Minutes of the Meeting of the Legal Committee of Council
Held in the Caucus Room of the Municipal Building
On Monday, June 13, 2016 at 7:00 P.M.

Committee Members Present:
Ward 2 Councilman Dennis McBride; Ward 4 Councilman Scott Radcliffe

Others in Attendance:

Mayor Bryan Jensen; Council President Craig Witherspoon; Ward 3 Councilwoman Mary Berges; Ward 1 Councilman Bob Butkowski; Law Director John Gasior; Economic Development/Planning Coordinator Pam Fechter

Robert Ellis of Wickens, Herzer, Attorney representing CarMax; Austin Allen with Centerpoint Integrated Solutions; Mike Creekmore, CarMax Real Estate; Bob Barto, owner of the property that CarMax is looking at

Used Car Sales in a Commercial District (CarMax)
Avon Codified Ordinances – Sections 1270.03(e)(4) and 1270.081

Mr. McBride asked about the area in question and Mr. Gasior said that it is the Ordinance itself that is the problem for this particular use and an amendment would be required to Sections 1270.03 and 1270.081 of the Codified Ordinances.

Mr. McBride asked if everyone had seen the memo from Brian Fischer, Chairman of the Legal Committee, and everyone said that they had. (Mr. Fischer was out of town and unable to attend this meeting. The memo is attached to these minutes as Exhibit A). Mr. McBride stated that he was in agreement with Mr. Fischer and sees no reason to change the use in this district. Mr. Radcliffe added that this legislation was put in place just a short time ago and he has not seen anything yet that necessitates changing it. He said he thought it would be prudent to let it work its way through and see what happens down the road with it.

Mr. Ellis stated that he represents CarMax and he knows that most Council members have seen the prior presentations from CarMax but they wanted to have this opportunity to have another chance to make sure that they have satisfactorily answered all previous questions or any other questions with respect to this matter.

Mr. Ellis said that, first of all, CarMax is not a start-up company. They are publicly traded and have been around for a long time. Their business model is essentially the same as a new car dealer in the sense that a customer would come into the store; there are no cars on the curb. If someone is driving by it would look the same as any kind of new car dealership. Also, he said that he was surprised to learn that for new car dealers, close to 2/3 or 75% of their sales come from used cars. So you are getting pretty close to a new car dealer when you deal with the kind of vehicles that CarMax does that are certified and perhaps better than the used cars from new car dealers. And as has been proposed, they would be willing to do all paperwork for an amendment to the Ordinance that would still keep out the used car dealers, as you understand them. But the proposed amendment to the Ordinance would require a certain large number of acres, the kind of buildings that CarMax has, the kind of minimum employment and so on. He said that he was thinking that Council would find that attractive because it would allow this kind of business to come into the City and provide an opportunity for the residents and others and

also we are talking 40 employees initially. It would be a net benefit to the City and the schools in terms of income taxes and real estate taxes. So they were hoping that there might be some reconsideration of the thoughts on this matter.

Mr. Ellis said that he wondered if anyone has had feedback from residents or from neighbors. He understood that when one of the newspapers had a story on this there were online comments that were all positive and normally it is the people who are upset. He was told there was no feedback and Mr. Ellis said he thought that indicates that there certainly is not a groundswell of opposition with respect to this. So again they are hoping that there might be some reconsideration. He said they are prepared to show the presentation that was made at the prior meeting if people desire to see that. Mr. McBride responded no, as all of them had seen it. Mr. Ellis asked if there were any other questions about the type of operation or the physical layout.

Mr. Radcliffe said that he had been impressed with the presentation and the company but again, at this point, he would like to see some more time pass before the legislation is changed or before he thinks about looking at it differently.

Mr. Ellis asked if there have been any other used car dealers attempting to come in and Ms. Fechter answered, not at this time. Mayor Jensen added that he thought that most people read the law and see that it is a prohibited use.

Mr. Creekmore asked if the "similar use" was not applicable here either, similar use being to new car sales. Mr. Gasior responded, no, that would not apply here either because the use is prohibited, so it is not going to really fall into the category of a similar use. If it was a permitted use, it would be a different story and then you just had not specifically named that type of a use and you would be saying it is so similar to a permitted use that we could include it as a similar use, but in this case, if anything, it is similar to a <u>prohibited</u> use and we would be using that to say that that use would be prohibited as well.

