

**MINUTES OF THE WORK SESSION OF THE COUNCIL OF THE
CITY OF AVON, OHIO HELD TUESDAY, SEPTEMBER 6, 2022
IN THE COUNCIL CHAMBERS OF THE MUNICIPAL BUILDING
AT 7:30 P.M.**

PRESENT: Council Members: 1st Ward – Jennifer Demaline; 3rd Ward -Tony Moore; 4th Ward - Scott Radcliffe; Council-at-Large – Craig Witherspoon; Council-at-Large and Council President – Brian Fischer; Mayor – Bryan Jensen; City Engineer – Ryan Cummins; Planning/Economic Development Coordinator – Pam Fechter; Law Director – John Gasior; Finance Director– William Logan; Safety/Public Service Director – Duane Streater; Clerk of Council – Barbara Brooks

ABSENT: Council-at-Large – Tammy Holtzmeier; 2nd Ward - Dennis McBride

1. **CORRESPONDENCE** Ms. Brooks
The Clerk reported that she received a request from the Ohio Division of Liquor Control for a New D5A license for Alora Nail Bar, LLP at 35860 Detroit Road, formerly Panera Bread in the Avon Commons.

There were no questions and no request for a hearing.

2. **ORDINANCE NO. 102-22 – APPROVING THE UPDATE TO THE PERSONNEL POLICY MANUAL FOR THE CITY OF AVON** Mr. Gasior

Mr. Gasior advised he would be turning over the discussion for this item to Melissa Fisco of Clemans-Nelson. He said they put this extensive amendment together and this is the first update to the personnel policy manual since 2009. Mr. Gasior stated Council received a copy of the summary of changes that is Exhibit A and they were also provided an electronic copy of the full manual with the markups. He advised assuming if Council acts favorably next Monday night, then a clean copy will be provided to the Council Clerk, and it will be distributed from there.

Ms. Fisco advised she would be providing an explanation of the substantive changes to the personnel policy manual listed in the summary and she would not be focusing in on the more clerical or non-substantive changes for the sake of time. She said there are several updates within the manual that have already been adopted by Council that would now be incorporated into the full manual.

Under Section 1.5; Equal Employment Opportunity, this update is regarding the protected classes under state and federal law. Since 2009 there have been significant updates to what is considered a protected classification and they have included in the language: national ancestry, military status, genetic information, gender identity and sexual orientation.

In Section 3.1; Employee Status, that section applies specifically to benefits eligibility for part-time employees. When the manual was first adopted, they had benefits eligibility applicable only to full-time employees. With the changes to the ACA (Affordability Care Act) there are potential benefits eligibility for employees that work thirty or more hours in a week on average. The language has been modified to cover those employees.

The next substantive update would be under Section 4.4; Training, this section pertains specifically to reimbursements for training such as convention expenses and seminars that are job related such as employees who are attending a conference or some type of off-site training. The critical update is the need for advance notice or approval depending on who the employee is; if the employee is under the authority of the Mayor, then that request and review for the expense reimbursement would go through the Mayor for administrative personnel or Council for legislative personnel. It would be a process to give advance notice before someone commits to going to any type of conference and having a process for the reimbursement of those expenses.

Under Section 4.5; Ethics, this section provides language that within fifteen days of employment with the City, a new employee will be provided a copy of the Ohio Ethics Laws as required by ORC Chapter 102 where the full language of what the law requires, and the employee would acknowledge receipt that they were provided the Ethics Law.

In Section 5.2; Compensation, paragraph B., longevity, there is a change to clarify that longevity would be based upon completed years of full-time service as of December 31 of the prior year (changed from “applicable” year). Ms. Fisco said there was some confusion in administering the language of what applicable year meant. Under paragraph E., Out-of-Classification Pay (Permanent Part-Time Employees). Ms. Fisco advised she has a note to add this to the full legislative language of the manual to make sure it is incorporated. The Out-of-Classification Pay for Permanent Part-Time Employees covers when a permanent part-time employee has been assigned by the Department Head to perform the duties of a higher classification for two or more consecutive workdays, that they would receive that higher rate of pay. She clarified that the assignment has to be in writing and the employee has to be directed to perform that work so the individual could not arbitrarily perform the work and receive the higher pay, but it has to be a written and directed assignment to do so.

In Section 5.4; Overtime and Compensatory Time, was modified to delete the daily overtime. Under FSLA the requirement for overtime is over forty hours worked in a week and this change is to comport with FSLA. Along the same lines, in paragraph D., sick time was deleted as being included as time worked for purposes of overtime. Ms. Fisco said that is a cost saving measure and a fiscally responsible way of administering overtime in conjunction with sick leave.

Under Section 5.8; Workers Compensation, they included updates to improve the process including copies of the incident report to Human Resources and making sure HR is kept apprised in a timely manner of any issues related to Workers Comp. They also added some conditions for when the paid injury leave ceases. This includes when the condition becomes permanent, or the claim is found to be fraudulent after payment has commenced. This was also an update that was included in the AFSCME collective bargaining agreement.

