

Minutes of December 18, 2023 Council

Regular Meeting of the Clayton, Ohio City Council
Clayton Government Center
December 18, 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.

PUBLIC HEARING

PC23-04: Planned Development Modification to the “Village of North Clayton PUD Final Development Plan.” Request is made by Bella Sorella Pizza, LLC.

Mayor Stevens administered the Oath to members of the public who wish to speak on this case tonight.

Jack Kuntz, Director of Development, advised application PC23-04 was received on November 8, 2023, for Plan Modification to a previously approved Final Development Plan, specifically for Phase II of the Village of North Clayton. The applicant is Bella Sorella Pizza, LLC, and the property owner is the City of Clayton. The Planning Commission heard the case on November 27, 2023. A public notice was printed in the Eaton Register Herald on December 9, 2023, and letters to property owners within 300 feet of the site were postmarked and mailed on November 28, 2023 for the City Council meeting. The proposed project site is located along National Road to the north and Esther Price Way to the west, parcel number M60 03102 0112, with an area of 3.78 acres. The current zoning of this parcel is PDD, Planned Development District. Bella Sorella is a local small business owner who presently owns two wood fired pizza ovens and does local catering across the Miami Valley region and are growing to three ovens in 2024. Bella Sorella is owned by sisters Elizabeth Weizman and Gail Okafor. Bella Sorella has become one of the region’s most popular mobile food vendors who desire to open their first free standing restaurant, kitchen and event space. During the PLAN Clayton process, one of the most common survey responses to what residents would like to see in terms of future development in Clayton was more independent, locally owned restaurants. The new space would eventually expand to include a 3,000 square foot event space. Kuntz shared images of the surrounding area and the proposed location. The Phase II approved Final Development Plan for the Village of North Clayton community included a sportsplex and medical center on the original 7.78 commercial lot at the southeast corner of National Road and Esther Price Way. The proposed sportsplex/medical office facility was proposed and approved on the final development plan to be 180,000 square feet in total size, but for a variety of factors, this project never moved forward. Kuntz then shared images of the approved final development plan. The property in question soon found itself in an Indiana probate court after the original owner of the land filed bankruptcy during the Great Recession and the new property owner passed away. The property in question soon became tax delinquent, owing close to \$100,000 to the City in deferred property tax payments. In June of 2018, Clayton and the probate court responsible for the estate of Kevin Merrick, the deceased owner of the land in question, entered into an agreement to split the 7.78 acre parcel into two parcels, with the newly created most northern parcel, being 3.78 acres sold to the City for \$105,000. The majority of the proceeds of that sale were used to pay the delinquent property taxes owed to the City. The land has been listed and marketed with a

