

LEGISLATIVE COMMITTEE MINUTES

OF OCTOBER 21, 2019

Municipal Council of the City of Vermilion
Municipal Complex, 685 Decatur Street, Vermilion, Ohio 44089

In Attendance: **Vermilion City Council:**
Steve Herron, President of Council; Monica Stark, Council at Large; John Gabriel, 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; Chris Hartung, Police Chief; Tony Valerius, Service Director; Bill DiFucci, Building Inspector

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: Boat Dockage (Amendment to Ordinance 86-41) Ordinance 2019-31

M. Stark said council has been discussing this topic all summer and at the last council meeting, Mr. Sliman had spoken to council about considering a permit process. In the meantime, Council received an email from Lee Howley on October 18 about this matter.

Lee Howley of the Vermilion Lagoons Association thanked Council for their patience of going through this process. He said the purpose of his latest communication was to give Council some history they had never shared on the importance of the existing legislation as it allowed the Lagoons to essentially retain its character in a unique environment without causing people to stack boats, crowd the neighborhood and experience parking issues. So, effectively it has worked. The challenge that has evolved over the last 10-15 years is the introduction of jet skis or personal watercraft that was not anticipated when the ordinance was created 30 years ago. Their only intention was to try to tweak the ordinance to recognize that the only way you can really dock a jet ski is perpendicular to the dock. Jet skis are generally 10' – 12' long and by nature they must come up on a floating ramp, so technically they're in violation of the existing ordinance. He said 10'-12', even 15' is generally the width of a good reasonable boat already, so they didn't think this was outrageous or unreasonable to allow this to occur. They have no enforcement capabilities in the Lagoons – they're an association. The only thing they can enforce is the color of their houses and the color of the roof, which is in their deed restriction. They do have the ability to persuade or talk to their neighbors and they realize that others and Ray Sliman have an issue with it, and they would love to help them work this through. He said not only is it critical to maintain this ordinance, but it's important to recognize there's an issue they need to clean up. If it helps resolve this issue, they certainly would be willing to go from the 15' they requested to 12', which makes it easier to get in and out of the dock. They certainly don't want to get rid of the ordinance because that has really helped them a lot. Prior to that, he can remember they really had docking and parking situations in the 80's where people congregated boats with their friends which were stacked three to four deep, and they were everywhere, so therefore the ordinance was created.

F. Loucka asked if the ordinance was changed to 12' would there still be tons of violations? L. Howley didn't think so – there might be a few but he thinks people would comply because there is no guidance now in what they can do. However, he does believe there will be one or two that will have an issue. There is one that has a 30' dock that is perpendicular – this is what they're trying to avoid. He said jet skis are only 10' – 12' long and J. Gabriel said typically 12' or 13'.

B. Brady said the one thing still in question is the setbacks. L. Howley said he understands the reason why somebody would request a setback, but he thinks the concern of theirs is that if you give a 3' setback on each end and you have a 50' lot, now you got 44'. The person buying the house thought he was getting a 50' dock and if they retroactively start putting setbacks in, he thinks it will create an issue. Some of the lots are as small as 38'. If there's only one or two issues they are trying to deal with then they would like to deal with it internally themselves.

Ray Sliman of 5230 Park Drive said L. Howley is right on the 12' floating dock. Ironically, he was transporting a boat and there was a triple cockpit jet ski and he walked the dock off and it wasn't over 13', so a triple cockpit jet ski is being floated by a 13' dock. He said he visited a couple marinas in Vermilion and their jet ski docks were mostly between 12' and 13'. As far as the setbacks and the beam of a boat, the beam is the widest part of the boat (towards the center), and the transom is what you're against if you're trying to dock a boat or get around a boat. If somebody had a 50' dock they probably won't be docking a 50' boat with a 14' transom. When you start getting into the lines of 50', then their issues really start when people start putting jet ski docks there. Finally, with him having issues with neighbors – he has made it clear to council that he saw this with a neighbor years ago with having one of these docks put in front of him. He had it with a second neighbor that moved it over, but of course it ended up at the other neighbor's lot line and there's an issue there. But, there's no personal vendetta against a neighbor or anything like that. He was just talking about some type of rule or change long before that and he also wants everyone to understand that he recognizes there are floating docks and they're here to stay. He isn't trying to get rid of floating docks. He just doesn't want to have his ingress/egress cut off by those floating docks. He thinks the solution he gave to council last week is a slick solution.