Section 5.11; Health Insurance, there were some general updates in the health insurance section. In paragraph A., they included language specifying exactly when health coverage benefits will be effective for eligible new hires of the City. The first day of the month in which the employee starts or the first day of the month the following month. Ms. Fisco stated the wording was a little convoluted, but technically accurate and she has seen it used in other cities recently. Paragraph E. clarifies that part-time, temporary, seasonal, intermittent, or interim employees are not eligible for insurance except as required by law. Potentially the City could have part-time employees that may be eligible for health insurance, it just depends on the number of hours they work, but those classifications should not be eligible. They also deleted the language pertaining to a six-month waiting period for temporary employees as well as language covering ACA eligibility and under what circumstances the supposed benefits continue. If they have an employee who is on FMLA their insurance continues while out on leave and then the employee is required to pay their share of the insurance while they are out, but their benefits continue. The final item in this section pertains to COBRA eligibility and this issue comes up fairly often with injury or long-term leave and they have exhausted paid leave, and this gives the City some clarity to be able to address those situations. Essentially when an employee exhausts their paid leave and have exhausted family medical leave then it would be a COBRA qualifying event.

The next substantive change is in Section 6.2; Vacation, that section specifies that there is no vacation for part-time or permanent part-time service credit, which is what the City has been doing recently but it is not clarified in the language.

Section 6.5; Bereavement Leave, updated to be consistent with the recently negotiated AFSCME bargaining agreement where they have bifurcated benefit level between time off for deaths related to the immediate family and family members that are not considered immediate under the definition.

Section 7.2; Safety and Health, similar to the general updates within the Worker's Compensation policy this covers some improvements with respect to accident reporting. Employees need to report accidents immediately and failure to report could be subject to disciplinary action and also making sure that HR is involved in the process with respect to incident and accident reporting.

Section 7.6; Gambling, The City had a separate gambling policy, and it is being deleted from the manual. Gambling as a potential area of discipline or misconduct is still within the discipline article. The reason this section is being deleted is because there could be fantasy sports betting or squares at work that are fairly common, but there could be the potential for an employee doing online gambling during work hours, and that would need to be addressed. Addressing that kind of issue would be through the disciplinary article.

Section 7.12; Discriminatory Harassment, consistent with the EEO policy this includes general updates with regard to the protected classes as well as reporting procedures to include Human Resources as a potential avenue for employees to report concerns. This also includes throughout the language a designee as an individual to investigate these types of claims. Ms. Fisco advised often times she is asked to look into these types of complaints, and they can be handled better from an outside party because of the sensitive nature of the issues that can be involved.

Under Section 7.13; Computer Security and Usage Policy, this includes some general updates that mainly deletes obsolete language such as diskettes and other technology related terms that we do not see any longer. It also includes updates consistent with the EEO policy.

In Section 7.14; Social Media/Networking Policy, this is a brand-new policy that includes the purpose of the policy, the scope, consent, and it covers off-duty and on-duty conduct related to social media use. There is language in the manual that counterbalances issues of First Amendment rights and while they cannot prohibit someone from speaking, but to the extent that it relates to their employment if it is improper the City would have the tools to address an issue depending on the circumstances.

In Section 7.15; Concealed weapons, this was an existing policy, and the language has been updated to comport with ORC 2923. This is often referred to as the parking lot rule where someone is able to carry with them as long as it is in accordance with ORC 2923.1210 and their firearm is locked in the trunk of the vehicle in accordance with State law. This is not saying that someone can bring a firearm into a City building as that is prohibited, but it is saying that the City's policy does not violate anyone's rights under ORC 2923.1210, the parking lot rule.

Under Section 7.17; Anti-bullying Policy, this is also a brand-new policy that addresses more than discriminatory harassment, but problematic behavior such as bullying that can be seen at times in the workplace.

Section 7.19; Conviction of a Felony, in this section they added a paragraph where an employee has to notify the City within 48 hours of any conviction of a felony.

Section 7.22; Smoking/Tobacco Use, added a new policy in accordance with ORC Chapter 3794 that prohibits smoking in accordance with that chapter and also use of tobacco products in the workplace.

Section 8.2; Progressive Discipline Policy, the update includes language addressing performance improvement plans as an alternative to discipline. If an individual is having performance issues that instead of suspension or some other course of action, they could use an alternative to address the unsatisfactory performance.

Section 8.3; Grounds for Disciplinary Action and Penalties, they added one of the additional statutory areas of misconduct, which is unsatisfactory performance within the section as well as failure to timely and properly report off work for any absence.

Ms. Fisco advised that covers the substantive changes and she would be happy to address any questions that Council may have of her at this point.

Mrs. Demaline advised she does not have any questions and she feels these changes are appropriate and timely. The City has done a great job especially with adding some references to Human Resources. She said she has mentioned this before that those items such as an employee handbook and classification specifications changes are really at the discretion of the Administration, and she does not feel it is necessary for Council to approve or vote or be involved in these changes. Mrs. Demaline stated she is happy that Council is apprised of these changes, but she does not think it is Council's place to vote on them. She asked Mr. Gasior if he could provide any guidance on why Council adopts Class Spec changes and employee handbook changes.

Mr. Gasior advised all he could tell her was that they have been doing it that way in Avon forever and he carried on the practice from previous Administrations. He said it is certainly something that he could look into and possibly put something together with Ms. Fisco and possibly adopt one thing that authorizes Human Resources to act in that manner and avoid them being brought before Council. Mr. Gasior stated up to this point, that is the way it has always been handled.

