

## **Minutes of February 15, 2024 Council – Draft Not Approved by Council**

Meeting of the Clayton, Ohio City Council  
Clayton Government Center  
February 15, 2024

### **CALL TO ORDER**

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

### **SPECIAL PRESENTATION**

Council recognized Battalion Chief Michael Seagraves who has retired from the Clayton Fire Department with 42 years of service.

Government Finance Officers Association – Certificate of Achievement for Excellence in Financial Reporting was presented to Kevin Schweitzer, Finance Director. This was his 18<sup>th</sup> year receiving this award.

### **PUBLIC HEARING**

Planning Commission Case PC23-05 A request for a plan modification of an existing approved Final Development Plan for a Planned Development District, specifically the Village of North Clayton PDD. The request was made by Kurt and Kathy Crim, the applicant.

Ellen Snyder, GIS and Zoning Manager, advised application PC23-05 was received on November 22, 2023, for Plan Modification to a previously approved Final Development Plan, specifically for Phase II of the Village of North Clayton, the applicants and property owners are Kurt and Kathy Crim. A public notice was printed in the Eaton Register Herald on December 6, 2023, and letters to property owners within 300' of the site were postmarked and mailed on November 30, 2023. The property is located on lots 6 and 7 on Steineman Street in the Village of North Clayton, parcel numbers are M60 16323 0006 and M60 16323 0007 with a total land size of approximately .24 acres. The current zoning of the parcels is PDD, Planned Development District. Staff reviewed and provided each Planning Commission member the following documents: Application, Site Plan and Elevations, and Phase II Village of North Clayton approved site plan. The applicants plan desire to build their new single-family home in the Village of North Clayton. The applicants have purchased lots 6 and 7 on Steineman Street, which is located in an area included with the originally approved Phase II of the Village of North Clayton Planned Development District, which was approved by Clayton City Council on November 17, 2005. The Phase II Final Development plan was approved with a mixture of residential types and parcels with varying lot sizes, ranging from lot widths of 40'-49', 50'-59', 60'-69' and 90' plus. Specifically, on Steineman Street, there were townhome and single-family lots approved, with four townhome lots identified at the corner of Steineman Street and Anneliese Way and the remainder of the seven lots identified and approved as single family lots in the 40'-49' lot width series. Ms. Snyder shared images of the proposed location and surrounding area. Since the time of the original Phase II approval, four single family homes have been built on the single-family lots. Three remaining lots have not been built on, including lots 6 and 7. The applicant has purchased the lots in question and desires to combine the lots to build their new single-family home. Lot 7 has a lot width of 46.92' and Lot 6 has a lot width of

45.44'. Combined, the newly created lot would have a width of 92.36.' If this property was not located in a Planned Development District (PDD), staff would be able to approve this request administratively because it meets all the requirements of a minor lot combination because the newly created lot will continue to meet all the required development standards of the zoning district. However, since the property is located in a PDD and the proposal differs from what was originally approved by Clayton City Council, it must come before the Planning Commission and City Council for approval. The applicants will be required to build a home to the standards of the Village of North Clayton community, as regulated by the Village of North Clayton architectural guidelines. This includes having a rear entry garage, accessed from the alleyway, sidewalks and building materials consistent with those standards. Setbacks and other development standards would be required to be maintained as well. Clayton staff reviewed the application and have no comments. The application request decreases the original density approved by case ZC-05-11 and will have zero negative impact to the community in terms of traffic, storm water and life safety factors. Snyder displayed the Village of North Clayton's approved Final Development Plan along with the applicant's project plans for their new home. Staff used the following Planning and Zoning Code Guidance for this case. Section 1111.21 of the Clayton Zoning Code addresses Planned Development Districts (PDD). Specifically, Section 1111.21.P details the steps and process for a plan modification for a PDD. Subsection 1 states: "Because of the difficulty in being able to supply precise data at the time of approval of the Final Development Plan, it may be necessary to make certain modifications to the Final Development Plan at a later date." Subsection 2 states: "Modification to the Final Development Plan shall not deter from the general intent and purpose as originally approved by the City Council. No modifications, unless approved by the City Council, shall be approved that will increase density or intensity, decrease parking and loading areas, and reduce useable open space or reduce distance between structures and the perimeter property lines." Staff recommends the application be approved as submitted as the proposed plan modification reduces the overall density of the Village of North Clayton Planned Development community and has zero negative impact on the overall safety, traffic and storm water functions of the overall neighborhood. 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 lot combination will decrease the density and intensity of the land included with the request; the proposed use will not decrease public 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; and, the proposal also does not reduce space between buildings or community open space. The proposed lot combo will increase the distance between homes and has zero impact on the community's open green space.

