

**MINUTES OF THE SPECIAL MEETING  
OF THE AVON LAKE MUNICIPAL COUNCIL  
OCTOBER 16, 2023**

The special meeting of the Avon Lake Municipal Council was called to order on October 16, 2023 at 7:55 P.M. in the Council Chamber with Council President O'Donnell presiding.

Mr. Kos led the Council, staff, and public in the Pledge of Allegiance.

Present: Council Members Zach Arnold, Billie Jo David, Jennifer Fenderbosch, David Kos, Marty O'Donnell, Mark Spaetzel, and K. C. Zuber; Mayor Zilka; Law Director Ebert; Finance Director Widman; and Clerk of Council Valerie Rosmarin.

Absent: City Engineer Howard.

**AUDIENCE PARTICIPATION**

Regarding the motion on the agenda, the following individuals addressed Council:

- Jason Lamb of Avon Lake Animal Clinic, 124 Miller Road, Avon Lake informed Council that Avon Lake Animal Clinic was assured that their request for a conditional use permit to construct a parking lot on their property within a residential zone was legal. The Zoning Board of Appeals approved a use variance, and the property cannot be put to residential economic use in its current state which is evidenced by the lack of development, and it does not have access to water, sewer, or utilities. He noted that the criteria Planning Commission considered has similarities to the Zoning Board of Appeals and many aspects are identical. However, both entities voted differently. He asked that Council's vote be objective and voiced his concerns that subjectivity may play a role since two Council members are running for Mayor.

As a resident and a partner of a business in Avon Lake, he received a postcard from Councilman Zuber identifying the four points on which he is running. Point No. 3 states, "that Councilman Zuber will work to expand new business opportunities and help maintain existing businesses." During the Planning Commission meetings, Councilman Zuber appeared to engage and direct discussion with the residents who oppose the parking lot, but he never contacted Avon Lake Animal Clinic to understand their position. If Councilman Zuber does not understand both sides, how can he make an objective opinion? It appears that he is posturing for votes for the upcoming election and is persuaded by subjectivity. Likewise, should Councilman Spaetzel vote in opposition to Councilman Zuber, it may cost him votes. Based on this scenario, Dr. Lamb urged that the upcoming mayoral election be set aside and Council vote objectively. Avon Lake Animal Clinic has a legal right to proceed with this project and will work with the three adjacent residents to the property (the Wongs and Calabrese families on Lake Road and the Sawyer family on Electric Boulevard) to create a project that is safe, quiet, appropriately ordered, landscaped, and fenced that is within the

City code. The parking lot will be used by daytime and evening employees, and no clients will be permitted to use it. Avon Lake Animal Clinic is a growing business, and this project is bigger than what is opposed by the Wong, Calabrese, and Sawyer families and others; it is what's best for the City. The Avon Lake Animal Clinic creates jobs and provides needed services for the growing community.

- Gerald Phillips, legal counsel, 461 Windward Way, Avon Lake, stated that the parking lot Avon Lake Animal Clinic desires to construct does not comply with the City's code and has not met the 29 criteria required for a conditional use permit. The Avon Lake Animal Clinic claims that they have a parking issue, but statistics provided by Mr. Phillips have shown that they have more parking spaces than they need. No one has negated the fact that this would be the only commercial property parking lot in a residential area in the City and that it is not spot zoning. No one has provided data to support that the adjoining property values will be maintained. He has previously noted that a City official (Austin Page) highlighted there are two major problems with this parking lot: it does not comply with the Comprehensive Use Plan and traffic will be a major problem. The decision by the Zoning Board of Appeals was illegal, and Council must determine whether the applicant has met the burden of proof on all 29 criteria.
- Rachel Kuhn of Kaman & Cusimano, 50 Public Square, Cleveland, expressed her opinion that a commercial parking lot does not belong in a residential neighborhood and noted that no one in the neighborhood has spoken in support of Avon Lake Animal Clinic or this project. She urged Council to uphold the decision of the Planning Commission because the Zoning Board of Appeals did not properly consider the criteria.
- Mike Crnobrnja, 33803 Electric Boulevard, Avon Lake, said he learned of a community in Massachusetts where property values decreased, and medical problems increased because a pickleball court was placed near residential homes. The property owners filed a lawsuit, and a court ruled in their favor. It is his opinion that a parking lot will create blockage to the only entrance and exit of Smugglers Cove, and he does not want a commercial parking lot near this location.
- Vera Wong, 33811 Lake Road, Avon Lake, requested Council to be objective and agreed with Mr. Phillips' comments. This issue is about a conditional use permit and not about being a good neighbor. She has addressed Council at various meetings since August urging that they review the rules and regulations on conditional uses and support the decision of Planning Commission to reject the parking lot.

