

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: APRIL 18, 2012

CASE NO.: 3/21/2012-2 (CONTINUED)

APPLICANT: VIGEANT FAMILY PROPERTIES LLC
& LEONARD A VIGEANT REVOCABLE TRUST (LEONARD A AND JANE
M VIGEANT, TRUSTEES)
10 LILAC CT
LITCHFIELD, NH 03052

LOCATION: 296 & 300 NASHUA ROAD; 2-25 & 2-26; C-II, WITHIN THE ROUTE
102 PERFORMANCE OVERLAY DISTRICT

BOARD MEMBERS PRESENT: MATT NEUMAN, CHAIR
JAMES SMITH, VICE CHAIR
LARRY O’SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
JAMES TOTTEN, NON-VOTING ALTERNATE
NEIL DUNN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING OFFICER
JIM BUTLER, TOWN COUNCIL LIAISON

REQUEST: VARIANCE TO ALLOW A COMMERCIAL DOG KENNEL USE IN THE C-II
ZONE WHERE OTHERWISE NOT LISTED AS A PERMITTED USE IN
SECTION 2.2, TABLE OF USES; AND TO ALLOW LIVING SPACE ON
THE SAME PROPERTY AS A MIXED RESIDENTIAL/COMMERCIAL USE.

PRESENTATION: Case No. 3/21/2012-2 was read into the record with no previous cases listed.

MATT NEUMAN: And who’s presenting?

STEVE CLARK: My name’s Attorney Steve Clark, I represent the applicant.

MATT NEUMAN: And the Board had asked for some additional information?

STEVE CLARK: Yes, I submitted that to Jaye earlier today. I do have just one additional...this was
inadvertently left out of [see Exhibit “E”]...there you go, Jaye. At the last meeting, the Board had asked
that we contact other area communities with regard to dog kennels in that community and as to
whether there were any complaints. Particularly, you asked that we contact the officials in Derry
because there’s The Barking Dog at 210 Rockingham Road in Derry. I spoke with the Animal Control

46 Officer on April 4th. In her employment with the Town, she's had no history of any complaints with
47 regard to the facility. She made the comment that once in a while, a dog might get away, but the
48 owners of the facility have been able to get it back. But there's been no complaints as to the dog
49 barking. Same with the Code Enforcement Officer. He confirmed for me that there was no complaints
50 that he's ever had. Both of them are long time employees in that position. I also spoke with the
51 Assistant Assessor as to whether there have been any reductions in value as a result of that facility at
52 Rockingham Road and the answer is 'no.' We've contacted the City of Manchester and there's a facility
53 in Manchester, as you'll look in under Attachment "B" in the submission that I submitted [see Exhibit
54 "D"], there's a condo development within seventy (70) feet of a large kennel. The Manchester Police
55 Department affirmed for us that there have been no dog complaints or noise complaints over the years.
56 We also went down to Hudson. There's a facility there that's no longer being used as a kennel, but it
57 was approved for a kennel. In the packet of material is a letter from the Code Enforcement Officer that
58 in the twenty (20) years that that operated, there were never any noise complaints or dog complaints
59 with regard to the kennel. I believe that's what the Board had requested that we obtain and submit and
60 that's what we've done for you.

61
62 MATT NEUMAN: Alright, thank you. Does the Board have any questions?

63
64 LARRY O'SULLIVAN: Sure, what are we looking at? I see the overhead Bing photos [see Exhibit "D"]. I
65 guess they'd be of 210 Londonderry Turnpike in Derry. I'm not quite sure where on Kilrea Road or on
66 Londonderry Turnpike that the kennels are.

67
68 STEVE CLARK: In the photograph, there's a structure that has a red roof.

69
70 LARRY O'SULLIVAN: Mm-hmm.

71
72 STEVE CLARK: To the right of that red roof is another facility. That is The Barking Dog.

73
74 LARRY O'SULLIVAN: Is that a similar type business where there's outdoor runs and all that?

75
76 STEVE CLARK: Yes.

77
78 LARRY O'SULLIVAN: Can I ask where the outdoor runs are? I just can't see them.

79
80 STEVE CLARK: I believe they run through the center of the building.

81
82 LARRY O'SULLIVAN: So between the two (2) buildings?

83
84 STEVE CLARK: Correct. Also at the front of the facility, towards Rockingham Road/Londonderry
85 Turnpike on the right hand side of the building, those are all outdoor runs in the front. It's a caged off
86 area.

87
88 LARRY O'SULLIVAN: What's the business further along, not the one with the red roof, but the one with
89 the green roof that we only see part of?

90

91 STEVE CLARK: That's a John Deere facility.
92
93 LARRY O'SULLIVAN: And the opposite side of the street from there?
94
95 STEVE CLARK: I think it's...there's...
96
97 PAUL SOUCY: Custom motorcycles.
98
99 STEVE CLARK: Custom motorcycles. Custom motorcycles.
100
101 LARRY O'SULLIVAN: Okay.
102
103 STEVE CLARK: The residential development is to the rear of the property, as you can see on Kilrea Road.
104 For the record, The Barking Dog has been in Derry since 1994, according to the information published on
105 its website.
106
107 LARRY O'SULLIVAN: We also have an Attachment "B," All Dogs Gym and Inn?
108
109 STEVE CLARK: Correct.
110
111 LARRY O'SULLIVAN: That's the one in Manchester?
112
113 STEVE CLARK: That's correct. And the residential condominium development is approximately seventy
114 (70) feet behind that facility.
115
116 LARRY O'SULLIVAN: And from the Manchester Police Department, we have a log of what?
117
118 STEVE CLARK: That log shows all the complaints on Sheffield Road, none of which were for noise or dog
119 complaints. My client spoke directly with the police officer who provided him with the log and he said
120 there was no dog complaints at that...for noise and barking at that facility.
121
122 LARRY O'SULLIVAN: Because "bites" is listed a couple of times there. What's that about?
123
124 STEVE CLARK: I was not investigating other issues. I was investigating only the noise issues. I'm
125 assuming with dogs on the site, over time there's probably been incidents. So...
126
127 LARRY O'SULLIVAN: There's other dogs around, too. Sure.
128
129 MATT NEUMAN: Although that was at All Dog's Gym. The bites. A number of them.
130
131 STEVE CLARK: That Attachment "C" is the facility or property down in Hudson that had operated for
132 over twenty (20) years. There's a letter from the Code Enforcement Officer stating in the twenty (20)
133 years, there had never been any code enforcement complaints from the neighbors at that facility. In the
134 pictures attached, there's residential houses in or around that facility.
135

136 MATT NEUMAN: What was the total number of dogs that we're looking to be kenneled?
137
138 PAUL SOUCY: Yeah...
139
140 MATT NEUMAN: And your name and address?
141
142 PAUL SOUCY: I'm sorry, Paul Soucy. It's my son and I who's...
143
144 MATT NEUMAN: And your address? Your address? Where you live?
145
146 PAUL SOUCY: 34 Phillips Pond Drive in Sandown.
147
148 MATT NEUMAN: Thank you.
149
150 PAUL SOUCY: We could have...we have sixty (60) kennels for the dogs and then daycare, we could have
151 fifty (50) dogs in daycare, give or take. You know, if it's a good season, we're gonna have fifty (50) dogs
152 at daycare but they go home at night.
153
154 MATT NEUMAN: And the limit on the size of the dogs? Does it matter?
155
156 PAUL SOUCY: No.
157
158 MATT NEUMAN: Small horses...size-wise?
159
160 PAUL SOUCY: Yup, size...yup. Doesn't matter.
161
162 LARRY O'SULLIVAN: So we're making the assumption that if somebody had a complaint about the noise,
163 they would have called the police officer or the zoning officer and in these cases, we see some of the
164 police reports? Is that right?
165
166 STEVE CLARK: Correct.
167
168 LARRY O'SULLIVAN: Do we see any of the zoning or...who else would take the phone calls on that?
169 Animal Control or...?
170
171 RICHARD CANUEL: Sure.
172
173 STEVE CLARK: That's why in Derry we contacted Animal Control as well as the code enforcement.
174
175 LARRY O'SULLIVAN: And do we have any of...
176
177 STEVE CLARK: In Manchester, we went to the Police Department, which Animal Control is under the
178 jurisdiction of the Police Department.
179
180 MATT NEUMAN: No correspondence actually from Animal Control in Manchester?

181
182 STEVE CLARK: No.
183
184 LARRY O'SULLIVAN: Or Derry? Except where this is today?
185
186 STEVE CLARK: No, I had...there's a note in there, I had a telephone conversation with the Animal Control
187 Officer in Derry. She said she had had no complaints.
188
189 MATT NEUMAN: Richard, would this come under your purview, if...?
190
191 RICHARD CANUEL: If there were complaints to be filed, of course.
192
193 MATT NEUMAN: Nice. Do you have a bog net or anything or...?
194
195 RICHARD CANUEL: Excuse me?
196
197 MATT NEUMAN: Do you have a big net for dogs?
198
199 RICHARD CANUEL: Well, I love dogs.
200
201 MATT NEUMAN: Well, obviously not being here at the last meeting, I'm playing a little catch up here,
202 but as far as asking the applicant for further information, does the Board...are you satisfied with...were
203 you hoping for some further...?
204
205 NEIL DUNN: Clarification.
206
207 LARRY O'SULLIVAN: Additional information or clarification? I was hoping that we'd have something that
208 said, in effect, that the Police Department's records were...or the Animal Control's records or what have
209 you showed no sign of any complaints from...similar to the email here, but, I mean there's...you know,
210 The Barking Dog has been there for a long time, I guess, and I would think that, you know, a simple email
211 isn't sufficient as far I'm concerned to say "No, I haven't had any," under how long...I don't know, Mr.
212 Clark, if you know how long Bob Mackey or who's the...Barbara Chapman have been t ere, but, you
213 know, do they log that stuff? I don't know. But what I was hoping for was that...
214
215 STEVE CLARK: Sure.
216
217 LARRY O'SULLIVAN: ...you know, something that was very clear that said, "No we haven't had any
218 issues." I can understand why there wouldn't be when you have the layouts that we had, that are had
219 there with the dogs between the buildings a significant amount of the time and then sometimes outside.
220 But then again, you know, the design of things is not up to us. It's gonna be, you know, simply for us, it's
221 a matter of can this possibly fit in this POD with questions about whether this will fit in this zone or not.
222 In this type of zone. So we've gotta get to that.
223
224 STEVE CLARK: Sure. And I can represent to you that all three are long time employees of the Town of
225 Derry dating back to as early or prior to 1995.