Stevens asked if these two lots will be combined into one single lot. Snyder advised yes.

Henning stated Denlinger builds quality homes and to the standards of North Clayton.

Merkle asked if we received any comments from neighbors. Zimmerlin advised no, and at the Planning Commission hearing both the current and previous HOA Presidents spoke in favor of this application.

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

Mayor Stevens administered the Oath to members of the public who wish to speak on this case. No comments were heard as a proponent or opponent on this case. Cathy Crim, applicant, advised just for the record, they have changed builders and will now be using Peebles. 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 Merkle. All yeas, motion carried. A motion was then made by Gorman 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 1, 2024 Council meeting. Motion by Gorman, second by Henning to approve the minutes as presented. All yeas, motion carried.

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

None heard.

#### **OLD BUSINESS**

Ordinance No. O – 02 – 24 – 01 An Ordinance Authorizing the City Manager to Enter Into a Purchase Agreement with Kate's Pizza Place, LLC and Further Authorizing Transfer at Closing for the Purchase Price of \$50,000.00 Plus Closing Costs and Broker Fee of the Public Property Bearing Parcel ID Number M60 03102 0112 Located at the Corner of National Road and Proaction Drive within the City of Clayton, Ohio and Containing 3.7884 Acres and Declaring an Emergency. This was the second reading of the Ordinance, with no further discussion. Motion by Gorman to approve the Ordinance as an emergency, second by Kelly. All yeas, motion carried. Motion by Henning to approve the Ordinance, second by Gorman. All yeas, motion carried.

Ordinance No. O – 02 – 24 – 03 An Ordinance Repealing Ordinance No. O-05-23-08 Which Adopted 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 Farmer to un-table the Ordinance from the February 1, 2024 Council meeting, motion was second by Henning. Voting: Farmer-yes, Henning-yes, Gorman-yes, Merkle-yes, Kelly-no, Bachman-no, and Stevens-no. Motion passed 4-3. Motion by Farmer to approve the Ordinance, motion was second by Henning. Voting: Farmer-yes, Henning-yes, Gorman-yes, Merkle-no, Kelly-no, Bachman-no, and Stevens-no. This Ordinance did not receive the required number of votes to move to a second reading.

#### **NEW BUSINESS**

Ordinance No. O – 02 – 24 – 04 An Ordinance Authorizing Removal of Specific Assessment for Grass/Weed Cutting Previously Submitted in Error to Montgomery County Auditor and

Declaring an Emergency. Kevin Schweitzer, Finance Director, advised this assessment represents a resident who had an assessment added to their tax bill in error. Motion by Henning to approve the Ordinance as an emergency, second by Kelly. All yeas, motion carried. Motion by Gorman to approve the Ordinance, second by Henning. All yeas, motion carried.

Resolution No. R – PC – 24 – 05 A Resolution \_\_\_\_\_ (*Adopting, Rejecting, Modifying*) the Recommendation of the Planning Commission to Approve Request for Modification of the PDD Final Development Plan for the Villages of North Clayton. Motion by Henning to adopt the Recommendation of the Planning Commission to Approve the Request, motion was second by Gorman. All yeas, motion carried.

