

Minutes of the Public Hearings held by the Town Board of the Town of LaFayette on March 8, 2004, at 6:30 p.m. in the Meeting Room of the LaFayette Commons Office Building at 2577 Route 11 in the Town of LaFayette.

Present: Gregory Scammell, Supervisor
Sandra Smith, Councilwoman
David Knapp, Councilman
Thomas Bailey, Councilman
William McConnell, Councilman

Recording Secretary: Mary Jo Kelly, Town Clerk

Others Present: Leon Cook, Highway Superintendent
Ralph Lamson, CEO
Kevin Gilligan, Town Attorney
Marshall Taylor, Assessor/Clerk
Ray & Nancy Young, 2479 Apulia Rd.
Kathy Plumridge, Apulia Rd.
Tom VerDow, Eager Rd.
Derek Hubler Eager Rd.
Geary Miller, Tully Farms Rd.
Yolanda Brzostowski, 6602 Colton Rd.
Heidi Smith, Dodge Rd.
Sue Snavlin, Dep. D.C.O.
Terry Merron Esce, Route 11
Tom Chartrand, Bookkeeper

Supervisor Scammell welcomed everyone.

The Town Clerk took the Roll. All present.

Pledge to the U. S. Flag was led by Town Councilwoman Sandy Smith.

Councilwoman Smith moved and Councilman Bailey seconded the motion

to accept the February 23, 2004, Town Board Meeting Minutes as submitted by the Town Clerk. Voting was as follows:

Supervisor Scammell	Aye	
Councilwoman Smith	Aye	
Councilman Knapp		Abstain
Councilman Bailey		Aye
Councilman McConnell	Aye	

Motion carried.

Supervisor Scammell opened the public hearing regarding Zoning regulations for nonconforming uses. He asked Kevin Gilligan to give a recap on the proposed amendment.

Kevin Gilligan said this actually started up over a year ago, maybe two. In review of the local zoning ordinance with respect to nonconforming uses, they saw a revision unlike any they had ever seen. It basically allowed the conversion of a nonconforming use to any other nonconforming use with a specific permit. This is kind of like no zoning. They brought this matter to the Town Board's attention at that time and suggested the town bring it into compliance with other ordinances throughout the state. The only real change has to do with closing up the one loophole so you can't change from one nonconforming use to another. It also states structures of nonconforming uses may be repaired and/or restored to their former condition after damage by casualty loss or deterioration due to the elements.

Councilman McConnell asked if this is for the entire Town of LaFayette and not just the Hamlet.

Kevin Gilligan said yes. It is universal.

Councilman McConnell asked if the nonconforming use is for size of lots or enterprise too.

Kevin Gilligan said you can have a nonconforming lot or you can have a nonconforming use. It can apply to two different things. It can apply to lot size, setbacks, height, etc. or it can apply to what the property is being used for.

Councilman Knapp asked if something can be grandfathered in to a nonconforming use.

Kevin Gilligan said basically that is what it is. Zoning may have changed and the owner was legal prior to the change and to protect the owner, it grandfathered as a nonconforming use.

Supervisor Scammell asked for any other questions or comments. There were none.

Councilman Knapp moved and Councilwoman Smith seconded the motion to close the public hearing. Motion passed unanimously.

The Public Hearing closed at 6:36 p.m.

Supervisor Scammell opened the Public Hearing regarding regulations for horses. He asked Kevin Gilligan to explain the proposed amendment.

Kevin Gilligan said a few years ago we had a neighbor put a stable in with a number of horses right up against their neighbors property which caused a lot of neighborhood dissention. This happens all over the place. As a result of the neighborhood dispute that arose over the manure, flies, etc., the Town Board adopted some procedures and regulations for getting approval for horses. The amendment before the public tonight

addresses the one and two horse ownership. This basically relaxes the current ordinance in respect to one and two horse ownership.

Supervisor Scammell asked for any questions or comments.

Terry Merron Esce asked if this is pertaining to just agricultural or residential property.

Supervisor Scammell said it could be anywhere.

Terry Merron Esce isn't sure how they came up with this figure.

Kevin Gilligan said the zoning in the town is Agricultural/Residential. Everything is Agricultural/Residential if it's not zoned Industrial, Hamlet, Business, Planned Cluster or Multi-Family.

