

**MINUTES OF THE AVON LAKE
PLANNING COMMISSION MEETING
AUGUST 1, 2023**

A regular meeting of the Avon Lake Planning Commission was called to order on August 1, 2023, at 7:03 P.M. in Council Chambers with Chairman Haas presiding.

ROLL CALL

Present for roll call were Mrs. Fenderbosch, Mr. Haas, Dr. Ma, Mr. Orille, Ms. Raymond, Ms. Leinthall-Slattum, Mayor Zilka, Director of Law Ebert, Community Development Director Esborn, Engineer Howard and Planning and Zoning Manager LaRosa.

ELECTION OF OFFICERS

Ms. Fenderbosch moved, Dr. Ma seconded to elect Mr. Haas Chairman and Ms. Raymond Pro Tem Chairman for the term expiring on January 2, 2024. Motion carried (7-0). They were sworn in by Director of Law Ebert.

READING OF GENERAL CORRESPONDENCE & ANNOUNCEMENTS

None

COUNCIL REPORT

Mrs. Fenderbosch reported that City Council is on break, hence there is no report.

SWEARING IN

Director of Law Ebert swore in applicants and members of the audience speaking to items on the agenda.

CASE NO. 013-23 Kopf Construction Company, Improvement Plan Approval for Phase 2 of the Walker Road PUD, Port Side Cluster Subdivision.

Request of Kopf Construction Company, 420 Avon Belden Road, Avon Lake, for Improvement plan approval for Phase 2 of the Walker Road PUD Port Side Cluster Subdivision. This project is located south of Walker Road between the South Port Subdivision and Lear Road within an R-1A Single Family Residential PUD Zoning District. Applicable Code Section: 1214.05 Major Subdivision apply. Based on recommendation from the Planning Commission, this application will go to City Council for their review and decision.

James Sayler of The Henry G. Reitz Engineering Co. outlined the basic features of the improvement plan:

1. There will be 46 detached, fee-simple cluster lots with two retention basins.
2. The streets will be private with no gates.
3. An easement will be granted to the Avon Lake Water Department for sanitary and water public utilities.
4. An HOA will maintain landscaping, entrances, and retention basin areas.

5. The City will not maintain the streets or storm sewers.
6. They plan to break ground in the late summer.
7. They may only have time for half of the project to be completed this year, hence the project may be split into two phases.

Doug Baldi of Baldi Design Solutions provided information regarding landscaping plans:

1. There are two standard landscape plans that buyers choose.
2. The individual lot designs will coordinate with the street landscaping plans.
3. Plans for street trees will be solidified after the public utility plans are finalized.
4. Existing trees in the west and south portion of the area will remain.
5. An existing designated wetland will remain untouched as the deed requires.

In response to Chairman Haas's inquiries:

Mr. Baldi showed examples of the homes to be built and estimates that the minimum price per unit will be \$450,000 to \$500,000.

Mr. Sayler explained that with access to the north and south of the development, there are no plans for this to be a gated community. If that plan changed, they would have to come before the Commission again. Determining who can drive on private streets is a legal issue not determined by the developers. The development will have guest parking spaces in several locations, including the mailbox stations, because there will not be room for parallel parking. There will not be recreation facilities or sidewalks.

Mrs. Fenderbosch requested an update regarding the addition of a gate at Legacy Isle and Heron Bay. Mr. Esborn stated that after a meeting with representatives from the police and fire departments and the developer, Heron Bay residents were told that a gate will be installed between Heron Bay and Innisbrook. The gate will not be for residents or vendors. It will only be for safety service access.

Mrs. Fenderbosch verified several of Mr. Sayler's responses to the City Engineer's questions regarding the Storm Water Pollution Prevention Plan (SWPPP). These responses were submitted to Ms. LaRosa in a letter dated July 28, 2023, which is part of the record and in revisions of the site plan (sheet 11 of 17).

A resident of Handford Court asked whether the homes would have basements. Mr. Sayler said that it is an option for the buyers, and they anticipate approximately 20% will have a basement. Regarding drainage pipes, the Engineering department has reviewed a comprehensive storm water management plan. The only area that may have some surface water issues is where wooded areas remain. This is regulated on the federal and state levels, not the city level.

