

**Minutes of the Meeting of the Legal Committee of Council
Held in the Council Chambers of the Municipal Building
On Monday, January 25, 2021, at 6:00 P.M.**

Committee Members Present:

Chairman, Ward 2 Councilman Dennis McBride

Ward 1 Councilman Bob Butkowski, Councilman-at-Large Brian Fischer

Others in Attendance:

Councilwoman-at-Large Tammy Holtzmeier; Law Director John Gasior; Mayor Bryan Jensen; Ward 3 Councilman Tony Moore; Ward 4 Councilman Scott Radcliffe; Councilman-at-Large Craig Witherspoon; Planning/Economic Development Coordinator Pam Fechter; Safety Director Duane Streater; Clerk of Council Barb Brooks

Regulations for Storage Condominiums

Mr. McBride stated that the background for this discussion is that we already have some storage condos which are not technically permitted but have been operating for a few years.

Ms. Fechter said that she has had inquiries about developing storage condos in Avon and as she researched it, she found that the Schafer storage units on Rt. 83 are already condos. Our Code clearly states that they can be no more than 500 sq. ft. but they are in existence and being sold and when you go on the Auditor's site you can see that they are broken up into individual condominiums. So she looked at other communities in the area that we know have storage condos and none of them has updated their Code to reflect the more than 500 sq. ft., etc. She went on the Schafer website and printed out their flyer for the Committee which shows the size of their units, the height of the garage, and the various uses that it has. So with that, she just thought she would present it to the Committee to see if they want to make it legal. She put a few parameters around it to see if they would work for the Committee. There was one on the email that she sent out on Friday that talked about adding the "no activities" (such as sale and repair) and Mr. Streater had a good point. We should put in there "no activities for profit" because someone may have two or three cars in there for his car collection and he may work on his cars but it is not for profit, it is not for sale. It is his own private storage area where he is working on his cars. So it is just however the Committee wants to move forward with it. She and the Law Director are more than willing to write it up but she just wanted to present it for them to put some parameters around it or decide if they even want it.

Mr. McBride asked how the Schafer buildings are constructed. Are they completely metal buildings? Mr. Radcliffe said he believed that they are metal pole buildings. Mr. McBride said his thought is if we are going to permit these, we want something that is a cut above, something that will generate more property taxes. And he thought that we need to have a discussion with the Fire Department about what type of fire separation assembly they would like. We could require masonry or we can just permit a normal dry wall assembly with an hour or two hour rating or whatever they are required to be. And the other big issue is how large should these storage units be because it is x amount of square footage that is not really going to generate a lot of revenue.

Ms. Fechter said that she has tried to break down the size of the bigger motor homes, different boats with trailers, etc. just to let you know how much square footage an RV by itself would take up or how much room for an RV and car. Do we want to give them enough room for an RV and some extra storage or do we want to just limit it to an RV? She has found that with the Schafer units, they can buy three and so

even though that one unit is only 500 sq. ft., now they have 1,500 sq. ft. because they have bought multiple. So we could also have people who could buy multiple units to get to the size they need as well.

Mr. Butkowski stated that the Code says 500 sq. ft., so how do we get to 1,200 – 1,400 sq. ft? Also, in regard to the point about people buying multiple units, he would much rather have somebody buy multiple units. We cannot prevent somebody from buying all 8 of these 1,200 sq. ft. units but the question is how do we go from 500 sq. ft. if that is the Code to 1,200 -1,400 sq. ft.? Ms. Fechter said because 500 sq. ft. has been set up all over the country for inside storage; every single Code that she looked up has the exact same thing as we do. We know we need roughly 600-700 sq. ft. just for a motor home; how much more over that do we want to give them to perform other things?

Mr. Butkowski stated that his concern is that he does not want these things turning into mini-businesses. He noted that industry and business is changing and we do not need big buildings and wide open spaces anymore. A lot of people are running e-trade or Amazon businesses out of their homes or out of a warehouse. If it is a storage building that is great but if it is running a business, that is what he is concerned about. And the larger unit size creates that opportunity in one unit as opposed to having to get multiple units; the barrier of entry becomes higher the more units they have to buy.

Mr. Fischer pointed out that on the Schafer's flyer, it lists right under one of the very first headings, "automobiles and business space." Mr. Radcliffe stated that the space is kind of limited in one unit. Most people who have a large motor home and a trailer want to park them next to each other so in the one unit, they need the room to maneuver them in place. Mr. McBride asked what the typical size of the larger motor coaches was and Mr. Radcliffe said that the length can be up to 47 ft. and width could be 10 ft. with the mirrors.

