

AVON TOWN COUNCIL MEETING

January 22, 2009

Avon Town Hall Council Chamber

Call to Order was given by Greg Zusan, Council President.

Invocation was led by Pastor, Karen Scanlon from Avon Christian Church.

Pledge of Allegiance was led by Council President, Greg Zusan.

Roll Call was taken by Clerk-Treasurer, Sharon Howell. Council members present were Charlie Dorton, Nikki Gordy, Greg Zusan, Beverley Austin, and Michael Rogers. Town Manager, Tom Klein and Dan Taylor, Town Attorney, were also present.

Consent Agenda

1. December 10, 2008 Executive Session Minutes
2. January 5, 2009 Executive Session Minutes
3. December 31, 2008 Check Register
4. Accepting Annexation Petitions

Council member Austin made a motion to accept the December 10, 2008 Executive Session Minutes, January 5, 2009 Executive Session Minutes, December 31, 2008 Check Register, and Accepting Annexation Petitions. Council member Gordy seconded the motion. Roll call vote was taken.

C. Dorton-for, N. Gordy-for, B. Austin-for, G. Zusan -for, M. Rogers-for
5-for, 0-against. Motion carried 5-0

Public Comment

None

Council Comment

None

Old Business

None

New Business

Request to Pay Arbitration Fees for Pyramid

Town Attorney, Dan Taylor presented. Pyramid has not paid their share of the fee for arbitration: \$5,250. This fee was due in October, 2008. The American Arbitration Association has asked if the Town would be willing to pay Pyramid's share of the fee. They have asked for a response by January 23rd. If the fee isn't paid in full, the arbitration may be suspended. Council member Dorton asked if Mr. Taylor thought there would be any other fees. Mr. Taylor does not feel that there will be any additional fees. Mr. Taylor recommends that if the Pyramid has not paid by February 15, 2009 that the Town pays the \$5,250 so that the arbitration is not suspended. If this goes to trial we would ask for these fees to be replaced.

Council member Austin made a motion to authorize staff to pay the Pyramid share of the arbitration fee of \$5,250 if Pyramid has not made payment by February 15, 2009. Council member Dorton seconded the motion. Roll call vote was taken.

C. Dorton-for, N. Gordy-for, B. Austin-for, G. Zusan-against, M. Rogers-for
4-for, 1-against. Motion carried 4-1

Contract for Remodeling West Wing: Guy co.

Mr. Klein presented the contract to remodel West Wing. Council approved quote but not the contract. The contract states that if there is any "Change Order Request", any changes made there will be a \$250 change order processing fee – this fee has been waived. If the contract is approved they will get started on Monday. Council member Dorton asked Mr. Taylor if he is comfortable with the wording in the contract. Mr. Taylor has requested several changes with the contract. Council member Dorton is interested in the amount of time the project will take and would like to make sure that once the project gets started it doesn't stop. Council President Zusan would also like to see some type of lien waiver from them. Would also like to see the last statement in the payment structure removed: "(10%) upon substantial completion of the work".

Council member Austin made a motion to approve the contract with Guy Company pending the changes that our Town Attorney has suggested and other council members have suggested. Council member Rogers seconded the motion. Roll call vote was taken.

C. Dorton-for, N. Gordy-for, B. Austin-for, G. Zusan-for, M. Rogers-for
5-for, 0-against. Motion carried 5-0

Agreement for 200 North/Dan Jones Roundabout Design: Crossroads Engineering

Mr. Cannon presented. Contract is for \$166,000. The budget was \$170,000. The contract includes right of way services. The Town received congestion mitigation and air quality funding (CMAQ) to design and construct a single lane roundabout that is expandable to a dual lane roundabout at this intersection. The design is 80% reimbursable using federal funds. Crossroad Engineers were selected to design the intersection. The proposed cost of \$166,125 includes design services as well as ROW acquisition services for up to 6 parcels. There is a traffic study portion of this proposal. Staff budgeted \$170,000 for these services ("Go Avon' bond). Staff recommends the Town Council approve the contract contingent on approval of the contract by INDOT for a cost not to exceed \$166,125. Council member Rogers asked where this money was budgeted from. Mr. Cannon replied that the monies were budgeted in the "Go Avon" road bond.

