

Minutes of the Ordinance Committee meeting
Sheffield Lake, Ohio
October 6, 2016

This regular meeting of the Ordinance Committee was held Thursday, October 6, 2016. Chairman Kovach called the meeting to order at 7:14 PM.

ROLL CALL OF MEMBERS:

Present: Kovach, Erdei, Gee

Attending: Mayor Bring, Law Director Graves

MINUTES: September 1, 2016, *Motion by Erdei/Second by Gee to accept the minutes with any corrections. Yeas All.

PRESENTATIONS: **None.**

CORRESPONDENCE: **None.**

OLD BUSINESS:

Industrial District – Law Director Graves advised you have the proposal.

Subdivision regulations – Law Director Graves advised nothing new.

Building Permit fees – **None.**

Installing yard storm drains at new construction – **REMOVE.**

Chapter 159; Economic Development Advisory Board – **REMOVE.**

Options for driveway additions, amend section 1345.01 of the codified ordinances of Sheffield Lake regarding certifications of occupancy – Law Director Graves advised Council President Rosso had asked me to have the legal opinion ready for the next Worksession but I was able to spend some time with it and you all should have received a copy of that. For discussion if you have any questions I would be happy to answer them. In doing the research a couple of things kind of jumped out even though I wasn't aware and we could talk about it if you want. Chairman Kovach stated in going through it, you are cross referencing three different issues. Law Director Graves added along with all the different definitions; new construction and then two different definitions of structures. You kind of piece it, reverse it back, so you say Portland cement applies to new construction and that means structure's, structure's means these two different things. So, driveways are structures, therefore they are new construction or any improvements to new construction, therefore they must be of Portland cement. Residential, you have to draw the distinction between residential and commercial. Portland cement under 903.05, that is all for residential. Commercial; asphalt or concrete and I think a strong argument could be made because of the hard surface language, they could do it under #57 or larger limestone aggregate for commercial. The couple of things that I would say were of concerns to me was that when you work through this logically and you say all residential driveways and driveway additions must be made of Portland cement. There is no exception for an existing gravel or asphalt drive, that would be a non-conforming drive because it predates the code. If you wanted to add onto that today you would

have to meet current code, in other words the addition would have to be concrete. The other problem with that is the requirement that it be made of Portland cement is in the 900 section which is the streets, utilities and public services section which means if someone did want to get relief from that and say I have got a gravel drive and I want to add onto it in gravel they would not even be permitted to try to seek a variance from the Zoning Board of Appeals because that is not in the Building or Zoning portions of the code. It is not in the 1100 or the 1300's, that is all the Zoning Board can give variances from. They can't give a variance from the streets, utilities and public services. You might want to consider moving those driveway material standards to the Building code. Councilperson Gee asked the guy with the really nice brick driveway, in other words, if a resident wants to put in one of those they couldn't even go and get a variance the way it is right now? Law Director Graves answered no, I did not see anything in there that allows for like decorative paver stones which some people use – it just says Portland cement. Now those paver stones not only, a lot of times look really nice, but they are also beneficial when it comes to the Stormwater because they are not an impervious surface, they allow for the water to penetrate. Chairman Kovach stated we have to find out what the content of the pavers are though. If they contain Portland cement they should be okay. Law Director Graves advised I would suppose you could have Portland cement pavers. Chairman Kovach advised I would imagine that those pavers already have it in them. Law Director Graves stated I don't know, but most likely you might be right. Councilman Gee asked what was your suggestion a moment ago to move what from streets? Law Director Graves advised the 903.05/part 9 streets, utilities and public services; for some reason 903.05 has the language, construction of material specifications for driveways. This is where they put this Portland cement driveways shall be installed from sidewalk to the front of the garage. I would recommend that this particular language, however Council ends up revising it or if you want to keep this language be moved to the Building code under part 13 or the Zoning code part 11 so that at least if someone thought they could prove practical difficulties and could meet factors they could apply to the Zoning Board of Appeals for a variance and try to plead practical difficulties for portions of code. As it stands right now there would be no relief available. Chairman Kovach asked should it be removed from this or just added to the other two, removed this section and included in the other Zoning and Building or should it be in all three? Law Director Graves stated I don't know that you need it to cross reference in multiple sections of the code. I think that having it in there once would be sufficient, I don't think you need to state it in part 9 and part 11, etc. Chairman Kovach asked so it should be removed from this section and included in another? Law Director Graves answered yes. Chairman Erdei stated a lot of people probably read that and really not understand it, is there any way we can clarify this a little bit more. Where there is no questions asked, this is what it is? Law Director Graves answered yes, it could be clarified. What happens, unfortunately over the years with our code is we pass an ordinance and we don't bother to go back