Mr. Butkowski said that he looked up the Avon Lake condos that they have and they actually pitch those as offices and warehouses and their size is 22 ft. x 55 ft. which is a little over 1,200 sq. ft. but that is pitched as a warehouse and that is where the concern is with the size that if you build it, they will come. He understood the tightness of having it conveniently in one unit but nothing prevents you from getting a second unit to give you that access and the space. Mr. Radcliffe said but it is unlikely that you will keep a trailer in one and a motor home in another if you are stretching to afford that one unit for storage. He said that he has talked to the people that run those over there and they allow businesses and they should not, and they try to get those out. He felt that the key thing in this is, that nothing can be for profit. It all has to be for personal storage only and no business storage, nothing that you would be able to go in there and work and turn a profit on.

Mr. Butkowski stated the four points that he wants to have for talking points for prohibitions: no direct plumbing into the units, no additional wiring or outlets after they are built, no operating machinery, power tools or other equipment in the facility, and no meeting customers and conducting sales out of the unit. Also, he wants to broaden the discussion about sales to make sure that delivery trucks are not going in and out of there. Mr. McBride said, to play devil's advocate, if somebody starts a business in a storage unit, do we care if they have employees there? Set aside parking for employees, but if they are using that unit to make money and are paying income tax to the City, do we care? Mr. Butkowski asked how do we ensure that we are collecting tax on that? We had to hire someone to go around and check all the trades that are working in the City so we had to spend money just to make sure that people were doing what they were supposed to be doing in the trade situation. So how would you know when someone is running a business out of a storage unit? Mr. McBride responded, how do you know if someone is running a business out of their house? You do not know and that is the bottom line.

Ms. Fechter thought that we do care if employees are coming in and out of the storage facilities. She does not necessarily care if someone is say, a drug rep and instead of keeping drugs in their garage at home, they now get one of these storage places and keep them there. But she does not want then someone coming in as a customer to that storage unit for a business transaction because then, to Mr. Butkowski's point, how can we keep track of the income tax when we have trouble keeping track of income tax on a job site when that is out in the open. That would be her concern with letting them operate a business.

Mr. Fischer said that he would assume we would have different codes for a business as opposed to a storage unit where as it was said, the Fire Department has to get in there and approve things. Mr. Radcliffe said, yes, twice a year inspections, a key for the lock box, etc. Ms. Fechter said, and that is why we expect businesses to get brick and mortar. We do not allow food trucks on the side of the road; we have a pop up COVID testing that wants to come and do something in a parking lot but we are telling them no because you cannot just come into a parking lot and set up shop; we have regulations around that.

Mr. McBride stated that right now every year or two, the Fire Marshal is supposed to inspect every commercial structure in the City and it is when you go past that time where nobody has inspected it for 5 or 10 years and whatever they are doing in there even if it is against the zoning code and other business codes, basically the City has acquiesced and it is now an illegal permitted use. You cannot just 10 years later tell them they are not supposed to be doing that and get them out because the City should have already discovered that within the first couple of years. But as long as we have the Fire Marshal going into these structures, he is going to find out what is going on.

Mr. Witherspoon questioned whether it was the Fire Marshal's job to police what goes on in the storage units or is it the Fire Marshal's job to make sure that it is within the Fire Code? You are adding zoning enforcement to his job as well. Mr. McBride noted that, in many ways, that has always gone on. If you rent a space or you have a business and you can only do certain activities, there is a use on that structure and then if you decide you are going to do some type of hazardous manufacturing and the building is not rated for that, you are going to get hit from the Fire Marshal. So it is not only zoning but it is building so that is all part of that. Mr. McBride said that he hopes that is what our Fire Marshal is doing now.

Mr. Fischer said his point was that when it is built, if you are allowing businesses then you are under that code. If you are just a storage unit and you are building just a pole barn, you are not under a code that would permit a business and so we have to decide, what are we going to allow them to build and at that point, it has to be the code. Mr. McBride stated that right now you can put up a pole barn in Avon and run a business out of it. It is a cheaper construction but you can put up a relatively cheap building and since these are for storage and they are not going to generate revenue because there is no business there, he thought that we do not want to permit a cheap pole building. We want to make that building be something that is a higher quality so when the Auditor does a rating on that building, it is a superior construction which means a higher property tax rate.

Mr. Radcliffe said he did not know if the Auditor would care about it being metal construction or a pole barn construction; you can have the same façade on the outside to make it look the same. Mr. McBride said whether it is a metal pole barn or a wood pole barn it does not matter. The structure can be wood or steel but when there is a masonry façade on the outside and you have other design elements that is going to be a nicer building. He knows that in Cuyahoga County, the Auditor does rate the quality of the construction and obviously the higher the quality, the more you would pay in property taxes, but that is something we want to do some research on.

