

**LOWELL TOWN COUNCIL
WORK SESSION
DISCUSSION OF VOUCHER #1752 - SEH
DISCUSSION OF ORDINANCE #2015-10 - DISCHARGING OF FIREARMS, AIR GUNS, ETC.
AUGUST 27, 2015**

A work session of the Lowell Town Council was called to order on Thursday, August 27, 2015 at 5:00 P.M. by President Christopher Salatas. Members present were Craig Earley, LeAnn Angerman, Donald Parker, Christopher Salatas, and Edgar Corns. Also present were Clerk-Treasurer Judith Walters, Town Attorney David Westland, Building Administrator Tom Trulley, Public Works Director Greg Shook, and two interested citizens.

Ordinance #2015-10 - Discharging of Firearms, Air Guns, Etc. - President Salatas stated he would like to point out Ordinance 30-34F which pertains to the Council and states, "every Council member previous to speaking or making a motion shall address himself to the presiding officer and say 'Mr. President', and the Council member shall not proceed with his remarks until he has been recognized by the presiding officer." President Salatas read section 130.02, the current gun ordinance. He stated he had spoken with Attorney Westland earlier this week, and they have come to the conclusion that the word "weapon" includes a bow and arrow, which has been a misconception among some of the people in town that believe they were allowed to fire a bow and arrow. He stated the ordinance passed in 1979, so for the past thirty-six years, town members have not been able to fire a bow and arrow or any weapon or similar device within the corporate limits of town. President Salatas also read section 100.07 under the Park Department rules and regulations, which states that firearms, including a bow and arrow, are not allowed to be discharged on Park property without written permission from the board. After discussions with Attorney Westland, it was pointed out that "the board" is referring to the Park Board, which we no longer have. After review, it seems that the Parks Department has been holding its archery program illegally since 2011. President Salatas stated we really should not have these two ordinances on the books as is. Attorney Westland stated you can and you do have these two ordinances on the books, but like the building ordinances, we have reviewed it and have noticed some potential inconsistencies. At a minimum, he stated we need to clarify section 100.07 and how it would relate to section 130.02A. Any new ordinance needs to clean up the potential ambiguity between the two ordinances.

Councilman Parker stated he believed this all started from discussions with the Carlson family and their concern of not being able to hunt their property if it were to be annexed. When Councilman Corns worked on the Right to Farm bill, there were discussions about when an agricultural property came in they could continue doing everything they had been doing before, including hunting. He stated that he had seen a draft of an ordinance that allows shooting in town, which he does not agree with, but he agrees with allowing bow and arrow practices in people's back yards, but if our ordinances are in conflict, then we need to correct that. Councilman Parker asked which ordinance they were following because one specifically applies to the park. President Salatas stated one is specifically under the Park rules. In some fashion we should allow bow hunters to practice that in their backyards, but we also need to clear this up for our archery program. Councilman Parker asked if the park portion could be included in the town ordinance, and then tweak the current town ordinance. Attorney Westland stated in the overall ordinance, it is not clear about the bow and arrow issue and whether it is considered a weapon or not. Mr. Westland stated in his opinion it is, but that needs to be clarified. Discussion followed regarding how the two ordinances needed to be clarified in order to coincide with each other.

Councilman Parker stated the draft ordinance that we have is only for discussion. President Salatas stated he believed the draft ordinance could be tweaked in order to fix the two current ordinances. He felt a disclaimer could be added for the parks programs, and possibly separating out a bow and arrow from the rifles and firearms to allow archery in some fashion. Attorney Westland stated the draft that was prepared was with regard to the certain amount of acreage allowing what was currently not allowed in section 130.02. He stated of all of the municipalities in Lake County, there is only one that allows any sort of discharge of a weapon., but that does not mean because of some of the unique situations in Lowell you should not allow it.

Councilman Parker stated, "We should not allow discharge of firearms within the corporate limits of Lowell, including any agricultural land that has or will be annexed. This is one ordinance that we need to stand firm on in town is not allowing discharge of any sort of shotguns or firearms, and there should be some restrictions put on bow and arrows."

Councilman Earley stated when he first read the draft ordinance he had questions about determining the minimum acreage needed in order to be able to discharge a firearm. He stated, "in no way, shape, or form am I in favor of allowing the discharge of firearms in town." Councilman Earley explained that, as he read the draft, it looked like they could not only repeal section 130.02, but 100.07 as well and start over with special authority or special exception with our Parks program as it meets certain criteria. Attorney Westland stated that was correct. Councilman Earley stated the current 130.02 does not spell out bow and arrow uses. It does fall under the definition of weapons, but for years this community, whether it has been overlooked or not enforced, has allowed archery. He stated he did not look up the facts, but believed that there were very few incidents or complaints involving the practice of archery. He stated, "There needs to be some sort of exception for those who do take part in archery in their backyard, but if we are going to define their exemption, we need to create some sort of criteria. If we include some sort of exception for the Park, which is in town, then we need to allow certain exceptions for those who do not want to take the class because it could be a form of discrimination if someone feels that they could be teaching their own child that without a class. As far as the discharge of firearms and the minimum acreage needed, I agree with Councilman Parker in that it all stems out of the annexation and the appeasement of proposed properties to be annexed to try and eliminate an argument they may have. Simply by saying you need a certain amount of acreage will still be limiting someone that is currently in town because there are larger parcels. It has been said that this ordinance is going to preserve gun rights in certain proposed annexed areas, which may be true, but that depends on the defined acreage. Not all parcels that we annex will be large parcels. Sooner or later we will pick up small parcels and if those people do not meet this criteria, then we will be limiting their rights. It cannot be said that this ordinance is to protect people's gun rights because some people will not fit the criteria."