Mrs. Demaline advised she has full faith in the Administration that they can administer an employee handbook and class specs without Council action. She said she is grateful to be involved in the process, but she felt it was unnecessary to do legislative action on these items.

Mayor Jensen asked Ms. Fisco if she sees that in other communities, they are adopting these kinds of changes by Council approval or was there a way for it to be done administratively as Ms. Demaline was suggesting.

Ms. Fisco advised in looking at the classification specifications specifically, she feels that Avon's Codified Ordinances address that where it is Council's authority to authorize the adoption of the classification specification and be apprised of any kind of position changes. She said often what she sees is that there are no issues if the Administration and Council agree but wondered what if there are issues. Ms. Fisco stated this is not to be specific with this body but if there is an elected official in a full-time office and they are creating positions and setting compensation ranges and their decisions are being questioned then often it is good to have the group involved to be able to have that check on those positions that are being created and that expenditure of public funds.

Ms. Fisco advised regarding the personnel policy manual she thinks there are some policies that perhaps do not need all of Council's approval; however, because there are so many of the other policies that cover paid leave and other types of benefits that are an expenditure of public funds that it is certainly appropriate to have Council involved. She said and that is something she commonly sees where Council is involved in the approval of a new employee handbook or policy manual or an update to it mainly because of those issues where there is a cost involved or paid time involved.

Mrs. Demaline advised they as a Council have opportunity when they approve the budget and appropriations to weigh-in on that as well. She said she finds it unnecessary, and she just wanted to bring that up for discussion and she thanked Ms. Fisco for her input.

There were no further questions or comments.

3. [ORDINANCE NO. 103-22](#) – AMENDING §256.98 OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO REVISE THE CLASSIFICATION SPECIFICATION FOR THE POSITION OF POLICE LIEUTENANT Ms. Szlempa

Mr. Fischer advised items no. 3, 4, 5 and 6 were all revising class specs in the Police Department and he was going to read those together in the interest of time and Ms. Szlempa would address those revisions.

The discussion is listed under item no. 6.

4. [ORDINANCE NO. 104-22](#) – AMENDING §256.98 OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO REVISE THE CLASSIFICATION SPECIFICATION FOR THE POSITION OF POLICE SERGEANT Ms. Szlempa
5. [ORDINANCE NO. 105-22](#) – AMENDING §256.98 OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO REVISE THE CLASSIFICATION SPECIFICATION FOR THE POSITION OF POLICE DISPATCHER Ms. Szlempa
6. [ORDINANCE NO. 106-22](#) – AMENDING §256.98 OF THE CODIFIED ORDINANCES OF THE CITY OF AVON TO REVISE THE CLASSIFICATION SPECIFICATION FOR THE POSITION OF POLICE OFFICER Ms. Szlempa

Ms. Szlempa advised as she mentioned last year, they started making updates to the classification specifications if the position description warranted any changes. She said they found that a lot of positions did warrant changes because the City has not updated the position descriptions since as early as 2005. Ms. Szlempa stated there were arbitrary or obsolete duties listed in many of the class specs that were no longer utilized in these departments, and they started with the Police Department. She advised they modernized them to contain the actual job descriptions and responsibilities that they were currently performing. Ms. Szlempa said they have gone over all these four revisions to classification specifications in the Police Department with the Police Chief and the Police Captain and the updates were also presented to all the union representatives in the City, and they agreed to all the proposed changes.

Mayor Jensen inquired of Ms. Demaline if she was okay if the City Administration does not bring these types of changes before Council for approval if the Law Director can come up with a way to say that it does not need to come before Council for approval.

Mrs. Demaline advised she does not believe that Council Members need to take legislative action when changing a class spec or job description. She feels that is the right of the Administration, but if this body feels otherwise, she can accept that as Avon's practice.

Mayor Jensen advised as a local government they always try to be transparent. He said if Council is okay with this proposed change in practices, they could leave the decision open so that if Council wishes to change it one way or the other, they could. Mayor Jensen stated if all of Council is okay with changing it, it would save a lot of time.

Mr. Fischer advised he felt these class specs were not changed often enough for it to warrant a change in our current practices. He said in the interest of keeping everything in the open and remaining transparent he does not see a reason to change it especially when dealing with class specs and sometimes compensation as those often go hand in hand. Mr. Fischer stated he would be opposed to making that change.

Mr. Gasior advised to Ms. Fisco's comment he felt they need to consider that there might be situations where that classification specification could be requested by a news media outlet, and they may want to know who is responsible for that classification specification for whatever reason. He stated he would feel much more comfortable knowing that a classification specification could be provided that has been approved by City Council opposed to one or two Administrators who may no longer be with the City at that point. Mr. Gasior said it is not that burdensome to write these pieces of legislation or that much of a problem for Ms. Szlempa to come before Council occasionally. He advised he understood what Mrs. Demaline was saying, but he likes the idea of Council approving what the Administration does as it provides a level of comfort that they are on the right track, and that everyone agrees and that is his opinion.