Mr. Fischer asked if you could run a business out of a place that does not have plumbing and Mr. McBride said, no. Mr. McBride added that he would want a bathroom in a unit if he had an RV or boat stored there

and wanted to go there for an afternoon to work on it. Ms. Fechter said, and people are also wanting to have water to be able to come in and wash their RVs and boats. Mr. Radcliffe said that storage units pretty much all have water and electricity now; it is what everybody wants. But the bathrooms are not as common. He said he thought that helps deter having a business because you do not have a bathroom on site.

Mr. Butkowski asked Ms. Fechter how many people have come before her to ask for something like this and Ms. Fechter said there have been two separate local groups. They each have RVs, boats, etc. to store and they do not want to store them out of town. They want to store them where they are quickly available so they can just get in and go.

Mr. Gasior stated that he did not see any reason why people have to own the storage units. It really makes acquiring a piece of property all the more cumbersome to have to deal with 35 individual owners as opposed to one person who owns the entire building and simply tells his tenants that he is not going to renew their leases anymore because he is selling the property. If a business came into Avon and needed land and wanted to buy property, one person owning a 500 sq. ft. condominium storage unit could end up holding up the whole operation. Or if the City had to acquire property by eminent domain for whatever reason, it really would make things cumbersome so he does not understand the need for this business model. When we originally put this Code together in 2001, it was considered a rental; everything in the Code says it is a rental. He has no idea how Schafer was able to put in condominium units but it happened and we are stuck with it. He said that he does not want to go through the process of having to cite Schafer or anybody as he thinks it is a waste of money. The condominium storage units are there and are going to stay there. But now, he thought that we have to think what is the great need for ownership vs. a lease? He looked on the Auditor's website at what Uncle Bob's Storage in Westlake pays in real estate tax and then looked at Schafer's and at what any one of those individual units pay in real estate tax, and when you add it all up, it is not that significantly different whether it is a lease or whether it is an ownership. So we have in the Code a provision for rental. If you feel that 500 sq. ft. is not large enough, we could certainly amend the Code to allow for individual compartments to be larger than 500 sq. ft. but he does not know if there is any great need to change the form of ownership.

Mr. Gasior noted that some of these RVs or boats have a useful life of maybe 10 years and then you get a new one. It is not like a house that could be there for 75 – 100 years. These are things that people probably are not going to have in their older years and so we may see a lot of subleasing as time goes on. Mr. Radcliffe stated that typically the people with the large size RVs want to own the storage units. Mr. Gasior said, for a time, and Mr. Radcliffe agreed, yes, for a time. Mr. Gasior said, but even for 20 to 25 years, we are going to be here with people owning condominium units for storage and we are going to be seeing them advertised and they may be pressured to lease it to someone who unbeknownst to the City, may end up running a business out of there. A lease is a lease and when you do not need it anymore, you walk away from it and the owner of the property finds somebody else to lease it. Ownership potentially creates 35 to 40 individual Uncle Bob's on that site. Mr. Gasior said, so he would think that you want to tread carefully here. The concept might seem good in the short term but in the long term maybe it has implications that will not be acceptable. He said he does not know if they need to make a decision right away and as he said, maybe the 500 sq. ft. does need to be increased to give the people who want that bigger unit with the RV and the boat more of an option. Mr. Witherspoon stated that if we keep it at 500 sq. ft., that is going to deter people from putting businesses in and that solves our problem.

Ms. Fechter said that some of what she is hearing is that people do not want to take the risk of having their high-priced RVs or boats at a rental place where maybe the property is not maintained as it should be. They feel that if they own it, they will take care of it. Mr. Radcliffe added, and if they can buy the RV, then they can buy a storage condo at whatever the cost is. Mr. Radcliffe said, so they want the storage

space to be theirs and they want to maintain it. Most of those people are not trying to do it for a business. The Code can be written so you cannot have business, cannot have for profit activities, etc. and he thinks it should be written that way; that the units should be for storage only for personal things but will that stop somebody from trying to skirt the rules? Of course not. So you tighten it up as best as you can and then keep an eye on it as best you can. He thinks, though, that we have to go to 700 sq. ft. as the size to get to the 24 ft. x 55 ft. range and then people can buy multiples if they choose.

