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COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, October 8, 2002

PRESENT: Alds. Becker, Ecks, Heins, Herzog, Kopischke, Krol, Sullivan, Treis -7

EXCUSED: Ald. Herzog

ALSO PRESENT: N. Welch, Community Dev. Dir.; A. Kesner, City Atty.; E. Miller Carter, Asst. City Atty.; N. Kreuser, Health Officer; M. Meske, Sanitarian; L. Nielsen, Pub. Health Nurse Supv.;

Ald. Heins in the Chair called the meeting to order at 8 p.m.

Land Combination at 8707 W. Hawthorne Avenue

Referring to an aerial view, Ms. Welch pointed out the site of a proposed land combination in the AA Single Family Residence District at 8707 W. Hawthorne Avenue requested by Dan and Denise Werlein. There is a home on one of the parcels; the other is vacant. The Plan Commission unanimously recommended approval.

Dan Werlein, 8707 W. Hawthorne Avenue, indicated that the land combination will allow him to improve his home by constructing an attached garage.

Moved by Ald. Ecks, seconded by Ald. Krol to recommend approval of the requested land combination. Ayes: 5

Land Combination at 1926-30 N. 69th Street

Ms. Welch reported that Betsey Caron and Thomas Schuler have requested a land combination in the BB Two Family Residence District at 1926-30 N. 69th Street in order to consolidate the two separate lots on which their duplex is located. The resulting parcel would become a single-family lot. The applicants failed to appear at yesterday's Plan Commission meeting, so the Plan Commission held the matter until their next meeting. It is the Plan Commission's policy that an applicant must appear at the scheduled meeting.

Ald. Krol said that he knows the applicants and believes that it makes sense to combine the parcels. There aren't any negative reasons to prevent this committee from acting, he felt.

Moved by Ald. Krol to recommend approval of the requested land combination –

Discussion ensued on the advisability of proceeding without a recommendation from the Plan Commission. Ald. Treis felt that this committee can take no action until the Plan Commission releases the matter. Ald. Kopischke noted that taking action tonight would in no way speed up the process since the Plan Commission will not address it until their November meeting. By waiting, this committee could then look at any new information that may be available.

Motion fails for lack of a second.

Moved by Ald. Kopischke, seconded by Ald. Krol to hold the matter in file until after the Plan Commission meeting –

Ms. Welch indicated that there really are no significant negative issues. There are no time constraints, and the applicants would not be penalized in any way by waiting. They were informed that they must be present at the Plan Commission meeting.

Vote on the motion, Ayes: 6; Present: 1 (Treis)

City Attorney Kesner explained that the item had not been removed from the committee agenda because the final agenda must be posted at least 24 hours prior to the meeting. The Plan Commission met last night, so there was insufficient time to meet the legal posting requirement.

Regulation of Animals Ordinance

Ms. Miller Carter reported that the proposed regulation of animals ordinance was revised following discussion at the previous meeting. The definition of dangerous dogs was expanded, and the definition of vicious dogs was changed. Both are now based on the behavior of the dog, and neither definition includes reference to a dog's breed. The ordinance will assist in identifying dangerous behavior and provide more authority and a range of remedies in dealing with dangerous and vicious dogs. Defining a wider range of behavior allows the City to get involved early and impose restrictions to prevent any bite or attack from occurring. In the past, the City was unable to respond to complaints of dog behavior that fell short of an attack or bite.

The proposed ordinance also updates rabies control measures. Previously, there was no obligation to report a bite, and people were often afraid or reluctant to report. The proposed ordinance imposes a burden to report any dog bite. Ms. Miller Carter felt that with these definitions and the intermediate remedies that we did not have before, people might feel more comfortable reporting various types of incidents. They no longer would be concerned that a dog would have to be removed or put down.

Ms. Miller Carter indicated that ordinances elsewhere that sought to regulate by breed have been declared unconstitutional and void. There also are significant proof problems. Also, classifying by breed would create a class of existing dogs that are grandfathered on which the ordinance would have no real effect; and determining which breeds are dangerous or vicious could result in omitting some unknown but equally vicious breeds. Of the 25 bites reported here this year, only a small percentage were from breeds traditionally thought of as vicious, Ms. Miller Carter stated. South Milwaukee has reported similar experience. She noted that insurance companies have different goals and standards in determining what breeds will not be covered under a homeowner's insurance policy. Therefore, the proposed ordinance does not seek to classify prohibited behavior by dog breed or reference to insurance company standards.

Ms. Miller Carter said it is important to note that the proposed ordinance allows the City to take immediate enforcement action once a report is made to the health or police department. The existing ordinance does not provide the City with that power.

Terry Lofy, 2441 N. 111th Street, asked about the vicious dog definition and whether any dog wouldn't basically have that potential. Ms. Miller Carter said a vicious dog is one deemed to be vicious in another community or a dog that has bitten or attacked a person or another animal. The definition would apply regardless of the weight or size of the dog. The whole idea of the two definitions is to base it on proven

behavior based on a verified report to the police or health department. Dr. Kreuser confirmed that the health department would do the follow-up investigations.

