDAY, FEBRUARY 1, 2016

A motion was made by Mrs. Holtzmeier and seconded by Mr. Butkowski to dispense with the reading of the minutes of the Special Meeting of Council held Monday, February 1, 2016, and to approve said minutes as published, and the vote was: Mr. Butkowski, "yes"; Mr. Fischer, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Ms. Berges, "yes"; Mr. Witherspoon, "yes".

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

RESOLUTION NO. R-2-16 – TO APPROVE, WITH MODIFICATION, AN APPLICATION FOR PLACEMENT OF FARMLAND IN AN AGRICULTURAL DISTRICT

The Clerk read Resolution No. R-2-16 by title only, entitled:

**A RESOLUTION TO APPROVE WITH MODIFICATION THE RENEWAL APPLICATION MADE BY FLOYD R. AND ANN J. PORUBAN TO HAVE CERTAIN LAND OWNED BY THEM LOCATED AT 38029 DETROIT ROAD, PERMANENT PARCEL NO. 04-00-011-107-071 DESIGNATED AS BEING LOCATED WITHIN AN AGRICULTURAL DISTRICT AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mr. Fischer to suspend the rules and act on Resolution No. R-2-16, and the vote was: Mr. Fischer, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Ms. Berges, "yes"; Mr. Butkowski, "yes"; Mr. Witherspoon, "yes".

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

A motion was made by Mrs. Holtzmeier and seconded by Mr. McBride to adopt Resolution No. R-2-16, and the vote was: Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Ms. Berges, "yes"; Mr. Butkowski, "yes"; Mr. Fischer, "yes"; Mr. Witherspoon, "yes".

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

ORDINANCE NO. 12-16 – TO AMEND THE SPECIAL USE PERMIT FOR AVON OAKS COUNTRY CLUB TO INCLUDE A 447 SQ. FOOT ADDITION TO THE PRO SHOP

The Clerk read Ordinance No. 12-16 by title only, entitled:

**AN ORDINANCE TO AMEND THE SPECIAL USE PERMIT FOR AVON OAKS COUNTRY CLUB TO ALLOW FOR CONSTRUCTION OF AN ADDITION TO THE TENNIS PRO SHOP, LOCATED AT 32300 DETROIT ROAD AND DECLARING AN EMERGENCY**

A motion was made by Mr. Fischer and seconded by Ms. Berges to suspend the rules and act on Ordinance No. 12-16, and the vote was: Mr. McBride, "yes"; Ms. Berges, "yes"; Mr. Butkowski, "yes"; Mr. Fischer, "yes"; Mrs. Holtzmeier, "yes"; Mr. Witherspoon, "yes".

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

A motion was made by Mr. McBride and seconded by Ms. Berges to adopt Ordinance No. 12-16, and the discussion was:

Ms. Fechter recalled that at the Work Session of Council on the previous Monday, Mrs. Holtzmeier had some concerns and the architect was in attendance this evening to answer questions. Mrs. Holtzmeier said she had mentioned the pitch of the roof in the rear of the building and she asked if it connected.

The architect, Rick Joseti, 7500 Pearl Road, stated that the roof of the addition would be connected to the existing pro shop. Mrs. Holtzmeier asked if it was free-standing on the west side. Mr. Joseti showed the west elevation and described that it was "saddled" to divert all of the water. Mrs. Holtzmeier asked if he anticipated needing to rework the ADA ramp to achieve the correct pitch. Mr. Joseti said no, the only modification will be to add a landing to the walk, which will still be compatible with the slope of the ramp.

The vote was: Ms. Berges, "yes"; Mr. Butkowski, "yes"; Mr. Fischer, "yes"; Mrs. Holtzmeier, "no"; Mr. McBride, "yes"; Mr. Witherspoon, "yes".

The vote was 5 for with 1 against and the Chairman declared the motion passed.

ORDINANCE NO. 14-16 – TO AUTHORIZE A PIPELINE RELOCATION AND REIMBURSEMENT AGREEMENT WITH COLUMBIA GAS OF OHIO, INC. FOR THE RELOCATION OF CERTAIN PIPELINES

The Clerk read Ordinance No. 14-16 by title only, entitled:

**AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO AN AGREEMENT WITH COLUMBIA GAS FOR RELOCATION OF THEIR PIPELINE LOCATED ALONG CHESTER ROAD (PROJECT K) AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mr. Butkowski to suspend the rules and act on Ordinance No. 14-16, and the vote was: Mr. Butkowski, "yes"; Mr. Fischer, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Ms. Berges, "yes"; Mr. Witherspoon, "yes".

