

BLUE ASH BOARD OF ZONING

APPEAL HEARING

INGRID ANDERSON

April 9, 2012

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INGRID ANDERSON

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1 MR. COLLETT: I'm about to call
2 the meeting to order, so if there's anybody
3 in the audience who intends to speak tonight,
4 if you would be so kind as to fill out one of
5 those forms with your name and address so
6 that we know who you are when you come to
7 speak either on behalf or in opposition.

8 AUDIENCE SPEAKER: (Indiscernible).

9 MR. COLLETT: There will be a
10 time, ma'am, when you can have your talk, but
11 if you're going to speak, you'll need to fill
12 out one of those forms.

13 Okay. It is after 7:00, so I
14 will call the Blue Ash Board of Zoning
15 Appeals meeting to order. Tracy, if you'll
16 call roll.

17 MS. TRACI SMITH: Julie Brook?

18 MS. BROOK: Here.

19 MS. TRACI SMITH: Mark Kirby?

20 MR. KIRBY: Here.

21 MS. TRACI SMITH: Marc Sirkin?

22 MR. SIRKIN: Here.

23 MS. TRACI SMITH: Paul Collett?

24 MR. COLLETT: Here.

1 MS. TRACI SMITH: Terry Peck?

2 MS. PECK: Here.

3 MR. COLLETT: Okay. Item Number
4 2, review and approval of the March 12, 2012
5 meeting minutes. Do I have a motion to
6 accept them as submitted, or any changes?

7 MS. BROOK: I'll make the motion
8 to -- indiscernible.

9 MR. COLLETT: And a motion to
10 second?

11 MR. SIRKIN: Second.

12 MR. COLLETT: Those in favor?

13 MR. SIRKIN: Aye.

14 MR. KIRBY: Aye.

15 MR. COLLETT: Opposed? Okay.

16 Minutes have been approved. Item Number 3,
17 under new hearings, 9701 Conklin Road, Ingrid
18 Anderson, appeal the zoning administrator's
19 order to permanently remove a horse. In this
20 case, we will call it the second horse. And
21 if someone would like to come before the
22 board and stand here and identify themselves.

23 MR. JOHNSON: If I may, Paul.

24 Mr. Collett, first everybody needs to be

1 sworn in. And also if I can just sort of
2 summarize it before they get started.

3 MR. COLLETT: Okay.

4 MR. PARKER: Good evening, I'm
5 George Parker, on behalf of Ingrid Anderson.

6 MR. COLLETT: Just one minute,
7 please.

8 MR. PARKER: Sure.

9 MR. COLLETT: He said the staff
10 needs to -- anyone -- we're going to have a
11 public hearing. As part of a public hearing,
12 you will need to be sworn in, so if anyone
13 intends to speak, please raise your right
14 hand.

15 (All prospective witnesses sworn.)

16 MR. COLLETT: I'm assuming you
17 do, sir, as well?

18 MR. PACHECO: No. He's all
19 right.

20 MR. COLLETT: He's all right?

21 MR. PACHECO: He's a lawyer.
22 You have to trust us, unfortunately, Paul.

23 MR. PARKER: Chloe is going to
24 testify too. Chloe will testify. I don't

1 know that she had her hand up.

2 MR. COLLETT: All right. Dan?

3 MR. JOHNSON: Okay. Just to
4 explain a little bit where we are here and
5 why we are back here, since we've already
6 been back here once.

7 This is considered a new case.
8 The first case that you heard back in 2010
9 regarded the first horse. The description
10 that's in the staff report kind of went over
11 that.

12 Essentially, what happened was
13 you all agreed with the zoning
14 administrator's interpretation, denied the
15 appeal, and that was scheduled to go to
16 council, but on the advise of the solicitor,
17 we did not follow through on enforcement with
18 that. And the solicitor could explain in a
19 little bit more detail about that decision.

20 But after that happened, the
21 appellant acquired a second horse, and that
22 is what this case is about. Under the same
23 rules, under the zoning code, we ordered them
24 to remove that horse permanently, and they

1 filed this appeal.

2 And the description about the
3 zoning code interpretation was included in
4 the staff report, essentially the same as
5 before, and then in the now assistant
6 recommendation, it included the information
7 from the solicitor about what this case is
8 really about with regards to how they filed
9 the appeal. And that brings us up to today.

10 MR. COLLETT: All right. Do you
11 have some comments you would like to share
12 with us?

13 MR. PACHECO: Unless you have
14 any questions about why we are here or where
15 we are. Other than what Mr. Johnson
16 explained, I don't have anything further.

17 MR. COLLETT: All right. Thank
18 you. Then we'll proceed. Sir, would you
19 like to speak on behalf of the appellant?

20 MR. PARKER: Sure. But
21 procedurally, do you want to do that, or do
22 you want to see if there is anybody that
23 complains? I mean, we'll do it however you
24 want.

1 MR. COLLETT: I believe we will
2 ask for your appeal, and then we will have
3 comments from people in the audience that are
4 something either on behalf or in opposition
5 to the situation or your appeal.

6 MR. PARKER: Then I do
7 understand I have the ability to ask
8 questions?

9 MR. COLLETT: Yes.

10 MR. PARKER: Well, let me just
11 point out for the Board that the city
12 solicitor did render an opinion --

13 MR. COLLETT: Could you speak
14 directly into the mike, please?

15 MR. PARKER: Sure.

16 MR. COLLETT: There you go.

17 MR. PARKER: Did render an
18 opinion after the first appeal in a previous
19 case, and that opinion was that the city
20 shouldn't moved forward.

21 Under that same analysis, we'd
22 ask you to consider the fact that the alleged
23 violation should be set aside and a
24 reasonable modification of the policies,

1 practices, and procedures of the City of Blue
2 Ash Zoning Commission be made to permit the
3 additional animal.

4 The additional animal is
5 necessary as a result of the actual
6 disability of Chloe Anderson Iles. In
7 addition, Chloe has a record of disability.
8 She's autistic, and she has intellectual
9 disability.

10 The animal, while the question
11 may be under what federal rule is deemed to
12 be an alternate, an acceptable alternate to a
13 service animal or to a dog, which would meet
14 the definition of a service animal.

15 The animal in question has been
16 individually trained to perform tasks for the
17 benefit of Chloe. In addition, Chloe can be
18 regarded as having a disability. In addition
19 to that being regarded as having a
20 disability, to allow her to have that animal
21 would be a reasonable accommodation, and to
22 not enforce the zoning regulation as you did
23 for the first animal would be reasonable.

24 Further, there really is no

1 suggestion that there's a -- any harm as a
2 result of this, her using this animal, so
3 we'd ask that you do the same thing. Well,
4 actually don't even do the same thing. Don't
5 make a finding of a violation of the zoning
6 regulations. Give that reasonable
7 modification to the rules.

8 But if you don't think that
9 that's appropriate, then allow her to have
10 the animal as a reasonable accommodation.

11 And then I'm going to ask you to
12 examine her interaction with the animal
13 personally, because the animal is outside,
14 and ask you to perform that demonstration for
15 you at some point in time so that you can see
16 with your own eyes her interaction and how
17 that animal assists her in overcoming her
18 disability.

19 There are whole lists of major
20 life activities that the animal helps her
21 with, including walking, speaking, learning,
22 thinking, communicating, interacting with
23 others. Once again, I say to you that she's
24 actually -- she has an actual disability.

1 There is a neighbor here to
2 speak in her behalf. Her mother will speak
3 in her behalf. I suspect that I have just a
4 major issue with regard to the identification
5 of the animal and the description of the
6 animal itself.

7 Let the record reflect that the
8 animal that's in question is not a horse. To
9 indicate that it's a horse would be to
10 indicate that it's capable of being mounted
11 and ridden. It's not. It meets the
12 definition of a miniature horse, and I don't
13 know that Mr. Pacheco nor Mr. Johnson would
14 have any objection to that.

15 There was some indication one
16 time with the assistance of the county
17 department of health that the animal in
18 question was identified as a Shetland pony.
19 That's an inappropriate characterization.

20 When you see the animal, you may
21 question whether or not we should even have
22 had the hearing because it's so diminutive.
23 And I don't mean to belittle the point, but
24 knowing -- do you have a copy of the

1 Complaint, the original citation?

2 The other issue is resolved. So
3 I think that that may show, if not an attempt
4 to be cooperative, an understanding that
5 there are just some things that you don't do.
6 And Ms. Anderson understands that with the
7 other animals that were alleged.

8 This horse is a necessary --
9 this miniature horse. See, even I do it, so
10 that's pretty easy. But this miniature
11 horse, it's part of Chloe's ability to
12 overcome her disability.

13 And if the previous appeal was
14 not followed through as a result of the first
15 horse, when you see her interaction with the
16 second one, you realize it's a result of her
17 aging, growing, and maturing that there's the
18 need to have the second horse.

19 I suspect Mr. Pacheco, in his
20 infinite wisdom, will say, well, then, why
21 wouldn't you need a third? And I think
22 you'll see that as we do the demonstration
23 for you. And I'd like to talk about that at
24 the end. But I do want to ask Mr. Johnson a

1 few questions whenever it's appropriate, and
2 then I'll move to the next witnesses whenever
3 you feel appropriate.

4 MR. PACHECO: Mr. Collett, may I
5 just address Mr. Parker?

6 MR. COLLETT: Yes. Please do.

7 MR. PACHECO: Mr. Parker made
8 some comments which I just want to clarify.
9 Number one, there was never an opinion from
10 anybody at the solicitor's office or at
11 Dinsmore that said that the city was
12 recognizing that this was, A, a service
13 animal; or B, that we had to do any
14 reasonable modification. That was simply,
15 quite frankly, just being good neighbors. So
16 this issue has never been tested. To the
17 extent it's been tested, you've previously
18 found there was no entitlement to make a
19 modification.

20 The second thing that was --
21 quite frankly, the thought process was to the
22 extent that this violates the ADA, which we
23 don't think it does, but to the extent it
24 does, there was a reasonable modification.

1 There was one already allowed, and now here
2 we are for the second one.

3 So I just want to make it clear
4 that there was never any opinion rendered
5 that this was a service animal. What was
6 rendered was let's just try to be a good
7 neighbor here, and now here we are on the
8 second horse. So I just want to make it
9 clear that there's been no opinion regarding
10 that.

11 And with respect to the issue of
12 the applicable law that is outlined for you
13 in your packet and, you know, the -- you will
14 decide whether the testimony fits those facts
15 or doesn't fit those facts.

16 But I just wanted to be clear,
17 because we're here not because anybody
18 rendered an interpretation. We're here
19 because there was an effort to be a good
20 neighbor previously, and now here we are
21 because now there's a second horse. Thanks.

22 MR. COLLETT: Okay. Thank you.
23 And you're looking for permission to ask
24 Mr. Johnson some questions?

1 MR. PARKER: If I might.

2 MR. COLLETT: Yes.

3 MR. PARKER: Mr. Johnson, you've
4 been out to the property there at 9701
5 Conklin Road?

6 MR. JOHNSON: I have. I have
7 seen it.

8 MR. PARKER: Have you seen the
9 property?

10 MR. JOHNSON: Yes.

11 MR. PARKER: Which horse do you
12 want them to permanently remove?

13 MR. JOHNSON: Either one.

14 MR. PARKER: It really wasn't a
15 trick question. There is no horse out there,
16 is there?

17 MR. JOHNSON: At the moment?

18 MR. PARKER: There never has
19 been a horse there. It's two miniature
20 horses.

21 MR. JOHNSON: That's fine. Of
22 course I would say that a blue horse is still
23 a horse and so is a miniature horse is still
24 a horse.

1 MR. PARKER: Now, Mr. Pacheco
2 mentioned that there is no opinion; however,
3 does that mean there's no writing that was
4 issued from the city solicitor about what the
5 next step that you should take?

6 MR. JOHNSON: I don't recall
7 whether there's a specific written opinion
8 from the solicitor.

9 MR. PARKER: But basically, he
10 said we'll just let them keep the one horse?

11 MR. JOHNSON: Yes.

12 MR. SIRKIN: Mr. Parker, can you
13 talk into the mike?

14 MR. PARKER: Yes. I'll try.
15 I'm sorry.

16 MR. COLLETT: I'm a little off
17 sometimes when you turn toward him.

18 MR. PARKER: So what was the
19 reasoning? Mr. Pacheco says to be good
20 neighbors. Of course, you don't live in that
21 neighborhood, do you?

22 MR. JOHNSON: Right. No, I
23 don't.

24 MR. PARKER: So you meant the

1 city being a good neighbor. The city doesn't
2 think that the Anderson family are bad
3 neighbors because they've added this second
4 animal, do they?

5 MR. JOHNSON: I don't know.

6 MR. PARKER: You don't know or
7 you don't think so?

8 MR. JOHNSON: I said it's
9 immaterial from a zoning standpoint.

10 MR. PARKER: Why should they
11 remove the animal?

12 MR. JOHNSON: In my opinion,
13 from a zoning standpoint, it's illegal.

14 MR. PARKER: And to review
15 again, what part of the zoning code?

16 MR. JOHNSON: It's outlined in
17 the staff report, specifically 1149.01(a),
18 permitted uses does not include a suburban
19 farm. Suburban farm is outlined in the code
20 under 1121.01(a).(122).

21 MR. PARKER: Let me kind of just
22 say this again. Do you agree that those
23 animals are not horses?

24 MR. JOHNSON: No.

1 MR. PARKER: So what are they?

2 MR. JOHNSON: Miniature horses.

3 I'm not sure I understand what you're asking?

4 MR. PARKER: Is your position,
5 then, that this is a farm animal?

6 MR. JOHNSON: Yes.

7 MR. PARKER: And what farming
8 activities does it engage in?

9 MR. JOHNSON: It's a horse.

10 MR. PARKER: Is it a horse or is
11 it a miniature horse?

12 MR. JOHNSON: In my opinion,
13 it's --

14 MR. PACHECO: Just a second.

15 MS. BROOK: This is ridiculous.

16 MR. PACHECO: Mr. Collett, I'm
17 going to object. The point is is that it's a
18 miniature horse. We've already said it, so I
19 would object.

20 MR. COLLETT: Let's move on.

21 Are there other pertinent questions on
22 something other than semantics?

23 MR. PARKER: So are you alleging
24 that they're engaging in animal husbandry at

1 9701 Conklin Road?

2 MR. JOHNSON: Yes.

3 MR. PARKER: And what's the
4 definition of animal husbandry?

5 MR. JOHNSON: I don't recall
6 specifically what the definition was, but
7 I've looked it up, and essentially my summary
8 in my staff report was that it includes
9 caring for farm animals, which in my analysis
10 or my understanding would typically include
11 horses.

12 MS. BROOK: Would you like a
13 definition off dictionary.com?

14 MR. JOHNSON: Sure.

15 MS. BROOK: Okay. It's breeding
16 and caring for farm animals. So they are
17 taking care of a miniature horse, so it is
18 husbandry.

19 MR. PACHECO: Go ahead, Mr.
20 Parker.

21 MR. PARKER: How many miniature
22 horse farms have you ever been to, Mr.
23 Johnson?

24 MR. JOHNSON: I have never been

1 to one, except for, perhaps, this one.

