

RECORD OF PROCEEDINGS

Minutes of the Vermilion City Council Public Hearing

Minutes of

Meeting

BARRETT BROTHERS - DAYTON, OHIO

Form 6101

Monday, February 8, 2021

Held

Videos and minutes of council meetings are available to the public to view online at www.cityofvermillion.com under 'meetings' tab (City Meeting Minutes or Videos).

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

Administrative Staff: Jim Forthofer, Mayor; Tony Valerius, Service Director; Chris Howard, City Engineer; Amy Hendricks, Finance Director; Chris Hartung, Chief of Police; Chris Stempowski, Fire Chief

CALL TO ORDER:

Steve Herron, President of Council called the Monday, February 8, 2021 Public Hearing to order with regards to:

Review of Ordinance 2021-1: AN ORDINANCE AMENDING SECTION 1270.01 "A-1 AGRICULTURAL DISTRICT," SECTION 1270.02 "R-1 ESTATE RESIDENCE DISTRICT," SECTION 1270.03 "R-2 RURAL RESIDENCE DISTRICT," SECTION 1270.04 "R-3 SUBURBAN RESIDENCE DISTRICT," SECTION 1270.05 "R-4 URBAN RESIDENCE DISTRICT," SECTION 1270.06 "R-4A TWO-FAMILY URBAN RESIDENCE DISTRICT," SECTION 1270.07 "R-5 APARTMENT RESIDENCE DISTRICT," SECTION 1270.08 "R-6 SPECIAL FAMILY RESIDENCE DISTRICT," SECTION 1270.09 "RS SPECIAL RESIDENCE DISTRICT," SECTION 1270.10 "RL-1 EXISTING LAGOON DISTRICT," SECTION 1270.11 "B-1 NEIGHBORHOOD BUSINESS DISTRICT," SECTION 1270.12 "B-2 CENTRAL BUSINESS DISTRICT," SECTION 1270.13 "B-3 HIGHWAY COMMERCIAL DISTRICT," SECTION 1270.14 "B-4 MOTORIST SERVICE DISTRICT," SECTION 1270.15 "I-1 LIGHT INDUSTRIAL DISTRICT," SECTION 1270.16 "I-2 HEAVY INDUSTRIAL DISTRICT," SECTION 1270.17 "I-3 INDUSTRIAL PARK DISTRICT," SECTION 1270.18 "I-U UTILITY DISTRICT," AND SECTION 1270.19 "FP FLOOD PLAIN DISTRICT" OF THE PLANNING AND ZONING CODE OF THE CITY OF VERMILION TO PROHIBIT JUNK BUILDINGS, SHOPS, AND YARDS.

Mayor Forthofer said as mayor he submits this ordinance under the general description of junk yard prohibition and his motivation was the junk yard at the east end of Liberty Avenue that greets residents and visitors when you enter the city. He indicated that it bothers him a lot and a lot of people. It presents an image to the city that is exactly the opposite of what they are trying to develop at the eastern corridor as a presentable place for new commerce. He asked some of the city decision makers who were around when this junk yard was established how they could let this happen and they told him there was no legislation to prohibit it at that time. The current junk yard is zoned heavy industrial and junk yards are a permitted use. His motivation in submitting a junk yard ordinance is to give decision-makers an option next time a junk yard wants to set up business in a prime development area. He worked with the law director to propose legislation to Council that does two things. It fundamentally prohibits junk yards in the city by district and it gives the people an option of supporting a variance to allow a junk yard in a district where it will be inconspicuous or consistent with a surrounding industrial environment where it will be out of the way. They can do this through the Board of Zoning Appeals by district. Sadly, the adoption of this ordinance will not solve the east-end Liberty Avenue junk yard as it is a pre-existing situation. The County Commissioners and he will continue to work with property owners to find an equitable solution to the junk yard and they will try to approach it through the Lakefront Connectivity Plan. However, this proposed ordinance will give future Vermilion's board members and council members some options next time a junk yard knocks on the city's door.