Resolution No. R – 02 – 24 – 15 A Resolution Authorizing the Five-Year Lease to Purchase of One (1) 2024 Ford Interceptor Utility SUV for Use by the Police Department from Enterprise Fleet Management, Inc. at a Total Cost of \$60,600.00. Schweitzer advised the new 2024 Police Interceptor will replace one of the oldest marked cruisers in the police fleet, having mileage of at/or near 100,000 miles, and is part of the ongoing fleet maintenance/replacement schedule. Motion by Merkle to approve the Resolution, second by Kelly. All yeas, motion carried.

Resolution No. R – 02 – 24 – 16 A Resolution to Authorize and Approve Purchase Order. Schweitzer advised the Westbrook/Salem Safety Project incurred increased costs due to price rises of the materials and since the original purchase order was written in 2022, no adjustment can be made. Also, the purchase of 3 dump trucks approved in 2022 had some price increases on parts that could not be purchased until the chassis was completed, and since the original purchase order was written in 2022, no adjustment can be made. Motion by Gorman to approve the Resolution, second by Farmer. All yeas, motion carried.

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

Amanda Zimmerlin, City Manager, advised the Northmont Chamber of Commerce has scheduled a Town Hall Meeting at Meadowbrook at Clayton on February 28<sup>th</sup> from 6-8 p.m. Staff will be there to give a presentation on the income tax levy we'll have on the ballot March 19<sup>th</sup>. We have also been pushing out on social media a series of videos. We did receive our flyers and those will be mailed out on Monday. We are also getting a shipment of yard signs. Speaking of taxes, CCA will be providing taxpayer assistance at the City offices, assistance is by appointment only, and you can schedule an appointment by calling (216) 857-3174. This information is also available on the City's website. Appointments will be Friday, March 1<sup>st</sup>, Wednesday, March 13<sup>th</sup>, Monday, March 25<sup>th</sup> and Wednesday, April 10<sup>th</sup> from 9:00 am to 3:00 pm. Residents can also go to other municipalities that utilize CCA. Councilmember Farmer had requested a series of work sessions, and I'm looking for direction from Council on what you would like to do with that. After discussion it was determined they would wait until after the election before moving forward with this.

Henning asked to share that early voting does start Wednesday, February 21<sup>st</sup>. The last day to register to vote in the March primary is February 20<sup>th</sup>. The Board of Elections will be open until 9:00 p.m. and you have until 11:59 p.m. to update your registration or register online on Tuesday at midnight. Starting on Wednesday you can no longer register to vote for the March primary. It will run 8 am to 5 pm weekdays, and Ohio offers 28 days of early voting.

## **COUNCIL MEMBER COMMENTS**

Bachman congratulated Battalion Chief Seagraves on his retirement, and then congratulated Kevin Schweitzer and his staff on their finance award. I want to wish a Happy Birthday to Lindsey (Dervali) and an early Happy Birthday to Amanda (Zimmerlin). Kelly wished a Happy Birthday to Lindsey and Amanda. Battalion Chief Seagraves I have had the pleasure of working with you on the Pink Ribbon Girls events for many years, I appreciate all his efforts working with us. Kevin, 18 years and counting of being fiscally responsible, I appreciate everything you and your staff do, great job. Merkle also congratulated Chief Seagraves on his retirement, 42 years in the fire service is a long time, that's phenomenal. I also want to congratulate Kevin for the work that you do, as well as the rest of the staff for the city. Gorman thanked Karl Keith for his presentation on property valuations during our work session earlier this evening. I want to wish the best of luck to Mike (Seagraves) in his retirement, and congratulations to Kevin. Vote no on Issue 4 and vote yes on Issue 5. Henning thanked Mr. Keith for coming this evening. I would encourage residents to reach out to their State Senators and Representatives and let them know that we still want action on the Homeowners Relief Act that did not pass in 2023. I want to thank Chief Seagraves on his 42 years of service, it's amazing. He and his family have done so much work in the Northwestern Montgomery County community. Kevin, obviously I want thank you and your team for all the work that you do for our finances. The Northmont Education Foundation Auction is Friday March 1<sup>st</sup> and they have a program that allows parents to go and have their kids babysat, if they are between 5-12, the Northmont High School Softball Team will be babysitting at the High School.