Mayor Zilka voiced his concern regarding gates and safety service access.

In response to Mrs. Fenderbosch's question, Mr. Sayler added that the development is designed so that it does not encroach into flood plains.

Ms. Raymond moved, Mayor Zilka seconded to recommend approval of the Improvement Plan for Phase 2 of the Walker Road PUD, Port Side Cluster Subdivision. Motion carried (7-0).

Ms. Fenderbosch stated that this case will now go to the Collective Committee and then to City Council.

CASE NO. 011-23 Lake Veterinary Properties LLC, Conditional Use Approval for a 34-Space Parking Lot West of Miller Road on the North Side of Electric Boulevard.

A Public Hearing on the request from Lake Veterinary Properties LLC (VLP), 430 Regatta Drive, Avon Lake, for Conditional Use Approval of a 34-space parking lot located west of Miller Road on the north side of Electric Boulevard in the R-1B Single-Family Residence Zoning District. Applicable Code Section: 1214.03 Conditional Uses.

After the close of the public hearing and based on the recommendation of the Planning Commission, this application will go to City Council for their review and decision.

Chairman Haas explained the procedure for this case as it is a continuation of a public hearing and specific rules apply.

Opening Statements

Richard Panza, attorney with Wickens Herzer Panza & Batista, represented the applicant, Avon Lake Animal Clinic (LVP/ALAC). Mr. Panza asserted the following:

1. LVP/ALAC submitted all the required materials for the case on time in July.
2. Since 1963, LVP/ALAC has grown as Avon Lake has grown and they want to continue.
3. The parcels at issue are on a dead-end street. The previous owners never developed them in seventeen years because they had to develop the infrastructure. No one has demonstrated any interest in doing anything with this property except LVP/ALAC.
4. Avon Lake Zoning Board of Appeals (ZBA) granted a use variance. Residents had sixty days to appeal in court and they did not.
5. While not attached, the land is near LVP/ALAC.
6. A parking lot will not disturb the area or change the character of the neighborhood.
7. Lighting and water issues will be addressed.
8. The property sits across the street from Smuggler's Cove garages and a parking area.
9. There are no safety issues.
10. LVP/ALAC are and will be good neighbors.
11. To deny a conditional use would be an abuse of the Commission's discretion.
12. This will be an employee-only parking lot.
13. No witnesses will be called because they all testified in July.

Gerald Phillips, attorney with Phillips & Co. LPA, represented residents of Electric Blvd. and Smuggler's Cove. Mr. Phillips asserted the following:

1. The lots at issue are not suitable for a parking lot because it is prohibited use in a residential district.
2. LVP/ALAC does not need more parking spaces as supported by Exhibits T2 and T3.
3. The campus already has more parking spaces than required.
4. Approving a parking lot is in contradiction of numerous requirements of the Comprehensive Land Use Plan and the Planning & Zoning Code.
5. This parking lot is a convenience for LVP/ALAC, not a necessity.
6. The Commission approved a 1.66-acre property split that is zoned for commercial use.

Rachel Kuhn, attorney with Kaman & Cusimano, LLC, represented the Smuggler's Cove Condominium Associations. Ms. Kuhn asserted the following:

1. Smuggler's Cove (SC) is a quiet, impeccably maintained complex with 170 units.
2. Built in the 1970s when standards were different, there is only one ingress/egress drive for the complex.
3. LVP/ALAC has grown into a campus and now wants a commercial stand-alone parking lot which is not permitted or conditional use in a residential district. In addition, it is inconsistent with the Comprehensive Land Use Plan or the Planning & Zoning Code.
4. The ZBA variance was for an employee and customer parking lot.
5. A sidewalk on SC's side of Electric Blvd. would require approval of 75% of SC residents.
6. There will be light issues.
7. Safety is a concern with a parking lot not adjacent to a building, i.e., loitering.
8. Property values will be negatively affected.
9. Paving of the lots will create drainage issues.
10. If the request is approved, it will be setting a precedent.
11. There will be greater stress put on City services.
12. Car noise and emissions will increase from early morning through the evening.
13. LVP/ALAC created its own situation. They did not plan well and there are other options for development on newly acquired land.

Ms. Kuhn asked that the conditional use be denied.