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

A motion was made by Mr. McBride and seconded by Mr. Fischer to adopt Ordinance No. 14-16, and the discussion was:

Ms. Berges asked Mr. Gasior if Avon has had similar agreements. Mr. Gasior said yes, we had one for the I-90 interchange (at Nagel Road). There is a separate agreement for this utility to relocate the pipeline, which is partly on private property. The property is owned by NWQ,

which is an affiliate of Jacobs Group. Anytime the City has to move that utility from private property to public right-of-way, they charge us. If it is already in the right-of-way to another location in the right-of-way, they do not charge us. Part of the relocation cost is being attributed to this whole project, which is going to be assessed to the property owners.

The vote was: Mr. Fischer, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Ms. Berges, "yes" Mr. Butkowski, "yes"; Mr. Witherspoon, "yes".

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

#### REPORTS AND COMMENTS

Ms. Berges reported that on Thursday, February 4<sup>th</sup>, there was a ribbon cutting ceremony at the Gym of Avon, which is located in Olde Avon Village. She said the owners looked at building this facility in downtown Cleveland until they saw the property at Olde Avon Village. They love the location and the City.

Mr. Fischer thanked the City of Avon safety forces and City employees for their hard work.

Mrs. Holtzmeier asked if Mr. Stuczynski would be at the Work Session on Monday, February 15<sup>th</sup> to discuss the bonds and Mr. Logan replied that he would.

#### EXECUTIVE SESSION

A motion was made by Mr. McBride and seconded by Mrs. Holtzmeier to enter into Executive Session to discuss union negotiations, and the vote was: Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Ms. Berges, "yes"; Mr. Butkowski, "yes"; Mr. Fischer, "yes"; Mr. Witherspoon, "yes".

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

#### RECONVENE

A motion was made by Mrs. Holtzmeier and seconded by Mr. McBride to reconvene the Regular Meeting of Council, and the vote was: Mr. McBride, "yes"; Ms. Berges, "yes"; Mr. Butkowski, "yes"; Mr. Fischer, "yes"; Mrs. Holtzmeier, "yes"; Mr. Witherspoon, "yes".

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

#### ORDINANCE NO. 15-16 – TO ENTER INTO A TENTATIVE AGREEMENT WITH TEAMSTERS LOCAL NO. 52 (BUILDING INSPECTORS)

The Clerk read Ordinance No. 15-16 by title only, entitled:

**AN ORDINANCE TO ACCEPT THE TENTATIVE AGREEMENT REACHED IN THE  
MATTER OF THE CITY OF AVON AND TEAMSTERS LOCAL NO. 52, AFFILIATED  
WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, (BUILDING  
INSPECTORS) SERB CASE NO. 2015-MED-09-1007  
AND DECLARING AN EMERGENCY**

A motion was made by Mr. McBride and seconded by Mrs. Holtzmeier to suspend the rules and act on Ordinance No. 15-16, and the vote was: Ms. Berges, "yes"; Mr. Butkowski, "yes"; Mr. Fischer, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Mr. Witherspoon, "yes".

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

A motion was made by Mr. McBride and seconded by Mrs. Holtzmeier to adopt Ordinance No. 15-16, and the vote was: Mr. Butkowski, "yes"; Mr. Fischer, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Ms. Berges, "yes"; Mr. Witherspoon, "yes".

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

Mr. Gasior distributed a letter that he wrote to Judge Mark Betleski, Lorain County Court of Common Pleas, regarding a Tier II sex offender, who has been residing, illegally, within 1,000 feet of two schools within the City of Avon. (Letter to Judge Betleski attached to these minutes as Exhibit A) The offender owns the property where he has been living and he may have to sell his property to comply with the law. The offender lives alone and Mr. Gasior discovered that he is slated to be released from supervision. When these offenders are released from incarceration, they should be required to move immediately if they are within 1,000 feet of a school and if they do not comply, it is a parole violation. As Law Director for the City of Avon, there is nothing he can say to the offender that will have the force of the threat of returning to jail for a parole violation.