Councilwoman Angerman stated she did not believe that an ordinance would be restricting anyone further. She said, "If someone is annexed in to town, they come in under the current town ordinances and they are further restricted by just even coming in to town and giving a number of acres may not be the right avenue to address it, but it may help in addressing the zoning. Nothing would change for the current people in town, but when someone is annexed and zoned agricultural, they would maintain the right to hunt just like their right to farm."

Councilman Earley stated he agreed with Councilman Parker in that if we are going to annex them, they will follow our rules. He said as far as creating a restriction in the zoning ordinance, the issue there is that in the perimeter of our current corporate area, there is agricultural property that comes right up to the backyard of someone's home. Councilwoman Angerman asked what is there current ordinance? Councilman Earley stated if they are agricultural right now in County, they would come in as agricultural. Discussion followed.

Councilman Parker stated he did not believe zoning was the issue, and we need to decide if we want to allow the discharge of firearms in town and hunting in town. He reiterated that he is ok allowing bow hunters to practice in a safe manner, but not the discharge of firearms. Councilwoman Angerman asked as we word the park ordinance, are we limited to a park program, or can someone take their child to Freedom Park and teach them on their own. President Salatas stated it is related to the park program, which would have a certified instructor. Councilman Earley stated he is not advocating allowing the general public to bring their kids to the park to shoot a bow and arrow if you allow them to shoot in their backyard as long as they follow the criteria they need to meet. If we are eliminating the possibility of archery being allowed in someone's backyard, then we should offer them a space where they can teach it, but that would be much more difficult especially liability wise. Councilman Earley reiterated that he is not advocating allowing hunting in town, only target practice. Attorney Westland asked what the safety criteria would be for the backyard and how they would make it objective and enforceable in a consistent manor. Councilman Parker stated he would refer to the instructors or Councilman Earley, someone who knows the sport and could elaborate on the safety criteria. President Salatas asked if the air guns, such as bb's, pellets, and paint balls

should be allowed for such things as target practice. Councilman Parker stated he did not believe so, but advised not to include language that would tie their hands if a competition or something of that nature would want to come in to town at the park. Councilman Earley stated they could get together with some sort of bow hunting association in order to get the safety criteria in place. Councilman Earley read a letter from the Indiana Bow Hunters Association regarding the ordinance.

President Salatas stated the ordinance that has been drafted does not further limit anything, we would actually be loosening these restrictions to a point. Attorney Westland stated the way the ordinance is written today, no one should be doing anything such as the program in the park. He stated you need to “pick a lane” and draft the ordinance the way you want it drafted. Right now the interpretation would be that you are not allowed to discharge a firearm or any sort of weapon, including a bow and arrow, but that may not have been how you were enforcing it. Discussion followed. Councilwoman Angerman stated that she remains in favor of allowing agricultural property that is currently being hunted on to be allowed to continue that practice even after it is annexed.

Building Administrator Tom Trulley stated you need to take in to consideration that we just annexed the Wastewater Treatment Plant, which includes a gun range. Attorney Westland stated they are exempt right now. Councilman Corns stated he is totally against anyone shooting a bow and arrow in town. “People cannot govern themselves. They set up a little cheap target, they do not want to build a berm or anything, and pretty soon they will be using a compound bow.” He stated that if he wants to fire his pistol, he goes to Blithe’s or the police range and everyone can do the same thing. Councilwoman Angerman asked if that included the park program. Councilman Corns stated that was an exception because it was a governed program. Councilman Parker stated we need a draft to look at and decide.

Attorney Westland stated it seemed that there was unanimity in regards to allowing a park or school archery program, but there was not unanimity regarding the bow and arrow issue for individuals. He stated he also did not hear unanimity in regards to the firearms themselves. President Salatas stated they would take it an issue at a time and each voice their opinion to give Attorney Westland direction on how to draft the ordinance. The first issue is at-home archery. President Salatas stated he believed Attorney Westland should get with the IBA and the current instructors to see what they have on at-home safety precautions and draft what a safe home archery target would look like. Councilwoman Angerman agreed with President Salatas. Councilman Parker asked if they were in favor of allowing practice in the backyard. President Salatas stated yes, with safety precautions that would be put in place. Councilman Corns stated he was sticking to his original opinion, but was okay with allowing the park and school programs. Councilman Earley stated he was obviously advocating some sort of private citizen being able to shoot in their backyard. He listed a few programs and associations that he could contact in order to get safety ideas to form criteria. Councilman Parker stated he agreed with President Salatas, Councilwoman Angerman, and Councilman Earley.