Mr. Panza responded to Mr. Phillips' and Ms. Kuhn's comments:

1. The Paws by the Lake property acquisitions have nothing to do with LVP/ALAC's request.
2. LVP/ALAC is twenty-two parking spaces short of its needs.
3. The ZBA granted a use variance with no conditions and that decision was not appealed.
4. The proposed parking lot is an employee-only lot and LVP/ALAC will not violate that promise.
5. No expert testimony or credible evidence has been presented to support the contention that property values will diminish.
6. No utilities or public services will be affected and there will be no increase in City costs.
7. LVP/ALAC has met the criteria for the granting of conditional use, and it should not be denied.

Witness Testimony

Patty Zinn, witness for Mr. Phillips and a resident of SC, asserted the following:

1. Per the ZBA case packet, the lot is to provide additional parking for staff and clients.
(Note for Commission members: The LVP/ALAC application form for ZBA Case 23-02 has "PROPOSED USE: Employee parking lot." The ZBA packet Discussion had "to provide additional parking for staff and clients.")
2. LVP/ALAC was recently granted previous variances for an addition and a balcony that reduced the available parking.
3. LVP/ALAC is pushing their selfish wants for expanding the business.
4. Safety is an issue with only one entrance to SC.

Becky Guthman, witness for Mr. Phillips and a resident of Electric Blvd., asserted the following statistics:

1. 3,000 - crashes per month at store parking lots
2. 16,000 - injuries from those crashes per year
3. 2,600 – deaths per year

Ms. Guthman asked the Commission members how they would feel if someone crashed into the home and yard of properties adjacent to the parking lot.

Tony Calabrese, witness for Mr. Phillips and a resident of Lake Rd., asserted the following:

1. The parking lot will be adjacent to his back yard where children play.
2. An expert is not needed to prove property values will diminish. No one would appreciate having a parking lot in their backyard, hence it will make it more difficult to sell his home someday.
3. Numbers have been presented showing LVP/ALAC does not need more parking spaces. The three existing parking lots provide sufficient spaces.
4. LVP/ALAC has 1.6 acres next to Paws by the Lake that they should use.
5. There is no hardship to LVP/ALAC if they cannot have a parking lot. Mr. Calabrese offered to buy the properties.
6. Mr. Calabrese referenced the Pickering Hill parking lot accident.
7. There is concern that the property will not be adequately maintained. LVP/ALAC has not been doing a decent job up till now. The weeds only get cut several times per year.

Commission Questions/Comments to Applicants Elicited the Following Responses:

Chairman Haas:

Mr. Panza asserted that:

- Mr. Panza stated that Ms. LaRosa's, not Mr. Phillips,' method of calculating the number of required parking spaces should be used.
- LVP/ALAC, Paws by the Lake, and Polished Paws should be viewed as independent businesses. The three businesses employ 217 people with 110 working at LVP/ALAC with the majority working daytime shifts.
- Mr. Panza stated that economic viability was part of the ZBA's decision. A developer owned the properties for seventeen years and never developed it. Hence, res ipsa loquitur, the thing speaks for itself. LVP/ALAC paid \$53,000 for the lots.
- Water and light issues will be managed.
- Mr. Panza stated that there is no evidence that property values will decrease because of a parking lot.

Mr. Orille:

- Dr. Lamb stated that Councilman Kos was approached to assist with setting up a meeting with residents of the neighborhood. The meeting was held but residents did not attend.
- Mr. Panza explained that the 1.6 acres referred to by the opposition is not a done deal yet. If it is, the land is going to be used to expand Paws by the Lake. That land and the Electric Blvd. property are different issues because they are not related businesses.

Mrs. Fenderbosch:

- Mrs. Fenderbosch commented that the only issue to be decided at this meeting is whether there can be a parking lot. Topics such as a gate, buffering, landscaping, and sidewalks would be addressed in the next review phase if it occurs.
- Mr. Panza verified that LVP/ALAC employees will only use the parking lot.
- Mrs. Fenderbosch noted that people could use an open lot not affiliated with LVP/ALAC if there is no gate. Example: a resident in the area has a large party and their guests use the LVP/ALAC parking lot instead of parking on the street.