Mr. McBride suggested that the City "attach" a piece of this person's property to cover any cost the City incurs, including Mr. Gasior's time and effort, while seeking his relocation. He asked what a Tier II sex offender is. Mr. Gasior explained that a Tier I does not have to register, Tier II and Tier III have to register. In this case the offender hosted a web-site where people could exchange child pornography. He received four months in the Lorain County Jail. When he was released, he should have been on two years' probation, but it appears this was going to be terminated early since the offender completed the psychological counseling required, paid his fines and did everything that he was required to do. Regarding Mr. McBride's comment, Mr. Gasior thought it was a good idea that the courts authorize him to seek reimbursement for pursuing this. Mr. Gasior said Mrs. Holtzmeier pointed out a number of details with this and he had not read everything she gave him yet.

Mr. Gasior has had this situation occur about three other times in the past and the City has been successful in each of the other instances. He only had to file one time and that did not even get to the point where there was a hearing because the individual moved and the issue was dismissed. He said he is handling this differently and is waiting to see how the Judge responds. The documents are prepared to file if the Judge does not do anything.

Mr. McBride asked if the offender's failure to comply with the State ordinance would be a violation of his probation. Mr. Gasior said he once thought so, but the probation people will tell him that there are not judges who want to consider this a violation of probation because there is no crime in living there. He said it is §2950.034 in the Ohio Revised Code. Mrs. Holtzmeier said ORC does not prohibit the offender from owning property within 1,000 feet of a school; it prohibits the offender from living there. Mrs. Holtzmeier said this offender is actually 600 feet from property line to property line. Mr. Gasior said he is 190 feet from the High School property and 455 feet from the Early Learning Center. He said some of the probation people have told him that some places measure building to building, in which case this offender is 1,685 feet from the nearest building at the high school and 986 feet from the nearest building at the Early Learning Center. He is definitely in violation. Mr. Gasior recalled a violator who lived in Woodmore, near Schwartz Road Park, within 1,000 feet "as the crow flies" from the Avon East Elementary School. The person was leasing the house and had to move from there.

Mrs. Holtzmeier stated that the terms of the current offender's community control have been modified once before, involving his use of computers and the internet. It is not out of the question to seek a second modification. Mrs. Holtzmeier said if the State law has no teeth, there are communities in Ohio that have enacted legislation protecting nursing facilities in the case that an offender lives within such a facility, schools, registered daycare with ten, or more, children, etc. Should they be part of the current statute? Mr. Gasior said that could be looked into and explained that the State passes what they consider to be a general law. When they do that they do not want cities to use home rule to change that law. He gave the example of the recent income tax law and Avon's review board discussion. He referred to the passage of the gun law. Some cities wanted to include banning guns in parks and other places. Their efforts were not successful. Avon could pass more stringent legislation on residency regulations, but Mr. Gasior cautioned it may be that you cannot pass a law more stringent than the State. The State deals with felons and cities do not deal with felonies; they deal with misdemeanors. Once a case becomes a felony, it is handled at the county and State level. Avon's Codified Ordinances do not deal with felonies. This §2950 deals with felonies and sentencing and the State may say you cannot do more than that. He is sure that the courts are going to be adverse to a ban on sex offenders living within your community; you cannot make laws that will result in that outcome. This will become a constitutional issue.

Mr. Gasior thanked Mrs. Holtzmeier for the articles and said that he would look into this and bring it to a committee. Mrs. Holtzmeier said middle ground exists. Mr. Gasior said he may ask Mr. Cummins, the City's Consulting Engineer, to plot the circles and that will give everyone a chance to look at where we are.

Mr. McBride said he has been on Council a long time and this is the second time this has come up. Mr. Gasior said this was the third or fourth time he dealt with this and he wanted to give Judge Betleski the opportunity to enforce the law.

