

McDowell County Planning Board
Regular Meeting
07/28/2014
Minutes

The McDowell County Planning Board met in regular session on July 28, 2014 at 7pm. The meeting was held at the County Administration Building located at 60, East Court Street, Marion, NC.

Members Present:

C.B. Edwards, Vice Chairman
Sam Dotson
Tommy Stamey
Arvin Hicks
Benny Stamey
Dan Thornton
Bob Brendle
Dennis Whitson

Members Absent:

Max Boyd, Chairman, Medical Leave
Tony Brown

Staff Present:

Jim Edwards, IPDC
Ronald Harmon, Board Secretary
Phoenikx Buathier, Intern

Other Present:

Captain Ricky Crisp
Gwen Straub
McDowell Animal Alliance Members

Call to Order:

Vice Chairman C.B. Edwards called the meeting to order and announced that a quorum of members was present.

The first item on the agenda was approval of the July meeting agenda. Vice Chairman Edwards asked for a motion to approve the agenda as presented. Motion to approve was made by Benny Stamey, second from Dennis Whitson, vote taken motion carried.

The next item on the agenda was approval of the June 23 meeting minutes. Motion to approve the June minutes was made by Benny Stamey, second from Dan Thornton, vote taken motion carried.

Tethering Discussion:

Vice Chairman Edwards introduced Captain Ricky Crisp of the McDowell County Sheriff's Department and turned the floor over to him for discussion of the provisions in the McDowell County Animal Control Ordinance. Captain Crisp thanked the Planning Board for allowing him to speak and answer questions regarding the ordinance and how the Sheriff's Department responds to calls. He also sent apologies from Sheriff Green, stating that the Sheriff was away at a conference.

Captain Crisp stated off by reading Article 1 Section 4 Item I of the Animal Control Ordinance stating: "It shall be unlawful to tether an animal to a stationary object under conditions that Animal Control Officer(s) deem harmful or potentially harmful to the animal. McDowell County will provide a manual of Best Practices for proper tethering of animals." Captain Crisp held up a copy of the Best Practices Manual that is available to anyone. Captain Crisp stated that for the most part two officers handle the animal control calls, but the entire Sheriff's Department responds to animal control calls.

Captain Crisp gave the Board facts he had pulled from the Departments Cad system. He stated that the calls went back to 2013 and looked at 1200 calls from that time period. Captain Crisp stated that there is no exact way to determine what the call was for. He stated that Officer Walker stated that less than 5% of all calls involve improper tethering of an animal. Captain Crisp stated that most calls involve aggressive animals, stray animals, nuisance animals and animal cruelty. Captain Crisp stated that Officer Walker said no civil citations, criminal citations or criminal warrants were issued regarding tethering. Captain Crisp further explained that in most cases the owner will rectify the issue with tethering once the officer brings it to their attention.

Captain Crisp gave a list of things officers consider when determining if the tethering of an animal is harmful or potentially harmful, those items were overall appearance of the animal, health, weight, size, breed, etc., length of the tether in relation to the size of the animal, type of collar, attachment, swivel attachment is best, animal disposition and temperament, clutter or objects in the immediate area, and access to food, water, and shelter. He further explained that they also take into account proximity to neighbors, others animals, and roadways.

Officer Crisp stated that alot of the calls received in 2013 did not involve tethering. Captain Crisp stated that all tethering calls were answered in a timely manner trying to assist the dog and assist the owner on how to correct the problem. He stated the officers were trained and they do take action where they see it is necessary. He stated that in most cases with some education and assistance the owner rectifies the problem. Captain Crisp stated that a lot of the calls deal with strays running loose and causing problems. He also reiterated that the Sheriff's Department does not get many calls regarding tethering, but when they do they address those calls and make sure that the dog is not left in a dangerous situation.

Captain Crisp stated that after conversations with the Sheriff, Chief Deputy, and Animal Control Officers, the current tethering law works and no changes were needed. Captain Crisp was asked if they follow up on all calls. Captain Crisp stated that they had discussed this in the Sheriff's Department and decided they could do a better job with follow up. He also stated that those calling in a complaint and ask for follow up, they do call them back once the officer checks the situation. Susan Menard asked Captain Crisp if officers made follow up visits to calls where the issue may have been clean food and water. Captain Crisp responded that they did follow up in those cases. Captain Crisp stated that they tried to place animals back into a situation where they put back into a home and not the shelter.