Council member Dorton made a motion to approve the contract with Crossroad Engineers for the amount not to exceed \$166,125 for the County Road 200 North/Dan Jones Roundabout Design contingent on the approval of INDOT. Council member Gordy seconded the motion. Roll call vote was taken.

C. Dorton-for, N. Gordy-for, B. Austin-for, G. Zusan-for, M. Rogers-for
5-for, 0-against. Motion carried 5-0

Agreement for SCO Update: Ground Rules, Inc.

Mr. Al Salzman, Director of Planning & Building, presented. A copy of the proposed contract between the Town of Avon and Ground Rules, Inc. was provided to council. This project is in the 2009 budget at a cost of approximately \$20,000. The proposal would establish a base cost of \$17,200 with incidental expenses not to exceed \$1,200. This would result in a maximum project cost of \$18,400. Council member Gordy made a motion to approve the contract between the Town of Avon and Ground Rules, Inc. with the revisions stated and not to exceed

\$18,400 as stated by Mr. Taylor. Council member Rogers seconded the motion. Roll call vote was taken.

C. Dorton-for, N. Gordy-for, B. Austin-for, G. Zusan-for, M. Rogers-for
5-for, 0-against. Motion carried 5-0

Agreement: Retrofitting CSX Diesel Engines

Mr. Klein presented. CSX has received federal funding from the CMAQ program to retrofit their diesel engines with cleaner engines. The grant must go through the local government agency. The agreement outlines the responsibilities for CSX. There is no obligation from the Town for this grant. We are just the pass through agency. INDOT is dealing with this project with CSX. They agree that the engines will stay at the CSX yard for another five years. This is one good step to help with the clean air project. The Town is not responsible to monitor this project.

Council member Austin made a motion to approve the Agreement of Retrofitting CSX Diesel Engine switchers with ultra clean diesel engines. Council member Gordy seconded the motion. Roll call vote was taken.

C. Dorton-for, N. Gordy-for, B. Austin-for, G. Zusan-for, M. Rogers-for
5-for, 0-against. Motion carried 5-0

Request to Gather Information for a Water Utility

Mr. Klein presented. Staff is seeking authorization to research the process to establish a Water Utility. An ordinance was adopted in 2008; this is the next step to create a water utility. Town would like to spend some time determining the cost involved in establishing a water utility. Council member Dorton would encourage that we get folks from DLZ, they know what is going on and Dorton feels they would be a tremendous asset in our research. He feels that the water doesn't have to come all from Avon's ground, he believes Indianapolis would be interested in working with Avon.

Council members consented to having the town manager gather information.

Appointment of Zoning Administrator

The Zoning Ordinance requires Town Council approval of the Town Manager's appointment of a Zoning Administrator. The Town Manager is recommending that Al Salzman be appointed as Zoning Administrator effective January 23.

Council member Rogers made a motion to approve the delegation that the Zoning Administrator be given to Mr. Salzman. Council member Dorton seconded the motion. Roll call vote was taken.

C. Dorton-for, N. Gordy-for, B. Austin-for, G. Zusan-for, M. Rogers-for
5-for, 0-against. Motion carried 5-0

Review of Initiatives Ranking

Mr. Klein presented. A spreadsheet showing the rating of the staff initiatives by each Council Member and staff was presented. Upon review and approval of prioritization, staff will establish timelines for the initiatives. Higher priorities will be put on the 5, 4, and 3's. This will help provide guidance if there becomes a need to cut back on the budget. Council member Rogers stated that there are a few items on the list that should always be recognized as a 5 because the Town is responsible to provide certain services such as snow removal. Council President Zusan stated that priorities should be the safety and appearance of the community. Council

member Dorton asked how Mr. Klein is going to address situations where Council and Staff have ranked areas differently. The Town plans to use the Council's rankings on how to prioritize their time. The Council is the policy making body. Council member Austin stated that if there is an item that the Council ranked high or low and Town disagrees with that ranking she recommends that the item be discussed before making a final decision; there may be something that Council is not completely aware of.

