**Village of Cement City**

**Council Meeting Minutes**

October 3, 2013 7:00 p.m. Village Hall Special Meeting

The special meeting of the Council was called to order at 7:00 p.m. Attendance: 17 Citizens present. Members present: James Ellis, Mel Cure, David Vescelius, Bill Bendele, and Larry Babinger attended. Attorney Fred Lucas was in attendance. Eric Wittenberg, represented the Planning Commission and Carol Ladd and Chari Cure were in attendance.

Public Participation: Mrs. Vescelius spoke on behalf of the zoning violation stating there was only one way to vote in regards to the dog kennel.

Mrs. Hartman expressed concern that her dogs would be taken away. She stated she has 5 dogs that are helpful with security and therapy for her daughter.

Wittenberg proposed the tabling of the decision to allow the planning committee to further look into the best interest for the citizens and to suggest updates to the current ordinance.

Babinger asked the audience if anyone else with more than two dogs would like to speak. No reply.

Zoning Enforcement: Vescelius asked Irwin how the dog kennel came to operation. Irwin stated that the zoning application was denied and that a conditional use permit was suggested. He then stated he was guided to the county. Vescelius asked for clarification on the number of dogs at the residence. Irwin stated there are 6 dogs total, 2 of which are puppies that will be kept for breeding purposes. Vescelius stated that legal council has advised the village council, per request, that the operation of a dog kennel in RS-1 is illegal.

Lucas spoke on the topic of land use and described that the zoning ordinance allows for permitted uses of certain activities that do not require approval. He also defined conditional uses, which are specifically addressed in the zoning book and which require approval. Section 8.3 describes conditional use variances that offer relief to property owners who have a hardship that is beyond their control. These conditional use variances are not, however, allowed for use of land. They are conditional variances in regards to setbacks, frontages, etc. Lucas told councilmen that the decision to enforce zoning ordinances is discretionary—at the option of the governing body. Lucas stated that if the council voted to enforce the current ordinance, Lucas would then file a civil suit in the circuit court to stop the commercial operation in the residential area.

Cure stated that the zoning board never saw an application for a conditional use permit. He then stated that he has witnessed dogs running loose but never considered the property as operating a kennel because there is no physical construction of a kennel, as in, concrete slabs and fencing. He stated that now he has a better understanding of the definition of a kennel and has looked into zoning regulations regarding kennels in surrounding municipalities. Cure cited Jackson as an example where kennels can operate with 3 adult dogs and puppies up to 4 months old. After 4 months, a conditional use permit is required. Cure stated he would like to resolve this issue out of court and proposed that the council table the issue if Irwin agreed to stop advertising commercially effective immediately, and to resolve stray and barking dog issues.

Irwin’s representative stated that to act would be considered spot enforcement and suggests that village update the ordinance since up to 6 families in the area are affected by the current language. She stated that the business entity is a different topic.

Babinger asked Mohr if the situation has improved. Mohr stated that it is flat due to the barking of dogs at 4:00 a.m. – 5:00 a.m. and other times when the kids are outside.

Lucas stated there is nothing in RS-1 that allows for commercial operations and that to have an offering for commercial use in RS-1, the ordinance would have to be amended to include conditional use for a kennel. The commercial aspect, or the operation for a profit, is the violation.

Wittenberg referenced a draft or possibly adopted amendment to the ordinance in 1998 and Lucas stated that would have to be verified with evidence of publication.

Hartman stated that the dog owners have addressed the issue of allowing the dogs to stray. She stated they have not turned a blind eye to the situation. She encouraged neighbors to work out problems. Several citizens reminded the council that children and pedestrians have been chased and bit. Another citizen stated that windows have to remain closed to tolerate the day time barking and is a nuisance for 3rd shift employees.

Rust stated that the dogs are let out between the hours of 6:00 a.m. and 9:00 p.m.

Vescelius stated that citizen concern is the reason that kenneling is allowable in an agricultural zone.

Irwin stated that he is willing to try to fix the noise situation by planting vegetation as a barrier.

Babinger invited the councilmen to state their stance.

Vescelius said the council should enforce the ordinance and look at other cases individually.

Ellis stated he is in favor of therapy dogs. He stated he doesn’t like selective management. Ellis also stated he is not in favor of advertising a commercial business in the area and suggested updating the zoning ordinance.

Babinger stated he is not ready to make a decision.

Cure stated he would like to see an agreement tonight to cease the advertising and to hold off on the kennel operation.

Bendele stated Lucas should proceed with notice adding that new dogs equal new training and new problems with each litter.

Babinger suggested mediation. Lucas offered to mediate with other lawyers in attempt to resolve issue.

Motion made by Cure, second by Bendele to table the decision to enforce the zoning violation in order to give the Planning Commission time to make a recommendation on the ordinance pending a good faith request that the owners cease advertising of the kennel operation and minimizes the barking. At the same time, mediation between the legal parties is encouraged. Roll call vote: Bendele, yes; Vescelius, yes; Ellis, yes; Babinger, yes; Cure, yes. All ayes, motion passed. Council asked the planning commission to report to the council in 30 days and to take action within 60 days. Council reminded the planning commission that to call on experts and specialists if necessary.

**Good & Welfare**

Motion made by Ellis, second by Vescelius to adjourn at 8:55. Ayes by all, motion carried.

Submitted by Carol Ladd, Clerk

Approved by James Ellis, President