

**CITY OF AVON PLANNING COMMISSION
AUGUST 16, 2023, 7:00 P.M.
REGULAR MEETING MINUTES**

PUBLIC HEARINGS

None

ROLL CALL

The meeting was called to order by Chair Witherspoon at 7:00 p.m. in Council Chambers.
Present: Bill Fitch, Bryan Jensen, Mayor, Jim Malloy, Scott Radcliffe, Carolyn Witherspoon, Chair, Staff: Ryan Cummins, City Engineer; Pam Fechter, Planning Coordinator; John Gasior, Law Director; Duane Streator, Safety Director; Jill Clements, Zoning Enforcement Officer Susan Pintz, Planning Commission and Zoning Secretary

REVIEW & CORRECTION OF MINUTES

Motion to dispense with the reading of the minutes of the regular meeting held on July 19, 2023, and to approve the minutes as published.

Mr. Malloy moved, seconded by Mayor Jensen, to dispense with the reading of the minutes of the regular meeting held on July 19, 2023, and to approve the minutes as published. The vote was: “AYES” all. The Chair declared the motion passed.

REPORTS & CORRESPONDENCE

None

ADDITIONS & DELETIONS

Motion to add or delete items from the agenda.

Motion to approve the amended agenda.

1. Middleton Crossing-General Development Plan, PL20230013

Aaron Appell of Bramhall Engineering is requesting approval of the General Development Plan creating 4 sublots on the 8.79-acre parcel at the southwest corner of Middleton Road and Nagel Road, Parcel Number 04-00-022-102-150.

Aaron Appell, Bramhall Engineering, 801 Moore Road, Avon, Ohio 44011.
Frank Jaram, LIG Land, 35700 Royalton Road, Grafton, Ohio 44044.

Aaron Appell begins to explain the drawing on the screen. It is the General Development Plan. It consists of 1 development that is known as a Sheetz Gas Station at the northeast corner. There are 2 access roads that are highlighted that bisect the property. One connects to Nagel Road East and one connecting to Middleton to the north. Southwest corner is a stormwater management pond that will service the entire roughly 8-acre development. The other 3 sublots, those are preliminary layouts, those are subject to change in the future. There is a turn lane on Nagel Road that is included with the General Development of the project as required by the Traffic Impact Study. He asked if there are any questions.

Ms. Fechter indicates that staff comments have been addressed and would recommend this move forward.

Mr. Cummins states this is the General Development Plan. He does not have any comments on the General Development Plan but will have comments on Final Development which is the next item. He has no objections to the General Development Plan.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: “AYES” all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the General Development Plan creating 4 sublots on the 8.79 acres parcel at the southwest corner of Middleton Road and Nagel Road. The vote was: “AYES” all. The Chair declared the motion passed.

2. Middleton Crossing-Final Development Plan, PL20230014

Aaron Appell of Bramhall Engineering is requesting approval of the Final Development Plan creating 4 sublots (including Sheetz) and roadwork, utility extension and related stormwater management on the 8.79-acre parcel at the southwest corner of Middleton Road and Nagel Road, Parcel Number 04-00-022-102-150.

Aaron Appell, Bramhall Engineering, 801 Moore Road, Avon, Ohio 44011.
Frank Jaram, LIG Land, 35700 Royalton Road, Grafton, Ohio 44044.

Aaron Appell says as a quick summary these are detailed improvement plans that include public water main, private sanitary sewer, private storm sewer, private roadways, dedicated right turn lane off Nagel Road, that would a city accepted improvement, at such time the improvements are done.

Mr. Radcliffe asked if there is a sidewalk at the east side of this property line to match what is on the north side in front of Meijer.

Mr. Appell states that is correct.

