



**ARAPAHOE COUNTY
PLANNING COMMISSION
March 17, 2009**

Members

Arnold Hayutin
Brian Weiss
Leah Martin
Brett Larson
Paul Rosenberg
Mark Brummel
Kim Herzfeldt-Absent and Excused

OTHERS PRESENT

Jan Yeckes
Ron Hovland
Tammy King
Sherman Feher
Tom McNish
Gail Stumpo

ADOPTION OF MINUTES

There were no minutes to approve.

OPENING COMMENTS

Ron Hovland informed the Board that Kim Hertzfeldt would be leaving the hospital Thursday or Friday and would begin therapy thereafter. He said Dr. Martin is in a nursing home in Denver undergoing therapy and is improving. He said Brett Larson and Leah Martin were reappointed to the Planning Commission (PC) in February and will serve until 2012. He said the PC approved a resolution with the terms of office for the current PC members. He said there no meeting is scheduled for April 7th and the next scheduled meeting is April 21st with one case on the agenda. He said the election of officers would take place this evening. He said the Arapahoe County bylaws require the election of Planning Commissioners be done between February 1st and April 30th of each year. He said a Chair and Chair Pro Tem are selected through a nomination, a second, and a majority vote of members present for each of the offices. He said the executive secretary is nominated by the PC; planning staff is recommending Jan Yeckes, Planning Division Manager. He said the recording secretary to the PC is provided by the Clerk & Recorder's office and does not require an election.

ELECTION OF OFFICERS

Ms. Martin nominated Mr. Hayutin as the Planning Commission Chair for 2009.

Mr. Brummel nominated Mr. Rosenberg as the Planning Commission Chair for 2009.

Mr. Larson seconded both nominations.

There was a tie vote.

Mr. Hovland tossed a coin and Mr. Rosenberg won the toss for Planning Commission Chair.

The motion was made by Mr. Brummel to appoint Mr. Hayutin as Chair Pro Tem, duly seconded by Ms. Martin.

The motion passed unanimously.

The motion was made by Mr. Brummel to appoint Jan Yeckes as the executive secretary, duly seconded by Mr. Larson.

The motion passed unanimously.

Mr. Hovland said the bylaws were amended July 2001, and under the adopted bylaws, the criteria to amend the bylaws can be made by the PC and staff and considered after a minimum of two weeks during a PC meeting. He said the bylaws have been reviewed and three items must be changed. He said one is a typo and the other changes are located on page 2 of the bylaws. He said he would like to move the last sentence from the executive secretary paragraph related to keeping a custodian of PC records, down one paragraph under recording secretary since, the bylaws state that the recording secretary is the Custodian of the records. He said the second change on page 2 is under the heading of executive secretary. He would propose that the executive secretary or designee prepares and distributes the PC agendas and provides a written summary of decisions made by the PC. He said if Ms. Yeckes were not available the designee would post the information on the internet.

Mr. Hayutin asked who would appoint the designee.

Mr. Hovland said the executive secretary.

Mr. Hayutin said that information should be added to the bylaws.

Mr. Brummel suggested changing the wording to “executive secretary’s designee.”

Mr. Hovland distributed copies of the bylaws for review. He said the bylaws would be discussed on April 21st and included in the packets. He said PC staff and legal counsel would discuss the changes.

CONSENT AGENDA

There were no Consent Agenda items.

REGULAR AGENDA ITEMS

Item 1 – W09-001, Land Development Code Update definitions of Pet & Kennel/Inoperable Vehicle

Tammy King, Arapahoe County Zoning Administrator, established jurisdiction. She began the presentation with the Pets portion of the Land Development Code update. She explained that the changes are in bold and underlined and everything else is currently in the code. She said the quantity of unlimited pets in the agricultural zones has not been changed. She said pot bellied pigs has been added because the Board of Adjustment heard that case as an interpretation and viewed that pot bellied pigs, because of their breed and if under 75 lbs, were considered a pet in a residential area. She said fowl is being removed from the definition because of complaints from people in residential neighborhoods, but still remains in agricultural. She said RA 2.5 and above acre properties are allowed chickens.

Ms. King explained the addition to prohibit wild or exotic animals has come up over the course of time and was never included in the laws to say they are not a pet. She said the animals are considered exotic by all jurisdictions and an amendment to the code would prohibit exotic animals in a residential subdivision. She said poisonous animals have been an issue in apartment complexes and a length greater than three (3) feet measured from the tip of the nose to the tip of the tail is prohibited.

Mr. Rosenberg said asked if Pet Smart sells snakes that are noted as illegal in the rule.

Ms. King said until the definition is changed, it is legal to sell snakes of any size.

Mr. Hayutin wondered if a business in unincorporated Arapahoe County would be prohibited from selling exotic animals.

