

COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

January 14, 2009

The Columbia County Board of Commissioners met in scheduled session with Commissioner Rita Bernhard, Commissioner Anthony Hyde and Commissioner Earl Fisher, together with Spencer Parsons, Assistant County Counsel and Jan Greenhalgh, Board Secretary.

Commissioner Bernhard called the meeting to order and led the flag salute.

MINUTES:

Commissioner Hyde moved and Commissioner Fisher seconded to approve the minutes of the November 26, 2008 Board meeting; December 23, 2008 Board meeting; January 5, 2009 Board meeting and January 7, 2009 Emergency meeting. The motion carried unanimously.

VISITOR COMMENTS:

None.

HEALTHY START PRESENTATION:

Jan Kenna introduced Sunday Kamppi, Program Supervisor with Healthy Start. Sunday wanted to personally thank the county and the employees for the very generous donations this year through the giving tree. She asked if the Board could share that thank you with all of the employees.

While present, she also displayed a check from the Safeway Foundation of \$2,500 for the Healthy Start program.

HEARING: TODD VIKEN CONDITION USE PERMIT TO OPERATE PET CAMP:

This is the time set for the public hearing, "In the Matter of the Application of Todd and Liana Viken for a Conditional Use Permit for a Type II Home Occupation to Operate a Pet Camp and Care Facility in the Rural Residential (RR-5) Zone".

Spencer explained that this hearing is an appeal on the decision of the Planning Commission. The Board disclosed no ex parte contact or conflicts of interest. Spencer read the pre-hearing statement into the record as required by ORS 197.763. He entered County Counsel's hearing file into the record, marked **Exhibit 1** and listed all contents.

Glen Higgins, Chief Planner, came before the Board to give the staff report.

He first entered a corrected site map into the record. The applicants, Todd and Liana Viken applied for a Conditional Use Permit for a dog boarding/care facility. The CCZO is silent on kennels except for a definition. Kennels are not explicitly listed as permitted or conditionally permitted in any zoning district. However, the County has historically classified and processed kennels as a Home Occupation which requires a conditional use permit and, if approved, compliance with conditions of approval and home occupation standards on a case by case basis. In light of recent issues raised about proper licensing and siting of kennels in residentially zoned areas and in recognition of the fact that they do not fit well within the concept of the traditional Home Occupation, the Board has recently initiated steps to create a task force to investigate possible amendments to the CCZO to establish standards for the location and site of kennels. Glen then went over the applicable criteria and staff findings.

The Planning Commission held a hearing on this application and approved the Conditional Use permit with 19 conditions. That approval was appealed by George and Debbie Benz, which is the purpose of this hearing. Based on the facts and findings, staff recommends approval of this application with the conditions and restrictions as listed in the staff report.

Commissioner Bernhard understands that noise seems to be the big issue and asked if that has been addressed. Glen stated that the sound proofing, supervision of dogs outside and separation from other adjoining uses have been identified and addressed in the conditions.

The hearing was opened for public testimony.

PROPOSERS:

Denise Lukins, 1412 NE 134th Street, Suite 130, Vancouver, WA 98685: She is the attorney for applicant. She wanted to address the legal issue of standing. The Benz's live about 900 feet from the property line. She would argue that under Section 1701.3 the Benz do not have standing because they are not within limits of the property line who require notice.

Spencer stated that is noted for the record, however, he would advise the Board that notice and standing are two different issues. Under State law, anyone who appears at the land use hearing has standing, as was done in this case.

As a procedural matter, Spencer entered the corrected map submitted by staff marked **Exhibit 2** and a binder submitted by Liana Viken marked **Exhibit 3**.

Liana Viken, 55501 Columbia River Hwy, Scappoose: Liana explained the plans for this dog care facility. She will be doing everything she can to minimize noise because she lives there too. This is not a rescue service, it is a care facility for dogs when owners are away and need a place for their dogs. Her service is by appointment only and not just open to the public. She has been planning this for over 5 years.

