

**Minutes of the Meeting of the Legal Committee of Council
Held in the Council Chambers of the Municipal Building
On Monday, June 8, 2020, at 6:00 P.M**

The Chairman, Dennis McBride, called the meeting to order.

Committee Members Present:

Chairman, Ward 2 Councilman Dennis McBride

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

Others in Attendance:

Ward 3 Councilman Tony Moore; Councilman-at-Large Craig Witherspoon; Ward 4 Councilman Scott Radcliffe; Law Director John Gasior; Mayor Bryan Jensen; City Engineer Ryan Cummins; Planning/Economic Development Coordinator Pam Fechter; Safety Director Duane Streator; Arborist Rick Varga; Resident Mark Pesta; Dillan Reynolds, media; Councilwoman-at-Large Tammy Holtzmeier

Discussion of On Street Parking and Home Occupation

Mr. Gasior stated there was a meeting probably two months ago in the Caucus Room with Mr. Pesta and we were trying to come up with a way to solve the problem of parking with a home occupation, just generally. There is one big problem that we are going to address with the whole home occupation revamping but this was just to address an immediate concern, which was to try to get cars to stop pulling up right to the edge of the driveway apron and parking and almost blocking the mailbox. Also when people put their garbage bins out on their apron, if the cars are parked close to the apron, Republic Services will just pass them by and not pick up because they cannot get the truck in with the arm to lift up the bin and empty the garbage. And the same is true with the postal service; if they cannot get to the mailbox because a car is parked in close proximity, they are not going to deliver the mail and then folks have to go to the post office to pick it up at great inconvenience. So Mr. Pesta put together proposed distances of 3 ft. and 8 ft. The parking issue that he is trying to resolve here is fairly simple and Mr. Gasior thought it was also logical. Why would we want to have people parking so close to these areas where we are eliminating their mail pickup and their trash pickup? He said that Safety Director Duane Streator had looked at this as well and he asked Mr. Streator if he had any concerns here. Mr. Streator said, no.

Mr. Pesta stated that it was an ongoing problem that made us look at the parking Ordinance which was kind of vague and basically he thought what we want to do is clean that up and make it a bit more specific to handle some of those problems. Mr. Gasior agreed and said so he thought it is 8 ft. from the mailbox and then 3 ft. from an apron. In many cases the mailbox is right at the edge of the apron so on that side at least it will be an 8 ft. distance. On the opposite side it will be 3 ft. and hopefully that will eliminate the problem for both the mail service and the trash service. Now the other issue that is involved here is the home occupation, which we are not going to tackle tonight. There is a little section of the Code in 1262.08 that spells out all of our rules and regulations for a home occupation but the City Administration has been meeting on permits in general such as door to door solicitation and vendor permits of various kinds and one of the other permits that we are thinking about would be a home occupation permit. He said he thought that might do us well because we can give the person who is going to run the home occupation a list of the rules and regulations and they could lose that permit if they do not abide. Right now, we have to rely on the Zoning Enforcement Officer and that system is just not working well because we really do not know who is operating until we get the complaint. He thought that if people know they have to get that permit, they are going to be more inclined to follow the rules and we will also know where people are that are operating home occupations. We would probably renew the permits every year or every two years; if we do not get complaints, there should not be a problem with renewing. If we get complaints, it

could be revoked at any time. North Ridgeville does something similar to that and he thought it works well but they place the burden on their Board of Zoning Appeals to approve every home occupation and then to also approve every renewal of a home occupation on a 3-year interval. That is not a bad system but he was wondering if we cannot do it through the permit process. If someone is denied a permit, perhaps then they do go to the Board of Zoning Appeals.

Mr. Gasior stated that the home occupation is another issue that Mr. Pesta has because we do have a problem on Peach Street and we are going to try and keep an eye on it. Mr. Pesta stated that the activity there never stops. Mr. Gasior said that this is a situation that you do not see very often. A professional person is operating his business right out of his living room; you can see the cubicles. We are talking about someone who has divided his living room into cubicles so he can conduct business and so clearly it is a violation of our home occupation law. Mr. Gasior said he believes that he has at least one secretary who is not a member of the family, so that is a violation. Mr. Pesta added that there is also an associate; it is a home office at this man's house. Mr. Gasior said so now you have an outside individual actually working there as an attorney and obviously the secretary that needs to come in in the morning so they park in the driveway and the driveways are not that deep. Mr. Pesta said that this person has extended the width of his driveway so he can get 6 or 7 cars there and then the rest of the cars are on the street. Mr. Gasior said, so they park in the street and they have been really disruptive of all the neighbors' trash pickup and mail delivery. The Zoning Enforcement Officer has written him a few letters but legally he denies it. We would have to prove it and that would require maybe warrants, etc. for what is not a serious offense but we are going to have to address it because obviously it just takes one individual to abuse the system like this person is abusing it and we end up having to create a whole new set of rules and regulations to be enforced.

