

Minutes of February 18, 2021 Council

Regular Meeting of the Clayton, Ohio City Council
Clayton Government Center
February 18, 2021

Due to the Governor's orders on limited size of meetings Clayton's City Council conducted its regularly scheduled City Council meeting on Thursday February 18, 2021 via the Zoom meeting format

CALL TO ORDER

The meeting was called to order by Mayor Stevens at 7:34 PM. Present were Mayor Stevens and Councilmembers Bachman, Henning, Gorman, Merkle, Kelly, and Lieberman.

PUBLIC HEARING

Case# ZC20-02: Request is for a Zoning District Change for the Northwest Corner of National and Haber Road, Redwood USA, LLC.

Jack Kuntz, Director of Development, stated the application before you tonight is made by Redwood USA with the consent of the property owner as indicated in his signed affidavit. This request is only for a zoning district change. It's not an application requesting approval of any type of development plan, and the specifics of the future development is not up for debate tonight. The property owner has requested to zone this property to be consistent with what has been determined in Clayton's land use plan to be the best future use for the property in question. As the applicant, Redwood only provided a preliminary conceptual plan to Clayton to show a good faith effort and to be transparent on what they would like to develop at the site. The preliminary conceptual plan is not up for consideration tonight because it's only a preliminary, conceptual plan.

There is a legal process that must be followed in rezoning cases, laid out by our Zoning Code, and supported by state of Ohio case law in terms of rezoning applications. Things to take into consideration is primarily the approved future land use plan as well as surrounding land uses. The details of the actual development plan will be determined, debated, and decided at future meetings with staff, the Planning Commission and City Council. If the rezoning is approved for this application tonight, Redwood will then begin their site work including figuring out where utilities are located, a traffic study will be required, along with a host of other factors will then be discussed between Redwood and city staff. For the record, water is located along Haber and sanitary sewer is located along National.

The intersection of Haber and National Road has been designated for future growth for over 20 years. There is an extremely large area of rural preservation located to the north of this site, but the property in question has never been located in a rural preservation zone. The original 1999 Land Use Plan designated this intersection as a mixed-use area, including residential and commercial uses. PLAN Clayton identified this specific intersection as the Clayton Commercial Center. This intersection is considered both a future commercial and residential neighborhood on the future land use plan because it's been designated as a flex use area with a mixture of uses residential, commercial, and open green space.

In May of 2005, Council approved and adopted the Clayton Improvement District (CIP) and this specific property is located in the middle of this District. The CIP was created to realize the areas of the city which had been identified for future development and that would also need assistance in infrastructure expansion costs through impact fees. This land has been designated for not only development but also a mixture of use typologies for over 20 years.

I feel it's important to comment on some of the comments staff has observed specifically about the applicant and this potential project. There have been several false statements thrown out on various platforms including an online petition which included language on the original version stating this project is a low-income project financed by the Department of HUD. This project will be market rate, financed via traditional lending mechanisms. It has been stated in social media posts promoting a petition that utilities don't run to the site, they do. It has also been stated the state has denied a traffic signal at the intersection of National and Haber, when in actuality, multiple grant applications weren't awarded enough points for state funding, partially due to data that did not support the argument traffic was an issue at the intersection, an intersection Clayton controls and has final say if a traffic signal is installed. The state has never denied a request from the city to place a traffic signal at the intersection. It has been reported on a local news station that there have been 21 complaints filed against Redwood with the Better Business Bureau over the past three years, and Redwood's customer rating on the BBB website is 1.29 stars out of 5. Those numbers are true, but appropriate context is important to understanding the real story. There have been 21 complaints filed against Redwood out of the over 12,000 residents, meaning approximately 99.8% of their residents have not filed a complaint with the BBB. The 1.29 stars is actually the average of the ratings given by only those same 21 complainants. Redwood has a history of being a great community partner and staff believes this rezoning application will give staff and the city a great opportunity to work with them as they move forward.

Seth Dorman, City Planner/Zoning Administrator, stated this is a request for a Zoning District Change for the northwest corner of National and Haber Roads from R-1 to PD-3, and identified the parcels for Council. The overall area of the property is 33.73 acres, and if the rezoning is approved the applicant intends to build a mixed-use development with multi-family residential and commercial uses. The current zoning of the property is R-1 which permits single-family dwellings, adult family homes and care facilities. Conditionally permitted uses include bed and breakfast, public parks and recreation, non-commercial recreation, cemeteries, educational institutions, and halfway houses. The proposed zoning of PD-3 permits retail and service establishments, office establishments, residential and recreational uses, and farmer's markets. Any development in the PD-3 is subject to Planning Commission and City Council approval of a Preliminary and final development plan.