2 MR. PARKER: Ms. Anderson will
3 testify a little bit differently, but what
4 farm chores do you know that these animals
5 are engaging in?

6 MR. JOHNSON: I don't know that
7 they're engaging in any.

8 MR. PARKER: They're helping
9 Chloe. Does that mean -- if you're a
10 disabled person means you're engaging in
11 farming? Yes or no.

12 MR. JOHNSON: I don't know.

13 MR. PARKER: You have the
14 written opinion from the city about what a
15 reasonable modification to the zoning
16 regulations would be to enable a disabled
17 child to have the use of a service animal, do
18 you?

19 MR. JOHNSON: Can you please
20 repeat?

21 MR. PARKER: Yes. You don't
22 have a written opinion from the city
23 solicitor or someone in your law department
24 telling you how to make a reasonable

1 accommodation for a child with a disability
2 to use service animals?

3 MR. PACHECO: Well, I'm going to
4 object. That calls for an attorney/client
5 privilege answer. The other part is we
6 talked about why we did or we didn't do
7 something, which was clear, and so that --

8 MR. JOHNSON: Right.

9 MR. PACHECO: That calls for
10 attorney/client privilege communication, so I
11 object.

12 MR. PARKER: In response.
13 Actually, Mr. Johnson didn't say it, Mr.
14 Pacheco did, but I guess legally I'm not
15 sworn to testify either. I'll ask a
16 different question.

17 Has the City of Blue Ash gone
18 through self-testing to examine your rules,
19 regulations, policies, procedures, and
20 practices to conform with the Americans with
21 Disabilities Act?

22 MR. JOHNSON: I don't know. I
23 don't know -- it has not happened
24 specifically as with regards to the zoning

1 code since I've been working here.

2 MR. PARKER: And one of these
3 animals is acceptable, but not two?

4 MR. PACHECO: Objection.

5 MR. COLLETT: You know, the
6 Board has decided that one -- have ruled
7 against having one. And the city staff opted
8 to make accommodation, whereas they did not
9 enforce our findings, and therefore did not
10 proceed to an appeal process. So if you have
11 more questions relating to --

12 MR. PARKER: Was that an
13 accommodation or was it a modification?

14 MR. COLLETT: I think it was an
15 accommodation. That's my opinion.

16 MR. PARKER: All the other
17 things in your complaint or your order were
18 cleared up?

19 MR. JOHNSON: The pigs, yes,
20 they were. As far as I know. I've been told
21 by folks that they were gone. The appellant
22 told me that they were going to be moved, and
23 I understand that they were.

24 MR. PARKER: Have you seen Chloe

1 interact with these?

2 MR. JOHNSON: No.

3 MR. COLLET: Sir, if you could
4 address the board, please. Are you done
5 asking?

6 MR. PARKER: Oh, no, no. I had
7 a few more questions. Are you saying I don't
8 have a -- I can't ask anymore questions?

9 MS. BROOK: We're the ones that
10 vote.

11 MR. PACHECO: But in fairness,
12 he has questions for Mr. Johnson. If he's
13 asking questions for Mr. Johnson, he can do
14 that.

15 MR. PARKER: I'm sorry. I was
16 asking questions and now you're coming at me.

17 MR. COLLETT: Continue with your
18 questions for Mr. Johnson, then, and we'll
19 get back to that.

20 MR. PARKER: Okay. Have you
21 asked Ms. Anderson what disability her
22 daughter has?

23 MR. JOHNSON: Are you saying --
24 no.

1 MR. PARKER: Have you asked her
2 what tasks the animals perform for her
3 daughter?

4 MR. JOHNSON: No.

5 MR. PARKER: Have you asked them
6 to provide any documentation such as proof
7 that the animal's been certified, trained, or
8 licensed as service animals?

9 MR. JOHNSON: They've provided
10 letters.

11 MR. PARKER: Is it your position
12 that these horses, miniature horses, don't
13 meet the definition of a service animal?

14 MR. JOHNSON: I don't really
15 have an opinion in that regard. I haven't
16 personally evaluated them.

17 MR. PARKER: Who would be
18 responsible for determining whether or not
19 they were service animals? Like for example,
20 if Chloe were to bring the animals in here,
21 who would make that determination?

22 MR. JOHNSON: I don't know.

23 MR. PARKER: It wouldn't be you?

24 MR. JOHNSON: I have no idea.

1 MR. PARKER: Well, then, why did
2 you issue a zoning regulation violation
3 without determining whether or not there was
4 an exception to the zoning rules before
5 issuing the order to remove the animal?

6 MR. JOHNSON: There's no
7 requirement to do so. It's from -- in my
8 standpoint, this is a zoning matter, which
9 simply addresses the fact that there's a
10 horse.

11 MR. PARKER: I have nothing
12 further of Mr. Johnson. Thank you.

13 MR. COLLETT: Do you have any
14 other comments to the Board that you'd like
15 to --

16 MR. PARKER: Oh, sure.

17 MR. COLLETT: I mean you
18 personally, are you finished with your
19 presentation to the Board, then?

20 MR. PARKER: No, I've got a few
21 more witnesses.

22 MR. COLLETT: Okay.

23 MR. PARKER: Do I do them now?
24 You just tell me what you want me to do and

1 I'll do it.

2 MR. COLLETT: Okay. If you have
3 a witness, you can --

4 MR. PARKER: Yeah. I'd like you
5 to see the interaction of Chloe with the
6 animals. And I think she's staging that now,
7 I believe, so whenever you're ready to see
8 Chloe's interaction.

9 MR. COLLETT: Is that something
10 that the Board would be --

11 MR. PACHECO: Well, I mean, you
12 know, I mean, yeah, it's up to the Board's
13 discretion.

14 MS. BROOK: Would that be
15 relative to our decision as to whether or not
16 this has to do with the zoning? Whether or
17 not the animal interacts with the child is
18 not our issue.

19 Our issue is whether or not this
20 horse needs to be eliminated from the
21 property. That's what our issue is, and
22 therefore, seeing the child interact has
23 nothing to do with our decision on zoning, in
24 my opinion.

1 MR. PACHECO: It's the Board's
2 call on the motion, not mine, so -- or a
3 request.

4 MR. COLLETT: I would have to
5 agree with the Board member's assessment,
6 that that does not have a significant impact
7 on our decision, in that it is not -- we're
8 here to decide whether or not it's
9 beneficial, or one or more. We assume that
10 it is.

11 MR. PARKER: You assume that it
12 is?

13 MS. BROOK: He's speaking for
14 himself. He's assuming.

15 MR. PARKER: I'd gladly enter
16 into that stipulation. Mr. Pacheco, would
17 you be willing to enter into the --

18 MR. PACHECO: Can we just move
19 on.

20 MR. PARKER: I don't know.

21 MR. PACHECO: No. Can we just
22 move on.

23 MR. PARKER: To where?

24 MS. BROOK: This has to do with

1 zoning. Let's move on to the zoning portion
2 of this meeting.

3 MR. COLLETT: Do you have a
4 witness that you would like to call?

5 MR. PARKER: I do. I would like
6 to call the two horses, miniature horses.

7 MR. COLLETT: Well, they would
8 not be permitted in our chambers.

9 MR. PARKER: Why not?

10 MR. PACHECO: Because they're
11 not housebroken and we don't have to make a
12 modification.

13 MR. PARKER: No. How do you
14 know they're not housebroken?

15 MR. PACHECO: Because you've
16 told me before. Are you going to tell me you
17 didn't?

18 MR. PARKER: No, I didn't tell
19 you they weren't housebroken. I told you
20 that I would like to not have to bring them
21 in, is what I said.

22 MR. PACHECO: Fine.

23 MR. PARKER: I didn't say they
24 weren't housebroken.

1 MR. PACHECO: (Indiscernible.)

2 MR. COLLETT: I do not think
3 it's necessary to bring the horses into
4 council chambers, miniature horses.

5 MR. PARKER: Just to make sure I
6 understand, you're going to prohibit this
7 person with a disability from bringing their
8 miniature horses into this facility, if
9 that's what you're telling me --

10 MR. PACHECO: Well, you know
11 what? What's completely misleading about
12 that statement is that Chloe has been in
13 here, was able to ambulate in here without
14 the horses, so I don't want this kind of
15 comment to be mischaracterized and
16 misconstrued in the manner in which you are
17 attempting to.

18 MR. PARKER: So no horses?

19 MR. COLLETT: Yes.

20 MR. PARKER: I'll call Chloe.
21 Chloe Anderson Iles.

22 INGRID ANDERSON
23 a witness herein, testifying on behalf of
24 CHLOE ANDERSON ILES, having been duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. PARKER:

4 Q. Could you identify yourself,
5 please?

6 A. Ingrid Anderson, mother of Chloe
7 Anderson Iles, certified accredited
8 nationally trade of service in therapeutic
9 animals.

10 Q. Could you speak into the
11 microphone, please?

12 A. Ingrid Anderson, mother of Chloe
13 Bell Anderson Iles, nationally accredited
14 service therapy animal trainer.

15 Q. Thank you.

16 MS. PECK: Certified through
17 who, Red Cross?

18 THE WITNESS: The Equine
19 Assisted Growth and Learning Association of
20 America. I also have two other affiliations.

21 MS. PECK: But not Red Cross?

22 THE WITNESS: Sir?

23 MS. PECK: Not Red Cross? Red
24 Cross, no or yes?

1 THE WITNESS: Delta Society, and
2 I have correspondence that I'm more than
3 willing to share with you, my licensure, and
4 my certificates.

5 MR. COLLETT: Your comments,
6 please.

7 MR. PARKER: Right now or later?

8 MR. COLLETT: No. What would
9 you like to say, Ingrid, Ms. Anderson?

10 BY MR. PARKER:

11 Q. Ms. Anderson, your daughter
12 Chloe has an actual disability?

13 A. Yes. Chloe has multiple
14 diagnosis disabilities, medically fragile.

15 Q. Does she have autism?

16 A. Yes, she does.

17 Q. Does she have multiple --
18 indiscernible -- her disability?

19 A. Yes.

20 Q. You've identified means to help
21 Chloe deal with her disability?

22 A. Yes.

23 Q. And that includes the use of
24 miniature horses, does it not?

1 A. Yes.

2 Q. These animals have been trained
3 to assist Chloe in various aspects of her
4 illness?

5 A. Yes.

6 Q. Such as?

7 A. Ambulation, socialization,
8 proprio-perception, trust.

9 MR. PACHECO: What was the third
10 thing? I didn't hear the third.

11 THE WITNESS: Proprio-perception.

12 MR. PACHECO: Thank you.

13 THE WITNESS: That is a medical
14 term which means for her to use multiple
15 parts of her body and using them in different
16 tasks, pretty much a conglomeration of OT,
17 PT, and cognitive skills.

18 MR. PACHECO: Thank you.

19 Q. They help her with
20 communicating?

21 A. Yes.

22 Q. Interacting with others?

23 A. Socialization is an incredible
24 factor.

1 Q. Speaking?

2 A. Quality of life, speaking,
3 reciprocal language.

4 Q. Walking?

5 A. Gross motor skills.

6 MS. BROOK: Does she take this
7 horse to school with her?

8 THE WITNESS: She can.

9 MS. BROOK: Does she take this
10 horse daily to school with her?

11 THE WITNESS: The horses are
12 invited to all of her school functions, yes.
13 We have not, no, because we respect the fact
14 that there is an issue.

15 MS. BROOK: So she does not take
16 these horses on a daily basis to school?

17 THE WITNESS: We have not pushed
18 that target, yes.

19 MR. PARKER: But she uses the
20 horses on a daily basis for all the things
21 that --

22 MS. BROOK: I asked if she takes
23 them to school.

24 THE WITNESS: She doesn't make

1 it to school every day because she's
2 medically fragile.

3 MS. BROOK: But when she goes to
4 school, does she take the horses every day?

5 THE WITNESS: Not yet.
6 Negative.

7 BY MR. PARKER:

8 Q. But she uses them at home every
9 day?

10 A. Yes.

11 Q. Let's talk about the animals
12 themselves. Let's talk about the type, the
13 size, the weight of each animal.

14 A. Sure. They're of miniature
15 standards. The miniature's 34 inches and
16 under. Jack, the male, a gelding who was
17 altered, is 28 inches at the withers and,
18 with all due respect, not insulting anybody's
19 intelligence, that's a measure of the
20 shoulders. Lacey, on the other hand, is
21 24 inches at the withers. She's altered.

22 MR. PACHECO: Lacey is 24 -- I
23 didn't hear.

24 THE WITNESS: Twenty-four.

1 MR. PACHECO: And the other?

2 THE WITNESS: So significantly
3 very miniature horses. A St. Bernard that's
4 bigger than the female.

5 MR. PACHECO: What was the other
6 name? I didn't hear it.

7 THE WITNESS: Jack.

8 MR. PACHECO: And Jack is how
9 big?

10 THE WITNESS: He's 28 inches at
11 the withers.

12 MR. PACHECO: Thank you.

13 MR. PARKER: Has anybody from
14 the City of Blue Ash ever been out to look at
15 your animals?

16 THE WITNESS: Negative.

17 MR. COLLETT: Pardon me. Would
18 you repeat that question? Sir, would you --

19 MR. PARKER: Has anybody from
20 the City of Blue Ash been out to observe your
21 animals?

22 THE WITNESS: I've seen you
23 walking with the horses. Does that count?

24 MR. PARKER: I don't know that

1 -- do we want to have a Board member testify?

2 I guess I could.

3 Q. Have you ever seen Mr. Johnson
4 when you're walking the horses, miniature
5 horses?

6 A. No. I really don't pay
7 attention to anybody unless they come up and
8 ask, which is an educated factor and, once
9 again, a socialization opportunity for Chloe
10 to engage in using some of her reciprocal
11 language, her social skills, and quality of
12 life issues.

13 Q. Are your horses used in any type
14 of farming?

15 A. We have people ask us for the
16 manure for the vegetable gardens. That would
17 be the only far stretched tangent I can grasp
18 at.

19 Q. But you're not engaging in any
20 husbandry activity with those animals?

21 A. They're alternates. Impossible.

22 MR. PACHECO: What was that?
23 I'm sorry. I'm having a hard time. I did
24 not hear her.

1 THE WITNESS: I said they are
2 altered. It's impossible for me to engage in
3 husbandry. There's no reproductive means one
4 way or another.

5 MR. PACHECO: Thank you.

6 THE WITNESS: A quick question.
7 Is there a question about the prescribed
8 regimen for Chloe's therapy?

9 MR. PARKER: We're not there
10 yet.

11 THE WITNESS: Oh, okay.

12 MR. PARKER: Yes, I have a
13 question about the prescribed regimen for
14 using animals as part of Chloe's therapy.

15 THE WITNESS: I don't want to
16 insult anybody's intelligence, but other than
17 ambulation and mounting a horse, there's
18 hippotherapy, equine therapy, horse and
19 maintenance therapy. So there's a plethora
20 of therapies that you may not be privy too.