Todd Viken, 55501 Columbia River Hwy, Scappoose: He explained that during the outdoor play time, the dogs will be running exercising with balls, frisbees, etc. Typically when dogs are running, they won't be barking. They will be exercising with supervision and this will take place only during certain hours of the day. By 6:00 pm, all pets will be inside. Liana explained that there will be cameras in the areas where the dogs are so she can hear and see them at all times.

Denise continued with her comments and response to the appellants arguments.

First is the statement from the appellant's attorney that the number of parking spaces required is apparently proof that this is not a home occupation and that such facilities are "never" shut down. In response, the number of parking spaces and a turn around are in no way determinative of whether this is a home occupation or not.

The appellant also claims that enforcement of conditions of approval for kennels are a "joke". Apparently, they do not believe that the County will do its part to enforce its own requirements. The facts are that the County has built two means of enforcement into the approval. Because the Vikens

are required to obtain a kennel license, they are subject to animal control regulations regarding nuisance noise. Further, if a problem does exist, the Vikens could lose their permit and ultimately their business. No one would have more incentive than the Vikens to ensure that the facility is well run and quiet.

The appellants argue that the Vikens must provide proof that the *"site and proposed development is timely, considering the adequacy of the transportation systems, public facilities and services existing or planned..."* and go on to state case law. Denise responded that the Vikens have already received their "always difficult to obtain" ODOT approach permit and have submitted that to the County. Therefore, there is no need to address this argument.

The appellant next argues that the Vikens must provide proof that the *"proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or precludes the use of surrounding properties for the primary uses listed in the underlying district"*. CCZO 600 provides that *"other uses shall be those customary to such areas, including farm and forest uses, churches and home occupations of a rural character"*. Nothing is more rural than caring for animals in a barn-like structure and paddocks.

Regarding noise, she herself has been an animal trainer with over 35 years experience. She can assure the appellant and their attorney that supervised, engaged dogs rarely bark. The appellants claims of "noise pollution" are speculative at best and nonsensical as it relates to them, since their property is located so far away.

Appellants argue that because there may be up to 30 dogs on site, this is not a home occupation. However, there is no citation of any applicable criteria supporting this argument, from either the county code or state statute. They argue that home occupations are only to be conducted inside of a home or accessory structure and that the public is not be subjected to sight or sound of said occupation. Here, the proposed use will be contained in a pole barn, a structure common to rural areas. The Type 2 Home Occupation the Vikens are applying for, "may be visible to the neighborhood in which it is located". The barn will certainly be visible and the neighbors may also see the dogs receiving care. This does not violate any applicable criteria.

In conclusion, the conditions required by the County adequately protect the neighborhood and the Benz's appeal should be denied.

Kimethy Lusk, 13092 SW Ascension Drive, Tigard, OR 97223: She owns and runs a K9, feline boarding kennel and grooming shop in Beaverton for the past 15 years. She has been a long time friend of Todd and Liana and has counseled and advised them about the business for more than 5 years. Over the years, she has learned a lot about dogs, much through other professionals. She is now in the position to help Todd & Liana build their new business, an exceptional, cost-effective kennel, daycare and grooming business. Liana is a very driven person who is not afraid to put in the time and dedication to her job. She noted that her business holds three times the amount of dogs that this business will. Noise was a concern when she went through her permitting process but has never been a problem.

Pamela Raye, 14620 SE First St., McMinneville, OR 97128: She has known the Viken's for 2 years and does the bookkeeping for their other business.

When she first went to their Beaverton facility, she was amazed at how well the dogs react to Todd and Liana. In fact, most of the time, the dogs didn't even want to leave. This will be a top notch facility and will provide quality service. The Viken's really care for the animals and people want a place like this to care for the animals when they have to leave them somewhere.

