

**MINUTES OF A JOINT WORK SESSION
OF THE AVON LAKE
PLANNING COMMISSION, CITY COUNCIL and ZONING BOARD
JUNE 7, 2011**

Call to Order

Planning Commission chairman Mr. Fell called the Joint Work Session of the Avon Lake Planning Commission, City Council and Zoning Board of Appeals to order at 7:00 p.m. in Council Chambers of City Hall, June 7, 2011.

Roll Call

Planning Commission Members, Mr. Fell, Mrs. Fenderbosch, Mr. Knilans, Mr. Sherban, Mr. Simonovich, Mayor Zuber, Director of Law Kerner, Engineering Manager Reitz.

Zoning Board Members, Mr. Davis, Mr. Hamister, Mr. Maloney, Zoning Administrator Booher and Assistant Law Director Graves.

City Council Members, Mr. Zilka and Mr. Rush.

Meeting Business

Mr. Fell thanked everyone for coming. The idea of this Work Session is an informal exchange of ideas between the City, Planning Commission and the Zoning Board concerning possible code revisions. Nothing will be formally decided or voted upon today. Planning Commission, City Council or Zoning Board cannot be bound by any aspect of these concept plan reviews.

CASE NO. JWS 11-01

1240.06 FENCES

Mr. Fell commented that this issue has been discussed at Planning Commission and was sent to City Council for approval. City Council had some issues on the wildlife fencing and sent this code section back to Planning Commission to look at the code section again. At that time it was discussed that City Council and Zoning Board should be present at the meeting so all commissions were together to discuss the changes to that code section.

Mayor Zuber asked that the wildlife section or any section that needs to be discussed should be taken out of the revisions for now and let the rest of the code section that had no comments go through. We have residents that are waiting for fences and it would be best to put through the sections that did not have a problem and let them get approved while we work on the wildlife sections.

Mr. Fell opened the floor to any members that had comments.

Mrs. Fenderbosch stated that City Council had some concerns on the wildlife fences, but thought the rest of the code looked ok and should go thru and be approved. Mr. Bucci is out of town today and could not make the meeting, but has allowed me to speak on his behalf. Mr. Bucci would like to see the invisible dog fence requirements looked at and added to this code section.

Mr. Davis stated that he would like decorative walls to be included in the fence code. Decorative walls can be considered fences when put up in sections. Mr. Davis also suggested that 1240.06(d)(8) the word “total” be added to (8)(a) line three “height limit, provided that the total portion of the fence is greater than three feet in height”.

Mr. Zilka stated that City Council only had concerns about the wildlife fences. The concerns that were discussed were the area where the fences could be placed, whether they are permanent or seasonal and the size area and color of fencing.

Mrs. Booher stated that the problems with the temporary fencing vs. permanent wildlife/garden fencing are that I hear the other side of the complaints. There are people who do not want to look at an 8 foot fence around a garden year long or at all. The other complaints or problems that I have is what if a person builds this 8 foot fence around an area and sticks one tomato plant in it and calls it a garden, or what if the person moves and has this big fenced area that was a garden, but now isn't a garden. I would like to see provisions than in the code for removal.

Mrs. Fenderbosch said that she had heard from the garden club people and there are plants that winter over. The temporary vs. permanent for people who garden all year long and also rear yard vs. side yard, if a person only gets sun in the side yard and not in the rear yard. It seemed to be accepted that the dark mesh fencing was acceptable vs. the orange or metal fencing. We have a gentleman here tonight that was at the City Council meetings that has a side yard garden.

John Balarini, 23206 Gable Lane stated that we had put in a garden a couple years ago and had to make it a permanent structure because of the deer. I understand where people have gardens that are not nice to look at, but we have solid posts that were put into the ground that could be removed if we moved. Mr. Balarini showed pictures of the garden that is in his yard. We had gotten permission from our neighbors and did things the right way.

Mrs. Spring asked Mrs. Booher if permits are required for this type of garden fencing? And if so, how many permits do you think you write in a year.

Mrs. Booher stated that any fencing in a yard requires a permit, the temporary/garden style included. I have not written any permits for these types of fences. People just put them up generally.

Mr. Fell asked Mrs. Booher about the complaints that she hears. Are the complaints more about the style or location of the fence/gardens.

Mrs. Booher stated that location and styles of fencing are the biggest complaints. Mrs. Booher showed photos of gardens/fences that have been complained about. I have done some research on these types of fencing, but most cities do not cover this in their codes. The cities that do cover the fencing all require the fencing to be in a rear yard and cannot be seen from a public or private street. Materials are mandated by Ohio Division of Wildlife in most cities that cover wildlife fencing.

Mr. Fell stated that it seems that the issues we need to deal with, side yard vs. rear yard and temporary vs. permanent fencing.

