

**TOWN OF WARREN  
DEVELOPMENT REVIEW BOARD  
MINUTES OF MEETING  
SEPTEMBER 12, 2001**

- MEMBERS PRESENT:** Chris Behn, Eric Brattstrom, David Markolf, Peter Monte, Chair; Lenord Robinson.
- OTHERS PRESENT:** Laurie McGuire & Duke Freeman, Applicants; David Graych, McGuire Attorney; Don, Robert & Patty Kaufman, Don Swain, Bob Sahlman, McGuire Neighbors & Abutters; Dick King, Sahlman Attorney; Sandy Porter, Darine Avedisian, Fred Gilbert, Linda Darr, Chessie Stevenson, Jessica Churchill, Dave Gravina, Thomas Zeller, Dennis Lane, Betsy La Flame, Bill Reynolds, Elizabeth Cadwell, Shannon Morrison, Fernando Belmonte, Philip McNesney, Tony & Dona Egan, Jane Cunningham, Patricia Pinkston, Rosemary Savage, Blair Boettger, Katie Bush; Rudy Elliott, Margo Wade, DRB/PC Assistant.
- AGENDA:**
- 1) 7:30 p.m. Call to Order
  - 2) Public Hearing Continuation: Laure McGuire – Conditional Use Review for a Dog Kennel
  - 3) Public Hearing Continuation: Steve Dollmeyer – Road & Stream Setback Variance Review
  - 4) Other Business:
    - a) Signing of minutes (8/8 & 8/22) & decision (Dollmeyer)
    - b) Rickard/Warren Store Site Plan & Conditional Use Amendment

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**I. CALL TO ORDER**

Mr. Monte called the meeting to order at 7:40 p.m.

**II. PUBLIC HEARING: MCGUIRE – CONDITIONAL USE REVIEW FOR A KENNEL**

Application 2001-56-MM: Laure McGuire seeks approval for a Kennel use designations for a dog day care and overnight boarding facility. The project is located on 3.3 +/- acres off Pike Hill Road in the Rural Residential District. The project requires review under Article 3, Section 3.12 - *Sign Requirements*, and Article 5 - *Development Review* of the Warren Land Use and Development Regulations.

Laurie McGuire, Duke Freeman and David Graych came before the board. Mr. Freeman left the meeting at approximately 8:30 p.m.

**STAFF REPORT**

Mr. Monte re-read the public notice, which ran in the June 7, 2001 issue of the Valley Reporter and stated that this was a continuation of the June 27, 2001, July 18, 2001 and August 8, 2001 public hearings.

**DISCUSSION**

Ms. McGuire submitted and reviewed the following written information: Proposed Hours of Operation; Owner Information Application; Dog Room Space Calculation; Noise Control; Decibel Readings at Valley Animal Hospital, taken by Donna Smith 9/8/01; Quote for Insulated Drapes; Traffic; Parking; Todd E. Johnson, DVM, August 29, 2001 letter; ABKA's Bill of Rights for Boarding Pets; ABKA Code of Ethics; Central Vermont Humane Society news letter photos; letters of support from Nancy Brickman, Margaret A. Johnson & Eric P. Allen, Andrea & Tony Della Vecchio, Elizabeth W. Cadwell, Mary Williams, Jessica Churchill & Dave Millard, Dona Egan, Kevin B. D'Arcy & Ellen M. D'Arcy; Dayna Lisaius; three examples of traditional kennel layout; and Roy Hadden, DVM, September 12, 2001 letter. Also submitted by the applicant: 13 V.S.A. §365. Shelter of Animals; and Susan Baird, August 21, 2001 letter to Donald R. Swain.

The board also received the following information: letter of support from Gail P. Brady, dated September 10, 2001; letter of concern from abutters, dated September 9, 2001; Barking Dog Project, The Hazards to Human Hearing of Barking Dogs in Kennel Settings by Gail C. Shaw; Noise Pollution Clearinghouse (NPC) - Quiet: Man's Best Friend and Noise: A health Problem.

Ms. McGuire amended the number of dogs allowed at the facility at any one time to 12.

Mr. Graych discussed the Pike Hill Act 250 permit stating that it did not include the McGuire property at the time the permit was issued in 1972. The current location of the road (Pike Hill Road) is not the location of record. He believes that Act 250 cannot exercise jurisdiction over the McGuire property today even though the road is partially located on the McGuire property. Either way the road location issue should not control the Town application process.