Mr. Cummins states, he states there are still some outstanding comments and working through the Final Development Plans and some of the legal agreements regarding a dedication plat or a subdivision plat to create these lots along with that will be a property owners' agreement between the 4 sublots that are created. That will address items like the public use, private roadways, utilities, public water main, ability for that private to be extended to the south if the development occurs. Some of those details, we are still working through those, dotting the I's and crossing the T's, so at this point, none of those have the ability to change the layout in way shape or form. He would ask that it be considered that the motion tonight would be contingent on final engineering and legal approval.

Mayor asked Mr. Jaram about the mound. Mr. Jaram indicated that will be removed. Mr. Jaram stated that would like to make it a beautiful piece of property in the end.

Mr. Gasior states that what they are looking to achieve is connectivity between his property and another other property that gets developed to the south which as he understands is under the control of Drug Mart. That is very important to the city that they have that ability for those two property owners to use that access to Middleton and also for Mr. Jaram's patrons in his development that they have access to his property and to be able to go south and have that access in the future. Then lighting can be installed somewhere on Nagel Road in front of the Drug Mart. Mr. Gasior that is what he is looking for but hasn't seen anything yet. He hasn't had a chance to review this agreement, he sees there is access agreements between the property owners. He wants to make sure the public has access to it as well.

Mr. Jaram agrees.

Mr. Gasior continues to say that Mr. Cummins explained to him that there is stub at the south end that is coming up a little bit short and Mr. Jaram will need to grant a right to the south property owner to come onto his property and complete that connection.

Mr. Jaram states he believes that is in the draft agreement, the connect part. That is why they ran the water and sanitary.

Mr. Gasior says he will review the agreement.

Mr. Jaram states with the connection portion the only issue they had is that it was not zoned commercial yet, so he doesn't know if they don't get zoning and that just stays residential does, he really want a residential neighborhood running through his property.

Mr. Gasior says he will not have to worry about that. Planning Commission would not require that connection if it is residential.

Mr. Jaram asked if that was just language that needs to be defined. That was one of the concerns they had. If it is zoned residential as this point, so it they didn't get re-zoned, he thinks the vote on this and the piece across street was really close to change the zoning, so if for some reason that piece of the south didn't get re-zoned and they have access granted and someone puts a residential subdivision and now he has that dumping into his property that would be a disaster.

Mr. Gasior states that he thinks at some point, that property to the south is going to be developed, and then they will need to come to Planning Commission and the main topic will be connectivity and you will be notified and if it's not a development that you agree with you can states your reasons at that time.

Mr. Jaram states that is the one thing that he says he wanted to make sure it was clarified or say a person builds one house there then they want to connect their driveway through to this property and with the way it would be worded they would have to make sure it is covered just for C4.

Mr. Gasior states he doesn't think that will be a problem. They can cross that bridge when they get to it. That is the legal issue, the general access between the two parcels.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: "AYES" all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the Final Development Plan creating 4 sublots (including Sheetz) and roadwork, utility extension and related stormwater management on the 8.79-acre parcel for Middleton Crossing at the southwest corner of Middleton Road and Nagel Road contingent upon on final engineering and completion of legal documents particularly regarding general access. The vote was: "AYES" all. The Chair declared the motion passed.

3. Middleton Crossing-Lot Split, PL20230015

Aaron Appell of Bramhall Engineering is presenting the Lot Split/Minor Subdivision for the proposed site plan for the 8.79-acre parcel to include 4 sublots and storm water management at the southwest corner of Middleton Road and Nagel Road on Parcel Number 04-00-022-102-150

Aaron Appell, Bramhall Engineering, 801 Moore Road, Avon, Ohio 44011.

Aaron Appell states the plat that is viewed on the screen, there have been some changes to that this afternoon. There was an additional easement for the storm water management basin along heider ditch along the southwest corner of the property, what is in front of you, everything else is general the same. The access that Mr. Gasior was talking about, that is provided on the survey side of things on this plat. Ingress and egress easement to the property line to the south where Drug Mart owns that property.