Mayor Zilka:

- The Mayor noted that the ZBA did grant a use variance. The issue is the profit of a business versus the economic stability of the neighborhood, i.e., residential property values.
- He also commented that there were issues of leaves collecting, dumping and vermin in the vacant lot before LVP/ALAC took ownership.

Dr. Ma:

- Ms. LaRosa explained that her calculation that the LVP/ALAC is 22 parking spaces short is because she looked at the LVP/ALAC as a separate entity from the other businesses (Paws by the Lake and Polished Paws). The calculation is based on the Code requirement of one parking space per 400 square feet of building space.
- Mr. Panza agreed that LVP/ALAC should be considered as a separate business.
- Dr. Ma stated that many businesses have employee parking in lots not adjacent to the building in which they work. It is unreasonable to have employees park on Miller Road.
- Dr. Lamb explained they do not own the 1.66 acres mentioned and they would have to displace the tenant of the property adjacent to Paws by the Lake to expand parking at that location. Currently, the Electric Blvd. location is the best/only solution.

Ms. Raymond:

- Mr. John Reyes, architect, stated that there are many ways of configuring the parking spaces; the size of solid surface, lighting, etc. are being considered.
- Ms. Raymond stated that going to smaller spaces, the usual nine feet by 18 feet as opposed to the 10 feet by 20 feet shown on the site plan, would reduce the amount of pavement. This would also increase the buffer on the north side of the parking lot.

Ms. Leinthall-Slattum:

- Mr. Panza explained that LVP/ALAC purchased this residential property for a commercial use because they needed it, they were confident a variance would be granted (as the ZBA did) because this is not an unusual issue, and it had not been developed as a residential property for the previous 17 years. Mr. Panza asserted that there is no evidence that residential property values in the area will depreciate because of a parking lot.
- Ms. Leinthall-Slattum stated that the City should not solve LVP/ALAC's parking problems.
- Ms. Leinthall-Slattum added that the parking lot would negatively affect the nearby property owners' values and that they were there first.

Commission Questions/Comments to Mr. Phillips Elicited the Following Responses:

Chairman Haas:

Mr. Phillips asserted that:

- The ZBA did not find it in accordance with the law or required procedure.
- Expert testimony has not been presented regarding the economic viability of this property.
- Mr. Phillips provided calculations to support the contention that these lots are economically viable for residential development.
- Planning & Zoning Manager Page recognized that a traffic study was needed.
- Expert testimony is not required to determine that property values will be diminished. The law allows property owners to simply say it will.

Chairman Haas commented that there are other parking lots in the area (i.e., Miller Road Park, existing LVP parking lots, and Smuggler's Cove).

Mr. Orille:

Mr. Phillips asserted that while the ZBA granted a use variance that cannot be undone, the Planning Commission needs to determine the issue of whether a parking lot will be "harmonious" and conform to the Comprehensive Land Use Plan and the Planning & Zoning Code. If it does not conform, then this is a case of spot zoning.

Mr. Phillips brought up the subject of the 1.66-acre acquisition adjacent to Paws by the Lake. Mr. Ebert explained that it is not applicable to this case.

Mrs. Fenderbosch:

Mrs. Fenderbosch stated that in a perfect world, the land use plan would be followed, however, evaluating conditional use has a specific process as in Section 1214.03(a) that explains: The purpose of a conditional use procedure is to allow consideration for certain uses that due to their unique and special nature relative to location, design, size, operations, circulation, and general impact on the community, need to be evaluated on an individual basis.

Mr. Phillips pointed out that 1214.03(d)(2) requires a conditional use be consistent with the spirit, purpose and intent of the comprehensive land use plan, the general purpose of this code, and the purpose of the zoning district in which the conditional use will be located. Mr. Phillips stated that in the past, LVP/ALAC, Paws by the Lake and Pampered Paws were considered complex, not separate entities. LVP/ALAC would have been in violation of the parking space requirement all along had it not been considered part of a complex.

Commission Questions/Comments to Ms. Kuhn Elicited the Following Responses:

Chairman Haas:

The Smuggler's Cove Condo Association representatives stated that the owner of the property south of the condominium complex was approached regarding having an emergency exit on their property and they were turned down. They also requested assistance from Councilman Kos that did not result in a solution.