Ms. Swain stated that Act 250 does not have enough information to make a decision regarding the road location. Originally, the access road was located on the east side of the McGuire property. The Town requested that the LaBonte and Pike Hill developments share a curb cut. At that time, Mr. LaBonte agreed to combine accesses for his subdivision with the Pike Hill Subdivision. He stated that the issue is not the location of the road, but the use of the road. Act 250 needs to determine if the road can be used for commercial purposes, i.e. a kennel.

Mr. Gilbert asked if the road was wide enough to service six residences.

Mr. Monte asked Ms. McGuire if the submittal material represented the conditions she was willing to accept if the permit were to be granted. Ms. McGuire concurred and restated that she was reducing the number of permitted dogs from 20 to 12.

Ms. Stevenson stated that she used and supported the dog day care, and believed it was a necessary service for the valley.

Mr. King questioned how well insulated drapes would mitigate the noise of barking dogs.

Mr. Sahlman raised the concern that the current permit conditions were not being abided by, which allow for 5 dogs with the hours of 7:00 a.m. to 7:00 p.m. In addition, asked if the facility were to be enlarged, how do we know Ms. McGuire will comply with those conditions?

Mr. R. Kaufman stated that he was concerned with loose dogs and recently had a confrontation with a loose dog that was threatening. He stated that the barking carries to his adjacent property and is disruptive. He believes the kennel has out grown the neighborhood and that the location is not large enough to support a larger kennel.

He also stated that Mr. Freeman had recently come over to apologize for the noise, saying it was a busy weekend and that they had had 20 dogs at the facility. Mr. Freeman responded that he did not make the statement.

Ms. McGuire replied that currently all dogs are wearing bark collars, which is successfully reducing the incidents of barking at her facility.

Mr. Behn asked if Ms. McGuire was complying with her current permit. Ms. McGuire replied that she took only 5 dogs at a time, but that sometimes there is a short period of overlap. Mr. Behn asked if she had records verifying the number of dogs at the facility at any given time. Ms. McGuire stated she did not have them with her at the hearing. Mr. Behn asked how often she anticipated having 12 dogs at the facility. Ms. McGuire replied that she anticipated the holidays would be the busiest times.

Mr. Sahlman stated that barking was a problem for him. There are other dogs in the area who are set off by Ms. McGuire's dogs or who set off Ms. McGuire's dogs. He stated that no one is denying the need for this facility, but that the residents of Pike Hill Road feel it not an appropriate use in this residential neighborhood.

Mr. Monte asked if the barking had diminished within the last few weeks since the bark collars have been used. Mr. R. Kaufman replied that he did not know and Mr. Sahlman replied that he had not noticed a difference.

Mr. King stated that the neighbors were not contending Ms. McGuire business, but questioned whether the business was suitable for that location.

Mr. Gilbert suggested fencing the perimeter of the property.

Mr. Sahlman stated that Ms. McGuire was not in compliance with her current permit, and asked who was responsible for enforcing the existing permit. He also raised concern with the holidays being the busiest periods because that is when the residents of the neighborhood are also at home.

Ms. Cadwell stated that she understood the neighbors concerns, but that dogs are very prevalent in Vermont. Dogs bark in neighborhoods without kennels. Ms. McGuire's facility is therapeutic for her dog, therefore has a calming effect. She feels dogs are a part of Vermont.

Mr. Zeller stated that he has worked extensively with dogs and feels Ms. McGuire's facility is excellent, and is a valuable service to the community. He stated that the facility helps to socialize dogs, and that aggressive dogs are kept separate. He also feels that if taken away, the community will have more unhappy dogs at home causing problems rather than happy dogs at Luck Dog.

Mr. Elliott stated that dogs are going to bark. The board should not hesitate to issue the permit. Coy dogs run wild all over and bark. He has been working next door, has noticed barking occasionally, but the noise has not been out of hand.

Mr. Reynells stated that Ms. McGuire and Mr. Freeman do not let the dogs run free and attend to the dogs to keep the barking down. Barking occurs all over town, and that barking is more likely to become a nuisance in a traditional kennel setting compared to Ms. McGuire's facility. With regard to traffic, he stated that he frequently drops off their dogs in the morning and rarely if ever sees another car.

Mr. R. Kaufman stated that he supports Ms. McGuire's operation, but feels it should be in a more appropriate location. He does not feel it is appropriate in the neighborhood.

Ms. Savage stated that she has the smallest Lucky Dog and would never bring her dog to a facility that took care of vicious dogs. Ms. McGuire screens all dogs before taking them and someone is always home when dogs are being boarded. She has only once seen another customer while she was dropping off or picking up her dog. She stated that dogs barked in greeting and Ms. McGuire or Mr. Freeman would quiet them within three minutes.