and check on other ordinances that it may be in conflict with. So those older ones just stay on the books too, and so then we come to a point on whatever topic when we go and say, well we have got all these different sections that references and they don't all say quite the same thing. So, then you have to say how do we reconcile them altogether, can they be interpreted so that they all have meaning, can they all work together or are they in conflict. So, you have to say, well we will go with the latest one and treat it as an exception. So yes, it could be stated a lot better, you could have kind of like what I put in some portions of your proposal on the Industrial. You could have a chart that just says, driveway materials for different zones and what is allowable, it could be just very clear. Councilman Erdei stated at some point, wasn't it and I could be wrong, but you could get away with residential property with a 4-inch limestone. Law Director Graves answered that was commercial. Councilman Erdei stated, but the line underneath or the next line it was rewritten to where it was conformed residential. Councilperson Gee clarified no it was the definition of hard surface. Law Director Graves advised in terms of a conflict, just it summarize what I said, there is no conflict between 1173.02 and 903.05. 1173.02 says hard surface, concrete or asphalt and that was the 1970. The other one 903.05 says Portland cement, there is no conflict there because 903.05 clearly says it is for residential, they are not in conflict. There is no conflict when it comes to commercial, but when it comes residential, the 1973 one says it applies to all drives and the 903.05 where it says residential. So they are in conflict when it comes to residential. Councilman Erdei stated yes, because wasn't it said existing structure on the one definition. Law Director Graves stated when you say that 903.05 only applies to residential, new construction – the issue was raised whether an addition to an existing driveway is new construction. So you have to go through a discussion of what constitutes new construction. Councilman Erdei stated that is why we have to clarify that. Mayor Bring advised I agree with you with the chart, I think that is a good idea. Councilperson Gee stated, but the very first thing that we need to do unless I misunderstood you was we need to take the 903.05 and move that section to Building code right? That is what you recommend? Law Director Graves answered, I think that is something that jumps out at me right away that regardless of how Council comes down on this issue ultimately. If you want to change requirements or move things around or clarify, however you do it – that is something that you should absolutely I think do. But I am not saying that you need to do that first. In fact, I probably wouldn't do it until you know what you are going to do because if you move it now then later on you say well, we want to clarify changes you are going to have to amend it again. So I would just say that once Council and you guys discuss it at Worksession, once you guys really know the direction you want to go and all the different changes you might want to make or how you want to move forward. At some point we will do those things, but along with that definitely should move this I think. Chairman Kovach stated with that being said, it seems to me the proposed amendment is still the most reasonable way to deal with this because if we don't

