

## **Minutes of June 15, 2023 Council**

Regular Meeting of the Clayton, Ohio City Council  
Clayton Government Center  
June 15, 2023

### **CALL TO ORDER**

The meeting was called to order by Mayor Stevens at 7:30 PM. Present were Mayor Stevens and Councilmembers Bachman, Henning, Gorman, Merkle, Kelly, and Lieberman.

Councilman Henning made a motion to amend the agenda to move Visitor Comments up to after the Clerk's Report. Mayor Stevens advised we will not amend tonight's agenda. We've had public opinions on this, we've had public hearings on this, you're breaking protocol. Councilman Henning asked Law Director Dillon to define Council protocol. Dillon stated that during public hearings visitor comments have an agenda time, and at other times as allowed by the Presiding Officer, so it's the Mayor. Henning asked does the body not have the ability to amend the agenda. Dillon replied through the rules it's the Presiding Officer which is the Mayor.

### **SPECIAL PRESENTATION**

Mayor Stevens stated we were scheduled to present a Proclamation this evening, however the recipient was not able to attend this evening so we will present it to him at our July 20<sup>th</sup> meeting.

### **CLERK'S REPORT**

Clerk Seim presented the minutes of the May 18, 2023 Council work session. Motion by Gorman, second by Kelly to approve the minutes as presented. All yeas, motion carried. Seim then presented the minutes of the May 18, 2023 Council meeting. Motion by Gorman, second by Henning to approve the minutes as presented. All yeas, motion carried.

### **OLD BUSINESS**

Ordinance No. O – 05 – 23 – 08 was tabled at the May 18, 2023 City Council Meeting. Motion by Bachman to un-table this Ordinance from the May 18, 2023 City Council meeting, motion was second by Lieberman. Voting: Bachman-yes, Henning-No, Gorman-yes, Merkle-yes, 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. Jack Kuntz, Director of Development, advised after two meetings and a work session the developer went back to his design team and they put together a new plan for Salem Springs. The original preliminary plan had 161 homes listed on the conceptual plan with a minimum width of 52 feet. After the Planning Commission's recommendation to City Council that they approve this particular project with a minimum of 60 foot widths, the applicant did bring forward a new conceptual plan that showed it

went down to 155 homes being shown on the conceptual plan with a minimum lot width of 60 feet. After the last work session, the applicant did go back with this his design team and today he's proposing this new conceptual plan that is down to 125 homes and a minimum lot sizes of 65 feet. There are several lots within this development that go up to 75 feet. They have also increased the green space along the eastern border along Irongate. At this time Councilman Gorman made a motion to reject this Ordinance, motion was second by Henning. Voting: Bachman-No, Henning-yes, Gorman-yes, Merkle-no, Kelly-yes, Lieberman-no, and Stevens-no. Motion failed 3-4. Paul Metzger, Director of Land Acquisition for Arbor Homes, after our last meeting we went back and worked through this plan and came up with what we think is a reasonable solution. We reduced the lot counts down to 125, 100 of those would be 65 foot in width. We've created a greater distance between the back of the houses on Haber Road, giving more distance between the road and the residences, and we've increased the open space. If we can get this approved, we would then have the engineering studies done, the geotechnical, storm water and all those things. We would then come back with a strong final development plan that would go before the Planning Commission for their review and approval. Motion by Lieberman to approve this Ordinance, motion was second by Bachman. Voting: Bachman-yes, Henning-no, Gorman-no, Merkle-yes, Kelly-no, Lieberman-yes, and Stevens-yes. Motion passed 4-3.

Ordinance No. O – 05 – 23 – 11 An Ordinance Maintaining the Current Division of Wards Pursuant to City of Clayton Charter Section 3.03(A) in Order to Provide for Substantially Equal Population in Each Ward. Second reading, no further discussion. Motion by Gorman to approve the Ordinance, second by Henning. All yeas, motion carried.

