

LEGAL AND LEGISLATIVE COMMITTEE/SAFETY

MAY 3, 2011

3:15 P.M.

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative/Safety Committee to order with Councilpersons Ladd, Scott, Rico, Berz, Benson, Gilbert, McGary and Robinson present. City Attorney Michael McMahan and Shirley Crowover, Assistant Clerk to the Council, were also present.

Others present included Dan Johnson, Jim Templeton, Donna Kelley, David Johnson, Missy Crutchfield, Melissa Turner, Sandy Coulter, Gary Hilbert, Mike Patrick, Larry Zehnder, Steve Leach, Dickie Hutsell, Bill Payne, Lee Norris, Richard Beeland, Vickie Haley, Greg Haynes and Karen Rennich. Mayor Littlefield joined the meeting later.

On motion of Councilman Rico, seconded by Councilwoman Robinson, the minutes of the previous meeting were approved as published.

Chairman Murphy stated that we would talk about the item on the agenda regarding horses and called on Karen Rennich. Ms. Rennich explained that this was an amendment to the Zoning Ordinance instituting a Special Permit for horses for personal use; that they had been working on this with Dickie Hutsell as to where horses are allowed; that they are allowed in the City A-1 Urban Agricultural Zone and Crabtree Farm is the only place that has used this—the minimum acreage is 20 acres. She went on to say that we have never been sure where horses are allowed, and it has been a question over the years; that the Staff had looked at the options to amend the A-1 Zone; however it was intended for urban agricultural use and entailed more than personal use horses. She went on to say that as we annex, there are areas that over decades have had horses, and the issue has become less clear; that people who request personal use horses can receive a Special Exceptions Permit for horses for personal use; that they were using the word “equine”—that this was intended for personal use and not for riding lessons. She stated that here had to be papers for the horses to show that they had been taken or seen by a vet. She further explained that this goes to the Board of Zoning Appeals for a Special Exceptions Permit and calls for a minimum portion of one acre and must be fenced; that it has to be 50 ft. from the property line and 150 ft. away from patios of other houses. She stated that this was a pretty common distance. She explained that the intent was for those who wish to have a horse for personal use and not a facility of any sort.

Chairman Murphy asked if they could be licensed to have horses on five acres or greater? Ms. Rennich responded that this was understood in the City code; however Mr. Hutsell added that we were unable to see where this is permitted. Attorney McMahan agreed that it was not in the City Code. Chairman Murphy wanted to know how this will modify the five acre rule? Ms. Rennich responded that they would follow up with the City Attorney concerning allowing “just because one has five acres of property”; that they would look over how many horses and how close they could be to the property line.

Councilwoman Robinson stated that she had a question concerning the acreage per horse and the number of acres in relation to the number of horses you can keep. She asked if when we talk about fencing or the pen area, could it be no closer than 50 ft. to the property line. She wanted to know if this was the pen area in acreage for the horse or if the entire parcel counted? Ms. Rennich responded that the pasture area has to be fenced to meet the one acre requirement; that they did not address a smaller enclosed area. Councilwoman Robinson asked if they could have a fenced area within a fenced area? Mr. Hutsell explained that their intent was that each horse have one acre of grazing area, and the 50 ft. requirement was not included in the grazing area, prompting Councilwoman Robinson to note that they possibly could have to have more acreage. Mr. Hutsell noted that they would put some controls on five acre parcels; that they had had some complaints.

Ms. Rennich added that they did quite a bit of mapping and looked at appropriate buffers and shrunk it to 50 ft.

Councilwoman Robinson stated that they needed to make it clear that it was not one acre per horse.

Councilman Rico stated that we discussed the chicken problem; that he thought if you have five acres you could have a horse.

Councilman Benson stated that we needed this Ordinance passed; that this particular location has five acres, but the barn was close to a development where previously there had been no horses and now there are horses; that these people had patios 15 ft. from where the horses defecated and just saying five acres does not give quality control; that we had to put some footage on them; that the barn might have to be moved in this case; that the barn is the big problem, with gophers and odor. He reiterated that five acres would not do it; that it would not protect the interest of other citizens.

Councilwoman Scott questioned if this was a new thing for new owners wanting to add horses; that an Ordinance to govern and give guidance is a good idea. She wanted to know what the prevailing side is if a barn is already there and the townhouses were built long after the barn; that whether there are horses there or not, why would it surprise people to have horses along with a barn; that even if we pass this Ordinance and the horses are there now, would we tell someone they have to move their barn because of this Ordinance?

Attorney McMahan explained that this was grandfathered in when it was in the County but at some point in time, they quit using this for agriculture and now horses were out of zone. Councilwoman Scott asked if the horses just arrived yesterday? Mr. Hutsell responded that they arrived in the last year, and the owner is leasing boarding space along with the house, and he can keep them until we go through this process and they can apply for a permit.

Councilwoman Scott summarized that they were using this under a non-conforming use and would have a certain amount of time to comply. She asked if the horse dies, and there is only one horse, does the non-conforming use go away? Mr. Hutsell explained that they could replace the horse within 100 days. She asked in regards to this case, do we know all the facts from both sides? Mr. Hutsell stated that everyone was very comfortable—that Councilman Benson had been in on the meetings.