Mrs. Booher stated that her neighbor has a permitted, five foot tall fence around her garden. We have deer all throughout our yard and neighborhood and she has never had a problem keeping the deer out of the fencing. I know the deer can hop the fence, but it has never been an issue. I also am concerned about how close these gardens can be installed to a property line.

Mrs. Fenderbosch said that with the deer research investigative group that is with the Environmental Advisory Board we have been working with the Ohio Department of Natural Resources and also the Cleveland Department of Natural History and they have tapped us into other natural park areas other than just in our local area and they are saying that deer can jump a 12 foot fence. I know we don't want it to go up to twelve feet, but I happen to live close to Mr. Balarini and we saw 8 deer ganged up together banging on their fence and pulled the fence and ate their garden before it was a permanent fence.

Mrs. Fenderbosch also wanted to discuss the issues of public notice of Planning Commission agendas and making the residents more aware of what is on the pc agendas before the items are being heard at City Council. This may push back our schedules or the agenda process, but this might help items go through Council easier because more people are aware.

Mrs. Spring stated that we already give the residents plenty of notice of pc agendas. The agendas are on line, available on our website, available in our office and we do have a mailing list that you can join and have the information available to anyone that is interested. Our applicants are already upset about the wait time it takes to get on an agenda and meeting our guidelines. You will always have controversial cases that will bring people to City Council and making our application process I don't think is the answer.

Mr. Fell stated that he thought this would be too difficult. We will come back to this discussion later after we finish the discussion we were having about the wildlife fencing.

Mr. Simonovich asked if Mrs. Booher had checked with the City of Solon about the deer issues and fencing. The City of Solon has been very vocal about the deer issues in their city.

Mrs. Booher stated that she had not done enough research on the issues, but she will check the City of Solon.

Mr. Reitz stated that the one case where the Zoning Board did approve of a fence that was above 6 foot by code, can we ask what the conditions were that the board allowed this fence. Zoning Board is always an option for anyone. The code now is 4 ft high in the side and 6 ft in the rear yard.

Mr. Davis stated that the property was Armour Road and the back yard abutted our new park, it was a corner lot and the street was abandoned when the park came in. The garden was in the back corner of the property, had the park not been converted to the Metro Parks, we would not have been inclined to approve this fence.

Mr. Hamister stated that it also was not visible to the street and there was also a deer enclosure on the property next door in the park. All the neighbors were in favor as well.

Mr. Fell asked opinions on the permanent fencing.

Law Director Kerner stated that this is a work session. The way this all came about is that the Zoning Administrator Mrs. Booher made some suggestion to the code to make it more enforceable, fencing was part of it, along the way as she put together materials other things got into it maybe, it went to Council, Council found parts of it objectionable and I think we took care of that tonight with the Mayors suggestion to remove the parts that were objectionable. The purpose was that Council wanted to let Planning Commission know that we don't condemn the entire code, just parts of it and wanted to talk about it, now we have four minutes left in this work session, I think that this wildlife fencing is going to be very divisive in the community because there are going to be lots of people that don't want fences in their side yards and so forth and it is going to take a lot to work through that. I think what this work session should accomplish is to just give Mrs. Booher some guidance that she can go back and get the workable part of this fencing ordinance in form to be represented to Planning Commission and Council and then put the other parts of the wildlife fencing in a different track.

Mr. Sherban asked if just the wildlife fencing is the only part of the code that is being stricken or the entire section 7 being taken out and reworked.

Mrs. Fenderbosch stated that the only section that was an issue was letter C of section 7. I think the other areas of that section should be left in and go forward. The construction fence should go through as this is a construction time of year.

Mr. Reitz stated that OSHAA requires construction fencing when you have open excavation. It has not been an issue that I know of.

Mrs. Booher asked if OSHAA requirements pertain to residential or only construction sites.

Mr. Reitz stated that the requirements are whenever a contractor is doing work, but if it is a resident doing their own work then it would not apply.

Mr. Rush stated that the 200 feet on the wildlife fence issue was an arbitrary number, but I think that it should maybe be a percentage would work better. That way if a person had a bigger lot the allowable area could be bigger, is they had a smaller lot than the allowable area would be smaller.

Mr. Hamister stated that he liked the way the code read, as Mrs. Booher the Zoning Administrator had written it. If it is that important that a resident would want something different that what the code requires my suggestion would be that they come before the Zoning Board for changes. I also think that if a garden or structure would be allowed in a side yard and is viewable to a street or other residents, than it should be screened somehow.

Assistant Law Director Graves stated that he would caution about passing legislation that is designed to address a circumstance that is few and far between. I don't know how many applications for side yard gardens we have, but as Mr. Reitz pointed out there is an avenue available right now if someone wants to put a garden in and wants to put around it in a side yard and that is the Zoning Board of Appeals and seek a variance. If you are having a deer problem with a garden and can show practical difficulties, than we could look at allowing that. If these are few and far between cases, then I don't know that legislation is the necessary. I know we are not talking about this now, but in regard to electronic dog fences, we have a law in the books that covers dogs at large and if a dog is going to break a electronic fence then it doesn't make a difference if it is in a front yard or back yard, so I would caution this as well. Let's enforce the laws that are already in place.

