

AMHERST PLANNING COMMISSION

206 Sout Main Street
Amherst, Ohio 44001

April 26, 2023

Minutes

6:00pm

Members Present:

Charlie Marty
Terry Tomaszewski
Mike Ireland
Mayor Costilow
Dave Andrews

Excused:

John Jeffreys
Dale Rosenkranz

Other City Official

Attorney Patrick Ward
David Macartney
Tammy Paterson
Councilman Winiarski
Councilman Dembinski

Mr. Marty opened the meeting at 6:00pm.

Mr. Britt Lilley is seeking a one (1) year extension for Lily's gated Community development off N. Dewey Road. Mr. Lilley stated he is requesting a one-year extension. Mr. Lilley stated he submitted all his paperwork but did not receive the full approval from the City until August 26, 2022, and the State approval until December 15, 2022. Mr. Lilley stated he plans on breaking ground in the first week of June, early July of 2023 then construction will start after that. Mr. Lilley stated it was physical impossibility to meet the deadline due to government approvals did not happen in a timely fashion. Mr. Macartney stated it was a different process for everyone involved since we have not had a manufactured development come through since he has been with the city. Mr. Macartney stated in addition to the city approval that was granted in December 2021, once it got through the Planning Commission and Council he then had to apply to the State for their approval. Mr. Macartney stated that he needed letters from the Building Department and the Fire Department which came in June and July 2022. Mr. Macartney stated Mr. Lilley was not able to do anything but clear trees on the property until he received the approval from the State, which he started clearing December 2022. Mr. Macartney

stated he received his State approval on December 15, 2022. Mr. Macartney stated this is not our typical development since the Amherst Building Department is not certified to do inspections on industrialized units which manufactured homes are considered. Mr. Macartney stated the city engineer will inspect roads and up to the pad but once the pad has been approved Mr. Lilley will need to contact the state for all inspections. Mayor Costilow stated the completion date was not able to be met since Mr. Lilley had to wait for approvals. Mayor Costilow reviewed the developer's agreement wording regarding the completion date and the developers right to ask for a 365-day extension. Mayor Costilow stated this is what the developer's agreement states:

SECTION IV - COMPLETION TIME:

The OWNER-DEVELOPER agrees to complete all required subdivision improvements listed in Section III herein in PHASES as shown on the PLANS after the filing of the plat for the Subdivision. The OWNER-DEVELOPER may request of the CITY an extension of 365 consecutive days (1 year) to this deadline if in the OWNER-DEVELOPER'S opinion the local economic conditions or a delay of State of Ohio approval affecting development require such extension. The City Planning Commission shall have full power and authority to approve or disapprove such requests for extension of time to complete the required subdivision improvements.

Mayor Costilow stated he should have placed this on the agenda sooner and apologized for the delay and felt there was still time to decide. Mayor Costilow stated he has spoken to Bramhall Engineering and Aaron Appel thought this was a fair request and he is in favor of the extension. Mayor Costilow stated the State also had to give additional approval after the City's that did not happen until December 2022. Mayor Costilow stated he is in favor of this but if anyone has any questions to please ask so a decision can be made. Attorney Ward had no comments or questions at this time. Mr. Tomaszewski asked if this is the only extension that needs to be granted. Mr. Macartney stated for this particular project, yes. Mr. Tomaszewski asked what the deadline would be for the extension if granted. Mr. Macartney stated one (1) year or 365 days to completion unless the law department reads it differently. Mr. Lilley stated that the documentation came from the city, and he believes that was a typo. Mr. Lilley stated in his opinion the correct wording should read started within a year. Mr. Lilley stated there is no development this size with four (4) phases that can be completed within one year. Attorney Ward stated he does not read it that way, it says "The OWNER-DEVELOPER agrees to complete all required subdivision improvements listed in Section III herein in PHASES as shown on the PLANS". Attorney ward asked what the original completion date per the plans was. Attorney Ward stated the verbiage on the developer's agreement references the schedule from the plans, and the extension would be 365 days after the original completion date was. Mr. Macartney stated he was not sure the dates were given on the plat, but it showed 3 or 4 phases. Mayor Costilow stated reading the agreement, they are not limited to one 365-day extension. Mayor Costilow stated if the project is well underway, Mr. Lilley would be able to come back to the Planning Commission for a new extension. Attorney Ward stated he is not aware of any ordinance prohibiting more than one extension approval. Mr. Macartney said yes. Mr. Lilley stated the first year was consumed by government approvals.

Mr. Ireland motions to grant the extension as requested by Mr. Lilley, seconded by Mayor Costilow from the original completion date.

Attorney Ward asked Mr. Lilley for the original completion date. Mr. Lilley stated he does not remember any dates since the project was bogged down with government approvals. Mayor Costilow stated the ordinance references a sunset development as passed by council on December 28, 2021, it did not have an emergency clause so it would have come in affect 30 days after that. Councilman Chuck Winiarski stated the Sunset provision Ordinance reads "In the event that construction has not been commenced within a period of one (1) year from the effective date of the rezoning of the Planned Development District the zoning of the District shall revert to its zoning classification(s) prior to the rezoning. City Council may extend the one (1) year period by resolution. If construction has not commenced during the one (1) year period or extension thereof reversion to the former zoning classification(s) shall be recognized by resolution of City Council.

