



ZTA Petition No. 150

Date: February 3, 2010

STAFF MEMORANDUM TO THE PLANNING COMMISSION

SUBJECT: ZONING TEXT AMENDMENT NO. 150
APPLICANT: Jason D. White
PROPOSED: Text Amendment for Animal, Domestic

REPORT

The City of Midland has received a zoning text amendment petition initiated by Jason D. White, a City resident requesting that the definition of "Animal, Domestic," be amended to include provisions to permit miniature pigs, and contends that a miniature (or micro) pig is not a farm animal and therefore should be included in the definition of a domestic animal.

Subsequent to the public hearing conducted by the Planning Commission on this matter on January 26, 2010, Mr. White has submitted additional information (enclosed) for the Planning Commission's consideration. Mr. White is also preparing another PowerPoint presentation that he will present at Tuesday's meeting that will include information that he has obtained relative to typical vaccinations for micro pigs and differentiations and names of various micro-pig breeds.

ASSESSMENT

In accord with Section 30.03(C) of the Zoning Ordinance, the Planning Commission and City Council shall at a minimum, consider the following before taking action on any proposed zoning ordinance text amendment:

1. Is the proposed amendment consistent with the City's Master Plan? **Yes.**

2. Have conditions changed since the Zoning Ordinance was adopted that justifies the amendment? **No.**
3. Was there a mistake in the Zoning Ordinance that justifies the amendment? **No.**
4. Will the amendment correct an inequity created by the zoning ordinance?

Possibly. Should the Planning Commission choose to recommend to the City Council to amend the definition of "Animal, Domestic" it would be to address the conclusion that it is an inequity among pet owners to be able to keep a dog as a pet, for instance, but not a miniature pig.

5. Will the amendment merely grant special privileges? **No.**
6. Will the amendment result in unlawful exclusionary zoning? **No.**


STAFF RECOMMENDATION

Upon careful review of the requested zoning change, staff recommended denial of Zoning Petition No. 150. It is the opinion of staff that a miniature pig could be considered a nonfarm animal but does not exhibit enough of the characteristics of a domesticated animal due to nuisance characteristics to be considered a pet.

PLANNING COMMISSION ACTION

Staff currently anticipates that the Planning Commission will formulate a recommendation to City Council during its regular meeting of February 9th. We further anticipate that on February 15, 2010 the City Council will set a public hearing on this matter. Given the statutory notification and publication requirements, the City Council hearing will likely be scheduled for March 8, 2010. Please note that these dates are merely preliminary and may be adjusted due to Planning Commission action and City Council agenda scheduling.

Respectfully Submitted,



Keith Baker, AICP,
Director of Planning & Community Development

/cw

Baker, Keith

From: Jason White [jwhite@stevensworldwide.com]
Sent: Wednesday, February 03, 2010 10:31 AM
To: Baker, Keith
Subject: Additional documents for review
Attachments: MSU Animal Law.pdf; Clyde Township.pdf; KALAMAZOO NEWS.pdf

Good Morning Mr. Baker;

Not sure I'll have the PowerPoint ready in time for you to include it with whatever it is your distributing to the rest of the commission this afternoon. That having been said, I decided to simply forward on a few documents that I thought would be important to consider for the matter at hand. There are 3 attached to this email. If you don't receive them all please let me know and I'll get you whatever failed to go through the first time.

1. **MSU Animal Law:** This is a legal synopsis (by MSU) of a case that took place in Indiana. In this case a woman was found to be in violation of city ordinances by owning a potbelly pig. Her initial appeal to the city was turned down but upon appeal the courts decided in her favor based upon their interpretation of the city's ordinance text. Despite having to do with a potbelly pig, I felt this article was worthy of review due to the appeal court's reasoning behind their decision to side with the owner.
2. **Clyde Township:** This is a copy of ARTICLE 2 – DEFINITIONS taken from the Clyde Township zoning ordinances. I included this document due to the unique way it addresses the definition of "animal". Perhaps this is how we should approach an amendment to the zoning text in question.
3. **Kalamazoo News:** This story was featured in the Kalamazoo Gazette back in September of 2009. 3 mini pigs were being kept as pets – in direct violation of the city's ordinances. After the owner's case had been heard by and voted upon by local officials, the pigs were allowed to stay with their owner by granting the woman a special permit for her pets. Perhaps this could be one way in which mini pigs could be allowed within the city of Midland.

