

# Canal Winchester

*Town Hall  
10 North High Street  
Canal Winchester, OH 43110*



## Public Hearing Minutes - Final

June 15, 2020

6:30 PM

### City Council

*Mike Walker - President  
Mike Coolman - Vice President  
Jill Amos  
Will Bennett  
Bob Clark  
Patrick Lynch  
Chuck Milliken*

**A. Call To Order** *at 7:29 p.m.*

**B. Roll Call**

*Yes 7 – Amos, Bennett, Clark, Coolman, Lynch, Milliken, Walker*

**C. Purpose of Public Hearing**

**[APL 20-001](#)**

Notice of Appeal Regarding the Denial by the Canal Winchester Planning and Zoning Commission of an Appeal to Overturn a Notice of Violation Issued by the Planning and Zoning Administrator Regarding Swine Being Housed on Property Located at 392 Sarwil Drive South. ([Findings Facts Conclusions Law, Neighbor of Resident Response to Appeal, Resident Response to Violation, Violation Letter from Planning & Zoning](#))

*Clark said he needs to abstain from this issue and become a public citizen because my residence is about ten yards from the back of this person's house so I have to abstain from this, thank you.*

**D. Staff Report**

Andrew Moore, the City Planning and Zoning Administrator, came forward to speak. He said his capacity here this evening is to answer any questions you all have in regards to this appeal. To basically sum up the series of events to date, the property owner was sent a notice of violation after a complaint was filed for the resident having a swine on the property. A notice was sent to the property owner notifying her that swine are only allowed or permitted on properties that are zoned for agricultural animals and agricultural related uses, and her property is not zoned as such. The violation notice reached the property owner and they were given thirty days to get rid of the violation. Around day twenty-five they came in, during the first week of our offices being closed to the public, she came in to drop off paperwork showing she had a doctor's note saying she can keep the animal. I talked to the resident through our process that a doctor's note does not dissolve my duties of saying she is not permitted to have the animal and that her best course of action would be to appeal our code section of Planning and Zoning Commission. The way that the code is written there is no variance to allow the agricultural animal since it is allowed in a different zoning district and rather than trying to rezone her property to an agricultural category in an established neighborhood, my recommendation was to appeal my violation notice saying that she does not have a swine on her property it's something greater. Planning and Zoning Commission heard the application at their June 13<sup>th</sup> meeting, or excuse me the meeting in May, and during that discussion they reviewed my violation notice and giving the same talk about how it was a violation from my end and they are appealing that violation notice. A resident that filed that complaint attended that meeting and discussed with the commission her concerns about that agricultural animal and how she felt that the appeal should not be approved by the P & Z Commission, and actually the appeal would be overturning the violation notice, saying there was no violation. Planning and Zoning Commission voted to deny the appeal which in turn upheld my violation notice saying that yes, she does have a swine on the property. It didn't do anything more or less than that. It affirmed the violation notice still stands. Are there any specific questions about that process I will be glad to answer and Gene Hollins is here to answer any legal related questions.