Councilman Winiarski stated he understands why Mr. Lilley is here since the developer's agreement gives the opportunity for extension to be granted. Councilman Winiarski asked the Attorney Ward where in the developer's agreement gives the Planning Commission the power. Attorney Ward stated it is Section 4 of the agreement the second and third sentence. After some discussion Attorney Ward asked Councilman Winiarski that his suggestion is the Council would need to extend the Zoning reclassification as well. Councilman Winiarski stated no, he was saying the extension is owned by Council. Councilman Winiarski stated the developer's agreement speaks to the extension time to complete the subdivision specifically to the subdivision improvements, not the extension of the completion. Attorney Ward stated he felt they were talking about two different items. Attorney Ward stated the Sunset provision is for the start of construction and the extension being requested tonight is the extension of completion of this project. Councilman Winiarski stated if that date is missed then Council has the approval to grant the extension. Councilman Winiarski stated he does not see where Council gave up the power to grant the extension. Attorney Ward went over the two separate extension deadline provisions. Councilman Winiarski stated Mr. Lilley did give a date of breaking ground in May of last year when he was in front of Council. Councilmen Winiarski went over the Council meeting minutes. Councilman Winiarski stated once that date came around and breaking ground did not happen, then the rezoning converts back to the original zoning. Mayor Costilow stated the ordinance is a little more liberal from developer's agreement and start of construction, which need to happen within 365 days. Mayor Costilow stated the City, administration, engineer, and the building department would argue clearing trees, EPA approval of clearing of the trees and drainage would be start of construction. Mayor Costilow stated not by just cutting a few trees down, but this had to be submitted to the EPA, approved by our city sewer department, and feels they have met the ordinance. Councilman Dembinski stated the extension for the completion of the project does lie with the Planning Commission but the extension for the PDD lies with Council. Councilman Dembinski stated in Mr. Lilley's words to Council, the project was to begin May, and nothing has been built there yet. Councilman Dembinski stated nothing should happen until the pre-construction meeting has happened with the building department, utilities, and engineering. Mr. Macartney stated there has been no pre-construction meeting. Councilman Dembinski stated the developer's agreement states this pre-construction meeting is required prior to start of

construction, therefore no construction has started on this project. Attorney Ward stated the Planning Commission should remember what is before them, and whether to grant the 365-day extension for the completion date, and that is the only agenda item before the Planning Commission tonight. Attorney ward stated whether the Sunset provision has or has not been complied with is a different issue and that is not before the Planning Commission tonight. Mr. Marty asked Mr. Lilley in a perfect world what his time frame would be. Mr. Lilley stated this is in four phases and feels he is right on schedule. Mr. Lilley stated he plans on breaking ground June/July of this year for grading, start working on the underground until winter and then finish the underground in Spring of 2024 for Phase 1. Mr. Lilley stated his plan is to have units up Spring to Summer of next year. Councilman Winiarski asked when the paperwork submitted to the State. Councilman Winiarski stated in council minutes, Mr. Lilley stated it would take the State 6 weeks to approve. Mr. Lilley stated it took 3 months to approve. Councilman Winiarski asked if it was submitted in February 2022. Mr. Lilley stated it was submitted three months from the approval date of December 15, 2022. Councilman Winiarski stated it was September of 2022, which was 9 months after Council approved it. Mr. Lilley stated Council's approval was not the only approval needed and he received the Amherst engineer approval August 26, 2022. Councilman Winiarski stated he just wanted to show there was a delay on the developer's part and when you do not give construction dates and just give approval dates.

Mr. Tomaszewski asked Mr. Macartney if the Planning Commission had received an actual letter or was this a verbal for the extension. Mr. Tomaszewski stated in his packet he did not receive anything but the agenda request. Mayor Costilow stated this came through his office and he emailed the request for the agenda item to the Building Department.

Motion to approve the extension of completion for 365 days from January 31, 2023. Motin passed 4-1 Mayor Costilow-yes, Mike Ireland-yes, Dave Andrews-yes, Charlie Marty-no, Terry Tomaszewski-yes.

2. Approval of minutes from March 29, 2023: Mayor Costilow motions to approve the minutes as submitted, seconded by Mr. Ireland. Approve 5-0
3. Next Scheduled meeting: May 31, 2023, at 6pm. Approved 5-0
4. Adjourn: Mr. Tomaszewski motions to adjourn at 6:44pm, seconded by Mr. Marty, seconded by Mr. Marty. Approved 5-0

Charlie Marty, tp 5/9/23 Tammy L. Paterson 5/9/23
Charlie Marty, Vice- Chairman Date Tammy L. Paterson, Sec Date