

**BOROUGH OF WEST READING
PLANNING COMMISSION
JANUARY 4, 2023**

The West Reading Planning Commission met for their regular meeting on Wednesday, January 4, 2023, at 6:00 p.m. at Borough Hall with the following persons present: Chair Mr. Wert; Vice-Chair Christopher Lincoln (via zoom); Members Jennifer Bressler, Daniel Horman, Cody Rhoads, Mariella Napoli, Kacie Rodriguez, and; Zoning Officer Cathy Hoffman; Assistant Zoning Officer Chad Moyer.

Visitors Mike Rohrer, SDE
 Colin Macfarlane, Kozloff Stoudt
 Sgt. Hayden Carroll

Mr. Wert called the meeting to order at 6:02 p.m.

Public Comment

There was no public comment.

Approval of Minutes

Motion to approve the November 2, 2022 minutes. **Moved** by Ms. Bressler and seconded by Mr. Horman. **Motion carried.**

New Business

- **Code Red/Code Blue for Animals** – Mr. Murray indicated that a representative from the ARL has been asked to attend the meeting to provide information regarding the ARL and Code Red/Code Blue. Mr. Wert noted that due to changes in State legislation, Code Red/Blue is now State-wide, however for the ARL to enforce this, the Borough’s regulations will need to be amended to reflect the necessary language, similar to the City of Reading’s regulations. Commission members were asked to review section 141-207 for further review at the next meeting. It was suggested that the language not refer to the ARL, but be more generic and not tied to a specific contract.

Mr. Wert noted that the ARL has state certified state humane officers to answer questions of neglect/abuse, which is different from an animal control officer as noted in the City’s ordinance. The difference between the two designations was unknown therefore it was unclear who would enforce a Borough ordinance.

Sgt. Hayden Carroll, Humane Society Police Officer with the ARL arrived at 6:15 and Mr. Wert explained to him the Borough’s interest in participating in the Code Red/Code Blue program, similar to what the city does. Sgt. Carroll spoke about ‘authority for removal’ of an animal and said that in the city there are multiple ordinances that can result in the removal of an animal; Code Red/Blue being one that results in the immediate removal of the animal. They spoke about the potential legalities when they see an animal in distress but are not able to reach it without going through the house because there is no access from the rear. A warrant would be required to enter the house whereas in situations when there is access from the alley there is an understanding that the city owns the alley, zoning owns the fence which provides them the ability to assess the animal legally. Mr. Macfarlane noted that animals are considered personal property and the law says that you can’t remove personal property without due process but was

unsure how this would work with animal neglect. Sgt. Carroll indicated that if they were acting as a humane officer, they would still follow normal protocol and obtain a warrant but under Code Red/Code Blue the animal is held for up to 72 hours after the expiration of the Code Red/Code Blue. The animal can then be returned to the owner. Code Red/Code Blue provides immediate recourse for the removal of animals in specific circumstances that comes with a fine that will go to a court of law, but it also gives them probable cause to enter the property and observe, as a sworn officer, with additional charges that go hand-in-hand with animal neglect and cruelty. He was asked if they patrol during Code Red/Code Blue and Sgt. Carroll said that they do if time permits and noted that it is the Code Red situations that are of most concern because that can kill an animal very quickly. During Code Blue, if an animal is left outside, a visual and physical inspection can be done of the paws, pads, underbelly, coat, and gums if the animal comes to the fence. Touching the animal can determine how long it has been outside. They will take all of this into consideration when having a discussion with the owner. In Reading, they must remove the animal if there is no one home, but if they see signs that there is a bigger problem, it ceases to be a Code Blue situation and turns into a misdemeanor or felony animal cruelty investigation because it is a violation of animal cruelty laws. Mr. Moyer indicated that from a Code Department standpoint, contact with the owner would be attempted to remediate the problem. Sgt. Carroll indicated that contact is important because when a case comes before a judge, they will want to know if someone was home, if contact was attempted, etc. If a Borough Codes officer sees something of concern, a report can be made to the ARL and an animal control officer will respond and do a welfare check.