Just some food for thought. And if I can get the P.Point finished soon I'll email it to you for review as well.

Thanks and have a great afternoon!

Jason White

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Court of Appeals of Indiana, Second District

Barnes v. City of Anderson

Indiana

642 N.E.2d 1004 (Ind.App. 2 Dist. 1994)

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Summary: Virginia Barnes and Jan Swearingen appealed a trial court's decision in favor of the City of Anderson, Ind., granting a permanent injunction enjoining the women from keeping and maintaining Swearingen's pet Vietnamese pot-belly pig, Sassy, and ordering Sassy's removal from the residence. Appeals Court found for pig owner, holding that the phrase "raising or breeding" in an Anderson livestock ordinance refers to a commercial enterprise and not to the keeping of pigs as pets.

Judge Friedlander delivered the opinion of the court.

Opinion of the Court:

Virginia Barnes and Jan Swearingen appeal the trial court's decision in favor of the City of Anderson granting a permanent injunction enjoining the women from keeping and maintaining Swearingen's pet Vietnamese pot-belly pig, Sassy, and ordering Sassy's removal from the residence.[FN1]

FN1. Oral argument was heard on October 26, 1994 in Indianapolis.

We reverse.

In September 1992, the City received complaints that a pig was being kept at an Anderson residence. Barnes owns the property and leases it to her daughter, Swearingen. In response to these complaints, the City Zoning Administrator visited the home and determined that a pig did, in fact, reside on the property. The City concluded that the pot-belly pig's presence violated Anderson's Zoning Code, which prohibits the keeping of livestock in a residential district. After having made its determination, the City notified Barnes and Swearingen to remove the pig. They refused to do so.

The City filed a Complaint for Injunctive Relief on November 19, 1992. At trial, on September 1, 1993, Swearingen and Barnes argued that the zoning ordinance did not apply because the pig is a pet and not livestock. The women offered evidence that the Vietnamese pot-belly pig has been in use as an exotic pet in the United States since 1985. Swearingen purchased Sassy from a breeder in February or March of 1992 after hearing that the pigs make good pets. Swearingen keeps Sassy in her home and backyard and walks the pig with a leash. Sassy weighs between 125 and 150 pounds. She eats mini pig chow and dog food and drinks water. Sassy has her own food bowl and water dish and uses a litterbox. Swearingen testified that she is not raising Sassy for slaughter, breeding, market or farm purposes. The City agrees that Sassy is a pet, and is not being used for farm purposes, but that Sassy is nevertheless "livestock" within the meaning of Anderson's Zoning Code and thus may not be kept on the property.

After the presentation of the evidence, the trial judge viewed Sassy at home. On November 1, 1993, the court entered judgment for the City as follows:

JUDGMENT

This cause having come for trial on Plaintiff's Complaint For Injunctive Relief for violation of City Ordinance, and the Court having heard and considered the evidence, having viewed the subject matter animal at the Defendant's residence and having duly considered the arguments and legal briefs of counsel, enters its findings and judgment as follows:

1. That the Defendant, Virginia Barnes, is the owner of certain real estate situated in the City of Anderson, County of Madison, State of Indiana described as 221 West 13th Street, Anderson, Indiana and that the Defendant, Jan Swearingen is in possession and occupancy of said real estate.
2. That said real estate is presently zoned R2 under the Zoning Ordinance of the City of Anderson, Indiana.
3. That the Defendant, Jan Swearingen keeps and maintains at the above said residence a Vietnamese Pot-Belly pig named "Sassy".
4. That there is in full force and effect in Anderson, Indiana Ordinance #2439 of the Zoning Ordinance of the City of Anderson, Indiana codified under Title 15 of the Code of Ordinances of the City of Anderson, which precludes [sic] the keeping of livestock and farm animals within the city limits of the City of Anderson.
5. That the Anderson Zoning Code, Section 160.03 defines 'livestock' as follows: 'Livestock. Domestic animals kept for farm purposes, especially those marketable animals, and the raising or breeding of domestic animals, such as cattle, horses, sheep, goats, and ponies, etc.'
6. That the Court finds that the keeping and maintaining of the subject animal 'Sassy' by the Defendants is an illegal and unlawful use of the above said property under the above said Zoning Ordinances...."