Councilman Knapp said the Town Board is looking at revising the 3 or more horses too.

Terry Merron Esce said what if you are surrounded by an Agricultural District and have no problem with the owner being in a Residential District and having more than two horses.

Kevin Gilligan said you then have the opportunity to go before the Planning Board with your plan to obtain approval for more than 2 horses.

Terry Merron Esce said you would still be going back to paying to have horses on your property when you have enough land to have them. We are in the country. She would just like to know why the town has to collect money for horses when you can have dogs, pigs, cattle, etc. without any special permits. What makes the difference between one animal and another for the town to collect money.

Kevin Gilligan said it's not a question of collecting money, it's a matter of having a zoning review.

Terry Merron Esce asked why horse owners are restricted and not pig owners, etc.

Councilman Knapp thinks that a lot of folks like to have horses and there aren't many with pigs.

Terry Merron Esce said if the owner is taking care of their animals, why are they being restricted?

Kevin Gilligan said you are not being restricted. This is relaxing the current standard.

Terry Merron Esce understands there was one bad person in the past but that shouldn't make it hard for everyone else. Can it go back to the way it was before this person messed up? It doesn't make sense for them to have to pay to have horses.

Derek Hubler believes horses shouldn't be restricted any more than any other livestock. It seems like horses should be looked upon in this township the same as any other livestock.

Kevin Gilligan advised there are no state guidelines for horses.

Derek Hubler asked if it isn't all based on the weight of the animal.

Terry Merron Esce thinks there were changes for the wrong reasons to begin with.

Councilman McConnell asked prior to the incident a few years ago, what were the rules if someone had 32 acres and wanted to have more than two horses?

Supervisor Scammell wasn't aware of any regulations for horses.

Marshall Taylor said there were no regulations. He had a neighbor that had horses next to him and when he complained, there were none. He said living next to someone who owns two horses on a 3 acre parcel is not pleasant. It's better to have something rather than nothing.

Ray Young said he owns 90 acres of land. He has had 13 – 16 horses. He's down to 5 he raises and breeds thoroughbred horses. Why should he have to come in to get a permit to move his horses in and out. Some days he may have no horses and other days he may have 12 to 14 horses. He has 90 acres of land.

Terry Merron Esce said once he has more than two horses, he would have to follow the same regulations.

Ray Young asked why he should be restricted.

Councilman McConnell asked if it's true that if someone has the number of horses up and down, would he have to come before the Board every time you go up and down.

Ralph Lamson said he was doing this before the ordinance was adopted.

Kevin Gilligan said he is a legal nonconforming use.

Ray Young said he has been raising thoroughbreds since 1974.

Councilman McConnell said there are no numbers in the zoning right now so he is not restricted.

Kevin Gilligan said in the current ordinance there is a requirement for 2 acres for each horse. This is being addressed by the Town Board now for over two horses. The Town Board is looking at fencing requirements, etc. That is a separate review which is going on.

Ray Young said there are state regulations for fencing stallions.

Kevin Gilligan asked if they are under Ag. & Markets Law.

Ray Young said yes. The regulations deal with the height of fencing, etc.

Councilman McConnell said this all came from one issue because of two close neighbors that had less than the 2 acres for the amount of horses they had.

Supervisor Scammell said that is correct, however, there have been complaints in the past from time to time.

Terry Merron Esce asked Marshall Taylor about his neighbor.

Marshall Taylor said the neighbor has moved. He thinks having to have 2 acres for up to 2 horses is a good regulation. You need regulations for people who don't have 23 acres.

Terry Merron Esce would agree there needs to be some sort of restrictions for neighbors not to be in violation of.

Supervisor Scammell said there's discussion to have 3 or more horses. The Town Board is looking to change it to have a minimum of 2 acres and 1/5 acre for each additional horse.

Kevin Gilligan said this is regarding the fencing.

Derek Hubler said it seems that if someone wants to board horses, they should be able to do that.

Supervisor Scammell asked what he might use for a guideline for the acreage.

Derek Hubler said that is why he brings this up. There's got to be a happy medium. He doesn't know what it is.

Supervisor Scammell said he would be happy to entertain any number he might have.

Derek Hubler said he would look at whatever the regulations say for livestock.

