

LEGISLATIVE COMMITTEE MINUTES
of September 20, 2021

In Attendance: **Vermilion City Council:**
Steve Herron, President of Council; Monica Stark, Council at Large; Emily Skahen, Ward One; F. Loucka, Ward Two; Steve Holovacs, Ward Three; Barb Brady, Ward Four; Brian Holmes, Ward Five.

Administration:
Jim Forthofer, Mayor; Chris Howard, City Engineer; Tony Valerius, Service Director

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: **Review of Ordinance 2021-58 (Full-Time Supervisor of Park Maintenance)**

B. Brady asked Terry Parker the Chairman of the Parks & Recreation Board to explain this position. T. Parker introduced Marc Weisenberger who is in his third year of service with the Parks Department and who is serving them exceptionally well. He brings a lot to the table in terms of experience, management skills, people skills, knowledge of equipment, knowledge of how parks operate and what should be done. He explained Ordinance 2021-58 is the natural evolution of having found somebody like Marc to take this position initially part-time. However, when they passed the levy it was envisioned at that time that this position would eventually become a full-time position. They are proposing no increase in the rate of pay, but to simply adding hours from 28 to 40, and there would be some additional benefits that will need to be offered, but the cash flow and the balance in the Parks Operating Levy is more than sufficient to sustain this. This will have no impact on the general fund or the capital levy they use for the parks. He said he has been proud to have worked with Marc as he brings a lot to the table. The recommendation from the Parks Board was unanimous, so they submitted this to City Council for their questions and consideration.

B. Holmes said Marc does a wonderful job and he has his full support. This will not affect the general fund as it will be supported through the levy fund, so he agrees it is time.

Mayor Forthofer said on behalf of the administration he thinks both Service Director Valerius and he will say that Marc has been exceptional. After Dana Corogin retired, they did not think they would ever be able to replace her with a better or good as Park Supervisor. He said Marc has his own unique abilities and they have been substantial, so they fully support Marc. He said Amy Hendricks has said the money is available through the levy.

B. Brady assumed he would be a working supervisor. Marc Weisenberger said absolutely. He said they really have focused on establishing a regular maintenance program and moving forward they have some nice capital projects starting in the near future in the parks. He said he has enjoyed working with everybody that he has been associated with in the first couple of years and is looking forward to continuing on. He thanked everyone for the opportunity.

F. Loucka asked how the winter months will be handled. M. Weisenberger said they have been operating year-round for the past two years. There are things they do and with moving into the old fire station and have a heated maintenance area, it will allow them to do more winter maintenance. T. Valerius said not only is Marc responsible for maintenance, but he has been actively searching for grants for shoreline erosion, tree trimming, etc. The Parks Department has evolved into bigger things. T. Parker said frankly they have been getting more than 28 hours out of Marc for some time.

Council thanked him for the great job he does.

TOPIC TWO: Review of Draft Legislation (Encroachment on Private Property)

M. Stark explained so many years ago, her and former councilman John Gabriel had talked about something like this draft ordinance as through the years they have a lot of issues with encroachment on properties. For instance, there was an issue in Elberta beach regarding a deck that was built on overlapping property. Currently, in the city there is a pool that has been built on encroaching property and fences on the Mapleview ditch. This ordinance would give the city some teeth to help with some of these things. She said this legislation is a work in progress and it doesn't have to be as written, but she wanted to bring it forward to get council's ideas and opinions.

B. Brady questioned the fact they are making the person that is encroached upon the one to pay for it. It would seem that if you're going to put up a fence or a structure that you're responsible at that point to get a survey of the property, so you know where it is. You should be having to prove that, so they are turning the responsibility on the person who is encroached upon, and this does not make sense to her. M. Stark said in the past if someone was encroached upon, then it was said to be a civil issue and the city could not do anything about it. It should be more than that and there should be something the city can do, and this legislation will put something into place where the city can do something. She said if she owns property and her neighbor behind her puts a fence up so many feet onto her property, then she should be able to get a survey and take it back to the city saying this is happening and it was approved somehow, but it is not right, so they need to be able to give the citizens something to come back for.

S. Herron suggested that if in fact there is a criminal conviction under the penalties that the cost of that survey could be included as part of the penalty. M. Stark asked if this is something they can put into the penalty clause or would this come from

the court system. S. Herron said council can put it in under an option. He said the problem is that a minor misdemeanor is a maximum of \$100, so he does not think they can attach a penalty to exceed this, and most surveys are more than \$100, but on a second one that would be a fourth degree, then you can attach something like this, so this may be a consideration of the way to go. He said they always want to have the ability for an inspector to go out and deal with the situation without anybody going to court.

S. Holovacs said this legislation is in progress, but if anyone comes for a building permit it is part of the building department's responsibility that this individual is putting a fence or building on their property. It is the responsibility for the building department to do a final inspection. If this individual cannot show them where the lines are on the property, then this is the first thing they should do before they get a building permit. If this slips through the cracks where nobody catches it, and if a homeowner has to go back, then anything they occur should be charged back to that homeowner that crossed the line or who put a fence on there because it cost his sister \$350.00 or \$400.00 to prove a fence was on her property. Why did she have to pay it to prove it because it should have been part of the building department's final approval and knowing that they were putting the fence on the proper line.