#### **NEW BUSINESS**

Ordinance No. O – 06 – 23 – 12 An Ordinance Approving Amending Chapter 183, Income Tax Sections 183.012, 183.013, and 183.081 of the Administrative Code of the City of Clayton, Ohio to Provide for Imposition of Annual Income Tax Rate of Two and One Half Percent (2.50%) per Year on Income and Restoring a One Hundred Percent (100%) Credit for Taxes Paid by Residents to Other Municipalities on Such Income on or After January 1, 2024, when the City's Income Tax Rate is Increased to Two and One Half Percent (2.50%) for the Purposes Specified Herein and Declaring an Emergency. Motion by Bachman to approve the Ordinance as an emergency, motion was second by Merkle. All yeas, motion carried. Motion by Merkle to approve the Ordinance, second by Kelly. All yeas, motion carried.

Resolution No. R – 06 – 23 – 39 A Resolution Authorizing and Directing the Board of Elections of Montgomery County, Ohio to Conduct an Election of the Electors in the City of Clayton Ohio at the General Election to be held on November 7, 2023 on the Question: Shall Ordinance No. O-06-23-12 Adopted by the Council of the City of Clayton, Ohio Providing on January 1, 2024, for an Additional One Percent (1%) Levy on Income to a Total Rate of Two and One Half Percent (2.50%) with Funds Generated by the 2.50% Income Tax to be Appropriated Solely for the Purpose of General Municipal Operations and Functions and Providing for the Restoration of the One Hundred Percent (100%) Income Tax Credit be Passed? Motion by Merkle to approve the Resolution, second by Lieberman. Voting: Bachman-yes, Henning-yes, Gorman-no, Merkle-yes, Kelly-yes, Lieberman-yes, and Stevens-yes. Motion passed 6-1.

Resolution No. R – 06 – 23 – 40 A Resolution Authorizing the City Manager to Enter Into an Agreement with the Kleingers Group for Professional City-Wide Thoroughfare Plan Services at Cost of \$49,600.00. Jack Kuntz, Director of Development, advised an updated and current Thoroughfare Plan will be used by staff to determine the appropriate size of right of way when reviewing future development and infrastructure improvement projects. This plan plays an important role in determining how wide an improved road should be, if new right of way is needed for future projects and a variety of other factors for future infrastructure improvement projects. It assists staff when applying for grants for future projects as well as ensuring the city’s future infrastructure needs are considered when new development projects are initiated. Currently the city relies on the Montgomery County Thoroughfare Plan to determine the appropriate size of right of way when reviewing future development and infrastructure improvement projects. This plan has not been changed for some time and has recommendations which haven’t changed for almost 100 years sometimes. PLAN Clayton recommends the city update this plan and create a Thoroughfare Plan specifically for Clayton. This was also an action item recommended by the PLAN Clayton Implementation Committee, is in the Five-Year Economic Development Plan and finally, is included in the approved 2023 City of Clayton budget. Motion by Merkle to approve the Resolution, second by Lieberman. All yeas, motion carried.

Resolution No. R – 06 – 23 – 41 A Resolution Authorizing the Submittal of an Application to Montgomery County for Community Development Block Grant (CDBG) Funds. Kuntz advised we request to submit a CDBG application to Montgomery County for \$89,440 to install a new five foot wide sidewalk along Union Road, specifically from the Hunter’s Glen residential development to Salem Avenue. It will also include some storm water improvements in the form of tile work to make the area project ready for the sidewalk. This new sidewalk would connect into the existing sidewalk located in front of Hunter’s Glen and extend south along Union to the newly installed ADA compliant ramps at Union and Salem Avenue. Those new ramps were part of the previously completed safety project at that intersection. Installing a new sidewalk in this section falls under Objective 3 in PLAN Clayton’s Implementation Plan, specifically under “Improving Existing Thoroughfares.” This application would be paired with a local match of \$22,360, with the total project cost being \$111,800. Motion by Bachman to approve the Resolution, second by Kelly. All yeas, motion carried.