Ms. McGuire stated that she has minimized the amount of traffic the facility generates by providing pick-up and delivery and by requiring customers to carpool. She also has been trying her best to deal with her neighbors concerns.

Mr. Lane stated that he has used the facility several times along with the pick-up and delivery service. He feels the facility provides a great service to the community, is a social place for the animals, and has seen no traffic problems on the road.

Dona Egan questioned what dogs were barking if Ms. McGuire was keeping her dogs under control. The neighbors' dogs are barking and causing problems for Ms. McGuire. Mr. R. Kaufman stated that he could differentiate between dogs at Ms. McGuire's versus dogs across the Brook Road.

Mr. Gravina stated that he was a dog owner and was also annoyed by barking and loose dogs. He feels the issues can be mitigated at the facility by increasing the height of the fence and using a holding pen to eliminate the possibility of escaped dogs.

Mr. Sahlman stated that he has placed several calls to the dog officer. Mr. Robinson asked if Mr. Tracy was called because of Ms. McGuire's dogs. Mr. Sahlman replied that Mr. Tracy was

called because of the Grant's dog and the dog leashed to a tree across the Brook Road, but the Ms. McGuire's dogs are also part of the problem.

Ms. Cadwell suggested that the board allow the facility under a probationary period. Mr. Monte replied that the zoning did not allow the board to issue a temporary permit.

Mr. Markolf asked Ms. McGuire if she has considered relocating the facility. Ms. McGuire stated that she had not because she enjoyed the convenience of working at home; and she cannot afford to move and will try harder to address the neighbors' concerns.

Mr. Zeller stated that it seems unfair for Ms. McGuire to be penalized for the neighbors' dogs that seem to be the instigators.

Mr. Swain stated that he did not have a problem with the current facility, but did with a larger facility because it will exacerbate the problems.

Ms. Morrison questioned why if Ms. McGuire is willing to accept and meet the conditions the board was hesitant to issue a permit.

Mr. D. Kaufman stated that he understood the permit would run with the land, and asked what would happen if Ms. McGuire were to sell the property and the subsequent owner did not abide by the conditions, and restrictions Ms. McGuire is willing to accept. Mr. Graych stated that Ms. McGuire would be willing to accept a condition that would not allow the permit to travel with the land. Mr. King responded that such a condition may not withstand a challenge.

Mr. King questioned the decibel readings taken at the Valley Animal Hospital pointing out that the readings of 6 dogs at the fence and 15 dogs inside the kennel were both reported at 70, which did not seem right. Mr. Graych responded that Ms. McGuire was willing to have the Noise Pollution Clearing House, a neutral source, come out and test Ms. McGuire facility.

Ms. McGuire asked if the neighbors would agree to a certain number of dogs outside at any one time. Mr. Graych stated that he had tried to contact Mr. King to discuss number of dogs, without success.

Mr. Sahlman stated that he is okay with 5 dogs, but feels there are issues that need to be addressed before increasing the size.

Mr. Monte stated that the board could not impose a condition on the Grant's barking dog.

Ms. Kaufman stated that she had no problem with 5 dogs, but frequently there are many more dogs than 5 dogs at the facility. Mr. Freeman has stated 20 dogs were present and they do board dogs over night. She feels that this occurs more than just in emergency situations. She asked how to monitor the conditions. She asked if the neighbors were responsible for calling the town each

time the numbers are exceeded. She does not like to have to keep her children quiet while walking past the facility in order to not stir the dogs.

Mr. Behn asked the neighbors how many dogs, on average, are present at the facility. Mr. R. Kaufman stated he was not sure of a number, but had been told by Mr. Freeman that 20 dogs had been present on a busy weekend.

Mr. Behn asked if the current permit and situation is livable today. Mr. Sahlman replied no.

Ms. Cadwell stated that Ms. McGuire did not violate her permit intentionally, but out of a response for the need and as a service to the community. Ms. Kaufman responded that the neighbors suffer the consequences.

Mr. Elliott stated that the board should be open-minded because this is a facility the Valley needs.

Ms. Darr stated that there were miscommunications that needed to be cleared up and that it did not seem right for board members to put Ms. McGuire in the position of breaking the rules.

Ms. Morrison stated that she uses the facility because it is a home setting and to some dog owners their dogs are their children and do not want to bring them to a traditional kennel setting.

Mr. R. Kaufman stated he just wanted the proprietors to abide by the current rules.

Ms. Kaufman stated that there is currently nighttime boarding and questioned whether the group setting was the most appropriate for the animals.

