

REGULAR

APRIL 9 2024

Amherst City Council met in a Regular Session under full compliance of State Law with President Wasilk opening the meeting at 7:00 p. m. Roll call: Mr. Winiarski, Mr. Dembinski, Ms. Harmych, Mr. Wachholz, Mr. Nahorn, Mr. Janik, Mr. Heberling. Also present were Mayor Costilow, Safety/Service Director Jeffreys, Treasurer Ramsey, Law Director Pecora, and Assistant Law Director Ward. Auditor Phillips was absent and had a letter on file. Mr. Dembinski motioned to excuse Auditor Phillips as she had a letter on file. Seconded by Mr. Wachholz. Voice vote 7-0 to excuse. Also present were several members of the public and a reporter from the Chronicle.

The prayer was invoked by Chaplain Janik, followed by the Pledge to the Flag led by Sergeant at Arms Dembinski.

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

Acknowledgement of the Public pertaining to items on the Agenda: Mrs. Meghan Dubois of 6140 N. Dewey Road had new flyers from residents asking for their opinion on the plan to add 174 homes to N. Dewey Road. She added the statement to the petitions that the developer has agreed to add an emergency access. She pointed out that there are 174 proposed homes to be built and there are 166 currently there. That's 338 homes that have Dewey Road to get in and out. She appreciates the emergency access as she believes it will save lives and realizes it's expensive. She read the residents' comments and only read residents comments that have a higher than normal probability of needing an EMS call, without sharing their names publicly. She provided the petitions to the Clerk. Between herself and another resident, they knocked on about every door of those 157 homes. No one is happy. Even with the emergency exit, some are not happy. People are concerned that that is a emergency exit and not an access road. It is not a convenience issue, it's not that they don't want more cars on their street. They are concerned that the flash points they are aware of will cause more accidents. They are talking about 600 cars going up and down the road every day. She understands that Rock Creek Run is not in favor of having a bridge open, but she does not know why. She does not think the new residents will be happy to have one way to get in and out. She asked for an answer to her question.

Mr. Wachholz motioned to limit the debate to three minutes per speaker and to limit it to three speakers this evening. There was no second.

Mrs. DuBois requested an answer to her question. There was no one answering her question.

Mr. James Doyle, 490 Rock Creek Run, Amherst said they have been trying to get that bridge put up as long as he has lived there, which is 57 years. He does not think it's a good idea. If you put a regular road in there, it will be a speed trap. He described the routes residents may try to take to avoid all the traffic lights. There is also the creek there and the water supply may be affected. Mayor Costilow to possibly limit the discussion on the bridge, said the bridge will be emergency access only and foot traffic. It's 12 feet wide and there is no room to make it bigger. There is no plan to make it bigger in order to bring cars across. Some of it is privately owned, from what he understands. It is not meant for that and it won't be for that. It's there for emergency and unlikely that it will be used for that. Mr. Doyle said that's how it always starts, give an inch and they take a mile.

Mr. Richard Sommers, a member of the Sommers Development proposing the development. Because of members of Council and Administration felt it was a good idea, they asked for a delay at the last meeting, so they could go out and see about designing this bridge. They hired a hydrologist whose job it is to put bridges over creeks. They are now committed in writing to put this emergency access in. It will have a lockable gate, with the key in a Locks Box. The only people who will have access to it is the Police, Fire Departments and safety personnel. They keep them in their vehicles. As the Mayor said, it will only be for emergency access should Dewey Road not be useable. This emergency access will be recorded as a deed restriction and will run in perpetuity with the property. This is very common and will prevent someone from getting permanent access for this bridge. People will confirm that this is an enforceable covenant.

Mr. Jerome Majkut of 100 Ceasar's Circle said in the regard to the bridge, he is more confused than he was when he came in. He suggested that Mr. Sommers make that a private bridge with access to the community and make it a gated exit and entrance. The people that live in there would be happy to have it. It would take care of the emergency and would take the pressure off N. Dewey Road. He does not understand why that's not feasible as the access has been around for many years. All it needs is a little more development.