OPPONENTS:

Jeff Kleinman, 1207 SW 6th Avenue, Portland, Or. 97204: He is the attorney for George and Debbie Benz and has been working in land use law for over 34 years. He first entered written documentation into the record, marked **Exhibit 4**. He also submitted a list of signatures on a petition, marked **Exhibit 5**. At this time, he addressed the request to hold the record open for 7 days. Spencer gave his legal opinion. Jeff would suggest that if additional time is granted, appellant can respond and if it goes over the 150 day limit, the applicant would have to grant an extension to the time limit. He then addressed the applicable criteria for this application. The proposed use for a Type 2 Home Occupation for a pet camp and care facility is not a home occupation. It is a full-scale commercial use proposed in a residential zone. The applicants proposal for an additional 10 parking spaces and a turn around supports this fact. Further, the staff findings states that the "proposed use is similar in parking demand to service and repairs shops", which is clearly not home occupations.

As the Board knows, the notion that noise related and similar conditions of approval can be enforced against a kennel or kennel-like operation is a joke. Once such operations are commenced, they are never shut down. At the

same time, citizen complaints are never shut down either and will continue to burden the county for as long as this commercial business continues to operate.

Based on the description of the operating hours, dogs may be going in and out in the morning and evening along with the shuttle transport.

Potentially, this is a lot of in and out traffic. Hypothetically, there could be 30 dogs coming in in the morning and 30 dogs going out in the evening, that equates to 120 trips daily.

Commissioner Fisher heard the testimony to say that there may be up to 30 dogs for overnight, so he doesn't see how that makes 120 trips per day.

Commissioner Fisher gave another hypothetical case where 30 come in and stay for a full week, making only 30 trips in a week. Jeff stated that, regardless, it still doesn't meet the criteria for a home occupation.

The criteria requires proof that the "site and proposed development is timely, considering the adequacy of transportation systems, public facilities, and services existing or planned for the area affected by the use". As staffs finding #8 points out, the proposed commercial operation will require an ODOT approach permit for vehicle access and a drainage permit for connection to ODOT drainage facilities for runoff entering the right-of-way.

However, no evidence has been submitted with respect to feasibility of obtaining such approval and compliance is left to future fulfillment of approval condition #4. Such a multi-stage approval process, in which final determination of compliance with approval standards is deferred to a later point in time or a later event, is subject to strict legal requirements. In failing to produce persuasive evidence of the feasibility of obtaining an always difficult to obtain ODOT approach permit, the applicants in this case have failed to meet the requirement.

Regarding dogs out in the yard for play time, noise, etc., the evidence will show that the applicants do not live on this property as they stated, a relative does. Even with the dog control skills they claim to have, the applicants can't be in two places at one time, their Beaverton shop and Scappoose and therefore cannot have the control over the dogs as they stated. The applicant has also stated that only 4 dogs will be let out at a time for play and exercise. He does not understand why 6,000 square feet of outside area is needed for this.

Conditions of approval #3 and #17 are contradictory. Condition #3 allows transportation of pets to and from the kennel on a leash or by carrier, while Condition #17 requires loading and unloading of transport vehicles inside the structure.

In conclusion and for the reasons he has stated here and in his submittal to the Planning Commission, which is part of the record, the applicants have not met and cannot meet their burden of proof and the Planning Commission erred in approving this application. Therefore, this appeal should be sustained and the application must be denied.

With the time being close to 12:00 noon and Commissioner Hyde needed to attend another meeting, discussion was held on whether to continue the hearing in the afternoon or carried it over to another date certain.

Denise Lukins stated that she has another court hearing at 1:30 today and cannot return today. She informed the Board that the applicant is willing to waive the 150 day deadline to extend this hearing to another date if necessary. Liana Viken confirmed that she would agree to waive the 150

day deadline. After discussion, Commissioner Hyde moved and Commissioner Fisher seconded to continue this hearing to Wednesday, February 4, 2009 at or after 10:00 a.m. The motion carried unanimously.

The Board recessed the meeting at 12:10 p.m and reconvened at 1:00 p.m. with all present.

