



**ANIMAL CONTROL BOARD MEETING**

**JUNE 13, 2018**

**AGENDA**

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES FROM MARCH 14, 2018

REVIEW MEETING WITH ZONING DIRECTOR (CATHY DRIGGERS)

UPDATE ON THE SPAY & NEUTER PROGRAMS (SERGIO PACHECO)

FURTHER DISCUSSION ON THE DOG TIE-OUTS

NEW BUSINESS

PUBLIC PARTICIPATION

SET DATE & TIME FOR NEXT MEETING

ADJOURN

VOLUSIA COUNTY ANIMAL CONTROL  
ADVISORY BOARD MEETING  
JUNE 13, 2018

PRESENT:

KAREN K. CLARK  
DR. PAUL REHME  
JESSICA RODRIGUEZ  
JUDY MALONE  
ROBERT BAIRD  
DIANE FERGUSON  
ALEXANDER PENALTA

SERGIO PACHECO, VCAS DIRECTOR  
MICHAEL RODRIGUEZ, VC ASST. COUNTY ATTORNEY  
DEE FERGUSON, VCAS FIELD SUPERVISOR  
SHARI WILLIAMS, VCAS OFFICE MANAGER

The meeting was called to order. Pat Mihalic, Cathy Driggers, Jeannine Colletti and Nicholas Mongello are absent.

Karen Clark calls for approval of the minutes of the March 14, 2018 meeting.

Ms. Malone makes a motion to approve the minutes as submitted.

Mrs. Ferguson seconds the motion.

The motion is carried

Ms. Clark: Unfortunately Cathy isn't here and this was her project, regarding having so many animals in a home.

Mr. Pacheco: We met with Zoning and Mr. Rodriguez along with the Zoning County Attorney. We tried to explain what Cathy wanted. She wanted Animal Control to take over the Hobby Breeder's part of the Zoning Ordinance. We would go over and check on how many animals residents were zoned for. Mr. Rodriguez had a lot of information.

Mr. Rodriguez: Part of my duties in the County Attorney's office is handling zoning development issues. I'm also technically this Board's counsel. I am your counsel. As for the issue with Hobby Breeders we try to clarify what was being requested. Was it a question of moving Hobby Breeders from Zoning or who's responsible for determining the uses or number of animals? As it's presently drafted, what the Zoning code provides is simply where is Hobby Breeding allowed as a permitted use? Basically if a use is not listed as permitted, it's not permitted. You cannot do it on that site. So in order for you to have a permitted use it has to be specifically listed. We went over the Zoning code and provided what Zoning districts Hobby Breeders are currently permitted by right. Which means you have a right to get use on that zoned property, go forward and go ahead and have your use. From a Zoning aspect, all it does is say where in the County you can be a Hobby Breeder. Zoning does not necessarily regulate once you have that use, how that use is done. So, from a Zoning perspective the only thing that needs to be seen is, I have a Hobby Breeder, they're operating at this

address, what's the Zoning classification for this address, is Hobby Breeder permitted or not? Period. That's the extent of the Zoning analysis. What are the regulations for Hobby Breeding are not located in the Zoning Code. Those are in Chapter 14 of the code, which is the Animal Control provision of the code. So Animal Control has jurisdiction over how Hobby Breeders are to operate. Zoning simply has control over where they operate. If we have a Hobby Breeder having their operations at their property that is not zoned for Hobby Breeding, it's not Animal Control that does the enforcement. It's the code enforcement division. They can be a Hobby Breeder and be compliant with every single requirement of the Hobby Breeder code but that's not Code Enforcement's call. Code Enforcement only examines one thing, are you permitted to be on this site? If you're not, you're in violation and you move forward. So that's the distinction between zoning and Animal Control in regards to Hobby Breeding as it's currently listed. So there's no need to have the Animal Control division going in and checking if whether or not it's permitted. They could, as I said, it's a simple process. Here's the property, what's the zoning classification? Under that zoning classification is it a permitted use or not a permitted use period. But if it's not a permitted use, it's not Animal Control that brings for the any enforcement action. If we have a Hobby Breeder who's violating the terms of the Hobby Breeding ordinance, those fall under chapter 14 and that is an Animal Control aspect. I'm hoping that clarifies who has jurisdiction over enforcement and what are the aspects of their jurisdiction.