21 And once again, I'm not being
22 condescending, however, there's a reason for
23 two horses, which has been backed by
24 Children's Hospital medical team on multiple

1 occasions.

2 So I'm graciously trying to be
3 compliant; however, being Chloe's mother, I'm
4 also going to be the best advocate I can for
5 what I can do for her as her mother.

6 BY MR. PARKER:

7 Q. So essentially, the doctors who
8 have been caring for her tell you that this
9 is a necessary part of caring for her and
10 providing for her to deal with her
11 disability?

12 A. I wasn't sure if everybody was
13 privy to that correspondence. As Dan had
14 mentioned, there has been a lot of
15 correspondence back and forth from Children's
16 Hospital special needs division.

17 Dr. Ron Levin has retired now,
18 but he was the person who manifested this
19 program, wrote a prescription, helped me get
20 it started, and has asked me to join their
21 team in helping other families develop this
22 program.

23 I can't do that because of the
24 restrictions and parameters and the issues

1 that I have dealt with personally with Blue
2 Ash, and the condescending remarks about farm
3 animal, et cetera, et cetera.

4 These are highly educated
5 animals; and, you know, like I said, I have
6 been invited by Children's Hospital to take
7 my skills and apply them to other children
8 and families.

9 MS. PECK: I don't think we're
10 questioning whether the horses are therapy
11 animals. I don't think that is the question,
12 because there are dog and cat therapy animals
13 as well.

14 We're not questioning that. And
15 we understand what they're writing. We're
16 just questioning the appropriateness of a
17 horse in the middle of an urban area.

18 And, you know, I'm not sure that
19 the doctors at Children's Hospital thought
20 about that when they started the program.
21 That may be something they need to think
22 about.

23 THE WITNESS: We've had a long
24 discussion, and with all due respect, I'm not

1 privy to discuss that because it's not
2 finalized. I'm still in the process of the
3 paperwork, and dotting I's and crossing T's,
4 so to speak. My reason for sharing that
5 information was -- I forget your name, but
6 Mr. -

7 MS. BROOK: Pacheco.

8 THE WITNESS: Indicated
9 something about Chloe's ambulation. I don't
10 think that is really in your realm to
11 determine her endurance and her ambulation,
12 and what it may or may not need since you
13 have not interacted with my child on any
14 level. That is called discrimination, making
15 a medical judgment based on what you know,
16 not what the facts are.

17 MR. COLLETT: Do you have other
18 comments relative to what you came up here to
19 tell us?

20 BY MR. PARKER:

21 Q. The question that Ms. Brook
22 posed was does she take horses with her to
23 school every day. Would you be better or
24 would Chloe be better to tell what she does

1 with the horses? I mean, you witness it, so
2 you can tell what she does.

3 THE WITNESS: With all due
4 respect, I think this is above and beyond the
5 foundation, the information, the basic
6 information that has been given. I default
7 to your -- it's very hard to be proactive and
8 respective of other people because we're all
9 here together. I look at my neighborhood as
10 an extended family and try to respect those
11 parameters graciously; however, when you have
12 a child like Chloe, and I walk up to Blue Ash
13 Elementary to pick up my child, I can't have
14 Chloe's service dog with me because it says
15 no animals allowed due to allergies, okay?
16 So I'm respective of that. I'm not pushing
17 the ticket. However, there's no reason her
18 service animal, her service dog cannot go in
19 that school, which is why I've not pushed the
20 issues with the horses.

21 All I'm trying to do is what I
22 can do, one person, one mother, and a
23 reasonable accomodable very considerate
24 position.

1 Q. So why two and not just one?

2 A. The two horses have different
3 therapeutic means.

4 Q. Such as?

5 A. Hippotherapy and equine therapy.
6 Not that it's relevant, but Chloe's endurance
7 does not let her mount a horse, so there's
8 been an Amish cart built for her, just in
9 excess of a thousand dollars, which was built
10 just for Chloe for her equine therapy.

11 Q. What does she do with it?

12 A. Chloe gets on the cart, and she
13 drives the horses independently. Chloe
14 right. She turns right. Chloe left. She
15 turns left. Chloe whoa. Chloe whoa. It's a
16 trust. It's reciprocal. It's building
17 confidence, independence, social skills.

18 And I understand this is far
19 more -- indiscernible -- than the zoning
20 issue we're addressing, but it's also a fine
21 line as to what is reasonable, and why there
22 are two horses and not just one, and why
23 would we not get a third one then, since we
24 have two. But that's not what we're after.

1 We're after a reasonable, therapeutic
2 environment for Chloe.

3 Q. Does she use both animals on a
4 regular basis?

5 A. Not quite daily, but yes.

6 MR. COLLETT: Is this a therapy
7 that in many other cases is available at a
8 remote location?

9 THE WITNESS: Winton Woods, for
10 example. Chloe was on the waiting list for
11 six years. When she came up to the top of
12 the list, she was what is called -- she was
13 in static encephalopathy, which is a status
14 of pretty much all system failure, and she
15 was not able to go to her 10:00 Saturday
16 session, which is why it was prescribed as it
17 is.

18 MR. COLLETT: At some point in
19 time, that was the case. Is all of what
20 she's currently receiving from the
21 combination available at remote locations, or
22 is it more common for one than the other?

23 THE WITNESS: I'm not sure I
24 understand your question.

1 MR. COLLETT: You said hippo and
2 equine therapy. I don't know if those are
3 correct terms or not.

4 THE WITNESS: Yes, sir.

5 MR. COLLETT: And one of them is
6 not as regular as the other, so it would be
7 possible to go to a remote location for one
8 of the two therapies?

9 THE WITNESS: The hippotherapy
10 is not commonly practiced. It's very
11 difficult to find somebody who does the
12 hippotherapy. It's sort of like if you'll
13 accept like acupuncture or hypnosis. It's
14 kind of an abstract, and especially in the
15 therapeutic animal world, it's not a real,
16 very well-versed practice.

17 MR. PARKER: I guess, if you
18 kind of summarize it, these horses aren't
19 farm animals?

20 THE WITNESS: No, they are not
21 farm animals by any stretch of the
22 imagination. Under no interpretation of the
23 definition could that be possible.

24 MR. PARKER: I'll call my next

1 witness, Chloe.

2 MR. PACHECO: I have some
3 cross-examination of Ms. Anderson, if I may,
4 please.

5 MR. COLLETT: Okay.

6 MR. PARKER: (Indiscernible.)

7 CROSS-EXAMINATION

8 BY MR. PACHECO:

9 Q. Ms. Anderson, however --

10 A. Sir?

11 MR. PACHECO: I don't want to
12 cause any problems. May I ask her -- is it
13 okay if I ask her questions now?

14 MR. PARKER: Chloe?

15 MR. PACHECO: No, I'm not going
16 to ask Chloe any questions. Is it okay if I
17 ask Ms. Anderson questions? I just want to
18 make sure. If there's not, I don't want to
19 create any -- okay.

20 Q. Ms. Anderson, Chloe already has
21 a service animal, correct?

22 A. Yes.

23 Q. It's a dog, right?

24 A. Yes.

1 Q. And these two horses are not
2 service animals, are they?

3 MR. PARKER: Objection. Asking
4 for a legal conclusion. Let me just object.
5 We had the discussion earlier --
6 indiscernible.

7 MR. JOHNSON: Excuse me. Please
8 use the microphone.

9 MR. PARKER: -- the difference
10 between a service animal and the -- well,
11 he's a smart man.

12 A. While you're looking for that,
13 Hope is Chloe's service dog who was trained
14 for seizure response, not seizure detection,
15 not proprio reception, not --
16 indiscernible -- seizure recognition.

17 And Chloe stops breathing when
18 she goes into a seizure. Hope goes down and
19 focuses her in a recumbent and sideline
20 position to avoid aspiration. Hope goes --
21 indiscernible -- that's Hope's job, period.

22 Q. Ms. Anderson, you understand the
23 terminology "service animal," don't you?

24 MR. PARKER: Objection. I think

1 he's asking for a legal conclusion. Once
2 again, under Code of Federal Regulations 35,
3 one through six, the actual subsection, which
4 seems to indicate miniature horses meet an
5 alternate definition of service animal. I
6 think it's somewhat asking her a legal
7 conclusion or --

8 MR. PACHECO: Mr. Collett, may I
9 give you the purpose for mine. You can rule
10 on the objection however you think it's
11 proper, but Ms. Anderson testified the dog
12 was a service animal. She knows what that
13 interpretation is, so she was able to provide
14 it.

15 I asked the question about the
16 horse. The Board can decide however the
17 answer is what the answer is. That was the
18 first of my question, and she just answered
19 it anyway.

20 MR. COLLETT: Okay.

21 MR. PACHECO: I'm going to --
22 you know what, point's been made.

23 BY MR. PACHECO:

24 A. Yes, the horses are service

1 animals. They do serve to enhance Chloe's
2 ability to thrive, as mentioned earlier.

3 Q. The horses don't go to school
4 with her, correct?

5 A. By law, they can go to school.
6 I have not pushed that ticket.

7 Q. The horses don't go to school
8 with her?

9 A. Not yet.

10 Q. Okay. And the horses don't help
11 her bathe, correct?

12 A. No.

13 Q. The horses don't help her eat?

14 A. You're insulting my
15 intelligence. Would you --

16 Q. Ms. Anderson --

17 A. Would you make the questions a
18 little bit more relevant to what they might
19 help her with.

20 MR. PACHECO: Mr. Collett, the
21 point of my questions are the ADA involves
22 daily life activities. I'm simply asking
23 about daily life activities.

24 A. What is quality of life? What

1 is communication?

2 MR. COLLETT: Please. Please.

3 Keep your tone down.

4 THE WITNESS: I apologize.

5 Forgive me. I respect where you are, and I

6 also respect where I am, and it's very

7 difficult.

8 MR. COLLETT: I understand.

9 THE WITNESS: So please accept

10 my apology. I did not mean to be

11 confrontational.

12 MR. COLLETT: But you made, you

13 know -- Ms. Anderson -- continue.

14 MR. PACHECO: Oh, I'm sorry, Mr.

15 Collett. I interrupted.

16 MR. COLLETT: You may continue.

17 MR. PACHECO: Thank you.

18 Q. Ms. Anderson, Chloe does not

19 need the horses to walk, correct?

20 A. What distance?

21 Q. Well, the distance from the

22 front of the door to the front of this

23 microphone, correct? She was able to walk

24 from the front of the door to the front of

1 the microphone, correct?

2 A. Today she is.

3 Q. Yes. And where did you park
4 tonight?

5 A. Right out front.

6 Q. And she was able to walk from
7 right out front to here, correct?

8 A. Actually, we put her in her
9 stroller because she has no depth perception.
10 She doesn't stop.

11 Q. Fair enough.

12 A. She oversteps and such.

13 Q. Fair enough. Good point. She
14 didn't need the horses for her to get
15 transported from the car to the microphone,
16 correct?

17 A. Negative.

18 Q. Okay. And you testified earlier
19 that she doesn't even see the horses every
20 day, correct?

21 A. She sees them every day. She
22 doesn't have an actual therapeutic session
23 with them every day.

24 Q. Right. And this therapy is

1 available at Winton Woods, correct?

2 A. Not to Chloe's level, no. It's
3 mounted therapy, period.

4 Q. Okay. But the therapy that she
5 could use with respect to horses is available
6 at other places other than your house, right?

7 A. Not that I have located, no.

8 Q. Okay. When you go on trips, you
9 don't take the miniature horses with you,
10 correct?

11 A. We don't go on trips.

12 Q. And when you go to the store,
13 Chloe doesn't take the miniature horses with
14 her in order to be able to get around, does
15 she?

16 A. We don't go to stores with
17 Chloe.

18 Q. Okay. When Chloe leaves the
19 house, the horses never go with her, do they?

20 A. No, not always.

21 Q. They never go with her, do they?

22 A. Actually, they do.

23 Q. When?

24 A. When we go for walks, and we're

1 working with her and the horses.

2 Q. So the only time that the horses
3 go with her is on those walks?

4 A. Correct.

5 Q. Which occur how often?

6 A. Multiple times a week.

7 Q. I see.

8 MS. BROOK: Can I ask a
9 question?

10 MR. PACHECO: Yes. I've got
11 more, but go ahead.

12 MS. BROOK: When you take those
13 horses for walks, do you clean up after them
14 as they're walking around the community and
15 the sidewalks?

16 THE WITNESS: Yes, we do. They
17 have saddlebags with receptacles in each one
18 of them.

19 Q. Ms. Anderson, the horses are not
20 housebroken, correct? They're not
21 housebroken?

22 A. No, not -- no. We do not let
23 them inside of the house, but they do have a
24 bathroom area, yes.

1 Q. In the house or outside?

2 A. Outside in a designated area.

3 Q. And they're housed outside in a
4 designated area, right, the two horses? You
5 house them, or you put them -- I don't mean
6 house as in -- where do the horses stay on
7 the property?

8 A. They have two stalls.

9 Q. Okay.

10 A. And they also have a backyard
11 area.

12 Q. What do they eat?

13 A. And we also have a field.

14 Q. What do they eat?

15 A. Hay.

16 Q. Do they graze on -- this may
17 sound trite. It's not meant to be. Do you
18 allow them to graze on the grass?

19 A. We historically have. We are
20 not anymore because we lost a horse to that.
21 It's called colic. Chemlawn was being used
22 on our neighbor's yard, and we did not
23 realize that the percolation was occurring as
24 such that it killed her previous horse.

1 Q. How often is Chloe in the house
2 on a daily basis, let's say out of 24 hours,
3 how often is she in the house? How many
4 hours a day does she spend in the house,
5 approximately?

6 A. Over spring break, she spent
7 maybe -- she was at Children's Hospital most
8 of the time.

9 Q. Okay. All right. I'm not
10 asking you about spring break. I'm asking
11 generally, when -- unfortunately, when she's
12 not having some type of treatment. I'm
13 asking you specifically in the house, just on
14 a general normal day, how many hours is she
15 in the house?

16 A. Average of an 11-year-old.

17 Q. Okay. And all the times that
18 she's in the house, the horses are not with
19 her, right?

20 A. They're right outside her
21 bedroom window.

22 Q. They're not in the house with
23 her, are they?

24 A. They are not inside the house on

1 any given day at this point. We are having a
2 ramp built.

3 Q. So is it your intent to start
4 housing the horses in the residence itself?

5 MR. PARKER: Objection. Assumes
6 facts not in evidence.

7 MR. JOHNSON: Speak in the
8 microphone, please.

9 MR. PARKER: The testimony was
10 that they are housed inside the house. It's
11 not in the residence area, but there is a
12 portion, so I think that's kind of
13 mischaracteristic of the evidence.

14 Q. Well, I thought we had that all
15 buttoned up, but I guess not. The horses are
16 not in the residence, right? They're not
17 housed inside the residence; is that correct?

18 A. Not in the living quarters
19 currently.

20 Q. Okay. Thank you. Now,
21 Ms. Anderson, do you recall receiving a
22 letter from or an e-mail from Mr. Johnson
23 regarding the two horses, and that that was
24 in violation of the zoning code? Do you

1 recall receiving an e-mail to that effect?