Mr. Brian Sarvas of 1260 Spruce Tree Lane said he lives on the street that will become a raceway if that ever would become a road. The gentleman has explained that a covenant would be in place. He has heard this before. Their neighborhood has worked with the previous two Mayoral administrations and they prevented the bridge from going through. This was with Mayor Higgins and Mayor Taylor. When Mayor Taylor was in office, that allegedly was done. It was made so that property could not be sold again. They were supposed to make a park and put a picnic table in there and it was never able to be sold again. Now he sees that it's sold. The dynamics of that neighborhood is that it's getting younger. All of the older people such as him are dying off. He referenced two neighbors who had young children. His grandkids come over and ride their bikes and then walk around the neighborhood. If that road opens up to be a "shortcut" to 58, the gloves are off. He wanted to ask the last time when all the pre-fab homes went up, where are they getting the water? When they put those 100 homes in, they began to get water main breaks in their neighborhood. He is an engineer, and knows it could handle it at that time, but it can't handle it now. They were getting monthly water main breaks; they have eased up a bit now. But they are still getting them. He asked that records be checked. He and his wife walk every day and they see the dug up front yards. So where is the water coming from? Mr. Pecora said he understands that the bridge will be privately owned and the deed restrictions will stay with that forever. They are filed with the county, and you can't undo that. This is not like a publicly owned bridge that we are putting a gate on. Future councils cannot change the terms, it is privately owned. The deed runs with the property, and not with the owner forever. Mr. Sarvas asked why it did not happen before. Mr. Pecora said he was not sure. He was not involved with this before. Mr. Sarvas said he does not think anyone (on Council or Administration) were here back then except one person (he pointed to someone). Mayor Costilow said it was a different Mayor and different developer and the problem did not come up. It now came up and he feels the developer has a great solution. He is on board with that. This could possibly be a safety enhancement for Rock Creek Run as well. There is a short amount of distance where they could get blocked into Rock Creek Road and an emergency access vehicle could actually come in from the back side and enhance the safety of Rock Creek Run also. Talking about the water, different water engineers have looked at that. He is not sure, but he believes the water is coming in from the other direction. There are a lot of impact fees that come with this housing. There are sewers in that area that actually impact their sewers and those will be upsized with sewer fees and some extra dollars that this developer is going to put in that. The pump station that's there that forces the sewage up the hill at the bottom of Rock Creek Run is going to be upgraded with dollars that the developer is providing. All the infrastructure that is going to be affected will be upgraded. He does not believe the fresh water supply will be affected by this. The water breaks will happen, as Mr. Sarvas said, they were installed in the 60's and are aging. They are looking at those things and trying to replace them as the city can. Eventually they will get to that neighborhood and do some enhancements/replacements to the water lines.

ORDINANCES AND RESOLUTIONS FIRST READING:

- (a) A Resolution authorizing the Mayor to participate in the Ohio Department of Transportation winter contract for road salt for 2024-2025; and declaring an emergency. (A-24-22)

Mr. Winiarski motioned to pass this on to its second reading. Seconded by Mr. Wachholz. Roll call vote 7-0 to pass to second.

ORDINANCES AND RESOLUTIONS SECOND READING:

- (a) An Ordinance amending Chapters 1301, 1305, 1307 and 1309 of the Codified Ordinances of the City of Amherst, Ohio to include the Current Code Cycle Years as adopted by the Ohio Board of Building Standards and adding Chapter 1317 for the adoption of the 2024 Ohio Existing Building Code; and declaring an emergency. (A-24-19)

Mr. Dembinski motioned to suspend all Council rules so that this may be passed in its second reading. Seconded by Mr. Nahorn. 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 0-23-14.

- (b) A Resolution amending City of Amherst Resolution No. R-24-01 for Automated Clearing House and Electronic Transactions and repealing all Resolutions in conflict herewith. (A-24-20)

Mr. Dembinski motioned to pass this on to its third reading. Seconded by Mr. Wachholz. Roll call vote 7-0 to pass to third reading.