have something like this which give some area to work with for the residents, it seems to me that Dennis could go ahead right now and use what is on the books to rectify what he feels are problems in this area. I know that is not what you want to do, but if we don't come up with this relief per say which is what this is, depending on how you would want to approach it. Councilperson Gee stated either, though we are going to be discussing this at Worksession right? Law Director Graves answered yes and that is when Rick wanted me to have this legal opinion. Chairman Kovach advised I get that, but I am just saying my thoughts on this issue are if we don't do something like this he can still approach it. Law Director Graves stated as I said at the Council meeting, it seems like there was almost two different discussions going on at the same time. One discussion was in regard to how we deal with existing driveway additions that are in violation of our current code and then another discussion is do we want to change the current code. Mayor Bring submitted paperwork to committee and stated if you read that according to that those cars aren't even supposed to park there in the first place because if you read what that surface is supposed to be they are already illegal. Law Director Graves stated this is change the title to add motor vehicle. Mayor Bring stated yes, it was changed to motor vehicles and the only reason I am putting this out there, but again if you read what it says about the surface. Councilperson Gee concurred because that is the one that said Portland cement also right. Law Director Graves stated well this one says "no vehicles shall be parked unless in the front yard unless they are parked on a driveway which is installed and established in accordance with the provisions of the ordinance of this city". So it doesn't say hard surface, it says if you are going to park a car in the front yard it must be on a driveway that meets the code which means Portland cement in residential. The other thing about this is it doesn't specifically say water craft, it should be amended to include boats. Mayor Bring stated that is why when Worksession comes I will show you the pictures and I will show you what is going on. Councilperson Gee asked isn't there an ordinance already somewhere that clarifies that water craft is recreational vehicle? Mayor Bring answered yes. Councilperson Gee stated I think I saw that somewhere when I was digging. Mayor Bring answered it is. Chairman Kovach advised I guess we have more information to send to Worksession. I remember this one when we did it. Mayor Bring advised yes and that has been recently. If I may, part of this with the Portland cement and stuff I think that you guys are thinking of the same thing is that if somebody has an asphalt driveway or something with the gravel and my intention was not to go after those people with the gravel driveways if they put gravel next to it. But according to what David has read is that would be in violation if they did add on to that and also if they had asphalt and they wanted to add onto it you would have to put Portland cement. Chairman Kovach stated, apparently the one gentleman on Lafayette must have read that to the tee because that is exactly what he did with the motor home where he has an asphalt original driveway and his extension is made out of concrete to park his motor home on and that is brand new, he just did that recently. Mayor

Bring advised some people aesthetically would like to see it remain the same, but I think the purpose of asphalt a long time ago was because it was about half the price of what cement was and now that price has escalated to almost the same amount. If you are going to do all that work, then concrete is a better way of going. My intention of people with existing gravel driveways, if they wanted to add on they could remain the way it was without doing anything else. But that is totally up to you guys, just throwing things out there. That is all stuff you guys can talk about, but I looked at this the other day because I found this because technically those people whether they would put 4-inch gravel or whatever they are still in violation. Chairman Kovach advised for the life of me if I were going through the process of adding to a driveway to put a boat on I wouldn't leave it sit on gravel - #1, gravel retains the water and the humidity will start eating the trailer and everything but that being said, yes that is a greater cost but all-in-all it's better. Mayor Bring stated if you look at the components of limestone mixed with rain actually causes your car to rust, so if you park it on there your frame, mufflers, brakes and everything else actually deteriorate. Also the same thing with your boats because you have brake systems and stuff, whether people realize it or not they are actually ruining their equipment.

NEW BUSINESS: Councilperson Gee advised I have been looking into some of the issues on drones, some cities have them where there is no fly zones for drones in residential areas below a certain footage so they can't be looking through windows. I spoke a few months back about it and there was an issue again over on my side of town with that guy looking through the windows with his drone. A lot of cities really are starting to stand up and have ordinances on them. Law Director Graves advised I can certainly look into it. I know that there is a question that the drone law is a new field and it is really up in the air as to enforceability. There is a lot of overlap with federal regulations, FCC regulations which are considered in some cases to be aircraft. I have to look into it, but I did read an article on drone law and I will have to read some more. Just because some of the other communities are doing it, doesn't mean that it is going to be legally enforceable if it were challenged in court. Before I would recommend that we adopt any kind of laws I want to make sure that they have a good chance of being upheld in court. Now all that being said, voyeurism is a crime and if you can prove that someone is using a drone to spy on someone's private space; in windows and things like that. Then you might be able to have a successful prosecution from voyeurism. Councilperson Gee advised some of them that I have read on instead of having something against drones, what they wrote as their ordinances is where your private property for example, was 20-feet up in the air was still also your private property. Then you put a sign no trespassing and the drone can't be below that altitude on your property. I use the 20-feet as an example, I think it was below roof tops in one city. Mayor Bring advised well two story houses would be higher than 20-feet. Law Director Graves stated I am reading about Cleveland's drone ordinance. Chairman Kovach advised roof top would be pretty