Mr. Butkowski asked if we are doing this for the vision that we see for Avon in the future or are we doing this out of convenience for a few? Mr. Radcliffe said he thought it was brought to us tonight just because there are people asking about doing it. Mr. Butkowski said that he understood that but he thought that part of our job is to think about taking that input and thinking about how that fits into our vision of what we see Avon as in the future and if we lock this land up, whether it is a rental or an ownership, we have removed that industrial piece of property from ever being developed for better income tax, better property tax. Mr. Radcliffe asked if we could put a limit on the overall size? Schafer's development is basically four buildings stacked up next to each other and they are all under 12,000 sq. ft. so maybe the Code could be written to say it would a single structure no more than 12,000 sq. ft. to help limit the size of some of these so you could not have a huge piece of property sitting in the middle of Chester Road. He would not want to see that either, but to have this proposed storage facility back in a corner, back by Custom Culinary or over there, with a beautiful metal building with four doors on either side that have bays like this, to him that is beautiful.

Mr. Butkowski stated that there is nothing preventing these people from going together and building a warehouse and putting all their RVs. etc. in that warehouse, but if we go through this, it opens up a Pandora's Box.

Ms. Fechter stated that she called about the Avon Lake facility and apparently they did not initially start out around businesses. Mr. Streator said that was correct; the front buildings were businesses because it had a frontage toward Pin Oak Parkway and the intent was for the rear buildings to be storage only. He thought that the developer was part of the problem of the lack of control over that. He did not think the due diligence was done ahead of time to prevent businesses from moving in there. As Mr. Radcliffe said, these storage places are popular in a lot of communities right now and marketability is what drives them.

Mr. McBride believed we should impose common sense restrictions. We should require it not to be some cheap metal pole building, require masonry structure and require some things that drive the value. Mr. Gasior stated that you have to be careful that you do not exceed the requirements of the State Building Code. Mr. McBride said that the Commercial Building Code is the minimum code; the State has lost numerous lawsuits on that issue. Ms. Fechter asked if we could do that in industrial zoning and Mr. Gasior said that he would check into what Mr. McBride stated. He needed a chance to review that before we decide to impose stricter requirements.

Ms. Fechter stated that if the Committee needed any additional information that would help them, to let her know. She said that every code she tried to research was based upon mini self-storage and every code mirrored ours. Mr. Gasior asked if we had checked with the Fire Department to determine what the burden would be on them to have to go to each one of these units and inspect them yearly? Mr. Streator said that if you are doing individual units it falls under a totally different category and as you are not allowing commercial operations out of there, then the Fire Department is limited in their ability to go into those. Ms. Fechter stated that certain things in regard to the Fire Department are already in the Code. She talked to the Fire Marshal more on the lines of if we had these storage facilities, what would they need and that is accessibility.

Mr. McBride noted, and these are not residential; they would fall under the Ohio Basic Building Codes. The Fire Department would have jurisdiction and could go in whenever the regular cycle is. He said again that if we are going to have these storage units and they are not going to generate revenue or income tax other than real estate taxes, then he thought that we should increase the status of that building so that it will generate higher property tax revenue. We should require sprinklers, masonry fire walls, masonry exterior; it can still be a pole building but we should get it to where it looks nicer. The big thing is that we know 500 sq. ft. is too small but how many sq. ft. should they be? Also, if we are going to do this, we should include a restroom. Mr. Radcliffe said that some places have a common restroom that is right up in the front corner and the property owner maintains that as part of the HOA dues for the property. So those are there but personally he would not recommend allowing them in the individual units. Mr. McBride stated, so you are talking just general water usage and then we are talking electricity, and gas for heating. Mr. Butkowski asked if they were talking about climate-controlled units and Ms. Fechter answered, yes. She added that right now everybody is using a company called Storage Condos USA and so when they have the monopoly on the storage condos, it is really difficult when you are searching and searching, trying to find other things. They are kind of set up all the exact same way. She thought that limiting the bathroom in the unit is not a bad idea. People do need the water if they are going to take care of their things but we do not necessarily have to have a built-in bathroom.

Mr. McBride asked if there was any more discussion on this subject. Mr. Fischer asked if they were going to be postponing it and Mr. McBride said, yes. They need to decide on the size, get some input from the Fire Department, and Mr. Gasior will check on the State Building Code.