Resolution No. R – 06 – 23 – 42 A Resolution Pursuant to Clayton Charter Section 12.12(D) Supporting the City of Clayton Income Tax Levy to be Placed on the November 7, 2023 Ballot. Motion by Merkle to approve the Resolution, second by Bachman. All yeas, motion carried.

Resolution No. R – 06 – 23 – 43 A Resolution Supporting Passage of Legislation by the 135<sup>th</sup> General Assembly of the State of Ohio Urging the United States Congress to Repeal the Windfall Elimination Provision and the Government Pension Offset. Motion by Gorman to approve the Resolution, second by Henning. All yeas, motion carried.

Resolution No. R – 06 – 23 – 44 A Resolution Authorizing the Five-Year Lease to Purchase of Two (2) 2023 Chevy Silverado Trucks for Use by the Fire Department from Enterprise Fleet Management, Inc. at a Total Cost of \$159,583.00. Brian Garver, Fire Chief, advised these two trucks are replacing the two front line command vehicles. The 2014 command vehicle will become the station vehicle, which is used daily and the 2018 command vehicle is being

transferred to the police department, since they were unable to get vehicles this year due to supply issues. These vehicles will be on a 5-year lease/buy option plan. After 5 years the City has the option to purchase the vehicles or trade them in for new vehicles, in which we receive the value of the traded in vehicles towards the new vehicles. The trade in value of these vehicles is estimated to be \$87,209. Motion by Henning to approve the Resolution, second by Kelly. All yeas, motion carried.

#### **CITY MANAGER'S REPORT**

Amanda Zimmerlin, City Manager, advised our offices will be closed Monday for the Juneteenth holiday. We will also be closed on Tuesday, July 4<sup>th</sup> in observance of Independence Day. Our shredding event is scheduled for Saturday, July 15<sup>th</sup> from 9 to 11 a.m. here at the City building. Our Movie in the Park is scheduled for Friday, August 18<sup>th</sup> at 8:30 p.m. at Meadowbrook at Clayton, and it's free for all community members. The movie hasn't been selected yet, but that will be put out on social media. We do have an opening on our Parks Commission, applications will be accepted until June 23<sup>rd</sup>. The Meadowbrook Pickleball Courts are now striped and opened for public play. The paving for this year has begun, if you've been up Union Road, it looks very nice, so does Salem Street and the top parking lot for Hardscrabble Park. Westbrook Park if Council recalls, one of the projects for the 2023 budget was resurfacing and striping of the tennis courts. Innovative Sports resurfacing will be completing that project, and that project includes the resurfacing the tennis courts and replacement of poles, nets and the striping for both pickleball and tennis.

#### **VISITOR'S COMMENTS**

The following residents spoke in opposition to the Salem Spring's development project:

Gloria Von Fahnestock – 10831 Putnam Road  
Chris Von Fahnestock – 10831 Putnam Road  
Anna Von Fahnestock – 10831 Putnam Road  
Rose Plummer – 11415 Old Mill Road  
Kelly Clark -04138 Phillipsburg Union Road  
Ryan Farmer – 11735 Old Mill Road  
Paulette Farmer – 11735 Old Mill Road  
Doug Bias – 10857 Haber Road  
Megan Bias – 10857 Haber Road  
Kristy Cox – 209 Kimmel Road  
Larry Erbaugh – 10511 Haber Road  
Dana York – 10635 Haber Road  
Alisha York – 10635 Haber Road  
Scott Anderson – 10581 Haber Road  
Nicole Alsobrooks – 220 Irongate  
Joe Frazier – 10669 Haber Road  
Steve Stapleton – 5286 Phillipsburg Union Road  
Floyd Fisher – 11974 Haber Road  
Joan Hodgkinson – 4489 Sweet Potato Ridge Road  
Steve Valley – 11511 Putnam Road  
Dennis Marlow – 3835 Phillipsburg Union Road  
Tre Weng – 4541 Phillipsburg Union Road

Jamie Wallace – 11221 Putnam Road  
Gala Lee – 10600 Putnam Road  
Bill Beaver – 3861 Phillipsburg Union 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.