Mr. Radcliffe advised he believes since Ms. Szlempa has come on board in the Human Resources Department that Council has been provided a lot more information regarding things such as classification

specifications. He said that while he does not have a Human Resources background and understand all of it like Mrs. Demaline does, he agrees it is nice to have that information to update Council for the thirty minutes twice a year and he felt it is a great way to provide that information and feedback to Council. Mr. Radcliffe said reading some of the changes and information they were presented tonight, he could see how some of the language is outdated, but to have it discussed he felt was a good practice. He stated that while he certainly would not make any recommendations for these changes, it is nice to see it and hear the reasoning behind it and for it to be brought in front of Council so that they are made aware of what is going on. Mr. Radcliffe said he appreciates all the time that the Administration puts into updating everything and he could see that it makes a difference in improving policies and class specs that have not been updated in quite some time and things are constantly changing so he appreciates their work.

7. [ORDINANCE NO. 107-22](#) – AMENDING COMPENSATION FOR THE POSITION OF FULL-TIME, CLASSIFIED, FINANCE SPECIALIST FOR THE CITY OF AVON Ms. Szlempa

Ms. Szlempa advised this position was originally created in 2015 and when it was created the compensation was for a specific dollar amount. She said they would like to update the compensation for this position to have a pay range instead of a rate of pay. Ms. Szlempa indicated the range would provide some flexibility in what the Administration could offer a prospective person for this position.

Mayor Jensen reminded Council that in the past this kind of legislation named the employee specifically, and now it reflects the position. He advised they are also trying to consider what the position should be compensated at today versus several years ago and a pay range allows for that flexibility.

Mrs. Demaline advised she fully supports salary ranges, and she encouraged the Administration to keep going in that direction as she felt it is the way to go to pay for experience. She clarified that she agrees that Council should approve compensation legislation.

8. [ORDINANCE NO. 108-22](#) – AMENDING COMPENSATION FOR THE POSITION OF PART-TIME, UNCLASSIFIED ACCOUNTS PAYABLE CLERK FOR THE CITY OF AVON Ms. Szlempa

Ms. Szlempa advised they recently updated the part-time payroll clerk position and were not overly successful in trying to get that PT position filled. She said they would like to have the range for the PT accounts payable clerk mirror the range of the PT payroll clerk increasing it from \$18-\$21/hr. to \$20-\$30/hr. in hopes of being more successful in filling the accounts payable clerk position as part time instead of a part time payroll clerk position.

9. [ORDINANCE NO. 109-22](#) – REAPPROPRIATIONS Mr. Logan

Mr. Logan explained the reappropriations as follows:

Mr. Logan advised regarding the gasoline usage Council will see them throughout the reappropriations. He said everyone is aware that the gasoline prices have gone sky high although they are starting to settle back down somewhat. Mr. Logan stated they are about 44% ahead of last year over all the departments with gasoline usage and the reason he is asking for reappropriations in a lot of these fund accounts.

General Fund No. 101

Increase appropriations \$6,000.00 for Building Department gasoline usage as the budget for 2022 will soon be exhausted as a result of increased prices.

Increase appropriations \$100,000.00 for legal services as the budget for 2022 has been exhausted.

Total General Fund Re-appropriations \$106,000.00

Special Revenue Funds

Fire Department Fund No. 200

Increase appropriations \$5,000.00 for gasoline usage as the budget for 2022 will soon be exhausted as a result of increased prices.

Police Department Fund No. 221

Increase appropriations \$44,000.00 for gasoline usage as the budget for 2022 will soon be exhausted as a result of increased prices.

Senior Center Fund No. 230

Increase appropriations \$2,000.00 for gasoline usage as the budget for 2022 will soon be exhausted as a result of increased prices.

Total Special Revenue Fund Re-appropriations \$51,000.00

Enterprise Funds

Water Revenue Fund No. 611

Increase appropriations \$7,500.00 for gasoline usage as the budget for 2022 will soon be exhausted as a result of increased prices.

Sanitary Sewer No. 2 Fund No. 631

Increase appropriations \$7,500.00 for gasoline usage as the budget for 2022 will soon be exhausted as a result of increased prices.

Total Enterprise Fund Re-appropriations \$15,000.00

Custodial Funds

Lorain Public Library Fund No. 702

Increase appropriations \$56,377.41 for property taxes due to Lorain Public Library – Avon Branch as the revenues for 2022 have exceeded the budgeted amount.

Mr. Logan reminded Council that the City collects those property taxes on the levies that the library established and the City then remits those amounts to the library directly.

Total Custodial Funds Re-appropriations \$56,377.41

Total Re-appropriations All Funds \$228,377.41

Mr. Radcliffe asked for a summary of the additional legal expenses have been used for this year. Mr. Logan advised he could send out an audit trail report of what has been spent and he could summarize that for Council. Mr. Radcliffe advised he wanted to ensure that all of Council has a good idea of where extra legal services have been spent this year and for the public to understand the reasoning behind the extra expenditures.

Mrs. Demaline inquired as to how the City purchases their fuel.

Mr. Logan advised at almost 100% now, the City buys fuel in bulk through a vendor, and it is stored in the City's own fuel storage tanks. He clarified that the Police Department in the last three months are now using their own fuel storage tanks, previously they were still using the gas cards. Mr. Logan said in addition to the Police Department, the Senior Center and the Building Department also once used these cards at GetGo, Pilot or BP for gasoline only. He stated they have since installed storage tanks at the Police Department and they can fuel their vehicles themselves. Mr. Logan advised the price difference in buying in bulk fuel versus at the pump is approximately .10 to .15 cents a gallon savings and that has helped. He said now that the Building Department also fuels at one of our locations as well as the Senior Center drivers, the City is not purchasing the gasoline at retail. Mr. Logan stated they still keep some of those gas cards on hand for the occasional out of town trip for a conference, but 99.5% of the City's fuel is now purchased through the vendor and stored in our own tanks.