Dorman gave the history of CID #1 Overlay and how it related to the proposed zoning change. Council established CID #1 in May of 2005 with the purpose of establishing impact fees for future development in and around the area known as Towne Center. The CID #1 area includes about 1,800 acres north of I-70 and East of Barnes Road. Over the years, the impact fees were modified, with the latest reduction to encourage development. After Council approved the CID#1 it became apparent that a Zoning District Overlay would be required to establish certain guidelines for development in this area. In 2006 City Council established a subcommittee to study the issue and submit a recommendation to the Planning Commission for their review and recommendation to City Council. The City hired McBride Dale Clarion to assist in the planning

effort for the new Overlay District. The consultant prepared a Land Use Plan for the CID#1. The Land Use Plan shows a combination of commercial and residential at the northwest corner of National and Haber Roads. We also had guidance from PLAN Clayton which identified the northwest corner of National and Haber Roads as Clayton Commercial Center. This area is intended for any combination of flex uses, mix uses, and parks. The proposed zoning is for PD-3 which permits retail and service establishments, office establishments, and residential and/or recreational uses.

At the January 25, 2021 Planning Commission meeting, the Commission unanimously recommended approval of the Zoning District Change for this request with the condition that prior to submitting for the zoning certificate and building permits for the initial phase of construction the parcels be combined into one primary parcel for residential and establish lot lines for the future commercial properties.

Mayor Stevens asked if any Council members had any questions. Henning stated when PLAN Clayton was signed we technically had a different administration at that time, we keep referencing it is a roadmap that we're going to use for decades to come, but with different administrations could come a new desire for what that roadmap should look like.

Greg Thurman of Redwood USA, LLC gave a short presentation to introduce himself and Redwood USA, stating they have over 13,000 units in seven states.

Mayor Stevens then asked if any Council members had any questions for Mr. Thurman. Bachman stated he visited a Redwood development in Tipp City area yesterday after a large snow fall in the area and the streets and sidewalks were all cleared of snow, do Redwood developments require city services? Mr. Thurman stated no, they are private property and are maintained by their maintenance people. We take pride in our snow removal, grass mowing, landscape maintenance, we power washing the units each year. We take great pride in our curb appeal and have a strong maintenance program. Henning stated part of the reason we have so much opposition to this project is the tone you took at the first Planning Commission meeting with residents when you basically referred to residents as opposition. We have another developer that has taken time to meet with residents, have a workshop, do a walking tour with residents, basically done a lot to help residents feel comfortable with the development. The tone you took at that Planning Commission meeting is why the opposition to this development is so vocal. You say you usually get these projects done, you persevere. What do you mean by persevere? Thurman stated we work with the community and the city engineer to come up with solutions beyond what Redwood is proposing. An example of that might be a traffic light, or a pedestrian crossing at National that ties it to the multi-use path. We might regrade some properties so that neighboring properties drain properly, so we're part of a fix. Persevere is a word I use to express that we can bring opportunity to the table that benefits past the Redwood boundaries. I apologize for the interpretation if that was your impression at that first meeting, I would be happy to meet with anyone.

Mayor Stevens administered the Oath to anyone wishing to speak on this case tonight. He then asked if there were any proponents who wished to speak this evening, hearing none he then asked if there were any opponents who wished to speak.

Mike Greer stated he objects to this project; this will not benefit our community and will be a burden to anyone living in this area.

Dana York stated he is the spokesperson for a group of over 30 people who worked on their presentation, which had been given to all councilmembers prior to this meeting. Residents are concerned with the cost of infrastructure improvements. He reviewed the CIDI-O and Impact Fees, where the original intent was for residential use and feels the Redwood project goes against this. He then reviewed the known traffic issues at the Haber and National Road intersection, the environmental impact with flooding issues in the area. Mr. York shared Redwood's rating with the BBB. He shared the Redwood developments in other areas and their characteristics that go against the PLAN Clayton vision. Lastly, they shared what the residents would like to see in that area, for example single family homes on 2-3 acre lots and farmers market to showcase local farmers and small businesses.