Mrs. Spring stated that if these cases that are few and far between would have to go before Zoning Board then the neighbors would then have to be notified and would have the opportunity to oppose or agree with the fences.

Mr. Sherban stated that he agreed with the Mr. Graves about the electronic fence issues. The wires may be at the sidewalk but the actual zone is about two feet before the wire. The dogs would then actually be stopping short of reaching the sidewalk. If the dog is going to break thru, it will break thru regardless of where you put the wire, and that is not an issue of Planning Commission, Zoning Board or City Council, that is a dog owner responsibility. There are laws in the books to control your dog.

Mr. Hamister agreed with Mr. Graves and with Mr. Sherban. The rules are actually that the wires not to be in the right-of-way and must be at least one foot behind the sidewalk. The warning for the dogs starts to go off five feet from the wire which would give a dog six feet from the side walk. And I would say that if a dog is in a front yard and fenced in by invisible fence and you walk by and are frightened then get a life.

Mrs. Booher stated that there are no permits required for invisible fences and are low voltage underground with no inspections involved. This would be almost impossible to enforce.

Mrs. Fenderbosch stated that Mr. Bucci who brought this point to us about the fence stated that

as he was campaigning for elected position he would walk up to the front door he would then be walking past where the dog would be and a dog would be able to come from the back yard to the front with no protection and he and the dog would feel threatened.

Mrs. Fenderbosch also made a comment about the 200 ft minimum of allowable garden area in the new fence code. There are residents in Ward 3 and Ward 4 that have property, think of two lots, one behind the other, almost like an alley between and the home owner on the property that would be facing the street owns the lot behind, so for years and years and years and generations that their families have lived in that home they would garden the entire lot. They are objecting to the 200 sq ft. maximum per lot.

Mr. Sherban stated, back to the dog fence issue. Mr. Bucci entered the dog's space that is not the dogs problem, that is his problem and he went in the yard at his own risk. That is not something that we should regulate. It is no different than if the homeowner had a gate and he walked thru the gate.

Mr. Fell asked if most people leave signs up that show there is an electronic fence in the yard?

Mr. Sherban stated that the manufacture always wants the signs to be left up because it is advertising but most homeowners let you know if there is one in the yard.

Mrs. Booher stated that if the sign just indicates that there is a fence then the sign is within code. If the sign indicates the company, then the signs are not within code.

Mr. Rush stated that maybe we need to mandate in our code that there must be a sign if you have an electronic animal fence. That way you know you are entering at your own risk if you cross the fence.

Mr. Maloney stated that he would like to move back to the wildlife fence issue for a moment. First, we are not talking about just deer. We are talking chipmunks, rabbits, possum, raccoons etc. I would like to see a deer that could jump a twelve foot fence. Most deer's that are confronted with a four or five foot fence will evaluate whether it can take a running leap into the plot, and is there enough room inside the plot for it to get back out. When you look at Bradley Road, Detroit Road, Center Ridge where these people have these truck farms and have stands out there where they sell produce, they don't have fences around there truck farms. They are able to grow and sell crops without a massive amount of interference. What I am leading up to is if there is exceptional circumstances where someone desperately wants a fence, then let them bring it to the Zoning Board and let us evaluate whether that will be intrusive to neighbors or community at large etc and rule on it accordingly. I know that if I have a house and I have family room in the back and a shallow lot and the lot behind me is shallow, when my neighbor puts up a 20 foot long 10 foot wide chicken wire fence, I am not going to be happy about that.

Law Director Kerner stated that he would like to just make a clarification. At the onsite of this discussion I think we were just going to look at eliminating the wildlife section, the Mr. Zilka

brought up eliminating all of section 7 which is the temporary fencing, then Mrs. Fenderbosch said it is just the wildlife fencing only, is it the sense that we can leave everything in but the wildlife fencing when Mrs. Booher comes back with the fence code?

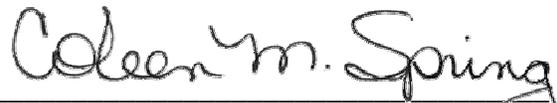
Mr. Fell stated that everyone was in agreement with just taking the wildlife fencing portion out and letting the rest go through.

Mrs. Booher will get the fence code ready for submission for the next meeting and will work on getting the wildlife portion ready for a meeting in the near future.

ADJOURNMENT

Mr. Fell adjourned the work session meeting at 7:44 p.m.

Gary Fell
Planning Commission Chair



Coleen Spring
Planning Commission Secretary