Lori Hartman of 7293 Phillipsburg Union Road stated her family is selling the parcel. It has been for sale for five years and no one made an offer until this developer approached the family.

### **COUNCIL MEMBER COMMENTS**

Lieberman stated I'm the representative for your ward. There are three wards in Clayton and each have about 4,000 residents. I view my job is to listen to what everyone has to say. At the last meeting I volunteered my cell phone number and asked that you invite me to your meeting so we could have a meaningful discussion. It's more complicated than what I would ever imagine. The easiest thing for me would be to vote as you wish. My job as I view it is to do what is best for the entire ward and for the city. At the end of the day, I have to do what I think is right, not politically convenient, and that is what I'm going to try to do. I've heard what you all have said and it has served as leverage to get them to reduce it down from 170 houses down to 125. It helped to change the structure on the road so that mound isn't there anymore. It also helped with the real issues, water, traffic and density. Those issues cannot be dealt with until we approve what we approved tonight then they have to do the studies. At the end of those studies if we're not convinced that that's the best thing for the city then I would vote against it, that's why we have these studies. I am willing to listen to you, I may not agree with you, you may not agree with me, but I am listening. Kelly thanked the residents for coming this evening, I've learned a lot listening to you; and, Ms. Hartman, I understand why you're selling and your concerns. Congratulations to our two newest Parks Commission members, Christina Miller and Misty McDowell. Merkle stated people think we take this job for granted, think it's easy, it's not. If this was an easy decision it would have been made long ago and we wouldn't be sitting here now. A lot of thought goes into this, trying to figure out what's best, the good and bad, and which direction to go. We weigh the pros and cons and try to come up with the best answer. This is not done yet, there's things still to be talked about and discussed. Gorman thanked everyone for coming this evening and wished everyone a happy Juneteenth holiday and 4<sup>th</sup> of July. Henning thanked everyone for coming tonight and stated the only thing we were all in agreement with tonight was the Pledge of Allegiance. After the Pledge, some of Council tried to amend the agenda to let residents speak, it failed. Government is supposed to represent the people who elected them, the residents, and the residents showed up tonight. Not one resident was in favor of this development. Good government represents the people and listens to the residents. I feel we failed the residents tonight unlike other governments who said no to similar developments. Bachman stated there's a lot going on tonight, for me what it came down to was, I felt this was appropriate and the right thing to do. I've asked questions at previous meetings; I've dissected all the comments from these three Council meetings as well as the Planning Commission's meeting. I've dissected and taken in all of those comments, I get it, it's where you all live. I've also dissected information from the developer and city staff. I feel we have one of the best city staff and I trust their input and judgement. I take all that into account. I also take into account property rights; I believe are a two-way street. When someone comes and asks

for rezoning of a property, whether it's a realtor or the property owner, I take that extremely seriously for them and the surrounding properties. I want to wish everyone a happy Independence Day and thank you for coming tonight. Stevens recognized Kevin (Schweitzer, Finance Director), Amanda and staff for receiving the GFOA Finance Award, this is the 13<sup>th</sup> year of receiving the award. I do have two questions for Jack (Kuntz). The last few days I've seen some activity at the Road Star Trucking site are they ramping up, and this will be their national headquarters on SR49. Kuntz advised they are a Canadian trucking company and are relocating their US headquarters to Clayton. We did sign off on their zoning permits earlier this week, and they had received some foundation building permits earlier this year, so they're able to get started. They're in the process of getting the rest of their building permits approved. Stevens asked if Jack knew the time frame for the demolition of the Laura's Loft buildings (Main Street). Kuntz advise that currently they are doing the environmentals. It's part of the State of Ohio demolition project through various land banks in the State. The original grant project was to be completed by the end of 2023. The State has actually extended it until the end of 2024, however the Montgomery County Land Bank has advised they believe that that structure will be going down by the end of this year. Steven stated, I don't typically call out people, but I want to say to Ms. Hartman, I want to thank you for coming, it took courage. Everyone here tonight was respectful and that speaks to our people.

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

Meeting adjourned at 11:02 PM.