Ms. Clark: One of the things that I wrote down was like a 2 acre minimum.

Mr. Rodriguez: That's going to be based on the zoning classification you're in. Let's use the example of RA, rural agricultural. In order to be a property in that RA zoning district, the property has to have a minimum of 2.5 acres. Across the board for every property in that zoning classification. The Hobby Breeder ordinance doesn't have a minimum acreage for your site. So that's going to be zoning classification. Some rural designations have higher minimum acreage for that zoning classification but it has no bearing what so ever on the Hobby Breeder use. That was solely a zoning matter and that's going to apply for every use that's permitted or not permitted in that zoning classification. It doesn't matter whether you're a Hobby Breeder or not.

Ms. Clark: Why didn't they tell us from the beginning? That was what was frustrating. These laws haven't changed in years.

Mr. Pacheco: For our discussions in the past, I'm almost positive we spoke about our enforcement part of it. From my understanding the county has an exemption to have a Hobby Breeders. Is that correct? If they're zoned residential?

Mr. Rodriguez: Hobby Breeders are permitted in certain zoning classifications. Off the top of my head, Hobby Breeder is not a permitted use in the R2 zoning category which would be the single family homes. You can't be a Hobby Breeder in any of the residential zoning districts. It's mainly limited to agricultural zoning classifications.

Ms. Clark: And if it goes through, does it open up a can of worms for other people who want to do ferrets and want to do all these other breedings that would add more stress and strain on zoning and Animal Control. Do you think that would happen? That was one of our questions. It was going to say to remove as a permitted use in a single family district. To have a resolution seeking the Council to direct staff to amend code.

Mr. Rodriguez: That is what I explained. Staff cannot unilaterally proceed forward with amending the code. In order to have a code amendment done, we have to be directed by the County Council. Upon their vote, their discussion to determine and to authorize the staff to proceed forward with such an

amendment has to be done in an open County Council meeting. This board, as an advisory board does have the authority to, by resolution, request that the County Council take into consideration any amendments and request that the Council vote either to vote to direct the staff to amend the code as per whatever it is that you're request to do so. Then it's up to the County Council to determine whether or not they want to direct the staff to amend the code or not.

Ms. Clark: We spoke about it specifically for this single family district.

Mr. Rodriguez: As your council all I can do is really advise you, I can't direct you and I'm not going to make the call. It's up for this board to determine whether or not you want to request the County Council to take into consideration amending the Hobby Breeder, or actually amending the zoning code, to permit Hobby Breeders to operate in more districts. So it would be, are you looking at expanding that permitted use to residential zoning districts?

Mr. Rodriguez requests a Zoning Code book. Ms. Williams exists the room to find one.

Mr. Rodriguez: I just need chapter 72 I can list you where they are currently permitted. Just off the top of my head, most are the agricultural districts where they're permitted. The only changes is if you wish to be a Hobby Breeder but have more animals than the Hobby Breeder ordinance permits, you must then apply to be a special exception to be treated as a kennel or animal shelter. That is going to then move you up into either a different zoning category or by special exception that means you have to make a presentation to County Council for them to approve it. Not just County Council it would have to be a presentation to the Planning and Land Development code review commission, PLDRC, who will then make a recommendation to the County Council. That's is across the board for everyone who's going to apply for a special exception. Zoning categories are split into permitted uses, which are uses by right. This means you as a property owner have the right to use this property under these listed uses. There's then a second category which is special exception. Which means yes your use is permitted but because your use is more intensive than the listed permitted uses, it is subject to scrutiny and each special exception has certain objective criteria that need to be met in order to then justify that your more intensive use is going to be compatible with the surrounding uses in that zoning district. Because the Council has deemed that going above that number of permitted number of animals in a Hobby Breeder the applicant has to justify to the County Council and meet that certain objective criteria in order to determine that your use with the larger number, which I recall is 10 large breeds, 15 small breeds, 25 cats is going to be compatible with the rest of your neighboring properties.

Ms. Clark: And with a Hobby Breeder you're allowed 2 litters a year. There was a new division called provisional that comes with a fee where you expand the Hobby Breeder in the residential area under the backyard chickens, where they have provisional things. That was a thought for an administration conditional use.