Ms. Martin stated that she could have an exotic animal in her home, which is an area that does not prohibit exotic animals.

Mr. Larson mentioned that a business could be run out of a home.

Mr. Rosenberg said the illegal sale of exotic animals in urbanized areas seems to be a contradiction.

Ms. King asked for clarification regarding businesses selling exotic animals.

Mr. Rosenberg said commonly sold pets would not be illegal.

Ms. Martin said it would not be legal to purchase four dogs.

Ms. King agreed.

Ms. Martin said it could legal to purchase four animals in another jurisdiction.

Mr. Rosenberg asked if Littleton, Denver, and Aurora have the same law.

Ms. King said yes.

Mr. Larson asked about a zoning law to allow Pet Smart to house fifty animals.

Ms. King said the pet stores are licensed through the state.

Tom McNish, Assistant County Attorney, stated that the regulation is meant for household pets only and business regulations are different.

Ms. King clarified that the revisions to the Pets definition are related to residential home only.

Mr. Rosenberg stated that there should be a regulation related to businesses.

Ms. King said the PC does not have jurisdiction over businesses.

Mr. Larson asked about the requirements for a farmer who raises animals on his property and also has a machine shop.

Ms. King said a state license for a kennel from the state veterinarian would be required.

Mr. Larson asked if the number of animals would be limited.

Ms. King said that would depend on the zone category. She said AE has no limit; A1 and A2 have a limit of four pets.

Mr. Larson asked about the purpose of passing the revisions to the definition.

Ms. King explained the goal is to restrict exotic animals, as required by the Division of Wildlife and other surrounding cities, such as constrictor or poisonous snakes with a length greater than three feet measured from tip to nose.

Mr. Larson clarified that the maximum allowed household pets is three.

Ms. King said the rule has been in place since 1962. She said the only response she received from the referral was the 4 Square Mile Group.

Jerry Atencio, 1776 S. Uinta Way, representing the 4 Square Mile group, said at meeting held last week there was confusion regarding the specificity of the proposed code changes with regard to pets. He said a vote was taken of those attendees and it was unanimously voted to request the PC to continue the matter until more input could be obtained from the public. He said the code changes would affect all of unincorporated Arapahoe County and none of the municipalities. He said most of unincorporated Arapahoe County is rural with some rural land in 4 Square Mile, which is multi-tenant. He said some properties sit on 1/3 of an acre with single family homes up to almost six acres. He said this proposal would impact anyone with a kennel on their property. He said some individuals live in unincorporated Arapahoe County and operate businesses out of their homes. He wondered if the addition of **not raised for commercial purposes** relates to breeding pedigree dogs and would the individual be exempt if part of the litter was sold. He did not understand why fowl was deleted from the definition. He said there is ambiguity regarding enforcement. He wondered who would measure the snakes and determine whether a resident has more than three pets. He said the revision implies three of anything, not just three dogs and it is very likely that a family could have more than three pets. He said the Land Development Code for Pets is overkill. He said the 4 Square Mile group is requesting a continuance to April 21st for more input from other residents in Arapahoe County and not to adopt the provisions as written.

Ms. King said indoor pets that never leave the house, including cats, are not counted in the number of animals allowed in a residence. She said only animals, such as dogs and cats, that roam outside are included in the number. She said fish, gerbils, and hamsters are not counted. She said the issue regarding fowl could be discussed further. She addressed the revision **not raised for commercial purposes** in the residential areas. She said zoning determines whether a kennel is allowed. She said complaints from neighbors regarding exotic animals inside a residence are investigated.

Ms. Martin asked for clarification regarding the statement, “Dogs, cats, small animals which are customarily kept in the home or on the premises.” She asked if the restrictions affect only the pets outside the home.

Ms. King said yes. She said reptiles are a different animal. She said residents are not penalized for de-clawed cats that remain in the home and are litter boxed trained.

Ms. Martin asked that the statement be clarified.

Mr. Brummel asked about the removal of fowl from the definition.

Ms. King explained that some jurisdictions are now allowing chickens in the home or on the premises. She said Planning staff has an issue in the residential areas. She said residencies on 2 ½ acres or more are not restricted to the number of chickens.

Mr. Hayutin said the code should indicate live dogs and cats because the wording could be misconstrued.

Mrs. Rosenberg asked if the code was modeled after other counties and cities.

Ms. King said yes.

Ms. King agreed with Ms. Martin to clarify definition of “inside.”

Mr. Larson asked Ms. King to clarify the definition of “in home vs outside” in the code.

Jan Yeckes agreed that more work is needed on the technicalities and language in the Pets code and could be continued to address the concerns of the neighbors.

Mr. Weiss asked if the County could specify breeds of dogs allowed in the county.

