

LEGISLATIVE COMMITTEE MINUTES
OF DECEMBER 14, 2020

Municipal Council of the City of Vermilion
VIA ZOOM

In Attendance: **Vermilion City Council:**
Steve Herron, President of Council; Monica Stark, Council at Large; Emily Skahen, Ward One; Frank Loucka, Ward Two; Steve Holovacs, Ward Three; Barb Brady, Ward Four; Brian Holmes, Ward Five.

Administration:
Jim Forthofer, Mayor; Chris Howard, City Engineer; Amy Hendricks, Finance Director; Tony Valerius, Service Director; Ken Stumphauzer, Law Director; Chris Hartung, Police Chief; Chris Stempowski, Fire Chief

Call to Order: Monica Stark, Chairwoman, RESOLVED THAT this Legislative Committee comprised of the committee of the whole does now come to order.

TOPIC ONE: **Emergency Clause in Ordinances**

S. Herron said he has been having discussions when reviewing ordinances and prior to adopting them by emergency. In his opinion, the Ohio Revised Code Section 731.29, and the Supreme Court case of Loughlin vs. James in 2007 was brought up to him by citizen Homer Taft. He said he looks at this in terms of the fact that Council can sit down and talk about whether an ordinance can be passed by emergency. He said it does not have to be written in the ordinance why the ordinance is being passed by emergency and the case of Loughlin vs. James does not say this. He said they looked at the public peace, health, and safety of the community and if council is acting in good faith and looking at the ordinance and enacting it, it is not reviewable by a court. So, he feels they will make sure that community members have an opportunity to referendum an ordinance as it is their right. He said the Airbnb issue has had a lot of discussion and if it is passed, they may not want to pass the legislation by emergency. He feels 99% of the ordinances they do pass are needed and are at the best interest of the community. If they are operating in good faith and not just passing things through, then he feels they are doing their job properly. He said they just need to try to record why they are passing ordinances by emergency, so everyone knows why they are doing it.

K. Stumphauzer agreed with S. Herron's assessment of emergency clauses and he concurs with his analysis.

Homer Taft said he has regard for his brother attorney's, but respectfully said this is not what the case and statute says. The statute itself is what council is bound by and it says the cause and reason for emergency must be stated in writing and in a separate section of the ordinance. It must be in writing. It must be relative to the subject and somewhat specific. If you do not do this, you may put the ordinance in jeopardy, or the court can otherwise disregard Council's wish for it to be an emergency and allow a referendum and put a hold on the ordinance anyway. He would hope the law director would take a more careful look at this, as there are cases that say you must put an explicit reason stated in the ordinance. He said if council does not do this, then he thinks they are putting their legislation in jeopardy.

B. Brady asked S. Herron if they will continue to put the emergency clause in all ordinances and remove it if they feel it is not appropriate. S. Herron said this is an option and when they discuss it, they can state the reason for the emergency and record it in the minutes. He said he is not going to dump on the council clerk to reprint every ordinance, especially if they are in good faith. In his opinion, he feels they are okay with doing it this way and to keep their options open and make a record on each one.

K. Stumphauzer said in many communities he is seeing they are stating their reason for emergency, which does not have to be elaborate. He said he has defended a lot of these cases. H. Taft agreed if they say something in the ordinance and if it is related to the purpose of the ordinance. His point is that it should be in the ordinance.

Drew Werley feels it is just a miscommunication as he agrees with everybody. They need to just state why it is an emergency as stated by S. Herron, and H. Taft is just saying it needs to be stated in the ordinance and why. E. Skahen said they should listen to their law director and she felt it was efficient if the reason is given for the emergency and it is put in the minutes as such. It is still in writing, so it should be good enough for the emergency purpose.

M. Stark said they should continue how they have been doing this in the last couple weeks.

K. Stumphauzer said the language should be in the emergency clause for the health, safety, and peace. They just need to specify the emergency in the body of the ordinance.

