

**MINUTES OF THE REGULAR MEETING OF THE COUNCIL  
OF THE CITY OF AVON, OHIO, HELD MONDAY, JUNE 13, 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 Mayor Jensen asked a moment of silence be observed for the victims of the tragedy in Orlando, FL followed by the Pledge of Allegiance.

**PRESENT**

Council Members: 3<sup>rd</sup> Ward – Mary Berges; 1<sup>st</sup> Ward – Bob Butkowski;; Council-at-Large – Tammy Holtzmeier; 2<sup>nd</sup> Ward – Dennis McBride; 4<sup>th</sup> Ward – Scott Radcliffe; Council-at-Large – Craig Witherspoon; Mayor – Bryan Jensen; Parks Director – Diane Corrao; City Engineer – Ryan Cummins; Service Director – Michael Farmer; Planning and Economic Development Coordinator - Pam Fechter; Law Director – John Gasior; Finance Director – William Logan; Clerk of Council – Barbara Brooks

**ABSENT**

Council-at-Large – Brian Fischer

**CORRESPONDENCE** - None

**ADDITIONS AND DELETIONS TO THE AGENDA** – None

**MINUTES OF THE REGULAR MEETING OF COUNCIL HELD MONDAY, MAY 23, 2016**

A motion was made by Mr. Radcliffe and seconded by Mrs. Holtzmeier to dispense with the reading of the minutes of the Regular Meeting of Council held Monday, May 23, 2016, and to approve said minutes as published, and the vote was: Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “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, JUNE 6, 2016**

A motion was made by Mrs. Holtzmeier and seconded by Mr. Radcliffe to dispense with the reading of the minutes of the Special Meeting of Council held Monday, June 6, 2016, and to approve said minutes as published, and the vote was: Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Witherspoon, “yes”.

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

ORDINANCE NO. 63-16 – TO ACCEPT IMPROVEMENTS IN ORCHARD TRAIL  
SUBDIVISION NO. 6

The Clerk read Ordinance No. 63-16 by title only, entitled:

**AN ORDINANCE TO ACCEPT IMPROVEMENTS IN  
ORCHARD TRAIL SUBDIVISION NO. 6  
AND DECLARING AN EMERGENCY**

The Chair declared this to be the third of three readings of Ordinance No. 63-16.

A motion was made by Mr. McBride and seconded by Mrs. Holtzmeier to adopt Ordinance No. 63-16.

The discussion was: Mr. Ken Kalina of Hawthorne Drive, in the Orchard Trail subdivision and on the board of the Homeowner's Association, stated they have been having some trouble with the development of Orchard Trail. He said it cost the association money to amend the agreement as they add new phases. Mr. Kalina said to a homeowner's association \$7,000 was a lot of money. He said that since they signed the document they have not heard anything back from Orchard Trail, LLC. He stated there were other things that were supposed to be done such as the trees planted were supposed to be of the same size and species and quality. Mr. Kalina said there is supposed to be a walking path made of crushed limestone and he saw they put a whole bunch of mulch out there. He advised since they have not had any contact with the developers they are worried about some of the other things that they were told would be taken care of such as maintenance of the pond. Mr. Kalina expressed that they were looking for support from City Council on some of these issues to make sure that what the developer's agreed in the signed document would be taken care of.

Mr. Gasior said he understood Mr. Kalina's concerns as part of the Homeowner's Association and he asked Mr. Kalina to contact him tomorrow and he would be happy to communicate his concerns to Mr. Batt to see if he could convince him to take some action, but ultimately this is a civil matter between the Association and Mr. Batt. Mr. Gasior stated he does not recommend Council hold back on voting on this matter tonight over something that is related to the HOA. He said if it was a matter directly related to the items addressed in the Ordinance that would be a different story and he believed all of those have been taken care of. Mr. Kalina inquired if one of the things in the Ordinance was the street trees to which Mr. Gasior replied no. Mr. Gasior gave Mr. Kalina his business card and asked him to contact his office tomorrow and he would be happy to talk with him as well as Mr. Batt on his behalf.

Mr. Gasior pointed out they added to the Ordinance since the last Work Session item numbers 7, 8, & 9 to Section 2 as they pertain to the drainage improvements, which includes an exhibit map that was prepared and added by the City Engineer. He clarified the dollar figures listed was not going to be deposited, but that cash was already on deposit and will not be returned until all the items are adhered to.

