

TERM OF COMMISSION: July Session of the July Adjourned Term

PLACE OF MEETING: Roger B. Wilson Boone County Government Center
Commission Chambers

PRESENT WERE: Presiding Commissioner Kenneth M. Pearson
District I Commissioner Karen M. Miller
District II Commissioner Skip Elkin
Director of Planning and Building Stan Shawver
County Counselor C.J. Dykhouse
Deputy County Clerk Josh Norberg

The meeting was called to order at 7:00 p.m.

Planning and Zoning

1. Request by Mark and Kristi Farrell for a permit for a dog kennel on 10.0 acres, more or less, located at 15585 S. Hagans Rd., Ashland. (Appeal) – tabled 7/1/08

Commissioner Pearson stated a public hearing was held regarding this item on July 1, and the public hearing was closed. The Commission wanted to get some additional information. Commissioner Pearson asked if Commissioners Miller and Elkin wanted to open a hearing for more testimony.

Commissioners Miller and Elkin stated they are open to that.

Commissioner Pearson stated he will open a public hearing for new information from people who may not have testified in the past. He asked for comments from those in favor of this request.

Commissioner Elkin asked Mr. Shawver if he has had any correspondence from anyone since last month.

Mr. Shawver stated he has not.

There were no additional comments in favor of this request.

Commissioner Pearson asked for additional comments in opposition of this request.

Catherine Sherrer, Hartsburg

Ms. Sherrer stated she does not live on Hagans Rd., but she owns property on Hagans Rd.

Commissioner Pearson asked if it was the rental property.

Ms. Sherrer stated that is correct.

Ms. Sherrer stated she has a letter from Kris Trower, who is the tenant at her property. Ms. Sherrer read the following letter:

“I am unable to attend the Commission meeting this evening, but I would like to comment on Mark and Kristi Farrell’s request for a conditional use permit. I am not a property owner, but I have rented the house at 15583 S. Hagans for 8 years. I am not in favor of a breeding kennel being built at their residence. Most of the neighborhood is made up of parcels of land that do include some acreage, and I think that gives us the illusion of privacy and distance from our neighbors, but we are actually still fairly close to one another – close enough for me to hear voices, activities, and pets on neighboring plots. However, we do still enjoy some tranquility, and I would like it to remain that way. Kennel dogs tend to bark a lot, and I would prefer not to have to listen to barking all day, even if it is restricted to 8:00 a.m. to 8:00 p.m.

“I have looked into the temperament of the Australian Shepherd and found that these dogs have too much energy and intelligence to be happy living in kennels. When they are not happy and challenged, they often become destructive, noisy, and possibly aggressive. The Farrells’ own website states that natural inclinations of the breed can sometimes cause them to be annoying to neighbors. These are exact quotes from their webpage: “It is an energetic dog that requires exercise and needs a job to do, whether it is learning and practicing tricks, competing in dog agility, or any other physically and mentally involving activity. It needs to run full-out regularly.” “Its protective instinctive behaviors can be frightening to children, strangers, and small animals. It was bred to guard stock and can be sometimes annoying with its inclination to bark warnings about neighborhood activity.” “This means that a bored, neglected, unexercised Aussie will invent its own games, activities, and jobs.” Every bit of information I found on the temperament, including the United States Australian Shepherd Association, states that these dogs require huge amounts of exercise and attention. They do not recommend kenneling the dogs because it causes them a great amount of distress and encourages destructive behaviors and barking.

“I do believe that the Farrells have the best intentions for the care of the dogs in the kennel. If they did not love their dogs, then they would not be interested in breeding them and sharing them with others. But when an operation grows beyond hobby breeding, it can be very disruptive to the people in close proximity. According to the plans submitted to the Commission, their dog farm is close to the Calvin property line, which is two houses over from mine. Charlie Calvin told me that it is right outside his bedroom window. They state that only 3 or 4 dogs will be outside at one time so the noise will be contained. But 3 or 4 dogs can make a lot of noise. The noise and smell – just the presence of the kennel – could also decrease property values of my landlord’s and neighbors’ homes. Even though I don’t own the home that I live in, I do respect that my actions as well as those of my neighbors have an impact on everyone else. When I feel that the neighborhood no longer fits into the way I want to live my life, I do have the luxury of being able to move much easier than most. But this places a financial hardship on my landlord and I do not want to have to move because I really enjoy living there.

“I do not feel that a populated neighborhood is the right place for this type of operation. I do believe that it will have an impact on our quality of life, property values, and the marketability of our homes. Should any of these dogs become aggressive and make it their job to escape, it could also impact our safety.”