Ald. Sullivan expressed appreciation for the effort put into the proposed ordinance and said he is pleased to have the two behavior-based definitions without stepping back from the prohibition on vicious animals. He felt that the double fence requirement for dangerous dogs that are confined outdoors is a very worthwhile precaution. He also commended the reporting requirement.

> Moved by Ald. Sullivan, seconded by Ald. Kopischke to recommend introduction of the proposed ordinance –

Ald. Kopischke said that the two definition levels—dangerous and vicious—allow us to use the judgment of our trained personnel at the lower level but, at the higher level, show no tolerance for a vicious dog. He agreed with omitting references to specific breeds or insurance standards.

Ald. Krol asked about records of a dog found to be vicious by another community. Ms. Miller Carter said the idea of prohibiting a vicious dog from entering the community is rather novel and has been discussed with the police. A lot of neighboring communities don't track this or don't have the same or compatible report requirements, so this may not actually happen. If someone has a concern about a dog that just came into Wauwatosa, it would be possible to check to see for police reports or other records in the previous community. The City would then investigate whether the incident rises to the level we have established. We are requiring a name and address whenever transfer of ownership or custodianship of a dangerous or vicious dog occurs. Ms. Miller Carter said that we are hoping that new public awareness will lead other communities to do better record keeping also. Every community will have a different definition of a dangerous or vicious dog, perhaps stricter or less strict. That is why there is "wiggle room" to allow for a variance.

In response to a question about liability insurance, Dr. Kreuser said she has found that some agencies would consider writing insurance based on the breed of the dog. That is an issue under some "umbrella" policies; some just ask selected questions based on what their agency considers to be a risk.

Ald. Sullivan asked about options that the judge might have in the case of a vicious dog that the health or police department feels should be destroyed. The ordinance provides flexibility to allow the owner to sell the dog or otherwise move it out of the area, but can we say we will not let someone move it out or will that option always be available? Ms. Carter Miller responded that the judge can make the determination based on staff recommendation. What is different now is that the ordinance will say "may" rather than "shall," allowing for some discretion on what is recommended. Ald. Sullivan indicated that he is comfortable with the City and judge having more discretion; he just wanted to be sure that the ordinance cannot be circumvented by moving the dog to another community.

Ald. Ecks asked about a statute of limitations on the required report, citing a situation where a dog is guilty of "youthful indiscretions" but has since matured. Ms. Miller Carter said that is why a variance from the health or police department was built in and why some of the conditions for a dangerous dog designation can be applied at the discretion of the health department. Mr. Kesner clarified that the term "variance" in the case of this ordinance does not have the same strict interpretation as in zoning and land use situations.

Ald. Ecks then raised the question of a dog that has been provoked to bite or attack. Ms. Miller Carter said that the definitions are based on unprovoked behavior that the dog initiates on its own. Under each definition there are listed exceptions such as defending its owner of defending itself.

Asked about penalties for failure to report a dog bite, Ms. Miller Carter said that the point is to encourage reporting. Often after a dog bite report comes in, a neighbor might report other activity that hadn't previously

been reported, and then it would be necessary to go back to establish reputation or disposition and look at some of that behavior.

Mr. Kesner said that the ordinance allows the department and city officials to use discretion to act appropriately under the totality of the circumstances rather than one piece of fear or sympathy. If something happened five years ago, that is part of the discretion aspect.

Dr. Kreuser reported that staff tries to bring in legal advice in every situation, investigates, looks for police reports, and talks to the dog's owner about options. In the two vicious dog situations in which she has been involved, the owners have concluded that they needed to move the dog out or put it down. Staff doesn't make snap decisions, she said, but looks at all circumstances and tries to come to the best decision for the community and the family.

Mr. Lofy asked about the penalty for having an unleashed dog or not having it in control in your yard. Mr. Meske responded that general penalty provisions would apply, with fines between $50 and $1,000 per incident.

Mr. Wothe then commented that small dogs often run out and rush his two big dogs, which may then react to protect themselves. Ms. Miller Carter said that just the act of rushing without growling or demonstrating an attack stance would not make it a dangerous dog; the question is if it is terrorizing or menacing. The City could investigate to determine if there is dangerous activity.

Vote on the motion, Ayes: 7

The Chair stated that this ordinance has to be very clearly communicated to residents once it passes Council, perhaps in the City newsletter or in an addition to the newsletter and probably on the web site as well. Individuals who have dangerous or vicious dogs should be aware of it, and all citizens should be encouraged to report dangerous or threatening dogs. Ald. Sullivan said that those applying for a dog license should be informed of their duty to report, and the Chair added that perhaps they should be given a copy of this entire ordinance.

The meeting adjourned at 8:45 p.m.

Carla A. Ledesma, City Clerk
Wauwatosa, Wisconsin