

SAUK COUNTY BOARD OF ADJUSTMENT
September 20, 2019 Session of the Board

PRESENT: Linda White, Chair
Dan Kettner, Vice Chair
David Allen, Secretary
Jim Mercier
Valerie McAuliffe

ABSENT: None

STAFF PRESENT: Lisa Wilson
Gina Templin
Brian Simmert
Cassandra Fowler

Chair White called the session of the Sauk County Board of Adjustment (BOA) to order at approximately 9:00 A.M. The Chair introduced the members of the Board, explained the procedures and the order of business for the day. The staff certified that the meeting had been legally noticed. The certification of notice was accepted on a motion by Kettner, seconded by Allen. **Motion carried, 5-0.**

The Board adopted the agenda for the September 20, 2019 session of the Board on a motion by Kettner, seconded by Allen. **Motion carried, 5-0.**

Receive, discuss and decide argument on whether any named party in the August 20, 2019 appeal challenging approval of Sauk County Conditional Use Permit 10-2019 (Kane kennel operation) is a “person aggrieved” within the meaning of Wis. Stat. sec. 59.694(4) or Sauk County Code sec. 7.151(7).

Daniel Olson, Sauk County Corporation Counsel, suggested that the Kane’s or their counsel provide argument first.

Mike Curren, Attorney representing the Kane’s, stated they filed the request for the meeting to make the argument on whether or not the applicants that filed the appeal are a “person aggrieved”. He referred to Sauk County Code sec. 7.151(7), and suggested that the applicant would provide new evidence in October versus a mistake made and stated they all focus on specific conditions that could have been attached versus the actual CUP itself. He stated they provided no proof of noise and people that live 3 miles away are complaining about noise and the complaint about groundwater effects without proof. He argued any support of an aggrieved party and whether they articulate and prove the status of how they are aggrieved. He then referred to Wis Stat 59.694(4) and how it relates to an aggrieved party and a tax payer and backing it up with sufficient evidence and a deficiency with the original hearing.

White asked when the kennel was started. Curren stated it was never started because the Kane’s never sold animals, however there have been animals since the end of 2018.

White asked if there were animals on the site prior to that. Curren stated there were not.

Kettner asked how many animals are currently kept there. Curren stated about 47, but he Kane's have applied to have up to 300 dogs, but the kennel is not situated to have that many dogs at this time.

White asked if there is any advertising in front of the building. Curren stated there is not and it looks the way it always looks other than a no trespassing sign.

White referred to property values and if someone drove by would they know it is a kennel, and that is what her questions refers to.

Kettner asked about the waste products and how those are handled. Curren explained they were initially going to be spread, then researched composting, and now it is loaded into a dumpster and removed by Town and Country.

White asked if for the future use the dog waste will not be left on site. Curren stated that was correct, but it is there until it is picked up from the dumpster.

McAuliffe asked about the prior use. Curren stated it was immediately vacant, but several years ago it was a veal farm.

White asked about the immediate neighbors. Curren stated it is located on the corner of Big Hollow and State Highway 14, and feels that all the aggrieved parties are no immediate neighbors, but possibly 1,000 feet away. Other neighbors are farm residents and buildings.

White verified the aggrieved parties are outside of the statutory 1,000 feet away. Curren stated they are.

Mercier stated the previous use of the farm was veal and chicken farm.

George Corrigan, Attorney for the Appellents, spoke of the aggrieved parties and the reasons they aggrieved. He spoke of the Wisconsin Supreme Court - Brookside case and the legal interest. He spoke of the right someone has to their own property. He also spoke of the Mount Horeb facility and how it affects the MLS.

White asked if the sales were required to take a considerable lower amount than what they needed to take. Corrigan couldn't get that data because of the timing of the meeting.

Corrigan then reviewed pathogens specific to dogs that is not the same as veal and chickens, as well as nothing in the decision that pertains to retail sales and services. He also addressed the issue of two members that should have recused themselves, which he won't get into.

White asked how many people were on the board that day. Corrigan stated that one was absent and two should have recused themselves but swayed the votes.

Corrigan spoke of the first two appellants are within ½ mile, which are affected by the economic impact, as well as the pathogen issues.