Supervisor Scammell said there are two pieces to this. The Town Board is looking to modifying both the private and public stables. The Board welcomes input from people who know more about this.

Derek Hubler said you always have people who don't do things the way they should but in general, he thinks it's good for the town. Most people in general will keep their places up.

Councilman McConnell asked Ray Young if he felt he would be restricted by equations of 2 acres per horse as he has 90 acres.

Ray Young said they don't bother him as it would allow him 45 horses.

William McConnell said that is his point. We have a community where folks would like to have horses and some residents might not appreciate them and they need to be respected too.

Kevin Gilligan said if someone came in with a new proposal for a stable, they would have to come to the Board for review.

Kevin Gilligan asked the cost of a horse.

Terry Merron Esce said you could pay up to \$60,000.

Kevin Gilligan said so \$300 is not a great bill.

Derek Hubler said he already pays taxes.

Kevin Gilligan said he also lives in this town and why should his taxes have to pay for someone else's horse application?

Sue Snavlin asked the difference between private and public stables.

Ray Young said a private stable is what he has. He doesn't board or sell horses.

Sue Snavlin asked how someone would know the difference if someone owns 5 pet horses as compared to a stable where someone is boarding someone else's horses.

Ralph Lamson said you would see the traffic from people going in and out to take care of their horse.

Kevin Gilligan said that is the difference between a public and private stable.

Ralph Lamson said if someone has a public stable, they will have advertising, etc.

Supervisor Scammell said you have to regulate the public stables to some degree for safety issues.

Terry Merron Esce doesn't know why the town needs to regulate something that is already regulated. Police can be called if someone is pulling in and out illegally.

Councilman McConnell said it sounds like everyone present would be happy since we live in an agricultural/residential town, with 2 acres of grazeable land per horse for non-business like stables.

Councilman McConnell said the 2 acres per horse allows someone who owns 90 acres to have as many horses as the 90 acres would allow and it would also protect the neighbors.

Terry Merron Esce doesn't believe there should be restrictions with horses whether it would be business or a private owner.

Councilman McConnell would agree with Ray Young that if someone came in and bought a farm and wanted to have a horses on it, he agrees the owner should have to come in and get a permit to have the number of allowed horses.

Terry Merron Esce said you are still getting into a situation where she could have a lot of people over to her house a lot of times and have no restrictions or she has someone coming to her house that is boarding a horse. You wouldn't know if she was boarding horses or having company.

Tom VerDow asked even if you board horses, do you have to have a minimum of 20 acres on your property if you only have 2 horses? Would there be potential opportunities to amend or go for a variance of some kind?

Kevin Gilligan said yes. You start getting into commercial aspects of it. The Board that reviews this would be sure there aren't adverse impacts on the neighbors.

Terry Merron Esce said then you are back to having to pay to board horses.

Derek Hubler said if someone has enough land, 5 or 6 horses aren't going to bother the neighborhood..

Supervisor Scammell asked what Derek Hubler would consider good care to be.

Derek Hubler said his personal opinion is that the place is kept up, the manure is handled, etc.

Sue Snavlin said there are some Ag. And Market laws that address that because once you have animals on your property that someone is paying you to keep there, there are inspections and some other things that must take place.

Supervisor Scammell said he has found in reviewing this ordinance that there are some issues already under regulations of other agencies.

Marshall Taylor asked if there are any requirements for removing the manure of private stables. If you have someone living next door to you that has a 50' pile of manure, the court costs to get him to remove it would exceed \$25,000. A person living next door to this has no power to change it. Someone who has 30 acres or a farmer who can plow it under is no problem. Someone who has two acres needs to put a manure management program in place.

Derek Hubler asked if there were any manure management laws from Ag. & Markets?

Supervisor Scammell asked the folks what a reasonable period of time would be to remove the manure.

Ray Young said in the winter it wouldn't matter much.

Supervisor Scammell said if you have 2 acres and 2 horses and it's in the summer, would weekly, monthly, etc be proper?

Ed Young would say weekly. If you have two acres of land and two horses, they should have a weekly plan to get it out of there.

Tom VerDow thinks monthly would be O.K.

Supervisor Scammell said so you could say no more than once a week and no less than once a month.