2 A. Would you indicate the date of
3 that particular correspondence, because I've
4 received multiple.

5 Q. In fact, I'll be happy to show
6 it to you. Take a look at the last page of
7 this.

8 MR. PACHECO: For the record,
9 this is a six-page document that's got a
10 number of things that I may or may not refer
11 to. And so I just, for the record, I wanted
12 to see what it is. But look at the last page
13 of that document.

14 MR. JOHNSON: Can you please use
15 the microphone?

16 MR. PARKER: (Indiscernible.)

17 MR. PACHECO: No, I haven't even
18 asked her a question. Can I ask her a
19 question before you object.

20 MR. JOHNSON: Mr. Collett, will
21 you please advise him to use the microphone.

22 MR. PARKER: (Indiscernible.)

23 MR. JOHNSON: We're going to get
24 a transcript for this, so please advise him

1 to --

2 MR. COLLETT: Please speak into
3 your microphone, sir.

4 BY MR. PACHECO:

5 Q. Ms. Anderson, I think you
6 testified earlier that you corresponded back
7 and forth, or have you corresponded back and
8 forth with Mr. Johnson regarding the issues
9 of the horses?

10 A. On multiple occasions, yes.

11 Q. All right. And the last page of
12 that exhibit, or that six pages of documents
13 is dated -- an e-mail from you to Mr.
14 Johnson, dated August 16, 2011, at 1:54 p.m.

15 Have I read that correctly, at
16 least the top part of it? I'm asking you if
17 I've read it correctly. Do you know?

18 A. What you read is accurate,
19 correct.

20 Q. Okay. And your e-mail is IA --
21 well, I don't want to read it in public, but
22 that's your e-mail address?

23 MR. PARKER: Objection --
24 indiscernible.

1 MR. COLLETT: Speak into the
2 microphone.

3 MR. PACHECO: I appreciate it.
4 Thank you, Mr. Parker.

5 Q. And you responded to
6 Mr. Johnson, quote, I need two horses to work
7 Chloe's cart. Did I read that correctly?

8 A. Correct.

9 Q. You didn't mention the
10 particular therapies that were needed,
11 correct?

12 A. No. That documentation was
13 later remitted by medical correspondence from
14 Dr. Ronald Levin.

15 Q. And you didn't indicate that the
16 horses were service animals at the time, did
17 you?

18 A. Once again, all that information
19 was remitted by Prescribe Method, Children's
20 Hospital, Dr. Ronald Levin, Dr. Derek
21 Fletcher.

22 Q. Well, my question was, you
23 didn't call these animals service animals in
24 this e-mail, did you? That's my only

1 question.

2 MR. PARKER: We've already
3 stipulated the document is what it purports
4 to be.

5 MR. PACHECO: Okay. Can she
6 just answer the question, I guess. If not,
7 then --

8 MR. COLLETT: Would you please
9 answer the question.

10 A. With all due respect, I don't
11 know if you realize, but it takes two years
12 to train a service animal, which is why I
13 went through the cost --

14 Q. Oh, so it takes --

15 A. -- the effort to go through the
16 schooling and certifications, accreditations
17 that I went through. But yes, it does take
18 them approximately two years from a service
19 dog to a horse, just depending.

20 Q. Okay. And I'm going to ask one
21 more time, and if I can get an answer, I
22 would love to move on. The term service
23 animal is not in this e-mail, correct?

24 A. Not in this e-mail right here,

1 no.

2 Q. All right. Thank you. Now, the
3 first approval for hippotherapy came from a
4 Dr. Levin, Ronald Levin; is that right?

5 A. Dr. Ronald Levin.

6 Q. Levin; is that correct? Take a
7 look at the package. It's the first page of
8 that package. Do you recognize this document
9 is a letter from Dr. Levin that was sent on
10 your behalf to the City of Blue Ash
11 concerning one horse?

12 A. Yes. I see it right here, just
13 as you do.

14 Q. Thank you. Second sentence,
15 first paragraph, "This letter is being
16 written to support the housing of a miniature
17 horse for in-home therapy support for Chloe,
18 who resides with her parents in Blue Ash."
19 Did I read that correctly?

20 A. That is correct.

21 Q. And that was for one horse,
22 right?

23 A. That is correct.

24 Q. And the -- in the third

1 paragraph, the doctor says, "We support the
2 use of this therapy at the home with the use
3 of a miniature horse where therapy techniques
4 are introduced by a trained therapist, and
5 can be utilized in a schedule that is more
6 conducive to Chloe."

7 So at the time, in 2010, the
8 therapy was available elsewhere. The point
9 of this letter was just to say that it would
10 be better for Chloe if it occurred at your
11 house, right?

12 A. Chloe cannot mount a horse. The
13 therapy was not available to Chloe's
14 disposal.

15 Q. So then the therapy that the
16 doctor recommended in this letter you did not
17 undertake?

18 A. The first horse that Chloe had,
19 which you're making mention to, was
20 pre-trained.

21 Q. Okay.

22 A. She passed.

23 Q. Okay.

24 A. We acquired another horse. He

1 did this particular therapy. Not enough to
2 carry Chloe in her cart that was specifically
3 designed for her, hence the second horse,
4 hence the second letter supporting the second
5 horse.

6 Q. And the --

7 A. And the addition of multiple
8 diagnoses, which were not aforementioned,
9 which she was not diagnosed with previously.
10 So her therapy did change within
11 approximately 12 to 18 months of time.

12 Q. You're saying that the therapy
13 has or that her conditions have changed in
14 the 12 to 16 or 18 months of time?

15 A. Yes. Hippotherapy was not
16 available for me to study and become fluent
17 in, and I went back and received that
18 training.

19 Q. Oh, so the reasons that the
20 doctor is asking for this particular
21 accommodation at your house is not because
22 there's a particular therapy that has to be
23 done there, it's because you needed more time
24 to study it so you could understand it

1 better?

2 MR. PARKER: Is that two
3 questions or one? Maybe three, actually.
4 Objection. Three questions in one.

5 MR. PACHECO: If it's
6 objectionable, then tell me to re-ask it. If
7 you think it was, then answer it.

8 MR. COLLETT: Just re-ask the
9 question, please.

10 Q. The reason that the therapy --
11 you needed more time to understand the
12 therapy, right, as of November 2010 when this
13 letter was written?

14 A. No, actually, I didn't. All I
15 did was pay for the -- to take the test to
16 become certified.

17 Q. Are you telling this Board that
18 not more than two minutes ago you said that
19 you didn't understand this therapy at the
20 time?

21 A. It was not available. I don't
22 know any place within the 275 realm, give or
23 take 10 miles, that does hippotherapy with
24 children.

1 Q. Well, it appears Dr. Levin
2 believes otherwise. Please take a look at
3 the third paragraph, second sentence, "Chloe
4 fatigues easily and just to drive across town
5 to receive therapy can wipe her out, leaving
6 no energy to enjoy this therapeutic and
7 recreational activity." Did I read that
8 correctly?

9 A. That's correct. Which is why
10 it's at her disposal, at her house, so it's
11 right there when she's able to do it.

12 Q. When she's able to do it, okay.
13 All right.

14 A. So is this about zoning, or the
15 medical necessity for Chloe's therapeutic
16 intervention?

17 Q. The next question I have,
18 Ms. Anderson, is -- well, when did you get
19 the second horse?

20 A. I don't have an exact date.
21 Estimation, May.

22 Q. Of?

23 A. 2011.

24 Q. Did you ask permission from Blue

1 Ash?

2 A. Negative.

3 Q. Well, did you have a therapy
4 prescription before this November 2010
5 letter?

6 A. Yes, because it took quite a
7 while to get.

8 Q. And when did you get it?

9 A. She actually got it six years
10 prior to 2011.

11 Q. Did you ever have a therapy
12 prescription for two horses before
13 Mr. Johnson sent you a letter in July 2011
14 saying you were violating the zoning code?

15 A. No. It wasn't -- there was not
16 ever an issue, but yes, The Children's
17 Hospital was aware of it.

18 Q. My question was, not was it
19 aware of it. And maybe I'm talking past you,
20 Ms. Anderson, but I don't -- well --

21 A. I understand what you're saying.

22 Q. The second letter, which is in
23 your packet, so I want to be fair to you so
24 you can refer to it, is dated --

1 MR. PACHECO: It's the third
2 page, for the Board.

3 Q. Dated 8/16/2011. The third
4 letter, or the third page, that's a letter
5 regarding two horses, correct?

6 A. Correct.

7 Q. And this prescription was not --
8 or this letter was not written until after
9 you were again cited by the zoning code,
10 correct?

11 A. That's correct, yes.

12 Q. And you never received a
13 prescription for two horses from anybody at
14 Children's Hospital until this -- or you
15 never received a letter supporting two
16 miniature horses until this particular
17 letter?

18 A. Correct.

19 Q. Now, then there was a third
20 letter, which is -- I'll show you, which is
21 attached to Mr. Parker's appeal letter?

22 MR. PACHECO: For the record,
23 for the BZA, this letter that I'm referring
24 to now is in the packet that was attached to

1 Mr. Parker's appeal letter.

2 Q. Is the therapy that -- before we
3 get to specifically the letter. Is the
4 therapy that Chloe is undergoing now, is that
5 currently available at Winton Woods?

6 A. I don't know, to this date.

7 Q. Okay. That's fine. It's
8 possible she can receive this type of therapy
9 elsewhere, you just don't know whether it's
10 available?

11 A. If it is available, I am unaware
12 of it. I am in constant communication with
13 Randi Greathouse, animal director at Parkey's
14 Farm slash Winton Woods Riding Center.

15 Q. And Dr., I guess, Fletcher wrote
16 this letter on behalf of two miniature
17 horses, or supporting the use of two
18 miniature horses at your house, right? Is
19 that who wrote this letter?

20 A. Yes, that's his name and
21 signature.

22 Q. Is Dr. Fletcher a treating
23 physician for Chloe?

24 A. He's one of many.

1 Q. Was Dr. Levin?

2 A. Dr. Levin retired.

3 Q. Okay. All right. It says here
4 in the third paragraph, third sentence,
5 "Chloe fatigues easily, and just to drive
6 across town to receive therapy can wipe her
7 out, leaving no energy."

8 Have you talked with Dr. Fletcher
9 to determine whether or not this therapy is
10 available, quote unquote, across town?

11 A. That is not his realm of
12 expertise. That is the social worker, Molly
13 Sicking, said negative. That was our last
14 conversation, which was prior to March 15th,
15 which is when she transferred.

16 Q. Well, at any rate, the doctor
17 thinks there's therapy available across town,
18 correct?

19 A. I don't know what he thinks.

20 Q. I'll move on. You're right.
21 That's fair. Now, in the fourth paragraph,
22 "She's formed a bond with the horses"; is
23 that correct?

24 A. Absolutely.

1 Q. And apparently, it's enhanced
2 her -- I think you testified earlier it
3 enhanced her language skills, right?

4 A. Yes.

5 Q. Language skills, correct?

6 A. Receptive language, yes.

7 Q. Quality of life, right?

8 A. Definitely.

9 Q. And her ability to relate with
10 others; is that right?

11 A. Yes.

12 Q. The extent of the therapy
13 offered by the horses is, as I understand it,
14 Chloe gets in a cart, and she is pulled by
15 the two horses; is that right?

16 A. That is one form, yes.

17 Q. And then at some point, I think
18 you testified earlier that she goes right or
19 left, and then the horses move right or left?

20 A. Correct. That's part of her --

21 Q. All right. And that is specific
22 therapy with the horses pulling her in the
23 cart, right?

24 A. She drives the horses.

1 Q. Fair enough.

2 A. With guidance.

3 Q. Fair enough. With guidance
4 from?

5 A. Me.

6 Q. Okay. And --

7 A. And John.

8 Q. And there's no other function
9 for the horses, other than to pull the cart
10 for Chloe, right?

11 MR. PARKER: Objection.

12 A. They pull her stroller as well.

13 Q. Other than, if you will, helping
14 transport either the stroller or the cart,
15 there's no other function performed by the
16 horses?

17 A. That's incorrect.

18 Q. What other functions are
19 performed by the horses?

20 A. We referred to those earlier,
21 proprio-perception, gross motor skills.

22 Q. Oh, no, I'm talking about --
23 fair enough. That wasn't my question. My
24 question was in terms of what the horses

1 physically do for -- they pull the cart and
2 they pull the stroller. That's all I was
3 asking.

4 A. It's very hard with a child
5 who's non-verbal to get an exact determination
6 of what level she's absorbing all this. So I
7 go by her facial gestures, her reactions, et
8 cetera and so forth.

9 Q. All I'm asking is the horses are
10 used to pulling the stroller and pulling the
11 cart. That's all I'm asking.

12 A. That's one of their many tasks.

13 Q. Now, there's been -- you've
14 received a complaint from the health
15 department concerning waste left at the
16 property, correct?

17 A. With all due respect, we weren't
18 cited or violated on any level, so I don't
19 know why that's relevant.

20 Q. I don't think there was an
21 objection, and I asked a question. I'm
22 entitled to an answer. Could you just answer
23 the question?

24 A. And I asked with why is that

1 relevant, since we were not -- we did not
2 violate. There was no violation.

3 MR. PARKER: She answered the
4 question.

5 Q. All right. Fine. If we're
6 going to play this game, take a look at
7 page 4 of the packet that I gave you.

8 A. With all due respect, I do not
9 consider this a game at all. I take this
10 very seriously.

11 Q. Did you receive a notice that
12 was addressed to Mr. Parker considering --
13 from the Hamilton County Public Health
14 Department concerning a complaint for odor
15 and possible animal waste runoff?

16 A. Oh, yeah, I'm aware of that.
17 Yes, I'm aware of that letter.

18 Q. Okay.

19 A. It was not valididated [sic]
20 when the person came out and inspected the
21 property. As I indicated, there were no
22 violations. Where is this leading? I'm
23 trying to understand.

24 MR. COLLETT: If you could just

1 please cooperate with the questions that he's
2 asking.

3 THE WITNESS: Okay. It seems
4 like a moot point, since there wasn't a
5 violation. I'm just trying to understand
6 where --

7 Q. Did Mr. Stone -- there was a
8 health --

9 A. About chickens and goats, and --

10 Q. There was a health inspector
11 that came to your house that day; is that
12 right?

13 A. Yes.

14 Q. Okay.

15 A. On a day. It wasn't that exact
16 day. Well, he obviously was there that day,
17 and then he came back.

18 Q. And he observed pet waste
19 outdoors. Have I read the letter correctly?

20 A. He did not indicate that to us
21 verbally.

22 Q. And --

23 A. He questioned the pile of manure
24 that we were processing for compost.

1 MR. PARKER: Objection.

2 Non-responsive -- indiscernible.

3 MR. COLLETT: Please speak into
4 the microphone.

5 Q. There was a pile of manure there
6 that the health inspector observed, right,
7 Ms. Anderson?

8 MR. PARKER: How would she know?

9 MR. PACHECO: Well, that's what
10 she just said, but if we're going to play
11 games, fine.

12 A. I'm glad you find this funny.

13 Q. I don't. What do you do with
14 the waste that's on the -- I assume the
15 horses generate waste, correct?

16 MR. PARKER: Objection. It's
17 irrelevant to the event, isn't it?

18 MR. PACHECO: Well, it's
19 relevant as to Mr. Parker has made an
20 argument that this is not a farm animal. One
21 of the things -- and it doesn't violate the
22 zoning code. These are issues as to why
23 these types of animals are not allowed in the
24 zoning code. So I'm simply going to --

1 that's the point of the question.