commercial real estate broker since approximately 2020. There have been almost zero serious inquiries for this property outside of gas stations and self-storage facilities. The property in question was originally acquired by Clayton to satisfy the delinquent property taxes, the majority coming from assessments placed on the tax sheet by Clayton, and to engage with the Dayton Metro Library to place their anticipated new Northmont branch at the location. The library did an analysis of the property and determined due to the 50 foot gas easement cutting the property diagonally from the northwest property corner of the parcel towards the southeast corner, the library's desired site layout would not be accommodated by the property. Over the last several years, Clayton has had discussions with Bella Sorella Pizza regarding their interest in locating their first restaurant in the Village of North Clayton. There was a concern from their standpoint regarding how their desired building would be able to be accommodated on the site due to the gas easement, but they were able to eventually come to a design which worked for them. The newly proposed building is consistent with the current architecture of previously approved commercial buildings within the Village of North Clayton PDD. In reviewing the plans, the Clayton Police Department responded they have no comments regarding the proposed building or use except to ensure the appropriate numbering of the building is appropriately addressed at a later date to ensure appropriate life safety services can be provided. The Clayton Fire Department had no comments specific to the plan modification but shared that they would need to review and approve all fire suppression, fire alarm and egress path/emergency lighting plans when they are submitted for final building permits. The Clayton Public Works Department had no comments on the project. The Kleingers Group provided the following comments along with the statement they find no issues with the submitted plans and/or use. The parking table indicates two proposed ADA spaces with one additional future space but note that only one is required for the current proposed plan, but three will be required in the full buildout. Confirm that parking and curb are allowed to be within the existing 15-foot easement and indicate easement type when final plans are submitted. If applicable, confirm the pond outlet pipe is permitted to cross the existing 15-foot easement when final plans are submitted. And ensure the detention basin is adequately sized to provide sufficient detention and water quality volume when final plans are submitted. Kuntz then shared images of the project site plan in addition to the preliminary landscape plan. The proposed plan modification of the Village of North Clayton Planned Development District included with Bella Sorella Pizza's application is much less intense than what was originally approved in 2005. The original use at this site was for a 180,000 square foot sportsplex/medical office facility. The previous use would have created much higher traffic volumes for the Village of North Clayton Community and surrounding areas. The proposed use meets all the requirements of a Planned Development modification, found in Section 1111.21.P.2, specifically the proposed use will not increase density or intensity of the community when compared to the originally approved plan. In comparison to the originally approved plan, the proposed use will decrease the density and intensity of the land included with the request. The proposed use will not decrease parking and/or loading areas of the overall development. There are still the same public parking and loading areas available in the Village of North Clayton community included in the originally approved plan. The only parking areas decreasing in size are specific to the private parking area of the project site. The proposed parking lot will provide more than adequate parking for Bella Sorella Pizza. The open green space of the proposed use will increase compared to the originally approved plans. The setbacks of the proposed structure will also conform to all other applicable setbacks for similar uses found in the Clayton Zoning Code. The proposed plan's impact will have less of an impact on the existing storm water system than a 180,000 square foot building and accompanying parking lot for a building of that size. The proposed building's architecture is similar to other commercial

structures found in the Village of North Clayton. The applicant will be required to submit storm water plans, which will be reviewed and approved by the city's engineering consultant. The applicant will be required to conform with all applicable landscape requirements found in the Village of North Clayton's Development Standards notebook. The Planning Commission heard this case on November 27 and voted unanimously to recommend approval. Therefore, staff recommends the application be approved with the following conditions. The applicant meets all recommendations from staff previously stated, including but not limited to having the address size and location be approved by the Clayton Police Department. The applicant will also submit stormwater and landscaping plans to staff as part of the final zoning permit approval as well as have the fire department review and approve all applicable fire suppression, fire alarm and egress path/emergency lighting plans when they are submitted for final building permits.

Mr. Merkle asked about exterior screening for lights at night, as far as trees, etc. Mr. Kuntz stated they will have to conform with the current zoning code, it is very specific on the light that is allowed. They will have to conform to all of the architectural features and regulations found in the Clayton's zoning code and the North Clayton standards.

Mr. Merkle you mentioned the retention basin, it's all on the property and it's been deemed adequate for the size of the building. Mr. Kuntz stated yes, they will have to get in more detail, and the applicant has already submitted the storm water plans.

Mayor Stevens asked the applicant if they had any comments. They replied not at this time.

Mayor Stevens after hearing no further questions from Council, asked for a motion to open the floor for this public hearing. Motion by Mr. Gorman to open the floor for this public hearing, motion as second by Mr. Henning. All yeas, motion carried.

Mayor Stevens asked if anyone wished to speak as a proponent on this case tonight.

Scott Fraser stated he is the past President of the North Clayton HOA. The residents of the Village are unanimously behind this project, there are no objections. Vance Gardner who is the current President of the North Clayton Community Authority, could not be here tonight, but wanted you to know that the Authority resoundingly is behind this project. Through the years Bella Sorella has shared their plans, we've provided feedback, and they have adjusted them.

Mayor Stevens then asked if there were any opponents for this case tonight. None were heard. Stevens asked Council if they had any further questions. Hearing none, Stevens asked for a motion to close the floor for this public hearing. Motion by Mr. Gorman to close the floor for this public hearing, motion was second by Mr. Henning. All yeas, motion carried.