Mr. McBride said that for home occupation you think of someone say, doing taxes, they have a couple that comes in for an appointment, there is one car in the driveway, they are in and out. But this is a situation where people are constantly pulling in and out of the driveway all day long and that is an abuse. And if you are going to have a couple of employees they need to be in the driveway and not impacting the bounds of the street and you should not have people in and out. With so many people working from home now, he thought that this is going to crop up of what is acceptable. Mr. Pesta stated that in their little area of Peach Street there, there are probably 20 – 30 young children who are just all over and so the traffic is the biggest concern of the parents.

Mr. McBride said that he thought that the whole delivery issue is not the bigger issue because he works from home and there are days, with Amazon, UPS, FedEx, and mail, when he gets half a dozen to a dozen deliveries and he suspects that is pretty normal for a lot of places now. But regarding home occupations, he thought that we should start with the parking issues. One of his questions would be to ask the post office what they would say; how much space do they need? And what does Republic Services need? People do not always put those trash cans on the apron; a lot of times they are on the tree lawn. He thought that we need an exclusion zone left and right of the trash cans. He thought that we need to look into that; that should not be that driver having to back that truck up and then swing out because that is dangerous any time and also dangerous for the mail carrier to have to back in to get to the mailbox. He thought that would be a safety issue that maybe the Safety Director could check into.

Mr. Butkowski asked what the Code says in regard to penalties for multiple violations of this Code. He was assuming it is a parking ticket for this. Mr. Gasior said, yes, when you get multiple parking tickets (he thought it was 3), then our Parking Violation Bureau can report that to the Bureau of Motor Vehicles and at that point, if the tickets are outstanding, they can prevent a person from getting their tags. If the person keeps paying the tickets then there is no problem; they just keep parking and it is like paying for parking. Mr. Butkowski said that is what he was just wondering, if this neighbor of Mr. Pesta's wants to

roll the dice and just pay the parking tickets. Mr. Pesta said, but his question then is, how many times would that happen before it becomes a nuisance? Mr. Gasior said that we are not going to give up on the home occupation aspect here but he thought it was a good first start to at least try to address it through the parking, whether it is 3 ft. or 4 ft. and the 8 ft. is probably good. But we are still going to look at this home occupation issue because it is a problem.

Mr. McBride felt that they should attack that separately but the parking issue was a good first start. He asked what the parking ticket fee was in Avon. If it starts at \$10.00, he proposed that it be \$10.00 for the second ticket, \$50.00 for the third, and then anything after that \$250. - \$500. - \$1,000.

Mr. Butkowski said but that is where we get specific with regard to what that violation is as opposed to just a generic parking ticket. We can call up this code and say you are violating this code, you get this fine. If you get so many that are violations of this particular code then it escalates and there is teeth in it as opposed to just randomly parking at the wrong spot. Mr. Gasior agreed that we probably do need that escalator in there.

Mr. Butkowski stated that if this person is running a law firm out of his house, he will pay the \$10. just for the convenience of being able to park his customers or clients there. If we really want to crack down on people doing this, call out this particular code in the violation so then it separates it from just a general parking violation. And you can put an escalator in it or whatever else but at least you are identifying what it is as opposed to a one size fits all violation. Mr. McBride agreed that it needs the escalator. Then a couple things are going to happen. One is going to be that our Traffic Court is going to get hit and the other is going to be that the Mayor gets called and they complain to him.

Mr. Pesta asked if this would also apply then to the private streets in the City and Mr. Gasior said that is where we are still going to have that problem because we are not going to enforce parking on private streets. Mr. Pesta said, so private streets are not covered under this? Mr. Gasior said that was right but we can try to address that. He has talked to the Police Chief about it a few times and we can add that to this; he will make a note to look at private street parking.

Mr. Radcliffe noted that we have talked about that in the past when the complaints about parking have come up and we said that we should address that at some point in the future. This seems like a good opportunity to put that in there right now to talk about that. Mr. McBride said but do we want to get into that when a private Homeowners Association can tow the car out of there if it is parked where it should not be. They have the absolute right to tow as long as the streets are posted. It is a private street. Mr. Radcliffe said that he thought there were issues with some of that and he would have to go back and look at that.