Gwen Straub explained that Animal Control Officers might look for swivels on a collar, but if one isn't attached they can't require that one be placed on the collar because nothing in the ordinance requires a swivel. She further stated that the only things Animal Control can look for are, food, water, and shelter, and shelter could be a metal barrel. She stated that anything beyond food, water and shelter, Animal Control Officers are afraid to enforce since no specific language is in the ordinance, therefore they fear being sued if they try to enforce other items. Mrs. Straub further commented that she had presented the Planning Board with a proposal that would require certain specific things. One item Mrs. Straub read stated that "tethering would be allowed only in cases where daily socialization and exercise off the tether can be verified and the dog is not displaying health or temperament problems. All dogs must be registered with AC." Mrs. Straub stated that 4,000 or more dogs could be living on tethers in McDowell County, she said "we don't know how many or know where they are".

Mrs. Straub discussed a proposed Three Year Plan to end tethering in McDowell County. She stated that all dogs in the county must be registered with Animal Control at no fee. The owner must register the animal and identify the location on their property where the animal will be staying so Animal Control can check on the condition of these animals. This must be done within a year. Mrs. Straub also stated that the state allows counties to appoint Animal Welfare Officers to look for situations where animals are neglected. Mrs. Straub stated that she recommends McDowell County appoint these officers. Mrs. Straub stated that the recommendations presented to the Board were common sense because a dog's life on a chain is hell, and dogs were born to run, sniff and smell, and belong to part of the pack. Mrs. Straub stated that she strongly recommends that the Planning Board adopts the proposal copied to them by her, and that they seriously look at the second proposal outlawing tethering over three years by registration. She further explained that at the time of registration the owner would be informed that they have access to materials to build a kennel 24x12 for about 140.00 and they would like the county to kick in funds for this, as much as they think they can. A general discussion occurred regarding how many of the issues with neglected dogs go back to owners not having the financial means to care for the animal.

Mrs. Straub stated that the proposal they recommend would be complaint driven, and that those that do call in violations need to be assured that they will remain anonymous. Captain Crisp stated that 80% or more of the calls Animal Control gets are for stray animals. Mrs. Straub stated that she wasn't interested in stray animals. Captain Crisp replied that Animal Control was interested in the stray animals because that is what most of their calls involved, because those animals are fighting other dogs, knocking over trash and biting folks. Mrs. Straub stated that is

why the county needs the Animal Welfare Officers to help take some of the burden off Animal Control. Mrs. Straub stated that Officers Walker and Holder told her that the only things they would enforce regarding tethered animals was food, water, and shelter.

A general discussion occurred with audience members telling issues they saw with animals in the county.

Susan Menard stated that in 2009 when the current Animal Control Ordinance was being drafted, Animal Control Officers stated that if the document was kept general it would allow them to use their judgment and concepts to address issues that may arise, however now she understands that Animal Control is saying the ordinance isn't specific enough to allow them to properly enforce it. Mrs. Menard stated that she was inquiring if more specific language was needed in order to allow officers to enforce the ordinance without fear of lawsuits. Captain Crisp stated that he did not know where this issue with lawsuits was coming from. Gwen Straub stated that she had been told by Animal Control Deputies that they were fearful of being sued if they enforced things that weren't specifically spelled out in the ordinance. Captain Crisp stated that this was the first he had heard of this. He stated that he was not aware of this and would need to talk to the officers that Mrs. Straub referenced.

Mrs. Menard asked that aside from the lawsuit issue, does the Sheriff's Department see anything that needed to be changed with the current document. Captain Crisp stated that they felt the current ordinance was fine. Mrs. Straub stated that Captain Crisp read that Animal Control Officers had the right to use their discretion in tethering cases. Mrs. Straub continued by saying they don't, they told her personally that they could only enforce food, water, and shelter.

Bob Brindle stated he had two questions to ask Captain Crisp. The first question was would it be helpful if specific items such as swivels were placed into the ordinance, reasonable specifics? Captain Crisp responded that it would probably be helpful. Mr. Brindle's second question was, would it be better if Animal Control was separate from the Sheriff's Department and go back to the way it was prior to the 2009 Ordinance? Captain Crisp stated that question would need to be posed to the Board of Commissioners.

Arvin Hicks stated that he did not understand why Section 3 of the 2009 Ordinance does not give Animal Control the responsibility and the power to address issues, he stated that it read to him that it gives them the authority needed to address any issue. Ronald made clarification that the issue was without specific standards in the ordinance Animal Control Officers had stated to Mrs. Straub they were fearful of lawsuits. Ronald also reiterated that Captain Crisp had stated that he had not heard until the meeting the issue with lawsuits. Susan Menard asked how it could be confirmed if the current document was leaving officers open to liability. Dan Thornton stated that Section 3 D reads that Animal Control does have the authority to enforce issues that may arise without fear of lawsuits. Sam Dotson stated that under N.C.G.S 130, Animal Control Officers have immunity because they are properly enforcing the law, they have immunity from lawsuits.