226
227 MATT NEUMAN: Any other questions from the Board?
228
229 LARRY O'SULLIVAN: I think everybody's still going through a lot of the...
230
231 MATT NEUMAN: Yeah, it's a lot of additional information here to take in. Can I just ask, what's the
232 approximate size of the outside area where the dogs would be?
233
234 PAUL SOUCY: Thirty five (35) by sixty five (65) runs. There's two (2) of them.
235
236 MATT NEUMAN: And would all the dogs be out at one time or is it...?
237
238 PAUL SOUCY: No, we could have up to four (4)...we could have up to four (4) different groups. We could
239 have two (2) groups inside, plus the two (2) groups outside, so you'd kind of divide that up...
240
241 MATT NEUMAN: What's the maximum amount of dogs that could be out at one time?
242
243 PAUL SOUCY: Forty (40).
244
245 MATT NEUMAN: Could be forty (40)?
246
247 PAUL SOUCY: Forty (40) to fifty (50), yup. Two (2) different areas. Yup.
248
249 MATT NEUMAN: Okay.
250
251 STEVE CLARK: Just to help the Chairman visualize, because he wasn't here last time...
252
253 PAUL SOUCY: Oh yeah.
254
255 STEVE CLARK: ...this is a conceptual of the...
256
257 MATT NEUMAN: Mm-hmm.
258
259 JIM SMITH: Wanna get on the mic?
260
261 JAYE TROTTIER: Can you make sure he's on a mic...?
262
263 MATT NEUMAN: Oh, yeah. Sorry. We need the microphone.
264
265 PAUL SOUCY: You need the microphone.
266
267 STEVE CLARK: This here is a conceptual of the facility. This would be Nashua Road out here.
268
269 MATT NEUMAN: Mm-hmm.
270

271 STEVE CLARK: And here would be the two (2) dog runs. As we explained at our last presentation, there
272 will be wooden fences on each side and this will be a fenced area. This is for the daycare area. This is...
273
274 MATT NEUMAN: How high are those fences?
275
276 STEVE CLARK: Say that again?
277
278 MATT NEUMAN: The height of the fences?
279
280 STEVE CLARK: At least...
281
282 PAUL SOUCY: Minimum six (6) feet. Yup.
283
284 STEVE CLARK: And they'll be on both sides of the runs. The abutter that presented last month and
285 objected, their property is back in this area here. So, that gives you somewhat of a visualization. One
286 other thing that may be of assistance that I have; at the last meeting...the question was raised as to
287 whether the overhead right of way for the overhead wires crossed the property or not. There was a
288 little bit of confusion on that. There's a submission there [see Exhibit "F"]. It shows that it does cross
289 the property, a significant portion of it. So even though it's fifteen (15) acres, there's very limited usable
290 area on the property. But this will be where the daycare is housed and this is where the long term stay
291 will be. All the dogs...the daycare dogs, I understand, will all be gone by 6:30. Late as possibly 7:00. And
292 the overnight dogs are housed and inside by 6:00.
293
294 MATT NEUMAN: Okay. Alright, thank you for that. Richard, what's the maximum they could have
295 those fences?
296
297 RICHARD CANUEL: There really is no maximum. Part of our site plan regulations does mention if you
298 put up a fence that's eight (8) feet in height on a commercial property, it has to be approved by the
299 Planning Board. But there really is no maximum per se.
300
301 MATT NEUMAN: I mean, I would imagine the higher the fence, the more that would diminish the sound.
302
303 JIM SMITH: Well, chain link...
304
305 [Indistinct comment]
306
307 MATT NEUMAN: Was that what it was gonna be, chain link fence?
308
309 STEVE CLARK: Solid.
310
311 PAUL SOUCY: Privacy fence. A solid...the intent is to put up a solid vinyl fence.
312
313 MATT NEUMAN: Okay.
314
315 JAY HOOLEY: Stockade type?

316
317 PAUL SOUCY: Yup, exactly.
318
319 JAY HOOLEY: Okay.
320
321 PAUL SOUCY: Yup, you're not gonna be able to see in.
322
323 MATT NEUMAN: I mean, I would imagine that's gonna buffer the sound.
324
325 JIM SMITH: To some extent.
326
327 MATT NEUMAN: Alright, any other questions from the Board to the applicant on this new information?
328
329 JIM BUTLER: Yeah, on the outside kennels, the two (2) long runs, is there gonna be a privacy fence that
330 surrounds that?
331
332 PAUL SOUCY: On the kennels?
333
334 JIM BUTLER: In the back, the two (2), yeah...See the two...right there. On both those sides?
335
336 STEVE CLARK: Yes, it will be solid.
337
338 JIM BUTLER: Those are gonna be solid?
339
340 STEVE CLARK: Yes.
341
342 PAUL SOUCY: Correct. Well, one side's completely facing the power lines...
343
344 JIM BUTLER: Okay.
345
346 PAUL SOUCY: ...anyways. The other one to their side will certainly be vinyl. The other one's probably in
347 question. We'd like to let some air come through and travel through, but like I said, that's gonna be
348 towards the power lines, which is endless.
349
350 JIM BUTLER: And what are your means of disposal for feces and things like that? Waste. Dog waste.
351
352 PAUL SOUCY: Septic...we're either gonna throw it away, dumpster. And then whatever you can't pick
353 up, we'll just...it'll be normal septic system.
354
355 JAY HOOLEY: Where this is only a conceptual design, it currently shows a...the runs on either side of the
356 rear section of the building...
357
358 PAUL SOUCY: Mm-hmm....
359

360 JAY HOOLEY: ...is there anything that would preclude both runs from being on, looking at the front, right
361 side of the building towards the power lines, as opposed to having one (1) on each side?
362
363 PAUL SOUCY: The length of the building, we'd have the double the length of the building. The building...
364
365 JAY HOOLEY: They couldn't be side by side? With fencing between? In other words, two (2) sets of
366 fenced kennels on the power lines side of the building.
367
368 PAUL SOUCY: I'm not quite understanding what you're...
369
370 JAY HOOLEY: As opposed to...
371
372 STEVE CLARK: What...if I understand the question correctly, what it would require is taking this half of
373 the building...
374
375 JAY HOOLEY: Okay.
376
377 STEVE CLARK: ...and building it out here, because, you can't see from your distance, but the access in
378 and out for each of the individual kennels is on each side. So, it would take physically moving it over
379 here.
380
381 JAY HOOLEY: So each animal...
382
383 STEVE CLARK: I think what you're suggesting is could you...
384
385 PAUL SOUCY: Inside the building, there's an eight (8) foot by five (5) foot run with a two (2) foot dog
386 door in the center. Outside, that same dog would have a five (5) foot by eight (8) foot run outside.
387
388 JAY HOOLEY: Okay, so there are separations within...
389
390 PAUL SOUCY: Inside.
391
392 JAY HOOLEY: Okay.
393
394 PAUL SOUCY: Within, correct.
395
396 JAY HOOLEY: I apologize, I was not...it looked like one (1) open run area.
397
398 PAUL SOUCY: Oh yeah, no, no, and then in between the two (2) cages inside is a work station for us to
399 store the food and whatever else. But yes, there's inside runs as well as outside runs, correct.
400
401 JAY HOOLEY: Okay.
402
403 JIM SMITH: So there's an individual run inside and outside for each animal?
404

405 PAUL SOUCY: Correct. That's correct.
406
407 JIM SMITH: Okay, they're not in a mix?
408
409 PAUL SOUCY: No, in the boarding facility, the dogs are on their...by themselves in their own cage.
410
411 JAY HOOLEY: I was not getting that from the visual of the run. It looked like one (1) common run area.
412
413 MATT NEUMAN: Right.
414
415 LARRY O'SULLIVAN: Mm-hmm.
416
417 JAY HOOLEY: Which, it seemed, would be easy enough to move to the other side.
418
419 PAUL SOUCY: The largest building to the right there, furthest to the right...
420
421 JAY HOOLEY: Yup.
422
423 PAUL SOUCY: ...that is an open, but that's the daycare. That is an open building and that's where the
424 daycare...we'll divide that building in half and that's where we're gonna have...we could have...outside
425 here, outside, and two (2), you know, and runs inside too. Foul weather, the dogs are all inside at that
426 point.
427
428 JAY HOOLEY: And the fenced area at the front, is that separated or...?
429
430 PAUL SOUCY: That's an outside play area.
431
432 JAY HOOLEY: Common?
433
434 MATT NEUMAN: Common area.
435
436 PAUL SOUCY: Common area, yes.
437
438 JAY HOOLEY: It would be multiple animals.
439
440 PAUL SOUCY: They're intermingl...correct. They're intermingling right there. Correct.
441
442 JAY HOOLEY: So the daycare dogs intermingle but the kennel dogs do not.
443
444 PAUL SOUCY: Correct.
445
446 MATT NEUMAN: And the boarded kennels, where the individual ones...?
447
448 PAUL SOUCY: Yup.
449

450 MATT NEUMAN: They can go in and out as they please?
451
452 PAUL SOUCY: That's correct. During the day. Yup. Correct.
453
454 MATT NEUMAN: So they could all be out or they could...
455
456 PAUL SOUCY: Yup.
457
458 JAY HOOLEY: All be in.
459
460 PAUL SOUCY: Correct, but by 5:00, somewhere around there, feeding time, they're all inside. The doors
461 are shut.
462
463 MATT NEUMAN: But separating each one is just, I imagine, just chain link?
464
465 PAUL SOUCY: Inside, it's a four (4) inch...
466
467 MATT NEUMAN: No, so the...one the..
468
469 JAY HOOLEY: Outside.
470
471 MATT NEUMAN: I'm sorry, on the outside kennel...
472
473 PAUL SOUCY: Oh yes. Yes. There's gates. Chain link or some type of a wire mesh.
474
475 MATT NEUMAN: So one dog can see the dog next to...
476
477 PAUL SOUCY: Oh, no, I'm sorry. No. In between each kennel is completely blocked with a solid wall.
478
479 MATT NEUMAN: Okay.
480
481 PAUL SOUCY: A solid wall. There's a gate inside and there's a gate outside, but inside there's a four (4)
482 inch block wall. Outside, there's gonna be another...
483
484 MATT NEUMAN: So no adjacent dogs are interacting with each other?
485
486 PAUL SOUCY: Can't see each other. Correct. Correct. Solid panels between.
487
488 JAY HOOLEY: Okay.
489
490 JIM SMITH: Facilities that you checked, did any of them have a similar setup as far as what we just
491 discussed?
492

493 STEVE CLARK: The Barking Dog has the...if you look at the aerial above, that's in Attachment "A," their
494 run is in the center of their building. They're...and I'm gonna have my client speak to that, but there are
495 some maintenance issues...
496
497 JEREMY SOUCY: I'm Jeremy Soucy.
498
499 MATT NEUMAN: Yup. And...
500
501 JEREMY SOUCY: I also live in Sandown. I worked at The Barking Dog for five (5) years. It's almost the
502 exact same setup, except it is reversed.
503
504 MATT NEUMAN: Speak in the microphone.
505
506 JEREMY SOUCY: I'm sorry. It's almost the exact same setup, but it's reversed obviously. The runs are in
507 the inside. It's cinderblock walls between the dogs that can't see one another. And the only chain link is
508 on the front, on the two (2) front sides for our access.
509
510 JAY HOOLEY: So, just that I understand then, so as opposed to having the one (1) building in the middle
511 and the two (2) runs, you have two (2) sets of building and then what would appear overall as one (1)
512 larger run area in the center that is subdivided? I may not be speaking that well, but...In other words, a
513 U-shaped building with the two (2) run areas in between is the setup that you're discussing at the other
514 location?
515
516 STEVE CLARK: Over at The Barking Dog.
517
518 JEREMY SOUCY: Correct.
519
520 STEVE CLARK: That's correct.
521
522 JAY HOOLEY: And therefore, you would actually have a full building to either outside, exposure of the
523 kennel for the run area.
524
525 LARRY O'SULLIVAN: But that's not what they're proposing, though, Jay.
526
527 JAY HOOLEY: No, I know, I'm just...
528
529 STEVE CLARK: No, that's correct. That's...
530
531 LARRY O'SULLIVAN: The Barking Dog has everything or the majority of the...
532
533 JAY HOOLEY: So to a degree, we're looking at noise, but it's apples and oranges based on design.
534
535 LARRY O'SULLIVAN: Right, so...
536
537 JAY HOOLEY: Because you've got a building on the outside of the run area in the other instance.

538

539 LARRY O'SULLIVAN: It's also apples and oranges in that there's, you know, a significant
540 difference...distance between residential and commercial, where this is located, so it's not an apples to
541 oranges complaint area...

542

543 JAY HOOLEY: Yeah.

544

545 LARRY O'SULLIVAN: ...'cause you don't have what we expect to have in the way of neighbors.

546

547 JIM SMITH: The dogs that are on daycare...

548

549 PAUL SOUCY: Mm-hmm?

550

551 JIM SMITH: Are they allowed to go outside at will, or is there some control over the amount of time that
552 they spend outside?

