

August 8, 2016

The Ellettsville, Indiana, Town Council met for a regular meeting on Monday, August 8, 2016, at the Fire Department Training and Conference Room. Dianna S. Bastin called the meeting to order at 6:30 p.m. Dianna S. Bastin led the Pledge of Allegiance followed with a prayer by Scott Thomas.

Roll Call: Members present were Dianna S. Bastin, Vice President; Kevin Farris, Brian Mobley and Scott Thomas. Scott Oldham was absent. Sandra Hash, Clerk-Treasurer; and Darla Brown, Town Attorney; were also present.

Supervisors present were: Danny Stalcup, Jimmie Durnil, Kevin Tolloty and Mike Farmer. Deputy Chief Kevin Patton represented the Fire Department.

Approval of Minutes

Dianna S. Bastin entertained a motion for approval of the minutes for the Budget Meeting on July 13, 2016, and regular meeting on July 25, 2016. Kevin Farris so moved. Dianna S. Bastin seconded. Motion carried.

Accounts Payable Vouchers

Dianna S. Bastin entertained a motion for action to pay Accounts Payable Vouchers. Kevin Farris so moved. Scott Thomas seconded. Motion carried.

Ordinances on First Reading

Ordinances 2016-09 to Amend Chapter 96 of the Ellettsville Town Code Regarding Animals

Darla Brown, Town Attorney, explained she researched whether or not it might be appropriate to have a grandfather clause in this ordinance. There are amortization provisions that require an owner to discontinue a non-conforming use after a certain period of time. She is not convinced this is a zoning use. Typically, zoning uses talk about building or property use. In zoning cases municipalities can use amortization provisions which means it is phased out and the property owner is told after a certain period of time the use will not be permitted. The penalty section of the chicken ordinance, §96.99(B), allowed 60 days from the passage of the ordinance to bring the chicken coups into compliance and one year to bring flock numbers into compliance. The proposed ordinance carries a penalty so it would be published in the paper thus notifying the public it has changed and it will include a certain amount of time to become compliant.

Dianna S. Bastin thinks if someone had an animal they would go through the permit process in order to keep it. It is a miniature horse and it is not in turmoil because it's living in a garage but may be lonely because they're social animals. If the horse is removed it could not return. She doesn't think there was a complaint on the same day the horse returned to the residence but a short time thereafter. Mr. Mobley thinks it should be grandfathered because it has been there many years. Mr. Farris asked if this ordinance is being drafted for one animal. Is there a federal law about exotic animals? Ms. Brown thinks this is an issue. There are people who harbor exotic animals and there aren't many regulations. The issue is the definition of domestic livestock being "*Any domesticated farm animal, other than a domestic pet, that is kept for commercial purposes.*" She amended this to say "*whether or not it is kept for commercial purposes*" to the ordinance. This is a policy decision. She foresees issues in the future with other miniature horses or farm animals. Ms. Bastin asked if anyone else came forward with another animal that might be listed in the ordinance. Ms. Brown answered no, it was just the miniature horse and there have been one or two complaints. Ms. Bastin asked for a summary of the complaints. Mr. Tolloty replied two neighbors complained about the time the horse returned to the house. He thinks there is a lot more to it than just the horse. There have been complaints the horse owner acted aggressively toward the neighbors but he doesn't know what actually happened. Ms. Bastin asked if he has personally been by the residence. Mr. Tolloty answered yes. Ms. Bastin asked if he can tell a horse is living there. Mr. Tolloty replied no, other than he could see it when the garage door was open. He didn't notice anything from the street and doesn't know if there are times the neighbors can see or smell something.

Sandra Hash, Clerk-Treasurer, is concerned this isn't the first time this has been addressed. In the past the horse owner was required to remove the horse. At that time they set a precedence and she is sure this is why the neighbors called right away. Now, they're changing their mind and saying because it is "this" person and because "this" person is particularly attached to the horse then they need to change the rules. Ms. Brown commented it is a policy decision and the Town Council doesn't have to do anything. She knows when the ordinance was passed the Town Council spent some time trying to come up with definitions to cover all possible situations.

Dianna S. Bastin is aware the Town had the horse removed before and she might have voted yes but she shouldn't have. She doesn't want to prepare the ordinance in a way that someone could buy a tiny horse and put it in their garage. Everything is changing, they're breeding animals smaller and they provide comfort whether it's licensed or trained. Clearly, this animal provides a service to the horse owner which is why she brought it back to her house. She doesn't want to open this up for everyone, give the horse owner special treatment or get involved in a bad neighbor situation. Mr. Thomas is of the opinion the person knew the Town's stance, has removed the horse before, and found a loophole to bring the horse back to her property. It isn't right. If this is a rule then they need to clarify their intent. Maybe they should ask for public comment before the next meeting. This person is very clear and aware of the Town's intent.