Vice Chairman Edwards brought the discussion back to order and thanked Officer Crisp for his attendance and his input. Vice Chairman Edwards stated if the county adopted the proposal that outlaws tethering over a three year period, it would bring an undue hardship on responsible dog owners and that isn't what they were asked to do. Susan Menard stated that what the Planning Board had in front of them was in fact two separate proposals, the proposal she was referring to was handed out in June and brought more specifics to the Animal Control Ordinance about how to tether and shelter an animal, not to outlaw tethering. Vice Chairman Edwards stated that Mrs. Straub had referenced a proposal that would phase out tethering over a three year period. Mrs. Menard stated that the proposal handed out in June did not reference doing away with tethering at all, she further stated the phasing out of tethering was a separate proposal. Ronald stated that the Planning Boards decision would merely serve as a recommendation to the Board of Commissioners. Mrs. Straub informed the Board that they did have two distinct proposals, and that the second proposal was merely something for them to look at.

A general discussion occurred between the audience and Board members about abuse vs responsible ownership.

Gwen Straub stated that Section 3 of the Animal Control Ordinance was not working, and she asked the Planning Board to recommend the amendment to Section 3 presented by McDowell Animal Welfare Alliance. Vice Chairman Edwards stated that the Board of Commissioners would have the final say no matter what was recommended.

Sam Dotson made a motion to table the decision on the tethering issue for further discussion. Ronald reiterated that Mr. Dotson's motion was to table further discussion of the tethering issue until the August meeting so Board members could have time to review all the information they had been given. Bob Brendle made a second to the motion. Arvin Hicks stated that the Board was charged with looking at the tethering provision in the current ordinance, and that the Board had been given a lot of information to look over. Mr. Hicks asked if the Board should not send back to the Board of Commissioners for further clarification of exactly what they wanted the Board to look into. Ronald made clarification that the original charge from the Board of Commissioners was for the Planning Board to look into tethering and made a recommendation on tethering in the current document, and whether or not the current wording was sufficient or if other guidelines were needed to help with enforcement. San Dotson withdrew his motion and Bob Brendle withdrew his second.

Arvin Hicks made a motion to send back to the Board of Commissioners that Section 3 of the Animal Control Ordinance was adequate and no change was needed.

Benny Stamey stated that the current document had plenty of civil penalties that could be enforced in issues of abuse and neglect. He further stated that he felt Officers should be given the opportunity to use their discretion. Mr. Stamey stated that he made a second to the motion on the floor. Bob Brendle stated that he felt officers should be able to use their own discretion, but more specifics in the ordinance would help. Ronald suggested that the Board possibly table the discussion for another month and allow Captain Crisp to talk with Animal Control Officers and allow him to address the issues that were brought up in the meeting that he wasn't aware of.

The question was asked if a person who calls in a complaint to Animal Control, will their identity be kept confidential. Captain Crisp stated that yes, their identity would be kept confidential.

Vice Chairman Edwards asked Ronald to read the motion on the floor. Ronald read, Motion was made by Arvin Hicks to send back to the Board of Commissioners that Section 3 of the Ordinance was adequate, Benny Stamey made a second to that motion. Vice Chairman Edwards asked for a vote of all in favor of the motion: Vice Chairman Edwards, Arvin Hicks, Tommy Stamey and Benny Stamey, those opposed were Bob Brendle, Dan Thornton, Sam Dotson and Dennis Whitson. The vote was void due to the Vice Chairman voting.

Vice Chairman Edwards called for a revote of the motion on the floor. Dennis Whitson asked for a restatement of the motion. Ronald read the motion, section three of the Ordinance was adequate and the Planning Board recommends no change. Dennis Whitson reiterated that the ultimate decision would rest with the Board of Commissioners, this was merely a recommendation from the Planning Board. Those in favor of the motion were: Benny Stamey, Dennis Whitson, Arvin Hicks and Tommy Stamey, all of those opposed were: Sam Dotson, Bob Brendle, and Dan Thornton, Vice Chairman Edwards abstained from voting. The motion carried by a 4-3 vote.

Updates and Communications:

Ronald introduced Phoenix Buathier to the Board and explained she was working a 10 week internship with the Planning Department and had helped in compiling information for the packet.

With no further business Vice Chairman Edwards asked for a motion to adjourn. Motion to adjourn was made by Benny Stamey, second from Tommy Stamey, vote taken motion carried.