Mr. McBride asked for clarification as to whether the Developer's Agreement did not call for a walking trail or it did call for a walking trail but it never specified the material. Mr. Gasior advised he would have to check, but usually the Subdivider Agreement if it calls for a walking trail it calls for the material, but he was not familiar with the phase or the material. Mr. McBride inquired if the Subdividers Agreement specified if all the trees would be the same species or not. Mr. McBride felt that until they know what is in that Subdividers Agreement he did not know if we should pass it. Mr. McBride stated if it calls for a walking trail and it is supposed to be in this phase whether limestone or asphalt or mulch then he felt everything would not be in order to approve it. Mr. Gasior advised he was going to have to look into it, but they have never had an issue with Mr. Batt as far as following up when we bring something to his attention. Mr. Gasior stated everything we brought to Mr. Batt's attention since last Monday has been resolved, which were items 7, 8, & 9 and he did not see any reason not to go forward tonight. Mr. Gasior stated if Mr. Batt needs to cooperate further with the City then they would address those issues.

Mr. Bud Tessloff advised he works with Mr. Batt and he could certainly address the concerns they may have with the walking trail. He stated there is a drawing that Mr. Cummins was aware of and the specifications are 8' wide and 8" deep and it is wood chip based. Mr. Tessloff said the drawing was approved by engineering and we have started work today with a construction company and the ditch is being cleaned that was in Phase 5 as discussed in previous meetings. Mayor Jensen inquired as to why the aggregate was changed from limestone to wood chips. Mr. Tessloff responded that it was changed in the original plan and agreed upon when they took it over from a previous developer. Mr. Butkowski inquired if he understood correctly that they were making a walking path out of mulch. Mr. Tessloff responded yes. Mr. Butkowski inquired as to how that was easy to walk on. Mr. Tessloff stated this walking path was almost a mile long that runs through the whole development. Mr. Butkowski asked if it was a cost issue. Mr. Tessloff said the other materials were much more expensive to do and this was discussed with the Homeowner's Association back two years ago. Mr. Kalina stated the document the developers signed with the HOA said the developers were to complete the walking path and it was designated on the original maps throughout the neighborhood using crushed limestone and that is what they signed and that they heard nothing about mulch.

Mr. Witherspoon inquired as to what phase the walking trail was supposed to be a part of. Mr. Tessloff advised it was in both five and six. Mr. Gasior advised he does not believe it was covered under the Subdivider Agreement and it sounded to him like the agreement that was entered into was between the HOA and the developer. Mr. McBride agreed some of this may not be relevant to the City, but he felt they needed to know what the underlying document requires irrespective of an engineering drawing that says it is going to be 8" thick mulch. Mr. Tessloff clarified it would be wood chips and not mulch.

Mr. Cummins advised his recollection is that it is wood chips and not mulch and extends as stated back into Phase 5 & 6. He said they posted money for the entire installation in Phase 5 & 6 and that was part of the acceptance tonight. Mr. Cummins stated the detail is depicted as wood chips in both of those phases. Mayor Jensen advised the signed document with the developer and the Homeowner's Association would add the legality from a civil standpoint. Mr. Gasior stated he was a bit confused because he does not recall anything in any Subdivider Agreement with Orchard Trail that involved a wood chip path that would be a dedicated public improvement. Mr.

Gasior continued that he does not believe that the City would have accepted a wood chip path as a dedicated public improvement. Mr. Gasior advised this is obviously something that is being placed in common open space through an agreement between the developer, subdivider and the Homeowner's Association is responsible for that common open space. All the parties involved must have agreed upon it with Mr. Batt and an agreement was signed with the Homeowner's Association. Mr. Gasior advised that has absolutely nothing to do with the publicly dedicated improvements. Mr. Cummins confirmed Mr. Gasior's statement to be correct that it is not a publicly dedicated path, but it is depicted on the improvement plans and therefore the monies have to be held to make sure it is completed.