553

554 PAUL SOUCY: There's an employee with them all the time. One of our employees is out there in the
555 yard. They don't...it's very controlled going in and out.

556

557 JEREMY SOUCY: It's not at will. We let them out, we're out with them, then the group goes in. We
558 follow the group around. So they don't have in and out. It's a closed door. When they're outside,
559 they're outside, and when they're inside, they're inside. They don't have a free run...

560

561 JIM SMITH: Approximately how long a timeframe would they be outside?

562

563 JEREMY SOUCY: Anywhere from an hour...if it's raining, if it's cold out, if it's too hot out, they come in.
564 So all those variables do play in the effect of how long they're outside.

565

566 MATT NEUMAN: What's the maximum, though? It's a nice day...

567

568 JEREMY SOUCY: An hour. An hour. But, again, we're constantly rotating groups. I just wanna make
569 sure that's clear. We could have four (4) groups, so we run them all day so there could be dogs in and
570 out all day.

571

572 MATT NEUMAN: With a maximum of about forty (40) I think, that was said before, right? Being out at
573 one time?

574

575 JEREMY SOUCY: Correct. In two separate groups. So twenty (20) in each of those yards.

576

577 MATT NEUMAN: Mm-hmm.

578

579 PAUL SOUCY: That's correct.

580

581 MATT NEUMAN: So the most amount of dogs that are gonna be together at once is twenty (20) dogs. In
582 one (1) group.

583

584 PAUL SOUCY: In one (1) pod, yeah. One (1) pod. Yeah, correct.

585

586 MATT NEUMAN: Okay.

587

588 JIM SMITH: I would say we need to open it up to...

589

590 MATT NEUMAN: Yeah, I just...is there anything else from the Board before we open it up to the public?

591 Well, if there's anyone in...did you open it up to the public before?

592

593 JIM SMITH: Oh yeah. Yeah, we had gone through the whole cycle.

594

595 LARRY O'SULLIVAN: But we didn't close the meeting.

596

597 JIM SMITH: No.

598

599 MATT NEUMAN: Right.

600

601 JIM SMITH: Just a continuation of the preceding meeting.

602

603 MATT NEUMAN: If there's anyone who would like to come forward in support I'll ask first. Wanna come
604 forward to the...state your name and address in the microphone.

605

606 LEONARD VIGEANT: My name is Leonard Vigeant. I live in 10 Lilac Court, Litchfield. I'm the owner of
607 the property. And one of the examples they gave you is this house on Barrets Hill Road. It just so
608 happens by coincidence that my son who just come out of the Marines bought this three (3) years ago.
609 It used to be It's A Dog's Life and the people that built this property, Mr. and Mrs. Rogers, I just
610 happened to be at the Planning Board in 1980-something on a subdivision I was doing and a friend of
611 mine, a good friend of mine, Gary Francoeur, was doing all these duplexes around where this kennel was
612 going and he fought this tooth and nails. Trust me, I was there. Even with the decision, he appealed it,
613 took it to court, took it to court and they finally even got as far as Supreme Court and Supreme and
614 Supreme Court gave him a decision that the kennels are valid and they stay forever. Now saying all that,
615 we approached the Zoning Board to see if there was any violations on this property and you can see part
616 of the building here but there's duplexes, two (2) or three (3) this way, three (3) or four (4) this way, and
617 those are about a hundred and fifty (150) feet from the kennel. And it's in a residential neighborhood,
618 which is duplexes, and I was kind of amazed when there wasn't even one complaint in twenty (20) years.
619 And realistically, understanding that this is gonna have a condominium project, looking at that plan, it
620 almost looks like those units are going towards the kennels on purpose, 'cause as a land developer, I
621 could lay that out and take four (4) or five (5) of those condos and spread them out away from the
622 kennels if they were worried about it. But I think I'd be more concerned if I was them if their condo docs
623 don't have a restriction for having pets, when Mrs. Johnson comes out of her condo and Mrs. Smith
624 comes out of her condo with dogs, and these two see each other and they start "ra-ra-ra-ra-ra," and you
625 live in the middle of them and you gotta put up with that noise, I think...

626

627 MATT NEUMAN: I know, but that's not really germane to this discussion. We're talking about this
628 particular property, not, you know...

629
630 LEONARD VIGEANT: Yeah, I mean, you got...

631
632 MATT NEUMAN: ...what dogs might be doing on that property.

633
634 LEONARD VIGEANT: You got three (3) kennels that were researched with no violations. I'm sure if you
635 checked three (3) fifty (50) unit condominium projects, the violations or complaints they have on dogs
636 with people that live within the own condominium association. Also, understand that looking at that
637 picture [see Exhibit "G"], that the picture of the kennel is flipped. That wing that's going towards those
638 condos on the left are supposed to be on the right and somehow by mistake, it got flipped but I think
639 there's gonna be a hundred and fifty (150), two hundred (200) feet distance between there and the
640 condos with trees in the middle. And I don't think there's gonna be any problem, especially with them
641 saying they're gonna bring the dogs in by 5:30 at night. Thank you.

642
643 MATT NEUMAN: Alright, thank you. Anyone else in support of the applicants would like to come
644 forward? Okay, how about anyone in opposition who would like to come forward and...Is that mic, is
645 that live over there?

646
647 LARRY O'SULLIVAN: It should be.

648
649 MATT NEUMAN: Yeah.

650
651 MORGAN HOLLIS: Good evening, Mr. Chairman, members of the Board, my name is Morgan Hollis. I'm
652 an attorney with Gottesman and Hollis in Nashua. And I'm here this evening representing Mesiti
653 Development Corporation. I was not present at the last hearing, but they were and they spoke in
654 opposition. After the hearing, they engaged me and I reviewed the minutes and the minutes were quite
655 clear as to the concerns of the Board and so, in working with my client, what we've tried to do is focus
656 on those issues that the Board raised at the last meeting and obviously, they're being raised again here
657 tonight. Just by the questions of the Board, it's obvious there are concerns about the operation, the
658 design, the construction, the number of dogs, the number of hours. Those are typically Planning Board
659 items, as you have all recognized tonight. What you do is convey and determine whether a use is
660 granted. In this instance, unlike the use in Hudson as referenced, unlike some of the other uses that
661 have been referenced, this proposed kennel is not a permitted use under your ordinance in this district.
662 So the burden is on the applicant to demonstrate all five criteria have been met. You had concerns in
663 some specific areas or criteria. The applicant's presented their evidence. And what we'd like to do is
664 present ours. The first thing is we asked Benchmark to overlay the proposed site along with the
665 proposed layout that has already been submitted and approved by the Planning Board as a conceptual
666 plan of the fifty five and up housing. Fifty five and up is a permitted use in this zone under your
667 ordinance, meaning that's where the Town decided this type of residential housing should be. And they
668 did so in consideration of other uses that are in that zone, whatever they might be, that are permitted in
669 that commercial district. They didn't do so thinking what other uses would not be permitted, because
670 that would be your decision to give relief if you're gonna allow...or legislative decision to amend the
671 ordinance and now allow kennels in a commercial zone. This is where elderly housing is permitted. The

672 layout of the elderly housing is coming off of Route...of the road, Route 102, and then up the side of the
673 hill and you have a cell tower. And if you could pass those out, they could see it a lot better, [indistinct].
674 So, just introducing the plan as you have it in front of you, you're all familiar with the property. You can
675 see on this aerial [see Exhibit "G"], what Benchmark did was overlay what's been presented and
676 approved conceptually. So that matter is not something that's out there in someone's dream. This is a
677 matter that's been looked at, reviewed, and presented to the Planning Board and they have given it its
678 blessing on the conceptual plan and final design in moving forward and would have been submitted
679 during August. So, this is a use permitted with a design that's in the works. And you should know what
680 "in the works" means is the design involves bringing water up from Hudson, all the way up 102 and then
681 the Pennichuck is going to extend it beyond that. That's their choice. But it will supply water to this
682 area. That's gonna be at the developer's expense. It's also gonna provide these type of units, which, as
683 you know, are a tax benefit. All tax benefit to the Town. Private roads, private hauling. This is a elderly
684 residential and no school children. This is the layout. Now along comes a proposed use not permitted.
685 And I'll admit that based on their representation of the plan now that I've seen, at least thus far in the
686 process, this wing is flip flopped. But the pens are accurate. The pens are going to be, at our best
687 measurement, a hundred feet or less to the property line. And then we, of course, have to have our
688 respective buffer from the property line upward. Remember, this is also topographically uphill, so
689 you're going to have units that are looking down the hill. Obviously, this may all be treed today, but you
690 know how development works as well as I do. Those trees are going to be removed, replanted, and
691 reorganized. From the pens, the outdoor pens, to the property line is all clear on their side. The issues
692 you raised, as I say, are Planning Board issues and they're typical Planning Board issues. That's where I
693 spend a lot of my time debating these issues. They're all matters that the Board weighs, experts weigh
694 in on, but they don't typically get discussed at the Zoning Board because you're talking about use, not a
695 specific designed use. And I would certainly remind the Board that whatever decision you make, should
696 you grant the use, it's not necessary that the use is gonna be exactly as they've presented to you. It's
697 going to be a dog kennel. But exactly where it's gonna be and how it's laid out will be determined by the
698 Planning Board. So questions you asked aren't gonna be answered. Those are gonna be answered later
699 and that may reflect back differently than what you thought you were voting on. Having said that, what
700 we did was go out and do some research. The first thing we did was seek out three (3) independent
701 opinions. That is opinions from brokers. People who are familiar with selling real estate in this town.
702 Selling residential real estate in this town, who are not involved in the transaction. The broker who gave
703 you an opinion is involved in the transaction. She's listed on the sign right out in front. Tinkham Realty.
704 That's not an independent opinion. Our brokers, three (3) separate brokers, I'd like to present those
705 opinions. We have one broker who is experienced, very experienced in fifty five and up communities.
706 One broker who has actual experience in attempting to sell a home next to a dog kennel, and we have
707 another broker who has experience on a broad base in Londonderry. And two (2) out of three (3) of
708 those are here. I'm gonna make an offer of proof, which is I'm gonna say what they would say, which is
709 essentially their report. They're here if you have questions. But that's the first step we took in the
710 research. And if I can, while I'm talking, I'll just introduce that. The first broker is Jim Miller of Coldwell
711 Banker in Amherst [see Exhibit "H"]. "I work mainly with fifty fund and up over buyers in the area. In
712 my professional opinion, if a dog kennel resides next to a retirement community, that community would
713 be far less attractive to the potential buyer. Potential buyers would be extremely concerned with
714 constant noise and potential foul odors. For those reasons, the properties would have to be sold at less
715 than what the value would be without the kennel there." Jim is not able to be here this evening. The
716 second opinion is a letter from Mark Oswald [see Exhibit "I"] who is broker familiar with properties in