## MOTION

Council President O'Donnell moved to confirm the recommendation of Planning Commission to deny a Conditional Use for a 34-space parking lot west of Miller Road on the north side of Electric Boulevard requested by Lake Veterinary Properties, LLC.

- Law Director Ebert stated that the Zoning Board of Appeals did not act illegally, and there is a legal procedure to address times when someone believes the Zoning Board of

Appeals, or the Planning Commission acted inappropriately. There are review criteria and the Zoning Board of Appeals did grant a use variance based on the criteria, and it was forwarded to the Planning Commission. Both entities acted properly within their jurisdiction and responsibilities under the City's Planning and Zoning Code. The new code was adopted on January 1, 2022, and there are issues within the code that will be addressed in the future. However, Planning Commission's decision was voted in a negative format, which is very unusual. Therefore, if a Council member agrees with Planning Commission denying the conditional use permit, then they should vote "Yes." If they object to the denial, then their vote should be "No."

- Mr. Kos stated that Community Development Director Ted Esborn was unfairly criticized at a previous meeting and was accused of acting inappropriately by working with an applicant who asked for advice; In Mr. Kos' opinion, Director Esborn did nothing wrong since it is his job to work with businesses.

Residents began contacting Mr. Kos about the proposed parking lot earlier in the year, and he spoke with doctors at Avon Lake Animal Clinic and attempted to work through these differences. He held a Town Hall meeting in February but, regrettably, his invitation only included the residents at Smugglers Cove and not the Harbour Estates residents. At this point, both sides have presented their case. Mr. Kos believes Avon Lake Animal Clinic has a problem with parking, and expanding their business will require additional parking. He has met with residents and listened to their concerns and had hoped that these discussions would alleviate some of their apprehensions, but it has parted the issue into two sides that believe so strongly that it seems unlikely a compromise will occur. Both sides have made persuasive points and there are different opinions regarding the subjectivity of the Planning and Zoning Code criteria. Mr. Kos voiced his objection to Mr. Phillips' previous comments that there was no subjectivity and stated that there is a lot of subjectivity in the criteria. This issue comes down to the people who live closest to the proposed parking lot, and it is difficult to reject the Planning Commission recommendation without considering how Mrs. Wong and the adjacent property owners will be impacted. Unfortunately, a compromise or middle ground has not occurred. Regarding the Smugglers Cove residents, their concerns stem from the ingress and egress issues which are valid points. An emergency exit at the south end of Smugglers Cove by the bowling alley is being considered, and the City is committed to solving this problem. At this point, the parking needs of Avon Lake Animal Clinic do not outweigh the concerns of the residents who live in the vicinity, and for that reason, he will vote to support the Planning Commission's recommendation to deny the conditional use permit for the parking lot.

- Mrs. Fenderbosch stated the processes with the conditional use code are problematic. The first step of the applicant was to obtain the Zoning Board of Appeals' approval and then the Planning Commission's recommendation regarding a small portion of the conditional use segment. The parking lot's design, such as how it would protect the neighbors or limit access to Avon Lake Animal Clinic's employees along with the stormwater management plan was not part of the discussion. The code reads, "Does this zoning variance meet conditional use." If the Planning Commission could have

discussed with the parties how the neighbors would be protected, a resolution may have been achieved. This issue is very contentious, and people are divided. Her decision is based on the conditional use code and its design. When the Zoning Board of Appeals issued a use variance, without conditions and regardless of the residential zone, they approved the parking lot for that location. The only requirement for this conditional use is that it must be within 500 feet of the primary building use, and the proposed parking lot is 155.47 feet. Therefore, it is the primary building use. It was stated by Mr. Phillips and others that there are no other parking lots in residential zones in the City. That is incorrect. John Christ Winery, Barnegie Hall, the Masonic Temple, all churches in Avon Lake, and Jake's on the Lake are all conditional uses within a residential zone. Because it falls within the code and based on the recommendation of the Law Director and the Community Development Director, she will vote in opposition to the Planning Commission's recommendation.

