

**Council for the Village of Yellow Springs
Regular Session Minutes**

Virtual Meeting 7:00 P.M.

Monday, April 19, 2021

CALL TO ORDER

President of Council Brian Housh called the virtual meeting to order at 7:00pm.

ROLL CALL

Present via Zoom were President Housh, and Council members Marianne MacQueen, Kevin Stokes, Lisa Kreeger, and Laura Curliss. Also present via Zoom were Village Manager Josue Salmeron, Public Works Director Johnnie Burns, Planning and Zoning Administrator Denise Swinger, Finance Director Matt Dillon, Chief Brian Carlson and Solicitor Breanne Parcels.

ANNOUNCEMENTS

Salmeron announced that the Community Gardens are being continued under Village direction, and all current gardeners can continue their activities. Salmeron explained that a Community Gardens leader had used his vehicle to strike a Village employee while working at one of the gardens. This occurred after several Village employees requested that this person not drive the vehicle onto the garden area. Salmeron stated that attempts to reach out to Community Gardens leadership had failed, and subsequently the Village has decided to take over running these gardens. Salmeron stated that he is the contact person temporarily. He stated his willingness to work with the group in the future.

MacQueen noted the following Earth Day activities in the Village: April 22; Agraria will hold open house visits; April 23 and 24, the movie “Hometown Habitat” will be show at Agraria at 7pm. April 24, Glen Helen Parking lot will host a native plan swap; April 25, booths and games at the new fire station.

MacQueen announced mediation training the next three Tuesdays through Village Mediation.

MacQueen thanked Migiwa Orimo for creating the “Habitat Community” banner hanging at the south end of town.

Kreeger announced that the new VIDA award will be presented to Sandi’s Gallery at a date to be determined.

Housh expressed excitement for the Glen Cottages project now visibly underway at the south end of town.

Housh noted that the Village of Clifton has voted to contribute another \$7,000 towards the Yellow Springs/Clifton Connector. He noted that the first phase is from the YS train station to US 343.

Housh noted a new Federal program called RAISE, which is geared towards moving away from fossil fuel powered vehicles, observing that this is well timed with the YS/Clifton connector efforts.

Housh cautioned viewers against getting caught up in misinformation being generated around the issue of Transient Guest Lodging establishments (TGLs). The issue is being thoroughly discussed and vetted among staff and Council, he said, and is not being taken casually.

Salmeron reminded all of the process for making public comment during the meeting.

CONSENT AGENDA

1. Minutes of April 5, 2021 Regular Session

Curliss MOVED and MacQueen SECONDED a MOTION TO APPROVE the minutes as written. The MOTION PASSED 5-0 ON A ROLL CALL VOTE.

REVIEW OF AGENDA

There were no changes made.

PETITIONS/COMMUNICATIONS

The Clerk will receive and file:

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Rebecca Kuder re: Transient Guest Lodging

COVID 19 Safety Update

GCPH re: Distracted Driving Awareness Month

Elise Burns re: Mayor's Report (2)

Tim Barhorst re: Carbon Dividend Tax

Eric Clark re: Transient Guest Lodging

Don Hollister re: Miami Township Position Regarding Kingwood Solar

Thea Tremain re: Transient Guest Lodging

MacQueen reviewed the materials received.

PUBLIC HEARINGS/LEGISLATION

Second Reading and Public Hearing of Ordinance 2021-06 Repealing Chapter 882 "Lodging Excise Tax" of the Codified Ordinances of Yellow Springs, Ohio and Enacting New Chapter 882 "Lodging Excise Tax". Parcels stated that any Council person who has a current permit should recuse, pending a response from the Ohio Ethics Commission regarding the need for recusal.

Curliss expressed a difference between her quasi-judicial role on Planning Commission and her legislative role on Council.

Parcels opined that any action which could potentially impact her business interest should be recused-from.

Curliss stated her opinion that generally applicable legislation, no matter how it impact Councilpersons, can be discussed and voted upon by those Council members. She stressed that her potential TGL is currently a gutted room with no sewer attachments. Curliss then RECUSED.

Stokes MOVED and Kreeger SECONDED a MOTION TO APPROVE.

Housh OPENED THE PUBLIC HEARING.

Housh stressed that the intent of the legislation on the agenda was to limit the impact of TGLs on affordable housing and housing availability, specifically to limit the practice of buying up homes with the intention of turning them into TGLs.