Mrs. Demaline asked if the City was on State bid pricing for fuel.

Mr. Streator advised he believed so, yes.

Mrs. Demaline inquired if that was only a .10 to .15 cent savings per gallon off retail.

Mr. Streator advised they save also on a lot on the taxes.

Mrs. Demaline asked what the estimated total savings per gallon would be.

Mr. Logan advised he could look at it and provide an analysis to Council as to what the savings is.

Mrs. Demaline advised clearly, the Police Department is the largest consumer of gasoline and understandably so. She asked if what they were saying was that in the past three months the Police Department has converted to using fuel from a City storage tank.

Mr. Streator advised that is correct. He said approximately three months ago they were able to finalize the installation of a City owned tank located at the Police Department.

10. ORDINANCE NO. 110-22 – TO AUTHORIZE A DEVELOPER’S AGREEMENT WITH CONCORD VILLAGE PHASE TWO, LLC AND CONCORD VILLAGE PHASE THREE, LLC FOR THE CONSTRUCTION OF PUBLIC IMPROVEMENTS AT THE CONCORD VILLAGE NO. 3 SITE LOCATED ON CHESTER ROAD Mr. Gasior

Mr. Gasior advised this legislation should state Phase Three and Phase Two should not be in there. He said this is to authorize a developer’s agreement for Concord Village No. 3 and is strictly for a waterline that is being installed. The sanitary sewer line is going to be private and the road inside the development is also private so, the only public improvement here is a waterline. Mr. Gasior advised he believes they have an engineer’s estimate, but it has not been approved yet by Mr. Cummins who is still reviewing it. He said there is an issue that came up during the Planning Commission meeting from the Fire Department and Safety Director about a loop and the loop is the connection between Concord Village Phase Three and the apartment complex to the east and perhaps Mr. Cummins could explain further about the loop. Mr. Gasior stated they are trying to find resolution for how and when that loop can be created, and it involves the property owners at the apartments and this loop would have to be created through an easement on their property and the developers are in the process of trying to contact them. He said it is something that benefits both parcels and it benefits the residents in the apartments, and it will benefit all the residents in Concord Village be it phase one, two or three. Mr. Gasior stated until they can get all of that resolved they have a draft of a developer’s agreement at this point, and he knows that the developer would like to get approval next Monday night, but there are still several things to do yet and he is not sure the engineer will have his final review completed by then.

Mr. Cummins advised the engineering plans he received about a week ago are still under review. He said they are working through that, and it includes the engineer’s estimate for the watermain. Mr. Cummins stated regarding the water loop when the apartments to the east were constructed, they were constructed with a public watermain system that goes through them. There was not anything located at that time to the west so there was no connection, and the loop was installed within the property of the apartments to serve their proposed buildings. Concord Village No. 3 came along, and it is a straight street that heads back to the north and at the end of the cul-de-sac the existing public watermain within the apartments is about 150’ away through the private property of the apartment complex. It was noted that it would be beneficial to both properties if they could tie those two together. So, if there is a water break scenario either in Concord Village area or in the apartment complex area there would be a way to back feed those areas and mute whatever emergency was going on. He advised that has been what they have been trying to work through by trying to identify the route for that loop and the potential cost of that loop and getting all of that reflected in the subdivider’s agreement. Mr. Cummins said again, the engineering review is ongoing, and they are also waiting on documents related to their wetlands permitting. So, there are a

number of things that will hopefully all come into place before next Monday and if not, Council will hear an update from Mr. Gasior accordingly.

Mr. Gasior advised the urgency on behalf of the developer is that the construction season is ending, and they would love to get the shovels in the ground before winter, but there are still these loose ends, and they are trying to work through them. He said he will let the Clerk and Council President know as to whether or not this legislation will be ready to act upon come next Monday.

Jordan Berns of 3733 Park East Drive, Beechwood, counsel for the applicant advised he wanted to assure Council that they are working cooperatively with both the City Law Director and City Engineer to work through the issues that they have outlined. He said they understand, and they feel they can work cooperatively with the apartment property owners and if they cannot, they have a plan B that has been discussed with the Law Director. Mr. Berns felt it was simply a matter of documenting that in the developer's agreement, which they think they can do pretty quickly, and they hope to put that issue to bed and hope that the City Engineer can complete his review of the plan documents and that Council is ready to act next Monday night.

11. [ORDINANCE NO. 72-22 – TO AUTHORIZE THE FINAL PLAT AND SUBDIVIDER'S AGREEMENT FOR RED TAIL SUBDIVISION NO. 17](#) Planning Referral
The Third of Three Readings will be held at a Special Meeting Immediately Following this Work Session

Ms. Fechter advised she had nothing to add tonight.

