

**Minutes of the Board of
Zoning Appeals Hearing
Thursday, September 26, 2019 at 6:30 p.m.**

**Proceedings of the Village of Spring Green Board of Zoning Appeals Hearing on
September 26, 2019 at 6:30 p.m., Spring Green Community Library, 230 E. Monroe
Street, Spring Green, WI.**

- 1. Call to Order.** Todd Miller called the hearing to order at 6:30 p.m. Members present were: Todd Miller, Julie Kardatzke, Michael Mertens, Doug Feiner, and Bob Churchill.
Others present: Wendy Crary, Vikki Stingley, Don Greenwood, Elaine Reese, Clinton Kane, Jill Kane, Mike Curran, Carissa Calminiti, Jaime Lardinois, Rebecca Kowalewsky, Roberta Kempthorne, Crystal Murry, Shailei Murry, Gavin Schulz, Rebekah Klemm, Jeff Johnson, Jeff Freel, George Corrigan, Chris Dalthe, Leah Shulter, Tiffany Corrigan, Nicole Peterson, Duane E. Wedige, Jordana Stuntebeck, Bernie Stuntebeck, Linda Schwanke, Pam Burke, Madeline Ouimet, Dan Ouimet, Barbara Pratt, Robbin Polivka, Marnie Polivka, Denise Milanowski, 6:31pm-Susan Gundlach, 6:32 pm -David Saperstein, Kathy Compty, 6:33 pm-Pam Porter, Jamie Hagenow, 6:34 pm-Emily Sawle, 6:36 pm-Nanci Buchanan, 6:39 pm-Mary A Schel, 6:41 pm-Ron Bauer, 6:42 pm-Fred Iausly, 6:47 pm-Nate Robson, Paula Schiller, 6:52 pm-Lisa Thomas, 6:53 pm-Joel Marcus, 7:01 pm-Charlotte Ann Chenery, 7:08 pm-Rick Paulus, 7:10 pm-Jeff Stanek, Lawrence Cuneaz, 7:27 pm-Dennis Polivka, 8:30 pm-Dave Radel, and 8:32 pm-Greg Prem.
- 2. Approve Agenda.** Motion by Kardatzke, second by Feiner to approve the agenda. Motion carried.
- 3. Consideration of an appeal by Clinton Kane & Jill Janssen Kane for the Plan Commission denial of a conditional use permit for “Commercial Kennel & Dog Boarding” on parcel #032-0658-1, S12904 Pearl Road, Town of Spring Green, WI.** Chairmen Todd Miller read a prepared opening statement to all in attendance. A copy of Miller’s statement is included in the hearing and meeting file for the public record. Attorney Mike Curran explained why the Kane’s are seeking the CUP for “Commercial Kennel & Dog Boarding” for S12904 Pearl Road and that the Big Hollow facility is separate and not for discussion during this hearing. Curran continued by saying, “As Todd explained the JEZC granted the CUP, the Plan Commission did not and I feel it was an error”. Curran further explained that Sauk County dismissed an appeal last week for Big Hollow and that the facility on Big Hollow is up and running. Curran said, “The use of the residence and garage is important for the care and health of the mother dogs and their puppies”. “A lot of what is relevant is law”. Curran reminded the Board of Zoning Appeals Members of their Oath of Office to uphold the law. Curran cited Act 67 and read State Statute 62.23(7)(d)(e)2a in its entirety. Curran stated, “The use of the word “shall” means must”. “The Village doesn’t get to bring additional information into decision for denial, reasonable conditions may be stated, and no personal preference is allowed

to be the basis for denial". Curran read the list of permitted uses for the ARN District. Curran explained that the Kane's own 8 acres of non-residential property and per the ordinance one animal unit is the equivalent of 1,000 pounds per non-residential land. Curran said, "The Kane's land is approved for the CUP and denial violates Act 67". "Where the Zoning Administrator and Plan Commission got off track was after the hearing in June and then the Zoning Administrator issued a new Technical Review two days before the July meeting". "When the language of a law is clear and Commercial Kennel is clear and so is boarding". Curran stated, "A Commercial Kennel is a place where dogs are kept to make a profit, this is plain language and is clear". Curran gave examples of other uses within the ARN District that may be less than ideal for surrounding property owners. Curran also pointed out that home businesses are allowed and that technically this is a home business since it is entirely within the residence.