MacQueen noted her confusion regarding the legislation. She stated that she did not understand the \$1,500 charge added to the permit fee for non-resident TGL owners. She objected as well to the "up to \$1,000.00" fine for non-tax filers, stating that this is exorbitant. She objected also to any of the cases being sent to Xenia rather than to Mayor's Court.

Parcels responded that the \$1,000.00 is not a current text amendment and is currently in the code.

With respect to the \$1,500.00 Housing Mitigation Fee (HMF), Parcels explained that she and Matt Dillon had come up with a reasonable amount to reimburse for staff time needed to maintain records and track down payments for each type of operation determines the certificate fees, while the Housing Mitigation Fee is applied to those operations that are potentially taking an affordable home or rental off the market to offset some of the impact. That number represents a market rate one-month rental.

Parcels stated that the Housing Mitigation Fee would be directed towards such activities as tap fee waivers, zoning permit waivers, etc.

Salmeron commented that the Affordable Housing Fund had been denied by the Auditor initially because it did not have a revenue source. The HMF, Salmeron noted, establishes that revenue source.

MacQueen stated that she would later propose that all funds be directed to the HMF. She stated further that the real issue is the lack of affordable housing available in the Village. She objected to the maximum fine mentioned in the legislation, and objected to the cases being sent to either Mayor's Court or to Xenia Municipal Court.

Kreeger apologized for missing the \$1,000.00 fine for non-filing. She suggested that all penalties be located in one area of the legislation so that they are easier to see and understand. She noted that the fine does state a maximum of \$1,000.00 and suggested a pro-ration of the amount of tax due. She agreed with MacQueen that cases should go only to Mayor's Court.

Stokes expressed appreciation for the creation of an HMF. He noted that it is now time to "tighten up" the process for TGLs, but stated his belief that there is a "sweet spot" to be reached that balances housing stock and TGLs.

Housh noted that the Village has supported the idea of owner occupied TGLs as an option for affordability, and that what is on the table here is a limitation of non-owner occupied units.

Swinger noted that the fines section is an existing section of the code, and is not new. She noted as limiting factors the suggestion of a cap that does not permit non-owner occupied units to exceed 30% of the total of TGLs, and the limit of one TGL per property or per owner.

Matt Carson stated that first time homebuyers are no longer able to afford homes in the village. He stated that TGLs increase this pressure on the market, and stated his strong feeling that this poses a serious threat to the market. Carson added that when he was looking at homes in the village homes were "pitched as rental possibilities". Carson stated that access to credit for first time homebuyers is an area Council could assist with.

Riley Dixon spoke as a concerned citizen, stating that the economic costs of TGLs are well documented and have a "net negative impact" on towns. Dixon noted research he has done indicating that TGLs increase housing costs generally, and listed a number of these. Dixon stated that the \$1,500 fee is not high enough to deter non-owner occupied TGLs.

Swinger noted that there is confusion regarding the legislation, and stated that the Village only regulates short-term rentals.

Jim Mayer received clarification, again, that only registered short-term rentals are considered in the legislation.

Bob Swaney commented his support for affordable housing. He stated that he has run the Jailhouse Suites for a decade. He stated concern for the annual FBI background check, which seems onerous to him. Swaney noted that he provides an income for his staff, and that the fee is excessive.

Megan Bachman, Yellow Springs News, asked who all will be required to pay the fees and asked whether the fee imposed would have any real impact as a deterrent. She asked whether the value of a lost rental is really \$1,500.00.

Parcels stated that the Village is working with the Bowen Housing data from 2018, and is not looking at individual stay date from reporting parties. She stated that the fee was based upon approximately one month's rent for a market rate apartment, as well as the cost for administrative work involved. Parcels stated that all TGL owners will be subject to the tax. In response to the FBI background check, Parcels stated that human trafficking has been identified as a problem that has come up related to non-owner occupied units.

Salmeron noted that the system currently is honor-based, and the Village is working to improve the reporting data.

Eric Clark commented that people who are renting out a room in their homes should be separated out from the rest of the TGL owners, since their rentals would not affect the housing market. Clark then spoke to the benefits that TGL operators bring to the village with regard to economic impact.