Amos said in the packet we were given, who inserted the federal housing act in there, was that the resident with the swine; Moore replied correct; Amos said it doesn't apply to homeowners, it applies only to landlord, lease, tenant in the state of Ohio; Moore said that was part of the discussion with the applicant when she first attempted to drop off the information saying that she was exempt from zoning, I explained to her that she would want to include any and all information that explains why she is exempt from zoning so the Planning and Zoning Commission could make that determination, because I do not have the capacity to. As part of her application contents she does talk about the Fair Housing Act and she does talk about the TSA allowing emotional support animals, she did use other information that was to prove why she believes she does not have a swine on her property. Amos said the FHA does not apply to her situation, the ADA would apply but even in that situation the ADA compliance is for a dog to fall under section one, it doesn't qualify under section two or three either; Coolman said that is correct; as a matter of fact the fair housing compliance talks about the homeowner and if your home is a one to four family unit you can actually be denied by your municipality so that is really what it does say in there about being a homeowner. Bennett said so if we were to overturn...if any council member were to vote for overturning this we would be essentially be ruling that the pig, the swine, the pig is not a pig, is essentially what we would be saying, we would be classifying it as an emotional support animal and it would no longer be officially referred to as a pig. Moore said the way that our code is written is that it discusses animals by their master species, the swine is in the *suidae* classification of animals and that is how our code defines that as being a prohibited animal, so, the attempt by the applicant was to say that while our code defines something outright what she has should be a sub-category of something that is permitted. Lynch said so, it is not in sense a swine or a pig it is an emotional support animal which is outside of our code, is that what you are saying; Moore said that is what the applicant was trying to portray to the Planning and Zoning Commission; Lynch said my question is from a legal standpoint is there any recourse on the part of the city as far as ADA goes, are we violating this lady's civil rights to have an emotional support animal, won't call it a swine or anything, it's an animal. Hollins said that is the nature of why we have these appeal proceedings; I don't know necessarily they are raising a defense to our case in chief and whether it is a violation of the ordinance or not; the thought was, and I hope I don't get too far into legalese, even if you have a violation, a prima facie case there are affirmative defenses and then it is her burden to show she has an affirmative defense and in this case the idea that it is an emotional support animal or an animal in the potential ADA, American Disability law type of issue, would be an affirmative defense; obviously P & Z and council those are the places equipped to look at legal affirmative defense issues, but maybe not, and we have to go through the process and they could eventually appeal it to a court to look at the legal issues. We can provide...this is just the public hearing process this evening, you do not need to make a decision and we can provide what we provided to Planning and Zoning in terms of a memorandum of our analysis of the legal issues surrounding emotional support animals which could help you in making your decision and if you want to take this on and look at her affirmative defense or send it on to court as equipped. We also understand this may resolve itself, apparently the property may be on the market, so it may resolve itself without your intervention, but we'll see. Coolman asked as a community when do we have the ability to enforce our code when there is a process established if someone wants an exception to our codes; there is a process they should come to us first before purchasing it, this is the third year in a row we have a resident that is coming back to us after having violated the code and they want us to give them a reprieve. This one is unique because they are calling it an emotional support animal, however, the evidence supported by the complainant shows there is property damage ensuing from this animal so as a council we have to look at our ordinances that

offer safety and security for all of our residents so when does it mirror the line there, when do we stand up and say you know. Hollins said I hear you loud and clear Mr. Coolman, we would rather not be in the enforcement mode, we'd rather work on these issues prior to investing and yes this is just an emotional support animal I am sure it wasn't without cost, but there are some things that folks do without coming to us first and make a call to Mr. Moore or the other folks in the zoning department to say is there a permit process I need to go through, is there an ordinance I need look at so we can avoid these types of issues to avoid the enforcement mode or getting to the legal issues of these types of things. We would much rather work with residents or potential buyers on these issues before the fact rather than after the fact.