Ms. Bressler asked if Code Red can apply to animals in vehicles and Sgt. Carroll indicated that the language in the ordinance would have to be less specific to include an animal in a vehicle however if the Animal Officer can't access the animal without causing damage to the property, it would be a problem. They spoke about writing an ordinance and said that the City's document is a good place to start. They cautioned about having the language too specific, i.e., using 'dog' instead of 'animal' so that cats can be included and noted that broadness brings the ability for discretion.

Sgt. Carroll also spoke about dangerous dogs and the incident that had happened in the Borough a couple of years ago. They said that some things have changed for animal control officers. They noted that in previous jobs in other counties, the District Attorney wouldn't let animal control officers enforce dangerous dog situations and that the Dog Warden must take care of these issues however in speaking with the Berks County District Attorney's office and the supervisor of Berks for the Department of Agriculture, they think differently and have allowed citing, particularly in situations such as the Borough's specific incident. As a result, anything pertaining to a dangerous dog, confinement, dog bite, death of an animal by a dog, can be handled by the Animal Control officers for both investigation and enforcement. With dangerous dogs, they are required to inform the Department of Agriculture for regulation purposes and the West Reading Police Department in case they receive requests for information. Then it is at the discretion of the courts to proceed from there. Mr. Wert noted that with regard to the recent incident, residents had questions as to why the case was handled the way it was. Sgt. Carroll said they are happy to explain should anyone have questions about the process. They noted that in these situations, immediate removal of the animal doesn't always happen because although the judge has the right to make that determination, it's not an automatic factor in a first incident with the animal. They noted that they and the officers in his department have a lot of experience citing,

prosecuting, and ensuring that everything is properly documented. Sgt. Carroll departed the meeting at 6:40 p.m.

- **Rental Occupancy Ordinance** – Attorney Colin Macfarlane from Kozloff Stoult was on hand to discuss his previous memos regarding the proposed rental occupancy ordinance. Mr. Wert said that in previous discussions, the Commission had found difficulty with the revocation of the rental permit from the landlord if there were repeated disruptive conduct incidents from the tenant. Mr. Macfarlane said they initially took issue with the statute as drafted because it gave the Borough authorization to evict the tenant, which conflicts with state law. They suggested instead that it becomes a loss of a privilege by revoking the permit and treating it just like any other zoning violation; a notice of violation is sent but possibly you don't act on the first notice but if it becomes a consistent issue over a period of months with additional notices which forces the Borough to take additional action.

The justification is that the landlord has a responsibility to the community to ensure that the tenants they obtain for their property are responsible individuals and they have a duty to ensure that those people aren't engaging in any disruptive conduct but if they do, they must evict that person, or they will lose their rental occupancy permit. If someone consistently engaging in disruptive conduct, even if there isn't language in the lease prohibiting such, it's still a violation of the law. It was noted that permits are issued per parcel, so if one property has two apartments and only one tenant is creating the disruptive conduct, how does it affect the inhabitants of the second unit who may have reported the disruption. The possibility of issuing permits per unit was discussed and it was noted that it would become cost prohibitive and work intensive to do so for properties such as the Lofts at Narrow which has 99 units.

Discussion ensued regarding how the revocation of the permit would impact the landlord given that the tenants would not be forced to vacate the property; condemnation couldn't occur due to the situation not being health or safety related. It would appear that the only way to enforce would be to charge the fine on a daily basis per the Rental Ordinance depending on the situation. This should be sufficient leverage to attain compliance.

It was noted that existing nuisances are dealt with through the Police Department, given that Code Enforcement is rarely notified of these situations. However, monthly reports are now being provided to Codes by the Police Department which should assist in identifying problem rentals. As well, it was noted that landlords may not be aware of issues with tenants and that in the majority of cases, when notified, landlords do take the necessary steps to resolve the issue.