Kreeger MOVED to clarify the penalty area of the legislation, and asked that the flat rate of \$1000 be removed as a penalty. She commented that perhaps there should not be a vote tonight so that Council has the opportunity to read the changes.

Dillon responded that the penalty is based on non-filing status, which means that he has no basis for a sliding scale.

Salmeron asked for more feedback from Council on this matter.

Housh noted that the discussion of the penalty is based upon one complaint, stating that this is not the urgent issue.

MacQueen asked that the possible jail term be taken off the table and the option for the matter to go to Xenia Municipal Court be taken off the table.

MacQueen MOVED TO TABLE THE LEGISLATION. Kreeger SECONDED, and the MOTION PASSED 4-0 ON A VOICE VOTE.

First Reading of Ordinance 2021-07 Dedicating a Revenue Source from Affordable Housing Mitigation Fees for the Fund Established for the Furtherance of Affordable Housing in the Village of Yellow Springs. Kreeger MOVED and Stokes SECONDED a MOTION TO APPROVE.

Salmeron stated that now that there is a revenue stream for the Affordable Housing Line, it needs to be reauthorized, hence the legislation.

MacQueen stated that all the money from the Affordable Housing Mitigation fee should go into this revenue line. She asked whether there was Council support for this request.

Kreeger commented that this would not allow for compensation of staff time.

Housh noted that the discussion will continue at the next meeting, and declined to call a vote.

First Reading of Ordinance 2021-08 Amending Section 1262.08 of the Codified Ordinances of the Village of Yellow Springs, Ohio with Respect to Transient Guest Lodging Special Requirements for Conditional Use Permits. Stokes MOVED and Kreeger SECONDED a MOTION TO APPROVE.

Curliss remained recused.

Swinger pointed out that this legislation adds affordable housing concerns as part of the criteria for considering the proposed location of a TGL in proximity to other such uses, giving Planning Commission another point of consideration. Swinger added that limiting TGLs to one per owner and one per property further restricts the use.

MacQueen commented that she is not in favor of a 30% of total TGLs limit for non-operator occupied units, stating that this is too many. She stated her preference for a cap on these units. She also asked that the hotel, OEC and BnBs be subtracted out from the total of non-operator occupied TGLs.

Salmeron advised against this approach, observing that persons could then operate their TGLs as LLCs to become exempt.

Parcels added that if these units are removed from the total, the total drops. She noted that the Bowen report is based upon 10-year-old data.

MacQueen suggested a cap on non-owner occupied units which are not hotels or BnBs at 10%,

Parcels stated that this constitutes a moratorium and would engender a lawsuit.

Swinger noted that the largest increase in TGLs presently is among property owners who are adding an ADU to their property, which has the effect of raising the total number of TGLs, which raises the number of non-operator occupied units able to be considered under this legislation.

Parcels cautioned against a ban as legally risky.

MacQueen stated that the Village perhaps does not have the necessary expertise to effectively address the matter, and asked that an outside law firm be engaged.

Stokes urged that something be put on the books asap, and the matter can come back if needed.

Housh agreed, but stated that he would like to go as low as possible on a cap.

Housh declined to take a vote.

Reading of Resolution 2021-13 Approving the Annual Fee for Spring Clean-Up. Stokes MOVED and MacQueen SECONDED a MOTION TO APPROVE.

Salmeron explained that the ordinance states that the cost for Spring Clean Up will be imposed by Council annually.

He noted that this is the first time the fee has come before Council, and he went through a chart explaining the rate of participation and the overall cost to the Village, suggesting a break-even fee of

\$8/year per participating customer.

Kreeger MOVED to SET THE FEE FOR 2021 at \$8 per CUSTOMER. Stokes SECONDED, and the MOTION PASSED 4-1 ON A ROLL CALL VOTE, with MacQueen voting against.

Housh CALLED THE VOTE ON THE MOTION TO APPROVE, and the MOTION PASSED 4-1 with MacQueen voting against.

Reading of Resolution 2021-14 Supporting Legislative Action for the Carbon Tax Dividend. Stokes MOVED and Kreeger SECONDED a MOTION TO APPROVE.

Tim Barhorst, who brought the resolution to Council on behalf of the local Citizen's Climate Lobby spoke to its importance.

Housh CALLED THE VOTE, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

Reading of Resolution 2021-15 Supporting Glen Helen's Application to the Clean Ohio Conservation Fund of the Ohio Public Works Commission. Curliss MOVED and MacQueen SECONDED a MOTION TO APPROVE.