Mr. Witherspoon asked Mr. Streator if this problem was City-wide or was it just a problem with this gentleman's individual place. Also, he could see a problem with these developments that are one right next to another where the police would be doing nothing but issuing tickets. That could create a lot of phone calls to the Mayor so he was just wondering if we are doing this for the entire City. Is it a problem for the entire City? Mr. Streator said that he did not have enough information about that as far as the history on the number of calls, especially the mailbox issue. Fortunately this does not happen a lot because the mail is delivered during the day and most people are not home during the day. The on street parking occurs more in the evening when people get the visitors, etc. So the number of complaints probably are not that high with regard to the mailbox and with trash, it depends on where people are putting their trash cans and things like that. From his knowledge, 3 ft. should be ok because Republic has the arm on the truck that is long enough to even reach in front of a parked car as long as the car is not parked within 3 ft. of the trash container. And as far as enforcement, like with anything else, we look for

voluntary compliance and even when the requirements are changed, we are looking to get out a public education notice of this to the community so we do not have to go around writing tickets or answering complaints.

Mr. Pesta stated that he has talked to his mail carrier and was told that it is an issue around the City. Maybe a lot of people are not calling and complaining but his mail carrier said that numerous times she will bypass a house and not give the mail and she will have to deliver it the next day. Secondly, we were talking to the Chief in the meeting about the parking in regard to the driveway and that is not something that the police go around and look for; that is something that they enforce when they are called upon.

Mr. Fischer asked if there was going to be signage that is required or some kind of public notice if enforcement became a problem. Mr. Gasior said that he did not think you would need to worry about the signage so much. We had a big issue a few years back when we decided to go with no parking on the hydrant side of the street and then we said we were going to post signage at the entrance to the City so that everybody would be aware of it but he thought that the word just got out and to this day he thought that we may still be able to issue tickets. The parking is something he thought they could pass and it could be enforced. Probably the Police Department would be more inclined to just warn people about where they are parking instead of ticketing them right away. Most people who have parties and invite folks over, usually on a weekend, will call the police to tell them and they will give them a pass. He noted that Streamview, which is a public street, has a couple of cul-de-sacs off from it and those folks in those cul-de-sacs have complained because folks on Streamview have guests who stay overnight and they have no room for them to park their car in the driveway. They do not call the police and say they need to park on Streamview. They tell their guests to go park in the cul-de-sac as it is a private street and they cannot be ticketed. And that is where we have a problem and what is pushing the effort to get parking on private streets regulated in some way. Aside from the parking on the hydrant side, every now and then we have handicapped parking issues but they get enforced. This is a first step toward addressing the problem with home occupations and the fact that that there would be no need for that type of parking if they were operating a legitimate home occupation with just family members. They are abusing that home occupation rule and until we can address that and force them to get their license or permit, this parking amendment will be a good first step. And to everyone's point here, we do need an escalator in the fines so that we just do not have 5 or 6 offenses with the same fine of \$10. because as it was said, that would just be a cost of doing business. So he will revamp this Ordinance a bit and bring it back to the Committee.

Mr. McBride suggested to maybe just make it simple and require a 10 ft. distance from the outside flare of the apron in either direction and that is it, and no parking on the hydrant side. And as long as we are changing this, if they do park on the hydrant side, then it is a big ticket if they are within so many ft. of a hydrant. You are not supposed to park on the hydrant side and we all know what happens particularly when there are parties.

Mr. Gasior stated that we will have to remove this Ordinance from the agenda of the Regular Meeting tonight. He would do a rewrite and bring it back.

Discussion of Developing a Tree Preservation and Maintenance Plan

Rick Varga, Certified Arborist and a resident of Avon, stated that what we are trying to do is put together a tree preservation plan, a protection plan, and he and Mr. Gasior have been working on this for awhile. Essentially what we are trying to do is set up some type of recommendation so when these builders come in they do not absolutely clear every single tree in our city. He had a handout to show some of the plans that were presented to the City of Olmsted Falls and how they proceeded to locate trees to save them. They set up a buffer zone in conjunction with where the houses were so they have some common areas

and they identified the trees. And we would look at it from the City perspective of which trees to save because you just do not save any tree. We have to make sure that if we get into this we are going to save the trees that are worth saving in conjunction with species. Other cities such as Westlake, Lakewood, and Rocky River are designated as Tree Cities and they have been getting grant money to plant trees to enhance their canopy. That is the other thing we can look at because he has the programs to establish what our tree canopy is in the City of Avon and we can see just how much of our canopy we have lost. So we can evaluate all that, put together a good program and see where we are. And what happens with all that is that it brings it all together to become a Tree City and once we do that, we can start getting grants as a result. So it is a win-win for everybody: we are saving trees, we are doing buffer zones so a builder cannot come in and destroy every tree there, and we can keep trees that are worth saving. Also in the program that he put together, a critical root zone is established so when they are building they are not ripping all the roots out of the trees that we are trying to save, so everything works together.