Mr. Cummins indicated that he would ask for this item as well to be considered on a contingent basis. It is part and parcel with the legal documents that we were just talking about and making sure everything is shown correctly in both places and corresponds. If you are looking to make a motion, he would ask that is be contingent upon final engineering and legal approval.

Ms. Fechter had no comments.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: "AYES" all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the Lot Split/Minor Subdivision for the proposed site plan for the 8.79-acre parcel to include 4 sublots and storm water management at the southwest corner of Middleton Road and Nagel Road contingent upon final engineering and legal approval. The vote was: "AYES" all. The Chair declared the motion passed.

4. Sheetz-Final Development Plan, PL20230016

Aaron Appell of Bramhall Engineering is requesting approval of the Final Development Plan for a 6,139 SF gas station and convenient store with drive-thru at the southwest corner of Middleton Road and Nagel Road on a portion of Parcel 04-00-022-102-150. Aaron Appell, Bramhall Engineering, 801 Moore Road, Avon, Ohio 44011.

Mr. Appell states they have prepared a Final Development Plan for Sheetz Gas Station, this includes a drive thru, outdoor patio as well. Ellen Selle is here representing Sheetz and she can answer any questions that you may have.

Ellen Selle, Sheetz, 5700 6th Avenue, Altoona, PA 16602.

Mr. Cummins states that they have completed a review of the Sheetz site plans and have no further comments. The lot that it would go on is, as you just voted subject to final engineering and legal approval, with that they can't create the lot if they don't do those things, so based on that he has no other objections to the Sheetz and recommend it be considered for approval.

Ms. Fechter states all staff comments have been addressed to the satisfaction of our team and recommend it's approval.

Mr. Radcliffe asked about the drive thru, if it is just for pick up or is there actually an order point and pick up.

Ms. Selle states you can order on a touch screen or an app. It is all touch screen but if there is a problem you can press a button and talk to someone inside. The majority of users just use the touch screen or order on the app and pick up through the drive thru.

Mr. Radcliffe asked if there will be signs or markers? Will they be able to come in and turn straight into that or are they supposed to go through the drive thru on the side.

Ms. Selle states they need to go through the drive thru and the side. She states there is a clearance bar at the entry way into where the order point would be and then they would cross the drive to then stack next to the building.

Mr. Radcliffe asked if they would turn right next and park to the building. Ms. Selle states that is correct.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: "AYES" all. The Chair declared the motion passed.

Mr. Malloy moved, seconded by Mayor Jensen, to approve the Final Development Plan for a 6,139 Sq. Ft. gas station and convenient store with drive-thru at the southwest corner of Middleton Road and Nagel Road. The vote was: "AYES" all. The Chair declared the motion passed.

5. **Sheetz-Special Use Permit-Drive Thru and Outdoor Seating, PL20230017**

Aaron Appell of Bramhall Engineering is requesting approval and recommendation to City Council to approve a Special Use Permit for outdoor patio seating and drive-thru for Sheetz at the southwest corner of Middleton Road and Nagel Road on a portion of Parcel 040-00-022-102-150.

Aaron Appell, Bramhall Engineering, 801 Moore Road, Avon, Ohio 44011.
Ellen Selle, Sheetz, 5700 6th Avenue, Altoona, PA 16602.

Ms. Fechter is referring to the drawing on the screen showing the patio area. She was looking to make sure there are bollards around that patio area. She asked if the dots indicate the bollards.

Ms. Selle states that is correct.

Ms. Selle says she has a visual if that helps. She had a picture which is then viewed on the screen. She states it gives a few different items. It shows the tables, umbrellas and where the bollards are located. She says it is highlighted, you can see where the seats, bollards, and walkway are located.

Chair Witherspoon asked Ms. Fechter if she has any comments.

Ms. Fechter states all comments have been addressed and they have plenty of stacking and after talking with Ms. Selle the drive thru at a Sheetz is not like a normal drive thru.

