

Minutes of May 4, 2023 Council

Regular Meeting of the Clayton, Ohio City Council
Clayton Government Center
May 4, 2023

CALL TO ORDER

The meeting was called to order by Mayor Stevens at 7:24 PM. Present were Mayor Stevens and Councilmembers Bachman, Henning, Gorman, Merkle, Kelly, and Lieberman.

SPECIAL PRESENTATION

Laura Knipp of Kleptz Early Learning Center gave a presentation on their Safety Town project. Mayor Stevens presented Ms. Knipp a check from the City for a donation to Safety Town.

PUBLIC HEARING

PC23-03 Rezoning and Preliminary Development Plan for Salem Springs

Seth Dorman, City Planner, advised the application for PC23-03 was received on March 6, 2023, for Rezoning and Preliminary Development Plan for a new single-family residential subdivision to be called Salem Springs. The applicant is Arbor Homes, and property owner is the Dorothy A. Hartman Trust; Orville Hartman signed the application affidavit stating they are aware of and consent to the application. The Planning Commission held a public hearing on this application on March 27, 2023; after which they passed a motion to recommend that City Council approve the request with a couple of conditions, increase of the minimum lot width from 52' to 60' as a result of testimony and comments received from the public on concerns about density. This change resulted in a reduction from 162 lots to 155 lots. Public notice for this hearing was printed in the Eaton Register Herald on April 19, 2023, and letters to property owners within 300' of the site were postmarked and mailed on April 20, 2023. The proposed subdivision is located along two road frontages, including Phillipsburg-Union Road to the north and Haber Road to the west. This is parcel M60 03006 0009 with an area of 42.99 acres, and the current zoning of parcel is RCD-2, Rural Conservation District-2, the proposed zoning is PDD, Planned Development District. Staff reviewed and provided to each Council member the following documents: Application, Preliminary Development Plan-Site Plan, and a Geotechnical Report. Dorman then shared images of the surrounding area and proposed location. The current zoning on the property is Rural Conservation District 2 which permits or conditionally permits several agricultural related uses, some residential uses, and limited types of uses in the following categories: Communications/Utilities; Institutional-Civic, Religious, Parks and Recreation; Commercial; and Industrial. The proposed zoning for this property is Planned Development District PDD for a proposed single-family residential subdivision with 155 lots, including various public improvements and community amenities with an overall density of 3.72 lots per gross acre. Access to the development would come from two access points; one on Phillipsburg-Union Road and the other on Haber Road. New public roads are proposed to serve the proposed lots and are to be called Salem Springs Drive, Randolph Drive, Fountainhead Drive, and Haines Drive. The new public roads will be built to city standards and dedicated to the City of Clayton, and will be required to have five foot wide sidewalks on both sides of the street. There will be a path leading from Haines Drive to the neighborhood park. Streetlights, matching the city standard poles and fixtures, will be installed for added safety and security for the residents of

Salem Springs. Utilities are available at or near the site and the proposed development will be able to tie into existing public infrastructure. Some community amenities are proposed; including: Ten foot wide multi-use path along the length of the Haber Road frontage; five foot wide sidewalk along the Phillipsburg-Union Road frontage to tie into the existing sidewalk in front of Irongate Estates; and a 0.5-acre neighborhood park to be located east of Haines Drive. Three retention ponds would be located on the east side of the proposed subdivision; the middle pond will have a fountain and will serve as a focal point for the community; while the other ponds will have aerators to circulate the pond water to help prevent algae growth and to discourage mosquito habitation. The preliminary plan shows a potential wetland area in the southeast corner of the property; applicant's engineering team will have to make a final determination in conjunction with the EPA and Army Corps of Engineers; it's unknown at this time what impact, if any, that may have on the layout of the proposed subdivision. Arbor Homes is proposing a standard 60' x 110' lot that goes up from 0.13 to 0.15 acres. They would have the following minimum building setbacks: 25' front yard, 5' side yard, and 25' rear yard. All lots would have a minimum 60 foot wide lot. PLAN Clayton indicates future land use on this property to be agricultural; however, this property is surrounded by single family zoning and residential uses to the east, west, and south. It is staff's opinion that a planned development rezoning for single-family residential would not be out of character for the area. As a point of reference, we looked back at the City's 1999 Land Use Plan and the Randolph Township Comprehensive Plan from 1990. This property in both documents was envisioned for single-family development, either low density or low to medium density depending on the document that you looked at. Guidance for the proposed Preliminary Development Plan comes from Section 1111.21 which gets into our Planned Development Districts and requirements for plan development submittal, and Section 1141.10, which is rezoning. The application and submittal clearly describe the proposed development and meets the spirit and intent of the submittal requirements. After evaluating the applicant's request, and providing an opportunity for public input, the Planning Commission passed a motion to recommend approval of the Rezoning and Preliminary Development Plan for Salem Springs with the following conditions: That the proposed development has a minimum lot width of 60 feet, and the applicant addresses the comments provided in the plan review letter from Planning Staff and sent to the applicant on March 24, 2023.

