

improvements are done for you. Obviously, it allows us to build the development but they are your improvements; they are built to your standards and they are for you.

Mr. Slagter continued by saying, so putting all these issues aside, we are here tonight to ask Council, through emergency ordinance, and they have authority to do so, to approve of this Ordinance in acceptance of the Subdivision. There is Supreme Court case law that we cite in our opinion that just recently came out that talks about the authority of a city to do that. Your Charter allows you to do it; you have the right to do it. It just has to be for a proper, legal, stated reason. It is crystal clear. You cannot just generally say "we want it for public health, safety, welfare." That is inappropriate. You cannot say you want to do it for Carnegie Development to help them out. Secondly, it may help Carnegie out as it may avoid these damages but that is the reason you cannot do it. And he is not asking them to do it for that reason. But what is a proper public purpose? First of all, you have a street constructed to your standards that anybody who is driving down the street would have no idea that it is private property. It has a speed limit, stop signs, a road name so no one would know it is private property. Your Police would be on private property if they drove down that road, and someone is at the end of the street, doing whatever; they would be on private property and it would have no authority. Also, these improvements were developed for your benefit; they are yours. We are holding them here; there are bonds in place for them, but you are allowed, under Supreme Court precedent, to protect your investment in infrastructure. Those are proper reasons and all you have to do under the law is simply say that in your Ordinance. And the courts do not look any further. He is not making this up; this is fact; this is reality.

Mr. Slagter said if they want to try to avoid a lawsuit by not approving this by emergency ordinance, unfortunately it is too late. The City is already in the lawsuit and so is Carnegie. We believe that lawsuit is baseless, that it is for purpose of delay and inappropriate but that is irrelevant. We are here tonight asking for you to accept these dedicated improvements which are public improvements for a public purpose. They are your improvements and you are allowed to pass legislation by emergency to protect them. You are allowed to do it to give access to your safety forces, to avoid any confusion and those purposes are more than sufficient to stand up in a court of law. And for those reasons, we ask you to do the right thing tonight and we appreciate your consideration. We are sorry that you are part of this; we did not want you to be but unfortunately you are part of this litigation but again it should not stop you from doing the right thing. There is no restraining order that has been granted against the City prohibiting you from doing this. We filed a motion to dismiss that and so the fact is, there is nothing stopping you from doing the right thing tonight and we ask that you do. Mr. Slagter thanked them for their consideration.

Gerald W. Phillips, 461 Windward Way, Avon Lake, Ohio, stated that Mr. Slagter did get a copy of the pleadings that were filed on the 26th. Mr. Phillips only had one copy and he gave it to Mr. Gasior at the last meeting. Mr. Slagter was not present and Mr. Phillips did not think he was going to show up. He paints a picture like we are trying to hide something. Yes, you can pass it on emergency but he checked the Council meetings for the last year and most subdivisions and acceptance go three readings. So if they want to give Carnegie special treatment like they have done, go ahead and do it; they can do it if they want to or they can do what they have done in the past and that is to go three readings, do not do the emergency. That is up to them. But he hopes everybody on this Council has been served with a copy of the complaint so before they take any action, they had better read it.

Peter Restivo, 4061 Nagel Road, Avon, Ohio, questioned that Council is going to pass this Ordinance on health, safety, and welfare? Do you know how many times Red Tail has flooded? And it is going to flood again and you are ignoring it. He said, let me tell you something, the health, safety and welfare is for the residents, not for the narrow interest of the developer here. What is the hurry? It was the judges of Lorain County that wanted this all put together. He will tell them who has been delaying this and it has not been him. This is not the issue in front of us here. You have one job: to protect the citizens. What is the hurry? And you are involved in a lawsuit. You should know this as Council; you are all going to be individually deposed. The Executive Sessions are going to be exposed. This is preferential treatment at an unbelievable level. It is outrageous. He said that they have laid out the facts and the facts will speak for themselves. If they are not worried that they are doing anything wrong, then let the facts speak for themselves. But there is another court: there is a court of public opinion and that has already started. Everybody is going to know the facts and know them clearly. If you lived in those houses and you spent \$1 million dollars and your house flooded and you could have done something

about it, you answer those questions. It has been 10 years since the last flood. Another one is coming and you have done nothing about it and you continue and you are running from the issue. You have a job. Do it. Protect the citizens.

Mr. McBride arrived at 6:41 p.m.

John Slagter said for the record, he wanted to indicate that Mr. Restivo told him to go to hell when he was walking past. Mr. Restivo, in a raised voice from the back of the room, repeated, "Yes, John, go to hell." Mr. Fischer reminded them to please maintain some decorum.

Mr. Slagter stated, as a follow-up, we are not here tonight over the stormwater and the design of that. We are here over the acceptance of the improvements. Again, the stormwater was approved over 10 months ago after the City Engineer looked at it. If they had an issue with it, then the proper channel legally would have been to file an administrative appeal within 30 days. They had a legal obligation and when you fail to do that, they have no ability to bring this lawsuit.