Lynette Porter lives on Deer Park Drive and their garage faces the horse owner. They filed a complaint against the horse owner one week prior. Their house is the side and back yard of the horse owner's home. She has called on multiple occasions and spoke with Denise at the Planning Department because no one would return her calls. She called the day the horse was unloaded into the garage. When they moved in 12 years ago they never had any interaction with the horse owner until the day she unloaded the horse. The horse gets walked at 2:00 a.m. The horse owner is always cleaning and fills five gallon buckets with Manure and sets them at the top of the yard. When it rains the Manure overflows and comes down the hill in front of a neighbor's house. The neighbor has to scrape their driveway every time there is a hard rain. They can't mow or do weed eating when the horse owner is outside because of how she acts toward them. Police officers are familiar with the horse owner who is trying to protect her area and is very upset someone is going to remove the horse. She doesn't agree with modifying a rule set in place for a subdivision for a sense of comfort. The horse owner was throwing rocks at guests and their cars at her daughter's graduation party on June 4, 2016. Three police officers at their party stood or drove by their yard to prevent the horse owner from throwing rocks and they had to have additional police officers come to their house. In preparation for the party they were cleaning windows facing her garage and the horse owner drove up in to their yard and then backed up again ramping up into their yard. Last week her husband was mowing and the horse owner spun her car toward the cul-de-sac driving right at him. When she was painting her mailbox post getting ready for the graduation party the horse owner drove right at her. The horse owner makes eye contact, yells obscenities and threatens them because she's afraid the horse will be removed. They have had to change their schedule of doing work at their home. They call the police when they've been driven at or the horse owner drives in their yard. They've set up a surveillance camera because they need to prove this has escalated to where it has changed their lives. She is asking Town Council consider this.

Kevin Farris asked if the horse is relocated how will it stop the horse owner from griping at the neighbors. Ms. Porter explained this all started on the day the horse arrived in March 2016. When the horse is not there for her to protect they don't have any problems.

Katie Cadwell lives across the street from the horse owner. They've lived in their home for three years and didn't know the horse owner lived there until she brought the horse to her home. They are looking at other houses because it is so bad to be there. The manure runoff comes into their yard and every night their house smells like it. If they turn on their outside light they get accosted by the horse owner who curses at them. It took her three hours to replace their mailbox 1½ months ago and the entire time the horse owner was screaming obscenities. They were told the horse owner was given a time frame to get rid of the horse and there were several extensions. They call the police all the time. They cannot walk out

of the house without the horse owner insulting them. She tries to play games in the yard with nieces and nephews and the horse owner stands in her yard yelling obscenities. Since the horse has been there it has detrimentally affected them. Ms. Bastin asked if the horse goes away will she focus on something else. Ms. Cadwell answered they didn't see her before the horse arrived. They can't get anything done because of the horse. Nothing is being done.

Scott Thomas thanked Ms. Porter and Ms. Cadwell for attending the meeting. They need to hear these things and it's their responsibility to represent the whole community. This doesn't mean the Planning or Police Departments should tell them. If constituents are having problems they want to know about it. Ms. Bastin explained police officers protect their privacy and they're not going to tell Town Council. Ms. Cadwell contacted the Planning Department on several occasions and the Humane Society. Ms. Bastin asked if they have a storm drain on their street. Ms. Cadwell answered yes. Mr. Farris asked if the ordinance passes what is the next step. Ms. Brown replied to pass it as is without the grandfather clause it would have to be published and then it takes effect 30 days after publication. Ms. Bastin asked if it is passed as written, how long before the horse would be evicted. Ms. Brown answered if the horse owner won't let it go voluntarily she has drafted an ordinance violation to file with a Petition for Injunction and then the court will get it on their calendar so it may take 60 days.

Brian Mobley asked Marshal Durnil for a list of calls pertaining to the horse owner. Marshal Durnil explained they have to have some place to put the horse if they're going to take it. They almost had the horse about one month prior and animal control asked where to take it. He told him to take it where they normally do. Animal control said there was no order to take it down where they hold them. Ms. Brown added assuming the court grants the injunction and orders the horse removed it will go to the animal shelter.

After a discussion, it was decided to let this ordinance return for a second reading.

Darla Brown asked if they wanted the grandfather clause to remain in the ordinance. The consensus was to leave it as written.

Adjournment

Dianna S. Bastin entertained a motion to adjourn. Scott Thomas so moved. Kevin Farris seconded. Dianna S. Bastin adjourned the meeting at 7:09 p.m.

Scott Oldham, President

Dianna S. Bastin, Vice-President

Scott Thomas

Kevin Farris

Brian Mobley

Sandra Hash, Clerk Treasurer