Mayor Jensen stated if there is an agreement signed by the Homeowner's Association saying the path is going to be stone and mulch is laid he inquired as to how that could affect the City if the Homeowner's Association shows it was not done properly and the City has the deposit. Mr. Gasior advised he needs to look into it because with what Mr. Cummins is saying he was not sure we have a deposit for that specific issue. Mr. Gasior stated he would like to double check as generally speaking when he gets the engineering numbers on a subdivision it is usually concrete sidewalks. Mr. Cummins stated it was part of the improvements listed in the engineer's estimate. Mr. Gasior advised they will look at the amount of money put on deposit, because it is 150% of the engineer's estimated value, and if there has been an agreement made with the Homeowner's Association it was all going to come into play when Mr. Batt requests his deposit be refunded. Mayor Jensen inquired if the document from the Homeowner's Association would be binding for us to say we would not refund the money until it is completed in the way it was agreed upon. Mr. Gasior stated no, that what we have to go by is what is in the engineer's plan and what the City requires by way of a deposit and if it is wood chips then that is what we are going to be looking for. Mr. Gasior continued if it states limestone then that is what the City is going to be looking for. He stated if it is something other than what is called out in the improvement plan then we are going to have to make sure that the Homeowner's Association is satisfied or the City will demand Mr. Batt does what is stated in the improvement plan or he is not going to get his deposit back. Mr. Logan did not believe a specific walking trail was listed in Phase 6, but he confirmed he has a deposit for everything listed in the Subdivider's Agreement along with the additional items that Mr. Batt and Mr. Cummins have been discussing such as the dirt pile and such. Mr. Logan stated if the walking trail was part of those discussions then yes, he does have the monies on deposit for those. Ms. Berges confirmed the walking trail was listed under #9 of Section 2 of this ordinance.

Mr. Butkowski inquired as to what date the document between the HOA and Mr. Batt was signed. Mr. Kalina stated July 19, 2014. Mr. Butkowski inquired as to what date is on the engineering agreement. Mr. Cummins advised the Phase 6 plans were approved in August of 2015. Mr. McBride felt they potentially have conflicting documents as they do not know if the HOA fees have any relevance with the City. Mr. McBride stated the deposit was normally calculated on the engineering drawing, which may or may not be incorporated in the Subdividers Agreement. Mr. McBride felt we need to make sure there was nothing in the Subdividers Agreement that calls out for a limestone walking path and he felt the issue required a little more due diligence. Mr. McBride felt the takeaway was that Mr. Batt's deposit is potentially at risk if he does not comply or properly install a walking trail if in fact we took a deposit for it. Mr. Cummins advised the engineer's estimate for Phase 6, Item 31 is for each square yard of walking

trail and there is a detail on the Phase 6 plan for a wood chip walking trail that connects into Phase 5. Mr. Butkowski said his concern is that if Mr. Batt is in a contract with the HOA and then presents a different document to City Council and it conflicts with the previous agreement we might approve something based on what we know. Mr. Butkowski added that we do not know what Mr. Batt has agreed to with the HOA. Mr. Butkowski stated if this HOA agreement predates any agreement Mr. Batt had with the City and Mr. Batt did not bring it to City Council's attention that is a big concern to him. Mayor Jensen said what Council was approving tonight he felt they still had leverage because the City has not given Mr. Batt any deposit money back, nor will they, until this is all settled. Mayor Jensen advised Mr. Batt's funds were at risk now and as long as that was understood then maybe something could be worked out with the HOA as the City may be hesitant to give back his deposit. Mayor Jensen clarified that Mr. Batt has always come through with requests from the City, but stated that potentially those funds were at risk of being returned. Mr. Tessloff understood and said he would advise Mr. Batt as they were meeting again soon. Mr. Gasior stated that Item 31 was \$4,200. Mr. Cummins clarified that amount was in the original, but then it was revised upward because Phase 5 had not been done yet and all of Phase 5 and 6 were going to be done together. Mr. Cummins said the City secured an additional deposit related to what the developer is committed to. Mr. Gasior stated it was \$43,530 on deposit for sidewalk and wood chips. He inquired if that amount would be sufficient. Mr. Cummins agreed it would be. Mr. Gasior reiterated City Council does not need to hold up any action tonight since we have deposits to cover in the event there is a failure to follow through.

The vote was: Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Mr. Radcliffe, "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.

ORDINANCE NO. 67-16 – TO AUTHORIZE AN INCREASE IN MUNICIPAL WATER RATES

The Clerk read Ordinance No. 67-16 by title only, entitled:

**AN ORDINANCE TO AMEND SECTION 1040.01(a) OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO INCREASE THE RATES CHARGED FOR WATER SERVICE FOR THE CITY OF AVON 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. 67-16, and the vote was: Mr. McBride, "yes"; Mr. Radcliffe, "yes"; Ms. Berges, "yes"; Mr. Butkowski, "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. 67-16, and the vote was: Mr. Radcliffe, "yes"; Ms. Berges, "yes"; Mr. Butkowski, "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.