F. Loucka said with regards to Ordinance 2019-31 he would support revising it to 13' from 15'. He thought it was a step in the right direction and everything could be changed. B. Brady thought they should remove Ordinance 2019-55 from the agenda which repeals Section 1270.10(i). M. Stark said council is not going to make everybody happy, but they will do their best. She agreed to revise the ordinance to 12' or 13'. She said currently Ordinance 2019-31 reads "15' in length overall with a setback of three feet from a neighboring property line, so they are talking about revising it to 13'. She asked council if they wanted to revise the 3' setbacks; 6' total. F. Loucka thought it was a giant can of worms unless they get more legal information. He would rather not have the setbacks at this point. S. Herron said everybody has a right to the quiet enjoyment of their property and they are looking at controlling a person's use of that property, so if it's 1.5', then it would be a total setback of 3'. It's hurting one parcel of property, but it's benefitting another person who has purchased a boat with the expectation that they could fit their boat in that area. They won't win, but the question does become do they throw out the setback. He's not totally opposed, but there is an advantage to maybe a 1.5' setback because it will benefit some people. B. Brady said it's a compromise and there is always the option to go to the Board of Zoning Appeals. M. Stark asked who was in favor a 3' in total setback.

Pamela Ferguson of 5218 Park Drive said from their perspective and they're relatively new property owners in the Lagoons – they're on a 50' lot and when they purchased the lot, they purchased a 50' lot, so they don't have the leeway of buying a larger boat. They bought this home for a substantial amount of money and they have added a substantial amount of money to it, and they then would lose 6' or 3', so while they all enjoy boating they don't have the luxury of flexibility on the sides of their frontage on the water, so they would prefer that council would research the issue more, and they would prefer there are no setbacks so it's fair to those that can't change the size of properties or sizes of boats.

S. Holovacs said he was never in favor of the 3' setback on each side as he feels it's unfair. Basically, he doesn't like the setback period. He was trying to compromise the 3', but in his opinion he doesn't see a setback now, but they can always bring it back later.

B. Brady said an owner can diminish the setback at the Board of Zoning Appeals, so it protects your neighbor. If they don't have a setback, there is nothing to protect that neighbor. S. Holovacs said they have never had a setback in 39 years.

Mark Musial of 5243 Portage Drive said he and his neighbor have their docks on their property line, but they put both parts together, so having a setback would force them to separate those. B. Brady said they could have the option to go the Board of Zoning Appeals and ask for a variance.

Ray Sliman of 5230 Park Drive said there is an assumption in having a jet ski dock and there is a law against it, which is lack of due diligence. He said when he got his first few speeding tickets, ignorance to the law was no excuse. He bought his property 21 years ago thinking he wasn't going to be encumbered by 15' or 13' floating docks, and he has never owned a floating dock because there was an ordinance against it. He stated that when you get down to 13' moving it over a little bit helps and he thinks they should use the permit process, or the appeals process to put docks together.

F. Loucka MOVED; S. Holovacs seconded to revise Ordinance 2019-31 to reduce the length from 15' to 13' and to remove the setback. Discussion: M. Stark said she would vote no on the ordinance because she feels there should be a small setback because there are a few people who probably won't be able to get their boats in and out, and she would hate for this to happen. She hopes people can be neighborly and make it work out for all. S. Herron said he is open to changing it in the event a setback becomes needed because it might be necessary, but he doesn't like controlling people's property, so he will vote yes for the revision right now. However, if there are problems and a setback is necessary, then council needs to revisit this. He thanked the residents of the Lagoons for how they have conducted themselves during the meetings, as they have been civil, cordial and thoughtful of others. Lee Howley thanked Council for listening. Roll Call Vote 5 YEAS; 1 NAY (Stark) 1 ABSTENTION (Gabriel). **MOTION CARRIED.**

J. Gabriel acknowledged to the Lagoons of who he represents that he can't vote or discuss this issue because one move one way or the other could force boats into commercial marinas. It's not that he doesn't care about this issue because he knows about boating, but he has a straight-line conflict of interest on this issue.

