

**VILLAGE OF MARIEMONT
REGULAR COUNCIL MEETING HELD IN COUNCIL CHAMBERS
SEPTEMBER 11, 2017**

Mayor Policastro called the meeting to order at 7:00 p.m. with the Pledge of Allegiance to the flag. The following Council members answered present to roll call: Mr. Brown, Mr. Marsland, Ms. Palazzolo, Ms. Schwartz and Mr. Wolter.

Mr. Wolter moved, seconded by Mr. Brown to excuse the absence of Mr. Hlad. On roll call; five ayes, no nays.

Mayor Policastro asked for a moment of silence to remember those citizens that were lost in the 911 tragedy and for the citizens in Texas and Florida who are suffering badly from Hurricane Harvey and Hurricane Irma.

Mayor Policastro read into the minutes the following letter dated September 9, 2017 from Councilmember Hlad: "Fellow Council Members, After further review of the sensitive archeological and historic sites on and adjacent to the Whiskey Creek Trail he recommends the following: 1. That for the time being the "approved" trail continues to be limited to its original footprint extending from the Boathouse to the first creek crossing. 2. The US Army Corps of Engineers be contacted and consulted regarding the viability of the trail extending beyond the first creek crossing. Questions to ask the Army Corps would include: a. Should the trail be extended beyond the first creek crossing? b. What path should the trail follow regarding the creek if it is extended? c. Is the current path the ideal path or should an alternative route be constructed in consideration to the creek bed? d. What measures need put in place or protocol followed if the trail crosses the creek? 3. The sign near the "Tot Lot" be removed that highlights three separate trails. Overall, he still has many reservations as to whether or not the trail should ultimately extend beyond the first creek crossing or the "Kiln Site". With the amount of sensitive archeological and historical sites in the area paired with the challenges of the creek bed, the most responsible option may be to limit the trail to its original footprint. The decision on the length and route of the trail should be influenced by both the Army Corps of Engineers consultation and the protection of our key sites. He is also in favor of affirming Section 95.07 of the Mariemont Code of Ordinances that states: No person shall use or ride any bicycle, motorcycle or motor pike on any walk or foot path within park or recreational premises or property, except on paths or roads provided for that purpose".

Solicitor McTigue said Council has had a lot of discussion relevant to Mariemont Code Section 95.07 relative to no bikes on certain trails within the Village unless they are designated. He thinks now is the time for Council to have a vote one way or the other as whether or not Council wants to have bicycles on these trails for a whole lot of reasons. If Council thinks a dangerous condition does exist on the trail due to bicycle traffic then you are on notice of a danger that exists. If Council does not do something about it then potentially the Village could be liable for damages should someone be injured on the trails. Typically we have governmental immunity but if we turn a blind eye to certain dangerous conditions, if Council believes dangerous conditions exist, then liability could actually be passed on to the Village.

Dr. Ken Tankersley, Tenured Professor University of Cincinnati, was granted permission to address Council. He said three mountain bike trails were constructed in the Whiskey Run valley and ridge area of Dogwood Park, which cut into, through, and across sites, which are currently listed on the National Register of Historic Places and sites, which are currently eligible for nomination to the National Register. These sites include the Madisonville and associated Spice Bush mound sites—a Native American cemetery and burial ground where bicycles have been riding over human remains. They have also been riding through early nineteenth century sites and are rapidly eroding the walls of a historic brick foundation from the colonial and pioneering days of Mariemont. On this important date in American History, Council is going to vote on whether or not to allow bicycles to continue to compromise the integrity of these historic sites, which are considered to be of national significance by the Ohio State Historic Preservation Office, the National Park Service, and the Department of the Interior. It is his fervent hope that Council's vote will foster an appreciation for the unique historical qualities of the Village and to help communicate to people of all ages the outstanding and long-term historic preservation efforts of Mariemont. Tonight's vote addresses the very foundation and strength of Mariemont—that is, historic preservation. Mariemont's past efforts of historic preservation and protection has been a key to a high quality of life in the Village. He sincerely hopes that tonight's vote will encourage children, the citizens of Mariemont, civic groups, corporations, and others to continue caring for historic properties within the Village. He also hopes it will help instill in all citizens an active sense of ownership, stewardship, and responsibility for the Village's historic resources. Historic preservation and protection of the cultural resources in Dogwood Park distinguished Mariemont as a "National Exemplar." In 1921, Mary Emery and John Nolan understood that historic preservation represents a long-term commitment to remembering the past and preparing for a sustainable future. Nolan and Emery had a long-term vision of preserving the Village's irreplaceable historic and cultural resources. They allow citizens of Mariemont and beyond to share the very spaces in which the generations before us lived. Preservation and protection of these sites is both a visual and tangible aspect of Mariemont's cultural identity. The preservation and protection of the historic and archaeological sites in Mariemont will help ensure that the character of the Village remains intact.