Gorman stated this is the fourth plat we've had through here and in the first three the PLAN Clayton document was gospel, now this one we're throwing PLAN Clayton out and rezoning it. I don't understand the difference, when we started the City of Clayton, the Merger Committee promised that north of State Route 40 will remain a rural area. We've had three developments where we've had less than 60 foot lots, we have a half a dozen in the city which have 100 foot lots. I don't understand, because we did it twice, we don't have to do it again with the 60 foot lots, this is 42 acres and they can make bigger lots, possibly bigger houses and less traffic. Amanda Zimmerlin, City Manager, stated Mr. Dorman correct me if I'm wrong, the 60 foot lots that are being required now that Planning Commission required is standard for RSD zoning, am I correct in that. Mr. Dorman replied yes. Zimmerlin then stated touching on PLAN Clayton, City Council has already established that PLAN Clayton is not a firm document, we saw that at the National and Haber discussion when City Council didn't want to put the Redwood project there which is fine and Council's prerogative. But to say that Council follows it as gospel isn't necessarily true. Mr. Gorman stated as being the only Councilmember who was on the Merger Committee, one of the promises that got the deal passed was to keep everything north of State

Route 40 rural so we could become a City. Mr. Dorman state we never used the word gospel, it is a guide, it is a vision for our development.

Lieberman stated I received some letters, and there seemed to be a consistent theme among them with concerns over water, either flowing or what would happen to those who have well water. Mr. Dorman advised at this stage Council is considering a rezoning to a Planned Development District for residential development. You have a preliminary development plan in front of you which is a conceptual plan. The charge before you tonight is to say does this make sense to rezone this to residential and do you generally like the idea of this development. When we get to the final development plan, if we get to the final development plan, engineering studies are going to be done, there will be a hydrology study to look at storm water and how that's handled. What kind of volume is needed in the retention ponds. We'll also be looking at a traffic study. The applicant is obligated to mitigate their impacts with this development that is what those studies will determine. Mr. Lieberman stated I understand, but those studies come at a later time so if they find that well water would be impacted or traffic studies would have a negative impact then we do not have to okay this project at that time. Mr. Dorman stated there will be public hearings on the Final Development Plan both with the Planning Commission to recommend to make a recommendation to City Council and then it will come City Council so you will have a chance to decide if the plan before you is something that you are in agreement with and would like to see move forward.

Stevens stated I also have a question concerning the water issue. Assuming this project goes through it would have storm water control, I understand it has the retention ponds but will there be additional storm water control. Dorman stated with public streets and with what would be proposed along Haber in terms of the multi-use path the storm water is going to be collected in pipes, and it's going to be taken to the retention ponds. The studies will determine how much volume is needed in those ponds. The water stays in those ponds, there is an orifice which is a type of plate that slows the release of water back into the storm water system. At a minimum, the development has to mitigate for their impact and storm water situation will be no worse than it is today, it has to be designed to pre-development condition or better. Typically, it's better.