Aaron Evenchik of 200 Public Square, Suite 2800, Cleveland, works at Hahn Loeser & Parks, LLP and he is representing Mr. Restivo and his entities. He advised he has been here before and has asked for information regarding Red Tail Subdivision No. 17 and Mr. Restivo made several public record requests. Mr. Evenchik advised they only received the stormwater documents that he and Mr. Restivo have been discussing for the first time last Friday afternoon, September 2, 2022, which is less than one business day for them to review the large number of documents that were provided. It truly was not enough time for Mr. Restivo and his team to fully review and comment on it and Mr. Restivo is a neighbor who will be impacted. Now that it is clear that the City had the documents for months; one of the things that they will be discussing tonight was going to be the Reitz Report, which was originally dated from July of 2022. So, the City has had that in their possession for approximately two months and did not turn them over. Chagrin Valley Engineering wrote a letter about that on August 17th and a lot of what was provided to them was many years older and they had asked for documents to be provided in a rolling production as there was truly no reason to wait until one day before to produce other than to inconvenience or prejudice Mr. Restivo. Mr. Evenchik said he believes the basis of what this body is going to talk about tonight is this Reitz Report and the latest version of this report is dated August 30, 2022, and it is labeled Stormwater Management investigation. He pointed out that the Reitz Report itself has no relevant math, there are no calculations in this report that show it meets Section 1050, the City's Comprehensive Stormwater Management Requirements. The report is based on 1998 preliminary calculations, which he would show are inadequate; in fact, the 1998 calculations never claimed to be otherwise. Mr. Evenchik stated the City presumes that this report shows that there is adequate storm capacity based on 1998 assumptions and addition of Lake BBB, but it is only an assumption; there is no math. He advised he is an engineer, and, in his trade, they trade on math and not just assumptions as they need math to prove it. The report on page 8 admits, "a higher level of data acquisition and numerical modeling needed for this type of calculation is beyond the scope of this investigation". This is not scientific, wishing is not scientific, but it appears that it is enough to satisfy the City. Mr. Evenchik said in fact Mr. Cummins told Reitz on August 17th, when he was looking at a July draft, a document that he did not receive until Friday, to remove any reference to meeting the "freeboard requirements of 1050" and he wanted to talk about freeboard requirements and what that means. Section 1050 of Avon's Code discusses freeboard requirements. Section 1050 was passed in 2016 to deal with flooding issues in the City of Avon at the direction of the Mayor. He said it appears now that the City is willing to ignore it. Section 1050.01(b) says that it applies to owners who develop or redevelop their property. Section (c) says it applies to all parcels used or being developed wholly or partially; subdivisions or larger plans for development and it requires a CSWMP, a

Comprehensive Stormwater Management Plan. It requires the CSWMP be provided when in conjunction with the submittal of the final plat, so timing is very clear. Section 1050.08(a) says this plan must address flooding that may be caused by the development upstream and downstream from the site. So, it is not simply onsite. Section 1050.09(a) are the Performance Standards (b)(1)(A) says not disturb riparian areas. He said he was here before to demonstrate that it is his client's belief that asphalt was placed there and they showed the City pictures, and it seems that there has been no penalty from the City for that. Section 1050.09(b)(6) says that all stormwater pond and surface conveyance designs must provide a minimum of one foot freeboard above projected peak stage during a 100-year, 24-hour storm event. Mr. Evenchik advised they have not seen any math to demonstrate that. He said he acknowledges that Section (7) is an Exemption. It exempts certain developments from this, but even that exemption must be shown to the satisfaction of the City Engineer that "part of a larger common plan of development where the stormwater management requirements for the site are provided by one or more existing SCM's or the stormwater management requirements for the site are provided by practices defined in a regional or local stormwater management plan approved by the City Engineer". It does not say grandfathered plans can ignore all requirements. He said he asked what SCM, or Local Regional Stormwater plans the City was relying on and he has not received a response.

Mr. Evenchik said that in 2016 the City required additional volume in the lakes to control flooding. They know this is an area that floods, and Mr. Restivo is concerned about the impact of flooding on adjacent parcels he has rights to. Rather than enforce this freeboard requirement or satisfy himself with the exemption "by one or more existing SCM's...regional or local stormwater management plan approved by the City Engineer" Mr. Evenchik stated the City Engineer apparently just concluded everything is okay. In fact, in an August 17th letter the City Engineer states, "It is my recommendation the report be revised to remove the statement that existing ponds meet freeboard requirements specified" and the letter goes on to say that "almost a complete model of the current conditions is provided". Mr. Evenchik said based on that letter, Mr. Reitz revised his report, and it is being reported that this non-scientific analysis is adequate rather than math. The Code requires the City to review math either under Section 1050 or under a prior standard.