Mr. Joe Stoner, President of MPF, 6924 Miami Bluff Drive, was granted permission to address Council. He said MPF is committed to the preservation because once it is gone it is gone forever. There are plenty of spaces to ride bikes in this area. We do not need to impinge on that particular site. There is plenty of room in the South 80 to develop more trails. It is a primeval forest area and somethings are just best to be left alone.

Mr. Bob Hedlesten, 3905 Beech Street, was granted permission to address Council. He has lived in the Village for 47 years and walked the trails many times. He agrees with preserving the historic sites but he is concerned about the safety aspect. The bikes pop up over the ridges and make for a dangerous situation. If bikes are allowed the next thing will be people wanting to trail ride with horses. He is against the bikes being on the paths.

Mr. Bob Van Stone, 4050 Lytle Woods, was granted permission to address Council. He is an engineer by training. It is easy to talk about safety but in physics momentum is defined as mass times velocity. When a pool ball collides with a second pool ball the momentum in the first ball is transferred to the second ball which rolls on the table. Consider the difference in momentum of a collision between a child and a bicyclist. A 40 pound child traveling at about one mile per hour and a bicyclist with a total weight of 120 pounds traveling at 10 miles per hour equates to the weight of the bike and rider at three times that of the child. The bike is traveling 10 times the speed of the child. If this was an impact between hard bodies (like pool balls) the child's speed after impact would be increased to 30 miles per hour. That may be an unrealistic assessment because a child is not a hard object. He compared it to a collision in the NFL. A 240 pound NFL linebacker traveling at 16 miles per hour (average speed in 5 second 40-yard dash) is twice that of the bicyclist and the speed is 60% greater than that of the bicyclist. The bicyclist has a momentum that is 31% or approximately one-third of that of an NFL linebacker. The purpose of the evaluation is to quantify the safety risk of an accidental collision of a bicyclist and a child. The point being when you consider a child absorbing a hit equal to one third of an NFL linebacker hit the collision has the potential for significant injury. This is further compounded by the remote and very narrow bike trails that have been created through Dogwood Park. It would be very difficult to get rapid medical attention in such an environment.

Mr. Bob Blum, 6601 Mariemont Avenue, was granted permission to address Council. He said the bike issue is now about what is best for Mariemont. He feels there are four issues that need to be considered when deciding if bike traffic should be allowed in Whiskey Creek. Those include 1. Destruction of historic Village and Native American property which Council is currently identifying those issues 2. Safety concerns – 2' path versus 4' paths and limited response time for Mariemont emergency vehicles. 3. Threat of continual soil erosion natural or man enhanced. Dr. Tankersley noted the soil issue and foot traffic verses bike traffic. The 4th issue is who benefits from the bikes being allowed in Whiskey Creek. It has been fondly expressed by many in attendance and generally known on both sides that we all have childhood and family memories of the Boathouse and Whiskey Creek area. It is special because it is natural, undeveloped, away from the day to day rush, secret and tranquil. He is sure that many can think of other descriptions that drew you and many other Mariemont residents to Whiskey Creek for almost a century. The South 80 Committee worked hard to make the paths walkable and even what they believed was a solid bike path. They did a spectacular job of making the area accessible for others. But maybe that is where the disconnect comes from. Whiskey Creek should be left natural, trees across the paths, quiet and forgotten. That is where all the memories originated from and that is what made it special and unique. He hopes that the volunteers understand that their work to clean up the trails in Whiskey Creek was beneficial and regardless of outcome will benefit future children and adults of Mariemont. As Matt Ayers stated "bikers are not evil". Most are Mariemont residents who through committee or volunteer, worked these trails with a different purpose than ultimately came to light. But it is time to ask what is right for Mariemont. He does not feel the trail bike community has presented the advantages why bikes should ride in Whiskey Creek. So far the only advantages he has heard presented to Council are: 1. It is a family event/sport which includes approximately 50 Mariemont residents (youth to adult approximately 1.5% of the Village). 2. Mariemont can get on the map for a public multi-use trail. Council should consider who benefits from bikes being allowed and who benefits if bikes are not allowed.