TOPIC TWO:Junk Yards / Draft Legislation

Mayor Forthofer said he provided a copy of draft legislation, which was prepared by the law department as it pertains to restricting junk yards in the City of Vermilion. The motivation behind this is because he is motivated in developing Liberty Avenue and there is one eye sore at the end of Liberty, which is a junk yard, and they do not want a repeat of this. He said it occurred because they had no codes to prohibit it, so he is proposing a vehicle for the future so the BZA would have some material to say no. Under the law director's advice, they chose to say that junk yards are not legal in any of the zoning districts in the city. If someone wishes to put a junk yard in, they can appeal to the BZA, but if it is on Liberty Avenue then he would strongly appeal to BZA to deny the request. He wished council would give it favorable consideration.

B. Holmes said this is difficult coming into town daily to see this, and then to see the Welcome to Vermilion sign. Hopefully, they can change this, but again thanked the administration for creating this legislation.

S. Herron said he was on Council when this went through, and they were sold a bill of goods from the company. There were covers on the fencing and they could not see the cars. He said these are cars that were wrecked that were there temporarily while insurance companies evaluated the loss. He agrees with this legislation as it gives someone the opportunity to come before BZA.

B. Brady understands it will stop people from opening junk yards, but will it also prevent storage areas from becoming junk yards. Mayor Forthofer said the definition of junk yards is something they had specific discussion about. K. Stumphauzer said it is defined in the ordinance, but he would argue that whatever they do it is presumed to be within the law, so if they run into a scenario where someplace ends up being a junk yard, then he feels they have the right to declare it a nuisance and they could take action to cease and desist from the continued existence of a junk yard under the ordinance. Mayor Forthofer said this does not affect the existing junk yard as they are grandfathered in. He said there might be some other methods to get rid of that junk yard, but not under this ordinance.

M. Stark asked if anyone has approached the landowner to talk to them about putting up a nicer fence to clean up the aesthetics. Mayor Forthofer thinks the Service Director and Building Inspector has talked to them about putting up the screens. M. Stark thought maybe a tall white fence would look decent, so it would be nice if it could be masked. She thought the city administration could ask them nicely to do this. Mayor Forthofer said this is something they can investigate, so he will see how motivated they are to be civically responsible.

S. Herron MOVED, E. Skahen seconded to put this legislation on the agenda for a first reading. Discussion: H. Taft said the ordinance says junk yards, junk buildings,

and junk storage, but there is no definition of what a junk yard, junk building, or junk storage is, and he does not think it would cover an insurance recovery operation, so they may want to incorporate a definition. He said there has been discussion on the taxes on this property, and there is listed a significant abatement of the taxes on this property that apparently had to be agreed for by the city and wondered if anyone had information on this. Roll Call Vote 7 YEAS. **MOTION CARRIED.**

B. Holmes asked the administration to define a junk yard, junk building, and junk storage in the ordinance a little better. K. Stumphauzer said he would work on this. B. Holmes asked the administration to investigate the tax abatement issue. Mayor Forthofer pointed out the city is getting less than \$600 a year for this property and it is obviously due to an abatement.

TOPIC THREE: Shipping Containers/Draft Legislation

B. Holmes thanked the Mayor and Law Director for creating this legislation. As far as the definition, he knows they currently have legislation regarding temporary storage containers and the definition in 1272.17 boils it down to any container, enclosure, structure, portable on demand. He said he likes the metal shipping container and mobile storage unit definition and maybe they could reconsider and add this to the modular self-storage facility unit. His intention on creating legislation was just not to limit the shipping containers, but also to eliminate the placement of storage units itself in certain zoning districts, if not all. He said with the current proposal, what is this landscape on the east end of town going to look like in 20 years. What is defining their community – lakefront defines their community, and they are a unique town. The city’s slogan says, “A Great Place to Drop Anchor”. He said they already have storage facilities in place on Liberty and Carter Lumber – what a great place, and if he were a businessman wow, he would have storage. This could eventually be another storage facility. What are they trying to show folks that are coming into town? They are going to come through the east corridor and see nothing but storage units. His concern is that it will turn a lot of people away and make it difficult for people who already live here to sell their property or make it a valuable property to create building. In the B-3 area the permitted uses include an animal hospital, antique shop, appliance store, automobile services, repairs, bars, taverns, marina sales, bowling alleys, car washes, cemeteries, churches, clinics, department stores, drive in banks, ice cream, drive in restaurants, theaters, fruit stands, food lockers, furniture stores, gasoline stations, strip malls, etc. These are currently the permitted uses in this area, and he knows the east corridor is made up of industrial, commercial, and residential, but his concern is that if they do not have legislation to limit the storage facilities along this corridor, then he feels they will need to change their slogan to “Come to Vermilion and Store Your Stuff”. What will these storage units give back to the city 20 years