Mr. Rodriguez: Right. What we discussed. The County just had our first public hearing for this past June's PLDRC. Actually it was May. The County authorized us at near the end of last year to adopt what is called the Backyard Chickens ordinance which allows the raising of chickens in certain residential properties. Limiting it to 5 chickens, there's certain regulations about the size of the coop. In order to properly regulate and provide certain objective standards, the County has created a new classification. It basically (inaudible) as a conditional use permit. It's one level below a special exception which means you do not have to go to the PLDRC or to the County Council. What it does is it allows the zoning enforcement officer to do the review and then issue (inaudible) conditional use permit. Which is basically a license which allows you to have that use (inaudible-someone's phone rings) for 2 years. If you're looking at expanding where Hobby Breeders can operate and you're going

to move them into certain residential zoning classifications, whether then you want to have it be a conditional use permit instead of it simply being a use by right, what that does is there's certain notice requirements that have to be met. First standards have to be met. One of the requirements is that you're going to have to notify your neighbors that you intend to have this use on your property. Either adjacent or we can establish a distance requirement. That would at least put the neighbors on notice that there's a potential that you're in a single family home and you might have 10 large dogs next door to you. You can open up issues of noise, sanitation and other requirements that are things to be considered when you're beginning to present that use in a single family neighborhood. Those are issues that you guys can mull over to determine whether or you wish to expand where Hobby Breeders are going to be permitted. If it's going to be open to residential communities, residential neighborhoods, we would probably be looking at creating a new special requirement in the zoning code listing out the uses then having it be as a conditional use or still remain it as a special exception subject to review by PLDRC and County Council. These are things that you need to weigh mainly because you're going to be introducing what could be a more intensive use into residential neighborhoods. It's going to open the door for push-back from residential neighbors and each one of these applications is going to be an opportunity for 20-30 people to show up to the Council to object the potential use. I think when the Hobby Breeder ordinance was adopted, probably 10 years ago, for the sake of full disclosure, this was before I was here. I was the attorney that represented NAIA with Pat Hawk. I wrote the complaint that sued Volusia County. I was the attorney for that organization 10 years ago. I was in a firm out of Fort Lauderdale. I was already out of the case when that resolved itself.

The ordinance, as it stands now, it's been approved and it's been affirmed and that's the purposes of the ordinance was allowing this use, of placing it on properties and in zoning categories where you would have the minimal impact on your surrounding neighbors. That's why I think the intent was to keep it in the agricultural.

Mr. Rodriguez goes over the zoning categories where Hobby Breeding is a permitted use by right: FR, RC, A1,

Mr. Penalta: How does the County define by right versus by privilege?

Mr. Rodriguez: It's one of your property rights. If you're permitted use, you have the right to that use on your property. If it's not listed as a permitted use, you don't have the right to use that property for that purpose. Variances are solely for structure, structural changes or the physical characteristics. You cannot obtain a use variance. There's no variances for use. That's the distinction between permitted uses and permitted structures as well as then permitted special exceptions. Which is the higher level of scrutiny that's required. The only exception is if you intend to exceed the number that's listed in the Hobby Breeder ordinance. Then you have to go to special exception. You can do that, have a larger number of animals, but we're going to treat you like a kennel or animal shelter. Which means it's a special exception and now you have to go through PLDRC and County Council and justify and meet their objective standards to be met for a special exception as to why your use should be more intense.

Mr. Penalta: This is for domestic and agricultural?

Mr. Rodriguez: The code has all the zoning classification in the county. Each classification has a list of permitted uses and special exception uses. The doctrine of zoning is if the use is not listed, it's not permitted. Only those that are listed are permitted.

Mr. Penalta: How about a breeder who holds a wildlife permit?

Mr. Rodriguez: Now we're in a different code. That's not going to be deemed a Hobby Breeder as defined. So now we're either going to have to use it as whether they fall under. It might fall under animal shelter, animal hospital. Without doing excessive research it might fall under animal shelter, and you then need to obtain your proper permitting from the Commission of Wildlife. It wouldn't classify as Hobby Breeders. I'd probably treat it similar to animal shelter. Animal shelter is not limited to dogs and cats. It's defined as a premises other than Hobby Breeders for the boarding of abandoned dogs and cats with a total combined number over 6 months of age exceeds that permitted in 72 306(a). So animal shelter is limited to dogs and cats.

Officer Ferguson: I would think exotics is limited to the state and the state has to do the inspection.