Regulations for Short Term Residential Rentals

Mr. Gasior stated that the Clerk of Council sent out a letter to everybody from AirBnB and he was going to follow up with that. He said that he thinks they want to work with us. Most of the communities which have AirBnBs have adopted codes that are fairly reasonable and he does not think we are going to run into a problem. Those codes will include registration for doing this and collection of the bed tax that we have in Avon. We need to talk to the Fire Department about inspections of these homes if they are going to be used continuously as AirBnBs. He then told of a case in Geauga County where a woman was leasing out her home. She said she could sleep 16 comfortably. She lived there by herself and depending upon the size of the group, she would stay and cook, or vacate and let the people have the house. The zoning enforcement officer went out and saw what was going on and cited her. She took her citation to the Twp. Board of Zoning Appeals and they ruled against her and said she was in violation of the zoning code. Their zoning code was silent, as is ours, on this type of rental and because it is silent, it is prohibited. So that is very similar to what we have in our Code. We always claimed that if it was not specifically listed, then it is prohibited. The case then went to Common Pleas Court, and that Court upheld the decision of the Twp. Board of Zoning Appeals. The woman took it up to the 11th District Court of Appeals and the decision was written in June or July and they upheld the trial court. So in Geauga County, if you try to run one of these AirBnBs you are going to be fined and charged under the zoning code. In our code it would be a 2nd degree misdemeanor. Mr. Gasior said he did not see any reason why that case would not have application here in the 9th District because we do not have short term rental listed as a permitted use, a special use, or an accessory use; it is just a prohibited use as it is not listed. So AirBnB probably appreciates that fact now more so than before with this recent case out of the 11th District and they are more willing to come forward and ask how they can make it work in our community.

Mr. Gasior said, so we will touch base with them. We have the moratorium in place and that gives us some time. He gave everyone a handout from Dublin, Ohio. He said they did a very thorough job in Dublin in trying to study the issue and then come to some reasonable regulations so until the Committee meets again, they have this material to look at. The Clerk of Council did a nice job of tracking down communities

that have AirBnB type ordinances and he has those to review. Also, he was able to pull a law review article about how HOAs can deal with this issue and that article was not promising. Apparently no HOA had the foresight to deal with this issue 5-6-10 years ago and they do not have good language in the HOA documents to do anything about this. It would take an amendment to the HOA documents which is a cumbersome process or you have to look forward to future HOAs coming in having a ban on this type of activity in their HOA. In the meantime we are going to try to put together a law that he thought in some way will permit it because we know that it is happening. We just need to regulate it and to make sure that it is happening safely and in a way that does not disturb the neighbors. He noticed in the letter from AirBnB that they have a hotline that anybody can call to complain about the way a particular site that they are leasing is being used. And then of course there are a couple other places that are doing this aside from AirBnB and Vrbo. He said if the Committee wants to have another meeting regarding this issue, he will let them know then when we have more information. We can take it up again; he is going to try and get an ordinance out for next month.

Mr. McBride stated that we do have another option and that is if it is not permitted in our Code, we do not have to do anything. We can just issue a cease and desist letter. Is there a need for short term rentals in Avon? Are we encouraging something we do not want? Mr. Gasior stated that he did not know how many places in Avon are listed right now on AirBnB or Vrbo but we may have a lot of people, more than you think, that are engaged in this and if we consider it a prohibitive use, we will have our Zoning Enforcement Officer pretty busy tomorrow. Mr. Gasior noted that one of the situations could be where people do this on a short term basis. They take a vacation once or twice a year for a week or two and while they are renting somebody else's place in Florida, somebody can rent their place here, and that is the extent of it and it is all over and done with. The situation that occurred in Camelot is something that is really problematic because there you have an owner that is obviously not a resident. That owner is listed as somebody in California and they do not have any intention of living in that residence. They have effectively turned that residence into a hotel and that is a business and that business should not be operating in a residential district. You can call it whatever you want to call it, but it is a business. We have a home occupation law but it does not fall into a home occupation if the person that owns the home is not even living there. So that is one of the things that we are really going to have to attack and that will be up to Council to decide whether that is a business model you want to allow in residential districts and if so, what restraints or conditions you are going to want to put on that. Then you are going to have the other model where it is almost like a bed and breakfast but not quite because short term rentals are so infrequent.

Mr. McBride stated that if you have young children, do you really want people you do not know living in the house next to you, even for a short time? With short term rentals, you do not know who is going to be there weekend to weekend or week to week.

Mr. Gasior said that he would be looking at the legislation and coming back with something, hopefully in the next two or three weeks. Mr. McBride said that the question is, do we need legislation, as it is not a permitted use now. Or could we tweak something to say, if you are caught, there is a very onerous penalty, such as a \$5,000 fine. Mr. Gasior stated that he saw what Mr. McBride was saying; if we believe the activity is prohibited right now, why do we need legislation? He said that is a good point but it does not hurt to have an alternative to look at.

Mr. McBride adjourned the Legal Committee meeting at 7:02 P.M.

Transcribed by Gail Hayden, Assistant Clerk of Council