

Minutes of the Legal Committee of Council  
Held in the Council Chambers of the Municipal Building  
On Monday, May 16, 2022

The Chairman, Ward 2 Councilman Dennis McBride, called the meeting to order at 6.34 P.M.

**Committee Members Present**

Chairman, Ward 2 Councilman Dennis McBride

Ward 1 Councilwoman Jennifer Demaline; Council President Brian Fischer

**Others in Attendance**

Clerk of Council Barb Brooks; Law Director John Gasior; Mayor Bryan Jensen; Ward 3 Councilman Tony Moore; Ward 4 Councilman Scott Radcliffe; Councilman-at-Large Craig Witherspoon; Planning/Economic Development Coordinator Pam Fechter; Kevin Martin, Chronicle Telegram; Service/Safety Director Duane Streater; Tom Corrigan, Westlife

**Discussion of Amending the Nuisance Law**

Mr. Gasior stated that this issue was brought to his attention as well as to the attention of the Council President by a resident of the City who is concerned about a neighbor who has just purchased 6-1/2 acres of property right behind them and had all the intentions and probably continues to have the intentions of bringing horses and other types of farm animals onto the property and keeping them on the property. So the neighbor, who lives on Hawkesbury Ct., was concerned. Mr. Gasior said that he looked at the property on the GIS map and the property is in the backyard of homes in Woodmore Subdivision on North Sandy Lane. They may not be aware of what is going on as they have a pretty good stand of trees that divide the parcels but this one family on Hawkesbury Ct. is very concerned and so concerned that they proposed some amendments to the nuisance law and that is what the Committee has in front of them tonight. Mr. Gasior said that he looked at the proposed amendments and he thinks the main thing that they are looking for is a definition. They want to remove the word "horse" and just use the term "livestock" and also the minimum lot area would be changed from 2 acres to 7 acres.

Mr. Gasior said that the important thing is that the provisions would not apply to residents who already maintain livestock prior to the adoption of this section. So there is a grandfathering clause in here and as we say in the law, it is "prospective" and that should at least allay some of the fears that folks might have if they are operating something on less than 7 acres. So this would only apply going forward. If someone wants to move into Avon and raise horses, they would need 7 acres, not 2 acres. There is a definition of livestock that is quoted in these changes: "livestock means horses, ponies, stallions, colts, geldings, mares, sheep, rams, lambs, bulls" (as well as many more). Poultry is also mentioned but he does not know if this would actually reach chickens. Ms. Fechter said she does not think it does; it is pretty much everything but chickens. Mr. Gasior said, and we do have people who have chicken coops and they would continue to be allowed to do that. He does not know what the rule is on poultry so we may have to address that; maybe say that they might need a minimum acre or half acre. If you said half acre, you would probably eliminate them from any subdivision lot because all subdivision lots are at the most one-third of an acre, 100 x 150.

Mr. Gasior said so that is what prompted this legislation. There are also some setbacks in Section 668.03 that they are trying to maintain, 300 ft. in some cases.

Mr. Fischer said he wanted to make sure it is clear that we are trying to protect people that have existing properties that are engaging in whatever these issues cover and also protect our existing residents and subdivisions. So everybody who is currently engaged in these activities would be grandfathered but for new people that are coming into Avon with the intention of farming or putting in livestock, we want to make sure that we have an updated nuisance code.

Mr. McBride said he finds it very disingenuous that for the property we are talking about, the 6-1/2 acres, the proposed change has been purposely set at 7 acres. He said that, as Council, they need to determine what the setbacks are and 300 ft. may be excessive. He also felt that we should regulate chickens and roosters because in one acre roosters are loud. He does not know what the big concern is with a horse; there are probably people with horses in Avon that are not even on 7 acres or 6 acres.