ORDINANCE NO. 68-16 – TO AUTHORIZE AN INCREASE IN MUNICIPAL SANITARY SEWER RATES

The Clerk read Ordinance No. 68-16 by title only, entitled:

**AN ORDINANCE TO AMEND §1042.02(i) OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO INCREASE SANITARY SEWER RATES AND DECLARING AN EMERGENCY**

A motion was made by Mr. Radcliffe and seconded by Mr. Butkowski to suspend the rules and act on Ordinance No. 68-16, and the vote was: Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “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. Butkowski to adopt Ordinance No. 68-16, and the vote was: Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Witherspoon, “yes”.

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

ORDINANCE NO. 69-16 – 2017 PRELIMINARY BUDGET

The Clerk read Ordinance No. 69-16 by title only, entitled:

**AN ORDINANCE ESTABLISHING A TAX BUDGET FOR THE CURRENT EXPENDITURES OF THE CITY OF AVON, LORAIN COUNTY, OHIO, FOR THE FISCAL YEAR ENDING DECEMBER 31, 2017 AND DECLARING AN EMERGENCY**

A motion was made by Mrs. Holtzmeier and seconded by Ms. Berges to suspend the rules and act on Ordinance No. 69-16, and the vote was: Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “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 Mr. Butkowski and seconded by Mrs. Holtzmeier to adopt Ordinance No. 69-16, and the vote was: Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. Witherspoon, “yes”.

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

ORDINANCE NO. 70-16 – ACCEPTING THE INSURANCE PROPOSAL BY CUSTIS INSURANCE SERVICES

The Clerk read Ordinance No. 70-16 by title only, entitled:

**AN ORDINANCE ACCEPTING THE INSURANCE PROPOSAL  
SUBMITTED BY CUSTIS INSURANCE SERVICE  
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. 70-16.

The discussion was: Mr. Radcliffe inquired if there were any changes or differences from the previous policy. Mr. Logan stated no, not with this year and he added the City is staying with Houston Casualty Company for another year although the premium is higher since we have added \$50-\$60 million of value with the water tower and the aquatic facilities. Mr. Logan added the premium rate went up by 3%.

The vote was: Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Butkowski, “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. 70-16, and the vote was: Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Mr. Witherspoon, “yes”.

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

ORDINANCE NO. 71-16 - TO AMEND THE SPECIAL USE PERMIT FOR THE CITY OF AVON TO INCLUDE A REPLACEMENT SIGN TO BE LOCATED AT 36225 DETROIT ROAD (POST OFFICE)

The Clerk read Ordinance No. 71-16 by title only, entitled:

**AN ORDINANCE TO AMEND THE SPECIAL USE PERMIT FOR THE CITY OF AVON TO CONSTRUCT A REPLACEMENT SIGN AT 36225 DETROIT ROAD TO BE USED BY THE UNITED STATES POSTAL SERVICE AND THE CITY OF AVON AQUATIC CENTER 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. 71-16, and the vote was: Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “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 Mrs. Holtzmeier to adopt Ordinance No. 71-16.

The discussion was: Mr. McBride commented that the design of the sign was much simpler than we have had in the past and he felt that was a nice addition. Mayor Jensen stated this will not move forward until Council approves the spending of the money for the sign, but this is the first step in the approval process.

The vote was: Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “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.

ORDINANCE NO. 72-16 – TO AMEND THE SPECIAL USE PERMIT FOR AVON OAKS COUNTRY CLUB TO INCLUDE A 20’ X 26’ CONCRETE PATIO TO BE LOCATED AT 32300 DETROIT ROAD

The Clerk read Ordinance No. 72-16 by title only, entitled:

**AN ORDINANCE TO AMEND THE SPECIAL USE PERMIT FOR AVON OAKS COUNTRY CLUB TO ALLOW FOR THE CONSTRUCTION OF A 20’ X 26’ OUTDOOR CONCRETE PATIO LOCATED AT 32300 DETROIT ROAD, AND DECLARING AN EMERGENCY**

A motion was made by Mr. Radcliffe and seconded by Mrs. Holtzmeier to suspend the rules and act on Ordinance No. 72-16, and the vote was: Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. Witherspoon, “yes”.

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

And the discussion was: Mr. Gasior noted there were some changes made to Section 2 and he inquired if there were any issues with those changes. Mr. Gasior stated the changes were the conditions called out at the Work Session and he felt obviously the project should proceed pursuant to the plans and specifications that were submitted by the Planning Commission. Mr. Gasior pointed out there is an attached Exhibit “A” that dictates there would be no serving of food and beverages on the patio, although he would imagine someone could drink hot chocolate or iced tea, but there would be no service on the patio. Mr. Gasior further clarified there would be no mechanically amplified sounds permitted on the patio as well as only low voltage landscape lights utilized for illumination. Mr. Gasior stated the patio hours would be 8:00 am to 9:30 pm with the maximum number of people permitted on the patio limited to 30 as well as in compliance with all other applicable requirements of the code.