Nick Boutis presented the case for passing the resolution, stating that it precedes a request for funding for clean-up for the existing Antioch power plant. He noted a number of improvements slated for the Glen area, but noted that the upcoming request for funds will apply only to the power plant clean up.

Housh CALLED THE VOTE, and the MOTION PASSED 5-0 ON A ROLL CALL VOTE.

CITIZEN CONCERNS

There were no Citizen Concerns.

SPECIAL REPORTS

Strong Towns Presentation. This was moved to the May 3rd meeting.

OLD BUSINESS

Update from Inclusive and Resilient Yellow Springs and Livable/Equitable/Age Friendly Partnership. Kineta Sanford presented a power point on the collaboration between the two organizations, reviewing upcoming events and the strategic plan. One of these is a Cost of Poverty Experience event, for which she asked Village engagement to get the information out and involvement high for a local survey.

Sanford closed with a request that Council consider response to the three suggestions from the group, those being:

- * Provide a letter from Council to the Greene County Commissioners asking that they join Montgomery County in providing funds for rental and utility assistance for those impacted economically by COVID-19
- * Set aside funds from the Covid Relief Act to extend financial support to struggling renters in Yellow Springs, extending the excellent program administered by Florence Randolph and funded by the YS Community Foundation and Miami Township initially
 - Set aside funds from the Covid Relief Act, if feasible, for the newly Established Fund for the Furtherance of Affordable Housing in the Village of Yellow Springs as a step towards removing long-term local affordability barriers

Curliss requested that solutions for the village's homeless population be presented.

Stokes responded to a comment from Curliss, stating that the questionnaires will address both residents and non-residents.

Stokes remarked that the skills needed to survive poverty are foreign to those who have never needed to employ them. He noted the difference in perspectives and the need for deepening understanding.

Review Council Roles and Responsibilities and Commission Assignments. Housh introduced the topic. He noted the need for common understanding of the parameters for Executive Session with regard to confidentiality.

Parcels noted that the ORC has clear guidelines for permitting Executive Sessions, the common factor being that these are matters that qualify for confidential discussion. The default, she stated, unless over-ridden by a majority vote of Council to disclose, should be to treat all Executive Session discussions as confidential.

Housh asked whether if the subject matter is technically not required to be kept confidential it must be kept confidential.

Parcels commented that this depends on the circumstances or context, and constitutes a slippery slope.

Parcels responded to a question from Housh regarding potential consequences, stating that the maximum would be an ethics violation letter issued by the Ohio Ethics Commission.

Curliss disputed these interpretations, citing page 17 of the Ohio Sunshine Manual, which states that Executive Sessions "are not necessarily confidential". She cited real estate as an example in which the developer is permitted to disclose outside of the session if they so choose. Curliss stated that she will follow her own understanding of the law regarding Executive Sessions.

Parcels countered, stating that the default will always be ORC Section 102.03 regarding disclosure, which requires authorization to disclose.

Stokes stated his understanding that by definition an Executive Session is confidential, and that should be the default.

Parcels agreed that the language of the ORC supports this approach.

Housh brought up the topic of the Planning Commission liaison and what the understanding of this role is among other jurisdictions and among Yellow Springs Council. HE asked for discussion so that a common understanding is reached.

Curliss stated that this has been informal. She stated that PC members have two roles: one is quasi-judicial, in which she is required to follow the law, not the will of Council. The other, she said, is the legislative side, she said, taking the will of Council into account is more appropriate, but is still unclear.

MacQueen stated her understanding of the role as a communicator between the two groups. Beyond that, she said, that person should act as a regular PC member.

Stokes commented that the liaison should assist the commission in helping the group to expand capacity for Council, but that role depends upon the nature of the commission.

Kreeger expressed that Council members of commissions should be voting members. She sees the liaison as one who supports the Chair and maintains the factual record.

Housh expressed agreement with Curliss' position, but stressed the need for alignment with Council goals and for facilitation of clear communication.

NEW BUSINESS

Proposal for a Dedicated Outdoor Refreshment Area (DORA). Salmeron introduced the idea, presenting a power point. Salmeron noted that Council would set the borders for a DORA. He asked whether Council would like him to return with an ordinance, and Council asked that he return with legislation and further information.