from now? What are they going to be looking at 20 years from now? He is concerned with the future of this corridor and how it will represent the city. He would like to build upon this modular storage facility and maybe limit it to certain districts.

Mayor Forthofer asked the law director to prepare legislation like the junk yard ordinance that addressed specifically metal storage containers or shipping units. He understands he is talking about the structural of storage containers. He said they may have to make modifications. He said there has only been one development that has come up that has storage units since he has been Mayor, but if there is going to be legislation that has fair restrictions then he would be fine with it. He is in favor of businesses that run 24/7 each day of the year, something like Defense Soap. He does not see much of a future in growing this corridor with storage containers either, so if they can create some fair legislation then he would be in favor of it.

K. Stumphauzer said after they prepared the legislation on the modular self-storage facility, they came up with additional language that needs to be added, but it does not address B. Holmes' concerns because he was asked to draft a specific ordinance regarding the modular units. He said they redefined it as reused truck or trailer bodies. The problem is that he understands there are modular units built simply to store items and a POD is an example that should be included in the ordinance, so he will send over revised language.

B. Brady agreed with B. Holmes and said storage units create no employees and they are not a permitted use in the district to begin with, so they need an ordinance that takes away the possibility of conditional use, so if they stop the BZA from issuing a conditional use in the B-3 zoning district, then they pretty much eliminate storage units down the Liberty corridor, and it it's not something they want there and it doesn't benefit the city in anyway or improve property values significantly. So, she does not see why they want them on Liberty Avenue period.

B. Holmes advised the law department that in Chapter 1272.17 the POD unit definition is described, and it discusses the POD and the design for transport and storage for personal items.

T. Valerius said he would like to take the definition that the law director gave them and see how they can incorporate it in Chapter 1272.17 temporary storage unit ordinance, which will suffice for everything. He thinks Ken's definition could be part of the existing ordinance.

S. Holovacs said a year ago they discussed the PODS and adjusted the ordinance. He said the clerk could pull this legislation to let everybody see what they passed.

B. Holmes thought they could review this legislation at the next meeting once they make the changes. He said the storage units itself would require additional legislation.

S. Herron said he had no problem with eliminating shipping containers, but he has reservations about telling people what they can do with their property when they start talking about no storage units at all. Property belongs to the property owner and this is America. You can do a lot of things with your property and it is a factor when they create an ordinance. They need to keep an open mind when they are talking about no storage units.

M. Stark said the current administration has done well with being business friendly and they have had a lot of development, so she would hate to see them put some legislation in that will stop a business in Vermilion. She thinks that Mr. Sommer is planning on bringing in his business and she feels his revised plan looks pretty good, and she does not want to stop somebody from opening a business. Vermilion should welcome a new business to town with open arms.

B. Brady said she is a property rights person, but within the permitted uses of that property and in the B-3 zoning district, storage units are not a permitted use, so when you buy a piece of property in this district you know that storage units are not permitted. You need to work within the parameters of that district, but in this case, it is not a permitted use.