Mayor Jensen inquired if Council was willing to add “at dark with no later than 9:30 pm” to the legislation. Mr. Saumial Jhavar, President of Avon Oaks felt that language would be fine as most of the time the patio would be utilized in the summer. There was then discussion about defining

the closing hour for the patio. Besides the “at dark but no later than 9:30 pm” other suggestions were for “at sunset”, “at 9:30 pm in the summer months” or keeping it at 9:30 p.m.

Mrs. Holtzmeier advised she couldn't speak to what residents Mr. Fischer spoke with, but today she reached out to the residents that were here last week and those same residents that came to Planning and she spoke with them specifically about these amendments asking where they stand on them. Mrs. Holtzmeier stated their first and foremost concern is noise. Mrs. Holtzmeier advised what they requested is that they be provided with some recourse to help mitigate the noise as stated in the details such as if there are less than 30 people they greatly reduce the potential noise than if there are 60 people. She added by not allowing mechanical amplification then it is made clear they cannot put a wifi speaker turned up and play music on the patio or even a microphone for a speech. Mrs. Holtzmeier said the same thing with the low voltage lights because if it is 10:00 pm in November you can be on the patio when it is dark and cold as long as you are not making noise, as that is where their concern lies. She felt the property owners were less sensitive to the timing than they were the noise issue and 9:30 pm is a good compromise. Mrs. Holtzmeier stated she is pleased with where they are at in this agreement and she originally voted no because she didn't feel there was enough compromise between the two parties. She felt this provides more compromise and she felt the residents could live with it because it gives them some recourse if any of these conditions are not met and gives specific guidelines to work with. Mrs. Holtzmeier said she did not believe the residents have any measureable issue with 9:30 p.m. to stop us from approving it.

Mr. McBride inquired if there was a specific prohibition against music. He related a musical instrument could be considered amplified. Mayor Jensen suggested we approve it as is if as Mrs. Holtzmeier stated everyone is good with it. Mr. Witherspoon said that Mr. Fischer had some concerns about the drawing previously submitted and something a little more precise was drawn up and he felt that took care of the second issue addressed. The discussion centered around whether unamplified musical instruments or singing or other such possible sound producing activities should be addressed. Mr. Gasior stated he could add musical instruments or singing. Ms. Berges believed in the Planning meeting she thought they had said no music and the previous version of this ordinance said “no music”. Mr. McBride said it should be no music unamplified or amplified. Ms. Berges agreed it should be put back in the ordinance. Mr. Gasior stated that Item 3 in Section 2 would be amended as follows: *that there be no mechanically amplified sound and no music or singing, whether amplified or not, permitted*. Mr. Gasior stated the motion will be to amend Item 3 and Item 5; *and the patio hours shall be from 8:00 am to 9:30 pm*.

A motion was made by Mr. Mc Bride and seconded by Ms. Berges to adopt Ordinance No. 72-16 as amended, and the vote was: Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Butkowski, “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.

ORDINANCE NO. 73-16 – TO CREATE A SPECIAL USE PERMIT FOR FATHER RAGAN, KNIGHTS OF COLUMBUS, TO INCLUDE A BASEBALL FIELD LOCATED AT 1783 MOORE ROAD

The Clerk read Ordinance No. 73-16 by title only, entitled:

**AN ORDINANCE GRANTING A SPECIAL USE PERMIT  
TO THE FATHER RAGAN CHARITABLE FOUNDATION TO CONSTRUCT A  
BASEBALL FIELD, BACKSTOP AND FENCE ON PROPERTY IT OWNS AT 1783  
MOORE ROAD, AND DECLARING AN EMERGENCY**

A motion was made by Mrs. Holtzmeier and seconded by Ms. Berges to suspend the rules and act on Ordinance No. 73-16, and the vote was: Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “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. 73-16.

The discussion was: Mayor Jenson responded to a question posed by Mr. McBride that he sent all the information to the affected parties and they never got back to him. Mayor Jenson advised if for some reason baseballs are flying over the fence, there is a 16’ fence on the eastern corner, they may have to revisit this and ask for netting to be installed. He advised at this point there is no issue and it does not look like it will be an issue, but you never know until it happens. It was noted the fence is chain link.

The vote was: Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Witherspoon, “yes”.