TOPIC TWO: Repeal of Chapter 873, Transient Accommodations

J. Gabriel said Council had created an ordinance to help the city inspect these properties to make sure they were safe for the Airbnb issue that has come on so fast and strong. He said this legislation has come into conflict with other legislation that is on the books, so it needs so much work that it's almost better to repeal it, rewrite it, and bring it back again. Fortunately, the Building Inspector was present to explain to council where they went off the rails.

B. DiFucci said the Bed & Breakfasts are specifically addressed in the RS zoning district and exclusively in the Historic Downtown area. At the time, this was the only way they were getting into a transient rental was through the Bed & Breakfast venue. Things have changed now to where you can get into Airbnb's or transient rentals of any type, but the way the code was written is that it allowed them in the RS; only in the Historic. Now, the way the ordinance was passed they're free reign to go anywhere in the city, and he didn't believe this was necessarily the intent of the way the ordinance was written. He thought a lot of the ordinance had to do with having a safe occupancy, so nobody comes into town and gets hurt. He said people who have bought homes in a R1, R2, R4 or other zoning districts were of the understanding they were single family homes and their neighbors would live there full time, but now they're having people coming and going all the time. He thinks thought needs to go into where they want these places to go and how they want to regulate them. He said he is 100 percent on board with the safety inspections. He provided council with some pictures from long-term rentals on some of the things they have seen when going into these places. He said the transient inspections they have performed so far have been doing a great job of providing a safe structure for their guests. He said they have only done safety inspections – they have not issued licenses.

J. Gabriel said a subcommittee was formed to review this issue. The committee consisted of the Chairman of the Planning Commission, a resident who has many years of City Manager experience, and an expert in zoning on top of that, along with three council people. They met for a couple hours in a detailed meeting and out of it he provided council with recommendations from the subcommittee, which asks to repeal Chapter 873. He said the subcommittee will meet again to create another set of recommendations to bring back to the Planning Commission, and then Planning Commission will add their language and will then recommend it to City Council for additional input.

B. Holmes said a lot of people are buying houses in residential areas and turning them into transient rentals. He said they need some teeth when creating short-term Airbnb's. S. Holovac thanked J. Gabriel for being a big leader in this issue. He said in the future, he would suggest they form small subcommittees to work on these issues, as it might work out better for Council as a whole. B. Brady said they also bring people in from the community that are experts to participate, so it expands the positivity of the matter. S. Herron said he doesn't have a problem with this procedurally, but he will not back down on his philosophy that if you buy a house you can do what you want with your house – he doesn't want anybody to think that if they take away this ordinance that they can avoid the safety issues.

J. Gabriel asked B. DiFucci what will happen once council repeals this ordinance. B. DiFucci said there will be nothing on the books, and the problem is that these places are not operating as a true Bed & Breakfast, so they're not addressing the city's codes. They are transient rentals – they are short term rentals. It is governed by Bed & Breakfast when they serve a meal, so now

they're going to pop up and exist and be allowed to exist. He says council needs to take into consideration if they do repeal this ordinance, what they're going to do with safety inspections. If there is a possibility of maintaining that then at least they will have eyes getting into these places in order to make sure the structure is safe. If the ordinance goes all away together, then they wouldn't be forcing safety inspections. M. Stark thought they should wait to repeal this ordinance until they have something ready to put in place.

J. Gabriel didn't know if they were a permitted use in any residential area regardless. B. DiFucci said it's not a defined use. J. Gabriel said if they leave Chapter 873 in place, then they can strike through the permit portion, so it's strictly reworded for safety inspection. J. Gabriel said they can change the title of Section 873.02 to Transient Accommodation Inspections.

B. Brady asked the finance director what happens to the 3 percent if they don't license them. A. Hendricks said it appears that Chapter 873 doesn't address the lodging tax, so anything that has to do with the Erie County lodging tax, or the local lodging tax would remain intact.

J. Gabriel MOVED; F. Loucka seconded to amend Ordinance 2019-5 (Chapter 873) by changing the title of Section 873.02 from License Required to Transient Accommodation Inspections, and striking 873.02(a), 873.03(a), and any other portions of the ordinance that deals with a license. Roll Call Vote 7 YEAS. MOTION CARRIED.