Mr. Gasior stated that, as Mr. McBride points out, 7 acres may not be the number. He asked City Engineer Ryan Cummins today how difficult it would be to put together a map identifying all parcels 7 acres or greater and he said he could do that relatively fast. So we could get a map and you will be able to see just how many lots we are dealing with that are 7 acres and of course Mr. Cummins can tweak that number and produce maps with lots of different acreages than 7. It is a little difficult in Avon as we have parcels of land that are owned by the same entity or the same individual. So somebody might own 3 acres and right next door, they own 4 acres and that 7-acre parcel that is commonly owned will not come up. So that will take a little more work to identify those parcels, but at least initially, we can see the lots of 7 acres.

Mr. Gasior stated that there is a registration requirement with this but that registration requirement appears to have been in the Code for a number of years. Almost all of these Ordinances that we are dealing with today were passed in the 60's or the 70's and we might want to reconsider some of these things, especially in light of the fact that if you were to go back and look at Avon's population in 1968 or 1973, or 1975, you will find that today it is probably 5, 6, or 7 times what it was back then and yet what was satisfactory back then for 2 acres, if you extrapolate that and look forward to the population today, you might be looking at maybe requiring 12 acres. So that is something else to consider.

Mr. Gasior added that he and Ms. Fechter talked earlier today and were thinking about sending this to Planning Commission but these are all Section 600 nuisance provisions that do not necessarily have to go the Planning Commission because they do not impact the Planning and Zoning Code. But if the Committee wants to refer it to Planning, they could do that and Planning could also look at the Planning and Zoning Code and see if anything needs to be amended there. But what Legal Committee has in front of them tonight is all general law which is Part 6 of the Codified Ordinances.

Mr. Radcliffe asked if we knew, with the current registration, how many houses currently in Avon do have horses or other livestock? He said that there is possibly some benefit to this as we have talked a lot about what can be done to keep property from being developed and a small farm like this in the right spot could be a benefit if it keeps a number of houses from being built. We have several places on Mills Road and that area that already have horse farms and horse barns, etc. Mr. Radcliffe said that he would also like to see how our Ordinance compares to those of surrounding communities. He knows there are horses in Avon Lake, N. Ridgeville, Sheffield, Sheffield Lake, and Vermilion. He thinks we need to consider another 120 or 180 days stopgap while we do some investigation of what other laws have been updated over the years. In his opinion, taking 10 acres and having it be one house with a barn on it, is more of an appeal than 10 acres with 15, 20, or 30 houses on it.

Mr. Moore noted that right now it is 2 acres and asked if we are going to grandfather certain residents that have horses and if they have let's say 4 acres, would they be allowed to get another horse based on

those extra acres? That has to be talked about in that grandfathering idea as well. Also, he was going to suggest, as Mr. Radcliffe did, that we compare our Ordinance to those of neighboring suburbs.

Mrs. Demaline stated that when we change the definition of this Ordinance from "horse" to "livestock" that encompasses so much more than just horses, so the current registration that we have on file or potentially on file (she does not know if that is something that has been regularly kept or not), the intent of the Ordinance currently is only to register a horse. Now we change the intent to register livestock which is a much broader term and we have....so when Mr. Gasior said "prospective", how are you going to capture the people that currently live here that have livestock and what happens in a year from now? Say someone gets their farming roots and decides that they want to get some livestock and has lived here since 2011. Can they do it? Those are things she thinks they need to address. And then under the penalty section, in (h), it says that violation is going to result in removal of livestock from the lot. Who is going to do that? Who is going to be responsible for that? And in section (f) under 618.13, the proposed change is that the City can approve an appropriate manager of manure plans. Who is going to do that? And how do we manage that? Those are her questions. And she agrees with Mr. Radcliffe and Mr. Moore about looking at surrounding cities to see what other Ordinances are on file and agrees with Mr. McBride that we cannot just take this on for this one complainant; we need to look at the overall scope of the City.

Mr. Witherspoon agreed with Mr. McBride that if we are going to put limits on size of property, let us do it as Council. He thought that was really important. It sounds like we have a lot of work to do on this before we start passing Ordinances but he agrees with what has been said this evening. Council should be the ones that set the parameters on the livestock, not the neighbor that does not want it there.