Homer Taft of 3972 Edgewater Drive said he wrote a letter to City Council in opposition to the way this ordinance was written. He has no love for the unscréened junk yard on the east end, but he thinks this ordinance is erroneously broad beyond that and prohibits a lot of things the City should not even think about prohibiting, and districts where they should not think about prohibiting it. He asked Council to look at the definition of junk in their ordinances. It is a sweeping definition - it is basically anything that is used that is not currently operable would be in that category, including anything that is donated for recycling - anything that is a collectable that somebody is fixing. The definition in the first place is excessively broad to regulate it in this way. The second problem is they are not only regulating on what is outside and what is a bunch of damaged cars, which might be in the current case to have better regulations to the screening or fencing they're required to have and here they are trying to solve a problem after the horse has left the barn where the city at the time apparently gave them forgiveness of a lot of the taxes they would have had to pay through abatement, but in this case if somebody wanted to have a recycled facility

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in an industrial area inside of the city – inside a building, then what is wrong with that. Is a car that is damaged that is getting repaired in someone's repair shop covered by this – it would appear so. He expressed that Council needs to take a far different look at both ordinances. Before Council adopts an ordinance, they need to take a much more careful look to what they are really trying to prohibit, if anything. From a legal perspective, his understanding like an asphalt or bituminous plant – when you put something in a prohibitive category in an ordinance, it is beyond the ability of Council, the Mayor, the Planning Commission, the Board of Zoning Appeals, or anybody else to allow it in that district – period, by law! This is what they are doing and with all due respect to the Mayor – no, the Board of Zoning Appeals cannot grant a variance by district if it is a prohibitive use – it means prohibitive.

Drew Werley of 5016 Timberview said he was a little shocked when the Mayor said you could go to the BZA on this because based off his research he could not see where they could do this. He indicated he is firmly against this ordinance because he does not like banning anything that is blanket-wide – the whole entire city of what this would entail.

B. Brady said in the state definition of junk yards it means an establishment or place of business that is maintained or operated for the purpose of storing, keeping, or buying junk. She asked why they are prohibiting this in residential areas. You cannot have a business in a residential area without going to the BZA to begin with, so why in particular are they banning this. It seems to her that in a residential area it would be a property maintenance issue, not a prohibited use issue. She said they would need to remove the residential areas from the ordinance where businesses are not permitted. She asked if they are limiting things they do not want to limit – like boat repair and auto repair. Are they reaching too far? She said the state definitions are not quite as wide in their scope, so she would hope they could look at some definitions and determine whether they need to do this in residential areas.

F. Loucka said they should defer to the law director and mayor of the objections that were raised.

S. Holovacs said with regards to the residential areas, they do have ordinances regarding the repair of boats and cars, so is this something that will also cover them, or will it not cover them. Hypothetically, they can work on their boat for 48 hours or so, but after that they cannot store something in their yard and repair it for spring. This is same for damaged vehicles with expired plates, this is considered junk vehicles. Does this ordinance cover this or do they go back to the ordinances that cover this in a residential area?

B. Holmes said he deals with a lot of this in his current job with working with junk yards, townships, or cities with the terminology junk motor vehicle. He knows it is covered in city ordinance and the O.R.C. defines junk motor vehicles as a three-model year or older – apparently inoperable with extensive damage, including, but not limited to any of the following – missing wheels, engine, or transmission. How does the state code fit into the city ordinance and current ordinance? He said 4513.65 covers this as well in the Ohio Revised Code.

S. Herron said they went through this about five years ago and the key issue for him at the time is the fact that the business was primarily used for storing junk. If you have a boat repair business and say you have six boats in March that are ready to fix for the season, then this is not a problem because you are dealing with repair and not junk. He does not think the ordinance is overbroad and inconsistent with state law. He does not think it is an unfair situation that will be enforced against people who are lawfully in the repair business.

