

**MINUTES OF THE SPECIAL MEETING OF THE COUNCIL  
OF THE CITY OF AVON, OHIO, HELD MONDAY, SEPTEMBER 19, 2016  
IN THE COUNCIL CHAMBERS OF THE MUNICIPAL BUILDING  
IMMEDIATELY FOLLOWING THE WORK SESSION**

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

**PRESENT**

Council Members: 3<sup>rd</sup> Ward – Mary Berges; 1<sup>st</sup> Ward – Bob Butkowski; Council-at-Large – Brian Fischer; 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 – Mike Farmer; Law Director – John Gasior; Finance Director – William Logan; Clerk of Council – Barbara Brooks

**ABSENT**

Planning and Economic Development Coordinator - Pam Fechter

**EXECUTIVE SESSION**

A motion was made by Mr. McBride and seconded by Mr. Fischer to enter into Executive Session to discuss Pending Litigation, and the vote was: Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mr. Fischer, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Mr. Witherspoon, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

**RECONVENE**

A motion was made by Mr. McBride and seconded by Ms. Berges to Reconvene the Special Meeting of Council, and the vote was: Mr. Butkowski, “yes”; Mr. Fischer, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Witherspoon, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

**RECONSIDERATION OF ORDINANCE NO. 98-16 – TO AMEND THE SPECIAL USE PERMIT FOR AVON SENIOR LIVING LLC TO INCLUDE 76 VILLAS AT 32200 HEALTH CAMPUS BOULEVARD**

A motion was made by Mr. McBride and seconded by Mr. Butkowski to reconsider Ordinance No. 98-16, and the vote was: Mr. Fisher, “yes”; Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Butkowski, “yes” Mr. Witherspoon, “yes” .

The vote was 7 for and 0 against and the Chairman declared the motion passed.

Mr. Gasior advised that for procedural purposes the motion has to be made by 2 people who voted in the affirmative to be able to reconsider an ordinance and since everyone voted in favor when it was originally adopted there was no issue with the reconsideration vote. He stated they could now discuss the issue.

#### DISCUSSION AS IT RELATES TO THE RECONSIDERATION OF ORDINANCE NO. 98-16

Mr. Gasior said that Mr. Butkowski asked a question prior to the vote at the Regular Meeting of Council September 12, 2016 about whether the independent living units at the Edward Rose Congregate Care facility were owner occupied or rentals. Mr. Mott may have misunderstood the question, but he did answer it by saying that it was owner occupied. Before Mr. Mott left the meeting he told Ms. Fechter that he believed he misspoke and Ms. Fechter brought it to Mr. Butkowski's attention after the meeting. After discussions with Mr. Butkowski about the matter Mr. Butkowski felt the record should be cleared.

Mr. Butkowski stated that after the meeting on September 12<sup>th</sup> he felt the project was misrepresented before City Council. As all of us sit up here on City Council, we decide and make important decisions based on the information we are provided and that is why when he asked that clarifying question there was a reason behind it. Understanding that things were misrepresented at the time caused him some pause, and he wanted to clear for the record what is actually going in at that location and make sure everyone on Council understands exactly what was voted on. After that meeting, in talking with some of the individuals, they were under the impression of something different based on the response by Mr. Mott to his question. He stated that the reason for this reconsideration is he wants to make sure that the sanctity of Council and the information that is provided is accurate.

Mr. Mott apologized to Council for misstating what was actually happening. The villas are rentals and are not for sale units. They are a congregate care facility. The leasing of the villas will be managed by the same people who manage the senior care facility. The residents in the villas will have access to all the activities and facilities and are considered a stepping stone to the main facility. They are looking forward to having a first class congregate care facility here and that is all they have ever wanted and that is what it is.

Mr. McBride inquired if there would be something in writing that states the people who occupy the villas will have all the rights to utilize the congregate care facility. Mr. Mott advised there is a lease and a lease addendum. Mr. McBride interjected he was not talking about a lease, but from the city standpoint. Mr. McBride stated he wants to make certain it is tied to the developer's agreement part and parcel. Mr. McBride indicated he was trying to be clear and avoid issues in the future.

Mr. Gasior stated in the ordinance to grant the Special Use Permit, they have that it would be pursuant to plans and specifications approved by Planning Commission and final engineering. We also have a requirement in Section 2 that it meets all the codified ordinance sections listed, some of which deal specifically with congregate care. Then it also states that any expansion, development, enlargement, improvement, change in ownership, use or the like, other than maintenance of the property in its current condition, will require an amendment to this Special Use Permit, with a recommendation of Planning Commission and approval by City Council. Mr.