Mr. Rodriguez: The state's going to license but the state is going to defer to the local government for whether that use is going to be a permitted use in that zoning classification.

Ms. Clark: Since Cathy could not be here today, is it possible in the near future that she would have an appointment with you to discuss this matter?

Mr. Rodriguez: She can meet one on one with any of the staff members.

Ms. Clark: She would have a million questions. This is what she's concerned about. It may be better for our group to have Cathy speak to you directly without any of us interfering.

Mr. Rodriguez: That's fine. If she has questions. But like I said, any type of direction, in order to make a change to the code this Board has to vote and submit a resolution to County Council. County Council will determine whether or not they are going to give staff direction to amend the code. We cannot amend the code without County Council authorization.

Ms. Clark: I would like to hear from our Board members. Would you like this conversation to continue or actually let Cathy and Mr. Rodriguez have a conversation and then hold it for our next meeting?

The Board members discuss it.

Mr. Rodriguez: I guess the question is, is the direction of this board to lean on wanting to request to have a proper discussion before anything can go forward, is it leaning toward to want to expand the number of properties where someone can operate a Hobby Breeding use.

Ms. Clark: I really think Cathy would be the better person in this. I think as it relates to us, she would have the proper knowledge and know all of her concerns and be able to condense it for us.

Ms. Ferguson: What is our ultimate goal here? Are we trying to define areas that these people are allowed in or are we trying define the number of animals? Are we doing 2 things or just 1 thing?

Ms. Clark: I think it's a possibility of 2 things. To expand the residential neighborhood; people that may have little dogs or big dogs and it's a concern all around.

Ms. Ferguson: Originally I thought it was just how many each person, depending on the size. Now we're getting into what areas.

Mr. Rodriguez: That's a discussion for this Board to decide. What is it that you want to ask the County Council? The County Council is going to expect something detailed requesting them to act, what is it you want them to authorize staff to do. So if the question is do you want to expand or change the number of animals a person can have on their property?

Ms. Clark: What if we have, with Cathy's permission, have Cathy make a presentation to our Board next meeting on her evaluation of whether we should go forward or just leave it as it is after she gets the accurate information from the attorney. We could sit here for 2 hours listening to this and go home and say "what did he say?"

Ms. Clark makes a motion to continue this conversation until Cathy Driggers speaks with the staff and make a presentation to the rest of the Board at the next meeting.

Ms. Malone seconds it

The motion is carried.

Mr. Rodriguez exits the meeting.

Ms. Clark asks what Animal Control thinks of this.

Mr. Pacheco: My feeling is that if that goes through I think it's going to open up a can of worms. It's going to put a lot of pressure on our existing animal control officers to enforce. People are going to come in and protest because they don't want a Hobby Breeder next door to them when they have 10 animals barking. It now becomes a barking complaint which we get involved with. As far as I'm concerned I think it just puts too much workload on our officers.

Ms. Clark: With this update on dog-tie outs. Could we hold that item until the next meeting?

Mr. Pacheco: We can discuss it at the next meeting. But we need to resolve this current item. It will cause too much confusion with too many things. Let's finish up with this Hobby Breeder stuff first.

Ms. Clark calls for the update on the spay/neuter programs

Mr. Pacheco informs the Board approval was received to hire a 3<sup>rd</sup> vet assistant for the spay/neuter clinic, then discusses the success of the spay/neuter programs.

The Board discusses the success of the Animal Services Facebook page.

Mr. Pacheco informs the Board approval was received for a pilot microchip program. The Board discusses the benefits of microchipping dogs and cats.

Mr. Pacheco informs the Board the agreement pending approval with West Volusia Humane Society. The Board discusses this agreement.

Mr. Baird discusses an on-going open case being investigated by Volusia County Animal Services. He then discusses a situation of cats being poisoned. Mr. Pacheco advises that someone needs to call in a complaint so it can be investigated.

Ms. Clark discusses dog tie-outs. It's confirmed to continue it to the next meeting.

Ms. Clark asks for new business.

Dr. Rehme discusses the FDOH Animal Incidents Report (see attached)

Mr. Penalta discusses the impact of endangered panthers attacking livestock.

The board members discuss wildlife in Florida.

Ms. Clark calls for the date and time for the next board meeting

The next meeting is set for September 12, 2018 at 9:00am

Meeting adjourned