Mr. Radcliffe was asking if there is a second bollard. It looks like there is one on the main corner coming in.

Ms. Selle states this photo is a prototype, but if you look at the plans there should be a bollard at each parking stall and there will also be fencing around the patio area as well.

Ms. Fechter asked on a normal Monday-Friday at noon is it usually about 10-13 cars?

Ms. Selle says usually there is 10-11 cars at noon which is the peak hour average. If you were to look at the top 5-10 stores the peak hour was 18 cars through the drive thru, so it's not like a McDonalds or a Chic-fil-A, a Starbucks, or anything like that, their numbers are a lot less.

Mayor Jensen asked when the anticipated start date would be.

Ms. Selle states they would open early 2024.

Mr. Gasior asked if they will have battery charging stations?

Ms. Selle states they don't specifically call those out right now, once they have everything permitted then they will submit their permitted plans to 3 different charging companies, and they have the option to then place their infrastructure on their site. They would need to get

their own permitting, their own transformer and do all their own construction. They won't look at their site until they are fully permitted.

Mr. Gasior asked if the entity that owns the site goes by a certain LLC and then operates or does business as Sheetz?

Ms. Selle states Mr. Jaram will be the landlord.

Mr. Gasior states then Mr. Jaram will be the owner of the property and Lessee will be Sheetz?

Ms. Selle states Sheetz will be the Lessee. Mr. Jaram confirms that is correct.

Mr. Malloy moved, seconded by Mayor Jensen, to suspend the rules. The vote was: "AYES" all. The Chair declared the motion passed.

Mr. Jensen moved, seconded by Mr. Radcliffe to recommend to City Council to approve a Special Use Permit for outdoor patio seating and drive-thru for Sheetz at the southwest corner of Middleton Road and Nagel Road. The vote was: "AYES" all. The Chair declared the motion passed.

6. Placing A Temporary Moratorium On The Future Development Or Construction of Any Hotel, Motel, Extended Stays, Boarding Houses Or The Like Within the City of Avon Through January 9, 2024

Discussion

Ms. Fechter states there was someone who wanted to come in with an extended stay facility and as we started looking through our code, we determined that we really need to button up some areas and clearly define what the city's expectations are versus a transient, non-transient guest. So that's why we have the moratorium, so they Mr., Gasior and myself can look for some help and see what some other communities are doing and see how we can button that up. If anyone has any suggestions, questions, or thoughts they would like to see, let us know. We are finding it's different with the over/under 30 days, we are looking at the taxes in town and some other things that we need to pay particular attention about those entities that are having people stay for longer than 30 days and how that affect our safety services.

Mr. Gasior states that one of the primary problems that we have had with the most recent applicant for a hotel/motel was the definition of transient. Our planning and zoning code says a hotel is a place for transient guests. No where in the planning and zoning code do we define the word transient, and we use it in that definition. So, we were trying to use a definition from our business code where we (Avon) and the State of Ohio defines a transient guest for bed tax purposes as person who stays 30 days or less. That ran into some legal arguments, and it was clear to him we (Avon) needed to address that definition first and foremost and insert something in the planning and zoning code as to what we mean by a

transient guest. As far as the actual extended stay itself, he is not sure where they will go with it, but he thinks they need to define it. We only list hotel/motel in our code but extended stays are becoming more common and the only thing we have to differentiate that would be the word transient which is not defined. Ms. Fechter and myself will be working over the next month to come up with a definition of transient, perhaps we will find a definition of extended stay. Then beyond that we will probably do some work with the county health department to see to what extent they are involved in inspecting and checking these facilities out because we do have one in town that has been a problem for the police and fire departments. They have had numerous calls both fire and police to one facility in particular. He thinks even the health department was involved in that facility. We are going to try and find out what we can do to help the health department. He doesn't think they want to get into do the health department's job as far as how these places are maintained. I think our Zoning Officer has enough work to do besides inspecting hotels. He thinks we can do something in our code. One thing; special use permit, right now hotel/motel is considered a permitted use in the C4 districts, and we may not want to see that as a permitted use anymore, we want to make sure that it's a special use. Under 1280.06 we may be able to insert some reasonable restrictions or limitations. So that is where we are at, mainly to make them special uses and to define the word transient and the word extended stay. He will try to have something prepared by the September meeting.

