

December 13

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This meeting was in Hybrid Form (Council members and visitors in Chambers and all others via ZOOM)

Amherst City Council was brought to order in a Regular Session with President Wasilk opening the meeting at 7:00 p.m. Also present in Council Chambers were Mr. Dembinski, Mr. Cowger, Mr. Wachholz, Mr. Nahorn, Mr. Heberling, Mr. Janik, Mr. Van Treuren and Mayor Costilow. Present via Zoom were Assistant Law Director Ward, Law Director Pecora, Treasurer Ramsey. Auditor Pittak was absent, and boarding a plane at the time of the meeting, and had planned to attempting to join the meeting via Zoom if possible and had a letter on file. Mr. Cowger motioned to excuse Mr. Pittak as he had a letter on file. Seconded by Mr. Heberling. Voice votes 7-0 to excuse Mr. Pittak. Also present were council elect Mr. Winiarski, Mr. Britt Lily, and many members of the Public from N. Dewey Road.

The Prayer was invoked by Chaplain Nahorn, who also prayed for the family of Patricia Heberling (Martin's grandmother). This was followed by the Pledge to the Flag led by Sergeant at Arms Dembinski.

Consent Agenda: The Clerk read the Consent Agenda. Mr. Dembinski motioned to accept the Consent Agenda as read. Seconded by Mr. Cowger. Voice vote 7-0 to accept the Consent Agenda.

Acknowledgement of the Public pertaining to items on the agenda: Ms. Katherine Gilles of 6050 N. Dewey Road read a letter stating the N. Dewey residents' concerns. The letter is attached to the minutes.

Mr. James Dubois of 6140 N. Dewey Road said he is the first resident off N. Ridge Road and feels there is no room on N. Ridge to make a turn lane. Directly after the guardrail, on either side of the road there are drop-offs. He would like more than six feet to make a turn with his truck. That's supposed to be the fix all for the traffic problem, but he does not see it happening without major reconstruction. There is county land on one side and Metro Park on the other. Both of them are drop-offs into the creek. A traffic study will not be enough, it needs significant studies. He explained further the state of that area. When you get on N. Dewey, on the left there is a drop-off into the creek, and on the right, you have telephone poles. It would be difficult to find roadbed to widen the road and his gas lines will have to be moved. He has serious concerns for the safety of the children getting on and off the bus. You will add over 100 residents of which at least one will be driving. He spoke further. Mrs. Wasilk asked for further new information. Mr. Dubois stated again that his concern is safety, especially with children and school busses. Mrs. Wasilk asked if anyone wished to speak with new information

ORDINANCES AND RESOLUTIONS FIRST READING:

- (a) An Ordinance authorizing and directing the Safety Service Director to solicit bids for the Milan Avenue/Cleveland Avenue Road Improvements Project and authorizing and directing the Safety Service Director to award the contract for such work to the lowest responsive and responsible bidder; and declaring an emergency. (A-21-49)

Mr. Dembinski motioned to pass this on to its second reading. Seconded by Mr. Wachholz. Mayor Costilow appealed to Council to adopt this item this evening so this can go out for bids as soon as possible and be awarded and we can get a better deal. We need to finish this project on a timely manner in deference to the school calendar. Mr. Wachholz withdrew his second and Mr. Dembinski withdrew his motion. Mr. Dembinski motioned to suspend all council rules so that this may be passed in it's first reading. Seconded by Mr. Cowger. Roll call vote 7-0 to suspend rules. Mr. Dembinski motioned to adopt. Seconded by Mr. Heberling. Roll call vote 7-0 to adopt. Becomes 0-21-44.

ORDINANCES AND RESOLUTIONS SECOND READING:

- (a) An Ordinance approving the 2022 Interim Budget; and declaring an emergency. (A-21-44)

Mr. Cowger motioned to suspend all council rules and pass this in its second reading to provide time for the Auditor's office complete their work so the budget can be in place by the 1st of the year. Seconded by Mr. Nahorn. Roll call vote 7-0 to suspend rules. Mr. Cowger

motioned to adopt. Seconded by Mr. Heberling. Roll call vote 7-0 to adopt. Becomes 0-21-45.

- (b) An Ordinance approving the final development plan and Owner's/Developer's Agreement for Lily's Gated Community and rezoning and approving Lily's Gated Community as a Planned Development District. (A-21-48)

Mr. Cowger motioned to pass this on to its third reading. Seconded by Mr. Van Treuren. Mr. Wachholz thanked the residents for coming this evening. This does speak to their feeling about this, as they have come to two meetings now. He knows a number of them reached out to a number of Council as well. Many of his concerns are about the resale of the property, that it won't have very good resale. He is concerned about only one person owning the property and renting those lots out to the individuals. His concern is when there is one person or one company owning a lot and renting it out to individuals. Just because there are only a few people that live on that road does not mean their concerns are worth any less. If 100% people have come out from that street, their concerns are equal, and he will not be voting for this.