Mayor Stevens asked for a motion to close this public hearing. Motion by Mr. Gorman to close this public hearing, motion was second by Ms. Kelly. All yeas, motion carried.

CLERK'S REPORT

Clerk Seim presented the minutes of the December 7, 2023 Council work session. Motion by Gorman, second by Merkle to approve the minutes as presented. Voting: Bachman-yes, Henning-abstain, Gorman-yes, Merkle-yes, Kelly-yes, Lieberman-yes, and Stevens-yes. Motion passed 6-0 with one abstention. Seim then presented the minutes of the December 7, 2023 Council meeting. Motion by Gorman, second by Kelly to approve the minutes as presented. . Voting: Bachman-yes, Henning-abstain, Gorman-yes, Merkle-yes, Kelly-yes, Lieberman-yes, and Stevens-yes. Motion passed 6-0 with one abstention.

VISITOR'S COMMENTS

None heard.

EXECUTIVE SESSION

Mayor Stevens stated we are in need of an Executive Session this evening to discuss matters pertaining to the sale of real estate. Motion by Henning to break for an Executive Session, motion was seconded by Gorman. Council broke for Executive Session at 7:53 p.m. Council returned at 7:58 p.m. and returned to their regular session.

OLD BUSINESS

Ordinance No. O – 12 – 23 – 27 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 Merkle to approve the Ordinance, second by Gorman. All yeas, motion carried.

NEW BUSINESS

Resolution No. R - ZC – 23 – 04 A Resolution _____ (*Adopting, Rejecting, Modifying*) the Recommendation of the Planning Commission to Approve, with Specified Conditions, the Request for Modification of the Final Development Plan for Phase II of the Village of North Clayton. Motion by Gorman Adopting the Planning Commission's recommendation, motion was second by Kelly. All yeas, motion carried.

Ordinance No. O – 12 – 23 – 28 An Ordinance Authorizing the City Manager to Sell a 3.7884 Acre Parcel of Property Located at the Corner of National Road and Proaction Drive and Bearing Parcel I.D. No. M60 03102 0112 to Bella Sorella Pizza Company, LLC for a Price of Two Hundred Thousand Dollars (\$200,000.00) and Subject to the Provisions Concerning Forgiveness of the Loan for the Purchase Price in Return for Maintaining an Agreed Level of Employment and Other Conditions as Contained within a Certain Purchase and Sale Agreement with the Purchaser and Declaring an Emergency. Motion by Lieberman to Table this Ordinance, motion was second by Henning. All yeas, motion carried.

Ordinance No. O – 12 – 23 – 29 An Ordinance Authorizing Amendments to Designation of Job Categories and Pay Schedules and Declaring an Emergency. Elaine Wittman, Assistant to the City Manager, advised the pay schedules include a 2% cost of living increase to the top wage for non-union employees. The starting rate for exempt employees remains the same. Per the recommendation from the Salary Commissions and the motion made and approved by Council on August 3, 2023, the Clerk of Council pay was raised to \$8,250 per year. Since minimum wage rose to \$10.45, the positions of Meadowbrook seasonal employees will be increased to coincide with this. These increases will begin on January 9, 2024, to coincide with the first full pay period in 2024. Motion by Merkle to approve the Ordinance as an Emergency, second by Bachman. All yeas, motion carried. Motion by Merkle to approve the Ordinance, second by Lieberman. All yeas, motion carried.

Resolution No. R – 12 – 23 – 72 A Resolution Imposing an Immediate Moratorium on the Issuing and Processing of Permits Allowing Retail Dispensaries, Cultivators, or Processors of Adult Use Marijuana Within the City of Clayton, Ohio. Motion by Merkle to approve the Resolution, second by Gorman. All yeas, motion carried.