#### **E. Public Comments - Five Minute Limit Per Person**

Kathryn Santore, 386 South Sarwil Drive, came forward to speak. She said I am the complaining neighbor; thank you for the opportunity for allowing me to address you tonight regarding the swine that was being kept on my neighbor's property, most of what I had to say was stated in my letter to council/zoning. After the appeal was denied by zoning, an article was published in This Week News and was taken up and supported by the CW for Responsible Growth Facebook page as factual and encouraged residents to make comments against the neighbor who filed the complaint against said animal and encouraged people to send comments to City Council (of which the admin of the page's husband serves on) in support of this swine. If one had obtained the documentation from zoning on the complaint, they would have probably realized that the article was more of an emotional rather than factual piece and only presented one side of an issue. Both online and in person, as a result of this, I have heard many complaints and name calling against myself, many of which, when I addressed them in person with the facts as to why my complaint was made they quickly apologized as they realized they had formed a judgement based on erroneous information that was presented as fact. The swine was kept outside in an unsightly shelter, allowed to freely roam the yard and urinate and defecate wherever it pleased often onto my property through the fence and damage the fencing that separated our properties. Swine are extremely destructive animals when left to their own devices and there was rarely anyone there outside to ensure damage wasn't being done. Although this animal is prohibited in Canal Winchester Zoning code, it was allowed to remain on the property since March when my complaint was filed until last week when the property owners decided to sell their property. Yesterday, said property owner brought in a bobcat to clean the rotted and excrement covered straw from the property, much of which then littered their driveway, the street and my side yard creating yet more waste on my property that I then had to clean up. I do think the city needs to address the keeping of prohibited animals as emotional support animals as this is an issue that will probably be ongoing. In my opinion, if the city chooses to allow the keeping of prohibited animals as emotional support, they should put stipulations in place for the proper shelter, fencing, waste disposal and distancing requirements from neighboring properties so those animals do not become a nuisance to others as happened in this particular instance. In my opinion, I feel that Mr. Lynch should have to abstain from any voting on this particular matter as his wife's opinions could easily sway his vote. I would question if it is ethical for him to vote on any matter for which his wife expresses such strong opinions and, in my opinion, tries to get people to influence a vote the way she would like it to go, as many of his comments in council seem to echo what she presents on her personal Facebook page. I think this is also an issue that council or the Charter Review Commission should address as I see it becoming more of an issue going forward with the rise of technology in society and people rushing to judgements and trying to influence public opinion and votes without actually presenting facts in the matter. I would like to take the time to thank Mike Coolman, Bob

Clark, Mike Walker, Chuck Milliken and Jill Amos for all taking the time out of their days to get a first-hand view of what I stated in my complaint. Those efforts were greatly appreciated. Thanks for listening. Walker asked Santore to log her name and address into the book; he asked for any other public comments.

Bob Clark, 370 Old Meadows Court, Canal Winchester, came forward to speak. He said he lives about 10-15 yards from the resident, I have not met Mrs. Elliott and I am sorry she is suffering from anxiety and depression, but all I can do is just...I have a Florida room that sits and I spend a lot of time in it and I can see her entire yard the way mine is configured and I have seen this animal roam 24/7. Anytime I am out in my Florida room this animal is out and roaming around and I have never seen anybody come by and touch it, or pet it, talk to it or do anything from her, her kids or her husband or anybody so that is all I can state. I am not saying it didn't because there are times I am not out there, but when I am out there, and I do spend quite a lot of time out there, I have not seen any interaction with this animal with anyone at all in that house, thank you.

#### **F. Council Discussion and Recommendation**

Walker called for council comments, discussion or recommendations; Lynch said he wanted to thank Miss Santore for the personal attack on myself and my wife, that was very nice. I have no problem with someone having an emotional support animal I think that is fine; I do care what type of animal it is, it has to be within reason even within city limits. I went to an agricultural school horses, pigs, goats it's kind of what I grew up with, The trouble I have hear is with the, and thank you Mr. Clark for pointing this out, if this is an emotional support animal why is it outside all of the time; I don't care if she has an emotional pig in her house as long as it is within a certain size I would be okay with that, but this pig is roaming around outside, I am not sure how anyone would get any emotional support from an animal that is running around outside all the time and not living with the family, two completely separate things. What she described as far as the pig running around in the yard sounds to me like a dog, I see dogs tearing up back yards, jumping over fences, barking at people, biting people, it is actually no different than a dog. Pigs are not allowed and I don't see any evidence that it is being used as an emotional animal no matter what kind of animal it is, so I just don't see any proof it's an emotional animal. Amos said I did stop by the Miss Santore's house and I did see the outdoor facility where it is predominantly staying and I walked by on several occasions and each time the pig was outside. Being a former pig owner, mine lived inside, he was not an emotional support animal, he was just a really noisy roommate and he was an indoor pig and he was really cute but he was outside every time I road my bike past and I don't ride my bike everyday 24/7, but I do go at different times of the day and even when I would walk during the middle of the day the pig would be outside, and he is very cute but again the same thing is that if he is an emotional support animal I would think that he would be with you the majority of the time. Coolman said I live in the community, I live on North Sarwil and this location is on South Sarwil. I walk my dog past this house almost three times a week and Karen walks our dog every day of the week and it doesn't matter what time of day or what day of the week we have always seen the pig back there. The other problem I have is emotional support animal or not, the issue I have with it is if it threatens the property, if it is a nuisance to neighbors and their safety, security, pets, causing property damage then we are talking about a whole other issue. The packets that were allowed to us by both parties clearing illustrated from the breeders of swine that they advise property owners of swine to check with your community first to make sure the ordinances allow it, and also if it doesn't pose a threat to neighboring properties, property owners, damage or injury all of which was witnessed and these things are occurring and we have not even