Record at 34.

Barnes and Swearingen appeal the judgment, and present the following issue: Did the trial court incorrectly conclude that keeping and maintaining Sassy, the pet pig, constitutes keeping and maintaining "livestock" as defined in the Anderson Zoning Code?

Construction of a zoning ordinance is a question of law. *Columbus Bd. of Zoning App. v. Big Blue* (1992), Ind.App., 605 N.E.2d 188. Zoning regulations that inhibit the use of real property are in derogation of the common law and are strictly construed. *Cooper v. Calandro* (1991), Ind.App., 581 N.E.2d 443, trans. denied. We will not extend a zoning restriction by implication. *Ayers v. Porter County Plan Com'n* (1989), Ind.App., 544 N.E.2d 213. When construing an unclear zoning ordinance, we utilize the ordinary rules of statutory construction. *Columbus Bd. of Zoning App.*, supra. We examine an unclear or ambiguous statute as a whole, giving the statute its apparent and obvious meaning. We presume the legislature intended that the language of the statute be applied in a logical manner consistent with its underlying goals and policy. *Moses v. Cober* (1994), Ind.App., 641 N.E.2d 668.

Anderson Zoning Code § 160.03 defines livestock as: " 'Livestock.' Domestic animals kept for farm purposes, especially those marketable animals, and raising or breeding of domestic animals, such as cattle, horses, sheep, goats, and ponies, etc."

The term "domestic animal" is not defined in the Zoning Code; however, a definition is contained in the Anderson Animal Control Ordinance at § 91.01, which classifies pigs and other animals such as dogs, cats, and hamsters, as domestic animals. Neither party denies that Sassy is a domestic animal kept as a pet.

The section of the definition in dispute in this case is that which refers to the "*raising* or breeding of domestic animals, such as cattle, horses, sheep, goats, and ponies, etc." (Emphasis supplied). The City urges us to interpret "raising" as the rearing of an animal to maturity. Barnes and Swearingen offer a different interpretation of the word "raising" and argue that the term should be limited to the rearing of animals for commercial purposes. The purpose of the Zoning Ordinance prompts us to adopt the latter interpretation.

The wording of the ordinance's definition evidences that the legislative body enacting the zoning ordinance did not contemplate the use of a pig as a pet and that the intent of the ordinance is to prohibit farming in residential areas. In making this determination, we examine the ordinance as a whole, see *Moses*, supra, and its relation to the definition in dispute.

The definition specifies that "domestic animals kept for farm purposes, especially those marketable

animals" are livestock. Cattle, horses, sheep, goats, and ponies, the animals named in the definition as examples, are all animals used for farm purposes. As explained above, dogs, cats, and hamsters all fall under the definition of domestic animal. If the phrase "farm purposes" is not read to modify the word "raising" in the ordinance, then dogs, cats, and hamsters are livestock and are prohibited from residential districts in Anderson. The Code does not reconcile this dilemma by expressly designating the domestic animals excluded from the definition of livestock. We, thus, conclude the policy of the ordinance to be the exclusion of farming activities in the city.

Although Sassy is a pig, and, in ordinary experience, pigs are farm animals, the parties agree that Sassy is a pet. Swearingen does not use Sassy for farm purposes and Swearingen is not planning to breed and market the pig. The wording of the zoning ordinance illustrates that the ordinance's drafters were contemplating farm animals when they enacted the legislation, not pets. The policy behind the ordinance of preventing farming in residential districts will not be furthered by the removal of Sassy.