B. Holmes said they need a license to run a junk yard, so obviously if they have something in the city that is defined in this ordinance or a current ordinance, and people are running a junk yard in town, then they need to do some enforcement to make sure they have the proper license through the state and county.

Mayor Forthofer said the definition of junk yards was his primary concern and the law director assured him this is the common definition in other communities as well as Vermilion's. He said which ordinance takes precedence whether it is state law or others is something he will have to defer to the law director. They did go over this ordinance with the intent of it being appealable, so it is not a blanket in all districts, and the law director assured him it could be appealed through the BZA if an area wanted to have a junk yard. It is not a permanent blanket, but appealable. He said the law director can review these concerns.

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Review of Ordinance 2021-4; AN ORDINANCE AMENDING SECTION 1260.06 "DEFINITIONS," 1270.01 "A-1 AGRICULTURAL DISTRICT," SECTION 1270.02 "R-1 ESTATE RESIDENCE DISTRICT," SECTION 1270.03 "R-2 RURAL RESIDENCE DISTRICT," SECTION 1270.04 "R-3 SUBURBAN RESIDENCE DISTRICT," SECTION 1270.05 "R-4 URBAN RESIDENCE DISTRICT," SECTION 1270.06 "R-4A TWO-FAMILY URBAN RESIDENCE DISTRICT," SECTION 1270.07 "R-5 APARTMENT RESIDENCE DISTRICT," SECTION 1270.08 "R-6 SPECIAL FAMILY RESIDENCE DISTRICT," SECTION 1270.09 "RS SPECIAL RESIDENCE DISTRICT," SECTION 1270.10 "RL-1 EXISTING LAGOON DISTRICT," SECTION 1270.11 "B-1 NEIGHBORHOOD BUSINESS DISTRICT," SECTION 1270.12 "B-2 CENTRAL BUSINESS DISTRICT," SECTION 1270.13 B-3 HIGHWAY COMMERCIAL DISTRICT," SECTION 1270.14 "B-4 MOTORIST SERVICE DISTRICT," SECTION 1270.15 "I-1 LIGHT INDUSTRIAL DISTRICT," SECTION 1270.16 "I-2 HEAVY INDUSTRIAL DISTRICT," SECTION 1270.17 "I-3 INDUSTRIAL PARK DISTRICT," SECTION 1270.18 "I-U UTILITY DISTRICT," SECTION 1270.19 "FP FLOOD PLAIN DISTRICT" AND SECTION 1272.17 "TEMPORARY STORAGE CONTAINERS," OF THE PLANNING AND ZONING CODE OF THE CITY OF VERMILION TO DEFINE AND PROHIBIT MODULAR STORAGE UNITS.

Mayor Forthofer said this ordinance was proposed considering the recent reaction to a project that was proposed on Liberty Avenue where modular storage units were going to be used. This is to try and get ahead of a city-wide use of things that were intended for shipping for another purpose of modular storage. This is not to prohibit them in the city when they are used for their intended purpose, which is to ship products to retail and commercial businesses. This is to prohibit them from being used for a secondary purpose, which is storage units. Again, the intention is to be appealable in situations where this may be allowed in a remote area of the city.

Homer Taft of 3972 Edgewater Drive said he submitted a letter to Council and his concern is they are going way too broad with their definition. He thinks this would sweep in all sorts of wheels, vehicles and things that do not sit on wheels, whether they are trailers and storage of various kinds. He was puzzled because the ordinance already prohibits modular storage units in Sections 1272.12 and 1272.17 of city code that he quoted in his letter. He does not understand why a proposal to use storage units that is unscreened would be allowed to come to Planning Commission or Council when it is not allowed under the ordinances. It seems like they do not read what is in the ordinances and they are just sweeping in some giant new law that will sweep a bunch of things in it they do not mean to put in it. He said there is three different things in zoning in the city - there is permitted uses, conditional uses where it may be granted by the commissions, and there are prohibitive uses, and he believes under city Charter there is nothing that authorizes - the Planning Commission and Board of Zoning Appeals are created by Charter and he does not see where they can vary the ordinances. As a matter of fact, there is a prohibition on it that they are not allowed to legislate. They are not allowed to change the ordinances, so if council says they prohibit this, then it is prohibited.