Resolution No. R – 12 – 23 – 73 A Resolution Authorizing the Purchase of Lucas Device and a Power Stair Chair from Stryker Medical Emergency Care for use by the Fire Department at a Total Cost to the City of Clayton Not to Exceed \$9,743.67, and the Remaining Cost thereof to be Paid with BWC Grant Funds. Brian Garver, Fire Chief, advised the Fire Department has been awarded a BWC Grant to purchase a Lucas Device, which is a chest compression device and a power stair chair. The new LUCAS device will replace the current LUCAS device that has been in service for eight years. The power stair chair is a newer device that will power up and down steps with a patient. This will replace the current manual version and help to prevent injuries while moving patients up and down steps. Clayton will be responsible for the matching funds, which will not exceed \$9,743.67. Motion by Henning to approve the Resolution, second by Gorman. All yeas, motion carried.

Resolution No. R – 12 – 23 – 74 A Resolution to Authorize and Approve the 2024 Budget and permanent Appropriations. Motion by Gorman to approve the Resolution, second by Merkle. All yeas, motion carried.

Resolution No. R – 12 – 23 – 75 A Resolution Approving Transfer of Funds. Kevin Schweitzer, Finance Director stated I am requesting the transfer from the General Fund to the Debt Service fund. The special assessment for the curb/gutter work was not collected at the amount originally budget for. The transfers budgeted for police, fire and service will not be fully utilized, so there will be no effect on the General fund balance. These transfers are for operating expenses. Motion by Henning to approve the Resolution, second by Kelly. All yeas, motion carried.

Resolution No. R – 12 – 23 – 76 A Resolution Approving Amendment of 2023 Appropriations and Estimated Resources, Schweitzer advised additional revenues and appropriations needed for building department activities, \$15,034 for appropriations and \$28,000 for estimated resources. Proceeds for ticket sales for Breakfast with Santa and related expenses need to be added. We need to reallocate operating expenses to personnel. We need an additional \$50 for a fence project at Warner cemetery. More revenue was collected for the Agency fund (\$254.10) and JEDD Tax fund (\$55,000), which need paid to recipients. And, additional appropriations needed for Firehouse analysis and TID Agreement costs, \$60,600. We need to reduce estimated resources by \$192,202.44 as it was improperly added previously. Motion by Gorman to approve the Resolution, second by Henning. All yeas, motion carried.

CITY MANAGER'S REPORT

Amanda Zimmerlin, City Manager, advised City offices will be closed Friday, December 22nd and Monday, December 25th in observance of the Christmas holiday, in addition to being closed Friday, December 29th and Monday, January 1st in observance of the New Year's holiday. The Laura's Loft demolition is still scheduled for early 2024. Boards and Commissions, we did advertise the BZA position, we have not received any additional applications for that. If you know someone that would like to serve, you can submit their name for consideration when you make your decision on January 4th on who to place on that board. Our trash bid is currently out, and both Rumpke and Republic have expressed interest. Our current contract expires June 2024.

COUNCIL MEMBER COMMENTS

Bachman stated we all saw the news earlier today, unfortunately a Preble County Sherriff officer was killed this morning in a traffic accident, along with another individual in another car. It's

unfortunate right before the holidays, I just want to send my well wishes to the whole Preble County community who is definitely hurting today. On a lighter note, we're still in the preliminary planning stages for Bella Sorella, but it's exciting project and looks good, it will be an excellent addition to the community. Councilman Lieberman this is your last meeting, I've learned a lot from you, and have appreciated your friendship. Henning stated I send my condolences to Deputy Hamilton's family, he has a ten year old Daughter, so we will be praying for their family. Congratulations to Jack (Kuntz) on your new role with Brookville. Dennis (Lieberman), it's been a pleasure working with you these last ten years, I value our friendship. Breakfast with Santa, I want to thank you Earl (Harlamert) and the Parks Commission, and everyone who volunteered, it was a phenomenal event. Bella Sorella, obviously we love your pizza, and are looking forward to your new site. I want to wish you all a happy and healthy new year. Gorman stated I want to thank Jack (Kuntz) and Earl (Harlamert) and the Parks Commission for the Breakfast with Santa event and thank Santa for taking the time to come and join us. Thank you, Dennis it's been a pleasure working with you, it's been a great ten years. Merkle stated my condolences to the Sheriff's Department in Preble County. Welcome Bella Sorella and are excited for the opportunity to bring in a new business into the area, we hope for your success. It's the holiday season, Christmas is coming and I wish the best for everyone as far as the holiday season. Dennis, I have enjoyed working with you all these years. Kelly stated first I would like to thank all the staff members, Jack, you're an amazing person. You work so hard and dedicate yourself to the City, Brookville is going to be honored to have you for a City Manager. Second, the Breakfast with Santa is always a great event. Bella Sorella, it's about time, we've been waiting for this so long, finally we're on the way. Thank you, and I think it's going to be a huge success. Dennis, we did our orientation together, for 10 years I've had the extreme honor to be on Council with you. I appreciate all the success that we've had, that we've done. I wish everyone a Merry Christmas and Happy holidays.