Lieberman stated just so I'm clear, the hydrology study, will we be able to determine whether those areas around this development whether their wells would be impacted by the development. Dorman advised I don't think it would get into that, it's going to get into what is the amount of water this site is going to take and what are the depths of the ponds and the volume that is required for those ponds. Lieberman stated I received a letter regarding bedrock and how that bedrock might have to be damaged in order to put in water and sewer from Union. The concern is whether that is going to impact their well water. We don't want to do damage to neighboring wells or sewer systems. Dorman stated we do have the geotechnical exploration report. They go on site and do bores to look at how much soil is there, where do we meet bedrock. It's important to note that if during construction something should spoil the wells that would then be a civil matter between the developer and the property owners. Lieberman asked then the study will be able to give us an idea as to the risk of impact to the neighboring areas. Dorman stated from the standpoint of depths of where the bedrock is, that will help us gain some sense of whether or not you will need to do blasting to put in utilities. Our city engineer will be reviewing all of the studies that are provided to us, but I would ask the applicant to further address your concerns.

Henning stated when I look at PLAN Clayton in 1999 that area was labeled single-family low density. What was the difference between low density versus what you want to change it too

now. Dorman replied that it is not currently codified in today's Planning and Zoning Code. Prior to July 2021 we had residential density definitions for low, medium and high. Low was no more than five dwelling units per gross acre, medium was no more than eight, and high was anything over eight dwelling units per gross acre. Those definitions are not currently codified in our Planning and Zoning Code, they were in the previous code. Henning stated in PLAN Clayton that area calls for parks. You said there was the wetland area, where in this development do they plan to put any type of green space. Dorman stated as with any development that comes before us, they do look at ponds as open space, there is a neighborhood park on the east side of the development, and there is the potential wetland that is shown as undeveloped without lots.

Stevens stated I know they have had issues at Irongate with basements flooding. Do you know if they are planning on building with basements. Dorman stated they are not planning on doing basements but would if that was something the buyer requests.

Merkle in looking at lot sizes, if you look at the lots on the other side of Haber, then what this development is proposing to have, then looking at the size of Union's lots. Maybe we should have something comparable to what is in Union in comparison to density. Dorman stated this is Council's moment if you're concerned with density, if you're concerned with lot widths. When you're approving zoning, you can request that.

Paul Metzger, Director of Land Acquisition for Arbor Homes. He stated why they choose Clayton; good city to be in, good site, good attributes, good schools, good tax rates, convenience to shopping, good parks, easy access to highways, close to job centers. Arbor Homes has been in business for 29 years but are new to the region, having started in Indianapolis. We built over 1,700 homes last year. We build slab grade homes, with an option for basements. Our price ranges from \$250,000 to \$400,000. There were questions on engineering, that's the next step after we hopefully get approved because it's hundreds of thousands of dollars is what would have to be spent to do those. Comments about rock, we have done some soil borings. Balsbaugh Excavating has looked at that and he does not think we are going to be blasting, but he can't guarantee it. He did the Irongate subdivision. Are we going to have to rip some rock, chip some rock, probably, but we don't expect to do any blasting. Comments on storm water and some pictures that were circulated, the issues on the properties to the west, there is not a whole lot we're going to do about those, those are issues on those properties. Where it crosses the road and gets onto our property, there are four current pipe systems that go through under the road. We have to pick that water up and we have to manage it, get a pipe through the site and get it discharged. There are all types of rules, including the EPA, that we have to follow that will do that.

Bachman asked can you clarify your statement on storm water as far as to the properties to the west. Metzger stated one of the pictures showed somebody sitting in a canoe, those are issues that are involved with those properties and lack of storm water management. In today's standards, all the way through the Ohio EPA, we have to deal with things like that that are on our property.

Kelly asked what are the sizes of the homes and what are your building materials. Metzger advised they range from 1,200 to 3,200 square feet. Our building materials, we do some level of brick based on the owner's selection on the front elevations, the rear and sides are vinyl. They will be similar to Union Springs and we have 14 styles of homes.

Merkle asked what is the timeframe to start this project if approved. Metzger replied they would start next year and anticipate building 30-40 homes per year, it will be built in phases.

Stevens questioned the width of the lots, is that still on the table. Metzger stated they are still open but it all comes down to cost, and the cost of infrastructure which is very expensive.

Mayor Stevens asked for a motion to open the public comments for this hearing. Motion by Bachman to open the public comments for this hearing, motion as second by Kelly. All yeas, motion carried.