Mr. Rob Bartlett, 3611 Mound Way, was granted permission to address Council. He said he is in favor of protecting the historical sites. He agrees that it is right to stop the damage that is going on. No trails should be on top of the burial mounds. He does not believe people should be on top of the burial mounds. He struggles with how someone can walk on it and not cause damage while someone on a bike does. He agrees with Mr. Hlad's proposal. Bicyclists are not going to want to ride to the creek crossing and turn around and go back. When and if the time comes to reopen the trail he would ask Council to keep an open mind to move the trail. Do it in a smart way not in a heavy handed way.

Mr. Brown said at the last meeting both Mr. Stoner and Ms. Lewis referred to the area of Whiskey Creek as not just being a piece of land but it is a special unique piece of land. Given the size and the width of the present trails he does not see the capability of pedestrians and bikes. He agreed with Mr. Bartlett that most bikers are not going to want to go to the creek crossing and turn around and go back. To him it has always been a special, quiet space, sanctuary type place. It is best enjoyed by walking without having the potential of encountering bikes. The length of the trail is ¼ mile. He believes it should just remain a footpath to enjoy the creek as it is. There are other potentially hundreds of miles of bike paths in the state that can be enjoyed – some right here in the South 80 acres.

Ms. Schwartz said in reference to Mr. Bartlett's comment she believes Council is still here months and many meetings later after discussing this issue it does show that Council has open minds. In the beginning she was leaning towards having bikes in Whiskey Creek. She has had an open mind during this entire process, as she believes all of Council has, and will continue to have an open mind in the future.

Mr. Wolter said he approached this matter from the beginning with the priority of vetting this and looking at it from all angles. From what Mr. Stelzer and Mr. Karnes have said over time this is what they have been looking for too. He feels at this point Council has done that. It is fair to say that Council can take this vote in good conscience. He would be surprised if somebody could prove to him that Council was prejudice and quick to react.

Ms. Palazzolo asked for clarification because the Council minutes from August 14, 2017 say that currently Section 95.07 does prohibit bicycle traffic in the area. So we are voting to confirm the enforceability? Her understanding of the enforceability is that we had not posted signage yet saying that you cannot ride bikes on trails.

Solicitor McTigue said from a practical standpoint what Council is voting on is whether Council is going to allow bicycles on Whiskey Creek property. He believes the code prohibits bicycles as it stands right now. Ms. Palazzolo asked why we are voting on it if it is already illegal. Solicitor McTigue said some people in the Village have indicated to him and other members of Council that at some point in time Council gave task approval to certain individuals to build trails but it was never formally voted on by Council. Frankly, Council made a mistake a year or so ago. Ms. Palazzolo said the fact that we are re-voting on something that is already in our code book makes it seem like the task approval, as opposed to a formal vote, makes this invalid somehow. Solicitor McTigue said it does not make it invalid. He feels it is the best way to allow Council to vet the issue. We have a code section that says you cannot have bicycles in the park unless there is a path specifically designated for bicycles. There are some people in the Village that believe that paths have been prepared specifically for bicycle travel. Ms. Palazzolo said going forward so we avoid this month's long situation in the future if Council were to do something else – would a formal vote of Council be the only method by which we would allow bicycles. Solicitor McTigue said the best way to accomplish something would be to do a formal vote in Council. He said had he been at the meeting when it was first proposed to have a bike path he would have discussed with Council that the Ordinance needed to be modified appropriately. Mr. Brown said the process would be to specifically designate a trail for bikes and then take a vote of Council. Mr. Wolter asked if Council should word some formal statement at this point that Council recognizes that it was a mistake to have allowed bike paths and that Council does not support bikes on the Whiskey Creek path. Solicitor McTigue said he would not go as far as to say it was a mistake (even though he uses the word loosely). He thinks more than it being a mistake it was more of a misunderstanding between proponents of the bike trail and Village Council of what was exactly going to happen.

Ms. Palazzolo asked if we are going to post signs right away. Mayor Policastro said once it is passed the Service Department will be on it. The ARB has already approved the signs. He said he ran into John Ruthven who voiced his opinion to not have bikes in that area which is too beautiful and too sacred. It is meant to be a bird sanctuary and wildlife preserve. It will also bring in a lot of people and trucks. We do not have the parking in our recreational facility.

Solicitor McTigue read the question before Council “Vote to confirm the enforceability of Section 95.07 of the Mariemont Code of Ordinance pertaining to cycles in all parks and recreational premises” (aye/yes vote = confirm). Mr. Marsland asked if 95.07 is a blanket law that bans bikes in all parks such as the South 80. Solicitor McTigue said Council specifically designated trails in the South 80 for multi-purpose. On roll call; five ayes, no nays.