- (c) An Ordinance establishing the wage rate, benefits and other conditions of employment for the permanent part-time Payroll Clerk/Budget Assistant of the City of Amherst, repealing all ordinances in conflict herewith, and declaring an emergency. (A-24-21)

Mr. Heberling motioned to pass this on to its third reading. Seconded by Mr. Wachholz. Mayor Costilow asked for suspension of rules. Mr. Wachholz withdrew his second, and Mr. Heberling withdrew his motion. Mr. Heberling motioned to suspend all Council rules so that this may be passed in its second reading. Seconded by Mr. Wachholz. Roll call vote 6-1 with Mr. Winiarski voting no to suspend rules. Mr. Janik motioned to adopt. Seconded by Mr. Wachholz. Mr. Dembinski asked if the existing ordinance being used now be the one that will be repealed. Mayor Costilow said the one that is being used now will be repealed. Mr. Dembinski said so the existing position that Gwen is working under now will no longer exist because of this ordinance? Mayor Costilow agreed. Roll call vote 6-1 with Mr. Winiarski voting no to adopt. Becomes 0-23-15

ORDINANCES AND RESOLUTIONS THIRD READING:

- (a) An Ordinance approving the Final Development Plan for the proposed construction of the Parkway Storage Self-Storage Facility on Rice Industrial Parkway. (A-24-17)

Mr. Winiarski motioned to adopt. Seconded by Mr. Dembinski. Roll call vote 7-0 to adopt. Becomes 0-24-16.

- (b) An Ordinance approving the Final Development Plan for the Proposed Construction of the KO Storage of Amherst Self-Storage Facility Located at 205 Through 211 S. Leavitt Road. (A-24-18).

Mr. Dembinski motioned to adopt. Seconded by Mr. Heberling. Roll call vote 7-0 to adopt. Becomes 0-24-17.

Tabled from 3/25/24 meeting:

- (c) An Ordinance approving the Final Development Plan for the Quarry Creek Residential development and rezoning and approving such development as a Planned Development District. (A-24-15)

Mr. Dembinski motioned to remove this item from the table. Seconded by Mr. Wachholz. Roll call vote 7-0 to remove from the table. Mr. Dembinski motioned to adopt. Seconded by Mr. Wachholz. Mr. Janik thanked Mr. Sommers for hearing our plea to put in an access road at the end of Spruce Tree Lane. With this comes a new and exciting venture for us to offer a different type of housing that we don't have. He feels many young people will be attracted to this housing. He hopes they are all cautious drivers. He has two young drivers in his household that are cautious drivers. He was very apprehensive when Quarry Lakes development went up across the street from Cooper Foster, which is a very busy road as well, from his own home, but the developer did a great job and traffic did increase, but it's not unbearable. It works.

There are peak times when you have to adjust and be the first one out. But there have not been any major accidents or fatalities. They have been great neighbors as well, provided more spaces for Trick or Treat, more spaces for kids to sell things when they have the school competition and more playmates for the kids. He is in favor of this and thinks it will be a great addition to Amherst.

Mr. Winiarski said Mr. Thomas was at the last meeting speaking to the position of the road and he had an audience with Mr. Thomas at his home and they walked around. Using the Auditor's GIS, there's parts where the right of way is 13 feet from his front door. He asked Mr. Sommers where he is planning on putting in the road? Mr. Sommers said he could not tell the exact distance, but it will be within the right of way. As he said, they are committed to keeping the road improvements to one side, the east side of the road. A road does not have to be the center of a right of way. They spoke to Mr. Thomas today and they have a gentleman's agreement that they will provide some landscaping. As they did with other neighbors, they walked with some, they have agreed to make mounds to address the issues. Mr. Winiarski said the one side of the right of way goes over to the sewer. He said one of the things they discussed is when Mr. Thomas bought the property, there is a GIS where it shows Dewey Road is on the east side of that sewage line. He did find it, however, it's not accurate. He can see where Mr. Thomas sees everything coming closer and closer to him. But if they worked it out and Mr. Thomas walked away with that, that's good. Mr. Sommers said he believes that Mr. Thomas is happy and like they did with another neighbor about a fence, they have agreed on a location and to save the trees, they will "gerrymander" the fence around the big trees and put 45 degree angles around it so they don't have to take down any more trees. Mr. Winiarski asked if the gate that will be built will be owned by the HOA? Mr. Sommers said yes, it will be built on property that is owned by the HOA. Mr. Winiarski asked how a deed restriction prevents private property from being modified? Mr. Pecora said the restrictions are with the property and not with the owner and filed at the county recorder's office. When you buy that property, you are bound by those terms, just like any right of ways or easements. This would be an actual deed restriction, so anyone purchasing the property would be bound by that deed restriction. Mr. Winiarski said his understanding is that deed restrictions are tough, there are some opportunity to lift them, but it's not easy. He told Mr. Sommers, after watching him in action, he is positively impressed by how he has responded to things we have asked for such as the gate. He hears good things about Mr. Sommers, and he is grateful for that. He feels like he wants to reward him for what Mr. Sommers has done as far as accommodating requests and things like that. The other side of that coin is that he looks at the density. 338 houses. He has a really tough time getting past that. He appreciates all the positive things, but his discomfort that he is leaning against is the density and his discomfort with that will influence his vote. Roll call vote 3-4 with Mr. Winiarski, Ms. Harmych, Mr. Wachholz, Mr. Heberling voting no. The motion fails, this item is not adopted.