The appeal process that is outlined in the ordinance is also an option for rental property issues. It was unclear whether the Housing Review Board duties had been turned over to Council given the significance of that board.

Mr. Moyer felt that the language suggested by Mr. Macfarlane would work for what we are trying to achieve. However, Mr. Macfarlane felt there was still a potential problem if

the District Justice didn't grant the eviction which would then require the Borough to restore the permit but would create a small risk of liability for the Borough. He added that he doubts that the District Justice would not act in a situation where there are several notices of violation for disruptive conduct at a given property.

Mr. Moyer also asked about the information requested on the current 'Tenant Listing' and Mr. Macfarlane felt that it was acceptable and noted that his concern had been with the potential 'registry' of disruptive conduct offenders. Regarding inspections under 355-11 (i), Mr. Moyer asked if extending the inspection period from two to four years is appropriate if the landlord has had two consecutive no-violation inspections. Mr. Macfarlane agreed that this would not be appropriate given that the Supreme Court has determined that if a code official has been operating with an indiscriminate rental inspection schedule, it creates a basis for probable cause for the inspection. But, if you deviate from that and change the schedule based on circumstances, the action will appear to be biased.

Mr. Moyer also asked about the landlord being responsible for obtaining consent from the tenant to do the inspection and provided an example where the landlord meets the inspector at the property, but the tenant is not at home to provide consent. Having the landlord be responsible for obtaining consent was proposed however Mr. Macfarlane said that it would be best to have consent from both parties. Therefore, the ordinance should reference mandated notification from the landlord to the tenant however the landlord would be responsible for this.

It was decided that once these changes are incorporated, they should be reviewed again by the Commission prior to being sent to Council. When the minutes are ready, they will be sent to the Commission and to Mr. Macfarlane.

- **Banner/Sign Program** – Mr. Wert said that our new Recreation Director is looking for some alternate funding ideas and has suggested placing advertising signs on the fence surrounding the pool during pool season only. To allow this, the zoning ordinance would have to be amended to permit this type of sign. Mr. Macfarlane recommended caution. He said that the fencing in a public park would be considered a public forum which means that you can't have content-based regulations, i.e., if one type of sign can be allowed, then all signs must be allowed. He explained that in the first amendment (free speech) law, there are three types of forums.
 - a. Public forums such as sidewalks, parks, streets which will only allow content neutral regulations.
 - b. Non-public forums such as courthouses, schools where content based is allowed.
 - c. Designated public forums such as municipalities that allow advertising in a subway or at a school baseball field (while it is public property, it is always designated for a specific use and not available to the public).

Given that the pool is in a public park, all forms of advertising would have to be permitted, which could end up being an issue if the content was objectionable. The types of signs seen at school baseball fields can be controlled because the school is not a public forum. A private pool would

also not be considered a public forum and could advertise as they wish but the Borough's pool is not private. Many potential options were suggested but, in all scenarios, the fact that Borough property is public opens it up to every type of advertising without discrimination. Mr. Macfarlane recommended caution before moving forward but some members felt that it would be good to discuss it again at the next meeting in hopes that alternative options could be found. Mr. Murray said they would ask other municipalities to see how they have handled this situation.

- **Political Sign Review** – Mr. Macfarlane was asked to attend the next meeting for this discussion however he anticipated a conflict for the February 1st Planning meeting. It was suggested that this discussion occur instead at the second council meeting scheduled for January 24th when Mr. Macfarlane is available. Mr. Murray will obtain authorization from Borough Council for the discussion at that meeting and Commission members will be invited to attend. If an amendment to the Zoning ordinance is recommended, the Planning Commission can provide a formal recommendation, if required, at the February meeting.

Adjournment

A motion was made to adjourn the meeting at 8:21 p.m. by Ms. Rodriguez and seconded by Mr. Rhoads. **Motion carried.**

Respectfully submitted,

Cathy Hoffman
Zoning Officer