Geary Miller said how does this affect the dairy farmer?

Kevin Gilligan said he has never seen a dairy farmer that only has two acres of land.

Marshall Taylor believes the person requesting 1 to 2 horses on 2 acres should come forth with a plan before they are granted permission to have the horses.

Terry Merron Esce doesn't believe the majority of horse owners would bother the neighbors like this.

Supervisor Scammell said the problem is when you have the neighbor who doesn't respect his neighbor.

Terry Merron Esce doesn't believe she should be restricted not to be able to board horses without paying the town for permission.

Marshall Taylor said from his experience, when a problem arises, it's impossible to get it resolved. If things aren't in place to ensure people are protected in the beginning, the 5% of people who don't do things right end up forcing the neighbor to live with the problem for a long time.

Supervisor Scammell asked the horse owners present to please contact the Town Board or him with their suggestions. He asked for any further questions or comments. There were none.

Councilmen Knapp moved and McConnell seconded the motion to close the public hearing. Motion passed unanimously.

The Public Hearing closed at 7:34 p.m.

Supervisor Scammell opened the third public hearing regarding Local Law 1-2004 dealing with howling or barking dogs.

Kevin Gilligan said this is something found through a recent issue of Town Topics regarding a situation that went to court regarding barking dogs. It was determined that the current ordinance is too vague to be enforced. This proposal is to provide a means to allow enforcement.

Sue Snavlin noted the proposal says you can have a neighbor as a witness. How are you going to prove it?

Kevin Gilligan said by sworn testimony.

Sue Snavlin said if someone goes to court and says their neighbor's dog barks for 15 minutes every hour and the owner said no it doesn't, how do you prove it?

Kevin Gilligan said it's up to the judge.

Sue Snavlin said when she goes to someone's house, the dog barks more because she is there.

Terry Merron Esce asked what if you have more than one dog? What if one dog barks and then another, etc.?

Kevin Gilligan said this is relaxing the standard. It currently reads barks enough to annoy a neighbor. The proposal is to have it so the dog must bark 15 minutes an hour and be heard outside the premises.

Terry Merron Esce said she has lived on her property for two years and never had a neighbor complain and she owns 9 dogs.

Councilman McConnell said if someone living in the Hamlet decides to go on vacation and have a neighbor feed their dog and the dog howls all day, he would become annoyed and want someone to handle it. This is a recourse for someone. He thinks you are protecting the people in the town. He thinks this is once again more for the folks with less property.

Ralph Lamson asked how would this get before the court?

Kevin Gilligan said the person would call the Dog Control Officer. The DCO files the complaint and sworn testimony with the court.

Ralph Lamson asked if the DCO has to witness the barking.

Kevin Gilligan said no. If the DCO did witness it, it would be added testimony.

Sue Snavlin believes there is an enforcement problem with this.

Kevin Gilligan said if you leave the ordinance the way it is, it is unenforceable in court. If you change it, it's proven to be enforceable.

Councilman Knapp believes this is more of a protection for the owner too. It's more specific.

Kevin Gilligan said the proposal sets an objective standard.

Sue Snavlin asked if it's 15 consecutive minutes.

Kevin Gilligan said no, it's not consecutive. You could get a complaint about this right now but it couldn't be enforced.

Terry Merron Esce said you now get into a problem with kennels.

Kevin Gilligan said the applicant's for a kennel have assured the Board they will have a sound proof building.

Sue Snavlin believes 15 minutes in an hours sounds kind of unreasonable.

Supervisor Scammell asked what she felt would be more appropriate. Would 30 minutes within an hour be better?

Kevin Gilligan said this is the language that has been approved by the court.

Councilman Bailey asked if this wording was endorsed by the Association of Towns?

Kevin Gilligan didn't know about being endorsed but it was in the Town Topics Magazine. Every town and village in New York State is in the process of changing their laws accordingly. The proposed language has been upheld. If you change any part of this other than what is proposed, he doesn't know if it can be upheld.

Supervisor Scammell asked for any other questions or comments. There were none.

Councilman Knapp moved and Councilwoman Smith seconded the motion to adjourn. Motion passed unanimously.

The Public Hearing closed at 7:49 p.m.

Respectfully submitted,

Mary Jo Kelly

Town Clerk