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

**ORDINANCE NO. 74-16 – TO REZONE THE FRONT PORTION OF A PARCEL OF LAND  
AT 36460 CHESTER ROAD FROM C-1 TO C-1/R-3 OVERLAY**

The Clerk read Ordinance No. 74-16 by title only, entitled:

**AN ORDINANCE TO AMEND ORDINANCE NO. 413-68, PASSED JANUARY 15, 1969  
COMMONLY KNOWN AS THE ZONING ORDINANCE OF THE CITY OF AVON,  
OHIO, AS AMENDED, REZONING THE FRONT PORTION OF A PARCEL OF LAND  
CONSISTING OF APPROXIMATELY 2.2466 ACRES LOCATED AT 36460 CHESTER  
ROAD, PERMANENT PARCEL NO. 10-04-00-016-101-127 FROM  
C-1 NEIGHBORHOOD BUSINESS DISTRICT TO C-1 NEIGHBORHOOD  
BUSINESS/R-3 MULTIFAMILY DISTRICT**

The Chairman declared this to be the first of three readings of Ordinance No. 74-16 and announced a Public Hearing to be held on Monday, July 11, 2016 at 7:15 pm

ORDINANCE NO. 75-16 – TO CREATE A SPECIAL USE PERMIT FOR 18/8 FINE MENS SALON TO INCLUDE AN OUTDOOR PATIO TO BE LOCATED AT 35972 DETROIT ROAD

The Clerk read Ordinance No. 75-16 by title only, entitled:

**AN ORDINANCE GRANTING A SPECIAL USE PERMIT TO FIRST INTERSTATE AVON, LTD TO ENABLE ITS TENANT, 18/8 FINE MEN’S SALON, TO CONSTRUCT AN ENCLOSED 600 SQ. FT. OUTDOOR SEATING AREA WITH DECORATIVE FENCING AND LATCHING GATE AT 35972 DETROIT ROAD AND DECLARING AN EMERGENCY**

A motion was made by Mrs. Holtzmeier and seconded by Mr. Radcliffe to suspend the rules and act on Ordinance No. 75-16, and the vote was: Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “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. Radcliffe to adopt Ordinance No. 75-16, and the vote was: Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. Witherspoon, “yes”.

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

ORDINANCE NO. 76-16 – TO AMEND PART 12 OF THE CODIFIED ORDINANCES (PLANNING AND ZONING CODE) PERTAINING TO GRANTING OF SPECIAL USE PERMITS AND REQUIREMENTS FOR CONGREGATE CARE FACILITIES AND SENIOR LIVING

The Clerk read Ordinance No. 76-16 by title only, entitled:

**AN ORDINANCE AMENDING PART TWELVE OF THE CODIFIED ORDINANCES OF THE CITY OF AVON (THE PLANNING AND ZONING CODE) SPECIFICALLY CHAPTERS 1222, 1228, 1230, 1264, 1270 AND 1280, AS THEY PERTAIN TO ADMINISTRATIVE PROCEDURES FOR THE GRANTING OF SPECIAL USE PERMITS AND REQUIREMENTS FOR CONGREGATE CARE FACILITIES AND SENIOR LIVING**

The Chairman declared this to be the first of three readings of Ordinance No. 76-16 and announced a Public Hearing to be held on Monday, July 11, 2016 at 7:25 pm

ORDINANCE NO. 77-16 – TO EXTEND THE TEMPORARY MORATORIUM ON THE ESTABLISHMENT, DEVELOPMENT AND CONSTRUCTION OF ALL CONGREGATE CARE FACILITIES

The Clerk read Ordinance No. 77-16 by title only, entitled:

**AN ORDINANCE EXTENDING THE TEMPORARY MORATORIUM ON THE ESTABLISHMENT, DEVELOPMENT AND CONSTRUCTION OF ALL CONGREGATE CARE FACILITIES IN THE CITY OF AVON, OHIO AND DECLARING AN EMERGENCY**

A motion was made by Mrs. Holtzmeier and seconded by Mr. Radcliffe to suspend the rules and act on Ordinance No. 77-16, and the vote was: Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Butkowski, “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 Mrs. Holtzmeier and seconded by Mr. Radcliffe to adopt Ordinance No. 77-16, and the vote was: Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Mr. Witherspoon, “yes”.

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

**ORDINANCE NO. 78-16 – TO AUTHORIZE THE CITY TO ENTER INTO AN AGREEMENT WITH FIRST FEDERAL OF LAKEWOOD FOR DEPOSIT OF PUBLIC MONIES**

The Clerk read Ordinance No. 78-16 by title only, entitled:

**AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH FIRST FEDERAL OF LAKEWOOD FOR DEPOSIT OF PUBLIC MONIES 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. 78-16, and the vote was: Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “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. Radcliffe to adopt Ordinance No. 78-16.

