

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of the Application of Todd)
and Liana Viken for a Type II Home)
Occupation for a Full Service Pet Camp) FINAL ORDER NO. 10-2009
and Care Facility in the RR-5 Zone)

WHEREAS, on August 28, 2008, Applicants Todd and Liana Viken applied for a Conditional Use Permit for a Type II Home Occupation to operate a dog boarding, grooming and day care facility on an approximately 5.34 acre parcel zoned Rural Residential-5 (RR-5) off of Highway 30, at 55501 Columbia River Highway, and having Tax Account Number 4130-030-00100 (Application No. CU 09-03); and

WHEREAS, the Application was deemed complete on September 4, 2008; and

WHEREAS, after proper notice the Columbia County Planning Commission held a public hearing on the Application at its regularly scheduled meeting on October 6, 2008, heard testimony and received evidence into the record; and

WHEREAS, at the October 6, 2008 meeting, after hearing testimony and receiving evidence, the Planning Commission closed the hearing to further testimony and evidence, deliberated on the matter and voted 4-2 to approve the Application subject to several conditions of approval; and

WHEREAS, on October 20, 2008, George and Debbie Benz filed an Appeal of the Planning Commission's decision to the Columbia County Board of Commissioners; and

WHEREAS, upon receiving the Appeal, a hearing was scheduled before the Board of County Commissioners for December 10, 2008; and

WHEREAS, the County was notified of inconsistent hearing dates provided in its mailed and published notices for the scheduled December 10, 2008, hearing on the Appeal; and

WHEREAS, the hearing was accordingly rescheduled to January 14, 2009; and

WHEREAS, after proper notice the Columbia County Board of Commissioners held a public hearing on the Appeal at its regularly scheduled meeting on January 14, 2009, heard testimony and received evidence into the record; and

WHEREAS, after receiving a waiver of the ORS 215.427 Deadline from the Applicant to February 23, 2009, the Board continued the hearing to its regularly scheduled meeting on February 4, 2009; and

WHEREAS, at the continued hearing on February 4, 2009, the Board of County Commissioners heard additional testimony, received additional evidence into the record, closed the hearing to further testimony and evidence, deliberated on the matter and voted to tentatively deny the Application;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Board of County Commissioners adopts the Findings of Fact and Conclusions of Law attached hereto as Attachment 1 and incorporated herein by this reference.
2. Based on the foregoing and the analysis provided in Attachment 1, the Appeal of George and Debbie Benz of the Planning Commission Approval of the Application of Todd and Liana Viken (Application No. CU 09-03) is SUSTAINED, and the Application is hereby DENIED.

Dated this 18th day of February, 2009.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By: [Signature]
Office of County Counsel

By: [Signature]
Rita Bernhard, Chair

By: [Signature]
Anthony Hyde, Commissioner

By: [Signature]
Earl Fisher, Commissioner

ATTACHMENT 1

FINDINGS OF FACT AND CONCLUSIONS OF LAW—CU 09-03

George and Debbie Benz timely appealed the October 13, 2008 order of the Planning Commission approving the application of Todd and Liana Viken for a Conditional Use Permit for a Type II Home Occupation for what has been described as either a “full service pet camp and care facility” or a “boarding kennel,” housing up to 30 dogs at a time. The use was requested for the applicants’ property comprising approximately 5.34 acres at 55501 Columbia River Highway; Scappoose, OR 97053, in the county’s Rural Residential-5 (RR-5) zone.

The Board of Commissioners considered the Benzes’ appeal at public hearings on January 14 and February 4, 2009. The Board deliberated on February 4, 2009, and having heard the testimony of the parties, their counsel, and other witnesses, and having duly considered the evidence and arguments in the record and the county’s applicable approval standards, voted unanimously to sustain the appeal and deny the application. The Board finds as follows:

CRITERIA AND EVALUATION PROVIDING THE BASIS FOR DENIAL

1. CCZO 1507.3 sets out criteria which are applicable to all home occupations. CCZO 1507.3.B requires that a “home occupation shall not unreasonably interfere with other uses permitted in the zone in which the property is located.” The uses permitted in the Rural Residential 5 Zone are set out in Section 602. Section 602.1 permits single family detached dwellings, and residential use in the form of substantial subdivision development predating statewide comprehensive planning for this area is prevalent in the area adjoining the site. The likelihood of interference with residential use in this zone, within the immediate area including Shamrock Way, was described by several witnesses. The site is on relatively high ground, from which the sound of dogs barking would carry to many nearby homes. During the warmer parts of

the year, residents try to enjoy their yards and patios. Residents also have dogs which would be provoked to bark by the presence and barking of the dogs at the proposed facility.