Councilwoman Berz stated that this was a typical case of an R-1 area wanting uses not allowed in R-1 and being allowed with a Special Exceptions Permit. She stated that Special Exceptions Permits in R-1 areas is another issue and questioned if we needed a law for a change in community; that if we mix this up, it makes us look wishy-washy.

Ms. Rennich agreed that there was a need to do research to see if this is common in other communities.

Councilwoman Berz stated that she had no problem with the Ordinance; however this person is operating out of zone, and we have a record of saying “no”; that we have to give this proper consideration.

Ms. Rennich stated that they would like more feedback; that they were happy to get feedback; that they did not want a Permit that would not be used; that they were happy to get any feedback; that this had been an issue for a long time; that people want to know how they have this ability.

Councilwoman Berz stated that we needed to take a second look before we pass this Ordinance to see if it is appropriate as to how this relates to someone operating out of zone; that we had gotten ourselves in a mess by being whimsical; that this was something to think about.

Ms. Rennich agreed that we wanted a process that would work ten years from now and not one based on one specific issue.

Councilwoman Berz questioned if this Ordinance had any relation to the issue Councilman Benson was talking about.

Ms. Rennich stated that they had been talking about this for awhile; that any case could get denied; that they thought this was a good fit for the City and not just this specific issue.

Attorney McMahan stated that unless his memory failed him, the Code says that one can have swine, goats and roosters without having five acres, but it does not mention horses. Mr. Hutsell stated that the opinion had been in the past that horses are allowed with five acres, and they had spent a lot of time reviewing this; that the language in the Code needs to be clarified.

Councilman Benson stated that we were trying to remedy this operating out of zone; that in the 1990's there were horses and Mr. Dowlen bought this property in 2002, and there had not been horses for four to five years then all of a sudden, horses are back on the property during the last year, and they are out of zone; that other than just removing the horses, RPA is trying to make some accommodations so that we don't have horses harming the value of adjoining homes; that both parties are easy to work with; that if everyone wanted to take this back to Planning, then fine, but the horses need to stop ruining the value of homes.

Mr. Hutsell noted that the horses are still there. Councilman Benson stated that even if this amendment is passed, they might have to relocate the fence. Mr. Hutsell stated that they were aware of this.

Chairman Murphy asked if there were any agricultural experts present, stating that this all needs to be re-visited.

Attorney McMahan agreed there needed to be setbacks for larger animals; that there were miniature donkeys in his neighborhood.

PEDICABS

Chairman Murphy noted that the gentleman interested in this issue was not present and questioned whether this should be discussed in his absence.

Chairman Rico stated that we had discussed this thoroughly already.

Chairman Murphy questioned if pedicabs should be held to the same standards as taxicabs and CARTA? Attorney McMahan stated that he had no idea.

Councilman Rico suggested discussing this and putting it to rest.

Adm. Zehnder stated that we had discussed a lot of different uses, including what is allowed on the Walnut Street Bridge; that on the bridge we have bicyclists, pedestrians, runners and strollers—that a speedy motor vehicle could be a hazard; that from their standpoint, pedicabs were not recommended because of the congestion on the bridge. He went on to say that we had looked at segways, which could be controlled, and we might could accommodate these. He reiterated that this is a confined space and pedicabs could be a hazard to users of the bridge. He added that he would be happy with an experimental period.

Councilman McGary stated that it was his understanding that the man who brought this to our attention was not here today; that if discussed today, we could come to a conclusion, and he might show up next week. He asked if the person would be allowed to speak if he comes next week? He questioned the urgency of discussing this today, stating that the gentleman who brought this up should be present.

Chairman Rico questioned what difference it makes if he is here or not.

Councilwoman Scott asked if in thinking about transportation, if this would be on the streets and not sidewalks or vice versa? She asked if on a pedestrian bridge if it would be confined to sidewalks or streets?

Chairman Rico stated that he thought they should stay on the sidewalks. Mr. Zehnder noted that bicycles have to follow the same rules—that these are highway rules and not park rules.

Councilman Benson stated that the last time we discussed this, it went on and on; that we would have to deal with segways and golf carts once we open the gate for a pedestrian bridge to have motorized vehicles. He stated that this would grow—that the Bridge is a very unique place and should be tranquil, and there should be enough room for people to walk. He went on to say that we had let dogs back on.

Mr. Zehnder mentioned dogs using leashes and also there is a corridor for dogs to use.

Chairman Murphy stated that the width is not sufficient.

Councilwoman Scott stated that we had had this conversation; that if the pedicab person could submit something in writing such as a proposal, we could vote it up or down.

Chairman Murphy questioned if anyone felt compelled that we needed to help this business?

Councilman McGary did not feel that we had had enough citizen input and perhaps we needed citizen benefit; that he did not have enough information to make a decision.

Chairman Murphy stated that we would table this issue and bring it up in six months.

The meeting adjourned at 3:55 P.M.