Ms. Sherrer stated she did a little bit more homework on property values. She stated she called 3 real estate offices in Ashland, and talked to several representatives. The question she put to them was “Will a kennel within a thousand feet of your property increase the value, decrease the value, or leave it the same?” Everybody said it would decrease the value except for one realtor who said it certainly won’t increase the value, but if it’s done right, it won’t hurt.

Commissioner Pearson asked for other comments in opposition to this request.

Elissa O’Brien, 4515 Dee Woods Rd., Ashland

Ms. O’Brien stated she is one of the real estate agents. She stated to her it would be very important to have this located somewhere away from residences where it won’t decrease the value. She stated she would not want this going up next to her house on 10 acres in Ashland. Zoning already has good rules to keep businesses from intruding on residences and vice versa. She asked the Commission to listen to those rules and make a judgment by the rules that are already in place without making exceptions.

There were no other comments in opposition.

Commissioner Pearson stated he thinks the Farrells should have an opportunity to make a statement.

Mr. Farrell stated he would like to add that the Commission recommended that they speak with the Extension office, and they have done that. He stated they also spoke with the building inspector for Ashland. They gave several good ideas for soundproofing. He stated he is going to work with multiple contractors to get the soundproofing done.

Mr. Farrell stated he spoke with the Health Department and the Department of Agriculture about the septic system. They said that the Department of Natural Resources is in charge of it, but there are not enough dogs for DNR. The Dept. of Agriculture said they can’t do anything with incorporating into another lagoon. The Health Department stated it is not really under their authority, so they are still trying to figure it out. He stated he is more than happy to do another lagoon for the dogs, but the original question was if there was enough room for another lagoon. He still believes there is room for another lagoon, but his research is still ongoing and it is hard to get an answer from the different government agencies.

Commissioner Miller stated according to the website, these dogs need to be exercised a lot.

Mr. Farrell stated he did not write that. It is an excerpt from an article by an expert on these dogs. He stated he is not an expert so he took it out of an article and put it on his website.

Ms. Farrell stated they do exercise their dogs and with the downsizing to the amount of dogs that there will be, they will be exercised twice a day.

Commissioner Miller asked what it means to say they are exercised.

Ms. Farrell stated they will be running in their pen and her kids will be out there playing with them.

Commissioner Miller asked how many hours a day they will exercise.

Ms. Farrell stated they will open the pen and the dogs will run out and go non-stop and will tire themselves out in about 15 minutes. They will also eventually be exercised during training.

Mr. Farrell stated the website says these are extremely agile dogs, but a dog that has been in a kennel for extended periods of time becomes a kennel type dog. Their energy level lowers as compared to a dog that runs all the time. They get excited when you are there and when you come in, but they realize they are in a pen and they adjust their life to that. He stated he is not going to reword what comes out of a book because he is not the resident expert on the breed.

Commissioner Elkin stated he has gotten a couple of comments about the Humane Society already being full of puppies and he agrees with that. He asked the Farrells if they had ever been in a situation where they could not get rid of a puppy.

Mr. Farrell stated he has not had that problem yet. He stated he is not saying that it could never happen, but he has never had that problem so far.

Commissioner Elkin stated he spoke with Melinda Westhoelter. The Commission approved a conditional use permit for a breeding facility in northern Boone County. He stated she has been in the business for 17 years, and she stated she has never given a dog to the Humane Society. She said if she can't get rid of it, she will work to find a home for it, but she has never had a problem with getting rid of a puppy in 17 years.

Ms. Farrell stated they have a list of people that want free dogs if they ever have trouble getting rid of one.

Commissioner Miller stated the Commission went and visited a pet resort where people leave their dogs there while they are gone. She stated there were probably about 25 or 30 dogs there in a room half the size of the Chambers. When they walked in, they got yappy and the attendant would tell them to be quiet and they would calm down. She stated when you went outside you could hardly hear them. She stated she thought that was amazing.

Commissioner Pearson asked if it was correct that the Farrells sell most of these dogs over the internet.

Mr. Farrell stated in the last 18 months, someone has come out to look at the pups about 4 or 5 times. Other than that, everything is done over the internet.

Commissioner Miller asked if the dogs get yappy when someone they know comes into the building.

Mr. Farrell stated they do but they calm down very quickly.

Ms. Farrell stated the building is going to be set up so that there will be an interior door to the kennel so none of the sound will be able to escape.

Commissioner Elkin asked what the chances are of 8 breeding females having puppies at the same time.

Ms. Farrell stated it is very small. They are scheduled on a rotation so only 2 or 3 are having puppies at the same time.

Mr. Farrell stated it is not in their best interest to have all of the puppies at one time.