Bill McCourt of 4135 Menlo Park Lane said he was against this ordinance and while he totally appreciates the mayor's intent in terms of prohibiting the steel shipping containers, he feels this ordinance is way too broad and it does not hit the mark - it does not even come close. He could reiterate everything Mr. Taft said and would pretty much agree. This is just something they do not need right now.

Drew Werley of 5016 Timberview said he is against this ordinance and it falls right in line with the other ordinance they are talking about.

Emily Skahen asked what is considered the heavy industrial district - and would these storage units usually be in an industrial district. Mayor Forthofer said the heavy industrial district is currently designated throughout the city as such and there is one at the far end of town - right where the current junk yard is and they certainly could be in this district or anywhere, so this is the intention for proposing this legislation.

B. Brady said there is a permit for a 30-day per year with a 30-day possible use in industrial and agricultural areas. If you look at Baumhart Road and the businesses, they use them for storage and then they pull them away. She said businesses need these and they load them onto the trailer, so giving them 30 days a year will not cover it. However, they are protecting the city by saying it must be out of the right of way and behind a covering, and out of the public sidewalk. She thought they should include the agricultural district as an allowed use, but to limit it to 30 or 60 days without an extension does not cut it if she is an industrial company using this to move the equipment. She is concerned they are over-reaching. She said pods are in the definition and in VOL people use these pods when they move, so they can transport their home goods, so she did not think they could eliminate them.

S. Holovacs said a year or so ago they addressed pods for construction and moving in a residential area and they had to leave upon the completion of the project. To answer the temporary storage, he would agree with Barb. He said construction companies are temporary on the job site that may sit there for nine months to a year, so this could hinder the construction companies that pay taxes to the city. They will need to be careful on this or they are going to stop some contractors in town that use them.

M. Stark addressed Section 7 for rural residents - prohibited uses and under (c) (2) it says - No building or structure, except a principle residence, shall be built or erected on any vacant lot within the district. She said if she

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buys a large property and wants to start her barn before she builds her house, then she cannot do this. T. Valerius said this is correct because it is already prohibited now. If she is going to build a house, she could go the BZA and ask for a variance, so she could build a garage or shed ahead of time, but you cannot put up a garage up a vacant lot. M. Stark said if this is on the books, why are they doubling up on this. T. Valerius said in (4) it says – Except as provided for in Section 1272.17 of the Planning and Zoning Code, Modular Self-Storage Units are prohibited in the R-2 Rural Residence District. He said they are adding the verbiage as part of something that cannot be added to a vacant lot along with a shed or garage. M. Stark said she did not agree with prohibiting this across their entire community as it will hurt businesses in town that are already using containers. She does not want just a container business to come to town to store them, but they have a lot that are using these for their businesses to work successfully, so she would have concern passing this in all districts.

B. Brady said she knows they cannot put something up other than a main residence on a vacant lot, but she also knows in response to what Homer said, this has gone to the BZA and they have allowed it in the past, so is the way the past ordinance a prohibitive use or written some other way. T. Valerius said it is under prohibitive uses, but they have always had the BZA to issue a variance. B. Brady said legally she does not know what is right or wrong. T. Valerius said this is a question for the law director.

B. Holmes said people using these modular storage units are putting them on rural lots and are turning them into homes – tiny houses, so is this covered in the legislation. T. Valerius said this would have to be addressed in the Residential Code of Ohio – the building code. The building official would get involved to determine if it is a permitted structure and follows all the building codes of the state.

Adjournment:

Upon no further business coming before the body, Steve Herron, President of Council adjourned the Vermillion City Council Public Hearing.

Transcribed by Gwen Fisher, Certified Municipal Clerk