

Minutes excerpt – July 8, 2019 Council Meeting – Construction and Landscape ordinance public hearing.

A motion was made by Vice President Meagher with second by Councilor Beye to open the Public Hearing at 6:50 p.m. President White, Aye; Vice President Meagher, Aye; Councilor Beye, Aye; Councilor White, Aye; Councilor Piva, Aye.

A) Public Hearings - Ordinances

- 1) Amendment of the Jamestown Code of Ordinances Chapter 22 Environment, Article IIIA. Construction and Landscape, Sec. 22-69 Activities Related to Building and Landscape Construction, Home and Landscape maintenance; Sec. 22-70 Definitions; Sec. 22-71 Exemptions; Sec. 22-72 Enforcement; Sec. 22-73 Penalties; Sec. 22-74 Sunset Clause (remove); and Sec. 22-74 – Sec. 22-85 Reserved; duly advertised in the *Jamestown Press* June 27, 2019 edition; review, discussion and/or potential action and/or vote

Vice President Meagher requested this amendment due to its Sunset Clause, requested the landscape elements be added, changing the Saturday hours to 8:00 a.m. from 7:00 a.m. and ensuring there would be no landscape activities on Sunday.

Public comments.

Laura Vetter of East Shore Road referenced her comments at the last Town Council meeting and requests the following: changing the end time for Monday through Friday operations to 7:00 p.m. from 8:00 p.m., on Saturday to 5:00 p.m. from 6:00 p.m., all trucks be parked on the property involved thus prohibiting loitering or blocking the public thoroughfare, penalties for infractions be assessed directly against the property owner not the contractor so they are impacted by fines keeping the progressive enforcement system intact, adding that a job site will be shut down, as a \$500 fine means nothing to the violating property owner.

Mike Smith of West Reach Drive stated he is confused by this ordinance. For 40 years his crews have worked 7:00 a.m. to 3:30 p.m. He asks if they will be able to continue and was informed he could Monday through Friday. Vice President Meagher explained the language that defines when activities are prohibited and that there are exemptions for home and landscape maintenance by homeowners.

Brian Evans of Fox Run stated he is a homeowner and does his own maintenance and to not be able to work on Sundays and holidays creates a hardship. The ordinance specifies non-commercial equipment. He asks if would he would be able to operate a power washer and was informed he could. He asks if he could construct a shed on the weekend and was informed Saturday is ok. Mr. Evans' asked if it rains on Saturday can he work on Sunday. Can he work over a long weekend? How many complaints have been received? Council referenced the proposed ordinance language "Home maintenance means the activities required to preserve, repair, or ensure functioning of a residential structure." The work is being done by the homeowner not a commercial operation. Mr. Evan asked who determines what is commercial and stated the homeowner is being punished. Council stated they are trying to maintain peace and quiet for all neighbors. On Sundays construction has only been allowed by homeowners and this effort is a common sense approach to

the issue. Non-commercial lawnmowers are specified in the ordinance and common sense dictates that neighbors can perform maintenance. The Sunday ordinance clause has not changed. Mr. Evans asks for assurance he can use his lawn equipment on Sunday to maintain his landscape, shrubbery and property. Lengthy discussion ensued.

Mr. Evans states he would like to work in his yard and does he need a permit to take down a barn on Sunday? How about a shrub? Numerous questions continued. Council asked if language was revised would he be in favor of the ordinance. Council noted a complaint would have to be filed before an action could be taken against a homeowner. Lengthy discussion ensued. Mr. Evans doesn't understand limiting activities on Sundays and this will cause problems between neighbors and asks Council to wait one year and have the Police monitor the complaints to determine where the problems exist. Council noted they can't see changing the days. Mr. Evans asks Council to return the ordinance to its prior wording. Discussion continued.

Peter Vetter of East Shore Road understands the concerns of homeowners. He referenced his questions at the last meeting, including why a non-contiguous property could be used for a commercial operation. The property owner in question doesn't care about neighbors and won't allow construction vehicles on his property. Why is that permitted and why is he allowed to let trucks idle on the road? There is no incentive for him to comply and Council must be serious when issuing permits and assessing penalties and must shut down the problem with a real impact to be taken this seriously. Discussion continued of past incidents and non-compliance.

Council asked the Solicitor if some of the changes recommended were beyond the Council's scope. Solicitor Brochu stated it would be and more time may be needed to ensure the language revisions were done properly. The point made regarding storing materials on one property for use on another is problematic. Solicitor Brochu is not aware of all the facts and has not conferred with the Building Official. Council discussed how far this can go, under what laws, and whether the public hearing should be continued or closed and the ordinance readvertised for a future meeting.

Beth Smith of Orient Avenue commented on multiple LLC's and owning multiple properties, and if zoning allows it you should be able to store materials for one property on another property. She was informed this is a question of scale. Private maintenance is a fine line as some commercial equipment is quieter than non-commercial equipment. Also sometimes work must be performed on weekends when weekdays didn't allow work due to weather conditions and people have to catch up. Council members note such situations could be addressed. An ordinance has to be enforced, we must rely on others to maintain the peace, and there are always exceptions.

Solicitor Brochu commented on the difficulty in crafting an ordinance and differentiating between commercial and non-commercial activities when they may be using the same equipment. Discussion ensued of closing the public hearing and re-writing the ordinance.

A motion was made by Vice President Meagher with second by Councilor White to close the public hearing and rewrite the ordinance. President White, Aye; Vice President Meagher, Aye; Councilor Beye, Aye; Councilor White, Aye; Councilor Piva, Aye.