Mr. Butkowski said he is most concerned that the Parole Board allowed this person to live within 1,000 feet of a school and that they were in the process of removing him from supervision. He asked what we in Avon, or Avon's police, can do to monitor this individual because he is in a location where a lot of students are walking past his address. Mr. Gasior explained that, under the statute, he has the authority to file a petition with the Common Pleas Court to have that person relocate. He has the paperwork prepared and can file that at the end of the week. He wanted to give Judge Betleski an opportunity to do something and hopes the Judge will contact him and ask what he can do to help. Mr. Gasior said he would request a hearing where he can state, on record, the action he wants on behalf of the City of Avon. If that fails, he will file the petition. Years ago, when he called the sheriff's department about sex offenders moving into residences within 1,000 feet of schools, the response was they cannot keep track of that for everybody. Mr. Gasior felt that, since it is in the law, they need to do that for all sex offenders. He said the legislature needs to make this violation a criminal offense so it can be a parole violation.

Mr. McBride asked about offenders who work in offices near schools, or own property they rent for other people to live in. Mr. Gasior explained that this statute was created to be tough on offenders, but for some reason, what was passed is something that has "no teeth." There is no crime being committed by living there, therefore there is no probation violation to be found. Mr. Witherspoon said they have to register with the court or county every six months for twenty-five years, so when they register why are they not identified as living within a restricted area and told to move. Mr. Gasior said he has asked that question and been told, "that is not our job." The Avon resident currently in violation was released in June, 2015 and supervised or not, he should not be living there. Mr. Gasior said when a person commits that crime, whether they go to jail or not, they either register for pre-sentence report at the adult probation department or they go to jail and they are handled by the adult parole authority, so either one of those organizations has to know where this person resides. It would be very simple to look at a map and tell the offender that they cannot reside in a particular location if it is within 1,000 feet of a school. Then they would be given a certain amount of time in which to find a different place to live. If they do not comply, they will have to go back in front of the judge.

Ms. Berges asked how this situation came to his attention and Mr. Gasior said he knew of the offender's location last March, but he was in jail; he was already not living there. When the man was released, Mr. Gasior lost track of his location and he thought it was Mrs. Holtzmeier who brought it to the attention of the Mayor. He had hoped that the people in probation would let the offender know that the Law Director in Avon had spoken to them and that he would have to relocate when he was released. The Chief of Police was also notified last March.

Mrs. Holtzmeier said if you search for Ohio Sex Offenders, there is a website you can find where you enter your zip code and it will provide you with a list of everyone who lives and works within your community who is a Tier II or Tier III sex offender. You can see the individual's

offense, their photograph, their address, what vehicles they drive and you can sign up for notification of any change in status of the offender.

Mr. Butkowski said he is in favor of putting this back in the court to make them responsible for making the offender move. Mr. Gasior said he would notify Council of Judge Betleski's response.

### ADJOURN

A motion was made by Mr. Butkowski and seconded by Mr. Fischer to adjourn the Regular Meeting of Council, and the vote was: Mr. Butkowski, "yes"; Mr. Fischer, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Ms. Berges, "yes"; Mr. Witherspoon, "yes".

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



# CITY OF AVON

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February 8, 2016

Honorable Judge Mark A. Betleski  
Lorain County Court of Common Pleas  
225 Court Street, Courtroom 711  
Elyria, OH 44035

RE: Daniel A. Stevens  
Case No. 14 CR 089504

Dear Honorable Judge Betleski:

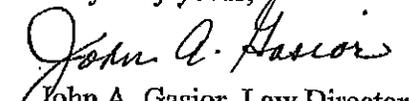
It is my understanding that the Adult Parole Authority will soon be discharging the above referenced, Daniel A. Stevens, from supervision. As you know Mr. Stevens is a Tier II sex offender. As such he is prohibited from living within 1,000 feet of a school.

Since being released from incarceration, he has been living at 3251 Stoney Ridge Road. This residence is currently within 1,000 feet of both the Avon High School and the Avon Preschool/Kindergarten facilities.

On behalf of the City of Avon, Mayor Jensen, Council members and residents, I request that you continue Mr. Stevens' supervision and order his relocation before considering any discharge from supervision.

Thank you for your consideration in this matter.

Very truly yours,

  
John A. Gasior, Law Director  
City of Avon

JAG:ckh

cc: Lorain County Prosecutor's Office  
Mike Edwards, Adult Parole Authority  
Mike Mawson, Adult Parole Authority  
Bryan Jensen, Mayor  
Avon City Council  
Richard Bosley, Chief of Police