Mr. McBride stated that the City recently went through a pretty detailed review of our zoning code. If there had been a number of years without any activity, he thought that maybe we would be willing to look at our planning and at our master plan again in our commercial areas but it has not been that long. The Interchange has not been there that long, and with the development that is going on, he does not think we have given it long enough.

Mr. Ellis said, so Mr. McBride was referring to the time period from when the Interchange opened and not from the time period the Ordinance was amended to prohibit this? Mayor Jensen stated that the Ordinance was put in place in 2014. Mr. Butkowski added that what Mr. McBride is saying is that we really have not let that period percolate enough. There has not been enough time to validate changing the Ordinance or the zoning as it is right now. Mr. Ellis asked what sort of things would have to happen in order to permit a reconsideration? Mr. Butkowski stated that the development along Chester Road is still in its early infancy; we still do not know what could potentially come in that area. It is zoned as commercial and we would love to see many large companies like CarMax come in, in a permitted use, so we could create good paying jobs for the City of Avon and we have to look at that when it comes to revising City Ordinances. We are still early on with that development over there; it is a great opportunity and we have one shot to do it and do it right. Mr. McBride stated, and the Interchange has not been there that long. We are now starting to get inquiries in the area with permitted uses from brokers and businesses and there is a timeline; it takes some time to put some of those deals together. We are right on the cusp of starting to move along and it is no different than the development at the Rt. 611 Interchange. It took planning over a number of years for that development and it is starting to reap benefits. It takes time, particularly coming out of some of the economic times we have had. Mr. Gasior

stated that Planning Commission has looked at other communities with exposures off from interchanges to see what they do with their codes and this is where the used car accessory use concept came about. Council saw the need or wisdom in it and since that has only been about 20 months, he does not think they feel that enough time has gone by to see if that was a wise decision. Right now he feels like they think it was a wise decision. He said he knows that everybody was impressed with CarMax and what they could do but from what he is hearing, nobody is ready yet to make that turnaround.

Mr. Ellis said that he does not represent the landowner but he thinks Council needs to take him into account and also the other people on Chester Road who might have opportunities. His primary area of expertise is real estate law and he does know that there are windows and that if you are a landowner and if you have missed the window, sometimes it does not come for a very long time so he thinks we need to be fair. You can wait years and years and things may or may not happen and when there is an opportunity he hates to see a landowner lose that opportunity. So he thinks that Council should consider that as well.

Mr. Creekmore asked if used car sales were allowed prior to the 2014 amendment of the Ordinance, and Mr. Gasior answered, yes, they were allowed in the code. Mr. Creekmore then asked how long it would take to get the transcript of the meeting tonight and Mr. Gasior said it would probably be a couple weeks.

Mr. Allen stated that they came to see what kind of next steps they could take to proceed with this project and obviously the similar use is not an option and a change of zoning is not an option so he does not know if there are any other options. Mr. Ellis noted that they do not admit on the record that the similar use is not an option but he respects the Law Director's comments. He said one option of course would be to make application for the amendment which presumably would be denied. It would have to go to the Planning Commission and so on and once that goes through that administrative process, then they would be allowed to go to the Common Pleas Court to argue on some constitutional grounds or some statutory interpretation. And that would be up to the client to decide how they want to go on that process.

Mr. Barto stated that his property taxes went from $14,000. a year to $55,000. in one year so that took everything out of his business. He is working there for nothing now and that is why he is trying to sell the property. Mr. Gasior stated that all the property that was acquired during the course of buying up land for the Interchange caused a lot of re-evaluation at the County level for all the property in the vicinity and therefore everybody's property values went up when they saw what an acre was being appraised for.

A motion was made by Mr. McBride and seconded by Mr. Radcliffe that the Legal Committee recommend to full Council that we not take any action on this matter of amending the Code. The vote was all ayes.

Adjourn

The meeting was adjourned by Mr. McBride at 7:34 P.M.

Transcribed by Gail Hayden, Assistant Clerk of Council