717 town. And Mark is here this evening. It says, "The question of dog kennels or pens has long been a
718 source of contention among neighbors and has a related correlation to housing values. In my opinion, a
719 barking or a loud dog is a distraction to neighbors and their quality of life. Among seniors, even more
720 pronounced, given their selection of a home to afford them a quality of and lifestyle they're seeking in a
721 planned community. I believe that these distractions would have a direct impact on property values and
722 may further result in challenges for a homeowner to sell, should a prospective buyer encounter a loud
723 animal adjacent or near their property. As you may be aware, many high density communities and
724 condo associations do not permit large animals, typically thirty five (35) pounds or more, nor pets
725 outside unless leashed and all animal waste is removed by the pet owner." And Mr. Oswald is here if
726 you have any questions. The third report is from Jill Jablonski [see Exhibit "J"] who is an owner/broker at
727 Calabria Properties LLC in Salem. Jill's letter says "it is my opinion that a dog kennel does, in fact, impact
728 the sale and/or resale value of a home in the area of a dog kennel business. I personally have had
729 experience with trying to sell a home just up the street from the dog kennel business. Home was in
730 great shape, valued lower because of the traffic as well as the noise from the dogs barking. The barking
731 was at different times of the day, morning and during the evenings. It is only natural for the dogs to
732 react to sounds and other dogs, that is their way of communicating. That same home in a different area
733 would have sold for more money. So, such a business would, in fact, impact the sale price of
734 surrounding homes as well as the marketability. The owners of such properties would not have the
735 ability to obtain a fair market value." And Jill's here this evening. The conclusion is the same from all
736 three (3). There would be an adverse impact on the value of this property to surrounding property if it
737 were built as a residence. We also went another step further. We engaged an independent appraiser.
738 That is a certified appraiser and asked him to prepare an appraisal, which is a lot different than an
739 opinion of value. I think you probably all know that. They have to do some research, they have to
740 analyze sales, comparable sales. They have to look at the situation to determine the highest and best
741 use of the property and then determine, in this case, what impact this use would have on (A) the highest
742 and best use, if any, and (B), the ultimate market values. My client engaged Jack Lavoie Real Estate, LLC
743 & Accurate Appraisal Services of Bedford, New Hampshire [see Exhibit "K"]. And this is a lengthy
744 document, but I have copies for everyone. Appraisals tend to be a little bit longer than an opinion of
745 value. And all I'm gonna do is highlight, but Jack is here this evening and you may have questions of him.
746 The highlight is contained on the first page, obviously. "Based upon my findings and experience, my
747 conclusion is that the presence of a large dog kennel facility abutting your development would have
748 significant impact...effect on the value of the project and of the site in general. Additionally, the highest
749 and best use of the property would change. That would decrease the value of the property
750 significantly." And rather than, really, me misstating any summaries, that in a nutshell is what he
751 concludes after looking at the property and evaluating the use of a dog kennel next door. Evaluating the
752 subject property as well as the proposed development. And Jack is here for questions as well. The
753 summary conclusion is by an independent real estate appraisal who performed a full blown appraisal. It
754 would have an adverse impact on the value. The third thing we did is we engaged a noise expert [see
755 Exhibit "L"]. VHB, which is consulting firm with offices nationally, but regionally in Manchester and in
756 Boston, happens to have one of the preeminent noise authorities in the region. He used to work for the
757 EPA noise. He designed the noise criteria. I contacted him. It turns out, he did a noise study for a
758 veterinary hospital that was proposing to locate near a residential zone. And his study at that time had
759 to do with decibel readings where he went out and measured. They were allowed six (6) dogs and he
760 took a decibel reading from a distance of twenty (20) feet from where the fenced in walk out area was.
761 Six (6) dogs outside at one time. His report is fairly short. He did not do a noise study, because as he

762 said, the barking...he told me The Barking Dog and this site are apples and oranges. One's closer to the
763 highway, one is farther from the residents. We're not gonna get permission to go on all the neighboring
764 properties to take readings and until we know how many exactly, we learned tonight how many dogs
765 would be out there, it would be impossible to do that. What he did do, and it's fairly short...and I'm just
766 gonna...I'm gonna hit the highlight, which...he first introduces himself and what his qualifications are,
767 then he discusses the purpose. He talks about the Londonderry noise standard, which is that property
768 lines may not exceed seventy five (75) decibels. He then says what I've summarized. "VHB conducted a
769 noise evaluation for the relocation of an animal hospital and care facility. Noise monitoring was
770 conducted. The noise monitoring was conducted approximately twenty (20) feet from an outdoor
771 fenced area where six (6) dogs were located. The maximum sound level measured over a twenty (20)
772 minute time period was eighty seven (87) decibels." That's from twenty (20) feet. "Using the properties
773 of sound propagation, this value can be extrapolated to other distances. Sound from a stationary source
774 will be reduced by seven point five (7.5) decibels every time the distance from the noise source over soft
775 sound, such as grass, is doubled. " And he gives an example of what that means, 'cause I didn't know.
776 Eighty seven (87) decibels twenty (20) feet will reduce to seventy nine (79) decibels at forty (40) feet,
777 seventy two (72) at eighty (80) feet, and sixty four point five (64.5) at a hundred and sixty (160) feet.
778 Noise values at other specific distances can also be calculated. In addition to adjusting the sound levels
779 for distance, sound levels should also be adjusted for the number of noise sources, that is dogs. My
780 understanding that the proposed Londonderry facility might contain more than the six (6) dogs actually
781 measured." All we had were the floor plans and you could see the number of pens, but we didn't know
782 how many would come out. "Sound levels from additional dogs can be added using noise addition.
783 When an additional noise source of approximately the same sound level is added, then you would add
784 three (3) decibels to the existing sound level. As more noise sources are added, the sound level will
785 continue to increase to about ten (10) decibels higher than the existing sound level. Therefore, the
786 sound levels presented in my example at the facility monitored could all be about ten (10) decibels
787 higher with additional dogs." And if you look to that first page, he's already sixty four point five (64.5) at
788 a hundred and sixty feet. We know these pens are not going to be...the outdoor area is not going to be a
789 hundred and sixty (160) feet. No matter what...however they move it around, it can't be. So it's gonna
790 be closer to eighty (80) feet based on what we know. If you add ten (10) to seventy two (72), you're
791 already over the decibel reading. "The sound levels that are measured or calculated are very important
792 in determining if a noise source will meet local, State, or Federal requirements. But the type of noise
793 may also be important. Typically, the majority of local, State, or Federal requirements assume a steady
794 state noise source such as HVAC rooftop equipment, motor vehicle traffic, and mechanical engines. A
795 second type of noise is an impact noise source. Impact noise sources can be particularly annoying to
796 human beings because they are more difficult to become accustomed to than steady state noise
797 sources. Barking dogs should be considered impact noise sources." So that is his report. What I think is
798 important about this report is it raises the issue of why this use is not permitted in this area. You're
799 going to have a use which under its best day is going to get close to your noise ordinance. There are
800 gonna be people measuring at the property line on a regular basis. There are gonna be complaints.
801 There are gonna be other people coming out to measure. This use does not belong here. And why is
802 this important? One of the criteria that you must find is whether this use is reasonable. It falls under
803 the hardship argument, the last criteria. The first, is it a unique site? Second, is there any fair and
804 substantial relationship if the ordinance to this site? And third, is the proposed use reasonable? This
805 document suggests that no matter what they do up there, no matter how they design, whether the runs
806 are inside the walls, outside the walls, unless you're putting in a soundproof roof, you're going to have

807 readings of...approaching and well exceeding the 75 decibels in the town. It is not a good site for it.
808 What's a good site for it is where it's zoned, frankly, AR-I. Large parcels. Very large rural parcels where
809 there's plenty of space in between. And that goes for other similar types of commercial uses. I read the
810 minutes. There was a question about, "Well, gee, your neighbor could be a excavating and rock crushing
811 operation." And it could be under the use, but not all uses fit. They have to come together with the
812 noise ordinance as well. I've represented Continental in applications before this Board, in fact and in
813 other towns. The distance is important. How much space is there. This site is not an appropriate use
814 for that type of noise, whether it's permitted or unpermitted. That's what's important here. Final thing
815 that we did to determine whether (A), it was gonna adversely affect property values or (B), in some
816 fashion, be an unreasonable use was we...my client runs an over fifty five community just down the
817 road, The Nevins. And they polled forty four (44) residents. And forty four (44) people that they were
818 able to approach and ask the question. And they have a petition [see Exhibit "M"] which they signed
819 and I'm gonna submit copies of the petition. Of the forty four (44)...the question was "If there was a
820 commercial dog kennel abutting The Nevins property before you bought your home, would you still
821 have purchased The Nevins?" And why is this important? It may well be that if people live there and the
822 dog kennel is there, either before or after they move in, they don't make complaints. Maybe they don't
823 mind the dogs. Maybe they do. But what's important is how will it affect the value? And the value is
824 determined by somebody who might be buying. What is their perception of the property? The question
825 is "If there was a commercial dog kennel abutting The Nevins property before you bought your home,
826 would you still have purchased at The Nevins?" No one checked "yes." Forty three (43) out of the forty
827 four (44) checked "no" and one (1) left a question mark. So I'd like to submit that as well. Finally, I
828 didn't get to see what was presented and what you were looking at, but as best I could tell, as presented
829 by the applicant this evening, but as based I can tell, it was an aerial. I don't wanna be duplicative, but I
830 have a aerial photograph of the facility in Derry as well [see Exhibit "N"] and I think as was referenced by
831 one, if not two of you, the distance between the commercial development on Route 28 and the
832 residents in the back is substantial and it's a swamp, it's tree lined, it's a forest, it's wooded. It's apples
833 and oranges. So getting whatever information about values that may have occurred there really is not
834 relevant to the issue here. That use is permitted there, by the way, on Route 28. This use is not
835 permitted. In summary, my client is at the point of submittal of a final plan to the Planning Board for the
836 fifty five and up housing on the property next door. Significant work has been made to date. Up to
837 three hundred thousand (300,000) dollars has been invested. Significant investment remains going
838 forward, including the infrastructure I've already outlined. This is a permitted use in the zone. The
839 client will have to think hard and fast about whether to pursue this project, should that dog kennel go in.
840 They've advised me they won't. But it certainly is, based upon all of this evidence, a very difficult
841 question for them to proceed. The client did the homework to be certain he was not jumping to what
842 he believed, when he testified before you last month, that "Isn't it obvious the dog kennel will be a
843 problem for my project?' Independent brokers, independent appraiser, independent noise expert. All
844 unrelated professions. The conclusion that will most certainly break the noise ordinance, unless
845 significant mitigation is somehow undertaken, there's going to be a fear from the residents as to
846 whether or not that noise will continue to be a problem. The mere fact of having the kennel next door
847 will chill sales, which is gonna lower the value of the property. And the noise will, in fact, be an issue.
848 It'll be an issue to the Town, to the neighbors, to the public, to the people measuring it, the people that
849 have to monitor it. Well, it may be true that there are other permitted uses that could be located on
850 this site which might have impact to my client's site, this use is not a permitted use. In order to grant
851 them permission, you must find that they meet the five criteria. We would respectfully suggest they do

852 not meet, clearly, the two issues that you wrestled with at the last meeting; whether it will adversely
853 affect the value of surrounding property, whether it is a reasonable use for the site. I think with that, I
854 have the witnesses if anybody on the Board has questions, they're probably the best people to answer.
855 The noise fella was unable to make from Boston to here, but I think his report is pretty straightforward.
856 I'll be happy to answer any questions. I also have my client here, Mr. Mesiti is here, and he can answer
857 any questions as well as his construction folk and real estate management people. Thank you.
858

859 MATT NEUMAN: Thank you. Neil, you have a question?
860

861 NEIL DUNN: Yes, if I may. A couple actually.
862

863 MATT NEUMAN: Go right ahead.
864

865 NEIL DUNN: In regards...you gave us a lot of great data. I just want to quantify it or qualify it, if you will.
866 Does The Nevins have any pet restrictions or allow pets?
867

868 JOHN KALANTZAKOS: They can have two (2) pets.
869

870 MORGAN HOLLIS: John, you'll have to answer here.
871

872 JOHN KALANTZAKOS: I'm John Kalantzakos. I was here last meeting. I'm a manager at The Nevins, so
873 according to the covenants at The Nevins, you can have two (2) common household pets and a pet
874 cannot be unattended outside. That's one of the rules in the covenants over there. And there's a leash
875 law in town, so any residents at The Nevins with pets have to basically keep them on a leash outside and
876 be with them at all times.
877

878 NEIL DUNN: And would this hold true for the new facility?
879

880 JOHN KALANTZAKOS: Yes.
881

882 NEIL DUNN: Any of the folks...do you know if any of the folks signing the list own pets? I'm just trying
883 to...
884