Ordinance

Final Adoption: Ordinance 2008-34: Amending the Tax Abatement Provisions of the Town Code

Mr. Klein presented. The Town Manager met with Tom Downard and Cinda Kelly to review the Tax Abatement Ordinance. Changes have been made to the ordinance based on the meeting. The packet provides a copy of the ordinance that shows the changes that were made. The Tax Abatement Committee has been amended to reflect the current Committee structure and the HCEDP has been added as advisors to the Committee. Council member Rogers asked if there is any legislation in place now that would deal with any abatements changing in the committee. Mr. Rogers would like to make sure that if the code is changed the Town is covered and doesn't have to go back and change it. Mr. Taylor feels that the very last section covers it.

Council member Austin made a motion to approve the Ordinance 2008-34: Amending the Tax Abatement Procedure of the Town of Avon. Council member Gordy seconded the motion. Roll call vote was taken.

C. Dorton-for, N. Gordy-for, B. Austin-for, G. Zusan-for, M. Rogers-for
5-for, 0-against. Motion carried 5-0

Legal Counsel Report

Mr. Taylor presented. They attended mediation with Andy Mohr on January 12, 2009. Andy Mohr West made a proposal and asked that it be brought back to the Town. They would like to resolve the matter by splitting the mediation fees with \$20,000 paid by Andy Mohr. \$10,000 would be within 30 days, \$10,000 would be paid January, 2010. ROW to Town would be from Kingston to edge of dealership. They would like a joint press release and dismissal of case. Mr. Taylor stated that if the Council is at a point to consider this offer seriously he would add the following additional terms:

1. The announcement and press release would be stated that the contract speaks for itself, nothing more would be stated.
2. If payments aren't made the Town would get judgment and be entitled to attorney fees.
3. Although Andy Mohr has agreed to dedicate the right-of-way. We know the document has been in their possession for quite some time. If they fail to return that document we would have the commissioner sign the document so we know the right-of-way would be dedicated.

If the Council is inclined to accepting the terms Mr. Taylor would like to make these small changes. Council member Zusan asked if we could tie a date to the right-of-way and payment. Mr. Taylor said that would be a good thing to do. This will help resolve this issue with Phoenix Fabricators. Council member Dorton would like to see a good faith statement added.

Council member Austin made a motion to accept the Andy Mohr offer with the changes that our Town Attorney has suggested. Council member Rogers seconded the motion. Roll call vote was taken.

C. Dorton-for, N. Gordy-for, B. Austin-for, G. Zusan-for, M. Rogers-for
5-for, 0-against. Motion carried 5-0

We received a request for a second mediation session for Pyramid. Mr. Taylor would recommend that we agree to do the second mediation session. They would like to get the mediation scheduled sometime in the next 30 days. Council member Zusan asked if there should be a spokesperson identified, Mr. Taylor replied that there should be and a strategy should be made.

Council member Austin made a motion to authorize our Town Attorney to schedule mediation with Pyramid and their insurance company and also to designate Greg Zusan, Council President as liaison to work with Staff and the Town Attorney for that mediation. Council member Dorton seconded the motion. Roll call vote was taken.

C. Dorton-for, N. Gordy-for, B. Austin-for, G. Zusan-for, M. Rogers-for
5-for, 0-against. Motion carried 5-0

Public Comment

None.

Council Calendar

- 2/12/09 - Town Council Meeting
- 2/17/09 - Ronald Regan Parkway Task Force - 4:00p.m. at the Government Center
- 2/27/09- Chamber Lunch
- 2/18/09 - Legislative Conference – deadline is 2/4 or 2/5 to sign-up

Adjournment

A motion was made to adjourn.