Curliss stated that she would like information from managers in other municipalities who have DORAs.

Memorial Naming of Ellis Park Bike Spur Proposal. Housh introduced the proposal to rename this area of the bike path the "Dressler Connector" after this champion of the Greene County Trails System and long-time village resident Ed Dressler. Housh stated that it is likely that Greene County Parks and Trails will support signage through their levy, and that he will follow up with this.

Curliss stated that she is normally hesitant to name yet another thing for another older white male, but that in this case, the honor is warranted.

There was general agreement from all Council members.

MANAGER'S REPORT

There was no verbal Manager's Report. Salmeron announced a request from Nick Boutis regarding the John Bryan Center oil recycling drum. Boutis indicates that the drum is unsafe and poses a risk to the Yellow Springs Creek in the event of a leak. Salmeron stated that based upon this information, the collection drum will be removed about May 21st.

Salmeron stated that the Village has received complaints regarding Greene County permits getting held up at Greene County. Salmeron suggested that the Village explore and come back with a proposal for developing its own Building Department which could offer permitting.

Housh stated that policy around the charging stations needs to be changed so that consumers cannot leave vehicles plugged in excessively.

Parcels noted that the Kingwood solar application has been filed, and asked for an Executive Session on May 3rd to discuss this.

Housh asked for a further explanation to the Mayor's Report in the future.

BOARD AND COMMISSION UPDATES

Kreeger NOMINATED Susan Stiles as a FULL MEMBER of Planning Commission. Stokes SECONDED, and the NOMINATION PASSED 4-0 on a voice vote, with Curliss abstaining.

Kreeger NOMINATED Gary Zaremsky as an ALTERNATE MEMBER of Planning Commission. Stokes SECONDED, and the NOMINATION PASSED 5-0 on a voice vote.

Kreeger NOMINATED John Fleming to another term on Arts and Culture Commission. Curliss SECONDED, and the NOMINATION PASSED 5-0 on a voice vote.

Kreeger NOMINATED Dr. Catherine Roma to another term on Arts and Culture Commission. Curliss SECONDED, and the NOMINATION PASSED 5-0 on a voice vote.

Kreeger REQUESTED a total of \$500, \$250 each to support Juneteenth and National Indigenous People's Day. This will likely take the form of producing a promotional card for each event. Kreeger asked that these funds be taken from the HRC budget. Council APPROVED THE REQUEST on a 5-0 VOICE VOTE.

FUTURE AGENDA ITEMS

May 3: **First Reading of Weeds Ordinance Text Amendment**
 Parking Minimums Discussion
 Reciprocal Income Tax Discussion
 Actions in Support of Inclusive Yellow Springs
 Third Reading of Ordinance 2021-06 Repealing Chapter 882 "Lodging Excise Tax" of
 the Codified Ordinances of Yellow Springs, Ohio and Enacting New Chapter 882
 "Lodging Excise Tax"
 Second Reading and Public Hearing of Ordinance 2021-07 Dedicating a Revenue
 Source from Affordable Housing Mitigation Fees for the Fund Established for the
 Furtherance of Affordable Housing in the Village of Yellow Springs
 Second Reading and Public Hearing of Ordinance 2021-08 Amending Section
 1262.08 of the Codified Ordinances of the Village of Yellow Springs, Ohio with Respect
 to Transient Guest Lodging Special Requirements for Conditional Use Permits
 First Reading of Ordinance 2021-09 Creating a Designated Outdoor Refreshment Area
 in the Village
 Resolution 2021-16 Authorizing the Village Manager to Enter into the Sale of Renewable
 Energy Credits
 Resolution 2021-17 Approving \$125,000 to the Glen Helen Association for a Clean Ohio
 Grant Request Match
 Resolution 2021-18 Renaming the Ellis Bike Spur the "Dressler Connector"
 Ordinance Establishing Chapter 212 of the Codified Ordinances: Ethics
 Ordinance Approving the Amended Personnel Policy Manual
 Resolution Supporting Climate and Sustainability Actions

ADJOURNMENT

At 10:01pm, Stokes MOVED, and Curliss SECONDED a MOTION TO ADJOURN. The MOTION PASSED 5-0 on a voice vote.

Brian Housh, Council President

Attest: Judy Kintner, Clerk of Council