885 JOHN KALANTZAKOS: Yes, they do.
886

887 NEIL DUNN: And just, while I'm on this topic, Richard, do you know, have you received any noise
888 complaints from The Nevins because of pets?
889

890 RICHARD CANUEL: None whatsoever.
891

892 NEIL DUNN: The real estate values is always a big one and it's....a lot of times, it's very hard to...you
893 know, you get someone saying they don't impact real estate values, and someone else saying they do.
894 Do any of these three persons have a relationship with the customer or The Nevins at this point, as far
895 as selling property?
896

897 JOHN KALANTZAKOS: Mark has.
898
899 NEIL DUNN: Mark has?
900
901 JOHN KALANTZAKOS: Mark is reselling a lot of the homes right now.
902
903 NEIL DUNN: But none of the other two people who submitted these have any relationship or have had
904 anything recently in...?
905
906 MATT NEUMAN: No listings?
907
908 JOHN KALANTZAKOS: No.
909
910 MATT NEUMAN: Do you know if they've ever listed any property in The Nevins?
911
912 JOHN KALANTZAKOS: Jill and Jim Miller have not listed any property. Mark has listed property there.
913
914 LARRY O'SULLIVAN: I think those other folks that were...that submitted the letters have no...
915
916 JOHN KALANTZAKOS: Right. The two brokers, Jill and Jim Miller, have never listed a property at The
917 Nevins. So they were independent realtors that we had called for an opinion. Jim Miller, if you do a
918 search on the internet and you put in, like, fifty five and over communities in New Hampshire, he has a
919 huge internet presence, so he's probably the leading broker's agent, buyer's agent that takes fifty five
920 and over people to all the communities. So I thought he would be a good source because he specializes
921 in these retirement communities and that's why I got a letter from him. Yeah, Mark...and Mark Oswald,
922 he doesn't work for the property but he is reselling a customer's home that reached out to him because
923 he's a prominent local realtor and they know he has a lot of experience, so he's reselling the home, but
924 he doesn't really have a relationship with us other than a co-broker, a listing agent for a current
925 customer.
926
927 MATT NEUMAN: Oka, thank you. Other questions from the Board?
928
929 JAMES TOTTEN: I have a question for Richard, if I could.
930
931 MATT NEUMAN: Go right ahead.
932
933 JAMES TOTTEN: If this was a permitted use in one of the zones that we have defined, which one would
934 it best fit in? Would it be the C-II as I read through it?
935
936 RICHARD CANUEL: That's a possibility. And the reason why it may fit in the C-II is because this is very
937 closely related to what could be interpreted as a service establishment, which is permitted in the
938 Commercial-II zone. The reason sending the applicant here for the variance is simply because this
939 kennel, or if you wanna call it a commercial kennel, there are no specific provisions in our ordinance for
940 that, so in my opinion as the Zoning Administrator, it would have been a stretch to say it was a service

941 establishment simply because it doesn't necessarily fit in with all of those type of establishments that
942 are considered service establishments, but that's probably the closest that it could have fit.

943

944 JAMES TOTTEN: And just one more. Is anybody else aware of how the noise ordinance affects some of
945 these other permitted uses? So I see here that we could have a drive-in theater on that property.

946

947 RICHARD CANUEL: Yes.

948

949 JAMES TOTTEN: Are they subject...does the noise ordinance...are they subject to that? And then it...

950

951 RICHARD CANUEL: Let me clarify that. The only specific provisions that we have establishing a noise
952 level for a particular use has to do with gravel pits or excavation sites at a maximum of seventy five (75)
953 decibels. Aside from that, the Town of Londonderry has no general noise ordinance for other uses.
954 That's it.

955

956 JAMES TOTTEN: Thank you.

957

958 RICHARD CANUEL: So to say that there's a noise level established for a use such as a drive-in theater,
959 there isn't.

960

961 JAMES TOTTEN: Okay. Thanks.

962

963 MATT NEUMAN: Okay. Thank you.

964

965 NEIL DUNN: So, if I may, Mr. Chairman, follow up with you Richard then, do you have the letter from the
966 noise expert?

967

968 RICHARD CANUEL: Well, let me see if I have that.

969

970 NEIL DUNN: So then that...what you're saying then is the ordinance, 97.6, "amendment to the zoning
971 ordinance relating to commercial performance which was approved by the Londonderry Planning on
972 April 16th provides guidance," et cetera, et cetera, so the guidance is a part, so we only implemented it
973 for those excavation or gravel pit locations. It wouldn't apply in this application?

974

975 RICHARD CANUEL: That's correct. That's right. Those performance standards have to do with
976 excavation sites.

977

978 NEIL DUNN: Thank you.

979

980 LARRY O'SULLIVAN: So you didn't, Richard, feel as if an AR zone would be a more appropriate place for
981 this?

982

983 RICHARD CANUEL: Well, again, another reason for this variance. If you look at the provisions in our
984 ordinance, it's very vague as far as kennels go. We have a very limited definition of what a kennel is.

985 And we...the only place in the ordinance where kennels are mentioned has to do with the keeping of
986 livestock in the Agricultural/Residential zone.
987
988 LARRY O'SULLIVAN: Mm-hmm.
989
990 RICHARD CANUEL: Understandable if someone has a home business and they, you know, maybe they
991 raise dogs or they board dogs at their residential property, that's one thing. But then you take a look at
992 the magnitude of this proposed project, it's just not something that you'd wanna fit in the middle of a
993 residential zoning district.
994
995 LARRY O'SULLIVAN: Unless you have a large enough lot to put it on.
996
997 RICHARD CANUEL: Sure. Yeah. Then we would have the same issue as we're discussing tonight, having
998 residences adjacent to, you know, this use.
999
1000 LARRY O'SULLIVAN: Well, I thought...I think that the circumstances that where this, in my opinion,
1001 would be ideal is if there's a couple hundred feet away from anything and with trees in between. But,
1002 given the state of where the businesses that we've seen or I've seen that are located, they're mostly on
1003 fairly well traveled roads or abutting fairly well traveled roads or highway, Route 101, or I don't know if
1004 anybody's been out by Amherst, there's another one out in Amherst that is in the middle of nowhere
1005 and I think those are successful because they're out in the middle of nowhere. But the significance for
1006 me about the "where it fits best"...I think that's what we're here for, is to help them make that decision.
1007 To help to guide that. And, you know, the decision may have been to put it in a Commercial-II where it
1008 really doesn't fit well. But in opinion, the location is everything. And then the zoning on top of that
1009 makes it far more difficult for us to, or for me to fit all these different variances or these two variances
1010 into that zone. So I'm having a real hard time of it. I mean, we can't change the zone to AR. The lot's
1011 the lot. It's in C-II, it's in the POD. I mean, there's a lot of issues there.
1012
1013 MATT NEUMAN: Very true. Alright, any other questions from the Board?
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1015 MORGAN HOLLIS: Thank you.
1016
1017 MATT NEUMAN: Thank you.
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1019 JIM SMITH: I have a question for Richard.
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1021 MATT NEUMAN: Go ahead.
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1023 JIM SMITH: In that part of the ordinance that addresses the dog kennels, is there a restriction on how
1024 close a kennel could be to a lot line?
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1026 RICHARD CANUEL: Well, again, it's grouped in with our keeping of livestock provisions and that says any
1027 pens or enclosures have to be at least twenty five (25) feet away from the property line.
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1029 JIM SMITH: So that's the only guidance we got...

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RICHARD CANUEL: That's it.

JIM SMITH: ...is that twenty five (25) feet?

RICHARD CANUEL: That's it.

MATT NEUMAN: The applicant have any further comments?

STEVE CLARK: Yes, I do. Just...it's hard to respond to all of these...

MATT NEUMAN: I'm sorry, was there anybody further, I should asked, in opposition?

JOHN GRIFFIN: Yes. My name is John Griffin. I'm an attorney in Amherst, New Hampshire, and I represent the property owner, Mr. Tai Deh Hsu, who is here this evening, and I'd just like to speak very briefly about Mr. Hsu's point of view on the application. Mr. Hsu has owned this property in excess of twenty five (25) years and he has actively marketed it for development purposes for approximately fifteen (15) years. He is convinced, based on the marketing of the property, that the highest and best use of this property is for residential use and he feels very fortunate that he was able to strike a deal with Mr. Mesiti in order to have this residential development conducted and constructed on this property. I agree with Attorney Hollis that the applicant has the burden of proving that this proposed kennel is not gonna have any adverse impact on the value of my client's property. My client will tell you that common sense would dictate that it does. He's had a very difficult time marketing it. He has a contract at this point and he is, you know, very very concerned about the possibility of losing that contract because Mr. Mesiti, understandably, for the reasons that Attorney Hollis has pointed out, is very likely to abandon this development in the event that the dog kennel is permitted. Mr. Hsu also, at the same time, based on my recommendation, had an independent certified real estate appraiser in the State of New Hampshire conduct a review of the issue of whether or not a dog kennel is gonna have an adverse impact on his property and I'd like to submit this report for the record, too [see Exhibit "O"]. His name is Brian Underwood and his curriculum vitae is also attached to this, so it's a relatively short two page report, but I'd like to introduce it into the record. Mr. Underwood could not be here tonight and I will obviously give the Board an opportunity to review his report, but just to summarize for the record, Mr. Underwood advises that there is substantial evidence that the subject property's market value will be diminished by the granting of the variance for the kennel project. It should be noted that there are other zoning districts within the town that allow kennels. The subject property's highest and best use as a residential development would be altered, it's marketing time increased, and it's overall market value diminished substantially due to be located next to a kennel that is not permitted in the zone. Furthermore, the buyers of the subject property have indicated that they will cancel the sales contract as I pointed out. So we would simply echo the comments of Attorney Hollis and Mr. Mesiti and we would urge the Board respectfully to hold the applicant to its obligation to satisfy the Board that this development is not going to have an impact on my client's property and we believe that it is. Thank you.

MATT NEUMAN: Thank you. Anyone else who would like to come forward in opposition? Seeing no one, if the applicant wants to rebut?