- Mr. Arnold said that he has similar points of view to Mr. Kos except that when someone buys property near vacant land, they cannot assume that the vacant land will not be developed. Recently, nine holes in Sweetbriar Golf Course were removed and homes constructed which changed the view of the property owners along the golf course. As a business owner, he is aware that running a business is expensive and parking issues do exist. Avon Lake Animal Clinic received a use variance by the Zoning Board of Appeals and based on this approval, he will vote in opposition to the Planning Commission's recommendation.
- Mrs. David acknowledged receiving emails from both parties and stated that she visited the site on various days and times to get a sense of the area. She was a member of the Business Navigation Ad Hoc Committee and learned from business owners that they experienced difficulties navigating the development process in Avon Lake. Based on their assertions, the Community Development Department was established, and the Development Review Committee was created to streamline those processes required by an applicant. In her analysis of this conditional use request, she also referred to the conditional use section of the code. She agreed that there are subjective criteria for conditional use and will be voting in opposition to the Planning Commission's recommendation.
- Mr. Zuber stated that Avon Lake Animal Hospital knew that they were in the process of purchasing 1.66 acres and failed to disclose this information to the Zoning Board of Appeals. He believes that the Zoning Board of Appeals would have had a different opinion if that information was disclosed. They issued the use variance without knowing all the facts. He recollected that Council overturned a Planning Commission recommendation twice with valid reasons, and there isn't a valid reason to overturn this case. Avon Lake Animal Clinic can place 20 to 44 parking spaces on the 1.66 acres they recently acquired.
- Mr. Spaetzel thanked the residents and Avon Lake Animal Clinic for presenting their positions. This is a difficult decision and has weighed heavily on all. Both sides have been very passionate and have made valid points. There is a reason Council has final

authority in these types of decisions, and the reason is for Council to hear the views of our constituents and business owners. He is an avid supporter of the City's businesses and believes Avon Lake Animal Clinic provides an invaluable service. This fact must be considered because the City does not want them to leave Avon Lake. However, he believes that they will make decisions that are best for their business regardless of tonight's decision. He has reviewed all information provided, the Comprehensive Land Use Plan, the Planning and Zoning Code, input from the residents, and Avon Lake Animal Clinic. Based on this research, he cannot support placing a parking lot in a residential zone and will be voting to confirm the Planning Commission's recommendation.

- Mayor Zilka stated that this is a very important decision for Avon Lake, and it is about land use and the rights of businesses and residents to protect their neighborhood and property values. He believes that a parking lot in this residential area will make a significant difference.
- Council President O'Donnell thanked everyone in attendance for their civility in the process and the statements that they made. The City has experienced expansions that have affected neighborhoods and reasonable agreements have been made to move the project forward. Avon Lake Animal Clinic is an important business in Avon Lake and has undertaken several expansions. The residents have been complimentary with those expansions because many are clients. Whether this is spot zoning or does not comply with the Comprehensive Land Use Plan, the most important investment people have is their homes, and is their biggest asset. He has concerns about a parking lot with that many cars regardless of how it will be constructed, and this impact on the neighbors must be considered. It is hoped that Avon Lake Animal Hospital will be able to use the 1.66 acres they purchased with help from the City or Director Esborn.

Yes: Kos, O'Donnell, Spaetzel, Zuber

No: Arnold, David, Fenderbosch

Motion failed.

Mrs. Fenderbosch moved for adjournment.

Yes: Kos, O'Donnell, Spaetzel, Zuber, Arnold, David, Fenderbosch

No: None

Motion carried.

Adjournment: 8:38 P.M.

Approved: /s/ Martin E. O'Donnell  
Council President

Attest: /s/ Valerie E. Rosmarin  
Clerk of Council