Mr. McBride asked if we become a Tree City and can get grants, who runs the Tree City program, who gets the money out and is the federal government involved? And what is the downside of becoming a Tree City, what is the paperwork, and what is the ongoing investment? Mr. Varga responded that he has all the details of what it takes to become a Tree City in his program. It is not terribly involved. To get our city moving, we have to have a tree protection plan first and foremost before we can even consider being a Tree City because we have to involve ourselves to show that we are looking to save trees. Ohio State University has put out a program that is called "Why Trees Matter" and when you look at all the statistics of what trees do, you can see that problems about tree roots, etc. do not even compare to the benefits of trees as far as shade, cooling, taking up excess water, giving oxygen. You can go on and on about how trees matter. Do you realize 30 million acres of trees were destroyed last year alone? There is the alarm about global warming. Yes, of course you are going to have global warming because all of these trees are being destroyed and we are losing the benefit of what they do to cool the climate.

Mr. Butkowski asked how these cities manage the legality regarding trees. Is it that new developments have to then follow our tree guidelines or are trees that are already in existence in other areas under these stipulations? Mr. Varga answered that his handout shows what a developer has to do for his due diligence as far as showing the trees and what he wants to save and then an arborist would review that. Mr. Butkowski stated that Mr. Varga had given them lists of the tree species that we want to try and keep and he asked if Mr. Varga was suggesting that at this point forward, those are the tree species that we are trying to keep or are we looking back at existing tree species that we want to keep on property owners' property? Mr. Varga said that we are looking at any tree that we think is a viable tree. Say that there is a red oak that is healthy and we want to try and save this particular tree because it is an indigenous species. Also we tried to introduce newer species of trees that are disease resistant and insect resistant so we have a variety of trees to develop a hardy, healthy canopy.

Mr. Butkowski asked Mr. Varga if he was suggesting then that if that red oak was in someone's front yard and they wanted to cut it down, we would prevent him from cutting it down to try and maintain the canopy? Mr. Varga said that is a very good question but that is an individual; right now he thought that first and foremost we have to focus on the developers. Mr. Gasior added that red oak would not be covered because that is an individual's house and from one of the other pieces of legislation, if you have a house on property under two acres, you can manage that by yourself. Mr. Butkowski then said that it almost sounds like we need a full-time person to manage this because if you talk to a developer and you are talking about healthy trees, what is a healthy tree to an arborist vs. a healthy tree to a developer that needs that space. Who is going to regulate that? How do you manage that? Mr. Varga said that would be up to the Mayor and whoever he would decide.

Mr. McBride said that it may get managed the same way that our City Engineer gets paid and that is as fees that are added on to a developer when that developer comes in. Mr. Butkowski stated it would be a certified arborist for assessment of the property. Mr. McBride said, right, whether that would be somebody on staff or somebody that we approve. He stated, and then there are those incidences where we have a commercial development that is going to go in next to a residential development and there are trees in there that we want to save but that developer is proposing cutting everything down and putting in a mound, irrigating it and then replanting everything there and that would potentially be a better buffer down the road for the residents. Mr. Varga said that developers' proposals are something we would look at also. He thought that the main thing here is just trying to limit them from going in and taking out every single tree.

Mr. Moore asked if, in the Ordinances that Mr. Varga has seen, do they speak to working with the developers in planting certain trees? Mr. Varga said, absolutely, and we have our list put together on tree species that we want them to consider using. We want to develop healthy trees, a nice canopy of trees and everything in conjunction so everything looks good. We do not want them going in and planting all Bradford pears.