2 MR. PARKER: I objected --
3 indiscernible. Should she answer the
4 question?

5 MR. COLLETT: Did she? I have
6 not heard her answer the question, no.

7 MR. PARKER: Should she?

8 MR. COLLETT: A question was
9 asked by counsel.

10 MR. PARKER: Objection. It's
11 irrelevant.

12 MR. PACHECO: I explained it, I
13 think, is what it was.

14 MR. COLLETT: He explained the
15 reason for his question, you know.

16 MR. PARKER: So you're saying
17 she has to answer?

18 MR. COLLETT: I'm saying it
19 appears to be relevant to the overall
20 consideration; and yes, she should answer the
21 question.

22 A. Okay. So what is the question?

23 Q. The animals, the horses generate
24 waste, correct?

1 A. Yes. All living creatures do.

2 Q. Right. And as a result of
3 generating waste, there was a complaint from
4 the health department?

5 A. It was an anonymous complaint.
6 We don't know where it manifested.

7 Q. The complaint was somebody
8 investigated a complaint, right?

9 A. Anonymous.

10 Q. Right?

11 A. We have no idea where it
12 manifested.

13 Q. And how often is the waste
14 cleaned up?

15 A. Daily.

16 Q. Okay.

17 A. Sometimes twice daily.

18 MR. PACHECO: Mr. Collett, I
19 just need a few -- I know you guys had a
20 couple questions. I may have a couple more,
21 but I just need to --

22 MS. BROOK: I have a
23 question.

24 CROSS-EXAMINATION

1 BY MS. BROOK:

2 Q. We don't have the notes from the
3 first time, but it was 2010 is when you were
4 here the last time, right? It was in 2010
5 when you were here the last time, correct,
6 according to our notes.

7 And you first lived in one house
8 in Blue Ash, and then you moved on Conklin;
9 is that correct?

10 A. Yes.

11 Q. And you had the horse in the
12 first house before you got to Conklin, right?

13 A. We did bring her there, yes.

14 Q. You brought her there. Where
15 did you live previous to this time? Did you
16 live somewhere that was zoned for animal
17 husbandry with the horse?

18 A. I don't participate in animal
19 husbandry so I would not know.

20 Q. Did you have the horse in the
21 other house? Before you lived in the other
22 house in Blue Ash, you had the horse.
23 Previous to living in Blue Ash at all, where
24 did you live with that horse?

1 A. Where I lived?

2 Q. Before you lived in Blue Ash.

3 A. Chloe was on the waiting list
4 for Winton Woods.

5 Q. No. I asked you --

6 A. A stable.

7 Q. So you lived somewhere else
8 before you moved to Blue Ash and you brought
9 the horse to Blue Ash. So you had the horse
10 before you moved to Blue Ash to the first
11 house, correct? Or did you move into the
12 first house in Blue Ash and bring the horse
13 the first time?

14 MR. COLLETT: I'm sorry. Repeat
15 your question.

16 Q. You lived in a house, I can't
17 remember the name of the street, before you
18 lived on Conklin?

19 A. Prospect Avenue.

20 Q. Prospect. And you had the horse
21 in Prospect Avenue, correct?

22 A. Yes. Kate went to Prospect
23 Avenue.

24 Q. Right. You had the horse. So

1 you moved from somewhere else to Prospect
2 Avenue, correct?

3 A. We moved, yes.

4 MR. COLLETT: From Prospect you
5 moved to Conklin?

6 THE WITNESS: We moved, yes.

7 Q. When you moved to Prospect, you
8 had the horse with you, or when you lived in
9 Prospect, you brought the horse in the first
10 time?

11 A. We had the horse at both
12 premises.

13 Q. So you moved into Prospect
14 Avenue with the horse?

15 A. Yes.

16 MR. PARKER: Objection. That's
17 been asked and answered ten times --
18 indiscernible. She doesn't have a horse.
19 She has a miniature horse.

20 MS. BROOK: Okay. Well, you
21 know what, I'm going to tell you something
22 else about the miniature horse. According to
23 U.S. Agricultural Standards, it's considered
24 livestock, a miniature horse, just so you

1 know that too. The U.S. Agricultural
2 Standards says livestock for a miniature
3 horse.

4 Q. So let's go back to this
5 miniature horse. When you lived on Prospect,
6 you moved into Prospect with the horse,
7 correct?

8 A. She did not reside at the
9 premises. She came to Prospect.

10 Q. She came to. So she was living
11 somewhere else, the horse?

12 A. Yes.

13 Q. And did you -- just out of
14 curiosity, did you look at any other
15 communities that were zoned properly to bring
16 the horse in so you don't have to face what
17 you're facing now?

18 A. I perused the zoning laws for
19 different areas which we potentially moved
20 to, yes.

21 Q. Okay. So you've picked an area
22 that is not zoned for the horse, correct?

23 A. It's zoned for an urban farm,
24 minimum of five acres. These miniature

1 horses are not farm animals. They're not
2 pets. They're therapy and service animals.

3 Q. Well, again, they're considered
4 livestock, that's number one.

5 A. That's an interpretation.

6 Q. U.S. Agricultural
7 interpretation. And the other question I had
8 was do you own or rent this house? Do you
9 own or rent the house?

10 MR. PARKER: Objection. It's
11 irrelevant.

12 MS. BROOK: Why are we not
13 seeking the owner of the house to have them
14 speak about whether or not they want this
15 horse in their house as an owner of this
16 rental property?

17 MR. PARKER: Objection. That's
18 a --

19 MS. BROOK: I'm asking Dan for
20 an answer, not you.

21 MR. PARKER: I know. I'm just
22 objecting for the record, because I think she
23 may be indicating bias and prejudice and
24 discriminatory by the answering the question.

1 This is a question in open forum.

2 A. We do not rent the house.

3 Q. You own the house?

4 MR. PARKER: Objection.

5 A. That's not relevant.

6 MR. PARKER: (Indiscernible.)

7 MS. BROOK: Pardon?

8 MR. JOHNSON: From a zoning
9 perspective, I don't know that it really is
10 relevant. We could probably presumably go
11 after the owner as well, but in this case
12 it's clear who the violation is tied to. And
13 that's just up to the discretion of the
14 enforcement official.

15 BY MS. BROOK:

16 Q. And although I want to stick to
17 the zoning code on this whole thing and
18 really just go after zoning, there are --
19 what level therapy does she need for
20 hippotherapy? What level is she at? There's
21 different levels for the hippotherapy?

22 A. Would you like to indicate the
23 levels, and I can tell you where she's been
24 and where she's going?

1 Q. Well, you're certified, so you
2 tell me what level she's at. As a certified
3 professional, what level is she at?

4 A. As far as equine therapy or
5 hippotherapy?

6 Q. Hippotherapy.

7 A. Really there is no measurable
8 goal because Chloe is non-verbal. It's
9 measured --

10 Q. What level therapist would you
11 need for hippotherapy?

12 A. To be certified.

13 Q. Okay. There's different
14 certifications on the levels?

15 A. I'm accredited and certified
16 nationally.

17 Q. Okay. And what level are you
18 at? Well, I'm --

19 A. All you have to do is go get
20 a --

21 Q. Well, I'm at the American
22 Hippotherapy website, and they have different
23 levels. And they have various therapists in
24 Cincinnati that have different levels. So

1 I'm asking you what your level is.

2 A. As far as EAGLA, that's who I'm
3 affiliated with, eagla.org.

4 Q. Okay. Sticking back to the
5 zoning --

6 A. It's not a regulated -- I mean,
7 there's different levels. Everybody can
8 interpret their own levels, beginner,
9 intermediate.

10 Q. No. I'm here at the American
11 Hippotherapy website --

12 A. That's one of the organizations.

13 Q. Association. AHA has levels one
14 and two. I'm just wondering what level you
15 need to be at?

16 A. I wouldn't know, because I'm not
17 familiar with that particular organization.
18 I can tell you based on --

19 MS. BROOK: Okay. Well, I'm
20 just going -- some research I've done here
21 just so we have some conversation going.
22 Number one, miniature horses are considered
23 livestock by U.S. Agricultural Standards.
24 That's number one.

1 Number two, animal husbandry
2 only has to do with the caring. You don't
3 even have to be reproducing horses to be
4 animal husbandry. You have to just be taking
5 care of them. So I think that that's a
6 second thing we need to be thinking of.

7 And number three, I'm not sure
8 that this is the only therapy location that
9 this child can have, so according to zoning,
10 I'm not sure that this is the only place this
11 child can get the necessary therapy.

12 So I don't -- on a personal
13 level, I don't need to feel that we're making
14 some sort of anti-ADA commentary because I
15 believe the child can get therapy elsewhere.

16 MR. PACHECO: I just had a
17 couple more to finish.

18 MR. COLLETT: All right.

19 MR. PACHECO: I just want to
20 make sure your attorney --

21 MR. PARKER: Sorry. I missed
22 that. I apologize. Do you need her
23 certifications now, Bryan, or later?

24 MR. COLLETT: I can't hear you.

1 MR. PARKER: Do you want her
2 certifications now or do you want to do that
3 later?

4 MR. PACHECO: I have a couple
5 more questions. I don't know if you're going
6 to have any redirect, if you want to put that
7 in then.

8 MR. COLLETT: You can provide
9 the certifications later.

10 MR. PARKER: Okay.

11 CONTINUED CROSS-EXAMINATION

12 BY MR. PACHECO:

13 Q. Ms. Anderson, we've identified
14 three letters that were written by various
15 doctors concerning a horse. Are there any
16 others that were given to Blue Ash that
17 you're aware of?

18 A. I have others at home.

19 Q. Any others that you're aware of
20 that were given to Blue Ash?

21 A. Not -- no, not to my
22 recollection at this particular moment.

23 Q. All right. Take a look at the
24 first page in that letter.

1 MR. PACHECO: And I'm almost
2 done, Mr. Collett. Thank you for your
3 patience.

4 Q. The first letter is from Dr. --
5 and I keep mispronouncing his name. Ms.
6 Anderson, will you help me again, please,
7 Dr. Levin?

8 A. Yeah, Dr. Levin.

9 Q. Thank you very much. Dated
10 November 3, 2010. The term service animal is
11 not used anywhere in that letter, is it?

12 MR. PARKER: Isn't this an
13 exhibit? Are you checking to see whether she
14 can read, or what? Objection. The letter is
15 an exhibit. It speaks for itself.

16 MR. COLLETT: The question is is
17 service animal used in the letter?

18 MR. PARKER: Yeah. Then I guess
19 that's the question. Wouldn't that be better
20 checked by -- do you want her to read the
21 letter to check whether Ms. Anderson can
22 read? I mean, the letter is what it is.
23 Isn't it an exhibit?

24 MR. PACHECO: Does she need to

1 answer the question or not?

2 MR. COLLETT: Yes. The question
3 is is service animal referred to in the
4 letter after, you know, reviewing the letter.
5 She didn't need to read the letter.

6 Q. Is the term service animal used?
7 That's all I'm asking.

8 A. No.

9 Q. And in the August 16, 2011
10 letter, which is page 3 of the packet --

11 MR. PARKER: This has already
12 been asked and answered -- indiscernible --
13 and there's a gentleman in the community who
14 wanted to speak. Can we bring Ms. Anderson
15 back up and let Mr. -- indiscernible -- go?

16 MR. PACHECO: I'm in the middle
17 of my cross-examination.

18 MR. PARKER: (Indiscernible.)

19 MR. PACHECO: I've got two more
20 questions and then I'm done.

21 THE WITNESS: Should I read it
22 aloud?

23 MR. COLLETT: No, please don't
24 read it aloud. You know, you've read the

1 letter. You submitted the letter. Is the
2 word service animal used in the letter
3 that's --

4 THE WITNESS: No.

5 MR. PARKER: I would also object
6 it's a non-issue because under the
7 co-defendant regulations 35.136, there's a
8 separate definition of miniature horse as a
9 separate subsection of service animal, so it
10 would be akin to saying service animal
11 service animal, just saying it twice, and
12 there's no need to do that.

13 You say miniature horse, you say
14 service animal. It's the equivalent of it.
15 So I object just for the record. And just
16 the mere fact that -- indiscernible.

17 MS. BROOK: Does that mean that
18 every miniature horse is considered a service
19 animal?

20 MR. PARKER: When it's used in
21 the capacity. That's the question, when it's
22 used in the capacity.

23 MR. COLLETT: So it's not -- the
24 word service animal is not in this?

1 THE WITNESS: Not in this
2 letter.

3 MR. COLLETT: Thank you.

4 MR. PACHECO: Thank you. And in
5 the February 29th letter, the term service
6 animal is not used either, is it.

7 MR. COLLETT: So the answer is
8 no?

9 THE WITNESS: I don't have the
10 letter in my packet.

11 MR. COLLETT: February 29th.

12 THE WITNESS: November 3rd, July
13 28th.

14 MR. PACHECO: It's attached
15 to -- sorry. Thank you. Thank you. That's
16 why you're not finding it. It's attached to
17 Mr. Parker's appeal letter. The doctor was
18 Dr. Fletcher. Thank you. Thank you, Mr.
19 Parker.

20 MR. COLLETT: Anything else?

21 MR. PACHECO: I didn't hear
22 any -- was there an answer?

23 MR. COLLETT: She has the
24 letter. You have the letter now, correct?

1 MR. PACHECO: May I show --

2 MR. COLLETT: Yes.

3 MR. PACHECO: Thank you. That's
4 the letter that was submitted attached to
5 Mr. Parker's appeal letter on your behalf.
6 By the way, did you see the appeal letter
7 that Mr. Parker submitted on your behalf?

8 MR. PARKER: Didn't we already
9 go through this letter before?

10 MR. COLLETT: Pardon me?

11 MR. PARKER: Didn't we go
12 through this before, same question?

13 Objection. Asked and answered.

14 MR. PACHECO: Is the term
15 service animal mentioned in the February 29,
16 2011 letter?

17 MR. PARKER: Today is the --
18 indiscernible. Okay. Is it in there? Well,
19 there it is, miniature horses. Right there.

20 MR. COLLETT: But the word
21 service animal is not in there?

22 MR. PARKER: I'll be honest,
23 I'll stipulate that that letter is what it
24 purports to be. Do you need me to stand and

1 read it?