1075 STEVE CLARK: We'll try and be as concise as possible because you were asked in...or received a lot of
1076 information that I'm also trying to absorb at the same time. But let me say this; you're acting as the
1077 finders of fact here to make a determination whether this use should be allowed in this zone at this
1078 location. We presented what we believe was the criteria necessary for you to grant us a variance at the
1079 meeting in March. This Board acts as a constitutional relief valve on the zoning ordinance. Presently,
1080 there is no zone, as indicated by your Building Inspector, that allows for this type of use. He's also
1081 indicated to you that if there was this type use, probably this would be one of the better zones to place
1082 it in. That having been said, responding directly to the evidence submitted tonight, you have the aerial
1083 photograph that's been submitted and it shows the development...if I could step over here for just a
1084 quick second. As indicated, in the presentation, as you know, this is on this side. It's not as close, 'cause
1085 these are the open day run. It'll be on this side. But there's approximately eighty (80) to a hundred
1086 (100) feet between this location here and the property line. This, as you know, is a type of a cluster
1087 development and therefore, there'll be some natural buffers required by the Planning Board. I believe
1088 this area here on the plan from which this map was created, overlaid onto the aerial, reflects that
1089 there's an additional fifty (50) foot of wooded buffer. I don't, in my experience in the fifteen (15) to
1090 seventeen (17) years I've worked with the Town of Londonderry, I don't see the Planning Board allowing
1091 that to be clear cut. So even though this is a grassed and not wooded, there is a wooded area between
1092 these homes and what...the facility that's gonna be here. Now, that having been said, we've
1093 represented to you when my client goes to the Planning Board, it's their hopes, because they've
1094 engaged somebody to draw the plans which we've given you a copy of in the application, that it will be
1095 as presented and that we will take into consideration additional buffering requirements. We've
1096 represented to you that there will be solid fencing along those runs that run closes to that...to the
1097 abutting property owners as well as the other runs and the boarding daycare runs. Looking quickly at
1098 the appraisals, I note in either appraisal, there's no comparable sales submitted in either of the
1099 appraisals. And each of the appraisers, I'm sure they're licensed, they're qualified. They're required
1100 under their standards to have certain documents within their work file. These are summary appraisals.
1101 But this Board hasn't been given that information to evaluate what sales did these appraisers look at in
1102 order to determine that a kennel would have a negative impact or a negative value on surrounding
1103 property values. We just don't have that information. We just have a summarization of that. On the
1104 Underwood appraisal, on the second page, second to last paragraph, the appraiser notes that he did
1105 speak with your Assessor. But the reference is to the airport and the airport zoning and not to the dog
1106 kennels. When I spoke with the Assistant Assessor this afternoon, she made mention that there
1107 was...she found a question interesting by me, and by way of full disclosure, I represented the Town of
1108 Derry as their counsel for fifteen (15) years up until last June when I went and am now located with the
1109 firm I'm with. But in speaking with that Assistant, she said that she had inquiry from a fee appraiser just
1110 a couple of weeks ago on a similar question and she said "I'll say to you what I said to them. We haven't
1111 had any complaints with that facility in Derry," and it hasn't affected their decisions in when they
1112 appraise the properties for assessment purposes. But again, you have to weigh the value of each of
1113 these opinions. It's not because they've submitted three letters and I've submitted one, they prevail.
1114 It's up to you to decide the merits of the application and decide whether at this location it will work. We
1115 believe that we presented the information that will allow you to grant this variance. We've addressed
1116 the issues that you...the specific issues that you asked us at the last meeting to come back with. And
1117 with all due respect to the applicant's counsel, and I know Morgan quite well, they've done a very good
1118 job here of presenting additional information for you to evaluate, but it's a tough decision, but I think, as
1119 indicated by your own official, this is probably one of the better locations, if the Planning Board was

1120 gonna take up and rezone and address the issue that the Town of Londonderry doesn't allow dog
1121 kennels, that C-II is probably the best location for this. It's a service related business. It's located on
1122 Route 102. It allows for people accessing the Interstate to quickly drop off and/or pick up at the end of
1123 the day. And I'd ask the Board to consider and vote to approve this variance.
1124

1125 MATT NEUMAN: Any questions from the Board for the applicant? Alright, I'll allow the opposition an
1126 opportunity if they'd like to rebut any of that.
1127

1128 MORGAN HOLLIS: Thank you. I'll just be very brief 'cause I think we've laid our case out, but I guess just
1129 to hit the points, there's not a question of relief for the applicant. While I understand the applicant and
1130 Richard may have determined that there's no other space in town for this type of use, that is not really
1131 what this Board's purpose is, is to determine that issue. This Board is to determine whether this site,
1132 this particular site, has a hardship. And whether or not this use, if it does have a hardship, this use is
1133 reasonable. And we would argue that, aside from whether they can locate anywhere else in town,
1134 which we think they can and have a disagreement over that issue, the bottom line is this is not a good
1135 use. While it has some good advantages, as just stated, on the road, close to the road, it's where people
1136 drive, all those things are fine. This lot is not the right lot. It doesn't give enough space. You're going to
1137 have forty (40) dogs, twenty (20) on each side, open air, going up, noise, close to an area where a
1138 permitted you know is going forward. It is not a good use for this site. On the appraisals issue, you have
1139 to make that weighing, that's clear. But what you have is a letter from Tinkham Real Estate, the broker
1140 in the deal. That's not an opinion. That's not an independent opinion. That cannot be considered.
1141 There's no credibility to that. That may be her belief, but she is out. So there is no evidence presented.
1142 On our side, we have our appraiser, three (3) realtors who are not hired by us, and the owner has an
1143 appraiser. I think the weight is clear. There is adverse impact. Thank you.
1144

1145 MATT NEUMAN: Thank you.
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1147 NEIL DUNN: Mr. Chairman, if I may?
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1149 MATT NEUMAN: Neil, go ahead.
1150

1151 NEIL DUNN: Richard, we've been stating that the excavating business could go in there and the drive-in
1152 could, but then when we look at the POD, those are not allowed in the POD overlay, right?
1153

1154 RICHARD CANUEL: Yes, they are.
1155

1156 NEIL DUNN: Okay, well that's where I'm trying to get some clarification...
1157

1158 RICHARD CANUEL: Right.
1159

1160 NEIL DUNN: ...because I look at POD 102 and I see that there's less permitteds.
1161

1162 RICHARD CANUEL: Yup.
1163

1164 NEIL DUNN: And then it says something about the underlying, if it's not permitted, is considered
1165 conditional, so it would be a conditional use in the overlay zone. It wouldn't necessarily be permitted.
1166

1167 RICHARD CANUEL: That's right. Those uses that are listed in the underlying district, the Commercial-II
1168 district, that are not listed as permitted in the POD, are permitted by conditional use permit, approved
1169 by the Planning Board.
1170

1171 NEIL DUNN: Planning Board only, not us.
1172

1173 RICHARD CANUEL: That's right. That's right.
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1175 MATT NEUMAN: Any other questions? Are we ready to pull this back to deliberation? Or any other
1176 questions before we do that?
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1178 LARRY O'SULLIVAN: Bring it back.
1179

1180 JIM SMITH: I'm looking over this report about the noise. And there's one part about it that I have...I'm
1181 struggling with. It gives a certain noise level, then it talks about if you add additional animals and
1182 somehow he comes to the conclusion it would go up by ten (10) dB. How did he come up with that type
1183 of a conclusion? Because if you take three (3) dogs, they're not all gonna sound the same, you're not
1184 gonna have the same noise level from each animal, you may not have all animals barking at the same
1185 time. So, how did he...what was that based on? That idea that it would increase 3 dB for each additional
1186 dog, up to a ten (10) dB? I just don't understand how he came up with that type of a thought process.
1187

1188 MORGAN HOLLIS: I apologize, I can't really speak for him, but in my query of him, when I was asking him
1189 what it stated, he said, just as it says, "an additional noise source of approximately the same sound level
1190 is added." I asked him the same question. Well, I have two (2) different kinds of dogs. I have a big dog
1191 and a little dog. The little dog has one sound and the big dog has another and he said, "Lookit, sounds,"
1192 that's what the other part of this letter is about. The type of sound may irritate you, but it's a decibel
1193 sound, which is different than the irritation sound. So the sound source for dogs has decibel readings.
1194 At a certain distance, those decibel readings are consistent among dogs, is what he tells me. He did the
1195 sound reading of this veterinary hospital. I have to rely on him. The addition of three (3) decibels is
1196 based upon, I think, the prior letter that talks about how these things are extrapolated. I'm not a noise
1197 scientist, but he clearly is. He wrote the book on it. This is how it's determined, this is how he
1198 extrapolates it, so I have to rely on it. I can't answer you in any more detail than that. If you wanted to
1199 table the meeting, then I would make sure he got here if you had questions. But he was unable to be
1200 here this evening.
1201

1202 JIM SMITH: I just had a hard time trying to understand...
1203

1204 LARRY O'SULLIVAN: It's not a lot different, Jim, from when you enter a room, there are two (2) people
1205 talking. Enter the same room with fifty (50) people talking. So, that's really what you're listening to, is
1206 your hearing the combination and, in effect, it becomes multiplied. You know, it's not like people speak
1207 louder, but they do in order to be heard.
1208

1209 MORGAN HOLLIS: It's just like I...I'm sorry. I had the question to him of, "You mean if I put thirty (30)
1210 dogs out there, that's still only gonna go up ten (10)?" And he said yes, which is counterintuitive to me,
1211 but that's how the science works in there. There's a certain cap noise level. And that's ten (10). That's
1212 what he states in his letter, so, whether you put forty (40) or twenty (20), there's a certain cap noise
1213 level based upon that sound.
1214
1215 MATT NEUMAN: Which does make sense.
1216
1217 LARRY O'SULLIVAN: Sure.
1218
1219 MORGAN HOLLIS: So, I wish I could answer in more detail, but I can't. I [indistinct] with him, but...
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1221 JIM SMITH: Well, I just wanted to raise that issue so we'd get some clarification.
1222
1223 MATT NEUMAN: Alright, any other questions from the Board?
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1225 NEIL DUNN: Just one more to the applicant. So you're saying the distance, the proposed distance from
1226 the property line at this point would be what?
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1228 STEVE CLARK: Approximately eighty (80) to a hundred (100) feet. It's all subject to site plan review,
1229 but...
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1231 NEIL DUNN: Right. I guess, no, what I'm looking at based on the noise thing, and noise is a science and
1232 it...I'm sure it's not linear, but I'm sure that mathematically this is correct. So at a hundred (100) feet,
1233 we would just be under the...I guess it's kind of hard to tell where we'd be. We don't have a
1234 measurement at a hundred (100) feet and we don't know that it's linear, so we can't even divide it and
1235 scale it or anything. At a hundred and sixty (160) it would be sixty four (64), then you add the ten (10), it
1236 would be at seventy four five (74.5). There's no way you'd be a hundred and sixty (160) away from a
1237 property line with any of that.
1238
1239 STEVE CLARK: From the property line, no. From the nearest residence, it would certainly be close. And
1240 keep in mind, he, in his analysis, he talked about "over a grassed area."
1241
1242 NEIL DUNN: Right.
1243
1244 STEVE CLARK: The Planning Board, certainly, in its infinite wisdom, may require some additional
1245 landscaping as a buffer to that between the kennel runs and that property line.
1246
1247 NEIL DUNN: And if we were to put in some kind of limitation on noise and there was some way for you
1248 to put in noise reduction material, I mean, not cones, not the normal [indistinct] kind of cones they use,
1249 but would that be something you think you'd be adverse to? Again, I don't even know if you'd get there
1250 and how would...I mean, theoretically on paper, if we know where the location is and you plant certain
1251 trees, maybe we can get some...the same person to come up with a...
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1253 STEVE CLARK: Well this...

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NEIL DUNN: At eighty (80) feet with this kind of a buffer, you would be below that threshold that we were using for some other more intense noisy...

STEVE CLARK: Sure and the Board has to evaluate each of these reports. We don't have the benefit tonight of being able to cross examine the individual who wrote this, but as you know, there's gonna be...we don't know in his analysis if he took into consideration the representation we made to you that there's a solid barrier between the dogs and the rest of the property, such that what impact does that solid barrier...sound is gonna travel, but it should reduce substantially or at least something and, as you know, at the eighty (80) foot, with the dogs referenced in the report, he's at seventy two (72) decibels. Then you put in the solid fencing that's gonna run between the dog runs and the property line of the abutters, it could be reduced further.

NEIL DUNN: Right, and I'm just trying to figure out how we can handle on that or if it even matters to anybody else on the Board. But, you know, to give to fair due to everybody in the process here, I didn't know if that's something you would be...object to doing if we put some kind of limit, or would you rather do more research on it, or...I'm just trying to get a sense from you if we put some kind of noise threshold that's only there for excavation now when we're trying to use that as a level, saying well, that would be allowed theoretically and that would be the threshold, would you be able to comply with that or do you think that would be to limiting? I'm just trying to get a better handle and see how...

STEVE CLARK: It's hard to say at this point in time, I mean, the one thing to keep in consideration, and it was raised by, I believe, by you Mr. Dunn, is the other uses that can be allowed in the zone and also that on the front of the two properties, when the applicant came in conceptually, he came to you for relief and wanted to make sure that between that access road onto Route 102 for this residential development, that he preserved his rights to have two (2) commercial lots, so something's gonna go on this lot at some point in time. And something's gonna go on those two (2) commercial lots that are going into that facility, all of which are gonna generate noise that may be equal to or greater than this. Again, thank you very much.