Commissioner Miller asked what the average litter is.

Mr. Farrell stated it is about 5 to 10.

Commissioner Elkin asked Mr. Shawver how many breeding females they can have right now without a permit.

Mr. Shawver stated the regulations say that a kennel is an establishment where small animals are boarded for compensation; or dogs are bred, raised, or sold on a commercial scale; or where two or more breeding females are kept or bred.

Commissioner Elkin stated they could have ten pets.

Mr. Shawver stated they could as long as they are not breeding or selling them.

Commissioner Elkin asked about the public necessity provision in the requirements for a conditional use permit. He stated it is very ambiguous. The Farrells are in the market and have no problem selling the puppies, so is that justification for necessity?

Mr. Shawver stated the regulations say that the County Commission shall find that there is a public necessity for the conditional use permit. It is up to the Commission to decide what they view as meeting that test. Whatever interpretation you put on public necessity is up to the

Commission. There are so many different conditional use permits, such as an agribusiness that provides agricultural equipment in an agricultural area where the nearest shop is 30 miles away. That could meet the test of public necessity. Each permit is a case by case evaluation.

Commissioner Pearson asked what kinds of businesses are allowed under a conditional use permit.

Mr. Shawver stated in an agricultural district conditional uses are limited to the following: Privately operated outdoor recreational facility; Enlargement of an existing cemetery; Equine boarding facility for more than six animals on a minimum 20-acre tract; Animal training facility on a minimum 20-acre tract; Riding school on a minimum 20-acre tract; Farm implement sales and services, and other agribusiness uses oriented to and exclusively serving the agricultural community; Veterinary office or clinic or animal hospital provided, however, if the establishment is in a major recorded subdivision or is within 500 feet of a residentially developed area or existing R-S, R-SP, R-D, R-DP, R-M, or R-MP zoning district all animals that are treated or cared for shall be kept within a sound-proofed, air conditioned building, no odor shall be perceptible at the boundary of the premises, and the noise outside the building shall not exceed that of average daily traffic measured at the lot line; Public building erected by any governmental agency; Hospital, nursing home, and educational, religious and philanthropic institution; Nursery, per-kindergarten, kindergarten, play, special and other private schools; Water tower, sewage lagoon or mechanical treatment plant where not approved under County Subdivision Regulations; Mobile home subdivision; Mobile home not meeting the provisions of Section 4. (9) of this ordinance; Bed and breakfast.

Commissioner Miller stated it is required to be sound-proofed and required to have no odor.

Mr. Shawver stated that is on a veterinary office.

Commissioner Miller stated it could be the same type of thing for this issue.

Mr. Shawver stated that is standard you can look at.

Ms. Sherrer stated she wanted to make a comment on public necessity. She stated she found a Missouri State Audit Report where they audited the Department of Agriculture inspection of dog breeders and dog kennels in 2004. She stated right now there are 1500 dog breeders in Missouri. The audit in 2004 found that since the previous audit, most of the problems were still occurring four years later. They found that there were unsafe and unsanitary conditions at licensed breeder facilities, which inspectors had not observed and reported. They found that there was no consistency in the training of inspectors. They found the inspectors have not always been thorough or cited all violations. They found marginal performers that were not being penalized. They found that most licensed facilities were not inspected every year. They found that this disposition of complaints was not timely, and that workload issues, part-time inspectors and personnel losses have impacted the program quite negatively.

Ms. Sherrer stated in 2006, they failed to inspect almost half of the 2,769 licensed animal care facilities. She stated her point is not only do we not need more, we already have too many that we can't inspect.

Commissioner Pearson stated that is not necessarily a reflection on the breeders as much as it is on the government agency responsible for doing the inspections.

Commissioner Elkin asked the Farrells how many years they have been in business in El Dorado.

Ms. Farrell stated two years.

Commissioner Elkin asked if they have had any inspections.

Ms. Farrell stated their inspector inspects twice a year and she is very strict and picky. She stated they have spoken to the inspector in Columbia and he is the same way.

Ms. Sherrer stated she would like to add that the Farrells have an excellent record. She asked about them specifically and they have a great record. She stated she doesn't have a problem with the Farrells. Her problem is that the conditional use permit goes with the land and she doesn't know about the next property owners.

Ms. Farrell stated they are willing to sign something saying if they sell the property they will sell it without the permit for the kennel.

Commissioner Elkin asked Mr. Shawver if there was any legal or practical way to restrict the conditional use permit to specific land owners.

Mr. Shawver stated in the past, legal counsel has advised that the conditional use permit goes with the land. It would be difficult to enforce, and hence would be inappropriate, to restrict it to a specific property owner.