Mr. James Dubois of 6140 N. Dewey said he has talked to several residents of the trailer park and those residents also go through the intersection of N. Ridge Road to N. Dewey. They are almost at his property before they can turn into the trailer park. Their children will be affected. Every single one he's talked to is unhappy about this project.

Mr. Janik thanked the residents for attending and for the letter that was provided. He asked about the amount of revenue that this development will bring in. Mayor Costilow said tax evaluation and tax collected are two different things. He explained with stating some examples and how trailer homes and modular homes are taxed. Mr. Janik would like to have the correct figures by the next meeting. Mayor Costilow said he would provide those. Mr. Janik said in one letter there was a question as whether the Police and Fire Departments were involved and informed about this. Mayor Costilow said every supervisor and every department gets to make statements. The Fire Department had some issues and improvements were made at the turn around at the end. The police did not have any concerns. Mr. Janik asked about the meeting the mayor had with the residents? Mayor Costilow said some residents did come. Some concerns were able to be addressed, some were not. They want to end the project, and he will not support that. But he will work with the developer on other items. Concerns such as school bus safety, he is sure the schools will work it out; there are so many variables, he does not think the school will allow unsafe pickups for the kids. Mr. Janik asked about widening the road. Mayor Costilow said that was brought up, and there was some discussion and they wanted some commitments if the road is widened someday. He is not willing to make a commitment as there are so many studies that would have to take place. But every single variable will be taken into consideration. Infrastructure such as moving of gas lines will also be considered. Mr. Janik asked about repaving the road. Mayor Costilow said that road is due for repaving and that could possibly be done after construction is done. We do not put any future repaving or repairs in writing. We have to wait until we study them all, and then when they meet the criteria and money is available, they are repaired/repaved. In the developer's agreement there is a video of the condition of the road and if he causes any problem to the road, they are charged with repairing the road to at least its condition now. Mr. Janik asked if the homes are on jacks on these slabs or are they flat? Mayor Costilow said they are on concrete piers. He explained further. There's been talk with the water department about easier way to get to the water meters rather than getting underneath the skirting the homes sit on. There are some arrangements about the meters being put right inside the houses. So the water department has expressed these concerns and the developer is working with them to address these concerns. Mr. Janik said since this is a gated community, is there any plans to allowing the current residents access to the walking trail or community center? Mr. Lily said this has not been considered yet.

Mrs. Cynthia McGuire, representing her mother, Delores Gilles who lives at 6024 N. Dewey road. At the last meeting, it was said that these are not mobile home, but today the Mayor referred to them as mobile homes. Mayor Costilow disagreed. Mrs. McGuire said the residents did have a meeting with the Mayor last Wednesday and she feels he had enough time to verify the numbers and not wait until another reading. She asked the Council to vote no on this project. There are still unanswered questions that have not been addressed. The frontage on each of the houses on N. Dewey Road is 10' or less to the front door. It is not a two-lane road. It is a one lane, maybe one- and one-half road. With a commercial vehicle

going down the road, another vehicle cannot pass them at the same time. There are 100% of the residents right here asking Council to vote no on this. Then Mr. Lilly can pursue whatever other endeavors he wants. This needs a thoroughly more research before another reading.

Mr. Cowger asked how many years will it take to move to phase three? Mr. Lily said it depended on many things, such as interest rates and he might estimate 3-5 years to 100% completion. Mr. Cowger said so we are not talking all these houses from day one? Mr. Lily said no.

Mr. Heberling said one of the great aspects of owning a home is owning the property it sits on and this is not the case here, so this one of the reasons he will not support this.

Mr. George Roling of 6120 N. Dewey said he has lived in his place for 90 years peacefully and he'd like to live peaceably for a few more years. He walks up and down the road and he sees where the cracks in the road ought to be tarred again this year. Even if the road is put back in the same shape, it is not in good shape right now. As far as safety, people walk their dogs up and down that road; he feels it's a big safety issues.

Mr. Len Gilles of 6060 N. Dewey and his thing is guarantees. When cisterns went in there, buffers were supposed to be put in and they never were. Now Mr. Lily wants to put in a development that may take 3-5 years and he promises guarantees. But we don't even have a guarantee that Mr. Lily will be in charge of this for the next 3-5 years. At any point in time he can sell this off and the next person can finish this off anyway they want. This is 3-5 years of construction on a road that is not big enough for a school bus to go all the way down. He said a change in routes, there will still not be enough room for anyone to go around it. He does not see this as being feasible or rational.