Mayor Jensen stated that this is going to be a difficult thing to change things, coming from a farming community. And who enforces those things? He and Ms. Fechter were talking today in terms of a zoning person who would go out and check to see if this was a grandfathered property. And then also if someone quits with farm animals, how long do they have before they can start it again? He said he thought that we are in kind of a mixed situation and that surrounding communities have fought the same battle regarding the nuisance of noises, the smell and some of the things that you would normally attribute to farmland but now saying that their community has grown to such a point where you should not have those kind of things. It is challenging and it has been suggested that the issue go back to Planning but he agrees with Mr. Gasior that it is really not a Planning thing because it is something that we have to address by Ordinance, not so much about how it changes the Planning and Zoning Code. This could take property out of development but he does not think many people are going to come to Avon and buy 10 acres to put animals on it instead of going somewhere else out in the country if they truly wanted to farm.

Mr. McBride said it would be maybe more of a gentleman farmer who wants to have a few chickens or goats. And what about a family that has had a farming heritage and now the farm is no longer there and the kids are still involved in 4-H; what do we do in that situation? Mr. McBride added that this kind of reminds him of the complaints we received from Avon Lake residents when he was first on Council about the water cannons. Some people in Avon Lake were just incensed about hearing that boom go off. Well, they moved out near farmland; it is just the way it is and we still have a lot of farms here. Not as big and not as many as we had but we still have farms.

Mr. Radcliffe said that he knows a place on Mills Road that was built and put in there for managing horses. That place was sold to people that he believed did not have horses and then he thought it was sold again to people that did want to have horses, so we need to make sure that this is being grandfathered in how that affects that property and those owners. If you buy a piece of property that already has horses and then find out later that you are not able to use it even though it had been used that way in the past, would be something that we should set out first. The second thing is the point about what our Code would be

for a business running a horse farm vs just a resident that wants to have a couple of horses for his grandkids to ride around on? There is a distinction there from a personal homeowner just having a couple of horses or some goats vs raising horses to breed, etc. He thinks that distinction of who owns the property needs to be discussed if this is being talked about in a residential area. Ms. Fechter noted that our Code does differentiate between commercial riding stables and residential stables. Mr. Radcliffe said so there are some things in the Code in that regard and if we are looking at updating these codes we need to make sure that carries forward also for the benefit of the residents whether it is in a subdivision or not in a subdivision.

Ms. Fechter stated that she pulled all the code sections for N. Ridgeville and pretty much all of them copy ours: 2 acres for one horse, and then ¼ acre after that for each additional horse.

Mr. Witherspoon said he was just wondering if this is a kind of a time-sensitive thing if we need to protect the situation with some type of a legal hold on doing this until we can come up with some ideas. He was suggesting this even though he hates putting moratoriums on anything.

Mr. Gasior said that we could probably do a moratorium on the registration. He noted that Mr. Streator did not think there are any registrations that are out there but we want to double check with the Police Department and see if they have any record of registration. Registration of a horse was a requirement for lots under 10 acres so we could put forth a moratorium on any registrations for horses which would prohibit them because under the law that currently exists, you cannot have them unless they are registered. We could do that in the interim. We could pass a broader moratorium but it certainly would not affect anybody that is already operating.