2. ORDINANCE NO. 86-23 – DECLARING THE INTENTION OF THE CITY OF AVON TO CONSENT TO THE RECONSTRUCTION AND WIDENING OF PAVEMENT & ASSOCIATED IMPROVEMENTS ALONG CERTAIN SECTIONS OF INTERSTATE ROUTE 90 (IR-90) BY THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) Mayor Jensen

Mayor Jensen stated that this is just a simple agreement like we have always done with ODOT when they do work on I-90. This is the part from Rt. 611 back through Sheffield as we had talked about a few months back. The one thing that is not on here that they still have not voted on yet from what he understands, is putting the wall in there. We are told that once the residents have voted to have that wall, that wall will be put in at the same time that the pavement is widened. Mr. Cummins and Mr. Streator are both aware that the wall is imperative in terms of when this goes through so that discussion will be continuing to move forward.

3. ORDINANCE NO. 87-23 – AUTHORIZING A SPECIAL USE PERMIT FOR PROPERTY OWNED BY ACE ACQUISITIONS, LLC TO ALLOW THEIR TENANT, INN THE DOG HOUSE, INC. (dba INN THE DOGHOUSE) TO CONSTRUCT AND OPERATE A DOG AND CAT DAY CARE, ANIMAL BOARDING AND GROOMING FACILITY LOCATED AT 37525 COLORADO AVENUE Planning Referral

Ms. Fechter stated that Inn the Doghouse would like to come into Avon. They are looking to build a 9,100 sq. ft. facility on Rt. 611 in the old Party Animal building. As you know, we recently changed our Code under livestock and these facilities are only allowed in the M-1 zoning district. There will be 15 to 20 employees in their full occupancy. The times that the dogs spend outside are supervised times. They are not allowed to roam free. There will be an 8 ft. fence to keep the dogs in. The dogs will be spending the night and they will not be supervised at that time so the dogs will be in kennels.

Mr. Fischer asked if there was a drawing on this yet and Ms. Fechter said they just had a drawing of the lot shown where the dog runs are going to be and she asked Mrs. Callahan to come forward to explain where those will be.

Whitney Callahan, 13885 Edgewater Drive, Lakewood, Ohio, stated that their intent is to purchase the property and they hope to close this month if they receive approval from City Council. There will really be no dog runs outside. The green fenced-in areas to the west and south of the property are just fenced-in areas where the dogs will be allowed to exercise during the day. The dogs are only outside, supervised, from 7:00 a.m. to 7:00 p.m. Monday through Friday and on Saturdays and Sundays from 9:00 a.m.-11:00 a.m. and 5:00 p.m. – 7:00 p.m. Mrs. Callahan said that she has been in business 20 years this October and she was one of first pioneers of dog day cares in Northeast Ohio. She has a facility in Lakewood and one in Mentor and they are a privately-held, small business. She currently has about 29 employees and hopes to grow this number. She said that every facility gets better; she is hoping to add maybe a water feature or some things like that for the dogs outside at the Avon facility. The kennels are all inside, the suites are inside; dogs would spend the night but people would not spend the night.

Mr. McBride asked how the outdoor noise would be controlled as the outdoor areas are adjacent to homes in Stonebridge Subdivision. Ms. Fechter said, yes, they are. Planning Commission held a Public Hearing and no one attended. Mrs. Callahan said that she recognized that there are homes behind them. They have always been good neighbors. In Lakewood there is a KFC directly next to them and people order from their drive-thru. There has never been a complaint. They have always been good neighbors in the cities that they occupy and they would certainly respect that. If there was a concern, they would address it. These dogs will be supervised. They are not going to be outside just barking incessantly but they do recognize that dogs bark. They are backed up by woods; the houses to the left of them are farther away than any other houses in either of the other cities. She said she would encourage Council to just drive by their other facilities if they do have concerns.

4. ORDINANCE NO. 88-23 – APPROVING MODIFICATIONS TO THE SANITARY SEWER MASTER PLAN AND ADOPTING SAID MODIFICATIONS AS REVISIONS TO THE OFFICIAL SANITARY SEWER MASTER PLAN FOR THE CITY OF AVON Planning Referral

The First of Three Readings will be held at the Regular Meeting
Immediately Following this Work Session
A Public Hearing will be held on Monday, September 11, 2023 at 7:25 p.m.

Ms. Fechter advised that Kevin Urig of Route 83 Properties came in to Planning Commission proposing a subdivision, Stoney Acres. With that subdivision, five of those lots needed to be added to a different Sewer District. We saw that as an opportunity to allow us to take a few parcels that were along Rt. 83 off from septic and add them into the Sewer District. The geography in that area is very tricky and the likelihood of sewers getting to that area is somewhat slim so we thought this would be a perfect opportunity to modify the Sewer District, add the few parcels on Rt. 83, and allow the subdivision, and we request that the Sewer District be modified.

Mayor Jensen noted that this is over by Willoway Nursery so it would be taking Willoway's offices off septic which the Lorain County Health Department is always for. There is that big ditch on the side that Willoway is on and even to try to bring sewer over anytime soon would be a huge challenge. The chances of anything happening are probably far in the future. So the Health Department thought this was a good idea and they appreciate all that we can do to get residents off septic systems.