Mrs. Wasilk said there were a couple of questions specifically to PDD – the work that was proposed not being carried through and this being taken over by someone else who might not have the same interests or goals. Mayor Costilow said with a PDD the city has the most control over any developer and they are held to complete the tasks that are in the plans. There's bonds involved that if those things done get done, the bonds are cashed and the city does the work. The city has a lot of control on the items that were promised. Then there is the developer's agreement on top of the general plan. That plan lists all the things that need to be done. If the property transfers to someone else, they have to follow the same agreements.

Mr. Janik asked Mr. Lilly if on the original map, were there actual homes that were going to be built over behind Rock Creek Run? Mr. Lily said no lots would be sold there. A discussion ensued about lots and property on Spruce Tree Lane and building homes there.

Mr. Dembinski asked how our city can remove a PDD? Mayor Costilow said if a project is not significantly started in one year, it goes away unless an extension is requested.

Mr. Wachholz asked Mr. Lily why he chose rentals rather than selling the lots? Mr. Lily said if you look at the surrounding property, and the present use of that surrounding property, such as Spruce Tree Lane is Residential One, he'd have to change it to R-3 to make it a rental and that does not make sense. This project property is C-2 surrounded by C-2 and we are using it as similar use the south side of the property. So the PDD is the same use as surrounding property. Mr. Wachholz noted that Mr. Lily will own the entire property and then break it down and collect rental pieces for individual lots. When Mr. Lily came to us at first, he said what was nice for the residents is that they don't have to pay taxes, but instead, they will be paying rental fees. Those rental fees don't seem to be as fixed which is alarming to him. Mr. Lily said he did not know if anything is fixed in pricing in this country. Mr. Wachholz asked what was dictating the price of rents on those lots? Mr. Lily said it depended on the type of demand and the maintenance that they do. Discussion continued.

Mr. Cowger said the two lots on Spruce Tree are part of Rock Creek Run and are not part this project's development. So this should not even be coming into the discussion here. In a development like this, whether it's a rental or everyone owns the property, there is an HOA. He explained the responsibilities of an HOA. He feels the way this is set up, it's better than an HOA which can change. This has a more definite structure to make sure the property is taken care of the way it's supposed to be taken care of. He will be supporting this.

Mr. Janik said his question was answered but Spruce Tree lane is relevant because it's in the area where we are building. The space that those two parcels are on are not very large. He does not know what type of homes are going in there, but they will not have much frontage or backyard. He does agree with Mr. Cowger's point about HOAs. He knows 2 or 3 that are going defunct as we speak. He explained the problems. So it is a good point of Mr. Lily taking on the rental. He will support this going on to the next reading, but he wants to know more of the values of these properties as opposed to owning the properties. He is trying to grasp what the advantage is.

Mr. Heberling said he has spoken to most of the residents of Amherst Village and the response was almost unanimous. The amount of cost that pertained to the lot rent has increased dramatically over the course of 15 years. It went from an average of \$300 to up to \$410 per month. That far exceed what any tax base would be as compared to owing a \$150,000 home. He does not think this is in the best interest of any future resident. One of the reasons is that they do not actually own the land the home will be sitting on.

Mr. Cowger felt it was not only the increase in the land value that needs to be looked at, you also need to look as to the cost of taking care of the property and the amenities that the residents agreed to when they made the purchase. They know up front what they are buying into. He does not see where the City can tell the people not to buy into a certain area. If they have the information from the beginning, they should be able to purchase to an area where they want to live in. It's their choice. If they don't like it, they can sell or move their homes to a different location. You can't compare property tax to an HOA increase. It doesn't compare.

Mr. Dembinski said he agreed with Mr. Cowger that if a resident moves in there, they know what they are getting into. But disagrees with the HOA analogy. An HOA is a quasi governmental agency and all the residents in that HOA have voting rights who elect board members and approve their constitution by-laws and rate increases and things like that. He does not want to assume, but he feels Mr. Lily will not involve his residents in the rate increases question.

Mr. Van Treuren said he is really interested and possibly swayed by the facts that this is a legal development allowed by the City and what the residents have to say about the safety issues. However, he is really confused as to why we are getting into whether this is a business problem. If he has a bad business model and that this is really dumb, then this will not work and he will go bankrupt. It's not like he is rounding up these people and forcing them to buy these houses and we have to protect them from that.

Mr. Heberling said we are on Council and we are hearing these things before they actually go through. Dictating what someone does with their own money and own property is not in our position to say what they can and cannot do. We are preparing for the moment when this person will actually develop the property. One of the aspects we lost here is that someone is dictating what someone will own in the future. You are talking about someone owning a home that is not on the actual land and as a homeowner, he thinks that is a feature that is lost to residents especially of a more advanced age. We take enough from those people. We see that with nursing homes and will all aspects of health care. Not owning the property the home is on is something you can't pass on to your family. So if you want to give the home to your grandkids, you can't give them the land it's on. He does not think that's right. In reference to Amherst Village and things that are covered in the lot rents, not in HOA's which can go away but lot rents don't, the three lights he brought up at the last meeting are still not working. He has brought up before about streets not being plowed in that area. Other things are not being taken care of on their properties that are covered under their lot rents. He feels it's important for us to consider future residents.