Miscellaneous and acknowledgement of the public: Mr. Wachholz asked on behalf of some residents about the status of how the pool will be functioning and if it will be opened. There are rumors and what has been heard from the Park Board that if they don't get an x amount of lifeguards in a certain amount of time, the pool will not open. Mayor Costilow said the Park Board is going to meet tomorrow and make their decision. There are a few lifeguards at this time. Mr. Wachholz asked if there was a possibility that the pool will be shuttered for the summer? Or what's the goal? Mayor Costilow said the Park Board will have to vote on that. Mr. Wachholz said so if the members of the community are concerned, they should attend the meeting? Mayor Costilow said they could attend or get some lifeguards. You can't have a pool without lifeguards. Mr. Wachholz asked if this was an all or nothing situation? Mayor Costilow repeated that it will have to be decided at the Park Board Meeting.

Agenda Requests – none were presented for this meeting. All committee meetings for April 15, 2024 are cancelled.

Reports of the administration:

Law Director Pecora: No report

Safety Service Director Jeffreys: No report

Treasurer Ramsey: Reported their March reports have been distributed and believes the Auditor's reports have been distributed as well. Tax returns are due this coming Monday – 4/15. They can be dropped off in the drop box or at their office or they can be mailed to the office as long as they are postmarked by the 15th. If anyone has filed for an extension, please let them know.

Mayor Costilow: Said normally he would have spoken before the vote on the development. He knows there is an ordinance that allows for the withdrawal of a vote when someone from the majority side chooses to change their vote at another meeting. So he will be reaching out to the “no” votes. He wants to make sure they understand the economic impact this development was going to have on our community. The money this was going to bring to the schools, the infrastructure that this was going to improve, the walkability possibility of that bridge, the safety concerns. There are many positives about this proposed development. Mr. Janik had mentioned a few of them. He will reach out and he asked that his calls be answered or meet with him. He really would like to talk to them about this. He still feels there is a good opportunity to have something good for our city. The whole city plan, his whole state of city address will have to change as we depend on 40-50 new houses per year. This is the only development proposed over the next three years. We are not going to have any new homes coming into the city, no new rooftops for businesses. The other thing he wanted to bring to light is that he passed out some information about that accident that was wrongfully mentioned at the last meeting. The city was accused of being heartless or something like that because we referred to that accident as a serious accident. That was not a fatality, no one died in that accident. It was a serious accident. You read all the police reports and talked to all the safety personnel, safety has been a big part of this discussion. He appreciates Council taking safety as a concern, but we have also had a lot of experts telling us that is not going to be a dangerous intersection. The accident that some people proclaim was a death caused by a dangerous intersection was actually caused by a drunk driver. There is nothing at that intersection that would have prevented that accident. Since 2020 there have been five accidents in that area. There’s been over 1200 accidents in the city of Amherst. That is a very minor area of accidents. He wishes he had said some of this before. He thought Council understood when our experts were telling us this intersection was going to get improved. It is not a dangerous intersection and it’s going to get improved. The street has potential for being widened. This developer, which Mr. Winiarski said it well, has done everything that has been asked of him. He does not typically get upset when there is a “no” vote but he asked that they reach out to him and talk and someone re-considers their vote because this is going to impact the future of the city of Amherst over the next 3-4 years.

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

Acknowledgement of the receipt of the March 2024 Auditor’s and Treasurer’s reports:
Mr. Dembinski motioned to acknowledge the receipt of the March 2024 Auditor’s and Treasurer’s reports. Seconded by Mr. Wachholz Vote 7-0 to acknowledge the receipt of reports.

Mr. Heberling motioned to adjourn. Seconded by Mr. Dembinski. Voice vote 7-0 to adjourn. The meeting was adjourned at 7:48 p.m.

Olga Sivinski, Clerk of Council

Jennifer Wasilk, President of Council