Lieberman stated I'm not going to talk about my election, I lost. Mr. Farmer, I wish you the best of luck and I really hope you succeed because if you succeed, Clayton succeeds. I do wish you the best of luck. I do want to spend a couple of minutes on what it means to me to be on Council. There are two different things, there's politics, which I was chairman of the Democratic party for 13 years. During that time, I learned about politics, and getting elected is different than when you are elected. Your responsibilities are different because people particularly in today's politics, people do and say anything to get elected. Our constituents, the people who vote, they vote on what they hear. So, if they're hearing things that are distorted or lies or misrepresentations, they're going to vote based on what they think are truth. When you get elected, you have an obligation to tell the truth. I think you have an obligation to the constituents in your community to act upon what you think are the facts, to act upon what you believe after listening to your staff after reading all the material every two weeks that you're given to weigh that and to vote on what you think is best. That's why we're a republic, if we were a true democracy then everybody would be voting on every issue that we have and we can't do that. We're too big and too modern today to do that, so we're a republic. The reason you vote for them is to weigh everything and to tell the truth and to vote the way that you believe is the right way to vote after looking at all that. I could have voted differently on the last vote on a development. I think if I had done that maybe I would still be up here for another four years, maybe not. Maybe someone still would have run against me, but I knew that my vote would probably cost me the election, yet that's why I'm here. I'm here to do what I think is right and I did what I thought was right. I think everyone on Council did the same thing. No matter which way you came out on it, we all weighed all the facts and we did what we thought was best and

we listened to our community. After listening and weighing all that, we voted the way that we thought was right. I don't condemn the way that people voted, it's a procedure I think that is even more important than the ultimate vote because if we don't do that, if we don't weigh the facts and if we're not true to ourselves and true to why we're here then why are we here. Just getting elected every four years is not a good enough reason. We have to be here to do what's good for our community. I truly thought I did that, that I tried to do it doesn't mean my conclusion was the same as everybody else's in fact. I'm very aware it wasn't the same as everybody else's, but it's still something that I think we in government owe our constituents. If I had to vote again on this one vote, which was probably instrumental in this election although there are other reasons people may not have voted for me too, but I would have voted the same way. I reached it in an honest way and that's why I voted the way I did. When you're on Council it's different than running for Council. When you're on Council you owe the people your best effort to do what you think is right, not just what's going to get you reelected. I know the people on this Council believe that too. The people of my ward have spoken and hopefully someday we can work together again, and if not, thank you, it's been an honor. Stevens stated the Breakfast with Santa was great and thanked everyone that helped with the event. Bella Sorella, we look forward to you coming, you're a local company and this will be your first brick and mortar. Dennis, we've appreciated your service, you've done a fantastic job. Mr. Farmer, you have big shoes to fill, but we're confident we're in good hands going forward. We've had a great 2023, and we're looking forward to a better 2024. I want to thank staff, we made a lot of strides this year, we got a lot of rooftops built and we're getting some new businesses, and we're getting some old buildings torn down, but we have some challenges ahead. I wish everyone a Merry Christmas and Happy New Year.

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

Meeting adjourned at 8:53 PM.