Gasior clarified that if Edward Rose sells the facility to someone else they would have to amend the Special Use Permit and come before Council for approval. Right now the ownership is with Edward Rose and operated by Ecumen, to which Mr. Mott confirmed. He received a copy from Mr. Mott of the lease and the lease addendum. The addendums to these leases require ID's and allow limited access, rules, owner's rights and are very specific to control the area of the independent living. In addition they have a general plan that there are 3 outdoor seating plaza areas, 3 activity courtyards and will contain active recreation. It will contain a bistro café along with the main dining area and indoor amenities. Some of this will be used exclusively by those in the memory care unit, but some of these amenities will be available to those living in the independent units. Some amenities will be available free of charge and others will be available for a minimal charge as part of the rent, to which Mr. Mott confirmed.

Mr. Gasior said the reason they approved it in the first place is because it fell into that same "St. Mary's of the Woods" mold of what we conceived to be a congregate care facility, unlike something they talked about in late 2014 and early 2015 with another project. To Mr. McBride's point, he thinks that if they tried to change ownership and separate the independent living units from the memory care unit that it would have to come before Council for permission to do so. Mr. McBride stated we would never know. Mr. Gasior advised they would be in violation if we found out and they would be brought before Council and we could make amendments to this Special Use Permit as deemed appropriate based on the ownership.

Mr. McBride said it is being based on that lease, which is not part of the Developer's Agreement or part of the Special Use Permit, unless it was referenced in the legislation. Mr. Gasior stated they could do that. Mr. McBride stated all he wanted was a simple statement with one or two sentences saying that these independent living units are part and parcel to the congregate care facility. Something that definitely ties them other than a couple of referenced coded sections, but more specifically referenced. Mr. Gasior advised we could rescind the vote on Ordinance No. 98-16 as it took place last Monday September 12<sup>th</sup> and then have a new 98-16 brought before Council on September 26<sup>th</sup> and amend it to include those specific references. Mr. Gasior indicated he had a document that could be referenced and incorporated as conditions that have to be met for the independent living.

Mr. Butkowski inquired if it would have to go back before the Planning Commission because it would be amending the Special Use Permit. Mr. Gasior stated no, that amendments such as these can be done in Council since the basic concept of this being a Special Use Permit still exists and if Council decides to add other conditions they can do so.

Mr. McBride did not feel they needed to go to the extent of rescinding the legislation, but he was thinking they could do a simple amendment. He suggested they add a couple sentences or a paragraph. Mr. Radcliffe suggested making the conditions an Exhibit A to the legislation.

Mr. Gasior stated it was a motion to reconsider this ordinance that was previously adopted and his thinking was they would either reaffirm the vote or they would rescind the vote. Mr. Radcliffe inquired if they could reaffirm with attachment "A". Mr. Gasior said we can do that if you choose to make the motion to reaffirm with the document attached as Exhibit A and referenced in the ordinance. He indicated he would have to rewrite the ordinance and whatever they state on the record would be inserted.

Mr. Witherspoon inquired of Mr. Mott if he would be amenable to that modification to which Mr. Mott agreed. It was noted it was in the Use Description. Mr. Gasior added that was just a general statement. Mr. Mott advised that is something they generally include. Mr. Gasior inquired if Mr. Mott would be satisfied if we referred to the Use Description in the ordinance and included it as Exhibit A and agree to those conditions.

Mr. Gasior suggested a motion to reaffirm the adoption of Ordinance No. 98-16 with the “Rose Senior Living Villas Use Description” as an additional condition under Section 2 of the Ordinance.

Mr. McBride said the reason we are reaffirming this is because of the rental units.

#### MOTION RELATED TO THE RECONSIDERATION OF ORDINANCE NO. 98-16

A motion was made by Mr. McBride and seconded by Mr. Butkowski to reaffirm the adoption of Ordinance No. 98-16 with the “Rose Senior Living Villas Use Description” as an additional condition under Section 2 of the Ordinance, and the vote was: Mrs. Holtzmeier, “yes”; Mr. McBride, “yes”; Mr. Radcliffe, “yes”; Ms. Berges, “yes”; Mr. Butkowski, “yes”; Mr. Fischer, “yes”; Mr. Witherspoon, “yes”.

The vote was 7 for and 0 against and the Chairman declared the motion passed.

#### ADJOURN

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

The vote was 7 for and 0 against and the Chairman declared the motion passed.