ambiguous considering the roof could be as low 12-foot and then you have got like that one home that is over by Edgewater that is probably 35-feet. Mayor Bring advised I think we have an ordinance as far as the height for residential properties and it can only be 34 to 35 feet something like that. Law Director Graves advised I am reading what Cleveland passed and it looks like this past April 26, 2016 basically the legislation just permits the authorities in the Cleveland Police Department to assist the FAA in regulating aerial drones. Before it passed Cleveland Police didn't even have any authority to respond to illegal drone operations, it requires drone operators to register their devices with the FAA or face misdemeanors, notify Airport Control Towers. They have urged drone operators to be mindful of basic FAA drone rules which is to fly below 400 feet and keep the drone within eyesight and don't ever fly near any manned aircraft and never fly over groups of people, nor fly near responding emergency vehicles, etc. I will take a look at what other communities are doing. Like I said I know that you are limited in what kind of local restrictions you can pass because anything you would pass would be trumped by federal regulations. I will do some more research on it and come back. Councilman Erdei asked do we have anything such as a memorandum on sales of marijuana? Law Director Graves stated the Mayor was just asking if we were going to talk about that. The Ohio Medical Marijuana Law, I sent out an email a while back, but it has a specific provision in it that allows local communities to pass local ordinances regulating the sale and cultivation of medical marijuana and you do that through zoning and so forth. Most of the communities that have passed legislation so far have passed it just in the form of a moratorium and that they are not going to allow it for a period of time until they are better educated and sort this whole thing out. I can tell you that the state is nowhere near ready for this to start. This was in the newspaper the other day and it requires a lot of regulatory action at the state level and none of that is in place and they are nowhere near ready to go. They are estimating that it could be up to another two years before any of this really starts. Mayor Bring added I heard a minimum of a year. Law Director Graves concurred a year to two year's addition. So, it is not like we are starting being flooded with this, but if it is something that you are interested in we can certainly look at that. Councilman Erdei stated just to cover our butts, just kind of like other cities are doing to kind of have something in place and be safe. Mayor Bring advised I think Avon Lake did, Lorain did and Sheffield Village did, but some of the smaller communities I haven't seen anything unless they just didn't put it in the paper but I haven't seen anything. I didn't see anything with Vermilion or Bay Village or anything like that and I think what David is saying and this is what I read too that is so many parameters that they have to follow yet that it is going to take quite some time. I don't know if we have to jump into this right away, but it is worthwhile discussing if you want to discuss it. Councilman Erdei stated I mean we are trying to draw business to our town, but I don't think the distribution of marijuana. Law Director Graves stated if anybody is interested the section of the Ohio Revised Code is 3796.29 and that specifically

authorizes the legislative body of a municipal corporation to adopt a resolution that would prohibit or limit the number of cultivators, processors and retail dispensaries which would be licensed under this chapter. So, you could technically under that I suppose just pass something that prohibits any cultivation or sale of medical marijuana in Sheffield Lake. Now that's still down the road is not going to prevent someone who has a valid prescription for medical marijuana from possessing and using it here. Mayor Bring advised a little bit more to that is actually that I have read and heard that some of this marijuana has worked very well for people that have extreme pain. They don't abuse it they use it for that and there are other conditions that use that for and it does work. In one aspect, I guess we don't want drug trafficking, but in another aspect, we don't want to stop people from getting the help that they need. Councilman Erdei stated that is something that we can discuss in Worksession, bring it up and just throw it around a little bit and get everybody's opinion. **Chairman Kovach referred to Worksession for discussion.**

CITIZEN'S COMMENTARY: None.

All ordinances before Council at this time:

MEETING ADJOURNED: With no further business before this committee,

*Motion by Erdei/Second by Gee to adjourn at 7:46 PM. Yeas All.

CLERK OF COMMITTEE AFFIRMATION:

This Meeting of the City Committee of the City of Sheffield Lake, Ohio, was held and conducted under all Rules and Regulations Governing the Sunshine Laws of the State of Ohio as they may apply. All meetings are recorded and available in Council's Office.

CLERK OF COUNCIL/COMMITTEES

Kay Fantauzzi

I, Kay Fantauzzi, duly appointed Clerk of Committee Of Sheffield Lake DO HEREBY CERTIFY that this Is a true and exact copy of the Minutes of the Ordinance Committee of October 6, 2016.

CHAIRMAN

Steve Kovach

COUNCIL PRESIDENT

Rick Rosso