Mr. McNish said no. He said the County has an animal control resolution that addresses dogs running at large beyond what is written in the zoning regulations. He said state law prohibits a county from banning a specific breed of dog and not municipalities. He said Aurora and Denver have prohibited certain breeds. He said Arapahoe is a statutory county and must follow the legislature. He said the county is prohibited from banning specific breeds of dogs. He said the county can only limit the number of dogs.

The motion was made by Ms. Martin to continue discussion regarding Pets until the wording is revised, to April 21, 2009, duly seconded by Mr. Rosenberg.

The motion passed unanimously.

Tammy King continued the discussion regarding Inoperable Vehicle. She said the words in bold and underlined are being added. She said the word “tags” is being changed to “license plates.” She said the words “vehicles reside” is changed to “are stored.” She said vehicles that are not operable or currently plated must be stored in an accessory structure or attached garage, adding the caveat of “fully enclosed”, and not a make shift carport. She distributed pictures of scenarios of parked inoperable vehicles from Sheridan, 4 Square Mile Area, and Smoky Ridge. She distributed a copy of a matrix of what other jurisdictions currently have in their code.

Ms. King said “weed free surface” in the definition was very important to the PC because the code does not prohibit parking on a grass area. She said some residential areas in the County have a combination of zoning and staff is not insisting that parking must be on a concrete or paved area. She said “weed free” means mowed and not growing up and around the parked vehicle. She said the vehicles must be registered

to the resident at the address where the vehicles are stored. She said people store boats and motor homes for others on their property that are licensed and plated and the possibility of a business used for farming or ranching has been added and is exempt from this requirement.

Mr. Brummel disagreed with the last statement. He said he is aware of places where collectors have accumulated vehicles that are inoperable and an eyesore for the neighbors.

Ms. King said vehicles used for farming or ranching are not require a license plate and could be difficult to remove.

Mr. Brummel said a vehicle that has not been run in three years should be discarded.

Ms. King asked if Mr. Brummel was referring to farm equipment.

Mr. Brummel said yes. He said there is a fine line defining "junk".

Ms. King said staff's definition is operable and current license plate.

Ms. Martin gave an example of someone in Strasburg who collects tractors that look nice and do not run.

Ms. King clarified that vehicles used for farming or ranching are exempt because those vehicles never leave the property.

Mr. Brummel said those vehicles are operable.

Ms. King agreed and added that those vehicles are not required to be licensed.

Mr. Weiss asked if a trailer pulled behind a vehicle requires a license plate.

Ms. King said yes.

Jerry Atencio, 1776 S. Uinta Way, representing the 4 Square Mile Group, said the entire provision has caused the 4 Square Mile Group much consternation. He said a trailer is not a vehicle with an engine and if it is licensed and parked is that considered storage, if is to be used at some point. He asked what the time frame for a citation would be under this provision. He said this provision would dis-storage the vehicles. He recalled Ms. King stating that one set of rules would apply to private property owners who are not leasing their space for storage of vehicles. He wondered if this provision would prohibit an owner of acreage where there is no residence to store vehicles that he does not own. He said some property owners have multiple lots with a residence at one address and open space adjacent for storing with a separate address. He said the definition is ambiguous and creates more problems with enforcement than it solves. He said he appreciates what the County is doing to address the issue, but is not in favor of the provision. He said the 4 Square Mile Group is asking for continuance because of ambiguity. He said it affects more than multi-family homes; it affects properties that are not farms. He said people may not farm their property, but live on the acreage and the definition covers anybody. He said he could have acreage in eastern Arapahoe County and not be a farmer or rancher. He said if he chooses to store vehicles for a relative or a friend this definition would prohibit that choice. He said it appears to be overkill of government enforcement and intrusion on the use of property rights. He said the current definition does not lend itself to enforcement given the diversity of property owners in unincorporated Arapahoe County. He asked for a continuance to obtain more input from 4 Square Mile and other people in unincorporated Arapahoe County who live on large tracts of land that might have the combines or the junk that needs to be cleaned up. He said the definition does not refer to that either. He asked that this portion be continued to April 21, 2009, and if not, the 4 Square Mile Group strongly objects to the language as written because it creates ambiguity.

Mr. Weiss asked if Mr. Attencio had suggestions to wording. He said the pictures that were distributed definitely show there is a problem.

Mr. Attencio agreed there is a problem. He said he has not crafted language in the definition to be more precise. He said when a governmental body creates a law, people must be put on notice as to what is being enforced, be precise, and try to limit the ambiguity in the regulatory provisions that being promulgated. He said the language requires some work.

Mr. Larson asked if Mr. Attencio had some suggestions.

Mr. Attencio said no.

Mr. Larson said the issue has been ongoing for a year.

Mr. Attencio said he was not aware of that.

Mr. Larson said there has been sufficient time to bring up the issues.