Kettner asked about the length in sales for the homes next to the existing animal facility and there were no other factors that were the reason. Corrigan stated there is nothing else near that facility that would affect it. He also stated they only had 3 days to provide information and will have additional information in October. White asked about the age of the home, pricing, school district, etc., and asked about the Realtor advertising that there was a kennel near the location of the homes. Corrigan stated they are showing there is a correlation. White argued the direct correlation. Corrigan continued to explain and verified they are establishing they have established an economic interest.

Corrigan then reviewed the pathogen interest. He reviewed the rodent issues. White asked how feces put in plastic bags in a dumpster is more risky than someone who has a dog out leaving waste in a yard, or a mouse going in a house where there is a dog. Corrigan some of the risk with the greater amount of animals and the lessor risk of 1-2 dogs versus up to 300 dogs.

Corrigan then spoke of the aggrieved parties issues with the deficiencies in the hearing. He spoke of the issue of 7.039 retail sales and service and the fact that the committee never addressed the issue in the ordinance and a supervisor asking for more information on it, yet never discussing it. He believes the appellants have the right to have that argument heard.

White asked him what they consider this use to be if it is not a retail sales or service. Corrigan stated they believe it to be a commercial use, no public, no traffic, production. It is producing dogs for research.

White asked if they have a customer. Corrigan stated he wishes this would have happened at the prior hearing – retail involves selling to the end user, in this case, they are a wholesaler. They have never argued that they are retail, they simple said ignore the language, they are not retail.

Kettner asked if they are saying that this is a commercial business. Corrigan stated the LRE committee never decided to give the words retail business weight.

Kettner asked what the different is between retail business and selling something. Corrigan explained the difference between retails sales and what is allowed in the ordinance.

White spoke about the ordinance and the only place in the ordinance that it is listed and gave an example and what should or should not be allowed. Corrigan explained what is or is not allowed and how the committee addressed it.

Corrigan then spoke of the recusal issues of committee members Johnson and Spencer. He spoke of the issues and reasons why both members should have recused themselves. White asked about the questions in the testimony that he is questioning, could the applicants have provided it during the public hearing. Corrigan stated it did not come up during the hearing; it was obtained while they were at a site visit and did not come from the record.

Mercier asked about Johnson giving out information and feels it was no different. Corrigan stated it is different because he was still involved and he was still doing business with the applicants and should have recused himself. He also referred to the Land Use Law handbook published by UW Stevens Point.

White asked if he recused himself from the board, does he have the right to testify as a citizen. Corrigan stated if he had recused himself early enough, I believe he could have testified like any other citizen, however, I am not sure if he had sat on the board and recused himself later, if he would have been able to do so.

Corrigan then provided the board a recap the reasons the appellants are considered an “aggrieved person”, which included: economic data, pathogens due to the high concentration of dogs, the lack of discussing the ordinance and interpretation of the statute and the recusal issues.

Allen asked about referring to any other locations where kennels would affect properties. Corrigan stated he is not aware of any other kennels of this size in a similar situation.

Dennis Polivka, appellant, spoke of the economic impact, and stated that by law, you have to disclose anything that could be a detriment to the property when selling and can make the property sale null and void. He spoke of the pathogen issues and the deficiencies with the dumpsters, the building conditions that could cause issues. He then spoke of the Kane’s ignoring the Village, the Town and the County regulations from the beginning and the

lack of open and honest information, as well as speaking about the parties aggrieved and past history and decisions made by the Board and conflict of interest.

Robin Polivka, appellant, spoke of the nature of the business and the lack of honesty with the business and failure to get permits, an aggrieved party and the processes taking place. White asked about the status of being aggrieved. Polivka spoke of the difference between the current business being wholesale and not a retail business and it not being addressed. She believes the county should have stopped the process from moving forward until they came into the compliance. She also addressed the economic impact to the Spring Green area and they have post after post of people not coming.

Dan Ouimet, appellant, spoke of the issue of retail sales not being discussed at the hearing, as well as the Town of Spring Green withdrawing their permit was not addressed, as well as no emotional testimony given weight, yet the Kane's emotional testimony was given weight.