Mr. Dykhous stated that would be his opinion. It becomes part of the bundle of rights you get to convey with the property when you sell it.

Commissioner Elkin asked if they could do a deed restriction or a covenant and record it, saying upon selling land they relinquish their conditional use permit.

Commissioner Pearson stated Mr. Dykhous stated it is part of a bundle of rights. He asked if it is possible to forego one of those rights.

Mr. Dykhous stated not in the way that Commissioner Elkin just envisioned because in order for restrictions to be appropriate there has to be an appropriate conveyance. You can't restrict yourself so there would have to be a third party as part of that for the covenants to run with the land.

Commissioner Elkin stated there are covenants on land all over for many different reasons.

Mr. Dykhouse stated those are parts of a conveyance. That is the question. It is not how can you bind them now to a sale in the future with those issues when they are going to continue to own the ground? That is the issue.

Commissioner Elkin asked the Farrells where they have to get their license.

Mr. Farrell stated they get it through the State of Missouri.

Commissioner Elkin stated they could put a restriction on their land once they sell it that says no further kennels allowed.

Mr. Dykhouse stated he agrees with that, but there is no way for the County to enforce that.

Commissioner Elkin stated it would be a civil matter like the subdivision regulations.

Mr. Dykhouse stated they could make the statement, but we couldn't hold them to that.

Commissioner Miller stated the neighbors couldn't either.

Mr. Dykhouse stated that is what Mr. Shawver was saying about the difficulty of enforcement makes such an arrangement an illusion of comfort because when the rubber hits the road there is no way to enforce it.

Commissioner Miller stated she thinks the key is that if this permit is granted, it has to be conditioned the correct way to mitigate the concerns. If they don't follow those conditions, they are out of business because their conditional use permit goes away.

Commissioner Elkin stated the only way to do that is to do a review.

Mr. Dykhouse stated it would be complaint driven.

Commissioner Miller stated everything else is complaint driven. If they aren't meeting their conditions, the neighbors have every right to complain.

Commissioner Elkin stated he agrees with that.

Mr. Shawver stated some things are easier to review than others. He stated his experience is that if you are going to put a review on something it needs to be very strictly worded on what you are looking for at the time of review. As time goes along, you forget exactly what the intentions were, and there is an investment made and so there is pressure they aren't meeting quite the letter of the intent at the time of the review.

Commissioner Elkin asked the Farrells what they would do if this is approved and six months from now Mr. Calvin knocks on your door and says they can't stand the barking.

Mr. Farrell stated he would have to try to see if he can come up with another way to insulate the noise.

Commissioner Elkin stated he doesn't think the noise is going to be a factor when they are inside. He stated when they visited the kennel the other day you couldn't hear any noise outside.

Commissioner Pearson stated the Calvins are about 400 feet from the barn.

Commissioner Miller stated it is 456 feet.

Commissioner Pearson stated he was about 20 feet from the kennel they visited and they could barely hear it.

Commissioner Miller stated if this is approved with the same condition as the veterinary office require a soundproofed and air conditioned building to meet odor and noise standards per the conditional use. That has to be done at the front end.

Commissioner Elkin asked the Farrells what they are doing about the odor.

Ms. Farrell stated it goes through a septic system. Even with 10 dogs, there won't be an odor.

Mr. Farrell stated the lagoon isn't going to smell any different than any other lagoon and anyone's property because it will go through a septic system so there won't be any solids.

Commissioner Pearson closed the hearing.

Commissioner Miller stated she is still very mixed because of the public need factor because it is so grey.

Commissioner Elkin stated if they didn't think there was a market, he doesn't think they would be investing the kind of money that they are going to be investing.

Commissioner Pearson stated he agrees. He stated he got an email that said there are a lot of dogs people can get from Second Chance or the Humane Society, but it is pretty clear that people who are interested in buying a pure bred dog that is registered are probably not going to go to the Humane Society or Second Chance. They are going to buy it on the internet from someone who has a kennel who raises a relatively small number of dogs. He stated in that respect he does think there is a public necessity. The market determines it.

Commissioner Miller stated she thinks the issues can be mitigated. Her only issue is the public

need.

Commissioner Pearson asked if there was a motion.