Mr. Gasior said that his only takeaway from all of this is that we are dealing with Ordinances that are 50 years old and in some cases 55 to 60 years old and have not changed in that period of time while the City of Avon has changed. We do not have to necessarily go to the 7 acres but just maybe to something that says that farm animals must be housed and maintained 200 ft. from another residential property, or 300 ft. and just try and determine what would be an appropriate number because in the one case that prompted the complaint and this discussion, we are dealing with a unique plot of land that is in the City and it is surrounded by residential property but it just happens to sit isolated there. You can go down Case Road or Stony Ridge Road and find 4, 5, or 6 acre parcels of land and he does not think you are going to find many complaints being generated from an area like that. He thinks it is the uniqueness of this particular parcel that sits right in the middle of a developed area of Avon that prompted this and we have to look at it and see if maybe there is an overreaction here but we also might want to try to protect people that have spent hundreds of thousands of dollars on homes in developments and yes, they have moved into the country but they also expect a certain level of peace and tranquility with their property which is the basis of the nuisance law. All he can point out is that the laws that are on the books here in Avon are more than 50 years old and the City has changed dramatically in 50 years and the approach to regulation should probably reflect that.

Mr. McBride said that he agreed with a lot of what Mr. Gasior said. He said he was just looking at the property in question on the overhead screen and noted that their access is off from Nagel Road. He said he does not have a problem with regulations about manure and rodents, etc. but trying to tell somebody they have to have a 300 ft. setback.....so they cannot do anything with that parcel. That is a big enough piece of property; 6.8 acres is a lot of property.

Mrs. Demaline stated that she would be cautious about a moratorium on an Ordinance that is 50 years old that we are not even actually enforcing. She thinks we are almost being punitive to the people who purchased this property. They purchased it with the understanding of the current Ordinances on the

books. She thinks we are almost targeting them at this point and she does not know that that is something that we want to be in the position to do.

Mr. McBride stated that he tends to agree with that statement. The fact that the complainant is proposing 7 acres specifically, that is definitely a NIMBY response and whether that is the correct response, he does not know. We can probably talk about this tonight until we are blue in the face but we are not going to resolve anything. He thinks that we need to do some work, we need to talk about setbacks, we have to limit how much manure is kept on the property, or grain or feed or anything that might attract rodents. We need to deal with all that and frankly, he does not know why we would want registration. We are just going to dump it on the Police Department as one more thing for them to do.

Mr. Streator said that he stood corrected. We do have a system in place for horse registration in the Police Department. Mr. Gasior added, and that is covered by the Code right now.

Mr. McBride said that he does not know how many people have registered and if we want to continue that. It sounds like more of a nuisance on the City. We update the Ordinance and we set some parameters. And he thinks that we should include chickens and roosters for anyone who is keeping chickens and producing eggs. We could grandfather the people who are doing it currently.

Mr. Gasior said that a comparison of some of our surrounding cities is a good idea and also in Cuyahoga County there are some communities like Olmsted Falls which are semi-rural and then you have places like Strongsville and N. Royalton that have some of the larger tracts of land and maybe we can see what they have done in addition to our local surrounding communities. But the neighbor had this complaint and brought it to Legal Committee and we need to do a lot more work to draft an appropriate piece of legislation for Avon. He is not saying that the one we have on the books is that bad but it is 50 years old and logic tells him that the City has changed dramatically in 50 years and a law on the books that deals with livestock or horses or any other farm animal probably needs to be in step with whatever changes have been made. That is not necessarily to say there should be a ban on them but we have to recognize that we have more people living in closer quarters than we did 50 or 60 years ago and we should probably be trying to pass legislation that is fair to them as well as to the folks that still want to farm in the community.

Mr. McBride stated that when he was first on Council and just as Willow Creek was being built, he would get these frantic calls that somebody was walking with a gun on Chester or Nagel or wherever it was, and not wearing an orange hat or anything like that. These people had moved out from Lakewood or Rocky River or someplace where there was not hunting and they were just completely aghast that you could still hunt in Avon. He had to tell them that that was the way it was; they moved out to the country, there was still farmland, and hunting was permitted, although having enough property to hunt is starting to quickly disappear now.

Mr. McBride said so we will pass the baton to Mr. Gasior to do some work and also to Ms. Brooks to obtain Ordinances from other communities.

Mr. McBride adjourned the meeting at 7:16 P.M.

Respectfully submitted by Gail Hayden, Assistant Clerk of Council