2 MR. COLLETT: Do you see the
3 words service animal in there, Ms. Anderson?

4 THE WITNESS: Negative.

5 MR. PACHECO: I don't have
6 anything further. Thanks, Mr. Collett.

7 MR. PARKER: Indiscernible --
8 but there's a gentleman from the community
9 who needs to speak -- indiscernible.

10 MR. COLLETT: So we have someone
11 from the audience wants to speak on the
12 matter?

13 MR. PARKER: Yes, he does.

14 MR. COLLETT: Yes, sir. Are you
15 finished?

16 MR. PARKER: I have a couple of
17 questions.

18 MS. BROOK: He has to swear in.

19 MR. COLLETT: Were your here
20 when we were swearing everyone in, sir?

21 MR. CONKLIN: I came in the
22 meeting late, I'm sorry.

23 MR. COLLETT: Okay. We'll need
24 to swear you in if you want to testify.

1 MR. CONKLIN: Yes.

2 MR. COLLETT: You need to
3 identify yourself.

4 MR. CONKLIN: Yes, I will.

5 MR. COLLETT: Okay.

6 MR. CONKLIN: My name is Phillip
7 J. Conklin. I'm a resident and business
8 owner here in Blue Ash.

9 MR. COLLETT: Yes, sir.

10 MR. CONKLIN: And I remember --

11 MR. COLLETT: Wait. I just need
12 you to identify yourself, and then I'll swear
13 you in. Your name is?

14 MR. CONKLIN: Phillip J.
15 Conklin.

16 MR. COLLETT: And you live?

17 MR. CONKLIN: At 4614 Northfield
18 Road, in the little farm subdivision in the
19 neighbor -- adjoining neighbor at the -- on
20 that street.

21 MR. COLLETT: All right. If
22 you'd raise your right hand, please.

23 (Witness sworn.)

24 MR. COLLETT: Thank you. All

1 right. Now, your comments?

2 MR. CONKLIN: The first comment
3 I want to make is I want to pay respect to
4 the fact that Mr. Paul Collett, I vaguely
5 remember you, maybe from another meeting.

6 My memory may not serve me
7 correctly, but you seem to have the
8 capability of this, of jurisprudence and
9 being able to help move the process along.
10 And I think things could have moved a lot
11 faster tonight if we had had really focused
12 on the issues.

13 And I know that it's an issue of
14 zoning and, as Julie has -- Ms. Brook, I'm
15 sorry, has pointed out. And my concern is as
16 a business owner, a resident, and also a
17 neighbor. And I've only stopped to maybe
18 talk with the family a few times.

19 But I've noticed up here a lot
20 of people listening tonight and not
21 interrogating in a vicious manner.

22 I've noticed Ms. Peck. She's
23 asked a couple questions. Marc, I don't know
24 that I've heard you speak. Mark Kirby,

1 Mr. Kirby, I don't know that I've heard you
2 ask anything.

3 And Dan, I know that some of
4 my -- one of my assistants and staff, we've
5 talked before, or they've talked with you
6 concerning some water issues and some zoning
7 issues.

8 And I'm only trying to better
9 the community in many different ways. I own
10 property on Kenwood Road that I'm trying to
11 turn into -- work with the city here soon
12 that is essentially going to be available
13 open to the public. It might be a dog
14 walking park, maybe something. But I have an
15 arboretum that I'm starting there on
16 Northfield. It's been all personally funded
17 by me.

18 And what concerns me is that in
19 trying to be a business owner here in Blue
20 Ash, and a resident in Blue Ash, and then
21 hearing the debate here tonight, I understand
22 the deputy solicitor, Mr. Pacheco?

23 MR. PACHECO: Very good. Yes,
24 that's right.

1 MR. CONKLIN: Are you Polish?

2 MR. PACHECO: No.

3 MR. CONKLIN: Well, I'm half
4 Polish, half Irish, so I'm -- forgive me if
5 I've --

6 MR. PACHECO: That's quite all
7 right.

8 MR. CONKLIN: But with all due
9 respect -- and you're an attorney, right?

10 MR. PACHECO: Yes, sir.

11 MR. CONKLIN: I guess what my
12 concern is is it's -- we've taken a lot of
13 time tonight to debate a lot of little
14 idiosyncrasies, and I think we've
15 concentrated on the fact about the zoning,
16 and that debate's gone back and forth.

17 What I'm concerned about is
18 certainly -- not to take anything away from
19 this child that apparently has a need for
20 this because certified doctors have provided,
21 we'll say, a prescription which is not
22 required under the Americans Disabilities
23 Act, under the federal guidelines.

24 Although it surprises me that

1 Mr. Pacheco, that with all of your legal
2 skills, that you would not have at least
3 looked under the U.S. Department of Justice's
4 guidelines for service animals.

5 I'm a taxpayer in Blue Ash. I
6 have been very fortunate and worked very hard
7 my whole life. After losing my father in
8 '96, moving the business here to Blue Ash in
9 2000, I've grown the business. I'm 5,000
10 percent now, and I probably -- and I say this
11 with -- I'm one of the single largest
12 taxpayers individually here in Blue Ash.

13 And I also live quite humbly in
14 what is probably the smallest home here in
15 Blue Ash. I sometimes joke I can plug my
16 vacuum in, hit every room in my house.
17 That's the way I choose to live.

18 What I'm concerned about tonight
19 is that the U.S. Department of Justice, Civil
20 Rights Division, under the Disability Rights
21 section, produces a pamphlet, as well as --
22 and this does not encapsulate all of the law
23 of the disabilities act.

24 What I'm concerned about is,

1 number one, that someone with a disability is
2 potentially going to be denied their rights
3 here to have a service animal. I'm in the
4 neighborhood. Those horses, they don't
5 bother anybody.

6 As far as waste, the Department
7 of Justice has rules and guidelines about
8 that. It's actually not even one of the
9 issues that determine whether or not a
10 service animal can even be in a business,
11 about a business, on public -- in a public
12 place, or reside at a residence.

13 Very simply, I think the Board
14 here tonight, council, needs to consider what
15 this could end up costing Blue Ash in terms
16 of its reputation, what it could cost
17 monetarily both extrinsically and
18 intrinsically to our community if this
19 information proceeds to some other level.

20 And I just want to share with
21 you the publication by the Department of
22 Justice with respect to the laws and some of
23 the commonly asked questions, if you will.

24 What are the laws that apply to

1 an ADA business, business, public entity,
2 disability. Under the Americans with
3 Disabilities Act, in order to serve the
4 public, such as whether it be restaurants,
5 hotels, retail stores, taxicabs, theaters,
6 concert halls, sports facilities, you are not
7 prohibited to discriminate -- it is
8 prohibited to discriminate against
9 individuals with disabilities.

10 And the ADA requires these
11 businesses or public entities to allow people
12 with disabilities to bring their service
13 animals on to business premises in whatever
14 areas customers are generally allowed.

15 They also identify in these
16 publications and a -- what a service animal
17 is.

18 The ADA defines a service animal
19 as any guide dog, signal dog, or other
20 animal, other animal individually trained to
21 provide assistance to an individual with a
22 disability.

23 If they meet this definition,
24 animals are considered service animals under

1 the ADA, regardless of whether they have been
2 licensed or certified by a state or local
3 government.

4 Service animals perform some of
5 the functions and tasks that the individual
6 with the disability cannot perform for him or
7 herself.

8 Guide dogs are one type of
9 service animal used by some individuals who
10 are blind. This is a type of service animal
11 with which most people are familiar.

12 But there are service animals,
13 many, that assist persons with other kinds of
14 disabilities in their day-to-day activities.

15 And some examples; alerting
16 persons -- some of the examples include
17 alerting persons with hearing impairments to
18 sounds, pulling wiggle chairs for carrying
19 and picking up things for persons with
20 mobility impairments, and assisting persons
21 with mobility impairments with balance. A
22 service animal is not a pet.

23 Number three, how can I tell if
24 an animal is really a service animal and not

1 just a pet? Some but not all service animals
2 wear special collars and harnesses. Some but
3 not all are licensed or certified and have
4 identification papers.

5 If you are not certain that an
6 animal is a service animal, you may ask the
7 person who has the animal if it is a service
8 animal required because of a disability.

9 However, an individual who is
10 going to a restaurant or a theater is not
11 likely to be carrying documentation of his or
12 her medical condition or disability,
13 therefore, such documentation generally may
14 not be required as a condition for providing
15 service to an individual accompanied by a
16 service animal.

17 Although a number of states have
18 programs to certify service animals, you may
19 not insist on proof of state certification
20 before permitting the service animal to
21 accompany the person with a disability.

22 What must I do when an
23 individual with a service animal comes to my
24 business? The service animal must be

1 permitted to occupy, accompany the individual
2 with the disability to all areas of the
3 facility where customers are normally allowed
4 to go. Any individual with a service animal
5 may not be segregated from other customers.

6 I've always questioned -- I've
7 always clearly posted no pet policies at my
8 establishment. Do I still have to allow the
9 service animal in? Yes.

10 A service animal is not a pet.
11 The ADA requires you to modify your no pets
12 policy to allow the use of a service animal
13 by a person with a disability. This does not
14 mean you must abandon your no pets policy
15 altogether, but simply that you must make an
16 exception to your general rule for service
17 animals.

18 Question: My county health
19 department has told me that only a guide dog
20 has to be admitted. If I follow those
21 regulations, am I violating the ADA?

22 Yes. If you refuse to admit any
23 other type of service animal on the basis of
24 local health department regulations, or other

1 state or local laws, the ADA provides greater
2 protection for these individuals with
3 disabilities, and so it takes priority over
4 the local or state laws or regulations.

5 Question: Can I charge a
6 maintenance or cleaning fee for customers who
7 bring their service animals into my business?

8 No. Neither a deposit nor a
9 surcharge may be imposed on an individual
10 with a disability. As a condition of
11 allowing the service animal to accompany the
12 individual with a disability, even deposits
13 are routinely required for pets; however, a
14 public accommodation may charge its customers
15 with disabilities if a service animal causes
16 damage, so long as it is the regular practice
17 of the entity charged non-disabled customers
18 for the same type of damages.

19 For example, a hotel cannot
20 charge a guest with a disability for the cost
21 of repairing or cleaning furniture damaged by
22 a service animal if it is the hotel's policy
23 to charge when non-disabled guests cause such
24 damage.

1 I operate a private taxicab and
2 I don't want animals in my taxi. They smell.
3 They shed hair and sometimes have accidents.
4 Am I violating the ADA if I refuse to pick up
5 someone with a service animal?

6 Yes. Taxicab companies may not
7 refuse to provide service animals to
8 individuals with disabilities. Private
9 taxicab companies are also prohibited from
10 charging higher fares or fees from
11 transporting individuals with disabilities
12 and their service animals than they charge to
13 other persons for the same or equivalent
14 service.

15 Am I responsible for the animal
16 while the person with the disability is in my
17 business, on my premises, in my community?

18 No. The care of the supervision
19 of the service animal is solely the
20 responsibility of his or her owner. You are
21 not required to provide care or food or
22 special location for the animal.

23 What if the service animal barks
24 or growls at other people, or otherwise acts

1 out of control?

2 You may exclude any animal,
3 including a service animal, through -- from
4 your facility when the animal's behavior
5 poses a direct threat to the health or safety
6 of others.

7 For example, any service animal
8 that displays vicious behavior towards other
9 guests or customers may be excluded. You may
10 not make assumptions, however, about how a
11 particular animal is likely to behave based
12 on your past experience with other animals.

13 Each situation must be
14 considered individually. Although a public
15 accommodation may exclude a service animal
16 that is out of control, it should give the
17 individual with a disability who uses a
18 service animal the option of continuing to
19 enjoy its goods and services without having
20 the service animal on the premises.

21 Can I exclude an animal that
22 doesn't really seem dangerous but is
23 disrupting my business?

24 There may be a few circumstances

1 when a public accommodation is not required,
2 an accommodation service animal; that is,
3 when doing so would result in a fundamental
4 alternation to the nature of the business.

5 Generally, that is not likely to
6 occur in restaurants, hotels, retail stores,
7 theaters, concert halls, sporting facilities.
8 When it does, for example, when a dog barks
9 during a movie, the animal can be excluded.

10 If you have further questions
11 about service animals or requirements of the
12 ADA, you may call the U.S. Department of
13 Justice's toll free ADA information line at
14 800-541-0301 for voice; and for the hearing
15 impaired at 800-514-0383.

16 This is a document produced by
17 the U.S. Department of Justice. And at the
18 very bottom of this document -- well, there's
19 other information, but I thought I would give
20 as quick a summary as possible.

21 It says, in six letters,
22 reproduction of this document is encouraged.
23 This was produced as far back, it says here,
24 in July of 1996, and last updated on

1 January 14th, 2008, if I'm reading correctly.

2 Bring this -- I'm not the one
3 who's responsible for bringing this forum to
4 a conclusion, although I just wanted to bring
5 some insight before people rush to any type
6 of judgment in any particular case because I
7 think what I heard tonight was a lack of
8 knowledge, if you will, about the ADA.

9 As a business owner, I'm
10 required to accommodate a service animal at
11 my place of business, and as a person
12 involved in the community trying to make this
13 place better. And Blue Ash is a unique
14 place. It should be on the forefront of
15 being a great place, a unique place.

16 And I don't think that the
17 family that's here tonight with their
18 daughter is asking even for -- that could
19 create a whole snowball effect, if you will,
20 and a fight that I don't know that -- they're
21 not asking for all that much.

22 And there may be other
23 circumstances or complaints that came to
24 light possibly that brought this here by a

1 neighbor. Neighbors sometimes -- everyone
2 has a good day. Everybody has a bad day.
3 Who knows what the results are.

4 But the bottom line is that Blue
5 Ash is a great place to call home. And the
6 ADA's rules are specifically provided in both
7 short form and long form, and they're covered
8 under the U.S. Department of Justice.

9 And I hope in the near future, I
10 have a chance to meet all of you again
11 because I have great aspirations for this
12 place I call home, Blue Ash.

13 And I appreciate your time
14 tonight. And thank you for conducting a
15 civil meeting. Thank you very much.

16 MR. COLLETT: Thank you. I
17 would ask, is there anyone else in the
18 audience who has the need to speak on this
19 matter?

20 MR. RUWE: Yes. I would like to
21 make a comment on it.

22 MR. COLLETT: Please come
23 forward. Identify yourself.

24 MR. RUWE: My name's Robert

1 Ruwe.

2 MR. COLLETT: Would you hand the
3 form to the --

4 MR. TRAUB: I'm going to go
5 ahead and leave because I'm going to take
6 Chloe -- indiscernible -- so if you need me,
7 just call.

8 MR. COLLETT: Thank you. Okay.
9 Sir, please speak into the speaker, the
10 microphone.

11 MR. BREWEY: The service horse
12 is helping Chloe a lot. She is a happy
13 little girl. To take something away that was
14 approved by the City of Blue Ash would be
15 very heartbreaking for her and her family.

16 The horse, the service horse, is
17 smaller than some neighborhood dogs and does
18 not bark. And I strongly approve of letting
19 the service horse stay. Thank you.

20 MR. COLLETT: Okay. Thank you.
21 Do we have other people who care to speak?

22 MS. BRIDGES: I wish to.

23 MR. COLLETT: Please come
24 forward. Do you have one of those papers,

1 please?