Ms. McGuire stated that she only took dogs that she knows for overnight boarding. Mr. Graych pointed out that Ms. McGuire and Mr. Freeman live at the facility and that it was in their own interest to keep the dogs quiet when they were in the house for the evening.

Mr. Belmonte asked how reasonable it was to put barking on the table when it appeared that a neighboring dog was causing the problem.

Mr. Monte asked if negotiation between the applicant and the neighbors outside the hearing setting would be worthwhile. There was no response to his question.

#### **DELIBERATION/DECISION**

Mr. Monte asked if there was any new testimony from the audience. With no reply, he closed the public comment portion of the hearing and invited the audience to stay for the deliberation.

Mr. Monte pointed out that the two main issues were noise generated by barking dogs and increased traffic generated by the facility on the Pike Hill Road.

Act 250 has not made a determination regarding the use of the road. Their determination may or may not have an effect on the outcome of the board's final decision.

Mr. Graych explained that the proposed 6 round trips a day include customer trips and Ms. McGuire's pick-up and delivery trips. One round trip includes the delivery of the dog to the facility and the subsequent return of the dog to its home. Mr. Monte pointed out that this could include 2 to 4 vehicle trips along the road depending upon whether the dog owner was personally dropping off and picking-up or using the pick-up and drop-off service.

Mr. Grays discussed the barking and stated that the ambient level of noise in the area would include vehicle and air traffic, along with the neighboring dogs and the facility's dogs.

The board determined that there was not enough information to establish a decibel level for current number of dogs or the requested number of dogs (12) at the facility. It was also noted that any testing for the decibel level would be taken at the property boundary. Though a decibel level is not known it is evident that the facility does increase the level of noise in the area to a significant degree.

Article 5. § 5.3 – *Conditional Use Review Standards*

**MOTION by Mr. Monte, seconded by Mr. Brattstrom to find that the proposed development will not adversely affect the capacity of existing or planned community facilities or services. VOTE: unanimous; motion carried.**

**MOTION by Mr. Monte, seconded by Mr. Markolf to find that the proposed development will adversely affect the character of the neighborhood or area due to the increased level of noise associated with a larger facility, unless noise mitigation measures were employed. VOTE: 4 ayes, 1 nay (LR); motion carried.**

Mr. Behn stated that under the current home occupation permit the neighbors are not happy, therefore the board cannot approve an expansion of the facility. He believes the proposed mitigation measures are good ideas, but questions how effective they will be.

Mr. Monte raised the point that the ordinance protected the neighbors not the dogs. He stated that the burden of proof rested with the applicant.

Mr. Behn asked how effective the mitigation measures have been. Ms. McGuire replied that she has not installed all of the measures because she was waiting for the outcome of the hearings. She stated that at the current number of dogs she would not be able to afford installing all measures.

Ms. McGuire asked if her application would be more acceptable if she did not increase the number of dogs, but were to provide overnight boarding. She stated that she would only take dogs she had first screened and gotten to know for overnight boarding.

Mr. Behn clarified that Ms. McGuire was requesting to amend her application by only asking for a dog day care and overnight boarding for the 5 dog. She was currently only permitted for 5 dogs during the day, and that Ms. McGuire was willing to comply with previously submitted material, and material submitted tonight addressing hours of operation, noise, drapes, traffic, parking, ABKA's bill of rights and code of ethics, Dr. Hadden's recommendations, and §365. Ms. McGuire agreed and added unless it has been amended during the discussion of the project. The 5-dog limit does not include Ms. McGuire's 2 resident dogs.

Mr. Monte asked the neighbors if the amended requested was satisfactory. The neighbors agreed.

**MOTION by Mr. Behn, seconded by Mr. Robinson to find that the proposed development will not adversely affect the character of the neighborhood or area because the following condition will be imposed and met:**

- 1) There will be no more that 5 visiting dogs, plus 2 resident dogs, at the facility at any given time.**
- 2) During the hours of 7:00 p.m. to 7:00 a.m., all boarded dogs will be confined in the dwelling or sunroom, except one at a time for outdoor visits when accompanied by a person.**
- 3) A human care taker will be present at all times when visiting dogs are present.**
- 4) All material submitted this evening addressing hours of operation, noise, drapes, traffic, parking, ABKA's bill of rights and code of ethics, Dr. Hadden's recommendations, and 13 V.S.A. §365 except as greater restrictions are otherwise imposed by this permit will be complied with.**
- 5) The number of allowable round trips is amended to 5.**
- 6) The insulated drapes will be installed on or before December 1, 2001.**
- 7) All dogs will wear functioning bark collars at all times.**
- 8) All dogs will be on a leash when not in a vehicle, the fenced in area, or the dwelling or sunroom.**