Mr. Henning asked that a letter from former Mayor Joyce Detering be entered into the record:

Dennis Lieberman's comments to council last meeting (February 1, 2024) were troubling and I have provided my thoughts which you may share and add to the public record. In his polished style as a long established criminal defense attorney, Dennis Lieberman eloquently laid out his argument and continued to advocate for the position which caused him to lose the election – zoning changes to favor corporate developers, despite the vehement objection of the citizens, specifically the residents of his Ward.

Most troubling to me, however, was his insistence that a vote on pending legislation by councilmember Farmer would be a violation of conflict of interest. This position, especially when set forth by a respected member of the community, attorney, and former member of council, has a chilling effect on the members of council who were DULY ELECTED TO MAKE AND PARTICIPATE IN such decisions!

Not all "conflicts of interest" are prohibited – it depends upon the facts and circumstances of the particular case. Only those in which a public official has a dual interest that would impair his independence of judgment in making decisions are prohibited. See Ohio Ethics Commission Advisory Opinion Number 88-004. "...It is not sufficient merely to identify some indirect or indefinite benefit that a public official may accrue from the performance of an official act. A public official should not be precluded from participating in such decisions that he was duly elected or appointed to make, unless he would secure a particular benefit for himself that creates a conflict of interest."

The standard on judging whether a conflict of interest exists is whether "the matter before council would provide such a definite and particular benefit for the council member that his private interest could impair his independence of judgment or unbiased discretion in making his official decisions." Advisory Opinion Number 88-004, See also Opinions No. 85-006, 76-005, 77-003, and 87-006.

I speak about this issue now because over the life of our city I have seen numerous times when certain members of council have declined to vote on difficult issues. Some have simply opted to not show up at meetings when the vote was to be taken, but more often, a “conflict of interest” was cited as a reason not to vote. Even when a true conflict of interest may be perceived, it is important for elected officials to remember that in our Council-Manager form of government City council oversees the general administration of the city (including appointing the city manager), makes policy, and sets the budget. Accordingly, voting is both a privilege and a responsibility and you were duly elected to make the decisions you are asked to vote on. Neither should you be bullied or dissuaded from not voting if no true conflict of interest exists. The Advisory Opinions are replete with references to “definite and particular benefit” and emphasize that the mere possibility that some indirect or indefinite benefit may accrue is not sufficient to cause a conflict. Knowing this, treating the word “might” in the council rule regarding conflict of interest as anything but a figure of speech (as in “I might like a glass of water”) is folly. However, to the extent that it causes concern among council members or counsel, it should simply be removed. I know, as one who initially voted for the rules’ implementation, that was not the legislative intent.

Simply put, according to the Ohio Ethics Commission publication “Conflicts of Interest: What Should I Know?” a public official has a “conflict of interest” when his or her ability to be an objective decision-maker is impaired by his or her own interests, or the interests of family members or business associates. I ask my elected officials to be judicious in honoring conflicts of interests and determined in participating in decisions that they were duly elected to make.

Joyce Deitering

Farmer welcomed Bella Sorella to the Village of North Clayton, we look forward to visiting your establishment. I want to wish everyone a late Valentine’s Day, and I want to bring up we just finished the week that’s congenital heart disorder week. That’s something that is near and dear to my heart, my Son was born with Hypoplastic Left Heart Syndrome, which is one of the hardest to deal with. He had three surgeries before he was three years old, he’s now 27 years old and thriving. I do want to thank Council for us having the repeal vote tonight, I wasn’t confident we would get to do that. I do hope that when you talk to residents that you have some good discussions on why the way you voted. Stevens thanked Karl Keith for coming in tonight, taxes are a heated issue everywhere. I want to say congratulations to Mike Seagraves, it’s bittersweet to see him leave. I’m happy for him, sad for us. I want to say congratulations to Kevin and Candice, our two person finance team, and all the rest of our staff and Council for keeping us on budget.

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

Meeting adjourned at 8:41 PM.