Christina Crawford wanted to clarify a statement Kuntz made earlier on their petition. Yes, at first when it was produced it did state the project was funded by HUD, but once they had the correct facts it was updated and that was removed. Also, PLAN Clayton is supposed to be an improvement, in my opinion, putting apartments in this location is not an improvement. Currently the petition has over 1,000 residents who signed the petition, you need to listen to the people who live here.

Bob Magee stated he wanted to speak on Jack defending Redwood, as for the BBB rating, as long as you pay you receive an A+ rating.

Mrs. Magee stated she is opposed to this rezoning. There are issues with the traffic at Haber and National and a traffic light is needed, Haber and Fox are narrow roads and there are many blind spots, both roads are dangerous. There are issues with drainage and they are looking to add concrete streets and roof tops that will only add to the drainage problems. We are also concerned with the water table and our wells as construction can cause problems with wells and with contamination.

Ellen Hogan spoke to Mr. Lieberman; you are our Ward rep and we want you to know that we want to remain a rural area and ask that he support them. We should be proud of our city center, but an apartment complex is not something we want as our city center. We ask that you listen to the residents who live here.

Jeremy Blanford stated one of the councilmembers said they drove through a Redwood development; I've drove through the Lebanon Redwood development. I've read through the 106 pages of the PLAN Clayton document; this project goes against PLAN Clayton. The pictures they show look good, but when you drive through these developments it's more like driving through a parking lot. PLAN Clayton promotes getting away from garage scape look, all you see is cars and garage peaks, their complexes do not promote community.

Pam Grusz we've lived here for 30 years. We don't want Redwood here; we just ask that Council listen to us. We have beautiful properties here and we don't want this to change.

Mayor Stevens advised staff and council had received e-mails from residents in opposition to the rezoning and read them into the record, e-mails were received from: Mark Counts, Mike Greer, David King, Ginny Smyers, GApalaynice (*no name given, an e-mail address*), Nancy Mercer, Mollie Magee, Maddison Pickens, and Vicki Shower.

Hearing no further comments, Mayor Stevens asked for a motion to close the public hearing. Gorman made a motion to close the public hearing, motion was second by Merkle. All yeas, motion carried.

CLERK'S REPORT

Clerk Seim presented the minutes of the February 4, 2021 City Council meeting. Motion by Gorman, second by Bachman to approve the minutes as presented. All yeas, motion carried.

OLD BUSINESS

Ordinance No. O – 02 – 21 – 01 An Ordinance Approving a Twenty Percent (20%) Increase of the Competitive Bid Threshold Pursuant to City Charter Sections 8.02(B) and 8.02(C)(1). Second reading, no further discussion. Motion by Gorman to approve the Ordinance, second by Henning. All yeas, motion carried.

NEW BUSINESS

Ordinance No. O – ZC – 20 – 02 An Ordinance Adopting, Rejecting or Adopting with Modifications the Planning Commission's Recommendation to Approve with Condition the Application of Redwood USA, LLC for a Change in Zoning from R-1 Open Space Residential to PD-3 Planned Development-Business for Property Located at the Northwest Corner of National Road and Haber Road consisting of a Specified Portion of Parcel I.D. Number M60 03012 0022, a Specified Portion of Parcel I.D. Number M60 03102 0002, and all of Parcel I.D. Number M60 03102 0105 and containing 33.73 Acres Within the City of Clayton,, Ohio. Motion by Henning to reject the Planning Commission's Recommendation, motion was second by Gorman. Voting: Bachman-no, Henning-yes, Gorman-yes, Merkle-yes, Kelly-yes, Lieberman-no, and Stevens-no. Law Director Dillon stated the 4-3 vote based on a planning commission recommendation requires four votes to approve, but the no votes totaling three to approve the recommendation was not sufficient. Dillon also noted that in order to reject the recommendation a total of five votes was required to reject the recommendation and the four yes votes, which in this case was to reject the proposal, was also insufficient. So, under our code, an insufficient number of votes to either reject or to approve, so this Ordinance dies on the table.