The discussion was: Mr. Logan advised he thought the agreement the City currently has with First Federal of Lakewood went through December 31, 2016, but it expired December 31, 2015. Mr. Logan stated we use this bank for depository for our online credit card monies and it pays a little better interest rate than what we could get somewhere else. Mr. Logan advised he was requested this be adopted to put us in good standing with the bank again and it will be good for five years ending December 31, 2021.

The vote was: Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “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.

ORDINANCE NO. 79-16 – TO AWARD BID FOR THE 2015 ASPHALT ROAD PROGRAM PHASE 2 – JAYCOX ROAD WIDENING

The Clerk read Ordinance No. 79-16 by title only, entitled:

**AN ORDINANCE TO AWARD THE BID FOR THE  
2015 ASPHALT ROAD PROGRAM PHASE 2- JAYCOX ROAD WIDENING  
WITH ALL APPURTENANCES THEREO AND DECLARING AN EMERGENCY**

A motion was made by Ms. Berges and seconded by Mr. Radcliffe to suspend the rules and act on Ordinance No. 79-16, and the vote was: Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Butkowski, “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. Radcliffe and seconded by Ms. Berges to adopt Ordinance No. 79-16.

The discussion was: Mrs. Holtzmeier noted for the record that because it is called the “2015 Asphalt Road Program” does not mean the road will be completed in 2015, but rather it is simply the name of the project and the work is being done in 2016. Mr. Radcliffe inquired regarding the bids received if the engineer was satisfied with results. Mr. Cummins stated KMU Trucking & Excavating is an excellent company based here in Avon and are currently doing the Chester Road projects both for the City and for the developer and he has no issues. Mr. Cummins added in discussions with KMU, they would probably get started with this project toward the end of July, which is earlier than what was listed because Nagel Road is getting completed ahead of schedule allowing this project to start ahead of schedule. Mr. Witherspoon inquired if they were going to change the grade on Detroit Road to which Mr. Cummins responded no. Mr. Cummins said Detroit would just be resurfaced as that change in grade was going to be a second phase and they would like to not move forward with that at this time and revisit it at a later date.

The vote was: Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Butkowski, “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.

MOTION TO APPOINT BARBARA BROOKS, CLERK OF COUNCIL AS THE DESIGNEE TO OBTAIN THE NECESSARY TRAINING REGARDING THE OHIO PUBLIC RECORDS ACT AND THE OHIO OPEN MEETINGS ACT FOR THE CITY OF AVON ELECTED OFFICIALS PURSUANT TO OHIO REVISED CODE §149.43

Mr. Witherspoon stated this was a requirement for elected officials or their designee to attend the training as it pertains to the Sunshine Laws in Ohio.

A motion was made by Ms. Berges and seconded by Mr. Butkowski to approve and the vote was: Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Mr. Witherspoon, “yes”.

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

## REPORTS AND COMMENTS

Mayor Jensen said the Nagel Road project was almost complete and they were just waiting on the paving marking to be done. He stated the road should open in the next day or two once the striping is complete. Mayor Jensen advised he has received a large amount of complaints from residents about door to door solicitation and we may have to come to Council to consider a stiffer penalty. He indicated they were looking into every avenue since the volume of complaints is so high and residents are saying they feel strong armed and badgered. Mayor Jensen commented the “Do Not Knock” list has increased by over 100 in just this last week. He said the City is recommending everyone who does not want solicitation to get the red sticker on their door that says “No Soliciting”. Lastly, Mayor Jensen said Ms. Pat Jankowski brought to his attention when talking about the water rate increase that we should look at billing people exactly what they use and not have the minimum since many retirees or those living alone do not use as much water. Mayor Jensen indicated he spoke with Mr. Logan and Mr. Lorenzo and they had no issues and it would not cost the City anything additional to calculate it in that manner. He said legislation will be coming before Council in a couple of weeks asking for that change to bill only for what is used, which he felt was fair. He stated how the new meter technology makes that possible along with being able to detect leaks sooner. He ended his comments with, “Go Cavs”.

## COUNCIL MEMBERS:

Ms. Berges, Ward 3 thanked Ms. Pat Jankowski for bringing that issue to the attention of the Mayor and she thanked the Mayor for doing something about it, as she felt that was great. Ms. Berges congratulated Mayor Jensen and all the City departments and City employees for helping to make Avon the No. 1 suburb this year as reported in Cleveland Magazine.