Mr. Evenchik advised Mr. Restivo sent a video and he did not know if that has been shared with City Council and he wondered if that video has been taken into consideration. The 1998 report that has been referenced here is labeled as preliminary and it presumes grading, utilities and storage requirements and he questioned whether the City Engineer actually checked to see if those presumptions are accurate. "Discharge from lakes J, K and L (lake L is the one that Red Tail 17 is going to drain into) were determined in the final retention design phase using City of Avon requirements". Mr. Evenchik said it is pretty clear even from 1998 that more is needed than reliance on a preliminary design. In fact, prior engineers have made this clear. In City of Avon Planning Commission Meeting minutes from May 20, 1998, Mr. Downing the prior engineer for the City, commented that the concept was okay but that a detailed review of engineering for stormwater and the effect on the adjacent properties upstream and downstream must be completed. He stated at the next Planning Commission Meeting held on June 10, 1998, "Mr. Downing commented a full review of the detailed engineering of a housing area in Red Tail 17 is the next phase of a housing area that will be required including a localized watershed study to determine the possible adverse effects on upstream and downstream flows". These are all the City's own words. It appears that in 2022 the City wants to rely on 1998 work, but the 1998 work made clear that in the future actual engineering was required. The City passed a standard and he hoped they were not going to ignore it. It appears that the City is prepared to pass Red Tail 17 on assumptions, and he certainly hopes the Grande Esplanade subdivision is given the same treatment.

Mr. Evenchik asked if anyone on City Council has seen a master stormwater plan for the golf course or a watershed study. He said they have not, and they have asked for those documents. They have also asked for prior wetland permits and have not received them. Mr. Evenchik said he does not understand how a City Engineer can say that they have adequate information when he finds so much information missing. Finally, there is no onsite treatment that he has seen in Red Tail 17 as all the stormwater from there simply appears to flow into the lakes without being treated and into the creeks from there. None of these are new questions. He has stood before this body asking these questions for months and Mr. Restivo is entitled to

the information so that they can meaningfully review and evaluate impacts on adjacent property. Mr. Evenchik questioned how a City can consider approving everything tonight with so much information missing other than it appears the City has the desire to get this passed without any more questions being asked. He advised to him and Mr. Restivo it appears there is a preference to Red Tail 17 and Carnegie Development, frankly to the detriment of Mr. Restivo. Mr. Restivo and his developments as persons and entities with interest in the adjacent property reserve the right to challenge any approvals the City provides tonight. He thanked Council for their time.

12. ORDINANCE NO. 95-22 – 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 A PORTION OF PERMANENT PARCEL NO. 04-00-022-102-072, CONSISTING OF 12.24 ACRES LOCATED NORTH OF MIDDLETON ROAD AND WEST OF PENDLETON COURT AND A PORTION OF PERMANENT PARCEL NO. 04-00-022-102-006 CONSISTING OF 9.4 ACRES LOCATED SOUTH OF MIDDLETON ROAD AND WEST OF PENDLETON COURT FROM R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT TO C-4 GENERAL BUSINESS DISTRICT Planning Referral

The First of Three Readings will be held on Monday, September 12, 2022
A Public Hearing will be held on Tuesday, October 11, 2022, at 7:25 p.m.

Ms. Fechter advised the exhibit should be in front of Council by their next meeting. She said the City Engineer spoke with the applicant's engineer and explained what the City requires. Ms. Fechter stated the applicant has agreed to what has been asked of them, they just need it to be added in writing as exhibits for the legislation and she would be following up with them this week to get the information needed by Monday night.

13. REPORTS AND COMMENTS

MAYOR JENSEN had no comments.

COUNCIL MEMBERS:

MRS. DEMALINE, WARD 1 asked how the annual budgeting review process works now that we are into September, and this will be her first time to participate in this process.

Mr. Logan advised in the next couple of weeks the Finance Department will be sending schedules out to all the departments with tentative expense budgets for 2023. He said the memo will mention incremental head counts that have to get approved through the Mayor, Capital Outlay, and things of that nature. Mr. Logan advised all the other operating expenses will be created in Excel files and the Department Heads will have a couple of weeks to review them and make their recommended changes. He stated the Assistant Finance Director and himself or the new Finance Director will then meet with each Department Head before coming to Council with the budget. Mr. Logan advised schedules will be sent out to Council in mid to third week of October and then schedule a Saturday Finance Committee Meeting in November to go over the proposed 2023 budget. He said after that Finance Committee Meeting there will still be time to make any changes that might have come out of the committee meeting. Mr. Logan stated the way he has done it in the 15 years he has been here is present an Ordinance to Council in December and ideally that will be passed before January 1st and then that Ordinance is submitted to the County Budget Commission, and it locks in Avon's budget for 2023.

Mrs. Demaline asked if there was an official date for Mr. Logan's retirement.

Mr. Logan advised September 30, 2022.

Mrs. Demaline asked if they were close to choosing a replacement.

Mayor Jensen advised they were very close.

Mr. Logan assured the Mayor and Council that he will work with his replacement through the transition. He said he would be happy to come Council and other meetings with that person to help.

Mrs. Demaline advised on May 9th Council approved to move forward with Lit Communities and she asked where that process stood currently with that assessment.

Mr. Streator advised they have been in bi-weekly meetings with Lit Communities, and they are currently in the financial part of putting that assessment together. He said they hoped to have something soon from Lit Communities.

MRS. HOLTZMEIER, AT LARGE was absent.

MR. MCBRIDE, WARD 2 was absent.

MR. MOORE, WARD 3 had no comments.

MR. RADCLIFFE, WARD 4 had no comments.

MR. WITHERSPOON, AT LARGE had no comments.

MR. FISCHER, AT LARGE mentioned that the traveling Heroes Wall was very cool next to the Veteran's Memorial behind the Fire Department. He thanked Council for approving that event and he hoped a lot of people took advantage of the opportunity to visit it while it was in Avon.