Ms. Fechter indicated that there is a distinction in the building and fire code. There is a different construction classification for hotels/motels than extended stays and the fire code also has some requirements, so we are working with the fire department as well to see what we can add to make that distinction.

Mr. Gasior added that Monday night is when Council passed the moratorium, so this is all going to have to happen. The goal is to have something accomplished by mid to end of November 2023 because we will need 30 days for it to take effect and then the moratorium is slated to expire on January 9, 2024. We have a tight timeline, but I think we can get it done.

Mr. Fitch asked what kind of occupancy does the one in town have now? Who tracks the 30 days stay?

Mr. Gasior states from what he understands it is more of a self-police situation where you are responsible for the bed tax if the guest is in the room for 30 days or less. Mr. Gasior found out from the Finance Director that we receive the bed tax for anybody that is staying 30 days. If they stay over 30 days no one has ever come and asked for a refund. The occupant pays \$100 and bed tax is 6% which is \$6.00. If you stay 45 days at \$106.00 per day, after the 30th day you should only pay \$100 and whether you should even get a refund on the first 30 because you are almost like a lease for 60 days those are all state bed tax issues that he is trying to stay away from. We were trying to use that definition of transient to flesh out hotel/motel definition. When the person came in and said they wanted to put in an extended stay, we were saying you can't because the only thing our code allows is hotel/motel and if you look at the definition of hotel/motel it says a room for let to transient guests. Extended stay says leases places for 45 days, or 2-3 months, construction workers

come in from out of town they want a place to stay. That is what the extended stay was designed to do. We were saying you can't do that in Avon because our code doesn't permit it. We got into a difficult legal battle over void for vagueness and some other legal phrases and so we were fortunate the developer who was proposing to come in decided to withdraw his proposal. As soon as that happened, we decided we had to put a moratorium on hotel/motel/extended stays. We realized we needed to address the problems that they raised.

COMMENTS

Mayor Jensen, no comments

Mr. Malloy, no comments

Mr. Radcliffe, no comments

Ms. Fechter, Happy Labor Day

Mr. Cummins, no comments

Mr. Fitch, no comments

Mrs. Witherspoon, no comments

Mr. Gasior wanted to comment about the Sheetz having the electronic charging station. He indicates we may want to consider electronic charging station as a special use right now. They all require about 20 minutes at best. That will involve more seating outside and things like that. It could create some issues and he is not sure that they will, but it might not hurt to have something in the code that an electronic charging is a special use just like an outdoor patio.

Ms. Fechter states right now they go straight to the building department to put them in parking lots.

Mr. Gasior states we are not going to bank them or anything like that. It is just to have the ability to understand where they are going and how they are going to be arranged and what they are going to do with any of the other amenities on site to handle the volume of people standing around waiting for their cars to charge up. It is just a thought. He was on a trip and noticed a lot of Sheetz Gas Stations. The ones that he saw on his trip have a separate area of charging stations approximately 15-20. The restaurant gets busy and then you have these cars parked out at the charging stations. People have to wait 20 minutes, so they are inside getting food. Mr. Gasior states it may not be an issue, but it may be something to consider down the road as to how they lay their lots out and traffic flows and things like that.

Mrs. Clements, no comments

Mr. Streator, no comments

ADJOURN

Mr. Malloy moved, seconded by Mayor Jensen, to Adjourn. The Chair declared the motion passed. The meeting adjourned at 7:37 p.m.

Carolyn Witherspoon, Chair

Susan Pintz, Planning Commission &
ZBA Secretary

Date