Mayor Stevens administered the Oath to members of the public who wish to speak on this case. Mayor Stevens advised Council received letters from Megan Bias of 10857 Haber Road, and Charles Singler of 10460 Haber Road, and read them into the record. Mr. Singler had also written a letter to Councilman Lieberman that was read into the record. All three letters are on file with the Clerk of Council. No one spoke as a proponent for this case. The following residents spoke in opposition to this case:

Larry Erbaugh - 10511 Haber Road
Dana Erbaugh - 10511 Haber Road
Dana York - 10635 Haber Road
John Roberts - 10829 Haber Road
Ellen Hogan - 10801 Haber Road
Kristy Cox - 209 Kimmel Road
Steve Hensley - 10895 Haber Road
Mike Study - 4675 Phillipsburg Union Road
Lori King - 10763 Haber Road
Pamela Bowman - 4486 Phillipsburg Union
Jeff Eubanks - 4590 Phillipsburg Union
Scott Anderson - 10581 Haber Road
Leanne Bustos - 9240 Haber Road
Doug Bias - 10857 Haber Road
Keith Gay - 10783 Haber Road
Mark Alsobrooks - 220 Irongate
Mr. & Mrs. Speer - 214 Irongate
Kelly Clark - 4138 Phillipsburg Union
Megan Gaul - 103 Springhouse Drive
Kristi Daugherty - 145 Springhouse Drive
Joan Hodgkinson - 4489 Sweet Potato Ridge Road
Nathan Terbay - 4516 Phillipsburg Union
Kevin Mullinex - 10680 Putnam Road

This meeting was taped and all resident comments were captured. A flash drive copy of this video is on file with the Clerk of Council and available for viewing.

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

CLERK'S REPORT

Clerk Seim presented the minutes of the April 20, 2023 Council meeting. Motion by Gorman, second by Bachman to approve the minutes as presented. Voting: Bachman-yes, Henning-abstain, Gorman-yes, Merkle-yes, Kelly-yes, Lieberman-abstain, and Stevens-yes. Motion passed 5-0, with 2 abstaining.

OLD BUSINESS

None

NEW BUSINESS

Ordinance No. O – 05 – 23 – 07 An Ordinance Approving Amendment of Section 1313.08 (“Placement of Receptacles”) of Chapter 1313 of the Clayton Codified Ordinances. Motion by Gorman to approve the Ordinance, second by Henning. Voting: Bachman-yes, Henning-yes, Gorman-yes, Merkle-no, Kelly-yes, Lieberman-yes, and Stevens-yes. Motion passed 6-1.

Ordinance No. O – 05 – 23 – 08 An Ordinance (Adopting, Rejecting, Modifying) the Planning Commission’s Recommendation to Approve, with Specified Conditions, the Application of Clayton Properties Group, Inc. DBA Arbor Homes, for a Change in Zoning from Rural Conservation District-2 (RCD-2) to Planned Development District (PDD) and to Further Approve the Preliminary Development Plan for 42.99 Acres of Property Located Along Phillipsburg-Union Road and Haber Road and Bearing Parcel I.D. No. M60 03006 0009 (to be called “Salem Springs”) within the City of Clayton, Ohio. Motion by Gorman to reject the recommendation of the Planning Commission for approval of this Ordinance, motion was second by Henning. Lieberman made a motion to table this Ordinance which I think takes precedence over the rejection, I believe there are questions that need answered so I’m moving we table at this stage. Merkle second the motion to Table this Ordinance. Voting to Table this Ordinance: Bachman-yes, Henning-no, Gorman-no, Merkle-yes, Kelly-no, Lieberman-yes, and Stevens-yes. Motion passed to Table this Ordinance 4-3.