Mr. Dembinski agreed with Mr. Van Treuren that Council usually does not get to say what people should do with their property. Mr. Lily has stated that if he wanted to, he could put storage units in that area. He is correct, that is zoned commercial so he can do that and is well withing his rights to do that. The reason we are having this discussion is that he is asking for a zoning change, a PDD. As part of that process, it comes to city council and for whatever reason council wants, we have an opportunity to say no. That's why it was written that way, so council has the opportunity to say no. That's why it was written that way so that council can look at a development and a change of use for a plot of land and say that it is or is not a good use for that piece of land. We are bringing up many technicalities because it's our responsibility to make that what we do it good for the residents now, for the city now, and for both for the next 20-100 years.

Mayor Costilow asked Mr. Heberling if he had approached the owner with those concerns? Mr. Heberling said the building manager, but not the owners. Mayor Costilow suggested he come to his office with the concerns and he will see about reaching out to the owners. Mayor also spoke to the escalating costs Mr. Heberling is referencing and the increased cost of \$5 a year and \$100 over 15 years, If Mr. Heberling has looked at his latest tax bill where costs have gone up 16% in one year. He explained further and said things are going up in price. Mr. Heberling said no one can say that we will have the same amount of fees being charged as things do escalate over time, but he feels the property taxes being cut in half over the course of a year between the homeowner and the landowner doesn't even come close to the \$5 or \$10 every year for the lot rents especially when the lot rents start out at \$500 a month or whatever they may be. They are paying far more each month. He explained further.

Mrs. Cynthia McGuire representing her mother at 6024 N. Dewy and is concerned that this property can be sold and the zoning has already been changed. Every resident that is here is asking council to vote no. If phase one is completed and there is no demand for phase two and three, there will not be a community center there. The community center is phase four and will not be built until then. She asked that council take that into consideration. Mayor Costilow said if this property is sold, it's held under the same rules that the original developer is held to in all the plans provided to the city. If a new owner does not significantly develop that, it reverts to the C-2 zoning just as it would for the present owner.

Mr. Roling of 6120 N. Dewey Road said that dead end signs that are placed incorrectly at the exit portion of the road road not the entrance portion of the road. So people are driving down there and then turning around at these residents' homes. The street light across from his house sometimes works and sometimes not.

Mr. Len Gilles Of 6050 N. Dewey Road said in response to Mr. Van Treuren's comment that if Mr. Lily does not have a good game plan, it won't go. If it's not a good game plan, it should not be started. The residents on N. Dewey will be left with that. He spoke about fees that would have to be charged if he 100 homes don't go in there. That's why they are here talking about this now.

Roll call vote 4-3 with Mr. Dembinski, Mr. Wachholz, and Mr. Heberling voting no. Passed to third reading.

ORDINANCES AND RESOLUTIONS THIRD READING: NONE

Miscellaneous and acknowledgement of the public: There was no one speaking.

Agenda requests and committee meeting schedules:

There were no new Agenda Requests submitted:

A-21-50 Ordinance – Declaring the ward boundaries for the City of Amherst

Please note: This committee is also being referred to as: **Ward Boundary Committee**

Ordinance (aka) ward boundary committee - December 20, 2021 at 7:00 p.m. A-21-50

No other committee Meeting scheduled for 12/20/21

Mr. Dembinski noted that if needed, Special Council Meetings will be held on 12/28/21 and 12/29/21 to consider the ward boundary legislation.

Reports of the Administration:

Treasurer Ramsey: The November reports have been distributed. He reported the City has received over \$23,000 in delinquent taxes after their office sent out certified letters with minimal cost for the postage.

Law Director Pecora: No report

Safety/Service Director Jeffreys: No report

Mayor Costilow: No report

Mr. Cowger motioned to accept the Reports of the Administration. Seconded by Mr. Heberling. Voice vote 7-0 to accept the Administration reports.

Acknowledgment of the receipt of the November Auditor and Treasurer Reports: Mr. Cowger motioned to acknowledge the receipt of the November Auditor and Treasurer reports. Seconded by Mr. Dembinski. Voice vote 7-0 to acknowledge the receipt of the reports.

Mr. Heberling motioned to adjourn, seconded by Mr. Cowger. Voice votes 7-0 to adjourn. The meeting adjourned at 8:22 p. m.

Olga Sivinski, Clerk of Council

Jennifer Wasilk, President of Council