Mrs. Holtzmeier asked, in regard to the Tree City USA designation, if that was the Arbor Day Foundation that gets that out and was in charge of the grant funding? Mr. Varga said that it is part of it. Mrs. Holtzmeier stated that the growth of a tree is significant of a moment in time. To have a tree worth saving, it means someone has made an investment many years ago to plant that tree and nurture it. So while saving trees, and saving the right kind of trees in the right places, is important, what she is really focused on is treating that investment today so we have a canopy in the future. What she can really get behind is looking at a plan that looks at our current and future developments and includes their landscape and their long-term landscape in their planning documents. She said she could also get behind community standards that show the tree trunk of a particular diameter so it has some years already on it before we put it in the ground to give it a decent chance of growing. Mr. Varga said that is all specified in his plan; we made a determination about diameter, and that is all detailed. Mrs. Holtzmeier said that she liked the way that he put that together and that adding arborist consulting fees as part of a new development makes a clearer path to be able to do this and make it financially feasible. She said that she would not be in support of having City staff to manage this but she sees it as important to be able to consider.

Mr. Cummins stated that he loves trees but he felt it was necessary to look at both sides. The document that Mr. Varga has there is something that Mr. Cummins' office put together: four different examples of tree ordinances and a summary of what is included in each. There are some very intrusive kind of requirements and there are some that are more flexible and so those are some options to draw ideas from. Mr. Cummins said that he does want to stress that there has been some talk about the impact on development. There will be impact on development. It will be extra time during the development process, it will be extra expense to the developer and to the City to manage. And the one thing that you have to be careful of, particularly in Avon because Avon is very flat, is that sometimes if you have a good stand of existing trees there is not always very good drainage among them because it is so flat. We have had several areas over the years where there have been trees left in place maybe along the back of the lots and then when the new residents get there, they do not like the water that lays in between them. So there will be extra steps in the development process and he was sure that you will hear from the development community about that as you consider this further. And there will be important things that the City will have to do to manage the process to make sure that you are getting the intents of the ordinance out. That people are providing you with an accurate accounting of the trees involved, that they are accurately depicting if there is a very special tree worth saving. If you have a fee structure, to determine how those fees are collected and what that money is used for and making sure that you are getting what the City is due under the ordinance. So there are a lot of things to consider. It is obviously

a very important thing and many communities have tree ordinances of this kind and it is probably because over the years as they were becoming developed, maybe the development community was not as thoughtful about those things as they should have been and thus the reaction was to have a tree ordinance. He said he was just asking them to consider the impact as well because he was sure there will be questions coming about.

Mr. McBride stated that he would assume that a tree ordinance would need input from Mr. Cummins and Mr. Cummins said that it absolutely will add to the engineering review of a project because we have to make sure that we are staying in compliance with the tree ordinance and we are not allowing any grading to occur and then you are going to get into squabbles about use of land and non-use of land. Mr. McBride mentioned the importance of the engineer's review in regard to changing the flow of water because of removing trees and doing other plantings, which could cause flooding. Mr. Varga said that can happen. He said that cities can put together their own tree preservation plan and some are more specific and detailed. What we are trying to start here is to get everybody together so we can have some type of idea of how extensive we need to be and how we are going to present this. He noted what happened at Mills and Jaycox; six months ago they just took every single tree out of the 12 acres there. He does not know if it was for the purpose of development but all of a sudden there was just a barren land there – 12 acres. He was saying this is all something that we have to start thinking about. How we are really going to get a plan developed and what areas we want to be concerned with.

Mr. McBride stated that he thought that this is going to require multiple meetings. Mr. Varga agreed and said that he will put some things together for more discussion.

Mr. Gasior stated that he would just sum it up by saying that about all we have on our books right now is Section 1248.08 which says that the developer or the subdivider "shall exercise due judgment in the clearing of land so that as many trees as is practical are preserved." That is all we have basically. And then we cover public trees and we put a lot of authority in the Service Director to care for public trees and prevent anyone from damaging trees on public property. And then there is another section in 1228 that requires the developer to identify some trees but we do not have any permit process for clearing so maybe that is a first step.

Ms. Fechter added that it is important to save trees and she thought it is also very important to add in requirements for new trees and that is something that we could do earlier and quicker. Right now a developer is required to do one 2.5 caliper tree for every 10,000 sq. ft. Having a little bit higher requirement for the tree numbers is something we would like to do on the front end to show at least that we are moving forward in that direction. Mr. Varga said that is a good point and if nothing else, we have to take at least small steps to try to initiate something.

Mayor Jensen stated that they are all saying the same thing, and that is that they need to move forward with putting something in place in our Ordinance regarding tree preservation and maintenance.

Adjourn

Mr. McBride adjourned the meeting at 6:58 P.M.

Transcribed by Gail Hayden, Assistant Clerk of Council