We note that this decision does not affect the ability of the City of Anderson to enact an ordinance forbidding the keeping of Vietnamese pot-belly pigs in residential districts. Reasonable zoning laws are a proper exercise of a government's police power. *Saurer v. Board of Zoning Appeals* (1994), Ind.App., 629 N.E.2d 893. The zoning ordinance involved in this case, however, does not apply to the facts before us.

We reverse.

KIRSCH and GARRARD, JJ. concur.

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2.02 ACCESSORY USE OR STRUCTURE

A use, building, or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal uses, building, or structure.

2.03 ADULT ENTERTAINMENT

Any establishment characterized by an emphasis on depicting or describing sexual or sexually related material, activities, or entertainment. Adult entertainment facilities may also be characterized as having material for viewing, sale, or rent, such as books, films, or slides; or live entertainment such as striptease or floor shows engaging showgirls or other similar descriptions or professions. Adult entertainment facilities are commonly known as adult book or video stores, adult motion picture theaters, adult novelty stores, striptease joints, topless bars, etc., where there is in any of the forms described above, or depictions of sexual activities involving less than completely covered human genitals, groin, buttocks, breasts, or crotch. A business is considered adult entertainment if 35 percent or more of its stock, shelf space, materials, services, or floor area is for the sale or display of, or is characterized by an emphasis on, the above-described matters.

2.04 AGRICULTURAL LABOR CAMP

A tract of land and all tents, vehicles, buildings, or other structures pertaining thereto, part of which is established, occupied, or used as living quarters for 5 or more migratory laborers engaged in agricultural activities, including related food processing. (added February 6, 2009)

2.05 ANIMAL

- A. Large: A large animal is a domesticated animal over 3 feet in height such as a horse, cow, pony and other similar animals, or smaller animals such as a llama.
- B. Small: A domesticated animal under 3 feet in height typically held as a pet, such as a cat, dog, or similar animal such as a pig or a sheep.
- C. Noncommercial domestic: Large domestic animals which are used essentially for pets, contests, riding, education or other special purpose as individual animal specimens.

2.06 AUTOMOBILE REPAIR, MAJOR

Major automobile repair includes general repair, rebuilding, or reconditioning of engines or vehicles; collision service (including body repair and frame straightening); painting or upholstering; or vehicle steam cleaning and undercoating.



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Little pigs can stay, Kalamazoo City Commission decides

By Mickey Ciokajlo | Kalamazoo Gazette

September 01, 2009, 12:17AM



Mark Bugnaski | Kalamazoo Gazette

The Kalamazoo City Commission decided Monday that Dr. Maureen Kidd can keep three miniature pigs at her home on East Maple Street.

KALAMAZOO -- Kalamazoo will keep three little pigs who live in a house on Maple Street.

In a unanimous vote accompanied by no public comment Monday, the Kalamazoo City Commission granted Dr. Maureen Kidd a special permit that will allow her three miniature pet pigs to remain at her home in the 100 block of East Maple Street.

City ordinance specifically prohibits keeping "any swine whatever" inside the city limits unless the commission grants a special permit.

Kidd's three pigs -- Lillegris, Magnolia and Miss Thing -- range in size from 80 to 130 pounds, well under the half-ton weight some farm swine can attain.

Kidd has said that 14-year-old Lillegris has been her pet since almost since the little piggy was born. The other two mini-porkers have lived with Kidd about four years.

Kidd said the pigs' food is specially formulated to eliminate strong smells.

Kidd told the Kalamazoo Gazette she would move from the city if the special permit was not approved, rather than give up her long-time pet pigs.

Comments

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Posted by [jadean](#)

September 01, 2009, 1:19AM

I remember a few years back a couple in Comstock had the same conflict with the township over their pet pot-bellied pig. Anybody remember how that turned out? It seems that if the city of Kalamazoo can make reasonable exceptions, a less urban community like Comstock should be able to do the same.

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Posted by [gold1102](#)

September 01, 2009, 7:41AM

Well I am very suprised and happy to read that she gets to keep them.

I really expected this to turn out badly for her.

I have to give credit to the City Council for some sense of compasion in this case.

I understand they may be just pigs to most people but in this case they are also her special pets.

Take care of them they are very lucky.