F. Loucka said in 1270.13 it also says any other retail business in the same general character can be determined by the BZA. So, they would need to go before the BZA for approval of this permitted use. B. Holmes agreed they can go before BZA to get the okay. He is a property rights owner, and they have the rights, but they need to consider what legacy they want to leave on how they develop this corridor. He hopes they can create something that will benefit the community into the future. He said they need to get the right growth and look at the future of the city.

Mayor Forthofer said he will resend the Corridor Plan to City Council which addresses many of these issues on what they want this corridor to be.

M. Stark referred this legislation to the January meeting.

D. Werley said he is hearing that a lot of people are for property rights, but it sounds like they are not because they are for it if they like what is going in there. He has an issue of them limiting people. He does not like both ordinances. He said why not utilize the process of BZA that is already in place. Why not just leave all this stuff in place.

H. Taft said he is a big property rights advocate, but they have a zoning code for a reason and people build in reliance of the zoning code, so they have anticipations of what might be around them, so this is one reason why they should not do spot zoning, but planning. If they truly believe any owner can do what they want on their property, then they need to be consistent and repeal the entire zoning code. If they do not want to repeal and prohibit some, then there is a place for zoning.

M. Stark said this will be discussed at the meeting on January 11.

TOPIC FOUR: Review of Ordinance 2020-58 (Insurance)

M. Stark thanked Mr. Pearl and Mr. Arnold who were both present.

Mayor Forthofer said on December 7 the administration fulfilled its responsibility to research and create contracts and make recommendations to council. Apparently, some other matters came to their attention and they need to decide what they want to do.

Amy Hendricks said they engaged the services of NFP to review qualifications for insurance brokers for renewal. In that they included all the agencies that had an office in Vermilion and agencies that the ownership of those agencies resided in Vermilion. One they researched was Sommers Agency, but determined he was no longer involved in the agency, so they did not include them in their proposals. He said the recommendation was for Fitzgibbons and Arnold to move forward effective January 1 for the proposal that was presented last week. As far as the things that have transpired since that time, she understands that Insurance Partners submitted a revised proposal based on the information that was discussed at Council. Her concern is that she feels at this point the other agencies should be allowed to respond as well. If more favorable pricing was available, then she feels that it should have been offered initially. The agency that was selected comes highly recommended and they have some companies that NFP feels are friendly to municipal clients and they might have more competitive coverage. She wants to do what is best for the taxpayers of the community and the maximization of their resources as they move forward with this selection. She feels the selection from NFP is the recommendation she would support.

S. Herron said they will need to decide this week and asked Council if they were comfortable in deciding tonight, or do they need to have a special meeting next week, so they have time to digest it. He said it is their obligation to sit down and make the right decision.

F. Loucka supported NFP's initial recommendation and felt they did due diligence so he would be ready to vote tonight.

S. Holovacs said there was a packet that Council did not receive and to do their job they need all the information. He respects that NFP did the research between the two companies, but all he received was a scorecard. He questioned why the packet was not delivered to them. He said how it went down he did not agree with because a lot of this information they needed by Friday night, so they could have the weekend to review it to make a fair decision. It is not fair to get this information on Monday because it is not timely, and this has been the rule always to have the information to council by Friday.

E. Skahen said she did not feel prepared by not having this packet, so she is not ready to vote.

Mayor Forthofer said he emailed a scan of the entire packet to Council members on Friday afternoon. M. Stark said she did not receive this email. S. Holovacs said he did not receive an email either. Amy Hendricks said she did not receive a request for additional information beyond what was submitted at last Monday's meeting until noon today. B. Holmes questioned why this was not dealt with three or four months ago, and suggested they move sooner on these issues instead of waiting till the end of the year, so they do not hurry something through. He said they need to be more prepared in the future. He said he is familiar with both agencies and they both do a wonderful job. He said maybe a little more time to digest this would help. He has no problem meeting next Monday. He hopes the administration would tackle this a little sooner. Mayor Forthofer confirmed he sent the email on December 11 at 12:20 pm. M. Stark said she did not receive it. He said when it arrived, they did not have resources to deliver it to everybody because they have three people in city hall, so the packet was emailed. S. Holovacs said he did not see it and it could be that the attachment was too big to go through, but if they did not have the personnel, then somebody could have taken it to the council office, and they would have picked it up. Mayor Forthofer said he does not have the key. S. Holovacs said the building inspector has the code because he fixes the door lock every time it breaks. He said it is hard to decide because he did not receive the packet. G. Fisher explained that she was on vacation Wednesday – Friday and at one point she told them she couldn't be reached these three days. However, she was contacted by the building inspector on Thursday who informed her that big packets arrived for Council and he put it by her mailbox at City Hall. She told him that she did not know what she could do about them because she was on vacation and she had no time to deliver them. She said the building inspector offered to deliver them. She did not ask, he offered. She asked him if he was working Friday and he said yes, but he would need their addresses, and she told him where they were and thanked him for that offer. However, she received another phone call on