EMPLOYEE SERVICE AWARDS:

The Board presented the following employees with service awards thanking them for their years of service to Columbia County: Judy Gettman - 30 Years; Alan King - 30 Years; Scott Davidson - 30 Years; David Fuller - 25 Years; Sharon Johnson - 20 Years; Randy Bonds - 20 Years; Diane Allen - 15 Years; Dustin Hald - 10 Years; Richard Baer - 10 Years; John Berg - 10 Years; Karen Gross - 10 Years; Ted Healy - 10 Years; and Troy Caldwell - 10 Years.

CONSENT AGENDA:

Commissioner Bernhard read the consent agenda in full. With that, Commissioner Hyde moved and Commissioner Fisher seconded to approve the consent agenda as follows:

- (A) Ratify the Select-to-Pay for 12/23/08; 12/31/08; 1/6/09; 1/13/09.
- (B) Ratify Commissioner Hyde's signature on the Trust Deed with Sykes & Beverly Ann Mitchell.
- (C) Order No. 2-2009, "In the Matter of Indemnifying County Officials from Litigation Liability".

- (D) Order No. 3-2009, "In the Matter of Declaring Certain Personal Property Owned by Columbia County to be Surplus to the County's Needs and Directing the Sale Thereof".
- (E) Approve reduction in hours of Administrative Assistant position in CCCCCF to .3 FTE and approve creation of position of Fiscal Assistant, at .3 FTE, and assign to salary range 23.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (F) Memorandum of Understanding with the AFSCME Local 1442.
- (G) Amendment #2 to the Oregon Commission on Children & Families 2007-2009 County Healthy Start - Medicaid Administrative Activities Intergovernmental Agreement COL0709 and authorize the Chair to sign.
- (H) Approve Collective Bargaining Agreement with AFSCME Local 1442, effective January 1, 2009 through June 30, 2013.
- (I) Approve the Services Agreement #14811 with the State of Oregon on behalf of the University of Oregon for Resource Assistance for Rural Environments (RARE) Volunteer Services and authorize the Chair to sign.
- (J) Firearms Range Lease with Morse Bros., Inc., dba Knife River for a portion of the Reichhold Site.

The motion carried unanimously.

COMMISSIONER BERNHARD COMMENTS:

Commissioner Bernhard was in Salem on Monday to attend the AOC Community Development meeting with many State departments heads, representatives, etc. A lot of discussion was held on the economic stimulus package. There are still a lot of questions to be answered regarding the process.

On Tuesday, she was in Albany for an Oregon Consortium Board meeting. They also discussed the stimulus package, the money that will be received for the work force, and the possibility of funding for youth services.

COMMISSIONER HYDE COMMENTS:

Commissioner Hyde spent a lot of time in emergency meetings last week dealing with the recent storm. Hopefully the worst is over. He felt there was a good response from all involved but there is always room for improvement.

He attended the legislative meeting in Salem on Monday. There was a very good turnout by County Commissioners throughout the State. He will be there again on Thursday and will testify on emergency management.

COMMISSIONER FISHER COMMENTS:

The Board has been very busy the past week dealing with flood issues. Commissioner Fisher spent time in Clatskanie filling sand bags.

On Tuesday, he attended the CEPA meeting.

Commissioner Fisher wanted to comment on the great work performed by the Road and Sheriff's departments during the recent snow and flooding event.

He was in Salem on Monday to attend the AOC legislative meeting and had the opportunity to speak with Senator Johnson and Representative Brad Witt. He looks forward to meeting with them more in the future.

Commissioner Fisher briefly commented on the facilitated meeting with the Board last week.

He will be attending the AOC County College in Salem this week.

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There was no Executive Session held.

Dated at St. Helens, Oregon this 14th day of January, 2009.

NOTE: A tape of this meeting is available for purchase by the public or interested parties.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____

Rita Bernhard, Chair

By: _____

Anthony Hyde, Commissioner

Recording Secretary:

By: _____

By: _____
Jan Greenhalgh

Earl Fisher, Commissioner