NEIL DUNN: I'm good.

MATT NEUMAN: Okay. Jim?

JIM SMITH: I'm just wondering whether we should ask for some more opinions or...?

MATT NEUMAN: Do you think we need some more?

JIM SMITH: Well, we've got some substantial documentation from the people in opposition. In my mind, it would seem fair to give the applicant more of an opportunity to try to come up with some counter expert opinions. Or would they be interested in that?

STEVE CLARK: Can we just take a...my client doesn't have unlimited resources. I just need to make him aware of what the cost is of obtaining such experts.

1299 MATT NEUMAN: Absolutely.
1300
1301 [Pause]
1302
1303 STEVE CLARK: As I indicated, my client's don't have unlimited resources, so they'd like to proceed with
1304 the submission that they have.
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1306 MATT NEUMAN: Okay. Alright, if there are no further questions from the Board, then, we're gonna pull
1307 it back into deliberation.
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1309 DELIBERATIONS:
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1311 MATT NEUMAN: Alright. What are you thinking, Jim?
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1313 JIM SMITH: Well, one of the thoughts I have about this is the site itself. It isn't any easy site to develop
1314 in any manner because it has a large impact by the utility easement, there's a certain amount of
1315 wetlands involved, so the site has some limitations as what can go on the site. So, in that respect, I
1316 believe it makes it a unique lot, so I think that's on one side. As far as the noise issue goes, I think that's
1317 a very tough issue to deal with because one, the Town really does not have a standard for noise level in
1318 the ordinance as it's written presently. Noise, as I understand it, is very dependent upon distance and
1319 whatever other buffering mediums you may have, i.e. trees and so forth. I think all of us have seen
1320 these barriers which are popping up all over the place on along the highways. And I'm sure all of those
1321 are there to try to reduce the noise impact of the highways. So, that's a tough issue. So, I'm not sure it's
1322 enough to stop the whole project, but it certainly is something that doesn't help it. That's where I'm at
1323 at this point.
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1325 MATT NEUMAN: Do you feel that the noise is enough to diminish the value of the surrounding
1326 properties?
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1328 JIM SMITH: Yes, I believe it could.
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1330 MATT NEUMAN: And I struggle with...I struggle with that as well.
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1332 JAY HOOLEY: But based on the information submitted to us, as presented...
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1334 MATT NEUMAN: Exactly, which is...
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1336 JAY HOOLEY: I would observe...I probably take a slightly different...have a slightly different take on the
1337 point of the uniqueness of this property distinguishing it from all other properties along there. If we
1338 were to look at all of the allowed uses for C-II, what makes this one so unique that you couldn't do the
1339 rest of those?
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1341 LARRY O'SULLIVAN: Well, the other uses that are permitted in any...I mean, yeah.
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1343 JAY HOOLEY: Yeah, what's unique...?

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LARRY O'SULLIVAN: There are dozens of uses that are permitted there. That's the issue, is...that's not the issue. But this is in the Performance Overlay District and one of the objectives of the district is to have uses that are public access. The ability for the traveling public, that kind of a thing. This, in my opinion, is the use is a destination use. I don't own a pet. I'm never ever gonna go there. My car gets low on gas or my car's over steaming or something, I'm not going in there. If I'm hungry, I'm not going in there. If I needed a doctor, if I was gonna go to the dentist or what have you, that's primarily what that whole POD was designed for and I...this is contrary to that as far as I'm concerned, so they...the objective of the district isn't dog kennel type businesses. That's a very limited section of the population to begin with. And then you're further limiting it...I think it's a terrific idea. An awesome idea for a business. I don't think this is the right location for it whatsoever. But...

JAY HOOLEY: But do you see...

LARRY O'SULLIVAN: ...I don't think it's the right zone. I don't think it's, you know, the combination of the requirements that you're gonna have a residence in here and it's gonna be...that will turn it into a mixed use and it's going to be potentially a noisy business. That's like third or fourth on the list as far as I'm concerned, so...You know, the overall zoning for an animal kennel is AR. Not C-II. And we have a Performance Overlay District that our Master Plan started with and this new POD helps us to determine further the uses that we want in that area. And this isn't one of them. So that's the basics that I had the issues with and then we can get into the, you know, how the values get diminished and so forth, so that'll be later in the support of the request. And maybe with...address each of those, but that's my start. I don't know if you all feel the same way but I completely disagree with Richard about the best places for this. [Indistinct] a C-II area where this location of this lot is, so I have a problem with it. I don't see how the public interest is met. I'm sure you're gonna wanna get into the each of the items that have to be covered, but...

MATT NEUMAN: Yeah, and I was just gonna say, why don't we walk through the five points and...

LARRY O'SULLIVAN: Well, do you disagree that the dog kennel is a destination business and it's not a motoring public business?

JIM SMITH: No, I wouldn't agree with that.

NEIL DUNN: Yeah, I'm not sure how...I mean, to me, I think Richard even mentioned that they're all service and I mean, it is a service. It's, you know, whether you go in there to get a bite to eat or to drop your dog off or to drop off your dry cleaning or...it's a service, though, I mean, I see it as a service business. I do agree with your point to the POD, though, I think that's the bigger drawback that...

MATT NEUMAN: Mm-hmm.

NEIL DUNN: The POD is trying to...you know, the excavation and some of those other ones that we were talking about earlier are really a conditional use which...you know, it's not easily permitted. It's not automatically permitted, let's rephrase that, as it would be in a C-II. If it was straight C-II, I think it would

1388 make it a lot clearer. I do agree with you that the POD changes the perspective on it. But I do see it as a
1389 service business. It's no different than...
1390
1391 LARRY O'SULLIVAN: I don't see it as being compatible with the other uses in the area. Or that we want
1392 to promote in the area.
1393
1394 NEIL DUNN: Well, that's where I think the POD is giving me some issue on the...you know, the intent or
1395 the general interest. But maybe we should walk through your points and go that way.
1396
1397 LARRY O'SULLIVAN: No, maybe somebody else has an opinion, I mean...
1398
1399 MATT NEUMAN: Well I think, though, it would be helpful if we go through the five points. Otherwise,
1400 we're gonna...
1401
1402 NEIL DUNN: Wander around.
1403
1404 MATT NEUMAN: Unless, you know, I...
1405
1406 LARRY O'SULLIVAN: You're the Chair, we can do...
1407
1408 MATT NEUMAN: Right, no, if no one else has any other groundbreaking insight on this, we can...Jim, I'm
1409 looking at you.
1410
1411 JIM SMITH: I'm all set.
1412
1413 MATT NEUMAN: Not you, the other Jim.
1414
1415 JIM BUTLER: You.
1416
1417 JIM TOTTEN: How many Jim's do we have up here? To that first point, right, the variance will not be
1418 contrary to public interest, and then what I'm seeing here for the POD, the definition that I'm deriving
1419 from it, it doesn't sound contrary to the POD. I mean, we've got assisted living facilities, elderly housing,
1420 I mean all of this stuff is destination, not service. I'll drive by it every day if the assisted living facility
1421 goes in there, so, that would be my point.
1422
1423 LARRY O'SULLIVAN: That's resident, though. Assisted living is residential.
1424
1425 JIM TOTTEN: Residential, right.
1426
1427 LARRY O'SULLIVAN: What we're talking about is a commercial use...
1428
1429 JIM TOTTEN: Religious facilities...
1430
1431 LARRY O'SULLIVAN: Right, those are the uses that we're promoting.
1432

1433 MATT NEUMAN: It's his first meeting, okay? Cut him a little slack.
1434
1435 LARRY O'SULLIVAN: I'm just trying to get...I didn't see where the fit was the...how the relationship
1436 between the kennel and...
1437
1438 JIM TOTTEN: Well, I think the previous point was made that it's, you know, not a medical facility. You're
1439 gonna drive by it, right, it's not a gas station, it's no place...it's not a destination or a service facility for
1440 yourself, but to Mr. Dunn's point, it is a service facility for another segment of the population.
1441
1442 LARRY O'SULLIVAN: Okay, say, the motoring public...so, you're driving...you have your dog in the car.
1443 You're driving down, are you gonna drop your dog off? Or are you gonna wake up in the morning, throw
1444 the dog in the car and drag the dog down and then leave? Leave the dog there and then come back
1445 eight hours later?
1446
1447 JIM SMITH: Well some people would.
1448
1449 LARRY O'SULLIVAN: What, drive by and say, "Oh, there's a kennel, let's let the dog off."
1450
1451 JIM SMITH: Well, they would get in the car...let's say they're going...they had to leave town for some
1452 reason...
1453
1454 LARRY O'SULLIVAN: That's exactly my point, Jim. That's what makes it a destination.
1455
1456 JIM SMITH: They're providing a service.
1457
1458 LARRY O'SULLIVAN: Right. That's what makes it a destination.
1459
1460 JIM SMITH: No, that's providing a service. They're taking care of an animal.
1461
1462 LARRY O'SULLIVAN: Sure, every...okay. I understand that. I'm trying to direct that towards the motoring
1463 or the services that typically people will drive by. And that's what we're talking about, right? In this
1464 POD. The uses that we're permitting in the POD.
1465
1466 JIM TOTTEN: I just don't see it that much different than a religious facility in that respect. Right?
1467
1468 LARRY O'SULLIVAN: Okay.
1469
1470 JIM TOTTEN: It's a destination. You leave your house to go to church at a certain time.
1471
1472 LARRY O'SULLIVAN: Absolutely. Right.
1473
1474 JIM TOTTEN: Driving home from work, you're typically not stopping in. It's not something that you just
1475 do on a whim, right? You plan for it. In that respect, it's not that different in the POD as the religious
1476 facility, isn't it? So I was just trying to clarify that motoring public comment versus, you know, and
1477 reconcile that with the other things that I am seeing on the permitted use.

1478
1479 LARRY O'SULLIVAN: Good point.
1480
1481 MATT NEUMAN: Alright, so, let's....everybody up for walking through the five points now?
1482
1483 NEIL DUNN: Mm-hmm.
1484
1485 MATT NEUMAN: Alright, number one. Thoughts? The variance will not be contrary to the public
1486 interest.
1487
1488 LARRY O'SULLIVAN: Their response is, this is one of the things that further the C-II district " is primarily
1489 intended to develop business areas designed to serve the motoring public." Alright? Again, don't see
1490 how a kennel fits that mode, but "the intended use would further the objective of the zone." I don't see
1491 that as being correct either. "By allowing the motoring public a convenient location to drop off their pet
1492 for the day or overnight to be cared for while the owner works or is away. The property, once
1493 developed, will contain enclosed structures for the use in well constructed buildings with peaked roofs."
1494 I don't see how that addresses it either.
1495
1496 MATT NEUMAN: So you're driving to work and you go drop your dog off at the daycare...
1497
1498 LARRY O'SULLIVAN: It's a terrific idea. It's absolutely a wonderful idea.
1499
1500 MATT NEUMAN: The motoring public?
1501
1502 LARRY O'SULLIVAN: Mm-hmm.
1503
1504 MATT NEUMAN: Of course, you wanna drag your dog there. I heard that little comment.
1505
1506 LARRY O'SULLIVAN: What, are you gonna walk by? I...
1507
1508 MATT NEUMAN: Alright, so...
1509
1510 NEIL DUNN: Well, on number one, if I may, Mr. Chairman...
1511
1512 MATT NEUMAN: Yup.
1513
1514 NEIL DUNN: I think it is talking to the C-II, but it's...the C-II also has funeral homes which you don't just
1515 drive by and stop in at. So when you go into the POD and we try to pull the picture out of the POD of
1516 what types...I think they get more to Larry's type of services, then I'm not sure that it's addressing the
1517 POD component. It does address the C-II, I'll agree that, but we also have the POD in there and I'm not
1518 sure that it's addressing that. I guess that's my point. So I'm still teetering on one.
1519
1520 MATT NEUMAN: Well, any other comments on one? Alright, number two, spirit of the ordinance is
1521 observed.
1522