President Salatas stated the second point is firearms in town, ie: shotgun, rifle, revolver, pistol. He stated he agreed with Councilwoman Angerman when she pointed out the land that is next to the middle school is currently being hunted on, and it would be the same if it were annexed in to town. He stated he was not sure how it would be determined to let them continue hunting, whether it be a variance or acreage issue. Councilwoman Angerman agreed. Councilman Corns did not agree with being able to discharge a firearm in town. Councilman Earley stated he opposes discharging firearms in town limits, continuing on to annexed properties, and that should be something we consider when we annex it. He stated the issue is if you start making exceptions, there will be arguments against those exceptions further down the line. He stated he was not sure if we should define weapons and asked if air soft guns and bb guns should be included, or if it should be left up to the discretion of the officer. Councilman Parker stated there should not be discharge of firearms allowed within the town limits, even on parcels that may be annexed.

Attorney Westland stated another point is that the current ordinance states it is unlawful for a person to carry or possess a firearm or other weapon in the Town Hall at a time when the Town Court is in session. He asked if that should stay as is. Councilman Parker asked if a separate ordinance could be done that states no firearms are allowed in government buildings. Councilman Corns stated it should say at the Town Hall. Councilman Earley stated his intent was to include it as written and not to change it. He stated State

or Federal statutes does not allow you to carry a firearm in to a court room anywhere, and if we expand that to the Town Hall, then no one can carry a pocket knife in here otherwise they would be in violation. Councilwoman Angerman stated her thought would be not in Town Hall as a safety precaution for everyone who works at the Town Hall, so it should be included. Councilman Earley stated he would not be in favor of that. He stated it does not matter if a law is in place or not, if someone wants to come in here and shoot up the Court or Town Hall, they are going to do it. He stated every person he has seen come in to court is checked with a metal detector, and if we include the Town Hall, do we include our service departments, fire departments, and police departments? He continued that there are laws in the state of Indiana that allow people who are licensed to bring a gun to work with them, and it is only up to private businesses if they allow it inside their business. Councilman Corns stated he believed it should include the Town Hall out of the respect for the employees. Councilman Parker stated he had mixed views on it, and stated if staff would feel safer with an ordinance in place, then he would agree. Public Works Director Greg Shook stated the employee policy says we cannot carry firearms at work, therefore no one should walk in to our office carrying one. Clerk-Treasurer Judith Walters agreed. Councilman Parker stated he agreed with Director Shook and Clerk-Treasurer Walters.

Councilman Parker stated he would like to see language regarding practicing shooting a bow and arrow and not hunting. He stated he understood the need for nuisance hunting, but the DNR can control that and allow permits. President Salatas suggested language that requires written permission from the Town Council and Chief of Police when it comes to permitting nuisance hunting and ceremonial events. Councilman Earley stated something to consider is that the DNR in Indiana has controlled where you can hunt and the rules, but they have created urban zones, which allow bow hunting in urban zones. He stated he was not sure if we could supercede these things because he believed Lowell was considered an urban zone.

Gary Fletcher, 1316 Gatewood Dr., stated Lowell also falls in the deer reduction zone, which is anything north of Route 2 and has been put in place by the State. He stated if you allow bow hunting within the town, you may avoid having to bring in sharp shooters who mainly work at night with a spotlight, which is much more dangerous. He stated that the majority of bow hunters are extremely safe, and that he has never heard of an archery accident in the thirty years he has lived here.

Dan Bohney, 220 W. Commercial Ave., stated he has hunted in some areas that may be considered part of this discussion with sizeable acreage. Most shots with a bow are ten or twenty yards, and 99% of the time you are firing from a tree stand to the ground. There are certain ethical points that you consider when hunting along with hunter education guidelines. He stated that hunting is a strong interest that he would like to keep doing if possible.

John Springsteen, 115 N. Nichols St., stated he has two acres and usually practices in his backyard, and it is getting a little difficult to understand why you are wanting to limit what people do on their own property. He stated he could understand the firearm issue and the office issue, but the deal of archery on your own property is different. You have more people burning in town even though the whole State of Indiana is a no-burn state.

Councilman Parker stated he had spoken with Mr. Reardon earlier and told him he did not need to be here for the meeting, which may be why he did not show up. Clerk-Treasurer Walters stated she had sent him the agenda, and thought he would be at the Redevelopment meeting.

With no further questions or comments, President Salatas adjourned the work session at 6:08 PM.

Christopher Salatas, President

Attest:

Judith Walters, Clerk-Treasurer