Mr. Butkowski, Ward 1 had no comments.

Mr. Fischer, At Large was absent.

Mrs. Holtzmeier, At Large thanked Mayor Jensen for the moment of silence at the beginning of the meeting. She felt that when tragedies like that happen, it was important for us to take a moment to reflect and remember versus saying nothing and she appreciated that gesture. She reminded everyone to mark their calendars for Monday, July 4<sup>th</sup> because Avon will be doing something new by having a “bike parade” beginning and ending at the pool at 10:30 am for a one mile course. She invited everyone of all ages to decorate their bikes and come out and help celebrate America’s Independence rain or shine.

Mr. McBride, Ward 2 reported the Legal Committee met earlier this evening and they revisited the ordinance issue regarding used car operations in the City. He advised the members of the committee are in agreement it is not worth entertaining a change to the current zoning and planning code. Mr. McBride stated used car lots are not a permitted use as a sole business in Avon. He said that if you want to sell used cars in Avon you must be a new car franchise. Mr. McBride added that you used to be able to open a used car lot in Avon and there are still some existing businesses that are grandfathered, but that was changed not long ago and you cannot sell used cars as the primary business. Mr. McBride stated there was a company that was pulling wire across Detroit Road and a flagman was present and they were blocking the westbound traffic and he thought the flagman was going to stop traffic, but he did not and a car made a left turn and a guy pulling a piece of rope walks out in the center of traffic closing down multiple lanes. Mr. McBride advised he would like to see us require these utility companies to provide traffic plans and not on a busy Saturday morning. He felt some of this kind of work could be done on third shift because on a main road, such as Detroit Road, the weekend is one of the worst times. Mr. McBride said he saw no reason why restrictions could not be placed on these utility companies the same as they are for paving projects or tree trimming. He said he would hate to see a major accident happen. Mr. McBride commented that a certain retailer in town who again had merchandise outside of their designated retail area leaving a single lane of traffic and he felt the City should start issuing summons to the corporate offices or let everyone do it. He felt we were putting our locally based businesses at a disadvantage by allowing this big company from out of town that seems to do whatever they want.

Mr. Radcliffe, Ward 4 had no comments.

Mr. Witherspoon, Council President inquired of Mr. Farmer why they did not stripe Nagel Road yesterday as scheduled. Mr. Farmer stated the striping company did not show up. Mr. Witherspoon said every day that project does not get finished is a nightmare for the entire area. Mr. Farmer agreed and stated their striper was supposed to be there today and they just did not show up to do the work. Mr. Farmer added that First Energy was there doing work today. Mr. Witherspoon inquired if there was a way to make certain they show up tomorrow. Mr. Farmer advised he would do his best and hopefully it does not rain tomorrow. Mr. Witherspoon stated the whole city would appreciate getting that road open as soon as possible.

#### ADMINISTRATION:

Ms. Corrao, Parks and Recreation Director stated the Duck Festival was this weekend. She said the parade is Saturday morning and Detroit Road would be closed and she asked everyone to plan accordingly. Ms. Corrao said it was going to be great with big crowds and music and fabulous weather. She invited everyone to participate in the festival and eat fair food.

Mr. Cummins, City Engineer had no remarks.

Mr. Farmer, Service Director had no remarks.

Ms. Fechter, Economic Development/Planning Coordinator had no remarks.

Mr. Gasior, Law Director had no remarks.

Mr. Logan, Finance Director stated Council had copies of the certificates of estimated property tax values from the county requested by the resolutions Council passed. He said looking at the different mills for the police and fire levies the next step would be for Council in conjunction with the Finance Committee to recommend what should be placed on the ballot in November. Mr. Logan advised he will be sending an email out to the Finance Committee to recap what was discussed at a previous Finance Committee meeting. He said a couple of ordinances would be on the next Work Session agenda with the ballot language. Mayor Jensen advised the City Administration is going to recommend a Replacement Levy for the Fire Department since the millage is so low and we need to generate more income to be able to replace a fire engine soon and the possibility of a new fire station at some point in the near future. Mayor Jensen added they are also recommending a Renewal Levy for the Police Department, but they would discuss both further and they were important ballot issues. Mayor Jensen advised these levies, if approved by the voters, would not start collecting until 2018. He added the Fire Department is not frivolously spending money, but those funds are needed to be able to do the planned capital expenditures.

AUDIENCE: No comments from audience members.

#### ADJOURN

A motion was made by Mr. Radcliffe and seconded by Mrs. Holtzmeier to adjourn the Regular Meeting of Council, and the vote was unanimous in favor.