Ron Bauer from Westwood Subdivision, Town of Spring Green stated, "The proposed facility is on Pearl Road just off of Kennedy, to the west is Ivy Lane, there are seventeen homes and vacant lots". "All together there are eighty homes in the area and ninety families, the property taxes are approximately \$400,000". "Why would we want this right in the center of the area?" "I'm not sure about the noise, smell or groundwater and in the future they may want to expand". "Why not have this at the Big Hollow site?"

George Corrigan from the Town of Dunn and an attorney with Dane4Dogs said, "Act 67 does not come into play the intention of the use is clear and it's pretty clear for the applicant". "Look at the intent, commercial kennel, boarding, grooming and training it specifically mentions the uses for a kennel which was to serve the public". "The evidence from people on the Plan Commission at the time is it was intended for those that wanted to board pets". "Act 67 does not apply".

Marnie Polivka from the Town of Spring Green said, "The boarding definition is "housing for a fee temporarily" a commercial kennel covers many areas but boarding is a service for the community, the intent was for a service".

Robbin Polivka from the Town of Spring Green said, "Curran refers to it as a home business, Sauk County defines home business as not more than 30% of the ground floor or an accessory structure". "They are breaking the law".

Barbara Pratt from the Village of Spring Green said, "I was on the original Plan Commission that looked at the original CUP". "The kennel was for grooming and training and to meet the needs of the public". Pratt continued by explaining that the Miller's application wanted to serve the community and the area. Pratt stated, "I am absolutely dismayed at how it has changed".

Jeff Johnson from the Town of Spring Green said, "I'm one thousand feet south of the Kane's, my interpretation is eight dogs not 1,000 pounds per acre". Johnson volunteered to play a video of the dog noise from the property. Johnson did not play the video.

Elaine Reese from the Village of Spring Green said, "Many have stated the whole situation is not going to serve the public". Reese continued by explaining that medical research is necessary and all benefit from medical advancement. Reese continued by explaining that she was diagnosed with a massive brain tumor and didn't know if she would live or die. Reese stated, "I was given medicine to reduce swelling and am here today because of research". "Have none of you ever taken medication?" "All medicine must be tested".

Paula Schiller from Spring Green said, "We're talking about morals and decency, slippery slope goes both ways".

Nicole Peterson from the Town of Spring Green said, "We've been told that the Kane's have purchased an existing business". Peterson read an article from the Home News. Peterson asked, "Is it a new business or an existing business?" Peterson informed those in attendance that the Sauk County Clerk states that a Conditional Use or Kennel Permit was never issued before in Sauk County.

David Saperstein from the Village of Spring Green and a member of the Plan Commission said, "I looked at the partial transcript from July which does not capture the evidence from the home owners provided that evening, we need the entire transcript". Saperstein continued by saying, "The ARN is artfully written, commercial kennel for boarding and training, go to the record at the Village Office". "Based on the documents from that time Act 67 does not apply". "It's not accurate to simply say the word "shall" means you must grant the CUP". "The burden is upon the applicant to provide substantial evidence that conditions can be met".

Chairmen Todd Miller clarified for those in attendance that the transcript title of Village Board is incorrect, it should be Village Plan Commission and also pointed out that the document was not signed. In addition the document has not been reviewed for accuracy. Miller stated, "The minutes that were reviewed and approved for June and July should be used for the record."

Mike Curran stated, "If you want the entire transcript, I don't object at all".

Chairmen Todd Miller said, "Commercial kennels have many definitions and there are opinions from each individual". "The Zoning Administrator changed his Technical Review two days before the meeting".

Rebecca Klemm from Madison, WI said, "The denial was absolutely based on substantial evidence provided at the meeting".

Madeline Ouimet from the Town of Spring Green said, "The garage facility will breed not only dogs but germs and bacteria". Ouimet explained that puppies are a greater pathogen of disease and that biohazards from feces and urine create airborne bacteria which can travel many miles. Ouimet stated, "Spring Green residents are at risk due to many factors".

Chairmen Todd Miller said, "The information you have read is speculative but very informative."

Doug Feiner, Board of Zoning Appeals Member asked, "What about the 300 to 400 dogs in the area, should we be worried about them?"