**VOTE: 4 ayes, 1 nay (PM); motion carried.**

**MOTION by Mr. Robinson, seconded by Mr. Monte to find that the proposed development will not adversely affect the traffic on roads and highways in the vicinity. Should an Act 250 decision significantly alter the conditions of this permit that the applicant submits an amended application to the Town. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Behn to find that the proposed development will not adversely affect bylaws in effect, noting that this application was submitted under the Land Use & Development Regulations. VOTE: unanimous; motion carried.**

**MOTION by Mr. Markolf, seconded by Mr. Behn to find that the proposed development will not adversely affect the utilization of renewable energy resources. VOTE: unanimous; motion carried.**



**MOTION by Mr. Behn, seconded by Mr. Brattstrom to require that the 10 cedar trees be planted along the north side of the stockade fence evenly spaced along the 50' distance exterior of the dog pen. VOTE: unanimous; motion carried.**

Ms. McGuire confirmed that waste disposal will be frequently removed from the dog pens, shelters and sunroom, and will be either composted or bagged and placed in the dumpster.

**MOTION by Mr. Behn, seconded by Mr. Brattstrom to find that (B) *Specific Standards* (1) and (3)-(10) are not applicable to the application. VOTE: unanimous; motion carried.**

**MOTION by Mr. Monte, seconded by Mr. Behn to find that (B)(2) is satisfied with the proposed access and parking plan, and that should these plans change an amended application will be submitted to the Town. VOTE: unanimous; motion carried.**

**MOTION by Mr. Monte, seconded by Mr. Behn to find that (B)(11) is satisfied with imposed conditions. VOTE: unanimous; motion carried.**

**MOTION by Mr. Behn, seconded by Mr. Monte to find that (C) *District Standards* are not applicable to the application. VOTE: unanimous; motion carried.**

**MOTION by Mr. Monte, seconded by Mr. Behn to grant conditional use approval for the project subject to conditions and submittal material as discussed. VOTE: unanimous; motion carried.**

### **III. PUBLIC HEARING: DOLLMAYER – ROAD & STREAM SETBACK VARIANCE REVIEW**

Application 2001-65-MM: Steve Dollmeyer seeks approval to replace and expand an existing non-complying structure. The project is located on the south side of Brook Road in the Warren Village Commercial District and requires review under Article IV. §3.C. – *Variances* and Article VI. §10. – *Streams*, of the Warren Zoning Bylaws.

#### **STAFF REPORT**

Mr. Monte read the public notice, which ran in the August 13, 2001. A second public notice was published to 1) correct the zoning district wrongly warned in the first notice, and 2) to include §10. *Stream* review, which was omitted from the first notice.

No comments have been received regarding the second public notice.

#### **DELIBERATION/DECISION**

**MOTION by Mr. Behn, seconded by Mr. Brattstrom to grant final approval for the Dollmeyer application. VOTE: 4 ayes, 1 abstention (PM); motion carried.**

### **V. OTHER BUSINESS**

a) Signing of minutes (8/8 & 8/22) & decision (Dollmeyer)

**MOTION by Mr. Markolf, seconded by Mr. Brattstrom to approve the August 8, 2001**

meeting minutes with corrections. **VOTE: unanimous; motion carried.**

**MOTION by Mr. Monte, seconded by Mr. Behn to approve the August 22, 2001 meeting minutes as submitted. VOTE: unanimous; motion carried.**

The Dollmeyer decision was approved and signed.

b) Rickard/Warren Store Site Plan & Conditional Use Amendment  
Ms. Wade briefly explained the application which includes (i) waiver of the public hearing; (ii) to find and conclude the municipal parking facilities and other available private parking adequately provide for visitors to Warren Village, in general, and the Warren Store, in particular; and (iii) to modify the parking requirements for Permit #1984-7-PH by elimination of the requirement that five parking spaces be provided behind the Rickard residence. Mr. Monte stated that either way the board would have to warn the application therefore should hold a public hearing. Ms. Wade will schedule the application for the next available date and contact the applicant.

**VI. ADJOURNMENT**

**MOTION by Mr. Monte, seconded by Mr. Markolf to adjourn the meeting. VOTE: unanimous; motion carried.**

The meeting adjourned at 11:30 p.m.

Respectfully submitted,  
Margo B. Wade  
DRB/PC Assistant

**DEVELOPMENT REVIEW BOARD**

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Chris Behn (date)

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Eric Brattstrom (date)

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Lenord Robinson (date)

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David Markolf (date)

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Peter Monte, Chair (date)