Mrs. Demaline inquired if that event was well attended.

Ms. Fechter advised it was very well received by the community as a lot of people reached out to the City saying they were very happy that Avon participated. She said she wished more people could have attended the opening ceremony as it was very nice, but understandably it was during regular work hours, so it was hard for some to get away and attend. Ms. Fechter indicated those who attended commented how nice it was to remember these heroes and many people took their time reading the names and seeing the faces of those who gave the ultimate sacrifice, and it was very moving.

Mrs. Demaline thanked those involved for putting that event together.

DIRECTORS/ADMINISTRATION:

MR. CUMMINS, CITY ENGINEER advised he would like to make a few comments regarding the Red Tail Subdivision matter and some of the points that were brought up this evening. He said the City had Carnegie Residential Development do a look back at the Red Tail Development as compared to what has been constructed over the past 20 years in relation to the 1998 calculations that were done. Mr. Cummins stated as he noted in the August letter that was mentioned, he had not been provided or come across or found any other calculations other than the 1998 calculations for the phases that have been completed to date on the east side. He advised that led him to believe the analysis of the current conditions relative to the 1998 plans completed by Jim Saylor with Reitz Engineering Company that was mentioned tonight. Mr. Cummins said he believes that Red Tail 17 falls under Avon Codified Section 1050.09(b)(7) as an exemption as a previously planned development with a stormwater management system that was designed at the time that it was planned and developed. He stated with that, he has no other concerns noted about those calculations. Mr. Cummins advised there was an issue brought up late this afternoon by Mr. Restivo with potential deviation in the flow amount for the Williams Court ditch. That ditch is part of the Red Tail 17 development only in the fact that the City had requested a temporary culvert installation to be installed across that ditch for access to the unfinished portion of Williams Court, which is just gravel at that point. Mr. Cummins said with the potential issue that was brought up to add an additional drainage area to that ditch as compared to the calculations of the Reitz Company that they previously submitted. However, he felt it disregards numerous culverts including in and around Hilliard Lakes golf course and existing control structures in and around Hilliard Lakes golf course that would attenuate that flow. Again, these are temporary culverts, only for emergency access into a stub of Red Tail 17. The existing ground surface to the east of the Hilliard Lakes golf course is quite a bit lower than the Red Tail 17 area is today and would be in the future. Mr. Cummins advised he does not at this point, see that as being a substantial issue for the overall development. He said the City may want to work with the Red Tail Development to make sure that the temporary culverts are as good as they could be, but they are just temporary culverts because there are no property rights to the east to build something more substantial. Mr. Cummins stated with that, he just wanted to say that he is satisfied that Red Tail 17 is falling in accordance with previous plans for previous phases of Red Tail on the east, in and around the

east course and under Section 1050.09(b)(7) would be exempt from providing a full stormwater management report meeting all the other aspects of Chapter 1050.

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

MR. GASIOR, LAW DIRECTOR advised following up on Mr. Cummins remarks, they have been working on this for three months and the Red Tail developers have been waiting for at least that long for approval on phase 17. He said it is on the Special Meeting tonight for the third of three readings. The City has tried the best they could to respond to all the public record requests that were issued to the City, and he feels they have done an admirable job in doing so. Mr. Gasior stated Mr. Cummins has done an admirable job in analyzing all of the engineering that has been produced and he has answered, to Mr. Gasior's satisfaction, many of the questions that have been raised by Attorney Evenchik. He advised he does not want to belabor any of those points right now. Mr. Gasior thanked Attorney Stephan Bosak who was present tonight who was hired as outside counsel that assisted the City in the matter of Hilliard versus Caravon and the injunction that was being sought over the plugged drains. Mr. Gasior said as he pointed out a couple of weeks ago to Council, the City received a favorable decision on that case with the dismissal of the action against the City. He stated he could not think of a situation that has not been vetted as well as this situation, as well as this subdivision. Mr. Gasior advised he is pointing out the obvious that this is Red Tail Subdivision No. 17, it is not Red Tail Subdivision No. 3 or 6, but 17. He said there have been 16 other phases of Red Tail built. The golf course was built a long time ago. The ponds were constructed a long time ago and Mr. Restivo, who is sitting in the audience, was very much responsible for all that engineering and all those ponds being constructed and Mr. Restivo came to the City with all those prior phases. Mr. Gasior stated Mr. Restivo is well aware, as is his engineer, who used to be with Carnegie Development, Euthenics Inc. He advised they probably possess all the records that they have asked for, because they were the engineers that submitted every single phase of Red Tail to Avon City Council over the years. Mr. Gasior said he could not ask Council to do something that they are not comfortable doing, but he could tell them that tonight when they get to the Special Meeting Council should feel very comfortable to vote in favor of passage of Red Tail 17.

MR. LOGAN, FINANCE DIRECTOR had no comments.

MR. STREATOR, SAFETY/PUBLIC SERVICE DIRECTOR reminded Council that this Saturday, September 10th is the Safety Fair at the Aquatic Facility from 10am to 2:00 pm. He said next Monday, September 12th will be the Patriots Day ceremony at 7:30 am at the Veterans Memorial and all are welcome to attend.

AUDIENCE: There were no comments made from the audience members.

- 14. ADJOURN: 8:46 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