Daniel Olson, Attorney for Sauk County, stated they have an interest in the decision and feel that a person aggrieved is up to the Board, and is an important decision for the LRE Committee and Department. He spoke of having standing and the principles of having a right to be here: consuming resources – if you want to be entitled to use our resources, then you have to prove you have the right to be here; faithful and obedience to the law – separate of powers and the courts getting to decide certain issues and interpreting the law. The same applies here and feels this is not the forum for resolution of emotional disputes and LRE does not get to rewrite the zoning laws and get to decide if there is a research kennel, same as the Board of Adjustment. The relief this board can decide is a narrow one and cannot provide a policy dispute. He feels this is a dispute between a legal and policy question and the more expansive you make the “aggrieved party” definition the more of a chance you will be addressing a policy question versus a legal question. He stated he feels they don't have to look at the other issues, like interpreting the ordinance issues or recusal issues and does not feel that allows or gives anyone the general right to feel they are aggrieved. He stated there is no general right to appeal an ordinance interpretation or legal decision made and feels there was no injury-in-fact at the time of the appeal. He stated all information to prove that they are aggrieved has to be provided at the time they file to the board for aggrieved party status and there is not a unique injury in the filing on this case and feels this filing has no merit or jurisdiction for the BOA to continue with this matter.

George Corrigan, reappearing, explained the Brookside information and evidence and brought up the evidence less valid and presenting all evidence at the time of the appeal and being able to provide it at the hearing. He spoke of the resources expended so far and the fact that people have the ability to file. He spoke of aggrievement, standing, and the fact that “every man/women gets their day in court”.

Mike Curran, reappearing, allowed the board to ask questions, but concluded by stating he feels the other parties do not meet aggrieved status.

White stated that the county balances the rights of individuals through the zoning ordinance and no guarantee that there will be no impact. She spoke of the conditions attached to the CUP permit and feels they were trying their best and feels because kennels are only listed under this section, they must deal with it under this section and to separate them based on size, the ordinance must be rewritten. She felt because they started without permit, if they met all the criteria for the permit, then it is up fines and penalties that is up the department not the committee. She addressed the handout by Mr. Corrigan, relating to economic impact addressing real estate; felt there were too many issues, such as disclosing to a vegan buyer if there were hunters next door, etc.. She spoke of a rodent issue; if they do not do, everything possible to keep rodents out would be poor business and not likely of the owners, as well as the conditions to bag the waste and keep the dumpsters from leaking, reduces it to the minimal impact. On the proper interpretation of the ordinance, she felt there is nowhere else to deal with the use under the ordinance and whether the LRE committee members had recused themselves or not the vote would still have been a quorum and still would have passed. She feels that a person that is not a board member would still have the

right to speak and would he have made the same statements and same points and does not believe it would have a substantial impact on the decision. She feels the parties are not aggrieved and simply have an emotional interest.

Kettner stated he feels that the prove they were wronged is mostly based on speculation and generalities and no evidence of the arguments brought forth. The real estate for properties in Blue Mounds that took place was most likely due to the fact that it is more isolated or they have to go further for groceries and there is no direct correlation between the kennel and the sales on the market. He stated he has been to the meetings in Spring Green and he sees nothing in question.

Allen complimented Linda on her summarization. He stated there was a lot of statements based on they “think” something will happen but no proof that it will happen.

Mercier stated that he is familiar with the area and the property values and feels the chicken farm will be more of a deterrent, as well as the airport affecting the property more than the kennel. He feels the pathogens argument is a search in looking for something to come up with and feels that does not make them an aggrieved party.

McAuliffe stated she does not feel the economic data is not something they can consider and does not feel it is conclusive. She also feels any good business owner will keep the pathogens contained. She stated she does not feel the recusal issues is not up to them to address and does not feel they are an aggrieved party.

Motion by White, seconded by Kettner, that there is a finding that there is no aggrieved status. **Motion carried 5-0.** Motion by White, seconded by McAuliffe that the challenge be dismissed based on the finding that there is no aggrieved status. **Motion carried, 5-0.**

Motion by Allen seconded by White to adjourn at 10:56 a.m. **Motion carried, 5-0.**

Respectfully submitted,

David Allen, Secretary