Friday from him saying the Mayor scanned and emailed the packets to Council so would he still need to deliver them. She said, she believed so, because Council does not always have the capability to print that many pages, or to pull them up on the computer before them when they are on Zoom. Therefore, he said he would deliver them. She said she came to work today to find an email from the mayor that they were not delivered because they did not have the staff. She felt that she could not be extended the courtesy when she was on vacation.

Amy Hendricks said this was an unsolicited amended proposal that none of them was aware was coming in, and they had already presented the results to council. The fact this came in and they are being chastised for not distributing it – the second proposal in her opinion was too late. If the offer could have been made, then it should have been made in the first proposal. Mayor Forthofer said the proposal was delivered Friday. He said when he gets complaints that nobody is in the building department, then he is not going to send the guy out all afternoon running down packets as a delivery boy, when inspections are to be made and they need to have discussions about proposed legislation. This was a better use of his time and he got the information to council in an attachment, so he is sorry they did not get it.

S. Herron said this is a situation where they are working from home and they are all under stress. He thought he received it, but he did not receive it. He asked if Insurance Partners submitted information during the process when NFP was evaluating. A. Hendricks said yes. S. Herron said they submitted an unsolicited amended proposal outside of the scope of the administrations window. He said their decision will be what is best for the city, but he does not want anybody to think they need to rush to decide. A. Hendricks said if it is just about price, Fitzgibbons Arnold has indicated they will match this price, and she will give the floor to Matt if he wants to discuss this. She thinks they need to look at the fact that the process was engaged, and a recommendation was made by the administration in good faith. The fact the bid came in at the eleventh hour is outside of the process and not within the scope. They engaged in services from an insurance expert in the industry and she is not sure why the administration's recommendation is being – why did they go through the process.

M. Stark asked if they are looking at the same deductibles, cyber coverage, apples to apples, apples to oranges. Are they looking at the same coverage? A. Hendricks said they need to review their plan, and have it marketed with more competitive carriers that specialize with municipalities and this is what Fitzgibbons can do beyond that Travelers quote once they sign the agency of record letter. The coverage is the same.

M. Stark says she knows the city has been with Insurance Partners for years and likes that they are in town. She asked if Fitzgibbons has an office in town. A. Hendricks said two of the owners live in town, so they are accessible. M. Stark wished they could support their local businesses in everything they do, so it breaks her heart they are not going with their business in town, but she understands they need to use their taxpayer's dollars in the best possible way.

Matt Arnold appreciated what Council is saying overall. They do not have an office in Vermilion as they are in Westlake physically, but he grew up in Vermilion. However, whether it is them or Insurance Partners they need to go with somebody that can give them options and opportunities, and this is something they can provide. He said they have 10 days to make a full submission to Travelers so if they wait until next week that would be unfortunate.

S. Herron said he would be satisfied with making a vote tonight since he was not aware of the 10-day submission.

M. Stark said in the future she would ask the administration to get the information to council sooner.

M. Stark adjourned the meeting upon no further discussion.

Next meeting: Time and Location to be determined

Transcribed by:
Gwen Fisher, Certified Municipal Clerk (CMC)