Resolution No. R – 02 – 21 – 15 A Resolution Approving a New Collective Bargaining Agreement with the Ohio Patrolmens Benevolent Association Setting Forth the Wages, Benefits and Terms and Conditions of Employment for Sergeants within the Clayton Police Department for the Period April 1, 2021 through March 31, 2024. Amanda Zimmerlin, City Manager, advised the current CBA between the OPBA–Sergeants and the City expires March 31st. Members of the collective bargaining unit and City administration met throughout the month of January to discuss proposed changes. The bargaining unit voted on and accepted the following non-financial and financial items: 2% wage increase in 2021; 2022; and 2023 with no me-too clause, a \$.60 per hour annual stipend totaling \$1,287 paid out the first full pay period in December, education bonus of \$1,000 for an associates or bachelor's degree in law enforcement, police science, police or public administration, criminal justice, or other police related degree program paid out the first full pay period in November, and an increase uniform allowance by \$50 each year. Motion by Henning to approve the Resolution, second by Kelly. All yeas, motion carried.

Resolution No. R – 02 – 21 – 16 A Resolution Establishing Rates and Fees at Meadowbrook at Clayton for the year 2021. Elaine Wittman, Assistant to the City Manager, advised Meadowbrook is in its seventh year of operation as a City-owned golf course and event facility. The rate and fee structure was last amended in 2019, and after a review of usage trends, rates of other similarly situated facilities and market trends, it appears that Meadowbrook's rates and fees are competitive. We recommend that only the following changes be made to the golf course rates and fees: Create a Fair-Share policy and implement a resident rate for greens fees which is \$2.00 less than the current rates, and increase the 9-hole prime time rate (Saturday and Sunday before 1pm) by \$2.00. It is also recommended that the event facility rental rates remain stagnant for any bookings made in 2021. Motion by Bachman to approve the Resolution, second by Gorman. All yeas, motion carried.

Resolution No. R – 02 – 21 – 17 A Resolution Authorizing the City Manager to Accept Proposal of America's Decorative Concrete, LTD and Enter Into an Agreement with America's Decorative Concrete, LTD for Specified 2021 Concrete Curb, Gutter, Catch Basin, and Related Work in the Amount Not to Exceed \$149,602.40. Randy Sanders, Public Service Director, advised, America's Decorative Concrete, LTD was the selected contractor after competitive bids were received for the 2021 curb, catch basin and concrete contracts. The 2021 contract consist of five roads with a combination of roll curb and chair curb. There is an estimated 3,500 feet of curb and numerous catch basins and approaches in this year's program. Funded is part of the 2021 yearly street and concrete budget. Motion by Gorman to approve the Resolution, second by Merkle. All yeas, motion carried.

CITY MANAGER'S REPORT

Zimmerlin advised the terms for the members of the Board of Tax Review will be expiring on March 7th. We will be bringing legislation to our March 4th meeting to appoint members. Please let me know if you have anyone you wish to appoint.

VISITOR'S COMMENTS

None heard.

COUNCIL MEMBER COMMENTS

Merkle stated for the city to be successful and moving forward we need to bring in development, but it needs to be desirable and placed in areas where we would have the best benefit. There has been a lot of discussion on Haber and National Roads and traffic issues. Those issues are valid and we need to look into how to remedy them. Lieberman stated many of the concerns raised this evening would have been better addressed at the next level. I'm concerned about where we stand with now being able to fulfill the very plan we all signed up for years ago, only on the question of zoning. This may not have been the development that we wanted but I felt with the rejecting of the zoning tonight, which we basically did, it's now dead, that it may cause us problems in the future. That is the only reason I voted the way I voted. I feel that the traffic issues are valid, and a lot of the other issues that were brought up tonight are valid issues, but we can't address them unless we have the money or the leverage to be able to address those. I just want us to keep an open mind in the future if we are going to be able to put this plan into effect. Kelly even though we can all agree to disagree I feel we all respect each other, there were valid points for and against the issues. Gorman asked everyone to be safe, get your shot, and keep your masks on. Henning thanked the service department for the great job on snow removal this

week, we know they worked some long shifts. There were issues with getting cars off the streets and some are now snowed in; this can cause issues with emergency vehicles so for everyone's protection please get cars off the streets. Stevens also thanked the service department on the great job during the snow event. I travelled to a number of other communities and I can say ours are in great shape. I also want to share a message I received from Patrick Ernst who was very complimentary on how members of our Police department responded to a call he recently made.

Motion by Gorman, second by Merkle to adjourn. All yeas, motion carried.

Meeting adjourned at 10:02 PM.