The applicants contend the pole barn in which the dogs would be housed will have acoustical features containing that noise, and that the dogs will be prohibited from barking. The Board is not persuaded these efforts will be successful. Moreover, the applicants propose to provide two outdoor play areas for dogs using the facility, totaling either 3,000 or 6,000 square feet. The Board is not persuaded barking by even small groups of dogs at play outdoors can or would be adequately controlled, and finds such barking would greatly exacerbate the impacts described above.

The nature of these impacts is clear from the site plan proposed by the applicants. They propose to use the new pole barn to buffer their existing dwelling from the noise of the outdoor play area(s). No such buffering is proposed for the surrounding neighborhood.

Hence, the Board finds that, under CCZO 1507.3.B, the proposed use would unreasonably interfere with residential use permitted in the zone in which the subject property is located. The applicants have not met their burden of proving compliance with this approval standard.

2. CCZO 1507.3.A requires a home occupation to be operated substantially in “the dwelling; or other buildings normally associated with uses permitted in the zone in which the property is located.” A use which contemplates regular and continuous use of an outdoor area as a key component of the service offered violates this provision.

The proposed use would not be operated substantially within the dwelling or other buildings normally associated with permitted uses. The applicants propose to utilize either 3,000

or 6,000 square feet of outdoor space (applicants' proposal is not clear which) *vis-a-vis* 4,600 square feet of indoor space (the pole barn) for the proposed use; it also appears the dwelling itself will not be used at all. The applicants testified that the outside play area(s) are a key component of their proposed business operation.

Based upon the extensive proposed outdoor usage and its importance to the applicants' business, the Board finds the proposed "home occupation" would not be operated substantially in "the dwelling; or other buildings normally associated with uses permitted in the zone in which the property is located." The applicants have not met their burden of proving compliance with CCZO 1507.3.A. Further, applicants have proposed building the pole barn to commercial standards, and there is uncontested testimony in the record that the proposed size of the pole barn is not consistent with sizes of barns and similar accessory structures in the surrounding area. The Board finds that a disproportionately large pole barn, built to commercial standards in a RR-5 zone, does not constitute a "building[] normally associated with uses permitted in the zone in which the property is located."

3. Based upon the Board's cumulative findings under CCZO 1507.3.A and B, above, with respect to impacts upon other permitted uses in the RR-5 zone and the proposed outdoor operations, the Board finds that the proposed use is fundamentally commercial in nature, and is simply not a "home occupation" as contemplated by our Zoning Ordinance. As the applicants' representative stated, this is "very much a commercial enterprise." The fact that the pole barn would be built to commercial standards dramatizes this point. The proposed use belongs at a commercially zoned location.

The Board does not wish to open the door for commercial enterprises to operate

throughout the county under the guise of “home occupations.” Approval would set a harmful precedent for the county, and create the potential for undesirable and unintended commercial “creep” along Highway 30.

4. The county’s criteria for granting a conditional use permit are set out in CCZO 1503.5. The applicant must provide “evidence substantiating that all the requirements of this ordinance relative to the proposed use are satisfied and demonstrates the proposed use also satisfies” the listed criteria.

CCZO 1503.5.C requires a showing that the “characteristics of the site are suitable for the proposed use considering size, shape, location, topography * * * and natural features.” The Board finds the evidence in the record is persuasive in showing that the location of the property and the location of the use on the site will maximize noise impacts interfering with the other permitted uses in the zone. The use would occupy high ground from which sound will radiate hundreds of feet to the affected nearby properties, in an amphitheater-like effect. The map showing the subject property and other nearby properties, including those on Shamrock Way, shows that a great number of residential dwellings would suffer noise impacts from the proposed use. As discussed above, buffering from outdoor noise would be provided for the applicants’ dwelling but not other affected properties.

As a result, the Board finds the applicants have not met their burden of showing that the “characteristics of the site are suitable for the proposed use considering size, shape, location, topography * * * and natural features.”

5. CCZO 1503.5.E requires a showing 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.” This is similar to the criterion set out in Section 1507.3.B, and we incorporate our discussion of that standard here. The Board finds that the noise impacts of the proposed use would in fact alter the character of the surrounding area in a manner which substantially limits and impairs the use of surrounding properties for residential purposes, a primary use listed in the underlying district. The peace and quiet which are a fundamental element of residential use would be significantly diminished. The applicants have not met their burden of proving compliance with CCZO 1503.5.E

CONCLUSIONS OF LAW

Based upon the above findings, the Board concludes that the applicants have not met their burden of proving compliance with the relevant county approval standards. The Benzes’ appeal must be sustained, and this application must be denied.