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby **approve** the request of Mark and Kristi Farrell for a permit for a dog kennel on 10.0 acres, more or less, located at 15585 S. Hagans Rd., Ashland, **with the following conditions:**

- No more than 8 breeding females on site at any time.
- That the hours during which the dogs are exercised outside be restricted to 8:00am to 6:00pm.
- The building is to be a soundproofed, air conditioned structure.
- No odor shall be perceptible at the boundary of the premises.
- The noise outside the building shall not exceed that of average daily traffic measured at the lot line.
- The wastewater system for the kennel must comply with public health standards.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 369-2008**

2. Squirrel Ridge Estates. S10-T50N-R13W. A-2. H-Town Properties LLC, owner. Steven R. Proctor, surveyor.

Mr. Shawver stated this plat is ready to be received and accepted by the County Commission with an authorization for the Presiding Commissioner to sign it.

Commissioner Elkin moved on this day the County Commission of the County of Boone does hereby receive and accept the following subdivision plat and authorize the presiding commissioner to sign it:

Squirrel Ridge Estates. S10-T50N-R13W. A-2. H-Town Properties LLC, owner. Steven R. Proctor, surveyor.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 370-2008**

3. Waters Edge Estates Plat 9. S3-T48N-R12W. R-M. Dan Hagan, owner. J. Daniel Brush, surveyor.

Mr. Shawver stated this is a replat of Waters Edge Estates Lot 98. Last month the Commission held a hearing to authorize the vacation and subsequent replatting of that lot with the vacation not to take place until the replat had been approved. The replat has been submitted and approved by the Planning and Zoning Commission and is ready to be received and accepted by the County Commission with an authorization for the Presiding Commissioner to sign it.

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby receive and accept the following subdivision plat and authorize the presiding commissioner to sign it:

Waters Edge Estates Plat 9. S3-T48N-R12W. R-M. Dan Hagan, owner. J. Daniel Brush, surveyor.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 371-2008**

Public Works

4. Budget Amendment for Corsair Door Lock (first read on 7/17/08)

Commissioner Elkin moved on this day the County Commission of the County of Boone does hereby approve the following budget amendment to cover the shortfall for Change Order #3 for the Corsair door lock system:

Department	Account	Department Name	Account Name	Decrease	Increase
6200	60110	Facilities Maintenance	Capital Repairs		\$3,582.00

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 372-2008**

Assessor

Jason Warzinik, GIS Manager, was present on behalf of this item.

5. Budget Amendment for the Creation of 2' Contours (first read on 7/17/08)

Commissioner Miller asked Mr. Warzinik to explain where the process is at this time.

Mr. Warzinik stated right now the Request for Proposal (RFP) is out on the street. It was released last Friday. It was submitted to about 20 vendors, and 4 or 5 vendors contacted Purchasing to be added to the list. He stated he is waiting for the RFP to close and start looking at the proposals.

Commissioner Elkin asked if there were that many people in this business.

Mr. Warzinik stated there are. He stated most of the aerial photo firms also do the map finishing such as the contour work.

Commissioner Miller stated we are requiring they use the aerial photography that we recently completed.

Mr. Warzinik stated that is our goal. That will get us the best price for the finishing work.

Commissioner Elkin asked if that gives the contractor that did our aerial photos an advantage.

Mr. Warzinik stated it would up until the point where if we opt not to go with that current vendor. The other option is to have another flight done.

Commissioner Pearson asked if he had done any estimating on what it would cost if we had to buy the rights to the pictures that are already there.

Mr. Warzinik stated the photo pairs aren't part of the normal contract.

Commissioner Miller stated she really thinks this will be a great asset to the whole community.

Commissioner Elkin moved on this day the County Commission of the County of Boone does hereby approve the following budget amendment for the creation of 2' contours:

Department	Account	Department Name	Account Name	Decrease	Increase
2010	71101	Assessment	Professional Services		\$489,950.00
2010	91301	Assessment	New Hardware		\$8,000.00
2010	91302	Assessment	New Software		\$2,050.00

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 373-2008**

Miscellaneous

6. Release Revenue Sharing Funds for City of Ashland

Commissioner Miller stated Ashland has some balance left from 2006 and 2007. The funds from 2007 were planned for the Henry Clay Road project, but 2006 has balance left and they would like to get it all released so they can widen Henry Clay.

Commissioner Miller moved on this day the County Commission of the County of Boone does hereby release the revenue sharing funds in the amount of \$118,282.60 granted in 2006 and 2007 to the City of Ashland to be used for the widening of Henry Clay Road.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0 **Order 374-2008**

7. Commissioner Reports

Commissioner Pearson introduced C.J. Dykhouse as the County's new counselor. He will officially be on board August 1, 2008. He has been acting as interim counselor.

8. Public Comment

There was no public comment.

The meeting adjourned at 8:04 p.m.

Attest:

Ken Pearson
Presiding Commissioner

Wendy S. Noren
Clerk of the County Commission

Karen M. Miller
District I Commissioner

Skip Elkin
District II Commissioner