TOPIC THREE: Medical Marijuana (Prohibited Use as Recommended by Planning Commission)

John Gabriel, Council Representative to the Vermilion Planning Commission conveyed that after much deliberation, a Public Hearing, much discussion and review of literature, the Planning Commission voted 3-0 to prohibit medical marijuana, the cultivation, sale and distribution anywhere in any of Vermilion's zoning codes. Even though there wasn't that much discussion that night, he did speak with the members and some of the thoughts relayed to him were that because it's already all around us, why do we need it here. He said whether that's what council feels, this is what the Planning Commission felt about this matter and this is an important part of the process.

B. Holmes said he read this Sunday's Elyria Chronicle which had a great section covering medical marijuana and he encouraged council to read this article to help expand and educate them on this topic. He said they discuss how a lot of these are popping up in municipalities and there are some bank issues with not wanting to fund them.

J. Gabriel said he has never been a part of any council that has overturned a board decision. However, he did think there were a lot of possibilities and in his opinion, they were talking medical marijuana and they're talking about something you would need a prescription for by a physician educated in the matter. There's always a possibility without overturning their decision that they could put it on the ballot and go to the voters to decide. B. Brady didn't think this was a bad choice.

S. Herron agreed, but said the voters did speak and the State of Ohio changed its Constitution to allow it. The wisdom of whether having it here or not - he respects the decision of that commission, but the people spoke, and like it or not it's here. They must consider - do the citizens in Vermilion get different treatment if they don't act. The citizens of Vermilion have a

right to equal protection under the law. B. Brady said its equal access and S. Herron agreed. S. Herron said he has watched friends and love ones deal with pain management issues and if they have a physician that is going to help them, then they need to consider the fact that the people of Vermilion have that right to access. If council says no, then it doesn't mean the people of Vermilion can't go to another community and get it.

M. Stark said as a council they put a moratorium on medical marijuana so do they continue with the moratorium if they follow the recommendation of the Planning Commission. S. Herron said they could always enact legislation making the moratorium language permanent. However, they could let it lapse and then whoever wants to do business in that manner will have to go get their financing. He said it makes him nervous because if you can't get financing then where are you getting your money to run this business, and then you start getting into law enforcement and it gets shady.

B. Brady asked if the Planning Commission rejected just the growing aspect or did, they reject the growing and the dispensary. J. Gabriel conveyed the vote was a complete straight-line prohibition. There was no aspect that was voted on separately. B. Brady said council could look at not growing and dispensary, one or the other. S. Herron said Council can do whatever they want. B. Holmes clarified that growing is not out in the open – it's in a contained building.

M. Stark asked the clerk when the moratorium expires, and G. Fisher believed it was December or January. (Clerk's Note: The moratorium expires January 2020). M. Stark said council can decide what they want to do before this expires.

TOPIC FOUR: Review of Ordinances 2018-63 & 2019-17 (Mobile Food Services)

M. Stark said she had a conversation with the School Superintendent on whether food trucks were allowed on the school premises. She said the clerk brought the legislation and zoning map for them to review and they telephone conferenced T. Valerius in on the matter. As reading the ordinance, they discussed that existing food trucks could continue on school property (Lions), but it wasn't clear whether they could invite other food trucks if they felt they wanted to. The school isn't sure whether they will move forward with allowing food trucks, but in discussions of how the current ordinance reads they felt that it wasn't allowed for the schools to have food trucks outside of the stadium because they are not in a B1, B3, or B4 zoning district. S. Herron thought they should ask the law director as to what extent can the city mandate what goes on the school property. They may very well be permitted to allow this. He said there was an Ice Shaving Food Truck at the Soccer game. M. Stark said the school is a government entity, being they pay taxpayer dollars, but it's the way their zoned on the zoning map. She said the Superintendent within their policy will regulate whether they allow it or not, but right now as the ordinance is written it's not allowed.

T. Valerius said he met with the building inspector and the mayor to discuss this issue and the school is zoned R3, which is residential. In a residential district you can have a food truck for a private party. M. Stark said you can't sell to the public, which is what they're doing. T. Valerius said if the food truck is within the football stadium fence, is this not essentially a private party, because in order to get in there everybody pays an admission fee. M. Stark said there have been trucks in the fence and outside of the fence. The Superintendent wants to make sure he is on board doing what's proper within the city ordinance.