2 MS. BRIDGES: No, I didn't fill
3 it out, sir, because I wasn't going to do
4 this but --

5 MR. COLLETT: Would you fill one
6 out, and when you've finished, hand it to the
7 lady.

8 MS. BRIDGES: Yes, I will.

9 MR. COLLETT: All right. Thank
10 you. And your name?

11 MS. BROOK: He just wants you to
12 swear him in.

13 MR. COLLETT: I'm sorry. And I
14 need to swear you in too.

15 (Witness sworn).

16 MR. COLLETT: Thank you.

17 MS. BRIDGES: I'm the back door
18 neighbor. My property goes into theirs. I
19 have no objections with them having one
20 horse. And I had no objection, I told them
21 face to face, if you keep up the manure,
22 don't let this gather on the property. And
23 they would put it around the trees.

24 Well, I don't want to smell

1 horse manure. And then I go out -- and I
2 have the picture here. And when they brought
3 two pigs in and put them out there, I can
4 show you what the backyard looked like. I
5 don't think it's fair.

6 MS. BROOK: Two pigs too?
7 There's two pigs, like pink?

8 MR. COLLETT: They're gone.

9 MS. BROOK: Oh, they're gone?

10 MR. JOHNSON: Apparently, they
11 have since been removed.

12 MS. BRIDGES: That's why I
13 object. I don't want -- they love dogs, yes.
14 They had one horse, that's fine. But I
15 object to pigs and all that.

16 MR. COLLETT: They might want to
17 keep your picture.

18 MS. BRIDGES: Pardon?

19 MR. COLLETT: They may want to
20 keep your picture there. If you'll go back
21 to the microphone, please.

22 MS. BROOK: I need to see the
23 picture.

24 MS. BRIDGES: That's all I have

1 to say. They're good neighbors.

2 MR. COLLETT: Did I understand
3 you to say that you were okay with --

4 MS. BRIDGES: One horse. But
5 the two horses, no.

6 MR. COLLETT: Okay. Thank you.

7 MS. BRIDGES: Thank you.

8 MR. COLLETT: Thank you. Please
9 fill out the paperwork.

10 MS. BROOK: Miss, you have to go
11 out over here, fill out the paperwork.

12 MR. COLLETT: Is there anyone
13 else wishing to speak on this topic? Would
14 you care to complete your statements and
15 comments and hopefully we'll get to the
16 zoning issue.

17 MR. PARKER: Mr. Pacheco asked
18 you whether or not you had received a
19 violation from the Hamilton County Health
20 Department. In fact, there was no
21 violations, were there?

22 MS. ANDERSON: That's correct.
23 There was no violations.

24 MR. COLLETT: Was there a follow

1 up to their visit on the Complaint? Did we
2 get a --

3 MR. JOHNSON: From what I
4 understand, there was an initial visit, and
5 then the follow-up visit to verify that there
6 was no -- that it was unsubstantiated; that
7 it met the minimum health standards. And I
8 believe they provided some follow-up
9 information on cleaning the property
10 appropriately and so forth.

11 MR. COLLETT: Thank you.

12 MR. PARKER: Once again, how old
13 is Chloe?

14 MS. ANDERSON: Eleven years old.

15 MR. PARKER: What's Chloe's life
16 expectancy?

17 MS. ANDERSON: She's exceeded
18 her life expectancy.

19 MR. PARKER: Is it your desire
20 to help her be trained to be independent in
21 the event that you're not around, John's not
22 around? The gentleman that was here. I
23 mean, you're trying to get her to be trained
24 to be self-sufficient, right?

1 MS. ANDERSON: To the best of
2 her ability, but I focus more on quality of
3 life, and experiences in life and
4 relationships. I'm sorry.

5 MR. PARKER: And just to finish
6 up, the animals are properly trained. Even
7 though you're not required to provide the
8 city with any documentation, you've gone
9 through that with them and explained how the
10 animals are trained?

11 MR. PACHECO: Objection.
12 Objection is it's an improper form of the
13 question, one; and number two, it's already
14 been asked and answered.

15 MR. PARKER: I don't have any
16 other questions of her.

17 MR. COLLETT: No further
18 questions?

19 MR. PARKER: No, but I do want
20 to make a closing, if I might.

21 MR. COLLETT: Okay. We may have
22 some questions for you.

23 MR. PARKER: That's great. For
24 me or for her?

1 MR. COLLETT: For everyone.

2 Members of the Board, do you have questions
3 for the appellant?

4 MR. SIRKIN: I do.

5 CROSS-EXAMINATION

6 BY MR. SIRKIN:

7 Q. Mrs. Anderson, I think we talked
8 about this last time. I just wanted to go
9 through. You have Hope the dog is a seizure
10 dog, correct? Hope, the seizure dog?

11 A. Hope is a service dog.

12 Q. Right, that knows when she's
13 going to have a seizure?

14 A. She's multiple tasks.

15 Q. But you said that was the major
16 one, the most important one.

17 A. She has a couple other tasks.

18 Q. How many dogs other dogs do you
19 have now?

20 A. We have six total dogs, one
21 service dog. So that's five dogs and one
22 service dog.

23 Q. Any cats?

24 A. Negative.

1 Q. No more pigs? You got rid of
2 those?

3 A. No pigs, no goats, no chickens,
4 no --

5 Q. Okay. One of the things I
6 looked up about these horses -- and listen, I
7 think Chloe has rights. I think your
8 neighbors have rights.

9 A. Absolutely.

10 Q. The horses, from what I've read,
11 everything I can read, they need a third to
12 half an acre a piece to be healthy happy.
13 That's what the literature, the equine
14 literature says.

15 A. Very astute, yes, that is
16 correct.

17 Q. The miniature horses.

18 A. In most circumstances.

19 Q. Right.

20 A. These are both rescues. They
21 both have issues which they don't have.

22 Q. My question is is you've got
23 these two horses, and you've got all these
24 other animals, and that's where I start

1 thinking farm.

2 I know we've talked about the
3 definition of farms and not farms, but I just
4 have a concern. It's a .379 acre lot with
5 six dogs, two horses. We had pigs. I
6 just -- I'm thinking about your neighbors.
7 If this young lady in the back didn't bring
8 it up, I would have brought it up anyway.

9 A. Absolutely. I agree.

10 Q. It's too much, isn't it?

11 A. We have -- we are still in the
12 process of rehousing or rehoming dogs. We
13 have rabbits. We have the two horses,
14 miniature horses. And we have Hope. And we
15 have a couple geriatric dogs. And the other
16 ones we are in the process of rehoming.

17 Q. The gentleman that spoke before
18 was talking about making Blue Ash better, and
19 I think that includes the neighbors. And I
20 think we forget you know, Chloe has all kinds
21 of rights, but so do our neighbors, and --

22 A. I agree. Absolutely.

23 Q. And I just think that's a big
24 issue for me. I'm not talking for anybody

1 else, but I have a big issue with the amount
2 of animals on .379 acres. I don't know if
3 anyone will understand, but I think that's a
4 big effect on this whole issue is that this
5 has become a farm. We added pigs. I have no
6 idea where you went with why you got pigs?

7 A. They were fosters. They needed
8 a home. That's all.

9 Q. That's really it. And the other
10 thing is, you know, we can go into this
11 definition of therapy animals and service
12 animals; and, you know, if they're miniature
13 horses, where can we go after that, you know.
14 Can we find another animal that's bigger and
15 more difficult to deal with on such a small
16 property and they're a service animal too
17 now, and --

18 A. There are elephants that paint
19 and they sell pictures for. I'm kidding, of
20 course.

21 Q. Hope and elephants aren't good
22 enough --

23 A. But with all due respect, that
24 was never my intent. It's not a glutinous

1 endeavor, by any means. I'm a vet tech. I
2 have a passion for animals. I understand and
3 I respect my neighbors wholeheartedly,
4 especially Miss Nellie. I'm very fond of
5 her.

6 And the last thing I want to do
7 is upset anybody, which is why I've gone
8 above and beyond to get the certification,
9 the credentials, all this correspondence to
10 clean up my yard as frequently as possible.
11 Yes, it was very bad earlier. She's
12 absolutely right. The backyard was a wet
13 trench.

14 MR. SIRKIN: I don't have
15 anything else. It was just that was my
16 issue.

17 MR. COLLETT: Julie?

18 MS. BROOK: I have a question.

19 RECROSS-EXAMINATION

20 BY MS. BROOK:

21 Q. Last time you were here in 2010,
22 your husband discussed the idea of possibly
23 starting a business with these horses,
24 starting a business with the therapy horses,

1 and --

2 A. First of all, I don't have a
3 husband. Second of all, I don't have any --

4 Q. Who's the gentleman that's with
5 you?

6 A. I'm sorry. Is that relevant to
7 this?

8 Q. Well, I thought -- doesn't he
9 live with you with the horses at the house?

10 A. Children's Hospital did ask me
11 to plead my case --

12 Q. The gentleman that came with
13 you, the party that lives in the house with
14 you?

15 A. -- service provider of this.

16 Q. Can I ask my question, please?
17 The gentleman that's with you, that lives in
18 the house with you, that works with the
19 horses with you. In 2010, he had considered
20 making this a small business. And he had
21 mentioned that he's also a therapist, and
22 that he had thought about bringing other
23 children to the house to make this a
24 business.

1 A. The clarification is that his
2 name is John Traub, and he's worked for
3 Sycamore High School for, I think this is his
4 fifteenth, maybe sixteenth year with special
5 needs kids. And he works with them on an
6 individual basis outside of school. And yes,
7 the children that he works with love to see
8 the horses.

9 Q. Okay. Do they come to your --

10 A. We explained to them we cannot
11 do that, that these are for Chloe
12 specifically, and that was what that
13 particular conversation was about.

14 The other potential is that
15 Children's Hospital did ask me to become one
16 of their service providers on their website,
17 and I declined, saying that I could not do
18 that because of the situation that we are in,
19 that it -- it's not part of the deal. I
20 would not do that.

21 Q. So you're not conducting any
22 sort of business out of your house with these
23 horses?

24 A. No.

1 MS. BROOK: When we close, we
2 can discuss?

3 MR. COLLETT: Okay. Terry?
4 Mark? I believe we will close the public
5 hearing portion. If any of you have a
6 statement you'd like to make?

7 MR. PARKER: I do. Thank you
8 very much. First of all, the Code of Federal
9 Regulations defines service animals in
10 paragraph small i.

11 Under that there is the
12 requirement that public entities make
13 reasonable modifications in policies,
14 practices, or procedures to permit the use of
15 miniature horses by an individual with a
16 disability if the miniature horse has been
17 individually trained to do work or perform
18 tasks for the benefit of the individual with
19 a disability.

20 I'm really indicating,
21 Mr. Sirkin, that that would be -- specific
22 statute or, I'm sorry, specific federal rule
23 that makes miniature horses an acceptable
24 animal to perform these services and not,

1 say, the painting elephant that Ms. Anderson
2 mentioned.

3 And I -- I'm almost ashamed that
4 I have to ask these questions, and I'm almost
5 ashamed that I have to come before you,
6 because I think we all know the real answer.

7 If Chloe wasn't 11 years old,
8 and was 30, and she wasn't living with her
9 parents, I don't think we'd have a question
10 here because she'd be an individual who would
11 be speaking in her behalf.

12 But we're staring at her mother,
13 and everybody's asking really the question
14 what are you doing with two horses on your
15 property, right? What are you doing with --
16 why don't you just put a bell on your
17 daughter, you could find her, or those types
18 of questions that would be --

19 MS. BROOK: I think that's
20 rather unfair, and I'm going to take offense
21 to that comment.

22 MS. ANDERSON: We did as well.

23 MR. PARKER: It would be -- it's
24 hard to consider the fact that when federal

1 law collides with state law, that sometimes
2 you have to tell your neighbors that their
3 rights are superceded by the rights that we
4 have under federal law.

5 And Chloe uses these animals and
6 the means that are permitted under the
7 federal law. Really her mom uses them for
8 her, with her. If Mom wasn't around, Chloe
9 would be left to fend for herself.

10 And is that really what we're
11 talking about, her mom guiding her and
12 training her with the use of these animals
13 for the purposes of making it through each
14 day that she has.

15 Zoning regulations are
16 important. That's why people move to a city.
17 I understand. I think that's also the reason
18 why you need to consider it reasonable
19 modification of your rules. In fact, city
20 council already did.

21 Wouldn't you be telling them
22 that their decision on the first horse was
23 wrong by saying that the second horse is
24 inappropriate, now that we understand that

1 both horses are needed to perform the tasks?

2 And then I guess she asked the
3 question which horse is to leave, or is it
4 both horses have to leave? And then you
5 supercede the Complaint that was made by
6 Mr. Johnson on the one horse. Or do we say
7 have a two horse limit. Or is she going to
8 come in next week and ask for three horses,
9 and then we just nip it in the bud today.

10 I think, under the analysis, as
11 flawed as it may be, that Dinsmore & Shohl
12 provided to you attached to your packet,
13 these miniature horses are permitted and you
14 should make that reasonable modification, if
15 not a reasonable accommodation.

16 And how do you handle the one
17 neighbor's complaint, or does she win? She
18 wins? He wins? Chloe lose? Or does Chloe
19 not lose as a result of this? Is Chloe not
20 going to have the task performed for her, is
21 that --- is it really just not a big deal?
22 Is it all just a subterfuge? I mean, this is
23 really -- are these just pets for her? I
24 don't think so.

1 So we'd ask that you make that
2 reasonable modification. It was already made
3 for one. The second one has been established
4 to be necessary. She has the actual
5 disability. I don't think anybody can deny
6 that.

7 Inspector came out from the
8 Hamilton County Department of Health. He
9 found that the animals posed no threat.

10 So we'd ask you to make that
11 same or similar reasonable modification that
12 city council did when it didn't proceed with
13 the other appeal, and we'll give you copies
14 of her certifications if that's what you're
15 going to require.

16 MR. COLLETT: We did not require
17 certifications.

18 MR. PARKER: Okay. Well, we'll
19 give them to you anyways. Thank you.

20 MR. COLLETT: You're finished?

21 MR. PARKER: Indiscernible --
22 but I suspect I am.

23 MR. COLLETT: Okay. Thank you
24 very much.

1 MR. PACHECO: Mr. Collett, I
2 have a -- may I respond?

3 MR. COLLETT: Yes.

4 MR. PACHECO: Or I don't know
5 about respond. First of all, you've heard a
6 lot of talk about what the ADA says, and
7 you've heard a lot of talk about what it
8 should say. I'm going to read you some
9 language right out of the statute so that way
10 you can know what it says.

11 And I'm going to tell you about
12 a case that involves a request for a service
13 animal relating to a miniature horse from
14 2003.

15 First, with respect to miniature
16 horses, there are four factors that you
17 should consider. Number one, the type, size
18 and weight of the miniature horse and whether
19 the facility can accommodate these features.

20 Mr. Sirkin made the point that
21 under the miniature horse website, it doesn't
22 accommodate the particular feature of the
23 miniature horse to be happy and healthy.

24 Two, whether the handler has

1 sufficient control of the miniature horse.
2 It's not clear to me who "the handler" is, at
3 least based on the testimony that I've heard,
4 but that is something for you to consider.