Public Comments

- Would not have bought a unit at SC if knew there would be a parking lot at the end of Electric Blvd.
- School buses stopping on Electric Blvd. create a traffic issue.
- LVP/ALAC does not want to displace a tenant on Lake Road but putting a parking lot next to her bedroom is acceptable which will result in her bearing the expense of adding shrubs and/or a fence.
- A parking lot in the middle of a residential area is not harmonious, other lots are already on Miller Road that are adjacent to LVP/ALAC businesses.
- Property owners adjacent to the parking lot will have to hear snow plowing early in the morning.
- Shocked by the ZBAs decision.
- The LVP/ALAC and affiliated businesses should expand into satellite locations like University Hospital or Cleveland Clinic.

Closing Statements

Mr. Panza:

- LVP/ALAC is growing and wants to keep servicing Avon Lake.
- This will be an employee-only parking lot.
- LVP/ALAC will do everything they can to minimize the impact on residents.
- LVP/ALAC believes it has met the 14 requirements for granting this conditional use.
- LVP/ALAC will abide by any conditions dictated by the Commission.

Mr. Phillips:

- Paper streets in the area will become available in the future.
- Employees can park in the lot adjacent to the grooming building, which is a shorter distance to LVP/ALAC than the proposed electric Blvd. location.
- Residents have objected little to past LVP/ALAC expansions, but this is different because it is not adjacent to any LVP/ALAC facility.
- LVP/ALAC has not met the 14 requirements.

Ms. Kuhn:

- The City has allowed this business to expand as a campus.
- No evidence was presented to refute the claim that there is enough shared parking.
- It is common sense that a parking lot will have a negative impact on property values.
- Just because one developer chose not to, it does not mean that residential development of the lots is not viable.
- Harmonious is defined as: forming a pleasing or consistent whole; or, free from disagreement or dissent.

Ms. Leinthall-Sluttum moved, Mayor Zilka seconded to recommend denial of the Conditional Use at Electric Blvd., PPNs: 04- 00-006-104-022; -023; -024; -050; -051; and -052. The motion to deny carried (5-2). All in favor except Mrs. Fenderbosch and Mr. Haas.

Commission members cited the review criteria items (1214.03) they believe had not been met:

The five commissioners voting to deny the conditional use felt Criteria 6 (the proposed use will be harmonious with the existing or intended character of the general vicinity) was not met.

Dr. Ma – 6, 7, and 8 – issue of property values and vehicle noise

Mr. Orille – 2 and 6 – issue of property values

Mayor Zilka – 2, 6, 7, 8 and 10 – ingress/egress issue at Smuggler's Cove, traffic noise, increased exhaust fumes, school buses creating one-lane road.

Ms. Raymond – 2, 6, 7, and 8

Ms. Leinthall-Sluttum – all 14 factors – health, safety, fumes, lights, etc.

Mrs. Fenderbosch read 1214.03(c)(5) to explain the continued review process.

INFORMATIONAL ITEMS

Chairman Haas informed the members he will not attend the next meeting.

DISCUSSION ITEM

CASE WS 003-23, Avon Lake Land Holdings, Sandridge Run R-2 Development, approved February 20, 2022 – Mr. Esborn informed the Commission that this project has changed from 25 to 28 units which is still below what mixed use would allow. 1214.01(O) applies.

Ms. Leinthall-Sluttum left the meeting at 10:31 p.m.

GENERAL PUBLIC COMMENTS

None

COMMENTS FROM BOARD MEMBERS

Commission members complimented Ms. LaRosa on the case packets she provided. The next Regular Meeting of the Planning Commission is Tuesday, September 5, 2023.

APPROVAL OF MINUTES

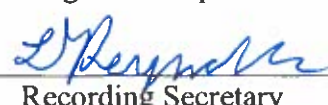
Mayor Zilka moved, Mr. Orille seconded to approve the July 5, 2023, meeting minutes as amended. Motion carried (6-0).

Ms. Leinthall-Sluttum returned to the meeting at 10:38 p.m.

ADJOURNMENT

Mayor Zilka moved, Mr. Orille seconded to adjourn the meeting at 10:40 pm. Motion carried (7-0).


Planning Commission
Pro-Tem Chair Person Raymond


Recording Secretary
Diane Reynolds