Mr. Attencio said he did not come prepared with language this evening. He said he has raised some examples of where there is ambiguity. He said there are problems in Arapahoe County and 4 Square Mile, but when a governmental body changes the rules it must do so with all the citizens in mind.

Mr. Hayutin asked if Mr. Attencio would be willing to work with Ms. King.

Mr. Attencio said he would be willing to work with Ms. King and the County Attorney.

Mr. Larson asked Mr. Attencio to elaborate his objections to the definition.

Mr. Attencio gave an example. He said a neighbor, John Smith, has three lots and resides on one. The lot behind his home has a different address where inoperable vehicles are stored and the third lot has a different address.

Mr. Larson said the definition says residential and the example as stated reflects two different scenarios.

Mr. Attencio said the three lots are considered residential although two of the lots not have residences on them.

Ms. Martin said the definition states, "No inoperable vehicles shall be allowed within any zone district that allows a residence as a principal permitted use or any property that has a residence."

Mr. Larson said he would no want to see a junk car on an empty lot next to his residence.

Ms. King clarified that a house on a lot with inoperable vehicles would still be a problem as the code currently reads. She said staff would work with someone if they had vehicles on a vacant piece of property that were operable and licensed and they lived next door.

Mr. Attencio said staff is creating a law and the entire enforcement scheme could change, but the law would be on the books. He read "all vehicles must be registered to the resident at the address where the vehicles reside." He said his neighbor has vehicles that he co-owns with others that may not be registered to him. He said they are stored on five acres and not unsightly. He said it is a boat and a trailer. He said another neighbor stores RV's, which either belong to him or his son. The vehicles are used and he is not aware if they are licensed to the resident or his son who lives in Durango. He said it is overkill and the way the definition is written Mr. Smith could not use the trailer if it is not licensed to him and park it there.

Mr. Larson said Mr. Atencio would like to recommend instead of “residents at that address” to “owners of that said property.”

Mr. Atencio said no. He said Mr. Smith’s son may own the trailer and lives in Durango and he understood Ms. King to say if a vehicle is being stored for someone it would not be permitted because that person is not the resident. He said if he lived at Whisper Sky and stored a vehicle in a parking space he understands that would be a different problem. He said this involves property that can be up to 20 acres or as he understands, there is not a restriction on the size of the property. He said the regulation is too broad. He said he appreciates that the PC has been wrestling with this for over a year. He said it is not an easy nut to crack if a solution has not been determined. He said this current regulation change is not a solution and he would be happy to work with Arapahoe County. He agreed that jurisdiction has been established, but how many people in Strasburg get the Villager or the other newspaper. He said there must be more public input because property rights are affected.

Mr. Rosenberg said a Public Hearing was held last summer and the room was full. He said many people spoke and were opposed to the regulation at that time and things have changed since that time.

Mr. Larson said common sense would prevail if someone owns three properties and stores vehicles on that property that are not registered to that specific address.

Mr. Atencio said he would hope so, but that does is not always that case.

Mr. Hayutin asked where the regulation was modeled from.

Ms. King said from the different jurisdictions as shown on the matrix that was distributed. She said the current code says that vehicles that are unlicensed or inoperable are prohibited. She said that is not being changed, only clarification of some of the wording. She clarified that if the vehicles are inside a structure, there is no problem. She said she would be happy to work with Mr. Atencio on the wording.

Mr. Hayutin suggested postponing until April 21, 2009 and that Ms. King work with Mr. Atencio.

Ms. King asked for input from the PC.

Mr. Atencio agreed.

Mr. Rosenberg said he is prepared to vote for the Inoperable Vehicle regulation, but the Pet regulation still need some work.

Ms. King said it may just be semantics and a few words moved around.

Mr. Weiss said discretionary enforcement aside, his understanding is that he could not have his sister visit him for a week and park her car in front of his residence if it is not registered to the property owner.

Ms. King said residency is 30 days and that would not be a problem.

Mr. Larson commented on business vehicles parked in front of residences that are not registered to the address.

Rashell Cohen, 1849 S. Xenia Ct., reiterated Mr. Atencio’s comments that there was concern among the neighbors at the meeting. She discussed a neighbor with a racecar parked on his property. She said the language is very important and needs to be spelled out before the regulation moves forward. She said parking of operable vehicles can also be a problem in some instances.

Mr. Atencio said he would like to meet with Ms. King before the next 4 Square Mile meeting in order to present new language to the residents. He said he hopes that there will be consensus among the neighbors regarding the language.

Ms. King agreed to work with Mr. Atencio.

The motion was made by Mr. Rosenberg to continue the discussion regarding Inoperable Vehicle issue until the wording is revised, to April 21, 2009, duly seconded by Mr. Weiss.

The motion passed unanimously.

Adjourned at 7:35 p.m.

Arnold Hayutin, Chair

**Gail Stumpo
Recording Secretary**