Madeline Ouimet replied, "No, larger numbers but in smaller groups and individual homes".

Jordana Stuntebeck from the Village of Spring Green said, "Dogs are kept in one area where they walk in urine and feces".

Dan Ouimet from the Town of Spring Green said, "I was at the meeting for the Miller's, that kennel was for the public". Ouimet inquired about the JEZC Members visiting the site and the information not available to the public prior to the meeting. Ouimet asked, "How can this be construed as a boarding kennel?"

Pam Burke from Blanchardville said, "I am with the Mount Horeb facility which is a much larger facility and we have no issues with smell, noise, or disease". Burke explained the benefits for animals and humans and referenced many medical advancements due to studies on dogs.

Nate Robson from the Town of Spring Green said, "There are a lot of people from the Town and the Village, the Village chooses to exert zoning in the ET Area". "My complaint is the lack of enforcement in the ET Area, when there's a complaint no one does anything, when issues arise who's going to enforce it?"

Chairmen Todd Miller explained the difficulty of enforcement.

Rebecca Kaslowsky from Madison, WI questioned new evidence provided by Madeline Ouimet and others.

Mike Curran replied, "Ms. Ouimet and others comments are purely speculative and a moot point".

George Corrigan stated, "No one from Ridgeland Farms gave testimony previously".

Robbin Polivka said, "Ridgeland Farms is much further out of town and hidden from the public, no one knows it's there".

Pam Porter from the Town of Spring Green said, "We've already heard two people testify what their definition of a boarding kennel was for the Miller's application". "We have testimony from that meeting and we know this is nowhere near what the original CUP was granted for". "Mount Horeb is not comparable, there are eighty residences in the area, not a fit for residential area".

Leah Shulter from Baraboo said, "I took a drive around the area, there are thirteen signs in a one block radius opposed to this use, people have voiced various concerns and cited many issues".

Mike Curran stated "I object to numerous issues with new information". "I requested that the Plan Commission be explicit in their findings for denial, which they did not".

Leah Shulter said, "I was here in July". Shulter implied that the Kane's and Curran have omitted information.

Joel Marcus, Chairmen of the Plan Commission said, "I would like to address the procedural information that the Plan Commission did not specify a reason for denial". "Saperstein and Broh framed our reason for denial and laid out information that this is not a commercial kennel".

George Corrigan said, "The evidence I submitted earlier today was also submitted prior to the July meeting".

Nate Robson said, "I arrived late and apologize but will you send this back to the Plan Commission or make a decision".

Chairmen Todd Miller replied, "We are looking at whether or not the Plan Commission made an error". "We have no more than thirty days from this hearing to make a decision and it does not go back to the Plan Commission".

Marnie Polivka inquired about the variance and appeals process.

Todd Miller explained the process.

Robbin Polivka said, "I think when this whole thing started the application was less than honest and they did not list the research part". "The first litter born was a year ago".

Nate Robson asked, "When was the USDA Permit granted?" "Part of the permit requirements is Federal inspection".

Nicole Peterson stated, "It was asked how many puppies were born between November 2018 and now". Peterson informed Todd Miller she has information regarding how many from Sauk County. Miller asked Peterson to submit the information to the Village Office.

Crystal Murry said, "If it goes through I will be moving and so will others, the dogs are loud, why should we have to deal with this?"

Mike Curran stated, "The Kane's are under USDA regulations that ensure health and care". "The waste was a condition by the JEZC". "A condition regarding noise was given by the JEZC, the Kane's acquired dogs and assets from an existing business." "I would argue that Marcus stated within seconds "I'm going to deny the conditional use" and the Zoning Administrator's original recommendation was an unbiased opinion". "I don't know how you fix language for commercial kennel".

Chairmen Todd Miller said, "There is substantial evidence for denial but also for approval". Miller explained conditional uses and the reasons for them. Todd Miller stated, "It suggests what a commercial kennel is, dog boarding, grooming and training". Todd Miller stated, "The original application also required a CSM which separated the commercial kennel from the home, this is apples to oranges". "Steve & Connie Miller's application stated public facility which this is not, this is different".

There were no additional comments or questions.

4. **General Public Comment.** There was no general public comment at this time.
5. **Adjournment.** Motion by Feiner, second by Churchill to adjourn the public hearing at 8:33 p.m. Motion carried.