1523 LARRY O'SULLIVAN: We have incompatible existing uses. I don't understand how they can be something
1524 that the spirit of the ordinance would ever propose. You know, to be construed as the type of use
1525 "furthers the C-II district objectives of serving the motoring public. This use will allow day and overnight
1526 stay for a family's pet so the owner can work or travel. The spirit of the ordinance is observed where the
1527 use meets the district's objective." And I don't think it met the district's objective to begin with, so...
1528
1529 MATT NEUMAN: Mm-hmm. Alright. Other comments? No? Number three, substantial justice is done.
1530
1531 LARRY O'SULLIVAN: Are you waiting for me?
1532
1533 MATT NEUMAN: Anyone with comments?
1534
1535 LARRY O'SULLIVAN: What the attempt is here is to make it a little bit...make it sound as if this a more
1536 unique location than others up and down 102 or others in the AR-I areas, so I don't think the limiting
1537 conditions make it anything else, another use, incompatible with it. We have, again, what, twenty five
1538 or thirty other uses that are compatible, so...
1539
1540 MATT NEUMAN: Mm-hmm.
1541
1542 LARRY O'SULLIVAN: And permissible.
1543
1544 MATT NEUMAN: Jay? Something to add?
1545
1546 JAY HOOLEY: No. I saw that more as getting down to number five, but I'm having those same thoughts.
1547
1548 MATT NEUMAN: Okay.
1549
1550 JAY HOOLEY: The uniqueness of the property within that section, that POD. What is the uniqueness
1551 that would preclude all the other items that are allowed and create the hardship? By not being able to
1552 do this as opposed to those other listed uses in the 102 POD?
1553
1554 MATT NEUMAN: Alright. And number four, the one that we obviously struggled with.
1555
1556 LARRY O'SULLIVAN: That's where we have it with our Master Plan. Our Master Plan talks about values
1557 and our values as a community and the things we care about and safety and peace and quiet and, you
1558 know, the why we have the minimum size lots and...or the lots sizes that we do have that are an acre in
1559 most of the town or more. And for different zones. Why we have limits or minimums on the size of
1560 those as well, so, that's part of, as far as I'm concerned, why we have this separate C-II area or separated
1561 C-II area in this POD where we try to do as much of the protection of neighboring properties, or
1562 potentially, what you're going to have nearby and I think that this is quite an intrusive thing on...and it
1563 will diminish nearby properties or limit the highest and best, as they were saying, of all the surrounding
1564 properties, so the uses that are nearby, I think this will have an impact on. So I disagree with what
1565 they've written in the way that it wouldn't, obviously, diminish the surrounding property values.
1566
1567 MATT NEUMAN: Mm-hmm. Other comments or thoughts?

1568

1569 NEIL DUNN: Well, the...I think there was...the applicant...counsel made a valid point that there was no
1570 really comparative, so we're getting "I think, you think" kind of things. And we get that all the time here
1571 at Board.

1572

1573 MATT NEUMAN: Mm-hmm.

1574

1575 NEIL DUNN: So without direct comparisons, property comparisons and done up properly, it, you know,
1576 if it wasn't the elderly housing there and it was another Comcast or another drive in theater or
1577 excavating plant, no, it probably wouldn't diminish the neighboring properties. But because the elderly
1578 housing is there, then, you know, maybe it would. But I'm not really putting the weight on, you know,
1579 my opinions from people without complete comparative results and, you know, unfortunately, that's
1580 what we have to go with, but, again, if it was all commercial there, then it probably wouldn't matter a
1581 hill of beans, but because there is a residential that was approved prior, then I imagine it could with that.
1582 And that's why I was trying to get to that noise level; is there any way to make sure we can get a better
1583 handle on that and without getting a handle on it, I guess you'd have...my thought is, it possibly could.
1584 I'm not convinced it would, but I'm not convinced it doesn't, so I don't know where everybody else is on
1585 that.

1586

1587 MATT NEUMAN: Yeah, you know, I think noise is only one part of the potential diminishment of the
1588 value with this particular type of use. I think that's another difficult thing to determine. But again,
1589 that's, you know, like this particular use. Just my thought. You have something to say, Jim? Go ahead.

1590

1591 JIM SMITH: No...

1592

1593 MATT NEUMAN: You sure?

1594

1595 JIM SMITH: I think I'm getting a flavor for the way the Board is going now.

1596

1597 MATT NEUMAN: Really?

1598

1599 JIM SMITH: I think we probably, rather than prolong the agony...

1600

1601 MATT NEUMAN: Well, no, I think we, you know, we've got one more that we should probably just go
1602 through it,

1603

1604 LARRY O'SULLIVAN: Go through each of them.

1605

1606 JIM SMITH: Yeah, we can go through it, but I think the tenor of the Board is showing.

1607

1608 MATT NEUMAN: Yeah. Alright, with nothing else on four, then five, the literal enforcement of the
1609 provisions of the ordinance would result in an unnecessary hardship. I don't know if anyone has any
1610 strong opinions on the unnecessary hardship.

1611

1612 LARRY O'SULLIVAN: You mean that we haven't already mentioned?

1613
1614 MATT NEUMAN: Yeah. Anything further that we'd like to...
1615
1616 LARRY O'SULLIVAN: I'll be redundant and say that I don't see the significant difference between this one
1617 and the one that's two lots away or five lots away. So I don't see that there's a significant issue there
1618 about the uniqueness of it. I don't think that there's...I think our ordinances are in the right place at the
1619 right time to say that there's a, you know, twenty five or thirty or so other uses that are permitted here,
1620 so, I think that this is...there's no unnecessary hardship on this. [Indistinct]
1621
1622 JAY HOOLEY: [Indistinct] this property being distinguished.
1623
1624 MATT NEUMAN: What's that, Jay?
1625
1626 LARRY O'SULLIVAN: There's nothing that distinguishes it from the others.
1627
1628 JAY HOOLEY: I'm agreeing [indistinct] that seems to distinguish this property as far as why you couldn't
1629 have any of those other uses that are listed.
1630
1631 MATT NEUMAN: Mm-hmm.
1632
1633 JAY HOOLEY: And need to do something different.
1634
1635 LARRY O'SULLIVAN: And we're talking about both things here. We have a residence inside this
1636 commercial business, right? So we have two different variances here. So, I think that mixed use thing is,
1637 you know, we don't allow it almost anywhere, do we? In places that we allow...they're allowed in lots of
1638 places, but not allowed in most. We have mixed uses, commercial and residential, on the same lot,
1639 so...you know, there's dozens of reasonable uses that we could come up with or that could be used, so...
1640
1641 MATT NEUMAN: Mm-hmm. Alright, well, unless there's any other further comments anyone would like
1642 to make, then I think we should maybe look for a motion? If someone would like to go ahead and make
1643 one.
1644
1645 LARRY O'SULLIVAN: I think my motion's more extreme than what you guys thing because I think the
1646 underlying and overlaying, I'm sorry, the POD, both the objectives aren't being met and they're being
1647 hindered by this kind of a business and I know you've already given me the impression that you don't
1648 agree with that, so I won't make the fist motion that includes that, if you'd like, however, that's a strong
1649 feeling that I have about this use of business in that zone, so...You want me to skip it or do you want me
1650 to make the motion or not?
1651
1652 MATT NEUMAN: Go ahead.
1653
1654 JIM SMITH: Go ahead.
1655
1656 LARRY O'SULLIVAN: Okay. I make a motion that we deny application...which one do we have, 3/21...?
1657

1658 NEIL DUNN: Yeah.
1659
1660 LARRY O'SULLIVAN: ...3/21/2012-2 because the variance would be contrary to public interest in that it
1661 does not further the objectives of the district, it does not further the objectives of the zone, and that the
1662 spirit of the ordinance hasn't been observed because, and again, does not further the C-II district's
1663 objectives and substantial justice has not been met in that the limiting conditions don't make it
1664 unreasonable for other uses, the values of surrounding properties, in my opinion, or the value of
1665 surrounding properties would be diminished based on the potential sound issues, smell issues, well
1666 those would be the primary, the primary issues would be sound and smell, and that that would be better
1667 fitted in an AR zone and that there is no unnecessary hardship on the lot, that there is a substantial...fair
1668 and substantial relationship between the purposes of our ordinance and this restriction.
1669
1670 MATT NEUMAN: You sure? That's good?
1671
1672 LARRY O'SULLIVAN: That ought to cover it.
1673
1674 MATT NEUMAN: Okay. We have a motion. A very long motion. Could be the longest in history.
1675
1676 LARRY O'SULLIVAN: We don't have a second, but what we could take is a second for discussion if
1677 anybody wants to discuss or rebuke or rebut any of the items that I listed. How's that? Is that fair?
1678
1679 JAY HOOLEY: I'll certainly second it for discussion.
1680
1681 MATT NEUMAN: Okay.
1682
1683 JAY HOOLEY: That was probably a slightly more detailed motion, you're correct in that I anticipated, but
1684 I think underlying the denial is overall the appropriate thing. For not quite as many reasons but for the
1685 most part, that I fail to see it established, the uniqueness of the property, that denying this particular
1686 use would prevent, again, most of the listed uses...
1687
1688 MATT NEUMAN: Mm-hmm.
1689
1690 JAY HOOLEY: ...are options. It would seem.
1691
1692 MATT NEUMAN: Alright, well, we do have a motion.
1693
1694 LARRY O'SULLIVAN: And a second. And it's open for discussion. Anything from you, Jim?
1695
1696 JIM SMITH: I think the only problem with the motion, by listing so many various items, you're giving the
1697 applicant more of an opportunity to appeal it because he then would have more different points to try
1698 to bring new information in. That would be the only downside to your...
1699
1700 LARRY O'SULLIVAN: Bring new information in? You mean on an appeal?
1701

1702 JIM SMITH: Yeah. But that's the only downside I see to it. Other than that, I'd like to just as soon go
1703 ahead and vote and be done with it.

1704
1705 NEIL DUNN: I agree with Jim. I was kind of fishing for more information. If they wanted to come back
1706 and appeal it with some new set of information, then that wouldn't hurt my feelings. So leaving it that
1707 broad and open, you know, is fine with me.

1708
1709 MATT NEUMAN: Alright, well...

1710
1711 LARRY O'SULLIVAN: [Indistinct], Matt?

1712
1713 MATT NEUMAN: No, I'm fine with it.

1714
1715 LARRY O'SULLIVAN: Okay.

1716
1717 MATT NEUMAN: So, we have a motion and a second. All those in favor...

1718
1719 JAY HOOLEY: Of denying...

1720
1721 MATT NEUMAN: ...of denying the motion?

1722
1723 JAY HOOLEY: Aye.

1724
1725 LARRY O'SULLIVAN: Aye.

1726
1727 MATT NEUMAN: I'm sorry, denying the applicant, say 'aye.'

1728
1729 LARRY O'SULLIVAN: Aye.

1730
1731 NEIL DUNN: Aye.

1732
1733 JAY HOOLEY: Aye.

1734
1735 JIM SMITH: Aye.

1736
1737 MATT NEUMAN: Aye. Those opposed? Abstentions?

1738
1739 RESULT: THE MOTION TO DENY CASE NO. 3/21/2012-2 WAS APPROVED, 5-0-0.

1740
1741
1742 RESPECTFULLY SUBMITTED,

1743
1744 
1745
1746

1747 NEIL DUNN, CLERK
1748 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY
1749
1750 **APPROVED MAY 16, 2011** WITH A MOTION MADE BY LARRY O’SULLIVAN, SECONDED BY JAY HOOLEY
1751 AND APPROVED 4-0-0.