Mayor Policastro said Joe Godbey has completed his probationary period and it is recommended that he be moved to Full-Time Regular status with the Village of Mariemont. Mayor Policastro said Mr. Godbey came from Sycamore Township. During his first week of employment Mr. Godbey was called to respond back to the Village after storms struck the Village in the early evening to help with several trees down in the roadway. He was able to take control of the situation and open the roads within a couple of hours. He has worked with Louise Schomburg and has had several compliments from residents. He is willing to work overtime to complete assignments and to help on weekends and holidays cleaning up around the shop and the Village. Superintendent Scherpenberg said Mr. Godbey has been doing really well and has been instrumental in cleaning out the sewer drain in front of the Municipal Building. He is glad to have him be part of the group. Ms. Schwartz moved, seconded by Mr. Marsland to move Mr. Godbey to Full-time status. On roll call; five ayes, no nays. Mayor Policastro and members of Council congratulated Mr. Godbey.

Mayor Policastro said he understands there was some discussion regarding the minutes from the Committee of the Whole August 22, 2017. He said if anyone wants to amend the minutes to please submit it in writing to Mrs. Singleton who will make the changes. Mr. Marsland moved seconded by Mr. Wolter to table the Committee of the Whole minutes. On roll call; five ayes, no nays. Ms. Schwartz moved, seconded by Ms. Palazzolo to accept the minutes as written for the Council meeting August 28, 2017. On roll call; five ayes, no nays.

Mayor Policastro read the following communications:

From Police Chief Hines: August 2017 Monthly Report

From Assistant Fire Chief Kiefer: August 2017 Monthly Report

From Service Superintendent Scherpenberg: August 2017 Monthly Report

From Building Administrator Keyes: August 2017 Monthly Report. Mayor Policastro said he would be able to help with the inspection of the Historic area.

From Tax Administrator Busam: August 2017 Monthly Report. Mr. Brown asked what the effects of HB176 would be for the Village. Mrs. Busam said it could be huge because it would no longer tax those who work in the Village unless they lived in the Village. On the other hand, those who live in the Village would not pay to other municipalities that they work in so the Village would get the full 1.25% earnings tax. Mayor Policastro said he talked with State Representative Brinkman and it is put on the table every year but it does not seem to go anywhere. Mrs. Busam said it was put into the Ways and Means Committee and she plans to keep an eye on it. Mayor Policastro said the problem is we would not want any businesses in the Village because it would be too draining on resources.

From Swim Pool Manager Schad: August/September 2017 Monthly Report

From Stephen Jones: E-mail Dated September 1, 2017 re: Thank You

From Assistant Fiscal Officer Wendler: August 2017 Monthly Report

From Joe Stoner, 6924 Miami Bluff Drive, was granted permission to address Council. As President of MPF he said as most of Council knows we have a Sister City in Venice Florida which was also designed by John Nolen. As far as he knows they were not impacted as hard as anticipated by Hurricane Irma but he thought it would be nice to make a symbolic gesture to continue the relationship. Mayor Policastro said he was thinking of reaching out to them to see if there is a charity that we can contribute to. Mr. Stoner and Mayor Policastro will make contact with those who have reached out to us.

Jerry Vianello, 6570 Wooster Pike, was granted permission to address Council. He said that bikes are not going away and as we look into the future on the lower 80 multi-purpose trail he would like Council to look at the safety issues of hands/feet getting caught in spokes. He would like someone to look into the blind turns if/when it is expanded from a safety standpoint. He thanked Council for their earlier vote.

Mr. Brown moved, seconded by Ms. Palazzolo to pay the bills as approved by the Mayor, Fiscal Officer and Chairman of the Finance Committee. On roll call; five ayes, no nays.

Council discussed and agreed to hold the Council meeting in December on December 18, 2017 at 7:00 p.m.

Resolutions:

“To Accept the Amounts and Rates as Determined by the Budget Commission and Authorizing the Necessary Tax Levies and Certifying Them to the County Auditor” had a first reading.

Ordinances:

“To Amend Section 95.10 of the Mariemont Code of Ordinances to Give a More Complete Description of Dogwood Park” had a third reading. Ms. Schwartz moved, seconded by Ms. Palazzolo to adopt the Ordinance. On roll call; five ayes, no nays. Ordinance No. O-16-17 was adopted.

“To Amend Section 31.077 of the Mariemont Code of Ordinances to Set Forth Authority of Building Commissioner to Obtain a Warrant to Conduct Rental Property Searches” had a first reading.

Mayor Policastro said he is glad this is over with. As he said at the last Council meeting we have been tearing each other apart. Let’s try to be nice to each other.

The meeting adjourned at 7:53 p.m.

Dan Policastro, Mayor

Anthony Borgerding, Fiscal Officer