Ordinance No. O – 05 – 23 – 09 An Ordinance Facilitating the Financing of Public Infrastructure Improvements for the Benefit of a Project Being Undertaken by Hunter’s Path Project I, LLC, by Authorizing the Execution of a Cooperative Agreement and Various Related Agreements and Declaring an Emergency. Jack Kuntz, Director of Development, advised Council this deals with Hunter’s Path, as you remember we passed a TIF for that particular property for public infrastructure to be installed there. The developer has reached an agreement with the Port Authority to sell bonds for DDC in order to be reimbursed for the public infrastructure improvements. This agreement allows us to pay the Port Authority for those bonds, the debit payments. Those funds are only to be used from the TIF account. This puts the City under no financial obligation outside of those TIF accounts. If the funds are not in the TIF account we are under no liability or obligation to pay additional City funds. Motion by Henning to approve the Ordinance as an emergency, motion was second by Kelly. Voting: Bachman-abstain, Henning-yes, Gorman-yes, Merkle-yes, Kelly-yes, Lieberman-yes, and Stevens-yes. Motion carried 6-0. Motion by Henning to approve the Ordinance, second by Kelly. Voting: Bachman-abstain, Henning-yes, Gorman-yes, Merkle-yes, Kelly-yes, Lieberman-yes, and Stevens-yes. Motion carried 6-0.

Resolution No. R – 05 – 23 – 36 A Resolution Authorizing the City Manager to Enter Into an Agreement with Wagner Paving, Inc. for Widening and Re-paving of the Westbrook Park Paths

at a cost not to exceed \$63,674.00. Randy Sanders, Public Service Director, advised Wagner Paving Inc. was selected after two paving contractors were contacted for the re-paving of the Westbrook Park paths. The work will include some widening and repaving of the existing paths which are in poor condition. This project was funded through the ARPA funds. Motion by Henning to approve the Resolution, second by Merkle. All yeas, motion carried.

CITY MANAGER'S REPORT

Amanda Zimmerlin, City Manager, advised our annual spring Sweep Clayton Clean will be held Saturday, May 20th from 8 am until 12 pm on Woolery Lane. City offices will be closed Monday, May 29th for the Memorial Day holiday. We have the Ward Study update and you were given that information on the streets that would be moved from one Ward to another. Council does need to take action on that item by July 1st. Zimmerlin advised we had a voluntary annexation request into the City of Clayton, it's the property we talked about behind Candlelight off Taylorsburg. They are asking to be annexed so the property can be developed into single family residential. Council agreed to meet with the property owner. The city had appropriated ARPA monies for the Talmadge Road storm water project. This project falls mostly on private property but it affects Talmadge Road as well. The cost estimates were done in 2020. When Montgomery County Soil and Water did the cost estimates now it is over what the City has dedicated to the project. There would now be a cost burden passed onto the residents, it will be dispersed across all the residences that it affects. Typically, they do not move forward unless fifty percent of the residences in that watershed are in favor. However, they feel that this project is important enough that with City Council's support and with the money that the City is willing to put forward they are willing to move forward with the project. Council agreed to move forward with the project. In 2020 the City discussed the allocation of ARPA monies for the Meadowbrook roof and skylight replacement. At the time, the quote for the project was \$116,000. This year we opened bids for that project, we opened two bids and they came in at \$262,113 and \$283,000. If we were to move forward with this project Council would have to appropriate additional monies. Council asked staff to get quotes on the repairs with no skylights but adding additional lighting.

VISITOR'S COMMENTS

Kristy Cox 209 Kimmel Road was asking who can she get information from on the JEDD. Mayor Stevens advised he is on the JEDD Board. She questioned a residential house at 7396 Pleasant Plain that now has a truck stop behind it. At any given time there are 1 to 15 semis parked there. Stevens advised her to work with the Clay Township Zoning Director as this is in Clay Townships jurisdiction. Her other concern is with Englewood Towing, and their junkyard across from their facility. I don't believe there is zoning for junkyards within the JEDD. Stevens advised again; this would be a question for Clay Township zoning. Lastly Ms. Cox asked when will the short section of Kimmel Road be paved. Sanders advised it is on the schedule for 2026.

COUNCIL MEMBER COMMENTS

Lieberman stated I heard a lot of good information and questions from residents, it was done very respectfully, and we thank you for the comments. Kelly thanked the residents for coming tonight, it shows you care. Merkle stated we need to look at long term solutions, and we will do our best moving forward. Gorman wished everyone happy Cinco de Mayo and Mother's Day.

Henning thanked everyone for the kind messages for the birth of his second Son and thanked the residents for coming out tonight. Bachman stated a lot was said and discussed tonight, it's been a four hour meeting but that's our job to hear you. Stevens thanked residents for coming out tonight and we appreciate that, we will work to make the right decision for the city.

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

Meeting adjourned at 11:24 PM.