T. Valerius said this is something the building department does all the time now. All permits are put into the computer and all permits have a final inspection, whether it be a fence or a house – all zoning permits get final inspections to make sure it was put on the property at the property line. M. Stark asked what would happen in the scenario she used – somebody puts a fence in her back yard ten feet in and it did not get caught on the final inspection. What is her repercussion – is it a civil issue at that point? T. Valerius said if it slipped through the cracks, then the city would speak with the homeowners and ultimately it would have to be a civil issue. M. Stark thought if they had legislation like this, then it would help this not becoming a civil issue and they can say it was encroached upon. Mayor Forthofer said this is a question he has in using this scenario – instead of them saying it is a civil issue, what does she envision the city's activity to be that would be better than the way it is now. M. Stark said with this ordinance they would have certain time to move their fence, or they would start getting charged a fee because it was put on – although it was not seen by the city, so the city could come to them and say they have a survey from the property owner and they see this is on property, so they would have to move their fence. This would just give the city some teeth instead of telling these property owners it is a civil issue. Not everybody has money to hire attorney's and have civil issues. If somebody put a fence on her property, then why should she have to hire an attorney if the city accidentally overlooked it, or it slipped through the cracks. As a property owner, she thinks the citizens should have something that gives them a little more teeth.

T. Valerius said if someone would come in to get a permit for a fence, they would do an inspection to make sure the property pins are located, and they would do a posthole inspection to make sure the postholes are on the property lines. If they do

this, and for some reason they do not go back for a final inspection and the neighbor says they moved the posts and put the fence 6” on the property, then he thinks the city could have some teeth and take this homeowner to court because they did not follow the permit. M. Stark said she is thinking that this could be from past building inspectors from years ago and all of a sudden they find out there is a shed or fence on their property and now they cannot sell their property – would this give the community some teeth. S. Herron said the problem with this is they cannot apply a criminal statute retroactively. He did not think people went to the city – they probably did what they wanted to do either out of not knowing or what have you, but this is a problem. He is not against where she is coming from, but he is saying this may be a problem on some of those situations. M. Stark said if there was a situation where somebody did not get the correct permits, then this would have some teeth for that. S. Holovacs said they can hire somebody to come in and put a utility building in on a Saturday or Sunday and the city would never see it – same with putting up a fence. They have to look on the other side of this situation where somebody gets a permit and they did something wrong – what happens when they are done without the approval of a building permit because at that point there is no approval by the city, but there is somebody encroaching on their property.

Mayor Forthofer said this is not to say council should or should not do this, but the problems they have now in the building department is that the prosecutor’s office has a big back up of all the situations they have now. If this leads to that, then he is concerned about the bottleneck. This is a technicality that has to be figured out, but it is an issue.

F. Loucka believed the complainant would be responsible for doing the survey, so if the property owner says you have something on his property, then he needs to show proof. For example, on Vermilion Road somebody put up a garage and the neighbor said he put it on his property – well he got a survey and it showed he has eight more feet, and he can park his car next to his garage now, so the guy was totally in the wrong because his garage was legal.

B. Brady said they are only talking about a \$100 penalty, but if somebody did something without a permit they will pay a double permit fee. She said a survey could be expensive. She felt the responsibility was on the wrong side. F. Loucka said if he felt something was on his property, then he would have to show proof it is on his property.

S. Holovacs said he isn’t looking to see any kind of fines, but he wants justification that if someone is on your property, that they get it off your property. You do not pay taxes for having someone else put a fence, a utility building or whatever on your property – unless they want to start taking over your taxes. He does not believe in the fines – just specify what you did wrong.

E. Skahen said as far as the survey costs under Section 1482.12 (c) where it says they have 15 days to remove items illegally placed or planted - maybe they could add

something that says they would have to pay the survey costs. M. Stark said it is a good idea, but she does not know the legality of this to say the other person would have to pay the cost of the survey.

B. Brady suggested having the law director review the legislation. M. Stark asked council if they were in agreement to having the law director review this. S. Herron thought it was a good idea but wanted to give the law director direction on what they think of this in terms of a civil penalty, and a civil penalty would be limited to attaching to a minor misdemeanor and a civil penalty to pay whatever it costs to get the survey done upon finding guilt.

B. Holmes asked if they need to define items in the ordinance, such as a trailer/camper? M. Stark said it says in the ordinance any items, structures, or plantings. However, the law director can review this as well.

M. Stark MOVED, F. Loucka seconded to send draft legislation on the Encroachment of Private Property to the law department for review. Roll Call Vote 7 YEAS. **MOTION CARRIED.**

D. Werley of 5016 Timberview said all of council knows how he feels about property rights, and he suggested they throw this thing away and he felt they should have not even brought it up because he sees no point in it at all. He thinks there are processes in place already to handle anything like this – civilly in civil court, but as soon as he saw this he thought it made zero sense. He is glad it was brought up that the building department should catch this – this is what makes sense to him. He said he will never apply for a building permit for anything, but he would imagine you would have to show property lines, so it should not get through, but if it does he would imagine that himself and the injured party could have a conversation and if they cannot come to an agreement, then they can take one another to court and let them handle it this way. However, if you want to put teeth into things – he doesn't want to allow them to have teeth – he wants to take all their teeth away because they do too much stuff as it is now – this law is the dumbest thing he has ever seen in the year and a half he has looked at ordinances. It makes zero sense, and they should handle it civilly. There is a process in there already and they do not need this at all.

M. Stark adjourned the meeting upon no further discussion.

Next meeting: October 18, 2021 – 7pm @ Vermilion Municipal Complex, 687 Decatur Street

Transcribed by Gwen Fisher, Certified Municipal Clerk (CMC)