touched on the handling of manure and that to me is more alarming. We had the same issue with chickens a year ago and how the chicken manure can start a health epidemic outbreak, and I think animal feces can do that do matter what the animal is; I think the proper housing, the proper coordination of security and safety for all of the residents and how it is being handled just wasn't exhibited here in this case. I think we have to be really careful here because anybody can get any animal and deem it an emotional support animal and reason being what is available out there on the internet now are these medical sites you can login to and ask for an emotional support letter and be granted one without even seeing a doctor if you are willing to pay a fee, and it is not that big of a fee so, that alone allows us to go get whatever we want as an emotional support animal. I would like to pay attention the wording of our ordinances and I think we need to enforce that and I think the protocol is you seek approval first to see if it qualifies not come to the city and ask for a reprieve after you violate the ordinance, that is the reason it is in place. Walker said this is a lot of good discussion; Walker said Mr. Hollins I know you are not a realtor but how would this impact property value or would it; Hollins replied that I am not saying this one does, but things that arise to nuisance conditions often are nuisances because the impact they have on the surrounding property can affect the value; those are factual determinations for your guys to make, it is a factor, if you look at the intent and purpose of our ordinance in the first place of having no farm animals in residential zones that is probably a large part of it, the intent and purpose of that ordinance was not to adversely impact your neighbors; use and enjoyment and value of their property. Milliken said I completely agree with what has been said, but just a couple of points that were touched on about the property owners has already listed her house for sale, not sure if it was in the paper, but they are planning on leaving the municipality I believe so they could have the pig or something of that nature; and that coupled with it is my understanding this resident didn't even attend the Planning and Zoning meeting and that combined with the pig being outside all of the time it really gives the appearance that there is no care here. Bennett said what are the next steps; Hollins said the next step is to close the public hearing, adjourn the meeting and council will take this under advisement and I will send some materials to you, I think I get the drift of where you want to go with this so, I can bring something back to council at a future meeting, we do have a timeline after this for your to make your decision; perhaps this will resolve itself during that timeline as well. Lynch asked would we do that in executive session or what; Hollins replied no, I can send you some materials, attorney-client privilege email, and you look it over and see if the draft is, and yes by the way, once we get a draft out if you would like to discuss it in executive session, quasi-judicial proceedings like this we can go into executive session to discuss it some more, let me get some materials out to you first so you have something to discuss. Coolman asked what is the timeline on that; Hollins replied it is sixty days, we were just talking about that to have a decision; Coolman said because we are off the second half of July. Walker said thank you for all comments and discussion.

#### **G. Adjournment**

***Motion to adjourn made by Lynch; seconded by Amos***

***Motion carried by the following vote:***

***Yes 6 – Lynch, Amos, Bennett, Coolman, Milliken, Walker***

***Abstain 1 – Clark***

***Adjourned at 7:56 p.m.***