5 The third, whether the miniature
6 horse is housebroken. Well, that's clear.
7 The miniature horses are not housebroken.
8 And fourth, whether the miniature horse's
9 presence in a specific facility compromises
10 legitimate safety requirements that are
11 necessary for safe operation.

12 Those are the four factors.
13 Those are read out of the particular
14 regulation, and those are the things that you
15 have to evaluate.

16 With respect to an actual case,
17 Access Now versus Kitchens, 2003, from the
18 Eastern District of Tennessee. This case was
19 not appealed, so it is good law interpreting.
20 It's the only case that I can find --

21 MR. PARKER: I would just
22 object.

23 MR. PACHECO: It's the only case
24 that I can find -- I did not interrupt you.

1 MR. PARKER: No, no, no. I just
2 want to object.

3 MR. PACHECO: It's the only case
4 that I can find that has to deal with the
5 issue of service animal.

6 Now, I know what Mr. Parker is
7 trying to say. He's saying, well, the
8 federal statute was amended so miniature --
9 you don't have to show that miniature horses
10 are service animals, therefore, my case
11 doesn't apply.

12 Well, I will show you
13 specifically where the language that
14 determines what is a service animal has been
15 specifically adopted for miniature horses, so
16 the argument's just -- it's a straw man, and
17 I'm going to knock it down.

18 Now, with respect to the case
19 itself. This involved a person who clearly
20 met the disability factors. And there was a
21 request in Jasper, Tennessee -- because these
22 types of animals, much like Blue Ash, were
23 not allowed in the zoning district.

24 And there was a request for

1 modification to allow a miniature horse. And
2 what the court said was, is it based on --
3 and I'll simply read the language so it's
4 not -- so I don't misstate it or misquote it.

5 "The horses are a pet and
6 companion for Tiffany, but it is not a
7 service animal under the ADA. Tiffany does
8 not need to utilize the horse as a service
9 animal. Tiffany can adequately stand,
10 balance herself, walk, and care for herself
11 entirely without any assistance from the
12 horse.

13 "One fact which clearly
14 demonstrates Tiffany does not need the horse
15 as a service animal is that Tiffany does not
16 utilize the horse when she is traveling,
17 walking, and moving around outside the
18 confines of Kitchens' house and backyard."
19 Kitchens was the name of the person seeking a
20 modification in this case.

21 "Plaintiffs make no contention
22 that Tiffany needs the horse as a service
23 animal when she goes to school, or otherwise
24 moves and travels beyond the Kitchens'

1 residence. Plaintiffs only argue that
2 Tiffany uses the horse at her residence. If
3 the horse was truly a necessary service
4 animal, Tiffany would need to use it on a
5 regular basis in many other places away from
6 Kitchens' residence."

7 Now, I know there's been a lot
8 of argument thrown up about discrimination,
9 and you're not applying the law, or the one
10 gentleman, I think, certainly tried to imply
11 that, you know, we were just flying by the
12 seat of our pants in this particular case.

13 We're not, by any stretch of the
14 imagination. We've looked at the case law.
15 We've looked at the regulations.

16 The point about service animal
17 is under this particular case, it says "to be
18 classified as a service animal, the horse
19 must be trained to work for the benefit of a
20 disabled individual."

21 When you look at the definition
22 of miniature horse, it says "if the miniature
23 horse has been individually trained to do
24 work or perform tasks for the benefit of the

1 individual with a disability." The language
2 for service animal as interpreted by this
3 court was the horse must be trained for the
4 benefit of the disabled individual. There's
5 no difference in the language.

6 Mr. Parker can try to set up
7 the, well, the law has changed. It's the
8 same test. It's the same test applied to
9 miniature horses.

10 And this case is very clear.
11 Given the undisputed testimony that Chloe
12 does not require this horse as -- in the same
13 vein that the Kitchens did not require the
14 horse. And so it's the same language. The
15 statute hasn't changed anything. And they
16 still have their burden.

17 And quite frankly, there's
18 already been a reasonable accommodation.
19 There's already one horse there. And again,
20 I will reiterate council didn't make any
21 decision. There was no appeal, okay, so
22 council didn't hear any appeal. There was no
23 decision by council, and nothing would run
24 afoul of that, so to suggest otherwise is

1 just wrong. It's not -- it's wrong on the
2 facts.

3 With respect to the safety
4 issue. The point, quite frankly, is not --
5 and this is another straw man that gets set
6 up and so, again, I'll knock it down, even
7 though it is not what even is being argued.

8 But the health inspector in his
9 March 5th letter made it very specific --
10 made it clear, "In addition, I observed
11 issues with pet waste outdoors."

12 Ms. Anderson herself talked
13 about the pile of manure, and then, you know,
14 Mr. Parker wanted to object to his client's
15 own testimony. And then you heard from -- I
16 don't remember her name. What's her name,
17 Tracy?

18 MS. TRACI SMITH: Nellie
19 Bridges.

20 MR. PACHECO: You heard from
21 Ms. Bridges about the manure. So these are
22 all items that go into whether or not there
23 should be a modification.

24 And it is unfortunate that we're

1 here in this situation because this is one of
2 those things that much like a police officer,
3 who is in some respects trying to work with
4 somebody and operate within the confines of
5 the law, then gets hit over the head with it
6 later when an additional item is brought up.

7 The fact of the matter is is
8 that nowhere, in any of these letters written
9 by the doctors, nowhere is the term
10 mentioned. Nowhere.

11 And also under the ADA, it's
12 very clear that comfort animals, or other
13 animals that provide various levels of
14 comfort that don't deal with daily life
15 activities are not service animals. And at
16 most, I would suggest to you that that is
17 what's here.

18 The therapy, Ms. Anderson
19 herself said that she doesn't know as of
20 right now, today as we stand here and sit
21 here, whether or not this therapy is
22 available elsewhere.

23 And the point is not that we're
24 denying her therapy, okay? We're not denying

1 her therapy. She can go to other places to
2 get the therapy. That's again another straw
3 man that's being set up, that somehow we're
4 denying something. We're not. We're not
5 denying anything.

6 We're simply saying you can't
7 house the horses at the property. It has
8 nothing to do with Chloe, by the way. It's
9 got everything to do with the horses.

10 So I sum up with this. There's
11 been a lot of -- there's been a lot of
12 arguments bandied about through the testimony
13 and else-wise, but the fact of the matter is
14 clear.

15 Under the statute, under the
16 statute which I read to you, no reasonable
17 modification is required. You already made,
18 in one sense because there's one horse there,
19 and we're only talking about one horse in one
20 sense, she's going to have a -- no matter
21 what you do tonight, she's still going to
22 have one horse, okay?

23 And there's been no testimony
24 that I recall that one horse isn't a

1 reasonable modification. I've heard we need
2 two, but I haven't heard that we can't do
3 one.

4 And the other thing too is the
5 law on point, as best I can tell, involves a
6 specific case that is really close on the
7 facts. And the court in that case found that
8 that horse was not a service animal. And
9 effectively, it's the same test as what's in
10 place with a miniature horse.

11 So the BZA needs to determine
12 whether there needs to be a modification or
13 not. But the bottom line is that the case
14 law that I believe is instructive out there
15 says it's not. Thank you.

16 MR. COLLETT: Public hearing has
17 been closed.

18 MR. PARKER: Oh, I don't get a
19 chance to tell you why the case that he's
20 citing is incorrect?

21 MR. COLLETT: In the interest of
22 time, and I believe you've had plenty of
23 opportunity to tell us, you know, many
24 details about your --

1 MR. PARKER: So he comes up with
2 a case that's still under good law, but that
3 doesn't -- that will be the rule that rules
4 the day.

5 The statute, the Code of Federal
6 Regulations modified and added the words
7 miniature horse, so that really kind of takes
8 the case and guts the whole thing. It was in
9 response to those types of cases. But thank
10 you. Thank you very much.

11 MR. COLLETT: Yes?

12 MS. BROOK: Couple of things.
13 I'm going to go back to, again, that we did
14 let the one horse in originally, or whatever
15 we did. We modified the one --

16 MR. COLLETT: Accommodated.

17 MR. PACHECO: You didn't.

18 MS. BROOK: We said no horse,
19 okay. I wish we had the notes from last
20 time. No horse. But there is one horse
21 there.

22 According to what I've read on
23 the internet, a miniature horse is considered
24 livestock. So we've allowed this to be a

1 small farm already -- or it's a small farm
2 now, because it has this -- well, whatever.

3 I also found multiple areas
4 where the child can get therapy, so I'm not
5 going to have it thrown out at us or feel
6 that we are being threatened by someone
7 saying they're going to take this further.
8 And I find that --

9 I find some of the accusations
10 today very insulting. So I'm very
11 disappointed in the other gentleman that made
12 the reference that he's going to take this
13 further, because I believe that already this
14 child -- it's unfortunate what's going on
15 here.

16 But this is livestock. This is
17 the second horse now. This is house -- horse
18 husbandry. She doesn't take the horse to
19 school, which we were given notes here about
20 it going to school on page 2 of Dan's stuff.
21 She does not take the horse to school.

22 There are other opportunities
23 for therapy. I believe that leaving it just
24 at one horse is a reasonable -- is reasonable

1 at this point. Leaving it at one horse. I
2 mean, we're not going back and restricting it
3 back from the other horse, but leaving it at
4 one horse, therefore not modifying, not
5 making any further modifications.

6 MR. COLLETT: Okay. Mark?

7 MR. KIRBY: Nothing further.

8 MR. COLLETT: Terry?

9 MS. PECK: I'm looking at we are
10 just being asked about the horse. I think we
11 have to leave out our soft side on this about
12 the therapy and those type of things because
13 I'm not sure that's been determined by the
14 doctors' letters. They were a little
15 general.

16 So if you base it on a horse
17 being in this zoning, I would say it doesn't
18 belong there. And Bryan answered all of my
19 questions I had listed here on the case law,
20 so I don't have any more questions to ask.

21 But it's a very complicated
22 subject matter, and I don't think we're
23 trying to -- I want to stick within the ADA
24 Guidelines, and also if we can, the zoning

1 recommendations.

2 MR. COLLETT: Okay. Yes or no?

3 MR. SIRKIN: Real quickly. I
4 think it was very brave of Mrs. Bridges to
5 come here. That's really hard to do when you
6 back up to your neighbors. To be real honest
7 with you, I think you really pushed it when
8 you decided to bring pigs into the yard.

9 I don't know what five dogs that
10 are not therapy, two horses, you said
11 rabbits, and then you determined to bring
12 pigs into the yard.

13 And it just looks to me like you
14 really honestly don't care what your
15 neighbors want. You've got something in your
16 mind that you've determined is very good for
17 your child and everybody else can be
18 discriminated against.

19 And I think that your neighbors
20 are being discriminated against right now
21 with the condition of what they're living
22 next to.

23 And I feel for you for your
24 child. I can't imagine what it's like, and I

1 couldn't put myself in your place. But we're
2 way past the point of, I think, reasonable.
3 That's all I have to say.

4 MR. COLLETT: I would, for
5 clarification purposes, I would remind
6 everyone that we did deny the first appeal
7 for the original horse. And that rather than
8 pursue the appeal process, an accommodation
9 was made; not a modification to the code, or
10 interpretation to allow the one horse to be
11 on the premises and serve the purposes for
12 which the appellant has come before us
13 tonight and came before us at that time.

14 And I believe that the city has
15 a need to really protect all of its citizens
16 from, you know, the various improprieties or
17 things that can -- that are dealt with in our
18 code.

19 And that's why we have codes, so
20 that we, you know, prevent neighbors from
21 being in an awkward situation and having to,
22 you know, come before council or a board to
23 have their side of an issue presented.

24 And, you know, there's not a

1 Board member up here that's not sympathetic
2 to the need and the cause and the benefits;
3 but, you know, again, I think the reality is
4 that we've tried to -- not we, because we did
5 not allow the first appeal. But I probably
6 at least speak for myself when saying that,
7 you know, that was a very fair accommodation,
8 and I think made -- hopefully made us look
9 like we were in some regard sympathetic but,
10 you know, there's a point at which we need to
11 do our jobs.

12 And I think that in spite of
13 everything that we've been told here about
14 definitions and legalese and interpretations,
15 we must just react and respond and make the
16 zoning question or the appeal to the
17 enforcement of the city administration or
18 city staff's interpretation. So that's what
19 we're charged with here tonight is to either
20 uphold the appeal or uphold the enforcement.

21 So with that in mind, I would --
22 are there any other questions?

23 MS. PECK: I just want to be
24 sure on one thing. So we are not violating

1 any of the federal ADA Guidelines?

2 MR. SIRKIN: No.

3 MR. PACHECO: No.

4 MS. PECK: No. And we can base
5 our vote on the zoning code of Blue Ash?

6 MR. PACHECO: Absolutely.

7 MR. COLLETT: Not being any
8 further questions, I'd entertain a motion.

9 MS. BROOK: I'm not sure how
10 we're going to word the motion. That's the
11 problem. I mean, we need --

12 MR. COLLETT: We deny the appeal
13 or we uphold the appeal.

14 MR. SIRKIN: Uphold the zoning
15 administration's --

16 MS. BROOK: So if we uphold, we
17 uphold what we said last time?

18 MR. COLLETT: Right.

19 MS. PECK: Just what's written.
20 You can agree with what's written or
21 modified.

22 MS. BROOK: So we're saying it
23 backwards.

24 MR. PACHECO: I would say that

1 it probably is, to be the clearest --

2 MR. COLLETT: Deny the appeal.

3 MR. PACHECO: Yes. A motion to
4 deny the appeal.

5 MS. BROOK: Okay. So then I'll
6 make a motion to deny the appeal to keep the
7 second horse at 9701 Conklin Road.

8 MR. SIRKIN: I'll second.

9 MR. COLLETT: There's been a
10 motion and second. Tracy call the roll.

11 MS. TRACI SMITH: Julie Brook?

12 MS. BROOK: Yes.

13 MS. TRACI SMITH: Mark Kirby?

14 MR. KIRBY: Yes.

15 MS. TRACI SMITH: Marc Sirkin?

16 MR. SIRKIN: Yes.

17 MS. TRACI SMITH: Terry Peck?

18 MS. PECK: Yes.

19 MS. TRACI SMITH: Paul Collett?

20 MR. COLLETT: Yes.

21 MR. PACHECO: Because of recent
22 case law changes, the Board's decision is not
23 final tonight. It has to be affirmed in the
24 minutes.

1 MR. COLLETT: In approval of the
2 minutes at the next meeting?

3 MR. PACHECO: Right. And then
4 it will become final when the minutes are
5 approved, in which case the appellant would
6 have 21 days to appeal that particular
7 provision, if I'm reading the right
8 provision.

9 MR. SIRKIN: This time they can
10 appeal to council instead of letting it go.

11 MR. PACHECO: Yes.

12 MR. COLLETT: Okay. We've
13 rendered our decision, and then we'll move on
14 to the next agenda item. Are there any
15 continued hearings?

16 MR JOHNSON: No, sir.

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