Mayor Forthofer said in the past week he has talked with the Superintendent to discuss the food truck issue and he said a lot of it was driven by an internal matter with Boosters and he was fine with how food trucks are as far as the city's end of it. Mayor Forthofer said he is aware there are ins and outs with the law, but in the first year of administering this ordinance they are trying to feel their way through and there are only three food truck licenses in the city. A lot of them were turned away by this ordinance. At a certain point they need to use common sense when administering the ordinance and he feels that on school property he would defer to the Superintendent and the School Board to decide how they want to do this if the trucks are licensed. On city property, they try to follow the rules the best they can with good reason and common sense. He said the Superintendent doesn't seem to be perplexed at all by the resolution that was finally agreed upon within themselves as to whether to allow this person or not. M. Stark agreed and said the Superintendent was very good about it, but he wanted to make sure they were doing the right thing, so in the future if they do want to invite them in, then maybe the ordinance needs to reflect this so everybody is on the same page to do the right thing.

S. Holovac pointed out that the Lions Club Food Truck is a little different than the other food truck vendors because those vendors when making profit take it home. The Vermilion Lions has a joint agreement with the Boosters in that they receive 50 percent of the Lion's profit. They also work under the Boosters health permit in their fenced-in facility.

B. Brady said she has a problem with T. Valerius' definition on private party. Just because you put a food truck behind a fence it's not a private party. If individuals are going up to that food truck and purchasing food, it's a food truck. A private party is contracted by an individual that pays a certain amount of money to serve food.

M. Stark asked the administration if they tell a food truck vendor where they're allowed to be on public grounds, or do they just set up anywhere on public grounds. Mayor Forthofer said it's defined in the ordinance of where they can be, and he would need to go through the ordinance to review that. M. Stark asked if the food truck vendor calls the administration to advise them of where they're going to be located. Mayor Forthofer said they establish with the food truck vendor where they can be and where they can't. If they move within the allowable places, they don't have them register every time they move. They have asked somebody to close because they were over their 30 days. B. DiFucci said that out of the three food trucks they have had, one was for a one-day event and they knew exactly where they would be located. The other truck was the permanent truck that was granted at the bowling alley, but their business has turned into a brick and mortar. There is one truck that is a roaming truck and they are to advise the building department of where they're going to be and when they're going to be there. There have been incidents where they were asked to move. They're allowed once every 30 days, so this has discouraged other trucks because they don't think it's worth once every 30 days.

M. Stark said the food truck that was across from the Main Stage during Woollybear was blocking the road and she had to go into the northbound lane to get through before the festival even started. She asked if the food truck had a permit to be at this location. Mayor Forthofer said it did not have a permit. However, he found out later that this food truck was moved because another parking place was occupied at the festival grounds. This food truck was part of the Chamber of Commerce's food trucks. M. Stark asked if the Chamber had the authority to park this food truck outside of the festival. Mayor Forthofer said with this one they did, and he had no complaints from anyone, plus the road was blocked off. M. Stark said this part of Main Street was blocked off during the parade, but not the whole day. Mayor Forthofer said it was a

grandfathered unit and it comes under the category of trying to use common sense. M. Stark said her concern is that the food truck was parked there for the whole day and other vendors may have seen this, so next year they might have a full row of food trucks right there because it's a great spot. She is concerned that other vendors will think they can line up there next year. Mayor Forthofer said they would need to talk to the Chamber, but they only have one or two that are outside of their area because of spillover. M. Stark said grandfathering in part of the ordinance really doesn't have anything to do with where they're located. She feels the trucks should be in the festival area.

M. Stark said another concern surrounds her seeing a different Icee truck around the community on the city limits, sometimes in the public right of way and other times on private property, and the day of the festival they were in the selling in the city limits on private property at the Old Schoolhouse. Mayor Forthofer said he didn't see or hear anything about this truck. M. Stark said she saw two violations that day. S. Herron said he remembers that truck being there and agreed it was a violation and thinks next year they need to get the word out and they should have a plan. M. Stark said when they have new ordinances it's fresh in their minds, but the longer the ordinances are on the books they seem to forget it's an ordinance. She said it just needs to be enforced.

Next meeting: November 18, 2019 - 7pm – Vermilion Municipal Complex, 687 Decatur Street, Vermilion, OH

Gwen Fisher, Certified Municipal Clerk (CMC)