5. ORDINANCE NO. 89-23 –AUTHORIZING THE HIRING OF THE LAW FIRM OF DOOLEY, GEMBALA, McLAUGHLIN & PECORA AS SPECIAL COUNSEL TO THE CITY OF AVON FOR ALL MATTERS PERTINENT TO THE CASE OF STATE EX REL AVON, OHIO, PETER RESTIVO vs CITY OF AVON, et al Mr. Gasior

Mr. Gasior stated that this is pretty straightforward. We are going to ask Council tonight to approve the hiring of outside counsel to represent the City in the case just referenced.

6. ORDINANCE NO. 90-23 – REAPPROPRIATIONS Mr. Presley

Mr. Presley explained the reappropriations as follows:

General Fund No. 101

Increase Land Purchases by \$665,000 as the original budget is insufficient to close on the properties approved by Council. (The Fratianne property and the Koosh property).

Increase Transfer to Traxler Fund by \$150,000 as it was not included in the original budget.

Total General Fund Reappropriations \$815,000.00

Park Operating Fund No. 250

Increase Operating by \$20,000 as appropriations are insufficient for the purchase of AEDs for active parks.

Total Park Operating Fund Reappropriations \$ 20,000.00
Capital Improvements Fund No. 401
Increase Buildings by \$175,000 as appropriations are insufficient to construct new Restrooms near the Aquatic Center.

Increase Land Purchases by \$40,000 as it was not included in the original budget. (The Church Street property).

Total Capital Improvement Fund Reappropriations \$215,000.00

Traxler Fund No. 407

Increase Land Purchases by \$1,480,000 as it was not included in the original budget.

Total Traxler Fund Reappropriation \$1,480,000.00

Grand Total of all Reappropriations \$2,530,000.00

(Grant of \$350,000 from Clean Ohio to offset the purchase of the Koosh Property. Grants of \$937,000 from OPWC and \$400,000 from State of Ohio to offset the purchase of the Traxler Property)

7. ORDINANCE NO. 91-23 – AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT TO PURCHASE REAL ESTATE LOCATED AT 2530 CHURCH STREET IN THE CITY OF AVON, PERMANENT PARCEL NO. 04-00-010-115-010 FROM MARK W. LADEGAARD Mr. Gasior

Mr. Gasior advised that this is the parcel that is directly south of the old Buck's Hardware parcel. It is not a very big parcel of land and the price is very reasonable. Council has had a chance to review the purchase agreement and if we can go forward tonight, that would be great. Mr. Gasior added that he would probably discuss this a little bit more in Executive Session.

8. REPORTS AND COMMENTS

MAYOR JENSEN had no comments.

COUNCIL MEMBERS:

MRS. DEMALINE, WARD 1, had no comments.

MRS. HOLTZMEIER, AT LARGE, had no comments.

MR. MCBRIDE, WARD 2, had no comments.

MR. MOORE, WARD 3, had no comments.

MR. RADCLIFFE, WARD 4, stated that he heard very positive things about the 4th of July celebrations last week with the City, with the ballpark and everything going on there and he gave kudos to all those involved.

MR. WITHERSPOON, AT LARGE, said that Mrs. Holtzmeier did a fantastic job with the 4th of July Bike Parade again this year. It was a wonderful turnout and was not an easy job for Mrs. Holtzmeier but she did great.

MR. FISCHER, AT LARGE, had no comments.

DIRECTORS/ADMINISTRATION:

MR. CUMMINS, CITY ENGINEER, was absent.

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

MR. GASIOR, LAW DIRECTOR, had no comments.

MR. PRESLEY, FINANCE DIRECTOR, stated that the Regional Income Tax Agency, RITA, will be mailing out over 3,600 letters to individuals who for one reason or another, did not file a municipal income tax return over the past several years. If any of Council's constituents should call, please have them call him or there are instructions on the notification that they receive to call RITA for further information of what they need to do to be compliant with that letter.

Mr. McBride said that 3,600 seems a higher number than normal and he asked Mr. Presley if that was correct. Mr. Presley responded that he does not have a history on that but he wanted to make sure that we stay on these so that the number does not grow even more exponentially so this is something that he will do annually just to keep that number down.

MR. STREATOR, SAFETY DIRECTOR/PUBLIC SERVICE DIRECTOR, was absent.

AUDIENCE:

Gerald W. Phillips, 461 Windward Way, Avon Lake, Ohio, stated that there is some litigation going on in the City of Lorain concerning the Sunshine Law where Council members are texting during the meeting and also having ex parte private conversations so he just want to make them aware of that.

9. EXECUTIVE SESSION: 6:58 p.m.

A motion was made by Mr. McBride and seconded by Mrs. Holtzmeier to Enter Into Executive Session for the Purpose of Discussing Pending Litigation and the Purchase of Real Estate, and the vote was: Mrs. Demaline, "yes"; Mrs. Holtzmeier, "yes"; Mr. McBride, "yes"; Mr. Moore, "yes"; Mr. Radcliffe, "yes"; Mr. Witherspoon, "yes"; Mr. Fischer, "yes".

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

10. RECONVENE: 7:55 p.m.

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

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

11. ADJOURN: 7:56 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